ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672
8926 SENATE JUDICIARY

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: HB 392 am

Revision Date: 2/23/96
Title: An Act relating to the reinstatement of dissolved Native village corporations...
Sponsor: Rep. Ivan
Requestor: Senate C&RA

Community & Regional Affairs
BRU: none
Component: none
COMPONENT SERIAL NO.

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

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
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 ( ) Revenue Code						

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 95) impact: $ none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson Remond Henderson Phone 465-4808
Division: Director, Administrative Services Date 2/23/96

Approved by Commissioner: Mike Irwin Date 2/23/96
Agency: Mike Irwin, Dept. of Community & Reg. Affairs

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

For further distribution information call the Governor's Legislative Office

FISCAL NOTE

FISCAL NOTE

STATE OF ALASKA **BILL NO. HB 392 am**

1996 LEGISLATIVE SESSION

Revision Date:

Department: Commerce and Economic Development

Title: Native Corp Director Classification

BRU: Banking, Securities and Corporations

Component: Banking, Securities and Corporations

Sponsor: Representative Ivan

Requestor:

COMPONENT SERIAL NO. 1233

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

FULL-TIME	
PART-TIME	
TEMPORARY	

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Willis F. Kirkpatrick, Director Phone: 465-2521

Division: Banking, Securities and Corporations Date:

Approved by Commissioner: William L. Hensley Date: 3-19-96

Agency: Commerce and Economic Development

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

For further distribution information, call the Governor's Legislative Office

Alaska State House of Representatives
House District 39

Session
Alaska State Capital
Juneau, Alaska 99801-1182
Phone: (907) 465-4942

Interim
P.O. Box 137
Aktak, Alaska 99552
Phone: (907) 765-7526

Representative Ivan M. Ivan

MEMORANDUM

TO: Representative Porter, Chair
and House Judiciary Committee Members

FROM: Representative Ivan

DATE: January 31, 1996

RE: HB 392

HB 392, relating to the affirmative vote necessary to amend the articles of incorporation of Native village corporations to authorize the classification of directors, was heard in the House Judiciary Committee on Monday, January 29, 1996.

At the hearing, a question was raised in regards to why sec. 10, ch 166, SLA 1988 and sec. 57, ch. 50, SLA 1989 were not codified (as part of the permanent Alaska Statutes).

Enclosed is a copy of a memorandum my office received from Theresa Bannister, Legislative Counsel, that addresses the above issue.

LEGAL SERVICES

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

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

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

MEMORANDUM January 30, 1996

SUBJECT: Codification of sections amended in HB 392
(Work Order No. 9-LS1448\C)

TO: Representative Ivan Ivan

FROM: Theresa Bannister
Legislative Counsel

You have asked why sec. 10, ch 166, SLA 1988 and sec. 57, ch. 50, SLA 1989 weren't codified (numbered as part of the permanent Alaska Statutes) and whether they should be. After a review of the sections it is not apparent why they were not codified initially.

The two sections are transition sections between the old corporations code (AS 10.05) and the new code (AS 10.06). Transition sections are usually temporary in nature and not codified. Section 10 requires existing corporations to continue with the former code's two-thirds vote requirement to amend their articles of incorporation, unless the corporation elects by the two-thirds vote to fall under the new code's lower majority vote approval. Section 57 amends sec. 10 to allow certain Native corporations incorporated under the former code to use a majority vote to amend their articles to add a provision about director liability.

As you can see, these two sections are not temporary in nature. They could continue to affect corporations indefinitely. Therefore, it would be appropriate to codify them in permanent law. This would not change their content or effect, but would merely place them with the other permanent statutes.

This codification can be accomplished by the revisor of statutes without further action by the legislature. Under AS 01.05.031, the revisor of statutes has the authority to revise for consolidation into the Alaska Statutes all laws of a general and permanent nature and all laws of a temporary or special nature enacted by the legislature. The revisor is authorized to accomplish this by, among other things, renumbering sections, parts of sections, articles, chapters, and titles.

The revisor is already aware that these two sections may need to be codified. If you would like her do so, you can contact her and suggest that it be done.

You do not need to change your bill, HB 392, at this time. If your bill becomes law and the revisor codifies the two sections, she can codify your new provision as well.

If I may be of further assistance, please advise.

TLB:klb
96-047.klb

Alaska State House of Representatives
House District 39

Session
Alaska State Capital
Juneau, Alaska 99801-1182
Phone: (907) 465-4942

Interim
P.O. Box 137
Aklak, Alaska 99552
Phone: (907) 765-7526

Representative Ivan M. Ivan

MEMORANDUM

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee

FROM: Representative Ivan M. Ivan

DATE: February 26, 1996

RE: Scheduling of House Bill 392 am

Please consider this request to hear House Bill 392 am: An Act relating to the reinstatement of dissolved Native village corporations, and to the affirmative vote necessary to amend the articles of incorporation of Native village corporations to authorize the classification of directors.

Section 1 of the bill allows Native village corporations that have been involuntarily dissolved by the State to be reinstated under the law, one year after the effective date of this act. In 1994, HB 71 added a provision under AS 10.06.960 (i) offering a one year opportunity for involuntarily dissolved village corporations to reinstate. According to the Division of Banking, Securities and Corporations, there remain five Native village corporations that did not take advantage of the reinstatement. Those corporations are Oscarville Native Corporation, Tulkisarmute, Inc., Cully Corporation, Ohog Incorporated, and The Grouse Creek Corporation.

Section 2 amends the Alaska Corporations Code to authorize ANCSA village corporations to provide for Board of Director classification in their bylaws. If enacted, House Bill 392 would allow ANCSA village corporations to amend their articles of incorporation to authorize a classified or staggered term board of directors by a majority vote of the shares represented at a meeting of shareholders.

Under current law, for those villages which did not have classified boards in place by July 1, 1989, such an amendment requires a vote of two-thirds of all outstanding shares entitled to vote. This is often difficult for village corporations to achieve. House Bill 392 rectifies that situation. Alaska Federation of Natives (AFN) supports House Bill 392 am.

House Bill 392 am was heard and passed out of the Senate Community and Regional Affairs Committee on Monday, February 26, 1996. Attached is a copy of the S (CRA) committee report.

Thank you for your consideration of my request. Backup material for this bill will be provided to your aide. If you require further information or have any questions, please contact myself or my aide, Pat Walker.

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/13/96 FURTHER: Judiciary

DATE TURNED INTO OFFICE: _____

The Community & Regional Affairs Committee considered HOUSE BILL NO. 392 am

Relating to the reinstatement of dissolved Native village corporations, and to the affirmative vote necessary to amend the articles of incorporation of Native village corporations to authorize the classification of directors.

and recommends:

[ ] be **replaced** with _____ CS _____ (_____)

[ ] adopt **previous** _____ CS _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR* _____

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
Tim Kelly	—				
	✓				
Rob Ellis	✓				
CHAIR: John Torgerson	✓	*CHAIR:*			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
Commerce & Economic Dev.	2/16/96	—	
Community & Regional Affairs	2/16/96	—	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

[ ] **APPROPRIATION -- no fiscal note**

***Include fiscal notes accompanying Governor's bill**

SENATE COMMITTEE REPORT

DATE: 2/28/96 DATE TURNED INTO OFFICE: 3-25-96

The Judiciary Committee considered HOUSE BILL NO. 392 am

Relating to the reinstatement of dissolved Native village corporations, and to the affirmative vote necessary to amend the articles of incorporation of Native village corporations to authorize the classification of directors.

and recommends:

| | be replaced with _____ CS _____(_____)

| | adopt previous ___ CS _____(_____)

| | attached amendment(s)

| | adopt Letter of Intent by _____ Committee

| | further referral to the _____ Committee

Senate Bill:
| | same title
| | new title

House Bill:
| | same title
| | technical change
| | new: SCR*_____

SIGNING: DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
[illegible]	X	[illegible]	X		
		Lyda Green	✓		
		Mike Miller	✓		
CHAIR: [illegible]	✓				

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
C-RA	2/22/96	✓	
Comm + Econ Dev	1/15/96	✓	
Banking + Securities			

| | APPROPRIATION -- no fiscal note

*Include fiscal notes accompanying Governor's bill

HB

433

FISCAL NOTE

STATE OF ALASKA **BILL NO:** HB 433

1996 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Public Safety

Title: Eavesdropping BRU: Alaska State Troopers

Component: Detachments & CIB

Sponsor: Rules Committee

Requestor: House State Affairs **COMPONENT SERIAL NO.** 0799 & 0830

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)

