

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8904 SENATE JUDICIARY

**SB**

**246**

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF PUBLIC SAFETY

COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

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April 2, 1996

Senator Robin Taylor  
Capitol Room 30  
Juneau, AK 99801-1182

Dear Senator Taylor:

Each year the Council on Domestic Violence and Sexual Assault sponsors a public hearing on a domestic violence or sexual assault issue. At our December 8 meeting, the Council chose the Governor's Domestic Violence Prevention Act of 1996 to be this year's topic. The Council felt it was vitally important that this far-reaching piece of legislation be heard in order to increase the effectiveness of our response to domestic violence.

Last week the Council co-sponsored the hearing with the Governor's office. Over forty people from throughout Alaska took the time to express their thoughts on the areas of domestic violence, and the impact this legislation could have on making Alaskans' safer. Over 90% support the passage of this bill.

On behalf of the Council, I am enclosing a copy of the transcript of this hearing, along with the written comments that we received. It is our sincerest hope that you will read this transcript, and hear the need for Alaska to strengthen its approach to domestic violence crimes.

Sincerely,

  
Jayne E. Andreen  
Executive Director

Enc.

cc: Council Members  
Lauree Hugonin, Alaska Network on Domestic Violence & Sexual Assault

**COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT**  
**MARCH 27-28, 1996**  
**JUNEAU, ALASKA**

**WEDNESDAY, MARCH 27, 1996**  
**Alaska State Capitol - Governor's Conference Room**

The meeting was called to order at 10:05 a.m. by Persenia Whittern.

Council members present: Persenia Whittern, Chair, public member; Evie Smith, public member; Del Smith, Department of Public Safety; Yvonne Chase, Department of Health and Social Services; Laurie Otto, Department of Law; Barbara Thompson, Department of Education; Mary Pete, public member.

Council staff present: Jayne Andreen, Executive Director; Marcia McKenzie, Program Coordinator; Errol F. Arnaud, Secretary.

Others present in Juneau: Tyrnee Orme; Sandra M. Stone; Judy Steffel; Kari Robinson; Heather Flynn; John Leque; Cindy Smith; Odette Foster; Val Revard; Annette Coggins; Amber Ala; Stephame Morris.

Teleconference sites included Anchorage, Fairbanks, Barrow, Bethel, Cordova, Delta Junction, Dillingham, Eklutna, Glenallen, Homer, Kenai, Ketchikan, Kodiak, Kotzebue, Mat-Su, Metlakatla, Nome, Petersburg, Point Hope, Seward, Sitka, Tok, Valdez, Wrangell, and Unalaska.

**Item: STATEWIDE TELECONFERENCE - THEME: GOVERNOR'S DOMESTIC VIOLENCE PREVENTION ACT OF 1996**

Whittern introduced the Governor's Domestic Violence Prevention Act of 1996 and indicated the Council decided to sponsor this bill because it will provide a number of new avenues to increase the safety of victims and make offenders accountable. She read an excerpt of a letter from the Cordova Family Resource Center supporting the Domestic Violence Prevention Act.

U. Governor Fran Ulmer: She believes this is an important issue, although she wishes the bill, the Council, and the conversation about domestic violence were not necessary. We have a very long way to go before we are truly a civilized society. It is important to change the picture of what is acceptable behavior in our society. This is not a problem unique to Alaska, and the bill comes as a result of work done by many people in other states; it is a model code that has been recommended to the states for adoption, and is a reflection of the best thinking on how to make a difference for victims and the communities in which we live. She cited State and national statistics. The National Council of Juvenile and Family Court Judges formed a task force to evaluate the status of the laws on domestic violence and to consider what kind of legislation should be passed to try to deal with the problem, this gave rise to the model code. It addresses law enforcement, prosecution, the Court System, and the Department of Corrections. Law enforcement will be able to take possession of deadly weapons used or possessed by a defendant during the commission of the domestic violence act. Peace officers will be required to give victims more information about domestic violence, including their rights, what legal options are available to them, and what resources are available.

whereas the victims don't. AVV encourages that the Domestic Violence Prevention Act of 1996 be looked at very seriously because it closes the loopholes and provides great safety for women and children.

Val Revard: She is Executive Director of Sitkans Against Family Violence. She has worked in this field for most of her adult life, but never chose it as a career option. She feels it chose her when, at 4-1/2 years old she watched a man she loved very much strangle a woman she loved very much until the woman passed out. Since that time she has seen many women with strangulation marks and bruises on their necks, and she has seen more black eyes than anyone should have to. Over the years, great strides have been made in legislation and we have laws to protect victims in many ways. But enforcement is spotty from community to community. The courts treat things slightly differently. She believes this legislation is important because it will help standardize and follow the national model to work with these difficult situations. She believes the changes to the orders for protection are extremely important and will be extremely valuable in moving forward.

Kari Robinson: She is a family law attorney practicing in Juneau. This new legislation is desperately needed in Alaska to ensure that women and children's safety needs are being met. Four million women in the U.S. are beaten every year, yet we still lack adequate policies and resources to effectively respond to domestic violence. Domestic violence often results in the woman's death. At least 70% of men who batter their wives also sexually or physically abuse their children. In 1995 the AWARE Shelter provided crisis intervention to 1,097 victims of domestic violence and 202 victims of sexual assault. The Act provides much needed revisions to domestic violence laws. One of the most important factors in deterring domestic violence and protecting women and children's safety is when the justice system coordinates its efforts between the police, prosecutors, magistrates, judges, attorneys, probation officers, parole officers, and battered women's advocates. The Act would ensure a comprehensive and coordinated response to domestic violence by expanding the existing protection order provisions, creating a central protective order registry which is important in ensuring a coordinated and effective response to domestic violence, providing for mandatory arrest which is an important first step in curbing repeated abuse, clarifying who is to be arrested (the primary aggressor, not the victim trying to defend herself), and prohibiting mediation in child custody and divorce cases where a domestic violence order is in effect. She urges the Legislature to pass this legislation quickly and provide the necessary protection for women and children.

Annette Coggins: She is the Director of AWARE in Juneau. She has spent about fifteen years working in the field of domestic violence and sexual assault, working with perpetrators of domestic violence as well as with victims. Batterers perpetrate because they can; our system allows them to get away with it, and they know they can get away with it, and they continue their behavior because of this. She asked that the Legislature hear this bill, it's a bill that would bring Alaska in line with model codes that have been found to be the most effective means of curbing domestic violence and that give a strong message to offenders that we're not going to tolerate this in our communities. In Alaska, where we have a higher rate of domestic violence than other states, it's very important that we give a strong message that this is not going to be tolerated.

Amber Ala: She is representing Senator Donnelly, who supports the Domestic Violence Prevention Act. Senator Donnelly has submitted Senate Bill 197 to protect victims of domestic violence. It

# CORRECTION

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Lt. Governor Fran Ulmer: She believes this is an important issue, although she wishes the bill, the Council, and the conversation about domestic violence were not necessary. We have a very long way to go before we are truly a civilized society. It is important to change the picture of what is acceptable behavior in our society. This is not a problem unique to Alaska, and the bill comes as a result of work done by many people in other states; it is a model code that has been recommended to the states for adoption, and is a reflection of the best thinking on how to make a difference for victims and the communities in which we live. She cited State and national statistics. The National Council of Juvenile and Family Court Judges formed a task force to evaluate the status of the laws on domestic violence and to consider what kind of legislation should be passed to try to deal with the problem; this gave rise to the model code. It addresses law enforcement, prosecution, the Court System, and the Department of Corrections. Law enforcement will be able to take possession of deadly weapons used or possessed by a defendant during the commission of the domestic violence act. Peace officers will be required to give victims more information about domestic violence, including their rights, what legal options are available to them, and what resources are available.

Peace officers are also required to look at the long-term situation, including past complaints and arrests. Prosecutors will be required to make reasonable efforts to notify the victim when the offender is released from custody, and they will be required to consult with the victim before a plea agreement is entered into. After an arrest, the defendant must talk to a judge or magistrate before being released from jail, which ensures that each situation will receive some degree of scrutiny. The court will have to consider the safety of the victim and the family, in addition to the safety of the public, when considering the release of an offender. Additional conditions of release will be available to be imposed upon the defendant. In child custody cases, the court is required to consider the safety and well-being of the child and the parent who is a victim of domestic violence; it will be required that they consider the perpetrator's history of causing physical harm, bodily injury, assault, or reasonable fear of harm or injury. The Department of Corrections must notify the victim of any change in the status of the prisoner (e.g., possibility of release, different custody level, or different location). The Parole Board will be able to add conditions of parole, and will be required to revoke parole if the offender violates the conditions. The Department of Corrections, with the approval of the Council on Domestic Violence, will develop a statewide standard for batterer intervention programs. The Department of Public Safety is to develop and maintain a central registry of all domestic violence restraining orders, which will allow the courts and police officers to look up the current and past status of a case.

The following people testified from Anchorage:

Janet Helen Gamble: She is the past chair of the Older Alaskan Commission. She listed the people present in Anchorage: Diana Heard, AWRC; Brandon Carmon, BIG; Jacqueline Oglesby, a survivor of child sexual abuse and domestic violence; Dr. Mark Peterson; Candice Miller, AWAIC; Kim Adelia Leff; Regina Manteufel, victim.

Candice Miller: She has been Program Director for AWAIC for approximately two years. Prior to that she was employed by the Alaska Women's Resource Center in their domestic violence recovery program for ten years. Last year AWAIC provided 13,760 safe nights to 656 women and 729 children. They responded to 11,500 calls on their crisis line and provided services for 554 women who were non-residential clients. This bill is of great importance in protecting the survivors and victims of violence. The significant importance of the domestic violence prevention act portion is that it provides a registry which will provide crucial information about prior acts of violence committed by offenders. Another crucial component is the mandatory training of all professionals who deal with domestic violence, which ensure that all parts of the system who come in contact with a victim will be giving them the same consistent message "You are the victim of a crime. It is not your fault, and you have a right to be safe."

The following people testified from Juneau:

Sandra Stone: She spoke on behalf of Advocates for Victims of Violence in Valdez. Many of her comments were already covered by Lt. Governor Ulmer. As a shelter program, day in and day out, they see the system working against battered women and their children. Often victims believe that they have backup within the system and then find the system is not there. Many victims return into abusive situations because they feel the system is working against them. Recently they have noticed that more and more batterers understand the ins and outs of the laws and know all the loopholes.

whereas the victims don't. AVV encourages that the Domestic Violence Prevention Act of 1996 be looked at very seriously because it closes the loopholes and provides great safety for women and children.

Val Revard: She is Executive Director of Sitkans Against Family Violence. She has worked in this field for most of her adult life, but never chose it as a career option. She feels it chose her when, at 4-1/2 years old she watched a man she loved very much strangle a woman she loved very much until the woman passed out. Since that time she has seen many women with strangulation marks and bruises on their necks, and she has seen more black eyes than anyone should have to. Over the years, great strides have been made in legislation and we have laws to protect victims in many ways. But enforcement is spotty from community to community. The courts treat things slightly differently. She believes this legislation is important because it will help standardize and follow the national model to work with these difficult situations. She believes the changes to the orders for protection are extremely important and will be extremely valuable in moving forward.

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Amber Ali: She is representing Senator Donnelly, who supports the Domestic Violence Prevention Act. Senator Donnelly has submitted Senate Bill 197 to protect victims of domestic violence. It

prohibits insurance companies from discriminating against victims of domestic violence. SB 197 has a hearing today; it has received strong opposition from insurance companies.

Stephanie Morris: She is a counselor with a background in family therapy. She believes this is a very important bill. She is particularly concerned about arrangements regarding visitation for minor children and the safety of children and victims. The children need to have protection and monitoring in these kind of situations and this bill seems to address that very well. She supports the bill.

#### Testifying from Anchorage:

Regina Manteufel: She is from Fairview in Anchorage, which is considered to be one of the poor neighborhoods with violence due to the high poverty rate. On June 18 she was a victim of domestic violence. Police officers tend to not listen. They did not look at the beer cans to see that the perpetrator was drunk. The officers left. The offender caught her and her arm was dislocated and she received a black eye. If the police officers had done their job, she would not have been hurt. She was unable to obtain a copy of the police report. At the emergency room, a police officer denied her ice for her eye and told the doctor he could not come in. She is the Women's State Boxing Champion, undefeated, and is quite able to defend herself. It is hard for her to say that she has been hurt, but if she does not stand up for herself, this will go on and on. She was stalked; it was reported 15 times and a stalking report was never put out on the perpetrator.

#### Testifying from Fairbanks:

Karen Simon: She is a survivor of domestic abuse. She was married for 22 years, 17 of which she endured mental, emotional, and physical abuse. They had two children and her son was abused by his father. When her son was 13, she discovered that her husband had been abused as a child, and both of his parents came from families that where domestic abuse had existed. Her daughter was married a year ago and she has watched her go through domestic violence. Her son is now married with a child, and knows where his reactions come from. When she was married and police officers were called, they told her that they had no sympathy for her because she could get out of the situation any time she wanted. They went through years of counseling. Everyone, including the counselors, had the attitude that this was a means of communication that needed work. She was kicked out on the street on Christmas Eve 1987. When her daughter was first abused as an infant, nothing was done; the paperwork had dropped through the cracks. Until people understand why women stay in abusive situations, they can never help them get out of them.

David Tyler: He is the Fire Chief of the Chena Goldstream Fire Department. He supports this Act. Being part of an emergency response organization, they have the need to respond to these type of situations. We need to give the tools necessary to approach this problem to the police and victims to try and stop this. This legislation is not going to eliminate domestic violence, but it will give a better handle to the people who are trying to control it. Domestic violence is preventable. If we can stop domestic violence, it will lessen the impact on emergency services and police, and will reduce the risks to people responding.

#### Testifying from Barrow:

Jeanne Cross: She is the Executive Director at the Arctic Women in Crisis Program in Barrow. She has also worked at the police department and court system. She thinks the bill has some good things in it. She believes training police officers is important; many times a victim does not seek help again because the officer doesn't immediately see a bruise. She thinks advising the victim of her rights is a wonderful idea, especially the way it is written. In Barrow they have one Assistant District Attorney; last week he had to prosecute a case where a woman was killed as a result of domestic violence, and there was a conviction. However, there are two Public Defenders, numerous Office of Public Advocacy attorneys, and numerous private attorneys. The cases are screened from Fairbanks. If there are going to be mandatory requirements, they have to have the tools to work with. AWIC is constantly overwhelmed and the DA's office is overwhelmed. Without prosecution in the early stages of domestic violence, they will get nowhere. The judges must have training. As a victim's advocate, she sees victims in the emergency room and cares for their injuries. They have to have judges and magistrates who don't close their eyes to the seriousness of these matters. There has to be a DA to prosecute. It is a wonderful plan, and we have to have the resources to implement it.

#### Testifying from Bethel:

Generosa Tall: She is a survivor of domestic violence. She supports the expansion of protective orders. This bill would help a lot of victims be protected. She sees a lot of women who are protected for a total of 110 days, but after the Domestic Violence Injunction is over the women and children are left again with no protection. We also need to have officers take the DVI seriously; too many times victims are left unprotected. She believes it is important that perpetrators be registered when a victim calls for a DVI. She has heard perpetrators say, "Who cares if you've filed a DVI? Who is going to stop me from beating you?"

Helen Sorenson: She is a survivor of domestic violence and is now an advocate. She believes training is important in the field of domestic violence, because domestic violence affects all of us. She supports the training provision of the bill. She supports the Council overseeing the content of what will be required for training, because it will be able to make it more thorough in helping victims. She supports training for teachers, hospital workers, prosecutors and judges, because they will be more aware of what to look for and recognize signs of domestic violence so they can make referrals to the providers or shelters. She supports prosecutors talking to victims about plea agreements prior to entering agreements, so the victims can have a say in regard to the perpetrator's conviction. She supports the Department of Corrections and Parole Board giving expanded notice to victims when someone is being released from custody, so the victim will be able to be more protected from being hurt. She supports the officers telling the victims where they can get help.

