ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8920 SENATE JUDICIARY

1 greater health and retirement benefits for employees of an employer who have a spouse
2 or dependent children than are provided to other employees of the employer.
3 (d) In this section, "dependent child" means an unmarried child, including an
4 adopted child, who is dependent upon a parent for support and who is either
5 (1) less than 19 years old;
6 (2) less than 23 years old and registered at and attending on a full-time
7 basis an accredited educational or technical institution recognized by the Department of
8 Education; or
9 (3) of any age and totally and permanently disabled.

Alaska State Legislature

REPRESENTATIVE
PETER KELLY
Mailing Address
N. Cushman, Suite
Fairbanks, Alaska
(907) 456-3101

State Capitol

House Of Representatives

Sponsor Statement

HB 226

House Bill 226 protects the rights of employers, employees and unions, including the State, to negotiate health insurance benefits as they choose.

The bill addresses a recent lower level court decision that found the University of Alaska discriminated in its benefits package because it "is compensating married employees to a greater extent than it compensates unmarried employees." (Tumeo v. UofA, p 12). The court gave the University two choices: "First it could simply refuse to provide health care coverage for spouses . . . Second . . . The University could adopt Tumeo and Anders' "Affidavit of Spousal Equivalency"." (Tumeo v. UofA, p. 18)

Thankfully, the University choose the second alternative, maintaining the benefits package for its married employees. The problem is the precedence this case sets. What will other employers do if faced with this court ruling? The court ruled in absence of any recorded legislative intent. HB 226 clearly provides future courts this intent.

The intent of HB 226 is to protect existing benefits packages from further court challenges by organized domestic partners groups. Those seeking to gain benefits for domestic partners failed to address the needs of single parents. HB 226 protects the benefits granted to single parents and married employees.

HB 226 does not prohibit employees, unions and employers from voluntarily negotiating for benefits for domestic partners. HB 226 reduces the uncertainty employers now face in planning their group insurance program.

Alaska State Legislature

REPRESENTATIVE
PETER KELLY
Mailing Address
119 N. Cushman, Suite 203
Fairbanks, Alaska 99701
(907) 456-8161

State Capitol
Juneau, Alaska

House Of Representatives

Sectional

Section 1. Provides for the exception found in Section 2. Section one contains Alaska's Human Rights laws prohibiting discrimination:

> "in compensation or in a term, condition or privilege of employment because of a person's . . . marital status . . . . or parental status. . . ."

Section 2. Allows (1) an employer or (2) a union to negotiate:

> "different health and retirement benefits to employees who have a spouse or children than are provided to other employees."

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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

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

☐ P.O. BOX 110300-DIAMOND COURT-CL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-5725

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 6, 1995

Representative Cynthia Toohey
Co-Chair, House HESS Committee
Alaska State Legislature
State Capitol, Room 104
Juneau, Alaska

Re: Proposed amendment to HB 226

Dear Representative Toohey:

Nancy Gordon, the Assistant Attorney General in our Anchorage office who represents the Human Rights Commission, has proposed a suggested change to HB 226. In her opinion, the existing language of bill section 2 is too vague, because it lacks a definition of "benefits." Thus, for instance, because vacation is a benefit, under the bill as written an employer could offer extra vacation time to married employees. She believes, and I agree, that this is beyond the intent of the bill which is limited to areas such as health insurance and retirement benefits where married and unmarried employees are [illegible]ly treated differently.

Our proposed change would replace existing bill section 2 with the following language:

> (c) Notwithstanding the prohibition against employment discrimination on the basis of marital status under (a) of this section, it is not a violation of this chapter for an employer to extend benefits only to employees, the spouses of employees, or the dependent children of employees, or for a labor organization to negotiate for or enter into a collective bargaining agreement under which the employer extends benefits only to employees, the spouses of employees, or the dependent children of employees. In this subsection "benefits" means medical insurance, retirement benefits, and supplemental employee benefits under AS 39.30.150 - 39.30.130.

The key change here is the definition of "benefits" added in the last sentence.

Please feel free to contact us if you have any questions about this letter.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:
John B. Gaguine
Assistant Attorney General

JBG/clh

cc: Representative Pete Kelly

Pat Pourchot
Legislative Liaison
Office of the Governor

Deborah Behr
Assistant Attorney General
Department of Law

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

HUMAN RIGHTS COMMISSION

800 A STREET, SUITE 204
ANCHORAGE, ALASKA 99501-3669
PHONE: (907) 274-4692, 276-7474
TTY/TDD (907) 276-3177
FAX: (907) 278-8588

March 14, 1995

The Honorable Pete Kelly
The Honorable Norman Rokeberg
House of Representatives
State Capitol
Mail Stop 3101
Juneau, Ak. 99801-1182

RE: House Bill 226 and House Bill 227

Dear Representatives Kelly and Rokeberg:

Last week's Representative Kelly's aide, Bruce Campbell, contacted the Commission's executive director and indicated that you would appreciate knowing the agency's position on House Bills 226 and 227, and any suggestions that the Commission might have. At its meeting on March 9 and 10, 1995, in Anchorage the Commission considered the legislation.

The Commissioners reviewed the bills and passed the following motion with regard to House Bill 226:

Motion: The Commission supports House Bill 226 with the following change: the term 'benefits' be clearly defined as health insurance benefits.

Motion By: Commissioner Hamilton; Second by Commissioner Dyson. Motion passed unanimously.

The Commission takes no position on House Bill 227 because it doesn't directly effect A.S. 18.80 et seq. the Commission's enforcement statute. The current commission has taken this practice when considering legislation.

If you have questions, please contact either me at 745-3362 or Executive Director Paula M. Haley at 1-907-276-7474, extension 241.

Sincerely,

Edna DeVries, Chairman

FACTS ABOUT DOMESTIC PARTNERSHIP BENEFITS

Contacts for further information:
Fairbanks: Mark Tumeo, 474-6090
Juneau: Sara Boesser, 586-5230
Anchorage: Allison Mendel, 279-5001

omestic Partnerships are NOT the Same as Marriage

he establishment of a domestic partnership is NOT a substitute for marriage nor does it provide the same ights and privileges bestowed upon a married couple. A domestic partnership is a contractual relationship etween two individuals who share long-term financial commitments with each other, and agree to share abilities and assets. While such a contractual arrangement may provide such benefits as insurance overage through one of the individual's employers, there are numerous rights which accrue to married ouples which do not accrue to domestic partners and which cannot be gained through contractual rrangements outside marriage. Examples of some of these benefits are provided below.

Examples of Rights and Privileges Gained Through Marriage (NOT available through Domestic Partnerships)

- Joint parenting, joint adoption, joint foster care or custody.
- Dissolution and divorce protections, including child support.
- Immigration and residency for foreign partners.
- Crime victims recovery benefits.
- Veterans discounts on medical care, education and home loans.
- Wrongful death benefits for surviving partner and children.
- Bereavement or sick leave to care for partner or child.
- Joint leases with automatic renewal rights in event of death or departure of one partner.
- Inheritance of jointly-owned real and personal property through survivorship, avoiding taxes and probate.
- Spousal exemptions to property tax increases upon death of co-owner.
- Visitation status as next of kin for hospital visits.
- Joint insurance policies for home, auto and health.
- Inheritance in the absence of will.
- Rights to social security and medicare benefits.
- Joint filing of tax returns.
- Joint filing of customs claim when travelling.

omestic Partnership Benefits DO NOT Cause Economic Hardship

urrently, over 50 cities or municipalities, 60 universities and 100 private companies offer domestic rtnership benefits. A complete listing of these organizations is provided in the attached information. As result of their experiences, extensive data have been collected on the economic impact of extending health nefits to unmarried domestic partners. Without exception, there has been little to no economic impact hen benefits were extended. Average enrollment increases ranged between 0.3% to 2%. There have en no associated increases in insurance premiums.

sing the data collected from the extensive experience of other universities, municipalities and private mpanies, if the University of Alaska extended domestic partnership benefits to its approximately 6000 nployees, it could realistically expect an increased enrollment of approximately 60 people (1%). At the erage additional cost to the University of approximately $150 per month, this represents a total increase only $108,000 per year. This is less than a 0.6% increase over the approximately $ 16.7 million the niversity expended in FY 1994 on benefits.

'Domestic partners' sign up for University of Alaska benefits

By KATE RIPLEY
Staff Writer

Of 38 University of Alaska employees who have signed up their unmarried partners for health benefits under a two-month old policy, the majority are heterosexual and most are at the Fairbanks campus.

The so-called "domestic partner" coverage was created to comply with a Fairbanks Superior Court ruling that found the university's old health care plan discriminated against unmarried employees. The revamped policy has increased the university's annual health care costs by about 4 percent, or $76,000 out of $18 million, said Bob Miller, a university spokesman.

That percentage is slightly more than advocates for the coverage had predicted and a lot less than foes had claimed it would be.

"We had predicted fewer than 60 people would sign up. So certainly, this is within the realm of our expectation," Miller said.

The university is the only government agency in Alaska offering such benefits. That could change if the institution is successful with its appeal of the lower court ruling. That appeal is scheduled to be heard before the Alaska Supreme Court next month.

For now, employees taking advantage of the new benefits are pleased.

"The university administration has

See BENEFITS, Page B-2

BENEFITS: University employees sign up

Continued from Page B-1

done everything they possibly can to put in a fair and equitable program," said Kate Wattum of Fairbanks, a public affairs assistant for the university's statewide office. "They've done a great job administering a program I'm happy with."

It was Wattum and UAF professor Mark Tumeo who forced the university's hand in offering the benefits. The two employees sued the university in January 1994, claiming the health care benefits package discriminated against them because of their marital status. Both are unmarried but sought health-care coverage for their respective same-sex partners. The university turned them down on the grounds the old policy did not extend to unmarried partners.

Fairbanks Superior Court Judge Mary Greene, however, agreed with Tumeo and Wattum. The judge did not require the expanded coverage but laid out several options the university could take to make its benefits package equitable. A "spousal equivalent" program was one option.

To qualify, employees must swear financial interdependence with their unmarried partner. The couples must sign a statement that they have been in an "exclusive personal relationship" with each other for at least a year and intend to continue the arrangement forever. They must live together, consider themselves members of each other's family and be responsible for their common welfare.

In addition, they must show common finances through such things as owning a house or car together, maintaining joint bank accounts or credit cards, and being listed as beneficiaries in each other's will.