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 95) impact: $ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

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

Prepared By: Lt. Dan Lowden Phone 465-5505

Division: Alaska State Troopers Date: February 2, 1996

Approved by Commissioner: [signature] Date: 2-5-96

Agency: Ronald L. Otte, Department of Public Safety

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

For further

FISCAL NOTE

STATE OF ALASKA

BILL NO: _____

1996 LEGISLATIVE SESSION

Revision Date _____ Dept. Affected: Public Safety

Title: Eavesdropping DPS Statewide Support

Component: Commissioner's Office

Sponsor: Rules Committee

Requestor: Governor COMPONENT SERIAL NO. 0523

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)

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: $ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated to the Department of Public Safety

Prepared By: Sandy Perry-Provost, Special Assistant to the Commissioner Phone: 465-43[illegible]

Division: Commissioner's Office Date: 1/3/96

Approved by Commissioner: D.C. Smith Date: 1/3/96

Agency: for Ronald L. Otte Dept. of Public Safety

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

For further distribution information call the Governor's Legislative Office

CS for House Bill 433 (JUD)

"An Act relating to an exemption to the unauthorized publication or use of communications and the prohibition against eavesdropping for certain law enforcement activities"

- Authorized law enforcement officers to monitor a persons conversations in limited crisis situations

- Current law prohibits surreptitious eavesdropping on a private conversation without the consent of one of the parties to the conversation. In an emergency (for example, where a suspect had barricaded with a hostage), law enforcement officers need to communicate with the suspect and, if possible, monitor the suspect's communication with others. Monitoring such communications can give valuable information to law enforcement officers to help defuse potentially dangerous situations.

- Amends AS 42.20.320 (a) Exemptions. Adds intercepting, listening, or recording of communications of a person who is barricaded an refusing to surrender, holding a hostage, or threatening to use an explosive by a peace officer tot he list of exemptions to the eavesdropping statutes.

- House Bill 433 was introduced by the Governor on behalf of law enforcement statewide

- Anchorage Police Department is strong proponent of this legislation

- HB 433 was heard in the House State Affairs Committee and moved out with individual recommendations on February 9, 1996 (2 do pass; 2 no rec)

- HB 433 moved out of House Judiciary on February 28, 1996 with a Committee substitute and individual recommendations (3 do pass; 3 no rec) and 5 zero fiscal notes

- Finance referral was waived on March 20, 1996

- In the House 4/24/96 33-0-2-5

AMENDMENT

Offered in the House

By: Representative Porter

To: CSHB 433 (JUD)

Page 2, line 17: after "officer" insert the following:

", in circumstances where there is an imminent risk of harm to life or property"

HB

446

FISCAL NOTE

No. 1
Bill Version: HB 446
(H) Publish Date: 2/9/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date:
Title: "An Act requiring home rule municipalities to bring action for certain injunctive relief relating to nuisances."
Sponsor: Representative Rokeberg
Requester: Representative Rokeberg

Dept. Affected: Department of Law
BRU: Civil Division
Component: General Legal Services
COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY96) cost: 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 09.50.180 to provide that a home rule municipality shall bring an action to enjoin a nuisance, as defined under AS 09.50.170 - 09.50.240 (lewd houses), if the nuisance is located in the home rule municipality. Currently, only the state or a citizen are allowed to bring such an action. The bill has the effect of giving local government authority to act in an area that is of local concern. There will not be a fiscal impact for the Department of Law.

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division
Phone: 465-3672
Date: 2/4/96

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: 2/4/96

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

COMMITTEE COPY

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/8/96 FURTHER:

DATE TURNED INTO OFFICE: 3/27/96

The Judiciary Committee considered HOUSE BILL NO. 446 am

"An Act allowing home rule municipalities to bring actions for certain injunctive relief relating to nuisances."

and recommends:

[ ] be **replaced** with _____ CS _____(_____)

[ ] adopt **previous** _____ CS _____(_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[X] same title
[ ] technical title
[ ] new: SCR*_____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS-	NR	DNP	AM
Lyda Green	✓	Fg Allen	X		
Rick Halbert	✓	Ric Cadas	X		
CHAIR: Judiciary Committee	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
at Law (Civil Div)	2/1/96	✓	

[ ] **APPROPRIATION** -- no fiscal note

*Include fiscal notes accompanying Governor's bill

I. GENERAL CONSIDERATION

This section is potentially open-ended Johansen v. State, 491 P.2d 759 (Alaska 1971).

Stated limitations on imprisonment. — Imprisonment for civil coercive contempt must be strictly limited in its application lest it intrude upon those constitutionally guaranteed liberties which the courts are sworn to protect. In re Elder, 764 P.2d 319 (Alaska 1988).

Distinction between criminal and civil contempt is generally phrased in terms of whether the character and purpose of the contempt is "remedial" or "punitive." L.A.M. v. State, 547 P.2d 827 (Alaska 1976).

Where the contempt power is invoked to punish the alleged contemnor for "past, willful flouting of the court's authority" pursuant to AS 09.50.010(3), contempt is criminal but where the contempt proceeding is instituted to "coerce future conduct" pursuant to this section, the contempt is civil. L.A.M. v. State, 547 P.2d 827 (Alaska 1976).

Willfulness is a prerequisite to imprisonment for civil contempt, but only in the sense that the act ordered must be within the power of the defendant to perform. State, Dep't of Revenue v. Oliver, 676 P.2d 1178 (Alaska 1984).

Inability to comply with an order to produce allegedly misappropriated funds is established as a matter of law where the undisputed evidence shows only that the funds or property ordered produced are in the hands of third parties over whom the alleged contemnor has no legal control or that such funds or property have been converted into some form of asset which the court refuses to accept upon immediate tender. In re Elder, 764 P.2d 319 (Alaska 1988).

Coercive confinement of recalcitrant grand jury witness must end when grand jury is discharged even after it is apparent that the witness has no further opportunity to purge himself of contempt. D.H. v. State, 517 P.2d 1391 (Alaska 1973).

Jury trial not available where confinement is remedial and not punitive. — See Cooper v. Cooper, 536 P.2d 1111 (Alaska 1975).

Appellate review of contempt order. — Court of appeals had jurisdiction to review a contempt order which arose out of a custody contest which the state attorney general participated in, but was not a criminal prosecution where defendant had a related appeal pending in the court and the imprisonment which arose out of the contempt had a clear effect on his sentence. Martin v. State, 787 P.2d 1209 (Alaska Ct. App. 1990).

II. NONSUPPORT

Contempt for nonsupport has criminal aspects. — Although contempt for nonsupport has traditionally been characterized as a civil action, certain aspects of that action, in particular, the threat of incarceration, more closely approximate penal proceedings. Olson v. Zahrese, 528 P.2d 837 (Alaska 1974).

Right to attorney. — Indigent in a contempt for nonsupport proceeding has a right to a court appointed attorney. Olson v. Zahrese, 528 P.2d 837 (Alaska 1974).

The burden of proof of inability to comply with the court order, which is the central issue in contempt proceedings for nonpayment of child support, is with the defendant. Olson v. Zahrese, 528 P.2d 837 (Alaska 1974).

Ability to comply with support order. — The principal question in civil contempt proceedings involving child support orders is not whether the defendant once had the ability to comply with the support order but whether he presently has the ability to comply. Rufaul v. Rufaul, 650 P.2d 389 (Alaska 1982).

Motion for a directed verdict finding husband in contempt for failure to pay alimony and support pursuant to divorce decree was improperly granted where there was substantial evidence that the husband was in bad financial straits and for mindful purpose could have reached different conclusions on the issue of his ability to pay. Rufaul v. Rufaul, 650 P.2d 389 (Alaska 1982).

Discussion of sentencing procedures in nonsupport cases. — See notes to AS 09.50.010. Diggs v. Diggs, 661 P.2d 1051 (Alaska 1983).