#### Testifying from Suka:

Angie Barber: She is a victim of sexual assault. She supports this legislation, especially with regard to restraining orders. She feels this bill will do a lot for victims, especially victims who are not related to the perpetrator.

#### Testifying from Valdez:

Katherine Vaara: She works for AVV in Valdez. She supports this bill. It makes offenders responsible for their actions. It puts pressure on law enforcement to make arrests, and it gives law enforcement the tools to help the victims. Having offenders past records in court provides a better understanding of the danger the victims are in. She agrees with the previous speaker who said this is a very good bill, but we need the resources to follow through. We need domestic violence education within all agencies and departments that deal with the issue.

The following people testified from Ketchikan:

Robert Neswick: He is a member of the WISH Board, a retired State Trooper, and a former Police Chief for the Annette Island Reserve. He wholeheartedly supports this Act. He has worked throughout the State for the past 22 years. He believes the mandatory arrest policy is definitely needed for uniformity. A lot of times the victims beg the police officers not to make arrests. This is not a problem that is going to go away, and until a person gets into the system they won't stop even though they say they will. The Act will let law enforcement and the criminal justice agencies work together for a better life for victims of domestic violence and sexual assault.

Patrick Foy: He is employed in human service work. He strongly supports the bill. He agrees with Mr. Neswick that this is not a problem that will go away and it is something that will take a never-ending amount of work. He feels that domestic violence orders are sometimes used as a tool in fighting for custody of children. He has filed for divorce and would like custody of his children (two boys), but the minute he filed for divorce there was a domestic violence restraining order filed on him, after he had already given his wife the house and everything but his clothes. Asking for the kids for a period of time seemed to upset his wife. He suggested that a study be done regarding the misuse of domestic violence orders.

Testifying from Palmer:

Pam Sandvik: She is Executive Director of the Valley Women's Resource Center. Domestic violence isn't just a private family member; it affects the safety of the whole community in which it occurs. None of us want our children to go play at the houses where we know domestic violence occurs. We don't feel safe when we live next door to a family where we think a gun might go off. She strongly supports House Bill 454 and Senate Bill 246 relating to domestic violence. Domestic violence is addressed at a number of levels in both bills, which is mandatory for any kind of effective intervention. The victims shelters and services can't do this job alone. The comprehensive base of this legislation is exactly the kind of approach that is needed to eradicate domestic violence in our communities. She supports some of the specific training mentioned for various people, such as educators, health and social service providers, and police. She's not sure it is enough, but it is much better. She supports the idea for a clearinghouse for protective orders. Although somewhat vague, the continued education for court system employees is essential. It is especially important in Mat-Su, where they have tried to engage the judiciary in receiving education, which has been declined for many years. She is concerned this legislation will be lost because of partisan politics that are happening. She urged the House and Senate majorities to set aside partisan issues and battles; the next woman to be murdered might be your daughter or your sister or your mother. She urged that this crucial legislation be passed. We can no longer fall back on the old question, why doesn't she

leave? We know that 75% of the women who are murdered by their intimate partners are murdered at the time or after she leaves.

#### Testifying from Tok:

Rose Isaac: She is Director for Tanana Chiefs Conference. She strongly supports House Bill 454 and Senate Bill 246. She agrees that all the legislators should put their differences aside and pass this bill. She has seen many domestic violence cases. She feels the current laws are not very strong. The judges are very lenient, and merely slap the perpetrators hands and let him walk the streets. She was recently directly involved with a client; the client was asked to file a restraining order, and she stated: "Why should I? It's not going to help me anyway. All they're going to do is put him away for one night. He'll be back on the streets and I'll be running for my life more so than ever." She believes the current law needs to be strengthened to help the victims. Victims need to be educated to rights at the time the violence occurs. There seems to be a great deal of shame regarding domestic violence, and nobody wants to talk about it. She would like to see these bills pass.

#### The following people testified from Homer:

Walter Gauthier: He has nothing but sympathy for victims of domestic violence, but he believes the entire bureaucracy is over-funded now and out of control. He quoted from an October 18 Anchorage Daily News article regarding Jennifer Bell Davis being sentenced for the embezzlement of money from the AWARE Shelter in Juneau. He objected to the proceedings of the Council; the Legislature created the Council on Domestic Violence to oversee and administrate programs for women who are abused. They did not create the Council to lobby for specific legislation. He stated that he intends to file complaints and requests for investigation with the Internal Revenue Service against every women's shelter grantee of the Council who has testified today; all of their charters specifically forbid them from advocating or influencing any particular legislation or lobbying.

Laurentia Chamblee: She has worked with victims of domestic violence for over 12 years. She has known women who never felt safe the rest of their lives, fearing for their lives. She has known of over 13 cases where fetuses were aborted because of domestic violence, and no charges were ever brought. It is important that this bill is supported and passed. She supports the bill in its entirety.

#### Testifying from Cordova:

Carol Peckham: She is with the Cordova Family Resource Center. She supports the Governor's Act. She believes that increasing the length of restraining orders from 90 days to indefinitely will make a difference in the victims' willingness to obtain an order. She believes that requiring the Department of Public Safety to maintain a central registry of all orders will make a difference in how the courts proceed in cases. She thinks it is very necessary to require prosecutors to consult with victims before a plea agreement is entered into. Prosecutors need to be in closer contact with the victims throughout the entire process. In Cordova, they have one visiting prosecutor whose work load covers Cordova, Palmer, Wasilla, and other towns, that one person can't possibly focus on each case in the manner that is needed. Money needs to go into this area. More prosecutors are needed, or at least more help for the prosecutors.

The following people testified from Kenai:

Brenda Wieffering: She is Executive Director of the Women's Resource and Crisis Center in Kenai. She thanked Governor Knowles, Lt. Governor Ulmer, Senator Salo and the Council for supporting these important improvements to Alaska law. We need more effective intervention for crimes of domestic violence and sexual assault, and increased safety for victims. They recently had a domestic violence related death in their community; that is not acceptable. She wonders if that death could have been prevented if this legislation had been in place. She echoed Pam Sandvik's comments. She is disappointed in the Legislature and thinks they need to hear these bills, because safety is much more important than partisan politics.

Jody Johnston: She has been involved in social services for over 17 years. This bill changes the focus of our problem and question from "Why isn't she leaving and why isn't she doing something?" to understanding domestic violence and sexual assault is a crime, focusing on the offenders, and supporting the system that holds them accountable for those crimes. She told of a method of killing a wolf in the Arctic. She hopes that we can re-establish our pride and go forth supporting victims of domestic violence by passing this bill.

Testifying from Sitka:

Bridget Ganey: She strongly supports this bill and believes it makes a lot of the gray areas much more black and white for the victims. It doesn't blame the victim; it makes the agencies work together to make that victim safer. She agrees with police officers documenting in writing why an arrest is not made. In small communities, the police officers may know the perpetrator or victim and excuses are a lot harder if they have to be documented in writing. There is a lot of gray area in child custody cases, and this bill requires the court to consider the safety and well-being of the child and the parent who is the victim of domestic violence. She thinks the statewide standards for batterers intervention programs will be good; the standards the Council already has are great and it would be good to put that into legislation.

Testifying from Anchorage:

Dr. Mark Peterson: He is a family physician from Juneau. He feels that Lt. Governor Ulmer stated the problem very adequately. He was particularly moved by her description of the feeling of powerlessness that women have. Many times he has dealt with battered women and advised them of their options, and they respond numbly saying, "He said he'd find me. He's done it before; he'll do it again. I don't have any place I can hide." The proposed legislation improves the woman's chance for safety and protection. It decreases some of the sense of powerlessness that many of the women have. Domestic violence is a very complex problem and requires a multi-disciplinary approach for solutions. He sees this legislation as one component of an ultimate solution, but it is a very important component that will lead to some solutions for domestic violence. He echoed the prior sentiments about setting aside partisan politics to address this bill for the good of all Alaskans.

Testifying from Fairbanks:

Sandy Samaniego: She is the Executive Director of the Women in Crisis Counseling Assistance Program. She spoke in favor of these bills. Domestic violence is no less a problem in Fairbanks than anywhere else in Alaska. In the last fiscal year, their shelter provided almost 7,000 shelter nights to over 800 women and over 400 children. She doesn't know whether the problem is growing or people are just becoming more aware. Laws reflect what society will and will not tolerate and accept. She believes the majority of our society accepts domestic violence as acceptable acts. We need to let abusers know we will not tolerate their abusive behavior and that there will be consequences. Passage of this bill would relate that message better than any one thing that has been done in the past. Enactment of this bill will save lives, and the sooner it is enacted, the more lives will be saved. The message needs to get to the Legislature that this bill must at least be heard.

Stella Hamilton: She works for Tanana Chiefs Council in Fairbanks as Coordinator for Domestic Violence and Sexual Assault. She will be training family and youth specialists from the villages and the village public safety officers who are in direct contact with domestic violence in the villages. She has 43 villages that she will be working for. She supports House Bill 454 and Senate Bill 246. She will also be working with the State Troopers. She is a survivor of domestic violence and used her education as a vehicle to get out of that situation.

Testifying from Metlakatla:

Floyd Guthrie: He is Family Services Director. He has clients for mental health purposes. What he has found to be most effective has to do with the police officers. They have one police officer who is very sensitive to victims' pain and because of that they're able to be more focused and discharge a lot of the feelings they have inside. He is hoping that will be clarified that police officers cannot be insensitive to the victims. Another issue is that safe homes are a real need; in Metlakatla they have some families that are willing to take someone in if need be. In remote villages, everybody knows everybody's business so it is very important to protect the families who provide safe homes. They have one victim who was severely beaten, and the guy got away with just 20 days in jail and is now back in the community. Fortunately, the police officers are familiar with the case and are protecting the victim. He supports this bill.

Testifying from Unalaska:

Desiree Harris: She works with Unalaskans Against Sexual Assault and Family Violence. She supports the Governor's Domestic Violence Act. They recently opened a shelter in Unalaska serving the Aleutian/Priofloff region. They projected 100 safe nights for fiscal year 1996; they have already met those 100 safe nights in the first quarter. Historically, victims have not been supported or even believed. Comprehensive victim assistance has been long overdue.

Lorraine Sweeney: She is a survivor of domestic violence and is supportive of the Governor's bill because it will provide greater protections for victims of this crime.

Testifying from Ketchikan:

Gigi Pilcher: She is Executive Director of Women in Safe Homes in Ketchikan. She became involved with WISH at the beginning in 1977 and has been working with victims of domestic

violence and sexual assault for almost 19 years. Her interest started because she has had three family members who were murdered in domestic violence situations. Since becoming involved with the program in Ketchikan, she has known several people who have been murdered as a direct result of domestic violence: Darlene, Diane, Linda, Lisa, Lila, Justin, and Police Officer Hogard. She believes this Act will do a great deal to address what is going on in all of our communities with domestic violence, and especially how it affects children. A lot of the kids in youth detention centers, who drop out of school, that become pregnant, or are in treatment centers for other problems have come from families where there has been a great deal of domestic violence. She believes the costs of domestic violence to children who are our future should far outweigh anything else. She urged both the House and Senate to support this Act.

#### Testifying from Bethel:

Connie Tromble: She is a Legal Advocate at the Tundra Women's Coalition in Bethel. She strongly supports this bill. She believes it is a comprehensive approach to protect victims of domestic violence. She thinks many times we believe that once the woman leaves the home she is safe from the violence, but in child custody issues especially the victimization can continue. Many of the problems women run into when they're trying to obtain custody is that male control comes through intimidation and subtle gestures which threaten a woman, especially in the court room. This bill will help judges and other people involved in the child custody process to realize that these are elements of domestic violence, and that the woman is not unstable even though she may appear so in court, but that there are other subtle issues going on beneath the surface. She has worked with two women in the past year where domestic violence has been an issue in child custody, and both women have run into problems of judges and guardian ad litem who refused to listen to the elements of domestic violence going on in the relationships; they are being threatened with having their children taken away. She believes this bill will go a long way in protecting those women.

#### The following people testified from Anchorage:

Tony Cosant: He feels this bill needs a lot of study. You never know what goes on between a man and woman, especially when they're married. He realizes that a lot of women have been battered. He was a paralegal for Alaska Legal Services for two and a half years and he interviewed many people who had domestic violence problems. In a lot of cases, a man reacts with violence in response to a woman's actions of humiliation. The Legislature has got to begin getting to the root problem. There are a lot of men in the State who are not too sophisticated and cannot take a lot of verbal and emotional abuse, and they react with violence. The legislation is trying to be comprehensive. He doesn't think the Legislature is addressing the causes of some of this violence. It takes a lot more study and a lot more protection on both sides. He discussed times when a woman calls her husband and invites him home even when there is a protective order because she misses him. A lot of men are too easily manipulated by their wives and girlfriends. He doesn't see any protection for any men.

Jacqueline Oglesby: She asked what she does if her 13 year old son crosses paths with her ex-husband who broke her neck. Her son says he wants to kill her ex-husband, and she tells him that he's not worth killing. She doesn't know what to do. She is a survivor of nine years of child sexual abuse and five years of domestic violence. The State of Alaska let her step-father, the child

molester, adopt her son. She has since married her son's real father and got her son back. Her ex-husband tried to kill her a lot of times because of her CIRC stock. She is still scared to go out and do anything, such as attend CIRC meetings, because he is a stockholder and might be there. She is afraid to go out of her house, seven years after the divorce. She had a seizure on March 19 and is trying to find out the cause, and is wondering if it is from the beatings she got.

Virginia Allen: She spoke in support of opening the dialogue for the Governor's bills. The emotional testimony has been hard to take. She really resents the majority holding the Governor's package hostage and turning domestic violence into a political issue.

Janet Helen Gamble: She stated that there are 14 people in the Anchorage office and all seem to be in support of House Bill 454 and Senate Bill 246. She will be attending the Healthy Futures Project in Anchorage which begins on Friday.

The following people testified from Fairbanks:

Julie Smith: She is a family law attorney in Fairbanks. She believes it would be hard for anyone not to support heightened protection for victims of domestic violence anywhere in the world. She thinks it is imperative that, if we're going to look at legislation that does as much as this legislation does, we also need to look at the likely outcomes of that legislation. Her primary concern is in the area of child custody. She is concerned with the statutory presumption in the legislation which would say that any finding of domestic violence against a person at any point in the past would create a presumption that that parent not share legal custody or sole physical custody of a child. She has gone through many domestic violence hearings and has had many clients who would be called perpetrators of domestic violence, as well as many clients who are the victims of domestic violence. It appears to her that there are many levels of domestic violence. A push or a shove or a slap in a moment of anger is domestic violence. In some families, that's all there is and a domestic violence order resulted from that allegation. In her opinion, children will not benefit from being deprived of access to a parent who, in a moment of anger, shoved or pushed their partner. She is concerned that this legislation will significantly increase the cost of domestic violence actions and child custody actions. If the legislation passes, she, as an attorney, would be responsible for ensuring that her client had a full hearing in a court of law on domestic violence actions. At this time, DV actions might consist of a 15 minute hearing to an hour long hearing on average. She also believes the judges who are listening to the hearings will require a higher standard of proof on the person alleging domestic violence because the judge will know that a finding of domestic violence will create a presumption in a custody case, and will be unwilling to create that presumption unless they're pretty sure that it happened. In Fairbanks at this time it is fairly easy to get a domestic violence order. Usually there isn't a lot of proof that domestic violence occurred because there are usually no witnesses. In some ways, the legislation may hurt the victims of domestic violence, and it will certainly hurt the people who have isolated incidents of minor violence against their partners.