The stringent requirements prevent employees from casually signing up boyfriends and girlfriends—as it should, Tumeo said.

"Once the university got past their angst, they realized it's not a big administrative burden."

Of the 38 newly insured partners, 16 are from same-sex relationships and 22 are from opposite-sex relationships, Miller said. Of the total, 23 are in Fairbanks. The rest are in Juneau or Anchorage.

The decision to appeal Greene's ruling came from the Board of Regents. Regent Mike Kelly, who lives in Fairbanks, said a majority of the regents, but not all, feared extending benefits would drive up health care costs.

"Where does it stop? In a time when the university is undergoing extreme financial pressure, expanding the benefits beyond the traditional benefits offered is not wise," Kelly said. "Ultimately, it is about costs."

Wattum doesn't buy that argument. "Why does the university continue to fight this? It's called homophobia," she said.

Regent Kelly's brother, state Rep. Pete Kelly, sponsored legislation last winter that would render the court ruling moot. As it was originally introduced, House Bill 226 would allow employers to deny health-care benefits to an employee's unmarried partner. The bill is still in committee.

SENT BY: XEROX TELECOPIER 7010 ; 1-29-96 ; 3:06PM ; 9074747570→ 9074633055;# 2
;1:UA_SW_202_Butrovich ; 1-29-96 ; 15:03 ; 9074747570→ 9074633055;# 2

Office of Public Affairs

Bob Miller, Director
206 Butrovich Building
910 Yukon Drive
P.O. Box 755340
Fairbanks AK 99775-5340
Tel.: (907) 474-7272
Fax: (907) 474-7273

January 29, 1996

Daniel Collison
Southeast Gay & Lesbian Alliance
P. O. Box 21466
Juneau, Alaska 99802

Dear Mr. Collison:

This is in response to your request for information regarding the financially interdependent partners program instituted by the University of Alaska last year. The program has been in effect since September 1, 1995, when it was started in response to an order from the Fairbanks Superior Court. The university has said the program is interim pending the outcome of the university's appeal to the Supreme Court or a change in state law.

To date, 44 university employees have enrolled in all or part of the program. Two-thirds of them are with opposite-sex partners, and one-third are with same-sex partners. In addition to the partners, nine dependents were added.

The total number of university employees is about 3,500, and 44 represents .012%. The total number of individuals covered by the health plan is 9,000, and the total cost of providing health benefits to university employees and dependents is about $18 million annually.

The estimated cost just for participants in the financially interdependent partners program totals about $88,000 per year (total cost of $18 million divided by 9,000, which comes to $2,000 per covered employee times 44).

Briefly, the benefits program covers health issues (medical, dental, audio and visual care), life insurance, retirement and the tuition waiver program for university employees and qualified dependents.

If you have other questions, please let me know. In the meantime, thank you for your interest in the University of Alaska.

Sincerely,

Bob Miller
Director

THE NATIONAL LEGAL FOUNDATION

Robert K. Skolrood
Executive Director &
General Counsel

Steven W. Fitschen
Executive Vice President

Barry C. Hodge
Staff Attorney

6477 College Park Square
Suite 306
Virginia Beach, Virginia 23464
(804) 424-4242
Facsimile (804) 420-0355

April 11, 1995
Via Facsimile & U.S. Mail

Representative Pete Kelly
Alaska State Legislature
State Capitol, Room 513
Juneau, AK 99801

Dear Representative Kelly:

I am writing in response to your request for our opinion of the recent *Tumeo* decision and the legal effect that H.B. 226 would have on it.

First, the order of the *Tumeo* court is of course binding only on the parties to the case. The reasoning of the case however will undoubtedly be used in other cases, both in Alaska and other states, as persuasive, though [illegible] what constitutes marital status discrimination. Thus, *Tumeo* has far-reaching implications.

Second, the Minnesota case, *Lilly v. City of Minneapolis*, 527 N.W.2d 107 (Minn. Ct. App. 1995), is inapplicable. The *Lilly* court enjoined the city's provision of benefits to employees' same sex "domestic partners" because the court concluded that the city had no authority to provide benefits to domestic partners under state law. The case did not turn, as did *Tumeo*, on what constitutes marital status discrimination.

Third, if H.B. 226 is made law it will nullify *Tumeo*'s result. However, the nullification will be limited in its scope because it would reach only the employment area. The proposed amendment does not affect the marital status provisions of other state statutes such as the prohibition on marital status discrimination in housing.

Furthermore, H.B. 226 does not target the real danger -- *Tumeo*'s reasoning and its definition of marital status discrimination. *See Tumeo v. University of Alaska*, No. 4F-94-43, slip op. at 12-13 (Alaska, Super. Ct., 4th Judicial Dist. Jan. 11, 1995). The reason the *Tumeo* court was free to conclude that the University of Alaska had discriminated on the basis of marital status was because the legislature failed to tie the court's hands by defining what constitutes marital status discrimination. If the legislature defined marital status discrimination in all relevant

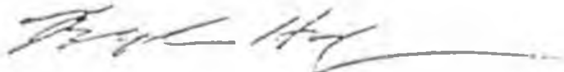
statutes in a way that did not prohibit the type of action taken by the [illegible]. *Tumeo's* result as well as its reasoning would be nullified.

For that reason, I suggest that marital status discrimination be defined in all relevant statutes as follows:

> A claim of discrimination on the basis of marital status arises when an individual is denied [housing, employment, public accommodations] because that individual is married, divorced, separated, or widowed.

I trust I have been of assistance in answering your questions. Should you have further questions, please feel free to contact me.

Sincerely,



Barry C. Hodge
Staff Attorney

l:\corresp\1995\kellysx.doc

HB

291

Alaska State Legislature
House of Representatives

Representative Eldon Mulder

District 23 Muldoon-Ft. Richardson

December 12, 1995

The Honorable Robin Taylor
Alaska State Senator
State Capitol
Juneau, Alaska 99801

Dear Senator Taylor:

House Bill 291 has been referred to the Judiciary Committee for consideration. The bill will provide limited protections from the risks inherent to skateboarding for municipalities. This is similar to the limitation on liability that we granted to ski areas.

Please schedule HB 291 for hearing as early as possible. It is important it receives early consideration so that the Municipality of Anchorage and the Fairbanks North Star Borough can proceed with the development of skateboard parks this Spring.

Thank you for your consideration.

Sincerely,

Eldon Mulder

Representative Eldon Mulder
CSHB 291 (JUD)
April 28, 1995

SPONSOR STATEMENT
HOUSE BILL 291

CSHB 291 (JUD) was introduced at the request of the Municipality of Anchorage.

The municipality would like to create a skateboard park so skateboarders will have a place to ride, rather than using other areas designed for pedestrians. Anchorage and Fairbanks are willing to develop areas suitable for skateboard riding if they can be insulated from liability for claims arising from hazards inherent in skateboarding.

Our intent with this bill is to encourage the municipalities to proceed with development of areas for outdoor recreation without increasing their liability unnecessarily. The bill applies only to municipal skateboard parks.

This bill is patterned after the legislation passed providing this limited protection to ski areas. The protection from liability relates to inherent dangers and risks of skateboarding. The municipality is required to post signs warning that there are inherent risks and the liability rests with the skateboarder. It was amended in the Judiciary Committee to make it certain that the parks are not required to have on-site supervision provided by the municipality.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

7) 465-3867 or 465-2450
X (907) 465-2029
Mail Stop 3101

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

MEMORANDUM April 28, 1995

SUBJECT: Sectional Summary of CSHB 291(JUD)

TO: Representative Eldon Mulder
Attn: Dennis DeWitt

FROM: Michael F. Ford
Legislative Counsel

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

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

Section 1

Sec. 05.50.010. - Prohibits a person from bringing a lawsuit against a municipality, for an injury resulting from an inherent danger and risk of skateboarding at a municipal skateboarding facility.

Sec. 05.50.020. - Describes the effect of a violation of AS 05.50. A municipality or other person who violates AS 05.50 is negligent and civilly liable to the extent the violation causes injury or property damage. Provides that if an injury occurs and an inherent danger and risk of skateboarding was a contributory factor or the injured person violated a provision of AS 05.50, that a municipality is not liable unless the municipality also violated a provision of AS 05.50.

Sec. 05.50.030. - Sets out the duties of a person who uses a municipal skateboarding facility.

Sec. 05.50.040. - Requires that municipalities maintain a sign system for protection and instruction of skateboarders.

Sec. 05.50.050. - Sets out the duties and responsibilities of a skateboarder who uses a municipal skateboarding facility.

Sec. 05.50.060. - Requires that a municipality must allow a person participating in a skateboard competition to visually inspect the course or area. Provides that a person participating in a skateboard competition assumes certain risks and cannot hold the municipality liable for the assumed risks.

Sec. 05.50.100. - Definitions.

__Section 2.__ Applicability section.

__Section 3.__ Effective date.

MFF:klb
95-309.klb

Municipality of Anchorage

P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-4431
Fax: (907) 343-4991

Rick Mystrom, Mayor

OFFICE OF THE MAYOR

April 7, 1995

Representative Eldon Mulder
Alaska State Legislature
Juneau, Alaska 99801-1182

Re: House Bill No. 291

Dear Representative Mulder:

There is significant community interest in the construction of a municipal skateboarding park. Like alpine skiing, skateboarding is an active sport that includes numerous inherent risks of injury. Prior to construction of a municipal skateboarding park, the Municipality of Anchorage desires adoption of a statute that would insulate it from claims arising from Hazards inherent in skateboarding.

House Bill No. 291 fulfills that need.

Thank you for your assistance with this legislation.

Sincerely,

Rick Mystrom
Mayor

Fairbanks North Star Borough

809 Pioneer Road P.O. Box 71267 Fairbanks, Alaska 99707-1267 907 459-1000

April 24, 1995

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

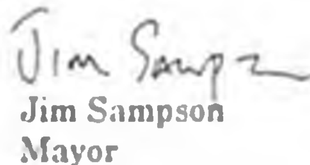
Dear Representative Mulder,

Thank you for introducing HB 291. The Fairbanks North Star Borough is considering the construction of a skateboard park and your legislation will make it possible to do so without the constant worry of claims arising from hazards associated with the sport.

We would like to know if you could amend your bill to include a requirement for the posting of a sign by the municipality which would explain the need for certain safety equipment to be used by skateboarders. It is my understanding that California has a law providing for immunity when a municipality posts a sign requiring the use of safety equipment. Also, I have been told that when the sign is posted, no on-site supervision by the municipality is required.