Nonsupport order vacated. — Superior court's order requiring defendant in nonsupport proceeding to serve 90 days with 45 days suspended on certain conditions was vacated where the court did not announce at the outset of the proceeding that it intended to impose a criminal sanction if the defendant was found guilty of contempt and the preponderance of the evidence burdens of proof were used by the superior court in its instructions to the jury rather than the criminal standard of beyond a reasonable doubt. Diggs v. Diggs, 661 P.2d 1051 (Alaska 1983).

Sec. 09.50.060. Prosecution on nonappearance. If the defendant does not appear on the day ordered by the court, the court may order the undertaking to be prosecuted. If the undertaking is prosecuted, the measure of damages is the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued and the costs of the proceeding. (§ 10.06 ch 101 SLA 1962)

Secs. 09.50.070, 09.50.080. Property subject to escheat; enforcement of rights by state. [Repealed, § 14 ch 133 SLA 1986.]

Sec. 09.50.090. Transmittal of personal property to state. [Repealed, § 6 ch 78 SLA 1972.]

Secs. 09.50.100 — 09.50.160. Escheat actions, claims, and reports. [Repealed, § 14 ch 133 SLA 1986.]

Article 2. Abatement of Lewd Houses.

Cross references. — For provisions governing nuisances in general, see AS 09.45.230 — 09.45.250.

Collateral references. — 24 Am. Jur. 2d, Disorderly Houses, §§ 23-36.

66 C.J.S., Nuisances, §§ 69, 77, 102, 169.

Sec. 09.50.170. Abatement of places used for certain acts. (a) A person who erects, establishes, continues, maintains, uses, owns, or leases a building, structure, or other place used for one of the following activities is guilty of maintaining a nuisance, and the building, structure, or place, or the ground itself in or upon which or in any part of which the activity is conducted, permitted, carried on, continued, or exists, and its furniture, fixtures, and other contents, constitute a nuisance and may be enjoined and abated

(1) prostitution,

(2) an illegal activity involving a place of prostitution, or

(3) an illegal activity involving

(A) alcoholic beverages,

(B) a controlled substance,

(C) an imitation controlled substance, or

(D) gambling or promoting gambling

(b) In this section, "illegal activity involving alcoholic beverages," "illegal activity involving a controlled substance," "illegal activity involving gambling or promoting gambling," "illegal activity involving an imitation controlled substance," "illegal activity involving a place of prostitution," and "prostitution" have the meanings given in AS 34.03.360. (§ 20.01 ch 101 SLA 1962, am §§ 8, 9 ch 121 SLA 1994)

Effect of amendments. — The 1994 amendment, effective September 28, 1994, in present subsection (a), in the introductory language, substituted "one of the following activities" for "the purpose of lewdness, assignation, or prostitution or any other immoral act," substituted "activity" for "lewdness, assignation, or prostitution," made minor stylistic changes, and added paragraphs (11)-(13), and added subsection (b).

NOTES TO DECISIONS

Bawdyhouse as nuisance. — A bawdyhouse is a nuisance *per se*, and it is also a public nuisance. Snyder v. Keller, 4 Alaska 447 (1912).

A bawdyhouse is not a "house" within the meaning of the 4th amendment of the United States Constitution. United States v. Ashworth, 7 Alaska 84 (1923).

Legislative intent. — The intention of the legislature, as disclosed by this article, was to suppress houses of lewdness and prostitution and to prevent persons from maintaining or conducting such houses either at the place where they were being maintained or at any other place throughout the judicial division, also to abate the nuisance then existing by closing up the same for the period of one year. Territory of Alaska v. House No. 24, 7 Alaska 611 (1927).

Injunction against maintaining nuisance and for abatement of building. — From a consideration of this article it is apparent that it has a twofold application, namely, a personal injunction against setting up, maintaining, or conducting a nuisance of the character described, the injunction operating in future, and the abatement of the building where the prescribed nuisance is being carried on. Territory of Alaska v. House No. 24, 7 Alaska 611 (1927).

Court has no discretion but to issue injunction and order abatement. — Where the evidence is clear that a house was maintained as a nuisance, there is no discretion in the court under this article but to issue the injunction, and also to order the abatement of the nuisance. Territory of Alaska v. House No. 24, 7 Alaska 611 (1927).

Testimony as to reputation of house. — Testimony that house had a reputation as a house of prostitution is not sufficient. United States v. Rex Hotel, 8 Alaska 21 (1928).

Sec. 09.50.175. Admissibility of evidence to prove nuisance. In an action brought under AS 09.50.170 — 09.50.240 to prove the existence of a nuisance, the court may consider

(1) evidence of reputation within a community;

(2) evidence derived from records of the courts of the state or of the United States that relate to previous complaints concerning alleged violations of, and to arrests for or convictions of violations of, laws based on activity set out in AS 09.50.170. (§ 10 ch 121 SLA 1994)

Sec. 09.50.180. Injunction. When there is reason to believe that a nuisance as defined in AS 09.50.170 — 09.50.240 exists, the attorney general shall, or a citizen may, bring an action to perpetually enjoin the nuisance, the person maintaining it, and the owner, lessee, or agent of the building or ground upon which the nuisance exists. (§ 20.02 ch 101 SLA 1962)

Cross references. — For court rule on injunctions generally, see Civ. R. 65.

NOTES TO DECISIONS

Legislative enjoining of nuisance violating criminal statute. — It is within the authority of the legislature to enlarge the powers of an equity court by empowering it to enjoin the maintenance of a nuisance, although the maintenance thereof may be a violation of a criminal statute. Territory of Alaska v. House No. 24, 7 Alaska 611 (1927).

Sec. 09.50.190. Dismissal. If the complaint is filed by a citizen, the action may be dismissed only upon approval of the attorney general and affidavit of the complainant and the complainant's attorney giving the reasons why the suit should be dismissed. The court may refuse to dismiss the suit and may direct the attorney general to prosecute the action. (§ 20.03 ch 101 SLA 1962)

Sec. 09.50.200. Contempt proceeding. If an injunction granted under the provisions of AS 09.50.170 — 09.50.240 is violated, the court may summarily try and punish the offender. A party found guilty of contempt under the provisions of AS 09.50.170 — 09.50.240 is punishable by a fine of not more than $1,000, or by imprisonment for not less than three months nor more than six months, or by both. (§ 20.04 ch 101 SLA 1962)

Cross references. — For contempt procedure, see Civ. R. 90.

Sec. 09.50.210. Order of abatement. (a) If the court finds and enters judgment that a nuisance exists, the court shall enter an order of abatement. The order of abatement must direct

(1) termination of the lease or rental agreement, if any, on the premises subject to the order of abatement, if the tenant who occupies under the lease or rental agreement has been given notice of the proceedings under AS 09.50.170 — 09.50.240;

(2) the removal from the building or place of the fixtures, furniture, and movable property used in the nuisance and their sale in the manner provided for the sale of chattels under execution;

(3) the closing of the building or place against its use for any purpose for a period of one year unless sooner released.

(b) A person who breaks and enters or uses a building, structure, or other place directed to be closed by an order entered under (a)(3) of this section is guilty of contempt and shall be punished for contempt as provided in AS 09.50.200. (§ 20.05 ch 101 SLA 1962; am § 11 ch 121 SLA 1994)

Effect of amendments. — The 1994 amendment, effective September 26, 1994, added the subsection and paragraph designations, added paragraph (a)(1), inserted "by an order entered under (a)(3) of this section" in subsection (b), and made minor stylistic changes.

Sec. 09.50.220. Proceeds of sale. (a) The proceeds of the sale of the contents shall be applied as follows:

(1) to the payment of fees and costs of the removal and sale;

(2) to payment of the allowances and costs of closing and keeping closed the buildings or places;

(3) to the payment of plaintiff's costs;

(4) to the payment of any balance remaining to the owner of the property sold.

(b) If the proceeds do not fully discharge all the costs, fees, and allowances, the premises may also be sold under execution issued upon the order of the court and the proceeds of the sale applied in like manner. However, the building or realty in which the nuisance is conducted or real estate on which it stands may not be subject to a lien, judgment, or costs unless the owner, or an agent or representative of the owner, has been duly served with process in the action and been given an opportunity to show good faith and to immediately abate the nuisance. (§ 20.06 ch 101 SLA 1962)

Sec. 09.50.230. Release of premises to owner. (a) The court may order premises abated under AS 09.50.210 delivered to the owner and cancel the order of abatement if the owner of the premises

(1) has not been guilty of a contempt in the proceedings;

(2) appears and pays all costs, fees, and allowances that are a lien on the premises; and

(3) files a bond with sureties approved by the court in an amount determined by the court to the effect that the owner will abate the nuisance that exists at the building or place and prevent the nuisance from being established within a period of one year thereafter.