Mike Corhill: He is the statewide President of the Alaska Peace Officers Association and a law enforcement officer with over 19 years of experience in the State of Alaska. The Alaska Peace Officers Association is comprised of over 1,100 federal, state, and municipal peace officers from throughout the State. They unanimously support all language in the bill as it applies to peace officers. A great deal of the police departments and State agencies already have mandatory arrest

as part of their policies and procedures. He also instructs peace officers on domestic violence at the Academy and local levels. The current mandate of four hours minimum training is not sufficient to address the problem, but the language in the bill of 12 hours will adequately address this for officers and should be maintained through the Alaska Police Standards Council records.

Jennifer Schmidt: She is a public health nurse at the Fairbanks Regional Public Health Center. They provide a number of services to clients in the clinic, and have two home visiting teams, one which works with families with chronically ill adults and children, and another that follows families for maternal/child concerns. About 10 months ago, two of the nurses at the health center decided to do a survey on the rate of domestic violence within the community. It was an anonymous survey which was handed to people as they registered for any services. In two and a half weeks, over 400 people filled out the survey; no one refused to do it. The preliminary results show that 50% of the people who filled out the survey had experienced violence sometime in their life; 20% were experiencing it now. Two things appear to be trends: there was a higher educational level than they thought; there were people who checked up to eight abuse indicators who did not feel they were being abused. She believes there needs to be a tremendous amount of public education, both in the media and the schools, about what abuse is. Abuse starts really early in the schools with just general harassment, pushing and shoving, and nobody saying that type of behavior is not appropriate. We also need professional education. She believes dating behavior among teens is pretty abusive.

Lynn Levensgood: He is an attorney in Fairbanks who handles a lot of family law cases, including domestic violence. Most of the cases involve custody actions. He understands there is a directive that precludes judicial officers and persons within the judicial system from commenting or testifying concerning this legislation. He suggested that newspapers contact these people and ask their opinion on this legislation. He has been contacted by a number of judicial employees who indicated opposition to this legislation. The opposition is because of the presumptions and the violation of the constitutional rights and the ultimate clogging of the court system that would result from enactment of this legislation as written. It violates the constitutional rights of children and parents by expanding the definition of domestic violence to include, among other things, all levels of assault, trespass, and harassment. He has been involved in cases where a DV order was issued based on a phone call which allegedly put the complainant in fear. The person who placed the DV order would be able to take possession of the dwelling, regardless of whose house it is, have the person the order is issued against pay for their house and transportation, and the person who the order is issued against would be required to surrender any and all deadly weapons, which are undefined, but could possibly include vehicles, kitchen knives, etc., and be required to surrender any firearms, regardless of their occupation. This legislation needs much work before it deserves legislative action.

Testifying from Manokotak:

Loumy Hautap. He is with the Manokotak Police Department. He agrees with statements made by Tony Cosanty and Lynn Levensgood. He asked how much of the 67% of homicides related to domestic violence cases come from rural areas. In his two and a half months of work in his position, he has had cases where a wife filed charges against her husband and the next day dropped the charges because she wanted him back.

Andreen explained that the information was that 67% of all homicides investigated by the Alaska State Troopers in 1995 were domestic violence related. They have to assume some of those were rural cases, as the Troopers do not as a rule cover the municipalities.

Testifying from Juneau:

Judy Steffel: She is a Sergeant with the Juneau Police Department, a member of the Board of Directors for AWARE, a member of the Board at Tongass Community Counseling Center, and on the Domestic Violence Task Force. This legislation wouldn't change anything in the assault laws. Fourth degree assault encompasses putting someone in fear of imminent bodily injury already, and it is already covered under domestic violence laws. Deadly weapons are defined under Alaska law, and it doesn't include kitchen knives or automobiles; those are defined as dangerous instruments. She was asked to attend this hearing by her Chief, who supports this legislation. He is concerned about the fiscal side of this legislation; it is going to cost more money. Juneau already has a mandatory arrest policy and has had it for at least three years. As Training Coordinator at the Juneau Police Department, she stated that if they are short on funds the first place the money comes from is training.

Testifying from Anchorage:

Virginia Allen: She noted that Senate Bill 197 is also a domestic violence bill that people should be aware of. It is Senator Donnelly's bill on assuring that insurance companies do not discriminate against domestic violence victims because they are "accident prone".

Deora Sherman: She is from the Alaska Women's Resource Center. She strongly supports this bill. She works directly with victims. It is very difficult to convince victims that they do have rights when they cannot get follow-up with the police department or the courts. A lot of court people and others who come in contact with victims are not trained appropriately, which sometimes revictimizes the victim and keeps her continually victimized. She believes people need to be held responsible for their behavior and that domestic violence be treated like any other crime. If 67% of the murders in 1995 were domestic violence related, that is obviously where we need to do a lot of work.

Whittem thanked the 44 people testifying for their comments. The teleconference was adjourned at 12:20 p.m.

March 27, 1996

Cordova Family Resource Center  
P.O. Box 863  
Cordova, AK 99574

Dear Members of the Council:

We want to urge you to support the Governor's bill, HB454, the Domestic Violence Prevention Act of 1996.

The bill goes a long way toward placing the burden of responsibility for crimes involving domestic violence on the perpetrator instead of the victim. The bill requires training regarding domestic violence for those who respond to the calls from victims, and education for those most likely to come into contact with victims. The bill enables police officers to arrest the perpetrator based on probable cause, without having to actually see the crime in progress. It also allows police officers to remove deadly weapons from the scene, and requires perpetrators to see a judge before being released from jail. The judge must consider the safety of victims first, before allowing the perpetrator's release from jail.

In short, this bill takes many steps to decrease domestic violence, de-escalate scenes involving domestic violence, protect victims, and educate the public regarding this crime.

As the economy in Alaska, and in Cordova, a fishing community, goes through yet another downturn, we are expecting that the hard times may be easily reflected in our client load. In 1995 our center served 72 clients, a 40 percent increase over the number served in 1994. We think sensible, long needed bills such as this one, could help keep the statistics down.

Thank you,

*Paula White*  
Board Member



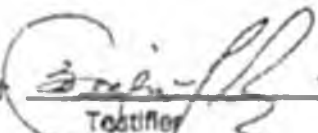
# Alaska State Legislature

Please enter into the record my testimony to the Dept. of Public Safety  
committee name

committee on HB 454 SB 246 . dated 3-27-96 .  
bill/subject

I strongly support Governor Knowles Domestic Violence act of 1996. This important legislation is more important than partisan politics. It's about lives & childrens futures. Please help take it out of its' current "holding pattern" and have it heard.

Thank you for your attention to this.

Signed  - Vickie L. Williams  
Testifier

Advocate for Victims of Violence  
Representing (Optional)

PO Box 524 Valdez, AK 99686  
Address

907-835-2980  
Phone No.

Teleconference 60587

465-3027

(4)



# Alaska State Legislature

Please enter into the record my testimony to the DEPT. OF PUBLIC SAFETY  
committee name

committee on SB 246 and HB 454, dated 3-27-96  
bill/subject

*I strongly support these bills! I hope that they will not be held hostage but rather pushed into hearings!*

*Victims safety is more important than legislative politics! Please put your differences aside and get these bills into hearing.*

*Thank you!*

Signed: Cassie Welch  
Testifier

Advocates for Victims of Violence (Valdez)  
Representing (Optional)

P.O. Box 524 - Valdez, AK 99686  
Address

835-2980  
Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the Janet James  
 committee name  
 committee on HB 454 - SB 246, dated 3/27/96  
 bill/subject

*Please urge the House Committee to hear  
 the Governor's Bill on Violence Against Women.  
 This is about Safety and needs to be  
 addressed now.*

*Thank you.*

*Catherine Vaara*

Signed: Catherine Vaara  
 Testifier  
AVV - Valdez  
 Representing (Optional)  
P.O. Box 2878 Valdez  
 Address  
235-4420  
 Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the Robert Taylor  
committee name

committee on HB 454 SB 246, dated 3/27/96  
bill/subject

*This bill is very important. Please put aside politics & urge this bill be heard.*

*I support this bill & believe that it will be effective in changing attitudes that have up until now tolerated domestic violence*

Signed: Catherine Vaasa  
Testifier

Representing (Optional)  
P.O. Box 2875 Valdez

Address  
835 - 4420

Phone No.

(Jacqueline R. Oglesby) survivor 9 yrs child sexual abuse 5 yrs domestic violence  
 B. Date 3-20-64 age 32 yrs old. Ph # 333-2841

1. What do I do if my 13 yr old son crosses paths with my ex husband who beat me between 1985 + 1989? He was age 3 and saw him beat me until he was 6 yrs old.

My son has told me he wants to kill the man who beat me. I told him he is not worth going to jail + not worth killing that he will pay in time.

Harold Sanguinetti was very abusive, an alcoholic + he often called me his ex wife's name Terry when he beat me.

Harold has called my step father <sup>(when he was drunk)</sup> and asked him "Why does Jackie hate me so much?"

My stepfather molested me after my mothers death in 1971 I was 8 yrs old, the incest continued until I was 16, I was in + out of foster homes at ages 13 thru 17. I was returned to perpetrator's home at 17.

I was put in my stepfathers son's home at age 13 and I was raped by his son Martin Jones All of the molestation happened in FLORIDA. No one believed me, my stepfather even shot my step mother in the face because she knew he molested me. The domestic violence was here in Anchorage, which my ex husband moved us out of town in N. Peters Creek and Eagle River 1985-1989. He said he would change + we moved to Hawaii Honolulu where he tried to throw me from the 2<sup>nd</sup> story of our condominium, in which I had a broken left foot escaping, I moved back to Alaska I left him for good + it took me until 1991 to get a dissolution. He still wanted to stay married. I would not go back because I knew I would not live. We are shareholders of CIRI, I received approx \$10,000 last year + I am sure my stepfather wanted me dead. This State of AK let him adopt my son. Now I have found my son's real father, we are happily married + we have our son back physically but not legally. My stepfather was not happy I married his real father he wants to be Billy's legal guardian because Billy is the heir to my CIRI stock. In N. Peters Creek Harold threw me down jumped on my neck with all his weight breaking my neck called "A Hangman's fracture." That was Aug 1986. I've found out from my 1<sup>st</sup> cousin that I am a rape child, my Mother was raped in 1963, I was born 9 months later.

# Public Opinion Message

Tok Legislative Information Office (LIO)  
 P.O. Box 845 • UAF Tok Center Building Tok, AK 99780 • Phone: 883-5020 Fax: 883-5021

**From:** Print your name and address as it appears on your voter registration card.

Mr., Mr., Mrs., Miss	First name	MI	Last name	Jr., Sr., III
	Ms. Roselyn		ISAAC	
Residence (street) address	T-9 TANACROSS, AK			Zip code 99776
Mailing address	P.O. Box 76004 TANACROSS, AK			Zip code 99776
Daytime telephone number	907-883-5181			
Group affiliation (if applicable)				

**To:** Write an H or an S in a Committee box; put a ✓ in a Caucus or Member's box.

Committee (enter H or S)	House members	Long	Senate members
<input type="checkbox"/> Community & Regional Affairs (cra)	<input checked="" type="checkbox"/> Auerman (aua)	<input checked="" type="checkbox"/> Mackin (mah)	<input checked="" type="checkbox"/> Adams (ada)
<input checked="" type="checkbox"/> Finance (fin)	<input checked="" type="checkbox"/> Barnes (bar)	<input checked="" type="checkbox"/> MacLean (mac)	<input checked="" type="checkbox"/> Dorley (don)
<input checked="" type="checkbox"/> Health, Ed. & Social Services (hes)	<input checked="" type="checkbox"/> Brice (bri)	<input checked="" type="checkbox"/> Martin (mar)	<input checked="" type="checkbox"/> Duncan (dun)
<input checked="" type="checkbox"/> Judiciary (jud)	<input checked="" type="checkbox"/> Brown (bro)	<input checked="" type="checkbox"/> Macok (mas)	<input checked="" type="checkbox"/> Ellis (eli)
<input type="checkbox"/> Labor & Commerce (l&c)	<input checked="" type="checkbox"/> Bunde (bun)	<input checked="" type="checkbox"/> Moses (mos)	<input checked="" type="checkbox"/> Frank (far)
<input type="checkbox"/> Resources (res)	<input checked="" type="checkbox"/> Davies (dav)	<input checked="" type="checkbox"/> Mulder (mul)	<input checked="" type="checkbox"/> Green (gre)
<input type="checkbox"/> Rules (rta)	<input checked="" type="checkbox"/> Davis, B. (dab)	<input checked="" type="checkbox"/> Navarre (nav)	<input checked="" type="checkbox"/> Halford (hal)
<input type="checkbox"/> State Affairs (sta)	<input checked="" type="checkbox"/> Davis, G. (dag)	<input checked="" type="checkbox"/> Nicholas (nic)	<input checked="" type="checkbox"/> Hoffman (hol)
<input type="checkbox"/> Transportation (tra)	<input checked="" type="checkbox"/> Elton (elt)	<input checked="" type="checkbox"/> Ogan (oga)	<input checked="" type="checkbox"/> Kelly, T. (kal)
<input type="checkbox"/> Other:	<input checked="" type="checkbox"/> Finkelstein (fik)	<input checked="" type="checkbox"/> Parnell (par)	<input checked="" type="checkbox"/> Laman (lam)
<input type="checkbox"/> Other:	<input checked="" type="checkbox"/> Foster (fos)	<input checked="" type="checkbox"/> Phillips, G. (phg)	<input checked="" type="checkbox"/> Lincoln (lin)
	<input checked="" type="checkbox"/> Green (grn)	<input checked="" type="checkbox"/> Porter (por)	<input checked="" type="checkbox"/> Miller (mil)
<b>Caucuses</b>	<input checked="" type="checkbox"/> Gruseendorf (grs)	<input checked="" type="checkbox"/> Robinson (rob)	<input checked="" type="checkbox"/> Pearce (pca)
<input checked="" type="checkbox"/> Anchorage (aga)	<input checked="" type="checkbox"/> Hanley (han)	<input checked="" type="checkbox"/> Rokoborg (rok)	<input checked="" type="checkbox"/> Phillips, R. (phr)
<input checked="" type="checkbox"/> Bush (bus)	<input checked="" type="checkbox"/> Ivan (iva)	<input checked="" type="checkbox"/> Sanders (san)	<input checked="" type="checkbox"/> Rieger (rie)
<input checked="" type="checkbox"/> Fairbanks (Interior) (int)	<input checked="" type="checkbox"/> James (jam)	<input checked="" type="checkbox"/> Theriault (thr)	<input checked="" type="checkbox"/> Sabo (sal)
<input checked="" type="checkbox"/> Matli (mat)	<input checked="" type="checkbox"/> Kelly, P. (kpl)	<input checked="" type="checkbox"/> Toohay (toh)	<input checked="" type="checkbox"/> Sharp (sha)
<input checked="" type="checkbox"/> Majority (mjr)	<input checked="" type="checkbox"/> Kohring (kor)	<input checked="" type="checkbox"/> Vazey (vaz)	<input checked="" type="checkbox"/> Taylor (tay)
<input checked="" type="checkbox"/> Minority (mnr)	<input checked="" type="checkbox"/> Kott (kot)	<input checked="" type="checkbox"/> Williams (wil)	<input checked="" type="checkbox"/> Torgerson (tor)
	<input checked="" type="checkbox"/> Kubina (kub)	<input checked="" type="checkbox"/> Willis (wis)	<input checked="" type="checkbox"/> Zharoff (zha)

**Subject:** Enter a bill number and check one box below OR enter a subject.

HB or SB	Bill number	and check one:	Support	OR	Subject:
HB	454	<input checked="" type="checkbox"/>	Support		
		<input type="checkbox"/>	Oppose		
		<input type="checkbox"/>	Amend		

**Message:** \* This form MUST be completely filled out, including a phone number. You may phone, fax, or deliver your POM to any LIO. \* Please PRINT. Your message cannot exceed 50 words (one word per box), and cannot contain any vulgar language.