The Fairbanks North Star Borough Assembly will be considering an appropriation in June, 1995 to fund the construction of a skateboard park. We do not plan to provide continuous on-site supervision. If your bill could address this issue, it would help the assembly in deciding to support this most worthwhile project. Thank you again for your help on this legislation.

Sincerely,



Jim Sampson
Mayor

JS:rlf

cc: Rick Mystrom, Mayor, Municipality of Anchorage
Hank Hove, Fairbanks North Star Borough Assembly
Earl Wiese, FNSB Parks and Recreation Director
Linda Anderson, Governmental Affairs, FNSB

Re: HB291
... m Rep. Mulder

Christopher Beck
& Associates

land use & tourism planning
public spaces/urban design
community development

May 4, 1995

Eldon Mulder
Alaska State House of Representatives
Juneau, Alaska

By FAX
465 3518

Subject: HB 291 - Skateboard Park Liability Release

Dear Representative Mulder,

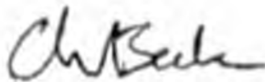
In these last days of the session I've just learned of a seemingly minor bill that I believe is extremely important. As you know, HB 291 would exempt cities like Anchorage from certain liabilities, and thereby allow construction and operation of public skateboard parks. The bill is modeled on a successful law passed in California. The passage of this bill would, at no cost, make a major contribution to keeping Anchorage teens out of trouble and headed towards useful lives. I realize this is a lot to claim for a technical change in insurance policy, but let me explain.

Teens everywhere are restless, often frustrated, and frequently on the edge of mischief or worse. At present a number of these kids can find a decent outlet for this teenage energy by hanging out and skateboarding at Anchorage's town square. Predictably, this motley group irritates members of the public. The Municipal Assembly, under growing public pressure, is poised to ban town square skateboarding. To the great credit of Connie Jones and other city staffmembers, all the pieces have come together to acquire land and build an alternative teen skateboard park. This eminently sensible action is stalled, however, out of city liability fears. This bill could clear away this last barrier.

Rudely kicking these kids out of their current hangout is a great way to push teens into cynicism, vandalism and perhaps more serious crimes. Grungy or not, these kids need public places where they can be with friends and enjoy themselves. In such locations, while the kids will perpetually test adult patience, they are, in effect, under supervision and thereby tend to stay out of trouble. Closing towncenter to skateboarding, without providing a good alternative, sends these kids off, mad as hell, to unsupervised locations, and to less benign activities.

It is not often that government can so directly deal with tough issues like crime and do something good for kids, all at little or no cost, as is possible through the passage of this bill. As a parent (two sons, 5 and 10), and a resident concerned about our community's future, I strongly urge you to explain the merits of this simple action to your colleagues, and get the bill approved. The whole community would thank you. Please contact me if I might be of assistance.

Sincerely



Chris Beck

cc Mayor Rick Mystrom
Connie Jones, Director - Department of Cultural and Recreational Services
Howard Weaver, Editor Anchorage Daily News

1847 Sunrise Drive Anchorage, Alaska 99508
Telephone (907) 272 6365 FAX (907) 272 6391

Eagle River Star 4/26/95

Skateboarders put plan into motion

By KRISTEN SEINE
Of The Star Staff

They aren't the kind of people to just sit around and let things happen. Or not happen.

For a group of Eagle River area youths, a craving to get out and move around has resulted in a movement to get the thing they crave: a place to skateboard. Tired of being shooed away from local parking lots, they are asking for a place of their own.

At a task force meeting on youth drug and alcohol use held at Chugiak High School Tuesday evening, several local skateboarders happened to sit across a table from the governor's community relations assistant, Marilyn Stewart. After listening to their complaints for a while, Stewart decided to lend a hand.

The skateboarders, who maintain that they have just as much right to wheel around on local blacktop as bicyclists and roller-bladers, ask only for a place to do their thing. Local businesses and residents — some of whom have had their car doors allegedly dinged by the youths — say that's fine ... as long as it's someplace else.

So the skateboarders, led by their recently appointed "spokesperson" Rich Canut and guided by Stewart and other adult volunteers, are taking their grievance straight to City Hall. They plan to make several presentation to local government and civic groups asking for support for an Eagle River skate park.

They aren't asking for anything fancy, they say. Just a flat place with maybe a fence around it, and they'll build their own half- and quarter-pipes (ramps, to most of us).

"We just want a place to do what we want," said skateboarder Jason Farmer, a senior at Chugiak High School. "We heard about the meeting (April 18) and decided it was the best thing to do."

Never ones to sit still for long, local skateboarders are putting their plans in motion. PHOTO FOR THE STAR BY JASON FARMER

Farmer said the skateboarders are more organized than they've ever been, and people are finally beginning to listen to them.

Their first presentation is scheduled for the next Parent Student Teacher Association meeting at the high school on May 9. Also on the agenda are the Parks & Rec board meeting and community councils.

Already, folks are standing up and taking notice. Mike Graham, student services principal, said Tuesday that he was extremely impressed with the attitude and initiative displayed by the youths.

"This is really great. I think you're definetely going about this in the right way," he told the youths.

HB
295

FISCAL NOTE

STATE OF ALASKA — **BILL NO:** CSHB 295(2d JUD)

1996 LEGISLATIVE SESSION

Revision Date: March 6, 1996
Title: Forfeiture of property to municipal law enforcement agencies.
Sponsor: Representative Porter
Requestor: H. Judiciary

Dept. Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments
COMPONENT SERIAL NO. 0799

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

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

FUNDING: (Thousands of Dollars)

	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 96) impact: $

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.)

See Attached

Prepared By: Lt. Dan Lowden — Phone: 465-5505
Division: Alaska State Troopers — Date: March 6, 1996

Approved by Commissioner — Date: 3/7/96
Agency: Ronald L. Otte, Department of Public Safety

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FISCAL NOTE

STATE OF ALASKA | **BILL NO:** CSHB 295(2d JUD)

1996 LEGISLATIVE SESSION

Revision Date: March 6, 1996 | Dept. Affected: Public Safety

ANALYSIS CONTINUED:

This bill, as drafted will not have a fiscal impact on the Division of Alaska State Troopers. However it may have an impact on the state's general fund.

Currently, a law enforcement agency in the State of Alaska may seek forfeiture through the federal government or the state government. If a municipal agency seeks forfeiture through the federal government that agency would likely receive 80 percent (20 is retained by the federal government for administrative over head) if successful. if a municipal agency seeks forfeiture under the current state system, 100 percent of the award goes into the general fund.

The federal forfeiture statutes are currently being challenged in court as double jeopardy.

Under this bill, the municipal law enforcement agency would receive 75 percent of the award and the general fund would receive 25 percent. If this bill is enacted and the federal courts rule forfeiture is double jeopardy those municipal agencies that are currently seeking forfeiture through the federal system would likely use the state system.

If this bill were enacted and depending on what the federal courts rule, the state could lose 75 percent of some awards in which it currently receives 100 percent of the award, and gain 25 percent of some awards in which it currently receives zero percent.

FISCAL NOTE

STATE OF ALASKA

BILL NO: CSHB 295 (2D JUD)

1996 LEGISLATIVE SESSION

Revision Date: March 8, 1996
Dept. Affected: Public Safety
Title: Property held by law enforcement agencies
BRU: Fish and Wildlife Protection
Component: Enforcement & I.S.U.
Sponsor: Representative Porter
Requestor: (H) Judiciary
COMPONENT SERIAL NO. 490

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

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

FUNDING: (Thousands of Dollars)

	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 96) impact $ 0.00

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: HB 295 if enacted would provide municipalities authority to enact ordinances for disposing of property seized by law enforcement agencies.

Since this act would grant an exemption for municipalities only, it does not appear to impact the Division of Fish and Wildlife Protection.

This bill if enacted would not affect this Division's programs or budget.

Prepared By: Captain Richard Graham
Phone: (907) 269-5509
Division: Fish and Wildlife Protection
Date: 3/8/96
Approved by Commissioner: Ronald L. Otte
Date: 3/8/96
Agency: Ronald L. Otte, Dept. of Public Safety

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Alaska State Legislature

Representative Brian S. Porter

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

MEMBER
FINANCE SUBCOMMITTEES
DEPARTMENT OF LAW
DEPARTMENT OF EDUCATION
COURTS

DISTRICT 20

SESSION
STATE CAPITOL ROOM 118
JUNEAU, ALASKA 99801-1182
PHONE (907) 465-4930
FAX (907) 465-3834

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

CSHB 295 (2d JUD)

Sponsor Statement

Purpose

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

Implementation

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

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

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

Alaska State Legislature

Representative Brian S. Porter

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ANCHORAGE, AK 99501-2133
PHONE (907) 258-8197
FAX (907) 258-5510

DISTRICT 20

Sectional Analysis CSHB 295 (2d JUD)

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

Chapter 36 Disposition of Recovered or Seized Property

Section 1. AS 12.36.020. Return of property.
Provides that a state or municipal law enforcement agency may not return property to the owner if the property is used for evidence in a criminal proceeding or subject to forfeiture proceedings. If the property is subject to forfeiture proceedings a law enforcement agency may transfer the property, with court approval, to another state or federal law enforcement agency . When granting approval, the court shall consider the elements set forth in Section 1(a)(2).

Section 2. AS 12.36.030. Disposal of unclaimed property used as evidence.
Exempts from AS 12.36 municipalities that have adopted ordinances providing for the custody and disposition of property that is held by the municipality's law enforcement agency, if the ordinances meet two conditions. The conditions require (1) certain evidentiary property to be held a certain time, and (2) the municipality to make reasonable attempts to identify and locate the owner of unclaimed property.

Section 3. AS 12.36.040 Disposal of property when owner unknown.
conforms the section to the new provisions in sec 2. of th bill.

Section 4. AS 12.36.060 Disposal of forfeited deadly weapons.
Clarifies existing law, that when a deadly weapon is forfeited to the state, it shall be disposed of by the commissioner of public safety.

Section 5. AS 12.55.015 Authorized sentences.
When a deadly weapon is used in the commission of a crime the court shall order the forfeiture to the commissioner of public safety or municipal law enforcement agency.