(b) The lease of the property does not release it from a judgment, lien, penalty, or liability to which it may be subject by law.

(c) A cancellation of the order of abatement does not affect a termination of a lease or rental agreement made under AS 09.50.210(a)(1). (§ 20.07 ch 101 SLA 1962; am § 12 ch 121 SLA 1994)

Effect of amendments. — The 1994 amendment, effective September 26, 1994, in subsection (a), added the subsection and paragraph designations, added the introductory language preceding "if," and made related and other minor stylistic changes, in paragraph (a)(3), substituted "an amount" for "the full value of the property as" and deleted ", the court may order the premises to be delivered to the owner and cancel the order of abatement" at the end, added the subsection (b) designation, and added subsection (c).

Sec. 09.50.240. Fine for contempt as lien on premises. A fine imposed as punishment for contempt against the owner is a lien upon the premises to the extent of the interest of that person in the premises and is enforceable and collectible by execution issued by the order of the court. (§ 20.08 ch 101 SLA 1962)

Article 3. Claims Against State.

NOTES TO DECISIONS

Cited in University of Alaska v. Geistauts, 666 P.2d 426 (Alaska 1983).

Collateral references. — 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 87-89, 99-126.

81A C.J.S., States §§ 174 — 180, 194-202, 207-211.

Applicability of estoppel doctrine against state. 1 A.L.R.2d 114.

Contributory negligence as defense to action by state. 1 A.L.R.2d 927.

Defense of breach of contract as within consent by state to suit on contract. 1 A.L.R.2d 964.

Denial of recovery for damage to property by negligence of governmental agents on basis of immunity of state from suit without its consent. 2 A.L.R.2d 894.

Declaratory relief with respect to unemployment compensation as suit against state. 14 A.L.R.2d 835.

Liability for speed of fire purposely and lawfully kindled. 24 A.L.R.2d 291.

Recovery of interest on claim against governmental unit in absence of provision in contract or express statutory provision. 28 A.L.R.2d 928.

Immunity of state or governmental unit or agency from liability for damages in tort in operating hospital. 29 A.L.R.2d 203, 16 A.L.R.4th 858.

Tort liability for injury or damage resulting from insecticide and vermin eradication operations. 29 A.L.R.2d 1057.

Tort liability in connection with destruction of weeds. 30 A.L.R.2d 1210.

Governmental or proprietary nature of function. 40 A.L.R.2d 927.

Liability for injury to property inflicted by wild animal. 87 A.L.R.2d 288.

Maintainability of action where state owns an undivided interest in property. 89 A.L.R.2d 917.

Liability for vehicle accident occurring because of accumulation of water on streets. 91 A.L.R.2d 425.

Liability or indemnity insurance carried by governmental unit as affecting immunity from tort liability. 98 A.L.R.2d 1017.

Liability of state, or its agency or board, for costs in civil action to which it is a party. 22 A.L.R.3d 1319.

Liability of state for damages to successful plaintiff or relator in mandamus. 23 A.L.R.3d 903, 34 A.L.R.4th 487.

"Motor vehicle" or the like within statute waiving governmental immunity as to operation of such vehicle. 27 A.L.R.3d 915.

...ence removal operations as within the scope of governmental immunity from tort liability, 92 ALR2d 706.

Right of contractor with federal, state, or local public body to latter's immunity from tort liability, 9 ALR3d 182.

Attorney's mistake or neglect as excuse for failing to file timely notice of tort claim against state or local governmental unit, 85 ALR3d 930.

Sovereign immunity doctrine as precluding suit against sister state for tort committed within forum state, 81 ALR3d 1239.

State or municipal liability for invasion of privacy, 87 ALR3d 145.

Liability of state or municipality in tort action for damages arising out of sale of intoxicating liquor by state or municipally operated liquor store or establishment, 96 ALR3d 1261.

Governmental tort liability for injuries caused by negligently released individual, 6 ALR4th 1155.

Actual notice or knowledge by governmental body or officer of injury or accident resulting in injury as constituting required claim or notice of claim for injury, modern status, 7 ALR4th 1063.

Liability of urban redevelopment authority or other state or municipal agency or entity for injuries occurring in vacant or abandoned property owned by governmental entity, 7 ALR4th 1129.

Construction and application, under state law, of doctrine of "executive privilege", 10 ALR4th 388.

Liability, in motor vehicle related cases, of governmental entity for injury, death or property damage resulting from defect or obstruction in shoulder of street or highway, 19 ALR4th 832.

Estoppel of state or local government ten matters, 21 ALR4th 873.

Legislative immunity of state officials from federal civil suit for injunctive relief brought pursuant to 42 USCS § 1983, 57 ALR Fed. 804.

Sec. 09.50.250. Actionable claims against the state. A person or corporation having a contract, quasi-contract, or tort claim against the state may bring an action against the state. A person who may present the claim under AS 44.77 may not bring an action under this section except as set out in AS 44.77.040(c). A person who may bring an action under AS 46.30.520 — 46.30.695 may not bring an action under this section except as set out in AS 46.30.685. However, an action may not be brought under this section if the claim

(1) is an action for tort, and is based upon an act or omission of an employee of the state exercising due care, in the execution of a statute or regulation, whether or not the statute or regulation is valid, or is an action for tort, and based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused;

(2) is for damages caused by the imposition or establishment of a quarantine by the state;

(3) arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; or

(4) arises out of the use of an ignition interlock device certified under AS 44.05.020(c) (§ 26(d) ch 101 SLA 1962, am § 1 ch 30 SLA 1985, am § 5 ch 106 SLA 1986, am § 1 ch 57 SLA 1989, am § 1 ch 119 SLA 1992).

Cross references. — For presentation of claims against state, see AS 44.77.010; for state as party, see AS 44.80.010; for counterclaims against state, see Civ. R. 13(d).

Effect of amendments. — The 1992 amendment, effective September 20, 1992, deleted "in the superior court" from the end of the first sentence.

Opinions of attorney general. — By its waiver of immunity in this section, it must be concluded that the state may be sued for negligent torts which arise under the Jones Act. It is true that under the Alaska Workmen's Compensation Act, employers, including the state (AS 23.30.265), are excluded from admiralty liability. However, this exclusive liability provision cannot act as a limitation on suits against the state under the federal maritime law once the state has unqualifiedly waived its immunity for negligent torts. 1963 Op. Att'y Gen., No. 28.

Hence, all employees on the Alaska ferry system who meet the classification of seamen or members of the crew within the scope of the Jones Act have an exclusive federal remedy within the terms of the Jones Act to the exclusion of the Alaska Workmen's Compensation Act, except as to those injuries that occur in a situation of only local concern or fall within the "twilight zone" between local and federal jurisdiction. 1963 Op. Att'y Gen., No. 28.

By waiving its immunity under this section, the state stands in the position of a private party and cannot limit its tort liability by a general provision in the Workmen's Compensation Act. So much of AS 23.30.055 as limits the liability of employers in admiralty must be considered an invalid infringement on the federal jurisdiction. 1963 Op. Att'y Gen., No. 28.

If it is the desire of the state to limit its tort liability to the Workmen's Compensation Act, it may do so by legislative enactment of an exception to the waiver of sovereign immunity contained in this section. 1963 Op. Att'y Gen., No. 28.

NOTES TO DECISIONS

I. General Consideration.
II. Liability.
  A. Generally.
  B. Specific Examples.

I. GENERAL CONSIDERATION.

History of sovereign immunity doctrine. — See State v. Abbott, 498 P.2d 712 (Alaska 1972); State v. Zia, Inc., 558 P.2d 1282 (Alaska 1976).

The basic policy of the law should be that when there is negligence, the rule is liability, immunity is the exception. State v. Abbott, 498 P.2d 712 (Alaska 1972).

The reason for preserving sovereign immunity for certain acts of the state is the necessity for judicial abstention in certain policy making areas that have been committed to other branches of government. Carlson v. State, 688 P.2d 963 (Alaska 1918).