Domestic	Violence	is	a	Crime, a
Social	disease	which	needs	to
be	treated	as	such.	Need
to	send a	strong	message	by
toughening	the	law.	In	twelve
years	I	have	seen	numerous
victims	especially	children	suffering	the
consequences	of	domestic	violence.	PLEASE.
support	and	pass	this	bill.

# Public Opinion Message

Tok Legislative Information Office (LIO)  
 P.O. Box 845 - UAF Tok Center Building Tok, AK 99780 • Phone: 883-5020 Fax: 883-5021

**From:** Print your name and address as it appears on your voter registration card.

Mr., Ms., Mrs.	First name	ALL	LAST NAME	P., Sr., III.
MS	Roselyn		ISAAC	
Residence (street) address			State	Zip code
T-9 TANACROSS			Alaska	99776
Mailing address			Zip code	
P.O. Box 76004 TANACROSS, AK 99776				
Daytime telephone number		Group Affiliation (if applicable)		
907 883-5181				

**To:** Write an H or an S in a Committee box; put a ✓ in a Caucus or Member's box.

	Committees (enter H or S)	House members	Long	Senate members
<input type="checkbox"/>	Community & Regional Affairs (cra)	<input checked="" type="checkbox"/> Auelerman (aue)	<input checked="" type="checkbox"/> <del>Madia (mak)</del>	<input checked="" type="checkbox"/> Adams (ada)
<input type="checkbox"/>	Finance (fin)	<input checked="" type="checkbox"/> Barnes (bar)	<input checked="" type="checkbox"/> MacLean (mac)	<input checked="" type="checkbox"/> Conley (con)
<input type="checkbox"/>	Health, Ed. & Social Services (hes)	<input checked="" type="checkbox"/> Brice (bil)	<input checked="" type="checkbox"/> Martin (mar)	<input checked="" type="checkbox"/> Duncan (dun)
<input type="checkbox"/>	Judiciary (jud)	<input checked="" type="checkbox"/> Brown (bro)	<input checked="" type="checkbox"/> Masek (mas)	<input checked="" type="checkbox"/> Ellis (eli)
<input type="checkbox"/>	Labor & Commerce (l&c)	<input checked="" type="checkbox"/> Bunde (bun)	<input checked="" type="checkbox"/> Moses (mos)	<input checked="" type="checkbox"/> Frank (far)
<input type="checkbox"/>	Resources (res)	<input checked="" type="checkbox"/> Davlos (dav)	<input checked="" type="checkbox"/> Mulder (mul)	<input checked="" type="checkbox"/> Green (gre)
<input type="checkbox"/>	Rules (rie)	<input checked="" type="checkbox"/> Davis, B. (dab)	<input checked="" type="checkbox"/> Navarro (nav)	<input checked="" type="checkbox"/> Halford (hal)
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<input type="checkbox"/>	Transportation (tra)	<input checked="" type="checkbox"/> Elton (elt)	<input checked="" type="checkbox"/> Ogan (oga)	<input checked="" type="checkbox"/> Kelly, T. (kel)
<input type="checkbox"/>	Other:	<input checked="" type="checkbox"/> Finkelstein (fik)	<input checked="" type="checkbox"/> Parnell (par)	<input checked="" type="checkbox"/> Loman (lom)
<input type="checkbox"/>	Other:	<input checked="" type="checkbox"/> Foster (fos)	<input checked="" type="checkbox"/> Phillips, G. (phg)	<input checked="" type="checkbox"/> Lincoln (lin)
<input type="checkbox"/>		<input checked="" type="checkbox"/> Green (gm)	<input checked="" type="checkbox"/> Porter (por)	<input checked="" type="checkbox"/> Miller (mil)
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<input checked="" type="checkbox"/>	<b>Caucuses</b>	<input checked="" type="checkbox"/> Hanley (han)	<input checked="" type="checkbox"/> Roketberg (rok)	<input checked="" type="checkbox"/> Phillips, R. (phi)
<input checked="" type="checkbox"/>	Anchorage (age)	<input checked="" type="checkbox"/> Ivan (iva)	<input checked="" type="checkbox"/> Sanders (san)	<input checked="" type="checkbox"/> Rieger (rie)
<input checked="" type="checkbox"/>	Bush (bus)	<input checked="" type="checkbox"/> James (jam)	<input checked="" type="checkbox"/> Theriault (thr)	<input checked="" type="checkbox"/> Sabo (sab)
<input checked="" type="checkbox"/>	Fairbanks (Interior) (int)	<input checked="" type="checkbox"/> Kelly, P. (kil)	<input checked="" type="checkbox"/> Toohay (toh)	<input checked="" type="checkbox"/> Sharp (sha)
<input checked="" type="checkbox"/>	Matsū (mat)	<input checked="" type="checkbox"/> Kohring (kcr)	<input checked="" type="checkbox"/> Vozey (voz)	<input checked="" type="checkbox"/> Taylor (tay)
<input checked="" type="checkbox"/>	Majority (mjr)	<input checked="" type="checkbox"/> Kolt (kol)	<input checked="" type="checkbox"/> Williams (wil)	<input checked="" type="checkbox"/> Torgerson (tor)
<input checked="" type="checkbox"/>	Minority (mnr)	<input checked="" type="checkbox"/> Kubina (kub)	<input checked="" type="checkbox"/> Willis (wls)	<input checked="" type="checkbox"/> Zharoff (zho)

**Subject:** Enter a bill number and check one box below OR enter a subject.

HB or SB	Bill number	and check one:	<input checked="" type="checkbox"/> Support	OR	Subject:
SB	246	<input type="checkbox"/> Oppos	<input type="checkbox"/> Amend		

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 \* Please PRINT. Your message cannot exceed 50 words (one word per box), and cannot contain any vulgar language

Domestic	Violence	needs	to	end	5
by	strengthening	current	laws	on	10
creating	new	ones	Perpetrators	need	15
to	understand	that	their	behaviors	20
is	no	longer	tolerated.	PLEASE.	25
Support	and	pass.	this	Bill	30
along	with	HB	454		35
					40
					45
					50



*Division of Administrative Services*  
*Delta Junction Legislative Information Office*  
*P.O. Box 1189*  
*Delta Jct. AK 99737*  
*Phone: (907) 895-4231 Fax: (907) 895-5017*

To: Exec. Department of Public Safety  
Fax: 465-3627 Phone: \_\_\_\_\_

Date Sent: 3/26/96

No. of Pages Including Cover Sheet: 02

Thank You,

Tammy R. Hall  
Information Assistant

# Alaska State Legislature



Please enter into the record my testimony to the Department of Public Safety - CVUSA  
Domestic Violence  
committee on HB 454, dated March 22 1994

Bill subject This bill in my opinion is just another way to dupe  
 people into believing that we no longer have God given unalienable rights guaranteed  
 by the Constitution of the United States of America. It appears to be more  
 government control, a back door to suspending the Constitution, as well as the  
 State Constitution, and away to disarm the Citizens so they can't protect themselves  
 from the reigning tyranny. (back door Gun Control, couldn't get the way you wanted,  
 so try another route). Government has NO Business trying to legislate regulations,  
 or rules for what is to take place in families. Giving power to the Womens Shelter  
 and especially badly written laws, statutes, or regulations. You want to remember  
 when your no longer in office, but I feel you should be treated the same as the  
 people while you're in office. It appears you all believe your above the laws, regulation  
 and shirk your passing and unambiguously enforcing, but you aren't. There is a Double  
 STANDARD here that shouldn't be. All men were created equal, we all have the right to  
 keep and bear arms without infringements, the right to privacy, to life, liberty, property  
 and the pursuit of happiness, yet it appears that legislation is willing to suspend the  
 Constitution, and pass what ever laws necessary to usher in the NEW WORLD ORDER  
 with the legislations blessings. It appears that the State is following the Comm-  
 unist marxist line by line to receive grants etc... from the feds to run our state  
 This wouldn't be necessary if legislation didn't bow to Agencies who want more control  
 and bigger budgets. It appears due process and all rights are being suspended, which  
 basically puts all people at the mercy of a government that has no amok. It also  
 appears legislators and others who take oaths are not upholding their oaths of office  
 which could be considered TREASON and/or Sedition which could also be considered  
 an act of war against the people. It also appears that legislators and various  
 departments and Agencies (Department of Safety being one of them) listen to what  
 the people say but it goes in one ear and out the other and legislation and like  
 departments and Agencies do what they want their own agenda, not caring for the  
 people at all. At least it appears that way. I don't agree with this bill and I don't  
 believe that it is in the best interest of the people of the state of Alaska or for the  
 few Sovereign Citizens there are throughout this state. Please stand up for the  
 Constitution which is part of the oath you provided to uphold. Don't continue  
 to sell families and people down the river for a buck. Turn from these ungodly  
 destruction of rights without a justice under we require and u.c.c. signed:

Testifier  
 Dennis Moore, Digger (Omy)  
 Representing (Optional)  
 Fourth Judicial District  
 of Precinct 544  
 Delta Junction, Alaska Republic  
 Phone No. (907) 895-4805

# Senator Judith E. Salo

Alaska State Legislature

## MEMORANDUM

TO: Senator Robin Taylor, Chair  
Senate Judiciary

FROM: Senator Judith E. Salo *JES*

DATE: March 11, 1996

SUBJECT: Senate Bill 246

.....

I am respectfully requesting a hearing on Senate Bill 246, The Domestic Violence Prevention Act of 1996. I am very interested in this legislation and hope you will consider it for a hearing very soon.

A considerable amount of work has gone into the rewrite of the statutes relating to Domestic Violence - a more workable law in this area can be the result of this work and that done in the committee process.

I became interested in this subject by attending a workshop in Kenai sponsored by law enforcement and the Council on Domestic Violence and Sexual Assault. At that workshop a prosecutor from San Diego convinced me and others that we could and should improve our handling of domestic violence cases.

Again, I urge your consideration of hearing this bill, and I would be willing to help in any way possible when you do work on it.

*South Anchorage • Lower Hillside • Ocean View • Klatt • Kenai • Nikiski • Kalifornsky Beach*

*↳ During Session: State Capitol • Juneau, AK 99801 • (907) 265-3930 • (907) 265-3766 FAX  
↳ Interim Anchorage: 716 W 4th, Suite 350 • Anchorage, AK 99501 • (907) 258-8183 • (907) 258-5571 FAX  
↳ Interim Kenai: 145 Mainstreet Loop • Kenai, AK 99611 • (907) 283-7996*

# Senator Judith E. Salo

Alaska State Legislature

## MEMORANDUM

TO: Senator Robin Taylor, Chair  
Senate Judiciary

FROM: Senator Judith E. Salo

DATE: March 18, 1996

SUBJECT: Senate Bill 246

.....

I am again respectfully requesting a hearing on Senate Bill 246, The Domestic Violence Prevention Act of 1996. I am very interested in this legislation and hope you will consider it for a hearing very soon.

There have recently been two very serious domestic violence cases in Alaska that have resulted in the murder of two women allegedly by their abusers. Both cases had a history of domestic violence and in at least one case the woman had done everything in her legal power to protect herself, and the system failed her. I believe that SB 246 would add some additional tools to help provide a better public safety net for domestic violence victims.

Please consider this legislation for a hearing. It truly is a matter of life and death for some people. I have attached two articles from today's paper. Please let me know what your intentions are for Senate Bill 246.

*South Anchorage • Lower Hillside • Ocean View • Klatt • Kenai • Nikiski • Kalifornsky Beach*

*└ During Session: State Capitol • Juneau, AK 99801 • (907) 465-2940 • (907) 465-3766 FAX*

*└ Interim Anchorage: 716 W 4th, Suite 250 • Anchorage, AK 99501 • (907) 258-8183 • (907) 258-5571 FAX*

*└ Interim Kenai: 145 Mainstreet Loop • Kenai, AK 99611 • (907) 283-7996*

# Sterling man pleads not guilty to murder

By JANIE LAWLEY  
Peninsula Clarion

3-19-96

A Sterling man accused of killing Susan Michele Overbeck on March 5 plead not guilty Friday in Kenai Superior Court.

Alan R. Burton, 39, was arraigned in court on Friday and his attorney, Public Defender Brian Easton, entered the not-guilty plea and requested a jury trial. Judge Jonathan H. Link scheduled the trial for early June.

Earlier on Friday, Burton was indicted on a charge of first degree murder by a grand jury.

Alaska State Troopers arrested Burton on March 5 and charged him with first degree murder in Overbeck's death. Troopers were called to the residence of Burton and Overbeck shortly after midnight on that day. The caller, who identified himself as "Al," told troopers that he needed someone to come out and get him and that he had just killed "S.O." and was going to kill himself too.

When troopers arrived at the home, Overbeck was found severely injured on the floor of the home. A 12-gauge shotgun was found on the porch. Trooper investigators described Overbeck's wounds. They said that she was shot in the

See PLEA, back page

## ...Plea

Continued from page 1

side of the face. The bullet then exited her throat area, entered her upper body and exited again from the side of her chest, damaging her arm.

The charging document stated that Burton told a trooper upon his arrival on the scene that Overbeck had shot herself. A trooper investigator examined Overbeck. He said that there was no indication that Overbeck had been holding a firearm and that the injury was consistent with her arm being at her side at the time of the shooting.

Crews from Central Emergency Services provided medical aid to Overbeck, but she died at the scene.

Burton is being held at Wildwood Pretrial Facility on \$100,000 cash-only bail.

First degree murder is an unclassified felony. If convicted, Burton faces a \$75,000 fine and 20 to 99 years in prison.

# DEATH: Stabbing death in hands of jury

Continued from Page D-1

Brady held up Willa's copy of the order for the jury to see. The yellow form, now sheathed in plastic and marked with an exhibit sticker, is soaked with her blood.

Pritchard, who testified in his own defense last week, said he was drunk on Budweiser and doesn't remember much of the attack. He recalls forcing his way into his wife's Midtown trailer, despite three young men who were there to keep him away. He remembers taking her to the kitchen, where, he says, she pulled a knife on him and they struggled. He says he remembers her crying out that her neck was cut, but doesn't remember plunging the knife into her heart or through her torso.

Brady argued that Pritchard intentionally killed his wife and thus was guilty of first-degree murder. Beer may have clouded his judgment, but

he managed to stab her through most of her vital organs, Brady said.

"Now, that is excellent eye-hand coordination for a man who says he was drunk," the prosecutor said.

Pritchard's lawyer, Jim Gould, did not discuss alcohol much in his closing argument. Instead, he gave the jury a new defense to chew on: heat of passion.

Pritchard, Gould said, was rejected by his mother and left to be raised by an aunt and uncle. He loved Willa, but she, too, was rejecting him. He went to her trailer to talk to her, but she didn't want to talk. Then, in the kitchen, she pulled a knife on him. He was frightened, overwhelmed by emotion, and he lost it, Gould said.

"The law recognizes that people are people and that we sometimes lose control," the defense attorney said.

If the jury accepts the heat-of-passion defense, it could convict Pritchard of manslaughter, which normally results in a five-year sentence.

Willa Pritchard was raised in Southeast Alaska, mostly in Yakutat, her aunt said. To the family, she was "a sunshine person": witty, upbeat, outgoing, Piccard said.