Section 6. AS 12.55.015 Authorized sentences.
Provides that when the court sentences a defendant, the court may in combination with the sentence order a forfeiture of property to a municipal law enforcement agency that participated in the arrest or conviction of the defendant. The court may grant the property to the municipal law enforcement agency if the property is valued at $5,000.00 (five thousand dollars) or less and is not money or something that is divisible (i.e., a vehicle with a value less than $5,000).

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

Chapter 30 Controlled Substances

Section 7. AS 17.30.112 Proceedings resulting in forfeiture.
conforms the section to the new provisions in sec. 6 in the bill.

Section 8. AS 17.30.114(b) Seizure and custody of property.
conforms the section to the new provisions in sec. 1 in the bill. Provides that when the state or municipal agency has taken or detained property, with court approval, can an agency transfer the property to another state or federal law enforcement agency.

Chapter 45. Unclaimed Property

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

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

KENAI POLICE DEPT.

107 SOUTH WILLOW ST., KENAI, ALASKA 99611
TELEPHONE: (907) 283-7879 • FAX (907) 283-2267

April 18, 1996

The Honorable Robin Taylor
Chair, Senate Judiciary Committee
Alaska State Senate, Room 30
Juneau, AK 99801-1182

Dear Senator Taylor:

I would like to express my support for the current version of HB295(2dJUD). I was able to testify on a teleconference when the bill was moving through committees in the State House. During that testimony, I heard support from the Department of Public Safety, Department of Law, and several municipal police departments. This bill would accomplish the following:

> Section 1 - Provides our local courts with the authority to determine what action to take regarding property (profit) seized from drug dealers.
>
> Section 5 - Allows local courts to forfeit weapons used in a crime to local law enforcement instead of the Commissioner of Public Safety.
>
> Section 6, 7, & 8 - Gives local courts the authority to assign profits from drug dealers to local communities in cases worked by local law enforcement.
>
> Sections 9 & 10 - Allows local government to dispose of found or unclaimed property.

It appears that there is a zero fiscal note from all state agencies affected by this bill. The State House has passed the bill unanimously.

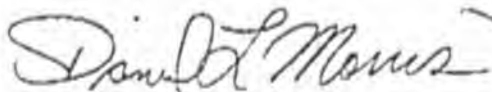
At the city level this bill will reduce the amount of property we have to store. I'm out of space and I don't expect funding for a new storage facility.

When I checked on this bill yesterday, I noted that it went to your committee on March 22, 1996.

If anyone on the committee is opposed to any part of this bill, please give us an opportunity to address it.

Thank you for your consideration.

Respectfully,



Daniel L. Morris
Chief of Police

DLM:gc

HB

306

FISCAL NOTF

No. 1
Bill Version: CSHB 306 (JUD)
(H) Publish Date: 4/28/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

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

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY96	FY97	FY98	FY99	FY00	FY01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: $ None

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

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Nico Bus, Acting Director
Phone: 465-2400
Division: Support Services
Date: 25-Apr-95
Approved by Commissioner: John Shively by Nico Bus
Date: 4-25-95
Agency: Natural Resources

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COMMITTEE COPY

Post-it® Fax Note 7671	Date 5-11-95	# of pages ▶ 1
To SEN R. TAYLOR	From Stan Throckmorton D.C.	
Co./Dept. SEN JUDICIARY COMMITT	Co. Throckmorton Chiropractic	
Phone #	6831 Jewel Lake Road	
Fax # 907 465-3922	Anchorage, AK 99502	
	Fax 907 248 7314	

THROCKMORTON CHIROPRACTIC

MAY 11, 1995

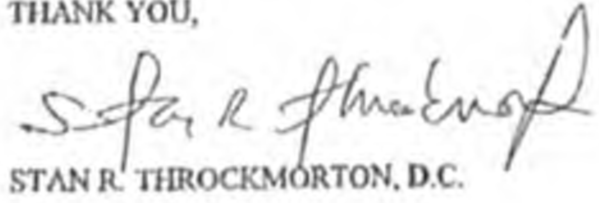
SENATOR ROBIN TAYLOR
CHAIRMAN OF SENATE JUDICIARY COMMITTEE

RE: HOUSE BILL 306 REGARDING MEDICAL LIENS

PLEASE MOVE FORWARD IN GETTING THIS BILL TO THE SENATE FLOOR PRIOR TO ADJOURNMENT SO THAT THIS BILL IS VOTED ON. CHIROPRACTIC PROVIDERS (ME) NEED TO BE RECOGNIZED LEGALLY AND INSURANCE COMPANIES NEED TO BE BROUGHT TO TASK TO AT LEAST MINIMIZE THEIR DISCRIMINATORY POLICY OF NOT HONORING OUR LIENS. HELP, PLEASE BRING IT TO VOTE. I APPRECIATE YOU TAKING THE TIME TO READ THIS.

PLEASE CALL IF YOU HAVE ANY QUESTIONS (907) 248-2848.

THANK YOU,



STAN R. THROCKMORTON, D.C.

6831 JEWEL LAKE ROAD, ANCHORAGE, ALASKA 99502
OFFICE: 907/248-2848 FAX: 907/248-7314

Debbie Ryan
13208 Brant Way
Anchorage, AK 99515
(907) 345-0638
FAX (907) 562-4256

Facsimile Cover Sheet

To: Senator Robin Taylor

From: Debbie Ryan

Number of pages transmitted: 1 (Includes cover sheet) Time sent: 2:36 PM

Remarks: RE: House Bill 306

Dear Senator Taylor:

I have been following the progress of House Bill 306 since last year. It is distressing that for no apparent reason this bill is being held in your committee. As a resident of the State of Alaska and a committed voter, I would like an explanation why this bill is not being moved. It would be most appreciated if you would consider this matter a high priority. Many people, both health care users and providers are watching the progress of this bill and will be most distressed should this bill die this year. As you know this bill will allow physicians to file liens against settlement or judgments a patient may receive. Currently an injured person in most cases must have some health care coverage that pays a physician directly or they must pay cash for treatment of injuries. Those that have neither option many times must find a trusting physician or go without treatment. This bill would allow patients to receive treatment and would in turn protect the physician that provided that treatment on extended credit. This is a fair bill for physicians and others who are not currently protected like hospitals and licensed special nurses. Please take some action on this bill and hold a hearing as well as show your support for this bill. I anxiously await your reply.

Sent by: Debbie Ryan Date: Monday, April 22, 1996

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KREMER CHIROPRACTIC CLINIC
401 E 36TH AVE
ANCHORAGE AK 99503

(907) 561-4474
FAX # (907) 561-4101

FAX TRANSMISSION

DATE: 4-22-96 TIME: 12:00

TO: Senator Robin Taylor

PHONE #: FAX #: 465-3922

~~PATIENTS~~ ~~NAME~~:

MEMO: Please schedule a hearing for HB 306, regarding the Lien Laws. The current law is not protecting all providers. Please call me. 561-4474 Thank you!

FROM: Gene A Kremer DC

TOTAL NUMBER OF PAGES INCLUDING THIS ONE: 1

April 25, 1996

RECEIVED
APR 29 1996
Ins'd.... ....

Senator Robin Taylor:

Please hold a hearing on HB 306.

The bill will let physicians file a lien against a settlement or judgment a patient gets.

I'm a patient of chiropractic and think this is only fair since other health professionals have this option. Please hold a hearing & support this bill.

Sincerely,

Linda Keil
1030 Fairwood Dr
Anchorage 99518

Date 4-26-96

Senator Robin Taylor
Capitol Building, Room 30
Juneau, AK 99801

Dear Senator Taylor:

SUBJECT: HOUSE BILL 306 (ALLOWING PHYSICIANS TO FILE LIENS)

HB306 is delayed in Senate because you are unwilling to schedule it for committee hearing.

HB306 would allow chiropractors to be paid directly for their services. Hospitals have that right. Doctors do not.

Please schedule a hearing for HB306. Support this bill in fairness to ALL health care professionals.

Sincerely,

Steve Richmond
(signature)

Name Steve Richmond

Address 3710 Perenosa Cir

City/Zip Anchorage AK 99515

Date 4/26/96

Senator Robin Taylor
Capitol Building, Room 30
Juneau, AK 99801

Dear Senator Taylor:

SUBJECT: HOUSE BILL 306 (ALLOWING PHYSICIANS TO FILE LIENS)

HB306 is delayed in Senate because you are unwilling to schedule it for committee hearing.

HB306 would allow chiropractors to be paid directly for their services. Hospitals have that right. Doctors do not.

Please schedule a hearing for HB306. Support this bill in fairness to ALL health care professionals.

Sincerely,

Gwyneth Nichney
(signature)

Name Gwyneth Nichney

Address 2461 Tagalak Drive

City/Zip Anchorage AK 99504

Date April 29, 1996

Senator Robin Taylor
Capitol Building, Room 30
Juneau, AK 99801

Dear Senator Taylor:

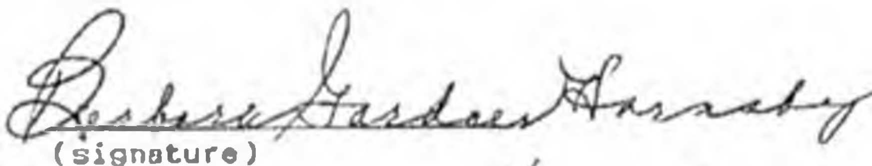
SUBJECT: HOUSE BILL 306 (ALLOWING PHYSICIANS TO FILE LIENS)

HB306 is delayed in Senate because you are unwilling to schedule it for committee hearing.

HB306 would allow chiropractors to be paid directly for their services. Hospitals have that right. Doctors do not.

Please schedule a hearing for HB306. Support this bill in fairness to ALL health care professionals.

Sincerely,



(signature)

Name Barbara Hornsby

Address 1651 Eastridge Dr. #104

City/Zip Anch/AK 99501

KREMER CHIROPRACTIC CLINIC
401 E 36TH AVE
ANCHORAGE AK 99503
(907) 561-4474
FAX (907) 561-4191

FAX TRANSMISSION

DATE: 4/30/96 TIME: 10:25 Am

TO: Senator Robin Taylor

ATTN:

PHONE: FAX #: 465-3922

REGARDING: HB306

MEMO:

FROM: Kremer Clinic patients

TOTAL NUMBER OF PAGES INCLUDING THIS ONE: 5

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If the number of copies received does not match the number sent, or it the copies are not of acceptable quality, please contact our office as soon as possible.