The general policy underlying tort immunity is to limit judicial reexamination of decisions properly entrusted to other branches of government; courts must not intrude into realms of policy exceeding their institutional competence. Industrial Indem. Co. v. State, 669 P.2d 561 (Alaska 1983).

This section applies only to claims against the state. It provides no immunity for public officials. Aspen Exploration Corp. v. Sheffield, 739 P.2d 150 (Alaska 1987).

Critical language of this section is identical to that of federal act. — The critical language in Alaska's Tort Claims Act, which establishes the discretionary function or duty exception of the State of Alaska's waiver of immunity, is identical to that contained in the federal Tort Claims Act. State v. Abbott, 498 P.2d 712 (Alaska 1972).

The federal analogue of this section is 28 U.S.C. § 2674. Adams v. State, 555 P.2d 235 (Alaska 1976).

This section is analogous to AS 09.65.070(d)(2). Urethane Specialties Inc. v. City of Valdez, 620 P.2d 683 (Alaska 1980).

This section is not of the jurisdictional nature. State v. Zia, Inc., 558 P.2d 1282 (Alaska 1976).

Right to sue state is conditional. — Under this section, which was promulgated by the legislature pursuant to Alaska Const., art. II, § 21, the right to

sue the state was made conditional upon compliance with certain provisions dealing with administrative remedies, i.e., AS 44.77. State v. Zia, Inc., 556 P.2d 1257 (Alaska 1976).

With respect to cases which fall within this section, that statute establishes an administrative procedure which can be characterized as a condition precedent. State v. Zia, Inc., 556 P.2d 1257 (Alaska 1976).

Actions first against affected state agency. — Actions against the state first should be considered by the affected administrative agency. State v. Zia, Inc., 556 P.2d 1257 (Alaska 1976).

Section and AS 09.50.280 construed together. — This section and AS 09.50.280, being in pari materia, are to be construed together. Stewart & Grindle, Inc. v. State, 524 P.2d 1242 (Alaska 1974).

When right to prejudgment interest against state afforded. — Since this section and AS 09.50.280 were passed together and amended together by the same legislative act, it is clear that AS 09.50.280 was intended to afford a right to prejudgment interest against the state only where this section established a substantive cause of action. Stewart & Grindle, Inc. v. State, 524 P.2d 1242 (Alaska 1974).

Actions against state delineated. — This section delineates the kinds of actions which may be brought against the State of Alaska. Lowe v. Commissioner of Educ., 263 P.2d 246 (Alaska 1953).

Causes of action authorized against state. — This section authorizes causes of action against the state sounding in tort, contract, or quasi-contract, exclusively. Stewart & Grindle, Inc. v. State, 524 P.2d 1242 (Alaska 1974).

When the state fires an employee for an unconstitutional reason, this amounts to unfair dealing as a matter of law and gives rise to a contract claim which can be brought under this section. State v. Haley, 687 P.2d 305 (Alaska 1984).

Section includes all civil claims. — This section and the other sections of this article were intended by the legislature to include all civil claims and should not be limited to only tort claims. Wright Truck & Tractor Serv., Inc. v. State, 199 P.2d 216 (Alaska 1965).

Separation of powers considerations. — There is no separation of powers problem in making review of a claim against the legislature by the executive Department of Administration a prerequisite to judicial review; no separation of powers problem is raised by the application of the claims procedure outlined in AS 44.77 and AS 09.50.250 — 09.50.300 to the legislative branch. State v. Dupere, 709 P.2d 493 (Alaska 1985), modified on other grounds, 721 P.2d 638 (Alaska 1986). See note under catchline "Applicability of claims procedure to legislative branch," analysis line II. B.

Waiver of immunity to contract claim actions. — By enacting this section, the legislature exercised its authority, pursuant to art. II, § 21, of the state constitution, to waive the state's immunity to suits asserting contract claims against it. State v. Haley, 687 P.2d 305 (Alaska 1984).

University of Alaska falls within scope of section. — The University of Alaska constitutes in function and character such an arm or instrumentality of the state as to bring it within the scope of those statutes which govern the conditional waiver of sovereign immunity in this state. University of Alaska v. National Aircraft Leasing, Ltd., 536 P.2d 121 (Alaska 1975).

The corporate status of the University of Alaska under the Alaska Constitution does not militate against the conclusion of the supreme court that the University falls within the ambit of the language of this section through AS 09.50.300 which governs suits against the State of Alaska. University of Alaska v. National Aircraft Leasing, Ltd., 536 P.2d 121 (Alaska 1975).

There is no municipal immunity in Alaska. State v. Jennings, 555 P.2d 248 (Alaska 1976).

A city does not enjoy even the limited protection afforded the state by this section. State v. Jennings, 555 P.2d 248 (Alaska 1976).

Degree of immunity unrelated to whether defendant bonded or insured. — The immunity reflected in paragraph (1) has never been held to be related to whether or not the defendant is bonded or insured. Integrated Resources Equity Corp. v. Fairbanks N. Star Borough, 799 P.2d 295 (Alaska 1990).

Human rights violations. — The general exceptions to state tort liability that the legislature established in paragraph (1) have no control over the specific consent to state liability under the Alaska human rights statute (AS 18.80). An action brought under the human rights statute is not subject to the same rules as one brought under this section. Johnson v.

State, Dep't of Fish & Game, 836 P.2d 896 (Alaska 1991).

Applied in Morrison v. State, 516 P.2d 402 (Alaska 1973); State, Dep't of Pub. Safety v. Brown, 794 P.2d 108 (Alaska 1990).

Quoted in Bodinson v. Department of Educ., 519 P.2d 790 (Alaska 1974); Moloso v. State, 644 P.2d 205 (Alaska 1982); City of Kotzebue v. McLean, 702 P.2d 1309 (Alaska 1985); State v. Law Offices of Coleman & Iacopelli, 718 P.2d 1 (Alaska 1986); Gwaltney v. State, 703 P.2d 488 (Alaska 1985).

Stated in Rapp v. State, 648 P.2d 110 (Alaska 1982); Hauman v. State, 768 P.2d 1097 (Alaska 1989).

Cited in Brown v. State, 526 P.2d 1368 (Alaska 1974); DeLong v. United States, 600 F. Supp. 331 (D. Alaska 1984); Vest v. Schafer, 757 P.2d 588 (Alaska 1988).

II. LIABILITY.

A. Generally.

This section places a number of limitations on the state's liability. State v. Abbott, 498 P.2d 712 (Alaska 1972).

No lesser standard of care than private individuals. — This section contains no indication that the legislature intended that the state should be held to a lesser standard of care than private individuals. State v. Abbott, 498 P.2d 712 (Alaska 1972); State v. I'Anson, 529 P.2d 188 (Alaska 1974).

To impose a lesser standard of care upon the state for highway maintenance would substantially diminish the risk spreading effects of this section and seriously undermine the sound policy considerations upon which it is based. State v. Abbott, 498 P.2d 712 (Alaska 1972).

Risk spreading principle adopted. — The Alaska legislature, in enacting this section, adopted the risk spreading principle. State v. Abbott, 498 P.2d 712 (Alaska 1972); State v. I'Anson, 529 P.2d 188 (Alaska 1974).

This section, in establishing a procedure for suits against the state in tort, represented the adoption in Alaska of the policy of risk spreading, the policy that society, rather than the injured individual, should bear the cost of the state's negligence. Adams v. State, 555 P.2d 235 (Alaska 1976).

When losses caused by the negligence of the state are charged against the public treasury they are in effect spread among all those who contribute financially to the support of the state and the resulting burden on each taxpayer is relatively slight. But when the entire burden falls on the injured party it may leave him destitute or grievously harmed. This would be unfair when the public as a whole benefits from the services performed by state employees. State v. Abbott, 498 P.2d 712 (Alaska 1972).

This section prohibits recovery for various intentional torts. State v. Abbott, 498 P.2d 712 (Alaska 1972).

Discretionary immunity doctrine. — See State v. Abbott, 498 P.2d 712 (Alaska 1972).

Discretionary function exception. — See State v. Abbott, 498 P.2d 712 (Alaska 1972).

Although there are no Alaska cases interpreting the discretionary function exception to the waiver of sovereign immunity, the critical statutory language is identical to that contained in the *Federal Tort Claims Act*, 28 U.S.C. § 2680(a), and there exists an abundance of relevant federal case law. State v. Abbott, 498 P.2d 712 (Alaska 1972).