Willa's 5-year-old son is living with relatives who love him, Piccard said, but sometimes asks when his mother is coming back.

"He's still waiting for her to come get him," Piccard said.

## Stabbing death goes to the jury

By LIZ RUSKIN

Daily News reporter

Jan Piccard attended nearly every day of the trial, sitting behind the prosecutors, sometimes weeping quietly for her niece, Willa Jean Pritchard, who was stabbed to death by her husband last September.

She was here to learn the details of how Willa was killed, hard as they were for her to hear.

"I'm here for Willa," Piccard said, outside the courtroom. She was there, too, for Willa's 5-year-old son. Someday, Piccard said, the little boy will ask how his mother died, and she will have to be ready with the answers.

On Monday, a Superior Court jury began deliberating the first-degree murder case against Leo Pritchard, 34.

In closing arguments, Assistant District Attorney Kevin Brady recounted how Willa Pritchard had tried to protect herself from the violent man she'd been married to for three months. A week before she was killed, she went to court for a restraining order to keep him away.

Please see Page D-3, DEATH

# DEATH: Stabbing death in hands of jury

Continued from Page D-1

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Daily News reporter

3-19-96

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Please see Page D-3, DEATH

**SB**

**257**

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB 257

Revision Date: \_\_\_\_\_ Dept. Affected: Fish and Game  
 Title: Taking Fish or Game for Public Safety BRU: Wildlife Conservation  
 Component: Wildlife Conservation  
 Sponsor: Senator Zharoff  
 Requestor: 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						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES ( 1024 )</b>	0.0	0.0	0.0	0.0	0.0	0.0

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

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

**POSITIONS**

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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 clarifies statutory authority for existing department and board of game practices.  
 Passage will not result in any increased costs.

Prepared by: Phil Koehl, Wildlife Biologist PK  
 Division: Wildlife Conservation  
 Approved by Commissioner: Glen Buerger  
 Agency: Department of Fish and Game

Phone: 465-6198  
 Date: 2/16/96  
 Date: 2/16/96

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## 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

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### 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 regarding 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 provides a mechanism for the department to work with remote communities on dealing with true "problem" wildlife that are causing unacceptable threats to public safety. With this authority, the department can work with the Village Public Safety Officer program and others to establish procedures for 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 25526  
JUNEAU, ALASKA 99802-0526  
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.

At the fall board meeting you offered to help with this matter. A comprehensive statutory solution would be to amend three statutes, as follows. Amend AS 16.05.255(a) (Regulations of the Board of Game) by inserting: "The Board of Game may adopt regulations it considers advisable in accordance with AS 44.62 for . . . (3) establishing the means and methods employed in the pursuit, capture, and transport of game, including regulations, consistent with public safety and welfare, and resource conservation and development goals . . ." and by adding: "(11) taking game to ensure public safety." Amend AS 16.05.050(6) (Powers and duties of the commissioner) by inserting: "(6) to take, capture, propagate, transport, buy, sell, or exchange fish or game or eggs for propagating, scientific, [OR] stocking, or public safety purposes." We have discussed this wording with the Department of Law and believe these amendments would provide concrete authority for existing regulations and activities. The department and the board would support this or some similar clarification of statutory authority. If we can provide any assistance in this matter, please let me know.

Sincerely,



Frank Rue  
Commissioner

cc: Pat Pourchot, Legislative Director, Governor's Office  
Wayne Regelin, Director of Wildlife Conservation  
Kevin Saxby, Assistant Attorney General

**SB**

**261**

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB 261

Revision Date: \_\_\_\_\_  
 Title: Unemployment Compensation  
 Sponsor: Senate Labor & Commerce  
 Requestor: Senate Labor & Commerce

Department Affected: Labor  
 BRU: Employment Security  
 Component: Employment/Unemployment Services  
 COMPONENT SERIAL NO. 1807

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

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

<b>CAPITAL</b>						
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<b>CHANGE IN REVENUE FUND SOURCE #</b>						
--	--	--	--	--	--	--

**FUNDING:** (Thousands of Dollars)

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY96) impact: \$ None

**ANALYSIS:** (Attach a separate page if necessary)

The bill makes several changes to the unemployment insurance provisions in the Alaska Employment Service Act. In addition to several technical amendments, the bill addresses federal income tax withholding, confidentiality of records, contributions and collections, benefit overpayments, finality of determinations and appeals. The tax withholding provision is a federal conformity requirement which will allow voluntary withholding of benefits to cover a claimant's federal income taxes. The other changes clarify ambiguities in the law and increase the efficiency and accuracy of claim adjudication and collection of amounts due to the unemployment compensation fund. The costs associated with these changes will be accommodated within existing expenditure authorization.

Prepared by Rebecca Nance, Director Phone: 465-2712  
 Division Employment Security Date: 2/12/96  
 Approved by Commissioner Tom Cashen, Commissioner  
 Agency Department of Labor Date: 2/12/96

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For further distribution information contact: **FISCAL NOTE** Legislative Office

# SENATE COMMITTEE REPORT

DATE: 3/8/96

DATE TURNED INTO OFFICE: 3-22-96

The Judiciary Committee considered SB 261

Relating to employment security records.

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- 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 change
- new: SCR# \_\_\_\_\_

SIGNING DO PAYS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mike Miller</i>	<input checked="" type="checkbox"/>				
<i>Al Adams</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>Chris Taylor</i>	<input checked="" type="checkbox"/>				

**NEW FISCAL NOTE(S):**

Department                      Date    Zero    Fiscal


**PREVIOUS FISCAL NOTE(S):\***

Department                      Date    Zero    Fiscal

<i>labor</i>	<i>2/12</i>	<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# ALASKA STATE LEGISLATURE



Senator Tim Kelly, Chair  
Senator John Torgerson, Vice Chair  
Senator Mike Miller  
Senator Jim Duncan  
Senator Judy Salo

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ANCHORAGE, AK 99501-2133  
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FAX: (907) 258-4524

## SENATE LABOR AND COMMERCE COMMITTEE

### Sponsor Statement

#### SB 261

**"An Act relating to the release of employment security records; relating to an injunction or an employer's security for delinquent unemployment insurance contributions..."**

SB 261 was requested by the Department of Labor and makes several changes to the Employment Security Act in six major areas: (1) federal income tax withholding; (2) confidentiality of records; (3) contributions and collection; (4) benefit overpayments; (5) finality of determinations; (6) appeals. SB 261 also contains a few minor cleanup provisions and technical amendments.

The six major changes are outlined here:

**Income Tax Withholding.** One important change brings the Employment Security Act into conformity with a new federal provision that requires states to allow claimants to have income withheld from their benefits to cover their federal income tax liability.

**Confidentiality of Records.** Proposed changes to current law would allow the Department of Labor to provide additional specific unemployment insurance information to other entities under strict disclosure guidelines. This information exchange will support and enhance the department's own programs, as well as assisting other state programs. The information would be used only to protect the unemployment compensation fund, enhance employment, training, and labor market information programs, and assist state eligibility verification and collection functions. These changes do not rescind public disclosure prohibitions already in statute. They are intended only to increase efficiency of state government while retaining current privacy safeguards.

**Contributions and Collections.** Two provisions would provide important tools for collecting delinquent contributions. First, the department would be authorized to require a deposit or bond from an employer who is at least two quarters delinquent in making contributions to the unemployment compensation fund. SB 261 would also allow the Department to enjoin a delinquent employer from operating. Additionally, the bill allows the Department to notify employing units of their contractor's or subcontractor's liability for contributions to the unemployment compensation fund. This information will help employers to meet their obligation to require contribution bonds of their subcontractors before making contract payments.

**Benefit Overpayments.** The standard for waiving unemployment insurance overpayments would be changed from "great hardship" to "equity and good conscience." The new standard would allow the Department to consider other factors, such as the degree of good faith in claiming benefits. The bill would also permit the Department to write off uncollectible overpayments after two years. Practice has shown that most recoverable overpayments are collected within two years.

**Finality of Determinations.** The Department would be given authority to correct any determination during the benefit year of an unemployment claim. This change will increase the accuracy of claim adjudication.

**Appeals.** A proposed amendment would provide a uniform 30-day time period for filing appeals from any determination made by the department. The current 15-day period probably impacts rural parties unfairly and may not allow enough time to review and consider an appeal. A longer period will still allow for prompt disposition of claims and assessments.

The bill would clarify the legal effect of appeal decisions. It would make it clear that findings of fact and conclusions of law in unemployment hearings are not binding in another proceeding. This change to current law will prevent excessive litigation by parties based on the effects of the Departments rulings in later civil litigation. This change should keep unemployment hearings speedy, informal, and inexpensive.

Both the 30-day appeal period and the provision restricting the scope of department decisions address concerns of a recent legislative audit of the unemployment insurance appeals process.

**Other Minor Changes.** Additional changes would allow an insured worker to continue receiving unemployment while attending the funeral of an immediate family member; require a worker to file a compensable claim for the week immediately before jury duty or attendance at a funeral in order to receive an eligibility exemption for those reasons; exempt extended benefit claimants from the work search requirement while attending an approved training course; correct the definition of "waiting week" in the Employment Security Act; and clarify the treatment of "cafeteria plan" payments under the wage definition in the Act.

SECTION BY SECTION ANALYSIS  
SENATE BILL NO. 261

Section 1 amends AS 23.20.110(a) in the following two areas:

- a. Employer access to information. A clarifying amendment gives employing units access to confidential information necessary to protect their rights under the Employment Security Act. This change would make it clear that both claimants and employing units have the right to information necessary to present or contest any claim or determination under the Act.
- b. Information shared with AHRIC-sponsored programs. The Alaska Human Resource Investment Council now has responsibility for coordinating all state employment and training programs under AS 44.19. This amendment would allow sharing of employment security information necessary to carry out the council's mandate.

Sec. 2 amends AS 23.20.110(d) to allow the department to charge persons for the cost of providing information. This change is consistent with an amendment proposed in section 3 of the bill which allows sharing of confidential information with authorized persons and agencies.

Sec. 3 amends AS 23.20.110 by adding subsections (l)-(n) to allow the department to provide unemployment insurance information to other persons and entities under strict disclosure guidelines. The information would be used only to protect the unemployment compensation fund and assist state eligibility verification and collection functions. These changes do not rescind the public disclosure prohibitions in AS 23.20.110; they would increase

efficiency of state government while retaining current privacy safeguards. Specific changes:

- a. Eligibility verification and collection. New AS 23.20.110(1) would allow the department to share information as necessary to verify the eligibility of applicants for state benefits, assist in the collection of fines and judgements, and collect money owed the unemployment compensation fund.

Proposed paragraph (1) would allow the department to release information for purposes such as verifying permanent fund dividend applications or determining public defender eligibility of criminal defendants. Under current law, the department must deny requests from the court system and other state agencies for residency, wage, and other information in departmental records.

Paragraph (2) would allow the department to release information to the Department of Law to verify the location and income of obligors. There is currently a large backlog of uncollected judgements, and this information would help the Department of Law determine probability of collection and focus collection efforts appropriately.

Paragraph (3) would allow the department to release information on persons or employing units that are delinquent in paying contributions or repaying benefit overpayments. Release would be restricted to information necessary for collection of the amounts due. The restriction would apply to the kind and amount of information released, as well as to the agencies or persons to whom the information would be released. Permitting disclosure would improve the department's ability to collect money owed the fund. The department is currently

prohibited, for example, from releasing the identity of even fraudulently overpaid claimants to a collection agency.

b. Information release agreement. New AS 23.20.110(m) would require an information release agreement between the department and the requestor prior to any release of information. The agreement would confirm the purposes for the information and the procedures for transmission, use, and safeguarding of the information. The statute already requires verification of a requestor's safeguarding procedures under federally-mandated disclosure provisions. This amendment would extend these requirements to any information release, and it would provide more consistent procedures for maintaining the confidentiality of the information.

c. Statistical reports. New AS 23.20.110(n) would allow the department to include firm name, address, industrial classification code, census code, and staff information in the department's labor market information reports. This would increase the usefulness of the reports, without revealing payroll or wage data.

Sec. 4 adds two new sections to the Employment Security Act, dealing with delinquent contributions. New AS 23.20.247 would give the department authority to require a bond or security from an employer whose contributions to the unemployment fund are more than two quarters delinquent. New AS 23.20.248 would allow the department to seek an injunction against a delinquent employer who refuses to post the bond. The injunction would not be sought until the employer had been given 30 days to post the bond or security. The department would have authority to waive the bond requirement after the delinquency was satisfied

The above provisions would be used when other collection remedies in the Act were not effective. For example, the delinquent account of an employer who operates on leased equipment and has no attachable assets is largely uncollectible using current procedures. In the past two years, the department has declared uncollectible 180 accounts, totalling \$454,213. About half these accounts had significant delinquent balances, and many were not collectible using currently available collection remedies.

Sec. 5 amends AS 23.20.265 to allow the department to notify employing units of their subcontractors' liability for contributions to the fund. Under current law an employing unit is liable for the fund obligations of its contractors or subcontractors, if it makes payment to them before they post a bond sufficient to cover contributions, penalties, and interest owed to the fund. Providing employing units with information on subcontractor liability will allow them verify compliance.

Sec. 6-9 amend the current appeal provisions to provide a uniform 30-day time period in which an employing unit may file an appeal from rate determinations and assessments made by the department. The current 15-day time period is unnecessarily short, considering the complexity of some of these cases. The 30-day appeal period was a recent legislative audit recommendation.

Sec. 10 allows the department to redetermine monetary or non-monetary unemployment insurance determinations within one year from the department's initial determination. The current provision allows the department to correct only a monetary determination. The amendment would allow the department to correct any determination resulting from inaccurate information or an error in computation, identity, or application of law. This change will improve the accuracy and fairness of the department's claim adjudication.

Sec. 11 amends AS 23.20.340(e) to provide a uniform 30-day appeal period for all benefit determinations under the Employment Security Act. The 30-day appeal period was a recommendation of a recently-completed legislative audit of the department's employment security appeals function. The current time period for filing appeals is 15 days from the date the department's decision is mailed to a claimant or other interested party. The 15-day period probably impacts rural parties disparately, due to mail delays, and it may not allow enough time to review and consider an appeal. A longer period would reduce this impact and still allow for prompt disposition of claims.

Sec. 12 amends the availability for work provision in AS 23.20.378 to allow an insured worker to receive benefits while attending the funeral of an immediate family member for a period no longer than seven days. Benefits would be paid only if the worker filed a compensable claim for the week before the funeral attendance. The proposed amendment would also extend this compensable claim requirement to any claimant seeking an availability exemption under AS 23.20.378.

Sec. 13 changes the standard for waiving unemployment insurance overpayments under AS 23.20.390(b) from the current "great hardship" standard to one of "equity and good conscience". The new standard would allow the department to consider other factors, such as the degree of good faith in claiming benefits, the exact cause of the overpayment, whether the claimant received only normal benefits or a duplicate payment, and the extent of the claimant's detrimental reliance on the award of benefits, in addition to financial hardship. The equity and good conscience standard is well-established in other jurisdictions, both federal and state, so there is ample precedent to guide the department in applying the standard.

Sec. 14 allows the department to declare uncollectible an overpayment that has not been repaid within two years and to remove it from the department's books. The current statute requires the department to carry overpayments for six years before they may be declared uncollectible.

Sec. 15 increases the appeal period for overpayment liability determinations to 30 days. This is consistent with the other appeal period changes made in the bill.

Sec. 16 adds a new section to the Employment Security Act to allow voluntary income tax withholding on unemployment insurance benefits. This change is necessary to bring the Act into conformity with Public Law 103-465, which requires states to allow claimants the option of withholding from their benefits to cover their federal income tax liability on those benefits.