Date 04-26-96

Senator Robin Taylor
Capitol Building, Room 30
Juneau, AK 99801

Dear Senator Taylor:

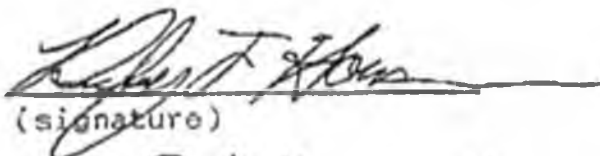
SUBJECT: HOUSE BILL 306 (ALLOWING PHYSICIANS TO FILE LIENS)

HB306 is delayed in Senate because you are unwilling to schedule it for committee hearing.

HB306 would allow chiropractors to be paid directly for their services. Hospitals have that right. Doctors do not.

Please schedule a hearing for HB306. Support this bill in fairness to ALL health care professionals.

Sincerely,


(signature)

Name Rick Housman

Address 2300 D St. APT 208

City/Zip Anchorage AK 99503

KETCHIKAN CHIROPRACTIC CENTER
R. CLARK DAVIS, D.C.
320 BAWDEN, SUITE 306
KETCHIKAN, ALASKA 99901
(907) 225-6815

May 1, 1996

Honorable Robin Taylor
Alaska State Senate
Juneau, Alaska
FAX (907) 465-3922

Dear Senator Taylor,

Please pass HB 306 out of the Judicial committee as soon as possible. PLEASE ALLOW TIME FOR THE BILL ACTUALLY TO PASS. WE APPRECIATE YOUR EFFORTS IN JUNEAU. Thank you.

Sincerely,

Clark Davis, D.C

Clark Davis, D.C.
CD/sac

Alaska
Chiropractic
Society

P.O. Box 111507 • Anchorage, Alaska 99511-1507

February 16, 1996

RECEIVED
FEB 22 1996
Ans'd............

The Honorable Robin Taylor
Alaska State Senate
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Senator Taylor:

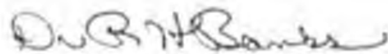
On behalf of the Alaska Chiropractic Society, I would like to thank you for taking time out of your schedule to meet with me. We received a great deal of support and positive feedback on House Bill 306, the physician lien law.

Many legislators also shared our concern about Aetna insurance and its inability to properly administer the state's health benefit package.

I will return to Juneau as these issues approach fruition.

Until then, I remain

Sincerely yours,



Robert Banks, D.C.
President
Alaska Chiropractic Society

Robin: I spoke with Peter Aschenbrenner he will be sending you info on the lein portion of HB 306 soon.
Bob

KREMER CHIROPRACTIC CLINIC
GENE A. KREMER D.C.
401 East 36th Avenue
Anchorage, Alaska 99503-4135
(907) 561-4474

May 9, 1995

TO: Senator Robin Taylor
Chairman, Senate Judiciary

From: Dr. Gene Kremer
Chairman, Alaska Chiropractic PAC

I would strongly encourage you to move HB 306 regarding "Medical Liens" out for a hearing and out to the Senate floor before this session ends. I am not aware of any opposition to this bill. You have had the Chiropractic profession's support for years. If there is a reason that this bill will not make it out onto the Senate floor for a vote, please call me. Office: 561-4474. Home: 345-6895.

Respectfully,

Gene A. Kremer D.C.

Gene A. Kremer, D.C.

GAK:kk

Community Chiropractic Clinic, A.P.C.

550 East Tudor Road
Anchorage, Alaska 99503

Tel: (907)562-5366
Fax: (907)562-4256

Facsimile Cover Sheet

To: Mr. Robbin Taylor, Chair, Senate Judiciary Committee

From: Dr. David Mulholland

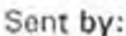
Number of pages transmitted: (1)
(Includes cover sheet)

Time sent: 2:40 am/(pm)

Remarks: I support HB 306 strongly, the bill regarding Medical liens. It is sad that this kind of law would have to be passed, but it is quite necessary. Please contact me if I can be of any assistance or provide additional information.

Thanks for your time, and please support HB 306

David Mulholland DC.

Sent by: 

Date: 5-9-95

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KREMER CHIROPRACTIC CLINIC
GENE A. KREMER D.C.
401 East 36th Avenue
Anchorage, Alaska 99503-4135
(907) 561-4474

May 9, 1996

TO: Senator Robin Taylor
Chairman, Senate Judiciary

From: Dr. R.H. Banks
Secretary, Alaska Chiropractic Society

Please consider moving forward on HB 306 "physician's lien's" as you know, the fees of Alaska physician's are not protected by Alaska statute. We need that protection in order to afford contributions to important legisators like yourself.

Sincerely,

Dr R H Banks

Robert H. Banks, D.C.

RHB:kk

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

April 28, 1995

Representative Cynthia Toohey
House of Representatives
Juneau AK 99801

Re: HB 306, Lien Law

Dear Representative Toohey:

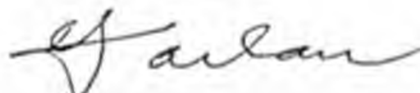
Thank you very much for sponsoring HB 306, and for working with us in bringing up to date a rather outdated law governing liens.

The amendments added in House Judiciary expanded the time period for filing a lien from 15 days to 90 days; provides for filing liens with a recorder rather than within each court district or borough and allows a general rather than itemized description of services.

Reason for our support is to help community hospitals do a better job of collecting bad debt when the individual not paying their bills has been paid by an insurance company or has the assets to pay their bill.

If not collected, the bad debt is eventually shifted to those who do pay their bills.

Sincerely



Harlan R. Knudson
President/CEO

319 SEWARD STREET #11 • JUNEAU, AK 99801 • (907) 586-1790 • FAX (907) 463-3573

MEMORANDUM

TO: HARLAN KNUDSON

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

DATE: April 11, 1995

RE: PROPOSED AMENDMENTS TO AS 34.35.450-480

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

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

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

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

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

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

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

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

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

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

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

We now approach the technical amendments:

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

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

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

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

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

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

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

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

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

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

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

AS 44.37.025 (a) provides that:

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

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

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

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

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

Other technical amendments follow from these points.

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

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

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

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

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

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

34.35.020 which provides that:

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

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

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

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

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

There are two other points which touch this issue:

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

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

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

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

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

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

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

Back to the big picture:

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

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

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

Draft legislation follows.

AN ACT

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

Section 1. AS 34.35.460 is amended to read:

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

Sec. 2. AS 34.35.465 is amended to read:

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

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

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

[(ITEMIZED STATEMENT)]

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

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

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

....

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

....
Notary Public for Alaska

Sec. 3. AS 34.35.475 is amended to read:

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

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

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

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

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

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

United States of America

State of Alaska } ss.

Third Judicial District
(Precinct or Borough)

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

[signature]

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

[signature]
Notary Public for Alaska
My Commission expires June 29, 1986

86-24180

RECORDED - FILED
Anch REC. DIST.
DATE 4/17 1986
TIME 1:44 P
Requested By Providence Hosp.

15.-

PROVIDENCE
HOSPITAL

3200 PROVIDENCE DRIVE · POUCH 6604
ANCHORAGE, ALASKA 99502
PHONE (907) 562-2211

SISTERS OF
PROVIDENCE

SERVING IN THE WEST SINCE 1856

OCT 29 1 13 PM '87
REQUESTED BY Providence Hosp.
ADDRESS

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

Clerk of the Court:

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

Your Number is 86-24180.

Sincerely,

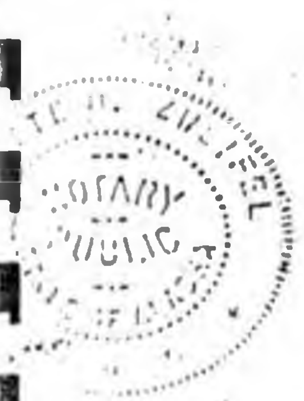
Beverly Schwiger

Credit Dept.
564-9651

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

Annette M. Zweifel

Notary Public for Alaska
MY COMMISSION EXPIRES APRIL 23, 1990



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

1-12 (7/83)

ASCHENBRENNER LAW OFFICES, INC.
P. O. Box 112908 • 615 E. 82nd Avenue, Suite • Anchorage, AK 99511-2908
Phone (907) 344-1500 • Fax (907) 344-1522

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

April 11, 1995

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

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

Dear Mr. Knudson:

It was a pleasure speaking with on the phone today.

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

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

Here are the main features of the proposed legislation:

- Hospital liens must now be filed in an extremely short time frame: The lien "window" period is only 15 days after discharge of the patient from the hospital. AS 34.35.460. This makes a prompt lien filing after traumatic accidents difficult. The proposal expands the filing period to 90 days.

- Present law calls for the lien to be filed "in the recording district or borough in which the injury occurred... ." AS 34.35.460. The proposal calls for central filing of liens.

- AS 34.35.460 and AS 34.35.475 (1) requires service of a *certified* copy of the lien

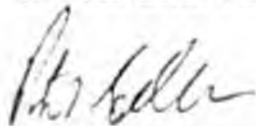
notice on the tortfeasor and/or his insurer as additional protection to the lienor. (A properly filed lien triggers the 180 day direct liability of AS 34.35.475, so service by mail is optional.) However, there is no practical reason as to why this copy should be certified. By comparison, a notice of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

- The present statutory form of lien requires an "itemized statement" of the charges but does not define what would qualify for such a statement. The proposal recommends that the language be changed to require a "general description of the services rendered". This conforms the nurses and hospital lien to the NRL which requires a "general description of the labor, materials, services or equipment provided or to be provided." AS 34.35.06· (a)(5). In addition, it renders unnecessary the questionable practice of filing in the publ . record the itemized billing statement.

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

If there are any other questions, please call.

Sincerely yours,
ASCHENBRENNER LAW OFFICES, INC.



Peter J. Aschenbrenner

PJA:taf

OFFICIAL BUSINESS

Alaska State Legislature

House of Representatives

REPRESENTATIVE
CYNTHIA TOOHEY
DISTRICT 13

STATE CAPITOL ROOM 104
JUNEAU, ALASKA 99801-1182
(907) 465-4919

716 WEST 4TH AVENUE, SUITE 330
ANCHORAGE, ALASKA 99501-2113
(907) 258-8193

SPONSOR STATEMENT

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

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

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

The bill was amended in the House Judiciary Committee to update the lien law which has been in place since territorial days. These changes include an extension of time (15 days to 90 days) in which to file the lien, a general description of services rendered instead of an itemized statement, and deletion of the requirement that the copy of the lien which is sent by registered mail to the responsible party and insurance carrier be a certified copy.