The discretionary function exception applies, and immunity therefore attaches, only where there is room for policy judgment and decision. Japan Air Lines Co. v. State, 628 P.2d 934 (Alaska 1981).

While the negligence standard satisfies the strong public policy favoring compensation of individuals injured by the tortious conduct of the state, it is an extremely flexible standard, and consequently will not inhibit the vigorous and effective performance by the state of its duties in the way that a more rigid standard might. Moreover, when the negligence standard is applied in conjunction with the policy oriented interpretation of the discretionary function exception, the danger of excessive judicial interference with important decisions committed to the coordinate branches of government is avoided. State v. Abbott, 498 P.2d 712 (Alaska 1972).

Review of relevant federal and California state case law on the subject of the discretionary function exception. — See State v. I'Anson, 529 P.2d 188 (Alaska 1974).

The supreme court has declined to use a mechanical or semantic test in determining whether a particular function or duty is discretionary. Adams v. State, 555 P.2d 235 (Alaska 1976).

Court must weigh the policy considerations behind the labeling of a partic

ular function or duty as discretionary. Adams v. State, 555 P.2d 235 (Alaska 1976).

Planning-operational test. — The adoption of planning-operational test, within analytical framework which is sensitive to the policies underlying discretionary function exception of this section was reaffirmed in State v. I'Anson, 529 P.2d 188 (Alaska 1974).

Under the planning-operational test for applying the discretionary act exception in paragraph (1) of this section, decisions that rise to the level of planning or policy making are considered discretionary acts which do not give rise to tort liability, while decisions that are merely operational in nature are not considered to be discretionary acts and therefore are not immune from liability. Carlson v. State, 598 P.2d 969 (Alaska 1979); Johnson v. State, 636 P.2d 47 (Alaska 1981).

Decisions that rise to the level of planning or policy formulation will be considered discretionary acts which are immune from tort liability, whereas decisions that are merely operational in nature, thereby implementing policy decisions, will not be considered discretionary and therefore will not be shielded from liability. Japan Air Lines Co. v. State, 628 P.2d 934 (Alaska 1981).

The distinction between planning decisions and operational decisions does not depend merely on who made the decision. Rather the distinction is based on the type of decision that is being made, examined within an analytical framework which is sensitive to the policies underlying the discretionary function or duty exception. Carlson v. State, 598 P.2d 969 (Alaska 1979).

The proprietary-governmental distinction was abandoned by the supreme court with respect to suits involving the state or its agencies under this section through AS 09.50.300. University of Alaska v. National Aircraft Leasing, Ltd., 536 P.2d 121 (Alaska 1975).

Duty of reasonable care in performance. — Once discretion is exercised to undertake an activity, a duty of reasonable care attaches in its performance. State v. Abbott, 498 P.2d 712 (Alaska 1972).

Once the basic decision to maintain highways in a safe condition throughout the winter is reached, the state should not be given discretion to do so negligently. State v. Abbott, 498 P.2d 712 (Alaska 1972).

Once the state decided to seize a crab vessel for possession of undersized king crab, the state should not be given discretion to do so negligently. State v. Stanley, 506 P.2d 1284 (Alaska 1973).

Failure to exercise proper care does not rise to the level of governmental policy decisions to which the discretionary function immunity from suit applies. State v. Stanley, 506 P.2d 1284 (Alaska 1973).

The elements of a cause of action for negligence are: (1) A duty requiring the actor to conform to a certain standard of conduct, for the protection of others against unreasonable risks; (2) a failure on his part to conform to the standard required; (3) a reasonable close causal connection between the conduct and the resulting injury (proximate cause); (4) actual loss or damage resulting to the interests of another. State v. Abbott, 498 P.2d 712 (Alaska 1972).

"But for" test. — See State v. Abbott, 498 P.2d 712 (Alaska 1972).

"Substantial factor" test. — See State v. Abbott, 498 P.2d 712 (Alaska 1972).

Concurrent causation. — See State v. Abbott, 498 P.2d 712 (Alaska 1972).

Proof of exposure to unreasonable risk of harm. — In order for a plaintiff to show that the state exposed him to an unreasonable risk of harm, he would have to demonstrate that the likelihood and gravity of the harm threatened outweighed the utility of the state's conduct and the burden on the state for removing the danger. State v. Abbott, 498 P.2d 712 (Alaska 1972).

Officials entitled to immunity from libel claims. — The libel exception is not so limited that sovereign immunity exists only when libel is committed by high level government officials. McCutcheon v. State, 746 P.2d 461 (Alaska 1987).

Acting district attorney fell within the category of government officials entitled to common law immunity from defamation claims. McCutcheon v. State, 746 P.2d 461 (Alaska 1987).

Failure to aver the superior court's jurisdiction over the state was procedural and harmless in nature, since the complaint could be amended to include the citation of the jurisdictional statute. A.R.C. Indus., Inc. v. State, 551 P.2d 951 (Alaska 1976).

Suit not barred by false imprisonment exception. — Suit against the state, alleging that state employees were negligent in failing to properly inform a judge of the dismissal of a complaint against plaintiff and that jail personnel were negligent in failing to allow plaintiff to make a phone call to obtain bail when he was arrested based on the dismissed complaint, was not barred by the false imprisonment exception to Alaska's government claims statute, but instead should have been treated in the same manner as any other negligence case against the state since it was negligent record keeping, rather than false imprisonment, which caused plaintiff's injuries. Zerbe v. State, 578 P.2d 597 (Alaska 1978), rehearing denied, 583 P.2d 845 (Alaska 1978), overruled on other grounds, Stephens v. State, Dep't of Revenue, 746 P.2d 908 (Alaska 1987).

Dismissals of state employees did not bar finding of state liability. — In a tort action where dismissals of all of the individual state employee defendants, with one exception, were by the express consent of the plaintiff and thus did not involve an adjudication on the merits as to their negligence or performance of discretionary functions, dismissal did not bar a finding of liability on the part of the State. State v. Stanley, 506 P.2d 1284 (1973).

Damages. — See State v. Abbott, 498 P.2d 712 (Alaska 1972).

Attorney's fees. — See State v. Abbott, 498 P.2d 712 (Alaska 1972).

Misinterpretation of law. — Governmental immunity applies to situations in which a state official misinterprets the law. Earth Movers of Fairbanks, Inc. v. State, 691 P.2d 281 (Alaska 1984).

II. Specific Examples

Applicability of claims procedure to legislative branch. — AS 44.77 applies to actions for breach of contract against the Alaska Legislature, but the exhaustion of remedies requirement was waived with regard to a plaintiff who sought compensation for performing legislative consultation because AS 44.77 had not previously been construed to apply to non-executive branch claims, the plaintiff's one-year delay in filing the action was not unreasonable given the assumption that the six-year statute of limitations for contract actions was applicable, and the claimant had not ignored the administrative process entirely, but had requested payment from the Legislative Council and had sought reconsideration when that claim was denied. State v. Dupere, 709 P.2d 493 (Alaska 1985), modified on other grounds, 721 P.2d 638 (Alaska 1986).

Parolee supervision. — The state has a duty to supervise parolees carefully; this duty extends to anyone foreseeably endangered, and this section, the sovereign immunity statute, will not shield the state from the consequences of its breach of that duty. Division of Corr. v. Neakok, 721 P.2d 1121 (Alaska 1986).

Decisions regarding intersection located near school. — Decisions whether or not to build one or more overpasses in the area of an intersection located several hundred feet from a school, whether or not to designate the subject intersection area as a school zone, and whether or not to undertake any other safety measures at the intersection in question or at other areas of a road not located adjacent to the school, were governmental decisions which have rightly been characterized as planning level decisions, and thus within the ambit of the statutorily created discretionary function exception to the state's tort liability. Jennings v. State, 566 P.2d 1304 (Alaska 1977).

The decision whether to build a road or railroad crossing is a planning decision involving a basic policy decision entrusted to a coordinate branch of government. However, once the state has made the decision to construct a road and crossing, discretionary function immunity does not protect it from possible negligence liability in the operational carrying out of the basic policy planning decision to build. Johnson v. State, 636 P.2d 47 (Alaska 1981).

The state is not an insurer of the safety of motorists. State v. I'Anson, 529 P.2d 188 (Alaska 1974).