Sec. 17 exempts extended benefit claimants from the work search requirement while attending an approved training course. These claimants are already exempted under federal law; this change simply brings the Act into full agreement with federal extended benefit law.

Sec. 18-19 amend the appeal provisions in AS 23.20.430-435 to provide a 30-day time period for filing an appeal from a decision of the appeal tribunal and to allow the department 30 days to initiate review of a decision of the appeal tribunal. These changes are consistent with the 30-day appeal period for tax and benefit determinations elsewhere in the bill.

Sec. 20 amends AS 23.20.455 to clarify the scope of the department's rulings in unemployment insurance cases. It restricts the scope of the department's declaration of legal principles to only those cases decided under the Employment

Security Act. This change is consistent with the amendment proposed in sec. 21 of the bill.

Sec. 21 adds a new section to the Employment Security Act to clarify the legal effect of appeal decisions. Under this provision, findings of fact and conclusions of law only have preclusive effect in proceedings before the department, and are not binding in another forum or proceeding. The purpose of the amendment is to prevent parties from excessively litigating issues based on the effect the department's rulings may have on later civil litigation. For example, under this provision a finding of fact or conclusion of law made by the department regarding whether an employee was terminated for misconduct could not be given preclusive effect in a subsequent civil lawsuit for wrongful discharge. The change is intended to help keep unemployment insurance hearings speedy, informal, and inexpensive.

Sec. 22 is a technical amendment that corrects the "waiting week" definition in AS 23.20.520(20). It simply adds another provision to the current incomplete list of disqualifying provisions which would disqualify a week for use as a "waiting week."

Sec. 23 amends the list of employee compensation payments in AS 23.20.530(b) which are not deemed "wages" and are therefore not subject to employment security contributions. It specifies that "cafeteria plan" payments are not considered wages so long as the payments would not be otherwise treated as wages under AS 23.20.530. For example, payments made to a cafeteria plan for retirement or medical expenses would not be considered wages, because those payments are excluded elsewhere in the definition of wages. On the other hand, payments made under the plan that an employee elects to take in the form of cash would still be considered wages. Cafeteria plans have been treated this way for some time for federal withholding and payroll tax purposes. The

Federal Unemployment Tax Act (FUTA) was amended in 1986 (Public Law 99-514) to make it clear that the cafeteria plan exemption applied to both FUTA and Federal Insurance Contributions Act (FICA) taxes. This change will bring Alaska and federal law into harmony on this point.

Sec. 24 provides an effective date of July 1, 1996.

**SB**

**263**

# FISCAL NOTE

No. 1

Bill Version: CS SB 263(JUD)

(S) Publish Date: 4/9/96

STATE OF ALASKA  
96 LEGISLATIVE SESSION

Revision Date: 4/4/96 Dept. Affected: Department of Law  
 Title: \*An Act relating to copyright licensing and BRU: Criminal Division/Civil Division  
 Agencies:  Component: Criminal Division/General Legal Services  
 Sponsor: Senate Labor and Commerce Committee  
 Author: Senate Judiciary Committee COMPONENT SERIAL NO. 2085/2087

**Operating Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
UTILITIES						
EQUIPMENT						
LAND & STRUCTURES						
LIABILITIES, CLAIMS						
miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( )</b>						

**Revenue Source** (Thousands of Dollars)

REVENUE SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
02 Federal Receipts						
03 GF Match						
04 GF						
05 GF/Program Receipts						
06 GF/MHTIA						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**Positions**

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

The Judiciary Committee Substitute for SB 263 drops criminal sanctions as suggested in the Department of Law's original fiscal note analysis. The bill will not have a fiscal impact for the Department.

Prepared by: Richard T. Peques, Director Phone: 465-3672  
 Title: Administrative Services Division  
 Approved by Commissioner: Bruce M. Batelino, Attorney General Date: 4/4/96  
 Agency: Department of Law

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SB 263

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "An Act relating to copyright licensing and BRU: Criminal Division, Civil Division  
royalties..." Component: Criminal Division, General Legal Services  
 Sponsor: Senate Labor and Commerce Committee  
 Requester: Senate Judiciary Committee COMPONENT SERIAL NO. 2085, 2087

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

**FUND SOURCE**

(Thousands of Dollars)

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

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

**POSITIONS**

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

This bill amends Alaska's Trade Practices Act, AS 45.45, to provide certain protections for business proprietors in the payment of royalties to copyright owners for the public performance of nondramatic music or similar work. The bill sets out several provisions by which the copyright holders must deal with business proprietors, including disclosing the rates and terms under a royalty contract, and the rates and terms in agreements with other business proprietors in the same area. The bill provides for a self-enforcing mechanism by allowing aggrieved business proprietors to enjoin violations of copyright holders and to seek treble damages in private consumer protection actions. The bill also provides that a person who knowingly violates the contracting and disclosure provisions commits a class A misdemeanor. The Department of Law believes that the criminal sanction should be dropped, because the civil remedies provided by the bill are adequate, and they are a more appropriate means of resolving disputes between private business interests.

Prepared by: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Division Date: 2/12/96  
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/12/96  
 Agency: Department of Law

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**SENATE COMMITTEE REPORT**

**First Committee of Referral**

DATE: 2/7/96

FURTHER:

Date of 5-Day Notice: \_\_\_\_\_  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4-4-96

The Judiciary Committee considered SB 263

Relating to copyright licensing and royalties.

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- 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>Richard Miles</i>	<input checked="" type="checkbox"/>	<i>C. Adams</i>	<input checked="" type="checkbox"/>		
<i>Richard Miles</i>	<input checked="" type="checkbox"/>				
<b>CHAIR:</b> <i>Richard Miles</i>		<b>CHAIR:</b>			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

## *CHARR Position Paper*

### *Senate Bill 263*

### *Music Licensing Reform*

*CHARR strongly supports SB 263 which will place limitations on the way BMI, ASCAP, and SESAC conduct business in our state.*

*SB 263 will NOT  
do away with licensing fees, lower them or eliminate your obligations to pay for the public performance of music.*

*SB 263 WILL  
prevent music licensing agencies from harassing, threatening, or setting arbitrary fees on business.*

*To affect this legislation, the Legislature must hear from citizens impacted by the proposed legislation.*

*The louder the voice, the more likely we will win this piece of legislation.*

*Won't you take a moment to voice your opinion and be heard?*

*Send a letter...  
a fax, call your local Legislative Information office and send a  
Public Opinion Message...*

***TELL YOUR SENATOR AND REPRESENTATIVE THAT  
YOU SUPPORT SB263!!!***

~~\_\_\_\_\_~~ Amendments to CSSB 263 (JUD)

Amendment #1

Pg. 1, Section 1, Line 9.

Replace [seven days] with seventy two hours

Amendment #2

Page 2, Section 1, Line 4-8 is amended to read:

(3) in the case of a Performing Rights Society, notice that the most recent available list of the members or affiliates represented by the Performing Rights Society and the most recent available list of the copyrighted musical works in the Performing Rights Society's repertoire will be available on electronic media through the State Restaurant Association (CHARR) at the expense of the Performing Rights Society.

Amendment #3

Page 3, Section 45.45.540 Line 10-22 is deleted.

*Notice Required before inspection of premises*

Amendment #4

Page 4, Line 5, is amended to read:

an investigation by a law enforcement agency or other persons concerning a suspected violation of AS 45.50.900 (a) (2).

Amendment #5

Page 4, Section 2, Line 28-30 is deleted.

*refers to violating AS 45.45.500 - 45.45.590  
(copyright royalties + licensing)*

9-LS0803VF  
Bannister  
3/29/96

CS FOR SENATE BILL NO. 263(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to copyright licensing and royalties; and providing for an  
2 effective date."

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

4 \* Section 1. AS 45.45 is amended by adding new sections to read:

5 ARTICLE 7A. COPYRIGHT ROYALTIES AND LICENSING.

6 Sec. 45.45.500. NOTICE REQUIRED BEFORE CONTRACT. A copyright  
7 owner or a performing rights society may not enter into, or offer to enter into, a  
8 contract for the payment of royalties by a business proprietor unless at the time of the  
9 offer, or within seven days before entering into the contract, the copyright owner or  
10 performing rights society provides to the business proprietor a notice containing

11 (1) the rates and terms of the royalties under the contract, including any  
12 sliding scale, discounts, or reductions in rates on any basis, for which the business  
13 proprietor may be eligible, and any scheduled increases or decreases in rates during  
14 the term of the contract;

1 (2) in the case of a performing rights society, a toll free number from  
2 which the business proprietor may obtain answers to inquiries concerning musical  
3 works and copyright owners represented by the performing rights society; and

4 (3) in the case of a performing rights society, how a business proprietor  
5 can obtain on request at the expense of the performing rights society the most recent  
6 available list of the members or affiliates represented by the performing rights society  
7 and the most recent available list of the copyrighted musical works in the performing  
8 rights society's repertoire.

9 Sec. 45.45.510. MINIMUM CONTENTS OF ROYALTIES CONTRACTS.

10 (a) A royalties contract entered into, issued, or renewed in this state must be in  
11 writing and signed by the parties. The contract must include at least the

12 (1) business proprietor's name and business address, and the name and  
13 location of each place of business of the business proprietor to which the contract  
14 applies;

15 (2) duration of the contract; and

16 (3) terms for the collection of the royalties and a rate schedule for the  
17 royalties, including any sliding scale, discount, or schedule for an increase or decrease  
18 of the rates during the term of the contract.

19 (b) A contract for the payment of royalties entered into, issued, or renewed in  
20 this state may not exceed one year at a time, unless the contract is under the terms of  
21 a national agreement. When each year of the contract ends, the contract is  
22 automatically renewed on the same terms and conditions unless either party to the  
23 contract provides the other party with written notice of the party's desire to terminate  
24 the contract or to change the terms and conditions. The notice must be given at least  
25 30 days before the termination of the current term.

26 Sec. 45.45.520. COLLECTION OF ROYALTIES. A copyright owner, a  
27 performing rights society, or an agent or employee of a copyright owner or performing  
28 rights society may not collect or attempt to collect a payment or another fee under a  
29 royalties contract between the copyright owner or performing rights society and a  
30 business proprietor unless the contract complies with AS 45.45.500 - 45.45.590.

31 Sec. 45.45.530. PROHIBITED PRACTICES. (a) A performing rights society,

1 or an agent or employee of a performing rights society, may not collect or attempt to  
2 collect a royalty payment or another fee from a business proprietor licensed by the  
3 performing rights society, unless the collection or collection attempt is made under a  
4 contract entered into in accordance with AS 45.45.500 - 45.45.590.

5 (b) An agent or employee of a performing rights society may not enter a  
6 business proprietor's premises to discuss a contract for the performance of copyrighted  
7 works or payment of royalties unless the agent or employee immediately discloses the  
8 purpose of the discussion and that the agent or employee is an agent or employee of  
9 a performing rights society.

10 Sec. 45.45.540. NOTICE REQUIRED. A performing rights society whose  
11 agent or employee enters a proprietor's business to investigate the possible  
12 performance, broadcasting, or transmission of musical works shall, not later than seven  
13 days after entering the proprietor's business, provide the proprietor with written notice  
14 that the performing rights society's agent or employee entered the premises for the  
15 purposes of investigation. The notice must include

- 16 (1) the name of the performing rights society;
- 17 (2) the date when the agent or employee visited the proprietor's  
18 business;
- 19 (3) that the purpose of the visit was investigation; and
- 20 (4) the name of each copyrighted musical work in the performing rights  
21 society's repertoire that was performed at the proprietor's business during the  
22 investigation.

23 Sec. 45.45.550. PRIVATE ACTION. A person who suffers a loss as a result  
24 of another person knowingly engaging in conduct that violates AS 45.45.500 -  
25 45.45.590 may bring a civil action to recover actual damages and reasonable attorney  
26 fees, to enjoin the violation, and to seek any other remedy available at law or equity  
27 for the violation. In this section, "knowingly" has the meaning given in AS 11.81.900.

28 Sec. 45.45.560. EXEMPTIONS. The provisions of AS 45.45.500 - 45.45.590  
29 do not apply to

- 30 (1) a royalties contract between copyright owners, or performing rights  
31 societies, and

1 (A) broadcasters licensed by the Federal Communications  
2 Commission; or

3 (B) a cable television operator, a cable television programmer,  
4 or another transmission service;

5 (2) an investigation by a law enforcement agency.

6 Sec. 45.45.570. CONSTRUCTION. AS 45.45.500 - 45.45.590 may not be  
7 construed to prevent a performing rights society from informing a business proprietor  
8 of the business proprietor's obligations under 17 U.S.C. (federal copyright law) or  
9 from exercising any exclusive rights preempted under 17 U.S.C. 301(a).

10 Sec. 45.45.590. DEFINITIONS. In AS 45.45.500 - 45.45.590.

11 (1) "business proprietor" means a person who owns a place of business  
12 in which the public may assemble and in which copyrighted musical works may be  
13 performed, broadcasted, or otherwise transmitted; in this paragraph, "place of business"  
14 includes a store, professional office, sports facility, entertainment facility, restaurant,  
15 hotel, or an alcoholic beverage establishment licensed under AS 04.11;

16 (2) "copyright owner" means the owner of a copyright of a musical  
17 work if the copyright is recognized and enforceable under 17 U.S.C.; "copyright  
18 owner" does not include the owner of a copyright in all or part of a motion picture or  
19 an audiovisual work;

20 (3) "musical work" means a nondramatic musical or similar work;

21 (4) "performing rights society" means an association or corporation that  
22 licenses the public performance of musical works on behalf of copyright owners, and  
23 includes Broadcast Music, Inc., SESAC, Inc., and The American Society of  
24 Composers, Authors, and Publishers;

25 (5) "royalties" means the fees payable to a copyright owner or a  
26 performing rights society for the public performance of a musical work;

27 (6) "royalties contract" means a contract for the payment of royalties.

28 \* Sec. 2. AS 45.50.471(b) is amended by adding a new paragraph to read:

29 (4) violating AS 45.45.500 - 45.45.590 (copyright royalties and  
30 licensing).

31 \* Sec. 3. AS 45.45.500 - 45.45.530, enacted by sec. 1 of this Act, do not apply to a

- 1 contract entered into, issued, or renewed before the effective date of this Act.
- 2 \* Sec. 4. SEVERABILITY. If a provision of AS 45.45.500 - 45.45.590 or its application
- 3 to a person or circumstance is held invalid, the invalidity does not affect other provisions or
- 4 applications of this Act that can be given effect without the invalid provision or application
- 5 and, to this end, the provisions of this Act are declared to be severable.
- 6 \* Sec. 5. This Act takes effect July 1, 1996.

for Steven  
Blinn



## OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001  
Contact:

CARL GOLDEN  
609-777-2205

TRENTON, N.J. 08625

Release: IMMEDIATE  
APRIL 27, 1995

Gov. Christie Whitman today exercised her power of conditional veto over legislation to regulate practices and agreements concerning the licensing of nondramatic musical works copyrighted under Federal law.

The legislation, A-1610, was sponsored by Assemblyman Walter Kavanaugh, R-Somerset.

The Governor said she had been advised by the Attorney General that the bill "impermissibly intrudes upon the ability of copyright owners to enforce and enjoy their copyrighted works by imposing restrictions beyond those intended by Congress."

The Governor submitted proposed amendments to the bill for legislative consideration.