Because we have a statewide computerized filing system now, the requirement that a hospital, licensed special nurse, or physician lien be filed in the borough or recording district in which the injury occurred, is no longer necessary. In the past, this system has led to misfilings and difficulty in determining whether or not a lien has been filed. House Bill 306 addresses the needed change. The recorder's office already uses the computerized system and supports the change.

There is a zero fiscal note from the Department of Natural Resources. The bill passed the House by a vote of 40-0. Your support would be appreciated.

ASCHENBRENNER LAW OFFICES, INC.

313 Seventh Avenue • P.O. Box 73998 • Fairbanks, Alaska 99707
Phone (907) 456-3910 • Fax 456-8064

RECEIVED
MAR 14 1996
Ans'd............

March 12, 1996

via fax 907 465 3922

Hon. Robin Taylor
State Capitol
Room 104
Juneau, AK 99801-1182

Re: CSHB 306 -- Alaska's Hospital's and Nurses Lien Laws

Dear Senator Taylor:

Thank you for your request for further information regarding the proposed amendments to AS 34.35.450 - 480.

A total of 7 changes were made in the CSHB 306 which is now under consideration before the Senate Judiciary Committee.

Four of these changes can be classified as "technical;" three as "policy."

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

The reference to "borough" was deleted in the House bill. Boroughs are units of local government, not recording districts. The two are not co-terminous. The boundaries of boroughs are approved by the Local Boundary Commission; the boundaries of recording districts are established by the DNR under authority of AS 44.37.025. Boroughs aren't referred to in AS 40.17. Boroughs have, literally, no meaning or significance to the recorder's offices.

The House bill eliminates the reference to "borough".

- As noted above, present law calls for the lien to be filed "in the recording district ... in which the injury occurred... ." AS 34.35.460. The House bill calls for central filing of liens to bring lien recordings in conformity with the DNR's central indexing of liens by amending §460 so that liens are to be filed "with a recorder's office."

Nobody is benefited by district-based or accident-based filing. The recorder's office doesn't want it; providers can be trapped into misfilings by using such a system; the insurance carriers, attorneys and other parties can miss provider filings with district-based filings.

Some accidents will be easy to site: a car crash at 36th & C Street is easy to identify on

the maps at the recorder's office on the 11th floor of the Frontier Building. Official maps, however, will not give any guidance to a hospital or nurse attempting to locate the recording district in which an off-shore accident occurred. In fact, a look at the current official map of the recorder's districts shows that "off shore" areas are excluded from recording districts, by wrapping the boundaries along coastal areas.

Thus, recording districts, for example, are not extended into the territorial waters of the United States; victims of a JAL turbulence accident over the North Pacific were brought to Anchorage in a 1982 incident. Did the hospital lose its lien rights if it was unable to protract on Coast Guard charts the exact location of the 747's sudden dive, with reference to the nearest recording district?

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

This will make clear that it makes no sense having health care professionals research the place of accident to guess at which recording district should be used for lien filings. When the dividing lines follow major state highways, the guessing game is even more risky.

For example, an accident at Mi 80-99 on the Parks Highway may be in either the Palmer or Talkeetna Recording Districts depending on which side of the centerline is regarded as the "place of injury."

An accident near Girdwood on the Seward Highway could also be recorded in either the Anchorage Recording District or Seward Recording District.

Follow the course of the Dalton Highway north from Fairbanks and you will find that the place of recording changes four times in a hundred miles, back and forth two times between the Fairbanks and Rampart Recording Districts. All of these highways have been the site of tragic and serious accidents.

The House bill eliminates accident-based recording.

- AS 34.35.470 requires maintaining a separate index for hospital lien recordings. Current law assumes that a person must run the hospital lien index under grantor(victim) or grantee(hospital) provided that you have selected the proper one of Alaska's 34 recording districts. Theoretically, an insurance carrier (having insured either the tortfeasor or the victim) must now diligently search the grantor/grantee index in the recorders' office (having first located what it believed to be the site of the accident). It has no obligation to search the recording

district index in the place the hospital is located, unless that is also where the accident occurred.

So cumbersome and outdated is this lien indexing system, that the recorder's office has disregarded AS 34.35.470 and utilizes centralized indexing without statutory authority to do so. Thus, hospital liens are afforded central indexing, like UCC filings for perfection of "general intangibles" and other similar interests.

DNR has the authority to establish this central index system. AS 40.17.040 calls for "an index system for recorded documents;" the only statutory direction as to the structure of this database is that it be structured so that the public "may find documents by names of grantors and grantees". *Id.* "Other means for locating ... documents" are merely options to be considered by DNR. There is no statutory requirement that "place of injury" trigger 34 indices for searching hospitals/nurses and victims.

Indeed, one of the interesting aspects of updating AS 34.35.450-480 is that if DNR could (and would not) establish accident based filings today because the Alaska Legislature has already set a standard which would bar such restrictive recordings.

AS 44.37.025 (a) provides that:

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

Today, the statutory scheme is a trap for the person who reads AS 34.35.450-480 without realizing that the recorder's office doesn't follow §470. It appears from AS 40.17.035 (2)(C) that the recorder may reject a document which does not state a recording district. Thus, at present, hospital and nurses lien claimants are required to guess as best they can which would be the legally correct site for lien recording. It is a dangerous tactic for the lienor to state "unknown" as the place of injury and file its lien in the recording district in which it does business since such a lien would not be properly recorded as required by current law. Of course, it is the language of AS 34.35.475 (a)(1) which requires the claimant to play recording district "roulette." That code provision gives constructive notice effect to only those liens recorded in the recording district which is eventually determined to be the place of the accident.

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

Documents to be recorded "in" the Barrow Recording District are physically recorded in Fairbanks. If a person were to walk into the Fairbanks Recorder's office at 17th & Cushman and say, "I want to record a document," the recorder's staff would undoubtedly (as they did with the Providence/Michael Brown lien) record the document in the Fairbanks Recording District. But of course that would mean that the lien wasn't recorded in the correct recording district and the lien would be invalid. AS 34.35.475 (a)(1) [post-settlement liability attaches to insurer if "the lien is recorded as provided in AS 34.35.460 and 34.35.465."]

The staff at the recorder's office has informed me that the fact that Section 470 wasn't repealed when AS 40.17 was adopted was simply an oversight. AS 40.17.040 "Indexing" provides that:

> (a) The recorder shall maintain an index system for recorded documents in the manner prescribed by regulations adopted by the department. The system shall be designed so the public may find documents by names of grantors and grantees, and the system may include other means for locating the documents.

To put this in perspective, since Statehood the "state of the art" of recording has changed dramatically. One can walk into the Juneau Recorder's Office and look up hospital liens filed in the Barrow Recording District, today. This is because of central filing which treats all documents as records in a computer database. An "index" is simply one field of that database which is sorted (usually) alphabetically. This revolution came about when the Legislature revised the recording acts in the late 80's. Therefore, AS 34.35.470 is a 1950's "hard copy" solution to the problem of finding who claims what, when the Legislature has mandated computerized filing and searching for this same information.

- AS 34.35.460 and AS 34.35.475 (1) requires service of a *certified* copy of the lien notice on the tortfeasor and/or his insurer as additional protection to the lienor. (A properly filed lien triggers the 180 day direct liability of AS 34.35.475, so service by mail is optional.) However, there is no practical reason as to why this copy should be certified. By comparison,

a notice of right to lien (NRL) -- an announcement that a construction contractor or materialman may have lien rights -- need not be certified. AS 34.35.064 simply provides that the claimant of an NRL "give a notice of right to lien" to the owner/lender.

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

Here are the policy concerns which the House bill addresses.

- The House bill includes physicians and chiropractors in its definition of health care providers; if passed, CSHB 306 would give them lien rights along with hospitals and nurses. The basic argument in favor of this amendment is that physicians and chiropractors should be encouraged to treat persons who are the victims of traumatic injury -- other than on-the-job injuries -- with reduced concern for the source of their reimbursement. Their patients may or may not bring personal injury actions to recover damages. As to a patient who does seek damages, she should be able to secure payment for her medical care without risking derogatory information on her credit report for an unpaid bill. The physician, at the same time, should be able to look to funds available from a recovery, if any, for payment of his bill without having to turn the patient into a debtor through debt collection.

We are talking about victims of accidents in the home, automobile and snowmachine accidents, hunting, boating and flying accidents and other personal tragedies. These unfortunate situations, if there has to be resort to the tort/insurance system, should not also be converted into debtor-creditor relationships. The patient is already a victim; if possible, she shouldn't be a judgment debtor as well.

- Hospital liens must now be filed in an extremely short time frame: The lien "window" period is only 15 days after discharge of the patient from the hospital. AS 34.35.460. This makes a prompt lien filing after traumatic accidents difficult. The proposal expands the filing period to 90 days.

The hospital's or nurse's situation is made worse by the regulations of the Department of Health and Social Services: For example, hospitals are allowed only 15 days to prepare a discharge summary. 7 AAC 12.780 (c) ["inpatient medical record to be "completed within 15 days of discharge"]. Furthermore, the "medical chart" must state the source of repayment. 7 AAC 12.770 (c)(1)(M). The hospital is put in the position of keeping the chart up-to-date in the case of a potential lien case *and* preparing the necessary discharge summary within the same time frame.

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

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

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

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

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

I believe the Providence Hospital/Brown lien filing points up the practical problem with the overtechnical (and grossly out-of-date) approach of AS 34.35.450-480. By requiring

information which is not readily obtainable (place of accident) and by appearing to require filing of the hospital billing (instead of a general description of the services rendered), *less* information was filed of record, rather than more.

There are two other points which touch this issue:

First, filing of hospital billings may be contrasted with a case in which a lawyer, whose client has prevailed in a suit, is required to file an "itemized billing" in support of his Civil Rule 82 fee application. *Hayes v. Xerox*, 718 P.2d 929, 939 (Alaska 1986)[accurate records of the hours expended and a brief description of the services reflected by those hours should be submitted on fee motions]. However, even a fleeting consideration of this comparison shows that there is little tangible result gained when the public record contains a professional billing on a matter *which is not yet in dispute*. Yes, the judge is proper arbiter of how much of the legal effort of a prevailing party should be passed to the loser after the termination of the litigation in which the legal effort is expended. But requiring this level of documentation on the public record as a condition of filing a lien requires an effort which is more appropriate to litigation or negotiation than perfection of rights through the recorder's office.