Maintenance of highways. — Title 19 provides that the Department of Highways is responsible for highway maintenance. But it fails to specify what standard shall be used to measure performance of that duty. State v. Abbott, 498 P.2d 712 (Alaska 1972).

The scope of the state's duty to maintain highways should be defined by ordinary negligence principles. State v. Abbott, 498 P.2d 712 (Alaska 1972); State v. I'Anson, 529 P.2d 188 (Alaska 1974).

Highway authorities have a duty to exercise reasonable care to keep the highway in a safe condition. State v. Abbott, 498 P.2d 712 (Alaska 1972); State v. I'Anson, 529 P.2d 188 (Alaska 1974).

The appropriate standard of care required of the State of Alaska and its

agents was to use reasonable care to keep the highway in a safe condition for the reasonable prudent traveler. State v. I'Anson, 529 P.2d 188 (Alaska 1974).

Duty of care the state owes to persons using its highways in general. — See State v. Abbott, 498 P.2d 712 (Alaska 1972).

The duty to maintain a highway safe for travel includes not only a duty to maintain the surface of the highway in a condition reasonably safe for travel, but also a duty of warning the travelling public of any other condition which endangers travel, whether caused by a force of nature, such as snow or ice, or by the act of third persons, such as a ditch dug in the sidewalk or roadway or an obstruction placed upon it. State v. Abbott, 498 P.2d 712 (Alaska 1972).

Where lower court found the state and its employees negligent in failing to exercise reasonable care to maintain the curve where the accident occurred, the supreme court concluded that the trial court was correct in holding that such maintenance was not within the discretionary function exception. State v. Abbott, 498 P.2d 712 (Alaska 1972).

Installation of guardrail at highway site. — The question of whether or not to install a guardrail at a highway site is one of policy, and an affirmative decision to go ahead with the installation has to be made at the discretionary level in order to advance the chain of events to the operational stage. Industrial Indem. Co. v. State, 669 P.2d 561 (Alaska 1983).

Liability of state for negligent winter highway maintenance. — See State v. Abbott, 498 P.2d 712 (Alaska 1972).

In some circumstances the state will be held liable for dangerous highway conditions caused by ice and snow accumulation. State v. Abbott, 498 P.2d 712 (Alaska 1972).

To impose liability on the state for its negligent failure to maintain Alaska highways through the winter would not place an "impossible burden" on the state. State v. Abbott, 498 P.2d 712 (Alaska 1972).

In making a determination of negligence by the state in maintaining highways, all of the following factors would be relevant: Whether the state had notice of the dangerous condition, the length of time the ice and snow had been on the highway, the availability of men and equipment, and the amount of traffic on the highway. State v. Abbott, 498 P.2d 712 (Alaska 1972).

Marking and striping a portion of a highway do not involve broad basic policy decisions which come within the "planning" category of decisions which are expressly entrusted to a coordinate branch of government. State v. I'Anson, 529 P.2d 188 (Alaska 1974).

No eroding of the separation of powers doctrine will result from a ruling that the functions of marking and striping a highway are not within the ambit of the discretionary function exception of Alaska's Tort Claims Act. State v. I'Anson, 529 P.2d 188 (Alaska 1974).

Approving reconstruction plans for road and railroad crossing. — Design decision made by the state in approving reconstruction plans of a road and railroad crossing were operational decisions which merely implemented the basic policy formulation decision to build an overlapping road and crossing at that location. Johnson v. State, 636 P.2d 47 (Alaska 1981).

Temporary reduction of speed limit by trooper. — Where a state trooper temporarily reduced speed limits in response to road hazards and subsequently ticketed a truck driver for exceeding the reduced limit, even if the trooper exceeded his authority, his mistake fit within the discretionary function exception and both he and the state were immune from liability. Earth Movers of Fairbanks, Inc. v. State, 691 P.2d 281 (Alaska 1984).

The design of an airplane taxiway is not within the discretionary function exception, and therefore the state may be held liable for negligence in the design of such a taxiway. Japan Air Lines Co. v. State, 628 P.2d 934 (Alaska 1981).

Negligent designs. — The state may be held liable for injuries which result from negligent designs. Japan Air Lines Co. v. State, 628 P.2d 934 (Alaska 1981).

Traffic signs. — The decision whether or not to provide a traffic warning sign is operational and hence not immune. Johnson v. State, 636 P.2d 47 (Alaska 1981).

Installation of flashing lights rather than traffic signal. — Decision by Department of Transportation to install flashing red and yellow lights in lieu of a sequential traffic signal constituted a planning level decision entitling the state to immunity from liability based on that decision. Wainscott v. State, 642 P.2d 1355 (Alaska 1982).

Negligent performance of inspection. — Although the decision to inspect a site is a discretionary act, the negligent performance of that inspection is a ministerial function and thus not immune. Wallace v. State, 557 P.2d 1120 (Alaska 1976).

The state is liable for a failure to enforce safety regulations once it has undertaken an inspection and has discovered safety violations in the course of that investigation. Wallace v. State, 557 P.2d 1120 (Alaska 1976).

For case holding negligent performance of fire inspection of hotel operational or ministerial act, and not immune, see Adams v. State, 555 P.2d 235 (Alaska 1976).

Operation and maintenance of seaplane dock. — A decision concerning the manner in which a seaplane dock should be operated and maintained is clearly an operational decision; as such, it does not fall within the discretionary function exception to government tort liability. Plancich v. State, 693 P.2d 855 (Alaska 1985).

A city and the state were not immune from liability under AS 09.65.070(d)(2) and this section in an action alleging negligent breach of duty to keep a seaplane dock available to members of the public who wished to dock seaplanes. Plancich v. State, 693 P.2d 855 (Alaska 1985).

Negligent failure to institute dust control procedures. — The state was immune from tort liability, under the discretionary function immunity exception to the Tort Claims Act, in an action based on negligent failure to institute dust control procedures on the Dalton Highway. Freeman v. State, 705 P.2d 918 (Alaska 1985).

Seizure of crab vessel for possession of undersized king crab. — See State v. Stanley, 506 P.2d 1284 (Alaska 1973).

An action to enjoin a state officer from enforcing a statute or regulation which is alleged to be unconstitutional is not an action against the state for the purpose of sovereign immunity. Etheredge v. Bradley, 480 P.2d 414 (Alaska 1971).

State regulation of hunting. — The discretionary function exception of subsection (1) made the state immune from tort claim for compensatory damages based on the state's failure to adopt subsistence brown bear hunting regulations. Morry v. State, Sup. Ct. Op. No. 4078 (File No. S-4688), ___ P.2d ___ (1994).

Personal injuries inflicted by bear. — The State of Alaska is not immune from liability for personal injuries inflicted by a bear, when the bear is attracted to the site of the attack by garbage that had accumulated on State-owned property. Carlson v. State, 598 P.2d 969 (Alaska 1979).

Personal injury of state employee on state ferry. — The express entry of Alaska into the common carriage of passengers on navigable United States and international waters, its express submission to coast guard regulations and jurisdiction, its consent to suit for personal injury (regardless of how limited), taken together, evidenced waiver of 11th amendment immunity for a suit in federal court for the recovery of personal injuries suffered by a state employee on a state ferry, based on unseaworthiness. Cole v. State, DOT & Pub. Facilities, 621 F. Supp. 3 (D. Alaska 1984).

Firing state employee for unconstitutional reason. — When the state fires an employee for an unconstitutional reason, this amounts to unfair dealing as a matter of law and gives rise to a contract claim which can be brought under this section. State v. Haley, 687 P.2d 305 (Alaska 1984).

Negligent prosecution of civil action. — Plaintiff's claim that this statute creates an irrational distinction, in that it bars suits against the state for malicious prosecution while allowing suits for negligent prosecution, fails, since Alaska declines to recognize the tort of negligent prosecution of a civil action. Stephens v. State, Dep't of Revenue, 746 P.2d 908 (Alaska 1987).

Constructive discharge and intentional infliction of emotional distress upheld. — See Cameron v. Beard, 864 P.2d 538 (Alaska 1993).