A COPY OF THE CONDITIONAL VETO MESSAGE IS ATTACHED

**STATEMENT OF BROADCAST MUSIC, INC.  
BEFORE THE NEW JERSEY ASSEMBLY COMMITTEE ON COMMERCE AND  
REGULATED PROFESSIONS IN OPPOSITION TO A. 1610**

**AUGUST 26, 1994**

Mr. Chairman and members of the Committee, my name is Marvin Berenson and I am Senior Vice President and General Counsel for Broadcast Music, Inc. (BMI), a United States performing rights organization that represents approximately 100,000 U.S. songwriters and composers and 50,000 U.S. publishers. BMI collects license fees on behalf of those American creators it represents, as well as for the thousands of creators from around the world who have chosen BMI for U.S. representation. The license fees collected by BMI for the "public performances" of BMI's repertoire of approximately 2,500,000 compositions are then distributed as royalties to the writers and copyright holders BMI represents and include radio airplay, broadcast and cable television carriage, and live and recorded performances by all other users of music.

BMI is headquartered in New York, with offices in Nashville, Los Angeles, Red Bank, Phoenix, San Juan, Middleboro (MA) and London. It was created in 1939 to provide a competitive source of music licensing in the United States. A not-for-profit-making corporation, BMI opened the door to performing rights representation for songwriters and composers of all types of music,

many of whom were not eligible under the membership guidelines of the older American performing rights organizations.

BMI grants legal access to its repertoire through blanket license agreements. A blanket license agreement allows music users to make unlimited use of the works in BMI's repertoire during the year for one annual fee. BMI's blanket licenses cover all classes and categories of music users, including major television networks using millions of copyrighted music performances per year, radio and television broadcast stations, and cable networks as well as hotels, restaurants, universities, and many other venues. BMI logs 500,000 hours annually of airplay performances on radio and conducts a census of performances on television through the most comprehensive and advanced techniques. Our most performed work, "Yesterday" by Paul McCartney and John Lennon, just surpassed the 6 million performance mark.

BMI writers have won numerous Grammys, American Music Awards, Oscars, Emmys, Tonys, Pulitzer Prizes, MTV and CMA Awards. BMI's roster includes such notable songwriters and composers as Alan Menken, John Williams, Lionel Hampton, Buddy Holly, Sandy Patti, John Lennon, Ray Charles, Eric Clapton, Paul Simon, Elvis Presley, Miles Davis, David Foster, Carole Bayer Sager, Bee Gees, Beach Boys, Willie Nelson, Thelonious Monk, Dolly Parton, Gloria Estefan, Nirvana, R.E.M., Michael Bolton, Mariah Carey, Lou Reed, Vince Gill, Carole King, Aretha Franklin and Chet Atkins.

Public Performances Under U.S. Copyright Law (Title 17, U.S. Code)

Pursuant to the U.S. Copyright Law, if a person desires to publicly perform a copyrighted musical composition, the person must obtain permission from the creator of the musical composition. BMI enters into affiliation agreements with the writers, composers and publishers of musical compositions. These agreements grant to BMI a non-exclusive right of public performance. BMI, in turn, licenses to users of music the right of public performance to the musical compositions contained in its repertoire. As stated above, BMI is operated on a not for profit basis, and all fees received, less administrative expenses and certain reserves, are distributed to its affiliates.

Music is pervasive in the American lifestyle. It is so readily available that people tend to think it's free, and they believe they have the right to use music as they please. It's not scrambled like HBO on cable TV. It isn't something like Coca-Cola where the formula is secret. Music is not so protected. You can buy music in one form and then use it for other purposes. For example, you can buy tapes for use in your home and then play them over and over again in your restaurant so your customers can better enjoy the restaurant's ambience and thus enjoy their dinner. Buying that record meant that you paid for that right to listen to the musical works in your home, but not perform them in public for your commercial benefit or advantage.

Without an organization such as BMI, a music user would be compelled to seek out every copyright owner whose music the user

is publicly performing to obtain permission for such performances. The availability of a BMI blanket license saves the user time and money in obtaining the necessary rights. Without BMI's efforts, the creations that we can hear with the push of a button would otherwise go uncompensated. If that were to happen, the incentive for a composer to continue at his or her livelihood would disappear, leaving society all the poorer.

Since its inception more than 50 years ago, BMI and its business of music licensing has been periodically examined in various contexts by the U.S. Congress, the courts and the U.S. Department of Justice, with the result that has been reaffirmed time and time again, namely, that a performing rights organization is the most effective and practical means to protect the rights to copyrighted music.

#### BMI's Licensing Practices

Because A. 1610 seeks to put limits on BMI's licensing practices, let me give you a brief summary of our standard operating procedures in this area so you can see that most of what you seek to accomplish is already in effect, making legislation unnecessary and, in the long run, detrimental to both creators and music users.

In 1990, BMI developed new methods of communications to businesses using music in order to increase public awareness of the need to obtain permission to publicly perform copyrighted music. Such efforts have been in the form of direct mail and telemarketing

in addition to telephone and in person contacts made by our Licensing Executives. BMI also utilizes advertising in industry publications on a regional and national basis in an effort to build awareness and establish credibility about BMI and music licensing and to convey a user-friendly image. The objective is also to promote the use of music and its benefits to current and potential music users.

BMI's communication efforts focus on providing education and information to both potential music users and known music users.

The heart of the matter is that performing rights organizations are implementing the law, and it is difficult to explain our function without referring to the Copyright Law. The fact is that no "fence" can be put around the public performance of our music. Given this reality, BMI does its best to explain the music user's need to comply with the obligations of the Copyright Law. At some point we may have to advise the user that the possibility of litigation is in fact the only recourse we have to prevent our product from being illegally taken from us. It seems to us inevitable that some music users will interpret these explanations as threats or intimidation. They are not so intended, and BMI constantly reviews its materials and presentations to find the best ways of conveying the information.

BMI uses every tool of communication that it can to support the Licensing Executive and prepare an establishment for a visit from the Licensing Executive. It would, we suppose, be our

fondest dream that businesses would contact BMI for a license before they begin using music as the law requires, that visits were not needed, that our direct mail and telemarketing were totally successful in explaining the need for permission to publicly perform music, and we received all licenses through the mail. Such is not the case, and visits are sometimes necessary. When they are made, we have made every reasonable effort possible to notify the establishment, and we do not appear out of nowhere and demand a license and a fee. Most pieces of our literature suggest to users that they consult an attorney if they have any questions, and our Licensing Executives do the same.

When our efforts to license music using establishments do not succeed, BMI brings copyright infringement actions. Approximately 300-400 such actions are brought throughout the United States each year. This represents, however, only a small fraction of the 15,000 licenses we receive each year, and an even smaller fraction of the number of establishments we are contacting during a year for license agreements.

Our fee in a restaurant, nightclub or similar establishment with occupancy of up to 75 and using only recorded music is \$195 a year. If the establishment has between 226 and 300 occupancy, the fee is \$360 a year, which is about average. If, however, multiple television sets are used, their fee is 35% higher. Our fee in a retail store or other commercial establishment is based upon square footage: \$60 a year for up to 1,500 square feet; \$480 a year for over 5,000 square feet. Fees

for audiovisual uses are somewhat higher. Thus, a user has access to all of the over 2,500,000 songs created by BMI's affiliates, and can use this music to enhance and make more profitable his or her business, for about 50¢ a day in a small restaurant and 15¢ a day in a store. This is truly a modest sum for music which enhances one's business.

In an effort to reduce the cost of licensing and thereby to reduce the amount of fees which users would be responsible for, BMI will negotiate group license agreements with a business association. Such an agreement is administered by the association for the benefit of its members and will usually provide for a reduced rate. Recently, BMI had a series of discussions with the New Jersey Restaurant Association. While BMI and the Association did not reach an agreement, BMI believes the negotiations showed that both parties recognized the value of music and the benefits a group license can confer. Unfortunately, instead of pursuing the best arrangement they could for their members, the NJRA has instead sought to look to legislation to either tie the hands of BMI and similar organizations to enforce federal rights or to seek exemptions from payment altogether. Neither approach is at all fair to the legitimate interests of creators of music from New Jersey or the rest of the country.

#### Why A. 1610 is unnecessary and detrimental

This bill virtually would prevent BMI or its affiliated songwriters and music publishers from restraining unauthorized use

of their music in New Jersey. It would therefore give free rein to those who choose to take that property without paying for it and the freedom to benefit from another's labors free of charge.

Much of A. 1610 constitutes unnecessary legislation, inasmuch as it attempts to codify longstanding BMI business practices and it interferes with the implementation of BMI's Consent Decree. Moreover, by putting obstacles in the way of effective enforcement of federally-granted rights, it essentially undermines those rights.

BMI has operated under a Consent Decree with the Department of Justice since 1966 which requires it to treat music users of the same kind alike. The relevant provision states that "[BMI] shall not enter into, recognize as valid or perform any performing rights licensing agreement which shall result in discriminating in rates or terms between licensees similarly situated...." As a result, our license agreements are standardized for uniform national treatment. That annual fee I mentioned for a restaurant with a 75 person maximum occupancy that only uses recorded music is \$195 whether the establishment is located in New Jersey or Nebraska and, by the same token, whether the New Jersey locale is Toms River, Sayreville, Pennsauken or Westwood. No special deals are or can be made. Thus, every restaurant proprietor in New Jersey is paying no more for music than competitors across the street or across the country.

Certain fees, however, are calculated upon the basis of information provided to us by the licensee. BMI's fee for live music, for example, depends upon the licensee's range of live

entertainment expenses. If two restaurants which are spending the same amount each year for live music and have no other music are paying two different fees, it is because one of them is not accurately reporting to us. Similarly, if a restaurant submits a license through the mail, it reports its occupancy. BMI cannot in every instance be certain of the numbers, although we do try to ascertain accuracy. Unfortunately, we do not have the staff to verify this kind of information from every establishment, so we must rely on random audits, as the license agreement permits, to do our best to make sure that no user in a class is getting a leg up on his competitors by being dishonest.

All BMI agreements are in writing, specifying the parties, duration and rate schedules, so that both BMI and the licensee know clearly each other's rights and obligations. To do otherwise would create such chaos that BMI could not do business. Since the royalties BMI pays out to its writers, composers and publishers comes from the universe of license fees we collect, we must be cognizant at all times of the fees we can expect to receive from our licensees. The only way we can monitor that would be to have precise, written agreements, which are the only kind of licenses we grant.

The requirement of A. 1610 that BMI attach a list of its repertoire and affiliates to every contract would be of little practical use to the user. With a repertoire of over 2.5 million songs owned by 150,000 people and entities which change on a daily basis, as soon as a document of that size was printed it would be

outdated and unreliable, to say nothing of the fact that it would be many thousands of pages long. Also, it would be very expensive to print the list and the cost would be passed along to the users as higher license fees. Furthermore, BMI answers phone or mail inquiries as to whether particular songs are licensed by us. We are also exploring the possibility of making our title data base available on-line to licensees and prospective licensees.

Also very troubling about the bill is the prohibition against one's entering a premises to investigate unauthorized music use without identifying himself or herself to the owners or employees. Certainly, BMI licensing executives make themselves known when they first approach a prospective licensee; not to do so would negate the purpose of their visit. But once a known unlicensed music user has been identified, educated, written to, visited, telephoned and urged to comply with federal law, BMI is duty bound to uphold the copyrights entrusted to it by instituting litigation, the basis for which are specific BMI songs performed at that location, as witnessed by an investigator who visited the establishment on a random evening. This bill would compel by law the investigator to identify himself or herself and state the reason for the visit to a proprietor who has been contacted repeatedly about the need to be licensed, has refused to become licensed and has continued to use music, now face-to-face with someone who announces that he is gathering proof of that unauthorized use for a lawsuit. This Committee could well imagine the sort of physical jeopardy in which the investigator would be placed. Furthermore, the proprietor could

easily stop the music until the investigator left. Under either scenario, the bill would make the upholder of federal law a lawbreaker in New Jersey. Without the ability to acquire evidence of unauthorized use, federal remedies could not be enforced, making free music use the order of the day. That would soon bring an end to new music.

Moreover, threatening to bring litigation if one does not license is a matter of perspective. BMI tells every licensee that if they play music without a license they will be in violation of federal law. That is not a threat; it is simply a statement of fact. To outlaw that would be to hide the fact that there is a penalty attached to one's illegal conduct. Is it not fairer to tell someone how they can avoid being in violation of law rather than to keep quiet about it and merely present them with a lawsuit?

Finally, the provisions allowing a three-day cancellation period or the voiding of a contract will hurt rather than help the licensee. BMI's contracts already provide that if one discontinues music the contract is cancelable. If a licensee seeks to cancel or void a contract yet still uses music, the moment the contract is ended the licensee is in violation of copyright law for using music without a license, subjecting him to serious damages. Therefore, nothing would be accomplished by this provision. There is no reason to legislate matters the parties as a matter of course have already agreed among themselves.

The only people in New Jersey who have anything to gain by this bill are those who use music without paying for it. Looked at

from the creator's perspective, this legislation is the equivalent of creating an atmosphere which would legally allow a songwriter to go into a restaurant, eat a meal and leave without paying the check. In order for the more than 2000 BMI songwriters and composers from New Jersey, as well as those from the rest of the country, to have the incentive to continue to create the music all of us enjoy, they need to know that there will be compensation for their creations, and that those who would use their music without paying for it will not be rewarded. Since the U.S. Copyright Law creates, and our Consent Decree controls, the mechanism for BMI to keep that knowledge secure, I urge you to reject this bill so that the destruction of effective licensing and enforcement of copyrights is prevented in New Jersey.

# SB813

LRB8904929FNsb

1	AN ACT concerning copyright royalty collection.	60
2	Be it enacted by the People of the State of Illinois,	64
3	represented in the General Assembly:	65
4	Section 1. Short title. This Act may be cited as the	66
5	Copyright Royalty Collection Act.	69
6	Section 5. Definitions. As used in this Act:	72
7	"Area" means a circular geographical region having a	74
8	25-mile radius surrounding the business location of a	76
9	proprietor. In the case of a proprietor with more than one	77
10	business location, there shall be a separate area for each	
11	location for the purposes of this Act.	78
12	"Copyright owner" means the owner of a copyright of a	80
13	nondramatic musical or similar work recognized and	81
14	enforceable under the copyright laws of the United States	82
15	pursuant to Title 17 of the United States Code, Pub. L.	
16	94-553 (17 U.S.C. 101 et seq.).	83
17	"Performing rights society" means an association or	85
18	corporation that licenses the public performance of	86
19	nondramatic musical works on behalf of copyright owners, such	87
20	as the American Society of Composers, Authors and Publishers	
21	(ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.	88
22	"Proprietor" means the owner of a retail establishment,	90
23	restaurant, inn, bar, tavern, sports or entertainment	91
24	facility, or any other similar place of business or	92
25	professional office located in this State in which the public	
26	may assemble and in which nondramatic musical works or	93
27	similar copyrighted works may be performed, broadcast, or	94
28	otherwise transmitted for the enjoyment of the members of the	95
29	public there assembled.	
30	"Royalty" means the fees payable to a copyright owner or	97
31	performing rights society for the public performance of	98

1	nondramatic musical or other similar work.	99
2	Section 10. Contract provisions. No copyright owner or	102
3	performing rights society shall enter into, or offer to enter	104
4	into, a contract for the payment of royalties by a proprietor	
5	unless at the time of the offer, or any time thereafter, but	105
6	no later than 72 hours prior to the execution of that	106
7	contract, it provides to the proprietor, in writing, all of	107
8	the following:	
9	(1) A schedule of the rates and terms of royalties	109
10	under the contract.	
11	(2) A schedule of the rates and terms of royalties	111
12	under agreements executed by the copyright owner or	112
13	performing rights society and proprietors of comparable	113
14	businesses in the area.	
15	(3) In the case of a performing rights society, the	115
16	copyright owners represented by that society and the	116
17	works licensed under the contract.	
18	(4) Notice, in a form prescribed by the Attorney	118
19	General, that the proprietor is entitled to the	119
20	information contained in paragraphs (1), (2), (3), of	120
21	this Section, and that the failure of the copyright owner	121
22	or performing rights society to provide that information	123
23	is a violation of, and may render a contract	
24	unenforceable under, the provisions of this Act.	124
25	Section 15. Contract terms. Every contract for the	127
26	payment of royalties executed in this State shall:	128
27	(1) Be in writing; and	130
28	(2) Be signed by the parties; and	132
29	(3) Not exceed one year; and	134
30	(4) Include at least the following information:	136
31	(A) The proprietor's name and business address and	138
32	the name and location of each place of business to which	139

1 the contract applies; and

2 (B) The name and address of the copyright owner and 141  
3 any performing rights society authorized by him to act on 142  
4 his behalf; and

5 (C) The copyrighted works licensed under the 144  
6 contract; and

7 (D) The duration of the contract; and 146

8 (E) The schedule of rates and terms of the 148  
9 royalties to be collected under the contract, including 149  
10 any sliding scale or schedule for any increase or  
11 decrease of those rates for the duration of that 150  
12 contract.