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

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

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

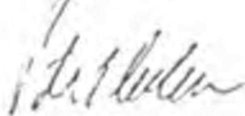
I suggest that there is little need to resolve this issue as a matter of hospital record retention/privacy legislation/regulation because it is so obvious that these professional billings do not belong in the hard copy filings of a public record database maintained for perfection

purposes.

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

I hope that this will be of some assistance to you and the committee members in considering CSHB 306.

Sincerely yours,
ASCHENBRENNER LAW OFFICES, INC.



Peter J. Aschenbrenner

PJA\ll

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

April 2, 1996

Senator Robin Taylor, Chair
Judiciary Committee
Alaska State Senate
Juneau AK 99801

Re: HB 306, Lien Law
Reduce Hospital Bad Debt

Dear Senator Taylor:

This is a "gentle" reminder that your friends from community hospitals and nursing homes would sure appreciate getting CSHB 306, the lien law bill, enacted this session.

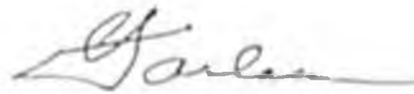
If the Judiciary Committee considers CSHB 306, could we ask your help in adding an amendment, if necessary, that would include nursing homes along with hospitals?

As you recall, CSHB 306 as passed by the House increases the time period for filing a lien from 15 days to 90 days; provides for filing liens with a recorder rather than within each court district or borough and allows a general rather than itemized description of services.

Reason for our support is to help community hospitals and nursing homes do a better job of collecting bad debt. Bad is when individuals who have the financial resources, either from insurance settlements and/or personal assets, but who do not pay their medical bills.

As always, we greatly appreciate your consideration and help on yet another health care issue. Many thanks.

Sincerely,



Harlan R. Knudson
President/CEO

319 Seward Street #11 • Juneau, AK 99801 • (907) 586-1790 • Fax (907) 463-3573

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

May 2, 1995

Senator Robin Taylor, Chair
Judiciary Committee
Alaska State Senate
Juneau AK 99801

Re: HB 306, Lien Law
Reduce Hospital Bad Debt

Dear Senator Taylor & Members of Judiciary Committee:

Community hospitals would like to respectfully request your help and support in enacting CSHB 306 this session. CSHB 306 brings up to date Alaska's outdated lien laws governing hospitals and physicians.

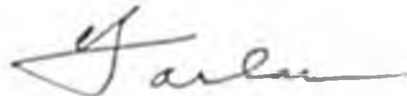
CSHB 306 as passed by the House increases the time period for filing a lien from 15 days to 90 days; provides for filing liens with a recorder rather than within each court district or borough and allows a general rather than itemized description of services.

Reason for our support is to help community hospitals do a better job of collecting bad debt. Bad is when individuals who have the financial resources, either from insurance settlements and/or personal assets, but who do not pay their medical bills.

Health facility bad debt in Alaska increased from $17.2 million in 1989 to $21.6 million in 1993. If not collected, the bad debt is eventually shifted to those who do pay their bills.

This is a small but very important step to reduce health care costs.

Sincerely,



Harlan R. Knudson
President/CEO

cc: Representative Toohey

319 Seward Street #11 • Juneau, AK 99801 • (907) 586-1790 • Fax (907) 463-3573

Sectional Summary of CSHB 306 (JUD)

Section 1. Adds physicians to an existing provision of law creating a lien against any sum awarded to an injured person by judgment or settlement. The lien is equal to the reasonable value of the services provided by the physician.

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

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

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

Section 5. Adds physicians as a profession that receives the protection of AS 34.35.475. This provision makes a person or insurer liable for payments made to an injured person, when the person or insurer has received notice of a physician's lien, or the lien is recorded, the payment is made after notice of the lien is given, and the lien is unsatisfied. Deletes a requirement that a certified copy of the lien be provided.

Section 6. Adds a definition of "physician".

Section 7. Repeals AS 34.35.470.

ASCHENBRENNER LAW OFFICES, INC.

313 Seventh Avenue ○ P.O. Box 73998 ● Fairbanks, Alaska 99707
Phone (907) 456-3910 ○ Fax 456-8064

Chuck
File Re

FAX COVER SHEET
January 15, 1996

TO: HONORABLE ROBIN TAYLOR

FAX: 907 465 3922

FROM: PETER J. ASCHENBRENNER

A TOTAL OF 8 PAGES ARE BEING TRANSMITTED, INCLUDING THIS FAX COVER SHEET. If all pages are not received please contact me at 456-3910.

COMMENTS: Enclosed please find the results of my research into Deficiencies in Alaska's hospital and nurses' lien laws\CSHB 306. Feel free to contact me with any questions and/or comments.

ASCHENBRENNER LAW OFFICES, INC.

313 Seventh Avenue • P.O. Box 73998 • Fairbanks, Alaska 99707
Phone (907) 456-3910 • Fax 456-8064

January 15, 1996

via fax 465-3922

Hon. Robin Taylor
State Capitol
Room 104
Juneau, AK 99801-1182

Re: Deficiencies in Alaska's hospital and nurses' lien law/CSHB 306

Dear Senator Taylor:

Since we last spoke, I have been looking more closely at Alaska's hospital and nurses' lien law to see whether the existing law provides adequate protection for attorneys in handling and settling the typical personal injury case.

I have come to the conclusion that AS 34.35.450-480 already provides the protections that will address your concerns. Specifically, AS 34.35.475 (3) provides that attorney's fees and costs incurred in negotiating a personal injury case come off the "top" of the settlement proceeds *and* that lienors may not bargain to impasse to obtain 100% of their lien claims.

1. The ques[illegible] posed is whether the House Bill should be amended to address a small class of cases in which there is not a sufficient recovery for the patient/plaintiff (the "injured party" under AS 34.35.455 - 480) and the attorney handling the matter for the patient who has expended time and money in recovering settlement proceeds, to pay off health care providers' liens.

2. AS 34.35.475 provides that a person and/or insurer is personally liable to the lienor for 180 days after a settlement in which the lienor didn't participate, unless the tortfeasor and/or insurer pays the full amount liened or "so much of the value of the services as can be satisfied out of a judgment, settlement, or compromise, after paying the attorney fees, costs and expenses incurred in connection with it."

3. This means that the lawyer can deduct his costs and expenses pursuant to a written contingent fee agreement "after" which deduction the lawyer then pays the "value of services ... claimed in the lien".

(In general, attorney contingent fee agreements must be in writing, Alaska Bar Rule 35 (c) and lawyers must have the written direction of the client to pay third party claims from trust accounts other than statutory liens. Ethics Opinion 92-3.)

4. The lien release provisions of AS 34.35.475 are important because they strike a balance among the competing interests of the four parties involved: tortfeasor/insured, plaintiff/patient, attorney and lienor.

Here are some concrete examples:

Case No. 1

Settlement: $100,000; attorney's fees: 35%; unpaid costs $5,000; lien $15,000. Lawyer first takes 35% of $100,000 = $35,000 as his fee and then deducts and pays himself $5,000 from the client share for unpaid cost reimbursements. Then he remits $15,000 of the remaining $60,000 to the lienor.

Case No. 2

Settlement: $20,000; attorney's fees: 35%; unpaid costs $5,000; lien $10,000. Lawyer first takes 35% of $20,000 = $7,000 and then deducts $5,000 from the remaining $13,000 = $8,000. Although $8,000 is less than $10,000 liened, AS 34.35.475 (3) explicitly permits the tortfeasor/insured to satisfy the liability created by AS 34.35.475.

5. The way the settlement will work in practice is that the tortfeasor/insured funding the settlement will want the lienor to participate in the settlement and, more importantly, be paid directly from the attorney's trust account so that the tortfeasor does not have to satisfy the personal liability of AS 34.35.475 from other (i.e. non-settlement) funds. This avoids having to pay a portion of the settlement twice.

6. This also means that the lienor cannot block a settlement by refusing to participate; the injured person can buy a release of the lien by paying all of the remaining proceeds after the attorney's fees and costs are paid, even if this is less than the amounts liened.

7. As a practical matter this still leaves room for negotiating between the parties: the plaintiff may not be eager to settle a case in which he receives no recovery and without the plaintiff's cooperation there would be no settlement in the first place. On the other hand, the tortfeasor/insurer will want to see that the lienor's cooperation is obtained, since it has personal liability up to the net settlement value to the plaintiff, meaning that it would have to pay that amount twice if the lienor didn't participate in the settlement. Cf. *State Farm Ins. Co. v. American Mfrs. Mut. Ins. Co.*, 843 P.2d 1210 (Alaska 1992)[plaintiff and tortfeasor/insurer should have negotiated with lienor to avoid interpleader], discussed below at ¶15.

In close cases, AS 34.35.475 makes the settlement a forum in which the parties can be expected to resolve their economic differences through negotiations. No party has everything

to gain and nothing to lose by bargaining to impasse.

8. As a footnote to the above discussion: AS 34.35.455 states in its last sentence: "A lien is not allowed for necessary attorney fees, costs and expenses incurred by the injured person in securing a settlement, compromise, or judgment." This appears to modify the first sentence of that code provision which renders liens ineffective to secure services rendered after a settlement, unless the settlement "is made within 20 days from the date of the injury."

In that very narrow circumstance -- the "quickie" settlement -- I believe the attorney forfeits the "off the top" priority afforded under AS 34.35.475 (3).

However, I didn't read it this way the first time through and I have taken three weeks to come to this conclusion. If the last sentence of AS 34.35.455 has broader application -- beyond quick settlements of personal injury claims -- then AS 34.35.455 conflicts with AS 34.35.475, since, standing alone that one sentence of §455 may seem to say that an attorney representing the patient (the "injured person") *may never* charge the provider *any* costs and fees for recovering sums sufficient to satisfy the lien *and* deduct these charges from the amount payable to the health care provider.

9. Laying this doubt to one side, then the answer to your question is that there is already an accommodation between the competing interests of the four parties involved.

10. How good a balance is it, assuming CSHB 306 is enacted so that there are more statutory lien filings?

The lawyers should always be happy, unless they have settled a case within 20 days after injury; obviously this doesn't happen very often, if ever.