13 Section 20. Prohibited acts. No copyright owner or 153  
14 performing rights society or any agent or employee thereof 155  
15 shall do any of the following:

16 (1) Enter onto the premises of a proprietor's business 157  
17 for the purpose of investigating as to the use of copyrighted 158  
18 works by that proprietor without first identifying himself to 159  
19 the proprietor or his employees and making known to them the 160  
20 purpose of the investigation.

21 (2) Collect or attempt to collect a royalty payment or 162  
22 any other fee except as provided in a contract executed under 163  
23 the provisions of this Act.

24 (3) Use or attempt to use or practice in negotiating 165  
25 with a proprietor, or in retaliation for a proprietor's 166  
26 failure or refusal to negotiate, with respect to a contract 167  
27 for the payment of royalties, including, but not limited to 168  
28 any of the following:

29 (A) Threatening to commence legal proceedings in 170  
30 connection with an alleged copyright violation with the 171  
31 intent of coercing the proprietor to negotiate or enter 172  
32 into a contract for the payment of royalties.

33 (B) Charging or collecting a royalty that is 174

1	unreasonable in comparison to the royalties for similar	175
2	licenses in the same area.	
3	Section 25. Fines. A person who violates any of the	178
4	provisions of this Act commits a business offense and shall	179
5	be fined not more than \$7,500 for a first offense and not	180
6	more than \$15,000 for a second and each subsequent offense.	
7	Section 30. A proprietor may bring an action or assert a	183
8	counterclaim, in a court of competent jurisdiction, against a	184
9	copyright owner or performing rights society, or both, to	185
10	enjoin any violation of this Act and to recover any damages	186
11	sustained by the proprietor as a result of a violation of	
12	this Act. The proprietor may petition the court to terminate	187
13	a contract that violates the provisions of this Act, and the	188
14	court in its discretion may void the contract. If	189
15	successful, the proprietor shall be entitled to recover	
16	threefold the damages sustained by him, together with	190
17	reasonable attorney's fees, filing fees, and reasonable costs	191
18	in addition to any other legal or equitable relief.	192
19	Section 35. Additional rights, remedies, and	195
20	prohibitions. The rights, remedies, and prohibitions	196
21	accorded by the provisions of this Act shall be in addition	198
22	to and cumulative of any other right, remedy, or prohibiting	199
23	accorded by common law, federal law, or the statutes of this	
24	State, and nothing contained herein shall be construed to	200
25	deny, abrogate, or impair any such common law or statutory	201
26	right, remedy, or prohibition.	
27	Section 40. Federal Communications Commission licensees.	204
28	This Act shall not apply to contracts between copyright	205
29	owners or performing rights societies and broadcasters	206
30	licensed by the Federal Communications Commission, except	207

# SB813

1        if a copyright owner or performing rights society is        208  
 2        licensed by the Federal Communications Commission, this Act  
 3        shall apply to contracts between that copyright owner or        209  
 4        performing rights society and a proprietor as otherwise        210  
 5        provided herein.

6        Section 99. Effective date. This Act takes effect upon        213  
 7        becoming law.

## A BILL

### FOR AN ACT ENTITLED

"An Act relating to copyright licensing and royalties; and providing for an effective date."

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

\* Section 1. AS 45.45 is amended by adding new sections to read:

#### Article 7A. COPYRIGHT ROYALTIES AND LICENSING

Sec. 45.45.500. NOTICE REQUIRED BEFORE CONTRACT. (a) A copyright owner or a performing rights society may not enter into, or offer to enter into, a contract for the payment of royalties by a business proprietor unless at the time of the offer, or within seven days before entering into the contract, the copyright owner or performing rights society provides to the business proprietor a written notice containing:

- (1) the rates and terms of royalties under the contract, including any sliding scale, discounts, or reductions in fees on any basis for which the business proprietor may be eligible, and any scheduled increases or decreases in fees during the term of the contract;
- (2) in the case of a performing rights society, a toll free number from which the business proprietor may obtain answers to inquiries concerning musical works and copyright owners represented by the performing rights society;
- (3) in the case of a performing rights society, the procedure wherein a business proprietor may obtain upon request at the expense of the performing rights society, the most recent available list of the members or affiliates represented by the performing rights society and the most recent available list of the copyrighted musical works in the performing rights society's repertory;
- (4) in the case of a performing rights society, a statement that it is in compliance with state and federal law, and orders of courts having jurisdiction over rates and terms of royalties and the licensing for public performance of copyrighted nondramatic musical works.

#### Sec. 45.45.510. MINIMUM CONTENTS OF ROYALTIES CONTRACTS

(a) A royalties contract entered into, issued, or renewed in this state must be in writing and signed by the parties and may not exceed one year, except if the contract is under the terms of a national agreement. The contract must include at least the

- (1) business proprietor's name and business address, and the name and location of each place of business of the business proprietor to which the contract applies;
- (2) name and address of the copyright owner and any performing rights society authorized by the copyright owner to act on the copyright owner's behalf;
- (3) duration of the contract, and

(4) terms for the collection of the royalties and a rate schedule for the royalties, including any sliding scale, discount, or schedule for an increase or decrease of rates during the term of the contract

(b) A contract for the payment of royalties entered into, issued, or renewed in this state may not exceed one year at a time, except if the contract is under the terms of a national agreement. When each year of the contract ends, the contract is automatically renewed on the same terms and conditions unless either party to the contract provides the other party with written notice of the party's desire to terminate the contract or to change the terms and conditions. The notice must be given at least 45 days before termination each year.

Sec. 45.45.530 **COLLECTION OF ROYALTIES** A copyright owner, performing rights society, or an agent or employee of a copyright owner or a performing rights society may not collect or attempt to collect a payment or another fee under a royalties contract between the copyright owner or performing rights society and a business proprietor unless the contract complies with AS 45.45.500 - 45.45.590.

Sec. 45.45.540 **PROHIBITED NEGOTIATION AND RETALIATION PRACTICES**

(a) A performing rights society or an agent or employee of a performing rights society shall not

(1) except under provisions of a contract executed in accordance with the provisions of this act, collect or attempt to collect a royalty payment or another fee from a business proprietor licensed by the performing rights society,

(2) enter a business proprietor's premises to discuss a contract for the performance of copyrighted works or payment of royalties without first disclosing the purpose of the discussion and that the individual is an agent or employee of a performing rights society.

(b) A performing rights society whose agent or employee enters a proprietor's business to investigate the possible performance, broadcasting, or transmission of nondramatic musical works shall, not later than seven days after entering the proprietor's business, provide written notice to the business proprietor that the performing rights society's agent or employee entered the premises for the purpose of investigation. The notice must include the following:

(1) The name of the performing rights society,

(2) The date on which the agent or employee visited the proprietor's business,

(3) That the purpose of the visit was investigation,

(4) The name of each copyrighted work in the performing rights society's repertory that was performed at the proprietor's business during the investigation.

(c) Nothing in this act shall be construed to prevent the performing rights society from informing the business proprietor of his obligations under the federal copyright law, Title 17 of the United States Code, or from exercising any exclusive rights preempted under section 301(a) of Title 17 of the United States Code.

Sec. 45.45.550 **PENALTY** A person who knowingly violates a provision of AS 45.45.500 - 45.45.590 commits a class A misdemeanor.

Sec. 45.45.560 **PRIVATE ACTION** A person who suffers a loss as a result of a violation of this article may bring a civil action to recover actual damages and attorney's fees, to enjoin a violation of AS 45.45.500 - 590, and to seek any other remedy available at law or equity.

Sec 45.45.570 EXEMPTION The provisions of AS 45 45 500 - 45 45 590 do not apply to a royalties contract between copyright owners or performing rights societies and a broadcaster licensed by the Federal Communications Commission, a cable television operator or programmer, or another transmission service. The provisions of AS 45 45 500 - 45 45 590 also do not apply to an investigation by a law enforcement agency.

Sec 45.45.590 DEFINITIONS In AS 45 45 500 - 45 45 590

(1) "business proprietor" means a person who owns a place of business including a store, professional office, sports or entertainment facility, non-profit organization, restaurant, inn, hotel, or licensed beverage establishment in which the public may assemble and in which nondramatic musical works or similar copyrighted works may be performed, broadcast, or otherwise transmitted.

(2) "copyright owner" means the owner of a copyright, recognized and enforceable under 17 U.S.C. 101 et seq., of a nondramatic musical or similar work. The term does not include the owner of a copyright in a motion picture, an audiovisual work, or in part of a motion picture or an audiovisual work.

(3) "performing rights society" means an association or a corporation that licenses the public performances of nondramatic musical or similar works on behalf of copyright owners. Examples of performing rights societies include The American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music, Inc (BMI), and The Society of European Stage Authors and Composers, Inc (SESAC).

(4) "royalty" or "royalties" means a fee or fees payable to a copyright owner or a performing rights society for the public performance of nondramatic musical or other similar work.

(5) "royalties contract" means a contract for the payment of royalties.

\* Sec. 2. AS 45 50.471(b) is amended by adding a new paragraph to read

(38) violating AS 45 45 500 - 45 45 590 (copyright royalties and licensing)

\* Sec. 3. AS 45 45 500 - 45 45 510 and 45 45 530, enacted by Sec. 1 of this Act, do not apply to a contract entered into, issued, or renewed before the effective date of this Act.

\* Sec. 4. If any provision of AS 45 45 500 - 45 45 590 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this ACT are declared to be severable.

\* Sec. 5. This Act takes effect immediately under AS 01 10 070(c).

JUDICIARY COMMITTEE  
DELIVERY ACCEPTANCE LOG

MEETING DATE 2/12/94

BILL NUMBERS SB 263

LEGISLATOR      ACCEPTED BY      TIME      DATE.....

SEN. GREEN.      Under Seal.....

SEN. MILLER.      mj.....

SEN. ADAMS.      Clayton Davis.....

SEN. ELLIS      W. Speight.....

# Alaska State Legislature

Senator Tim Kelly, Chair  
Senator John Torgerson, Vice Chair  
Senator Mike Miller  
Senator Jim Duncan  
Senator Judy Sandoz



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## SENATE LABOR AND COMMERCE COMMITTEE

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### Sponsor Statement

#### SB 263

#### "An Act relating to copyright licensing and royalties; and providing for an effective date"

SB 185 was introduced in response to growing outrage amongst Alaskan restaurateurs at the heavy handed enforcement and arbitrary pricing of the national music licensing giants. SB 185 would level the playing field between small businesses and the large multi-billion dollar music licensing giants such as the American Society of Composer, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI) and SESAC.

As required under Federal Copyright Law, a restaurant, retailer, or other establishment which plays music must pay for the music it uses. Under current federal copyright law, restaurants are liable even for the music played during TV commercials and sports programs. ASCAP, BMI, SESAC and other companies authorized to collect licensing fees are often overzealous in the enforcement of their copyrights. Local Alaskan restaurateurs have become increasingly alarmed by abusive collection practices, discriminatory enforcement, and random pricing by these organizations. SB 263 seeks to remedy these concerns by leveling the playing field in the contractual relationships between the licensing giants and the local restaurateur.

Specifically, SB 263 requires a copyright owner to provide notice before entering into a contract with a business proprietor. This notice must be received at the time of the offer or within 72 hours of entering into the contract. The notice must contain the rates and terms of the contract, the rates and terms of similar contracts executed by the copyright owner with other business proprietors similarly situated, a list of the copyright owners and their works, a list of commission rates, the amounts and terms of any discounts, and a

statement, on a form established by the Department of Law, that the business proprietor is entitled to the above information and that failure to provide such information is a misdemeanor and may render the contract unenforceable.

Further, SB 263 sets a mandatory minimum level of contents for royalties contracts. A royalties contract must be in writing and signed by the parties. It must be completed in one year. The contract should also include: (1) the business proprietors name, address, and location to which the contract applies, (2) the name and address of the copyright owner and any society authorized to act on the owner's behalf, (3) a list of works authorized, (4) the duration of the contract, and (5) the terms for royalty collection and a rate schedule for royalties. Collection of royalties will not be permissible if the contract does not meet the enumerated minimum standards.

SB 263 also requires a copyright owner or society to disclose to a business proprietor or the business proprietor's employees the name of the copyright owner or society before discussing a contract or the use of copyrighted works. Additionally, a copyright owner or society may not: (1) threaten court action to coerce a business proprietor to enter into a contract, or (2) charge or collect royalties which are unreasonable in comparison to royalties for similar licenses. A knowingly violation of these provisions would constitute a class A misdemeanor.

Under SB 263, a business proprietor can bring a civil action against a copyright owner or society for the violation of any of the above requirements. This civil action could be in the form of an injunction, an action seeking damages for a violation, or an action to terminate the contract. Treble damages shall be awarded to a business proprietor who prevails in an action.

SB 263 would level the playing field between large music licensing groups and small business owners, at least on a contractual level. It lays significant ground rules for the dealings between the parties. At least 20 states are working on similar legislation to protect the interests of local business against the power and dominance of large licensing firms.



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## MEMORANDUM IN OPPOSITION TO ALASKA SENATE BILL 263

The Motion Picture Association of America, Inc. (MPAA) respectfully submits this memo in opposition to Alaska SB 263 which would permit the State to regulate the business practices and agreements concerning the licensing of certain federally copyrighted works. MPAA represents the leading producers, distributors and copyright owners\* of motion pictures in the U.S. released in theatres, home video, and pay and broadcast television.

This legislation is overbroad and ambiguous, and would have unfair and adverse consequences on MPAA member companies as well as all copyright owners of motion picture, home video and television properties. Moreover, all states are pre-empted by federal law from enacting their own copyright statutes. Therefore, if this statute were enacted it would be subject to an immediate federal court challenge and would likely be permanently enjoined from enforcement.

Although intended to address the licensing, investigation, and enforcement of licenses of public performances of "nondramatic musical works" (NMWs) to restaurants, inns, bars, and taverns, SB 263 applies to copyrighted works "similar" to nondramatic musical works performed at retail establishments and other places of business. Moreover, the provision applies to any such establishment where NMWs and similar works may be "performed, broadcast, or otherwise transmitted" as a public performance. Thus, by its terms, the provision encompasses virtually all retail establishments, whether or not a nondramatic musical work has ever been performed at the location.

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\* MPAA members include: Buena Vista Pictures Distribution, Inc. (Disney); Metro Goldwyn-Mayer Inc.; Paramount Pictures Corp.; Sony Pictures Entertainment, Inc.; Turner Pictures; Twentieth Century Fox Film Corp.; Universal City Studios, Inc.; and Warner Bros.