The tortfeasors/insurers should be pleased because it is easy to check central recording and identify the lien claimants before settling a case. Statutory claimants can come "to the table" and negotiate on their own behalf in close cases; they can't block a settlement, however, even if the funds are insufficient.

Providers will be pleased with the improvements in lien filings. As to priorities they don't lose anything in CSHB 306; they don't gain anything either. In the average case they get paid in full. In the close case they are going to have to take substantial cuts in their liens to allow the cases to settle.

Plaintiffs probably have the most to lose by passage of CSHB 306 because they will give up the windfall often associated with settling their personal injury cases without paying their medical bills. Plaintiffs now have the choice of using the personal injury settlement to pay their medical bills by directing the lawyer in writing to that effect. On the other hand, if they want

to pocket the money, they can do so, and Ethics Opinion 92-3 directs the lawyer to pay the client, even over the objections of a legitimate, undisputed third party creditor without a "perfected statutory lien against settlement proceeds." (at p. 237)

11. Since AS 34.35.450 (a) states that, for example, "a hospital ... has a lien upon any sum ... obtained by a settlement or compromise to the extent of the amount due the hospital", there should be no doubt that this creates a statutory lien in favor of the hospital sufficient to trigger the lawyer's duty to honor the lien under the cited Ethics Opinion.

12. While the operation of AS 34.35.450 - 480 can seem harsh in some cases to the plaintiff, the Alaska Supreme Court has already ruled that here is no constitutional barrier to the Legislature providing for a zero net recovery to personal injury plaintiffs. *McCarter v. Alaska Nat. Ins. Co.*, 883 P.2d 986 (Alaska 1994) observed that: "Though there may be cases in which the recovery is less than the payments, McCarter cites no authority for the proposition that it is of constitutional significance for one's liabilities to consume the proceeds of a particular third-party recovery." (at 990).

The court had previously observed in *Forest v. Safeway Stores, Inc.*, 830 P.2d 778, 781 (Alaska 1992), in the course of interpreting AS 23.30.015 (a) that:

> The clear purpose of [AS 23.30.015(a)] is to allow employees to seek damages from third-party tortfeasors without jeopardizing their compensation while, at the same time, allowing employers to share in damage awards up to the limit of their exposure under the workers' compensation law.
>
> AS 23.30.015(a) provides:
>
> If on account of disability or death for which compensation is payable under this chapter the person entitled to the compensation believes that a third person other than the employer or a fellow employee is liable for damages, the person need not elect whether to receive compensation or to recover damages from the third person.

Turning from the worker's comp context, to uninsured motorist litigation, the Ninth Circuit's assessment of Alaska statutory and decisions law is that Alaska would enforce "consent to settle" clauses in UM coverage, based at least in part on the insurer's subrogated right of recovery to the insurer. *State Farm Mut. Auto. Ins. Co. v. Kolb*, 884 F.2d 486 (9th Cir. 1989). With a financial stake in the settlement, the court concluded, the UM insurer should have been called on to participate in settlement negotiations.

13. The current law -- with or without the amendment of CSHB 306 -- will put the health care providers on a different footing when compared to the worker's comp providers in *Cooper v. Argonaut Ins. Companies*, 556 P.2d 525 (Alaska 1976). This case confirmed that the

percentage deduction which the plaintiff's attorney can take from the worker's comp settlement is measured by the contingent fee agreement between the plaintiff and the lawyer.

AS 23.30.015 (g) provides:

> If the employee or the employee's representative recovers damages from the third person, the employee or representative shall promptly pay to the employer the total amounts paid by the employer under (e)(1)(A), (B), and (C) of this section, insofar as the recovery is sufficient after deducting all litigation costs and expenses. Any excess recovery by the employee or representative shall be credited against any amount payable by the employer thereafter.

Take these figures: Settlement: $100,000; attorney's fees: 35%; unpaid costs $5,000; comp lien $15,000; plaintiff's attorney working on a 40% contingent fee. A net subrogated recovery to the carrier of $15,000 - $6,000 (to the attorney) = $9,000. Costs are also deducted; in general they are prorated as to the recoverying parties: here the client obtains $50K/$65K of the gross recovery and the carrier gets $15K/$65K; therefore, they bear their proportionate share of the costs.

Anecdotally, I cab report that in many cases, plaintiff's attorneys negotiate with the comp carriers for waivers or reductions of liens before or during the personal injury litigation. At times, these negotiations fail and the *Cooper* rule is applied to the letter. Finally, there are cases in which there is an inadequate recovery and, under *McCarter*, the plaintiff's third party litigation efforts yield little or no net recovery to him.

14. Under *Cooper* the comp carrier always pays to participate in the settlement, no matter how much money is in the pot; under existing and proposed versions of AS 34.35.450 - 480 there will be many, if not most, cases in which health care providers will pay nothing to participate in the settlement.

In other cases, the health care provider and the plaintiff will be scrapping over the last dollar.

15. Some general insight into handling of liens by the plaintiff's attorney. In *State Farm Ins. Co. v. American Mfrs. Mut. Ins. Co.*, 843 P.2d 1210 (Alaska 1992) plaintiff offered to settle a case for $45,000 knowing that AMMIC had a subrogated claim for $10,000. State Farm, insuring the tortfeasor, accepted the offer for a full release of all claims; State Farm's position that it was entitled to interplead $10,000 of the settlement proceeds into court was ultimately upheld. The Supreme Court footnoted its acceptance of the trial judge's implicit finding that the plaintiff had not litigated in good faith. On the other hand: "State Farm did not bring AMMIC into the settlement negotiations, even though it knew the Wrights had no authority to settle AMMIC's claim. State Farm should not have been surprised to discover that its

settlement with the Wrights failed to resolve all issues in the case." (at 1214).

In general, parties with liens on settlement proceeds should be brought to the negotiating table; correcting deficiencies in AS 34.35.455-480 will not make the job of plaintiff's attorneys in handling these situations any more difficult.

16. I have referred to AS 34.35.475 as negating the right of the statutory lienor to bargain to impasse. There is no absolute right in the hospital lienor to approve or reject a settlement under existing law. This should be compared with AS 23.30.015 (h) which makes the carrier's obligation for comp benefits contingent on the employer's approval: the employer is liable for benefits "only if the compromise is made with the employer's written approval." From *State Farm v. Kolb*, supra, we know that UM "consent to settle" insurance policy provisions will be enforced in Alaska.

17. Both §475 (a) and (b) refer to "person" and "insurer" being subject to personal liability. Either the plaintiff's attorney or the plaintiff himself may be considered a "person" who "does not pay" the lien. As a practical matter it is counsel who will control access to the trust account through his fee agreement, subject to the Rules of Professional Conduct, the Bar Rules and case law governing trust account transactions as noted above. However, in a broader sense, it is the plaintiff himself who makes a settlement or accepts a settlement offer which has terms for the satisfaction of statutory liens (or lacks such terms).

As to the attorney's liability for failure to honor a levy on his trust account. see *Willner's Fuel Distributors, Inc. v. Noreen*, 882 P.2d 399 (Alaska 1994) [levying creditor claimed attorney violated AS 09.40.040 by disbursing settlement proceeds after levy; summary judgment for attorney reversed; court held there were "genuine issues of material fact as to when [attorney] authorized the issuance of the $80,000 cashier's check."]

18. In summary, then, CSHB 306 does not change existing law which provides a mechanism by which the tortfeasor and his insurance carrier, the plaintiff, his attorney, and the health care provider can negotiate fairly and in good faith in the minority of cases in which plaintiffs' recoveries are not adequate to cover all of the expenses.

19. One can think of ways in which liens could be abused, but there is a practical aspect that keeps the floodgates of abuse from opening wide. Physicians and hospitals will not be filing liens in every traumatic injury case: approximately $40 will be required for filing a lien and recording the satisfaction. The administrative costs of preparing, filing and monitoring lien filing will mean that most smaller cases will not have lien filings.

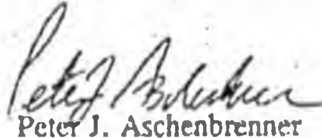
20. Health care providers can be expected to, in the difficult cases in which there is not enough money to go around, negotiate in good faith and not to impasse because their costs of debt collection are not inconsiderable, with commission rates anywhere from 25% to 40% and

with hourly attorney's fees for attorney debt collectors.

21. Most importantly, the mechanism provided for in the code allows for a body of experience to develop. It may be that one side or the other in this very complex equation suffers a disproportionate burden. At this time there is no real experience for the Legislature to consider because hospital liens have rarely been used.

I hope I have provided some background for you on this question. If you should have any further questions, please do not hesitate to call.

Sincerely yours,
ASCHENBRENNER LAW OFFICES, INC.



Peter J. Aschenbrenner

PJA:taf

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Providence Hospital

3200 Providence Drive
Pouch 6604
Anchorage, Alaska 99502
(907) 562-2211

BUSINESS OFFICE HOURS
8:00 AM — 4:30 PM

SISTERS OF PROVIDENCE

WHEN REFERRING TO THIS ACCOUNT PLEASE USE ADMISSION NO.

ADMISSION NO	DISCHARGE DATE
[illegible]	[illegible]

FOR

REFERENCE NUMBER	DESCRIPTION CODE	SERVICE DESCRIPTION	QUANTITY	PRICE
		[illegible] 052177[illegible]		
	[illegible]	[illegible]		
	[illegible]	[illegible] .00 PER DAY	[illegible]	[illegible]
	[illegible]	[illegible] .00 PER DAY	[illegible]	[illegible]
		AREA TOTAL ***		[illegible]
	[illegible]	[illegible]		
[illegible]	[illegible]	[illegible] MONITOR/DAILY		[illegible].00
57	[illegible]	[illegible] MONITOR/DAILY		[illegible]
53	[illegible]	[illegible] MONITOR/DAILY		[illegible]
[illegible]	[illegible]	[illegible] MONITOR/DAILY		1[illegible].00
[illegible]	[illegible]	[illegible] MONITOR/DAILY		1[illegible].00
		[illegible] TOTAL ***		[illegible].00
	[illegible]	[illegible]		
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

INSURANCE COPY 1

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

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

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

Donna L. Lorenzen

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

Notary Public for Alaska
My Commission expires June 21, 1986

RECORDED - FILED
ANCH
DATE 4/17 19 86
TIME 11:44 A M
Requested by Providence Hosp.
Address Anch. AK
86-24180