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS

OIL & GAS, CHAIRMAN
LABOR & COMMERCE, VICE CHAIRMAN
ADMINISTRATIVE REGULATION REVIEW, VICE CHAIRMAN
HEALTH, EDUCATION & SOCIAL SERVICES, MEMBER
ECONOMIC DEVELOPMENT, MEMBER

INTERIM
716 WEST 4TH AVENUE, SUITE 640
ANCHORAGE, AK 99501
PHONE: (907) 258-8191
FAX: (907) 258-2916

SESSION
STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4668
FAX: (907) 465-2040

Representative Norman Rokeberg

SPONSOR STATEMENT

HB- 446 "An Act allowing home rule municipalities to bring actions for certain injunctive relief relating to nuisances."

HB 446 adds municipalities to the list of entities that are allowed to enjoin nuisances within their jurisdiction when real property is being used for certain illegal activities such as drugs, gambling, prostitution or other similar activities. The Municipality of Anchorage has requested this authority in order to prevent and suppress nuisances and provide a mechanism for civil abatement of the premises. This procedure may be the only way in which to make a dent in those areas of crime and also get a landlord's attention after repeated notices from the municipality.

Current law requires the Attorney General's office to enjoin property where these types of activities are taking place. However, the AG has either been unable because of lack of funding or unwilling to enforce this statute.

The existing statute enables a citizen to bring a civil action. However, the financial resources and time commitment prohibit all but a few citizens from taking such action.

According to the Municipality of Anchorage they lack the power to act on nuisance claims independent of the State of Alaska. In Anchorage the Municipal Attorney would be able to pursue actions on a number of situations right now.

This bill will allow Home Rules Municipalities to close down crack houses and prevent other objectionable uses. I urge your support of this important tool for local nuisance enforcement.

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE: (907) 465-4322
FAX: (907) 465-4362

February 20, 1996

The Honorable Norm Rokeberg
Alaska State Legislature
Capitol Building #110
Juneau, AK 99801

Dear Representative Rokeberg:

I am writing to express my support for passage of your proposed legislation, HB 446, which allows a home rule municipality to seek injunctive relief against nuisances within the municipality.

I have also enclosed a letter from the Attorney General to the Anchorage Municipal Attorney's office regarding this subject. The Department of Law suggests in the letter that legislation such as HB446 would be one of two options they recommend to address the problem.

Recognizing that state government does not have the resources to address this problem currently, DPS also supports empowering local governments with the authority to solve local problems. HB 446 appears to be a logical step in that direction.

Sincerely,

Del Smith
Deputy Commissioner

Enclosure

ANCHORAGE POLICE DEPARTMENT

4501 South Bragaw Street • Anchorage, Alaska 99507-1599
Telephone (907) 786-8500

Rick Mystrom
Major

Service since 1921

February 5, 1996

Representative Norman Rokeberg
Alaska State Legislature
State Capitol (MS3100)
Juneau, Alaska 99801-1182

Re: House Bill 446—Civil Abatement

Dear Representative Rokeberg:

The Anchorage Police Department fully supports passage of House Bill 446, which would allow municipalities to present cases for abatement to civil court. The State of Alaska has neither the funds nor the personnel to adequately bring these actions. Therefore, we would recommend approval for enforcement on a local level.

Sincerely,

Duane S. Udland
Deputy Chief of Police

Anchorage · Stand tall North
Chamber of Commerce

Anchorage Chamber of Commerce
Criminal Justice System Reform
Resolution 95/96-5

WHEREAS the public is unsafe due to the Catch and Release of drug offenders who continue to operate after arrest, and

WHEREAS Civil Abatement is a useful tool in preventing illegal activities and is available only to the State and not local municipalities; and

WHEREAS juvenile offenders are becoming more dangerous and are exempt from public censure because of confidentiality laws, and

WHEREAS the sealing of the records of juvenile offenders obscures the fact after their 18th birthday that they have a criminal history; and

WHEREAS the State has sole jurisdiction over juvenile crime and municipalities are barred from addressing juvenile crime, and

WHEREAS the "best interest of the juvenile" standard conflicts with society's expectation of accountability to and protection of the public and

WHEREAS the Municipality of Anchorage has assumed costs of criminal justice services in excess of $5,535,00 those costs normally reserved to the state, and yet is burdened with inadequate numbers of correctional facilities and magistrates;

NOW THEREFORE BE IT RESOLVED that the Anchorage Chamber of Commerce does hereby support the Criminal Justice Proposals brought forward by the Municipality of Anchorage that propose more stringent conditions for bail for repeat drug offenders, allow municipalities to utilize Civil Abatement procedures, revise the confidentiality laws concerning juvenile offenders, give municipalities jurisdiction over less serious juvenile crimes, and provide for at least equal consideration of the best interest of the Public and the victims in bail and sentencing procedures for juveniles; and

BE IT FURTHER RESOLVED that the Anchorage Chamber of Commerce supports the Municipality of Anchorage's initiative to call upon the state to recognize the importance of increasing the number of correctional facilities and magistrates serving Anchorage by raising their priority within the state budget; and

BE IT FURTHER RESOLVED that the Anchorage Chamber of Commerce urges all of its members to actively support these proposals by encouraging their Senators and Representatives to support these measures.

Approved December 15, 1995

Sue Lunford, Chair

Carol Heyman, President

cc: LARRY
MARY
TIM

441 West 5th Avenue, Suite 300, Anchorage, Alaska 99501-2349 (907) 272-2401 FAX (907) 272-4117
Founded 1915

MUNICIPALITY OF ANCHORAGE

MEMORANDUM

DATE: February 5, 1996

TO: Rep. Norm Rokeberg

FROM: Tim Rogers, Legislative Program Coordinator

SUBJECT: H. B. 446

AS 09.50.180 grants the State of Alaska attorney general the ability to perpetually enjoin the owner, lessee, or agent of a building which is being used for certain illegal activities such as prostitution, gambling, use of controlled substances, etc.

There are numerous cases within the Municipality of Anchorage in which this statute could be used to stop illegal activity. Several of these sites are often the scenes of violence and there is concern for the safety of the neighborhoods. The State attorney general's office has been unable to undertake any cases on behalf of the Municipality.

The existing statute also enables a citizen to bring civil action. However, the financial resources and time commitment prohibit all but a few citizens from taking such action.

The Municipality of Anchorage would like AS 09.50.180 amended to allow it to pursue these actions. This would enable the Municipality to use this important enforcement tool while relieving its citizens and/or the State of the associated burdens.

If additional information is needed, please advise. Thank you for your assistance.

OFFICE OF THE CITY ATTORNEY
CITY OF KETCHIKAN, ALASKA

Steven H. Schweppe
City Attorney
334 FRONT STREET
KETCHIKAN, ALASKA 99901
(907) 225-3111, EXT. 327
Facsimile (907) 247-3111

RECEIVED
FEB 6 1996
Ans'd.....

February 2, 1996

Senator Robin Taylor
Mailstop 3100
Juneau, Alaska 99801-1182

Representative William Williams
Mailstop 3100
Juneau, Alaska 99801-1182

Re: House Bill No. 446

Dear Sirs:

We have received a copy of House Bill No. 446 which is entitled: "An Act requiring home rule municipalities to bring actions for certain injunctive relief relating to nuisances." City Manager Karl Amylon and I have reviewed this proposed legislation and desire to inform you of our concern and opposition to it. As we understand it, the bill is designed to require home rule municipalities to pursue nuisances actions against persons maintaining houses of prostitution and places where illegal alcohol, gambling or controlled substances are provided. We do not understand why this mandate is applied only to home rule municipalities. If the problem is significant enough for the State to mandate municipal action then it is important enough to impose the mandate on all municipalities.

While no one opposes actions to enjoin these illegal activities, the proposed legislation does not significantly increase efforts to stop these activities. Rather, it simply shifts the burden of prosecuting nuisance actions from the State to the municipalities. It is an unfunded mandate similar to those imposed by the federal government on the states. Cities have the same difficulties as the State has in dealing with unfunded mandates. By mandating that home rule municipalities pursue such nuisance actions, the State is requiring home rule municipalities to place these litigation expenses at the top of their priorities.

In Ketchikan prostitution, illegal alcohol, gambling and controlled substances

offenses are prosecuted by the State. It is not an efficient use of resources to divide efforts to end these activities. Since the State already has the evidence of the crime it is in the best position to also prosecute the related nuisance action. Future developments concerning double jeopardy and forfeiture actions may require that the nuisance action be brought as part of the State's criminal case.

Since statehood, Alaska has placed a high value on home rule for municipalities. Unlike other states, home rule in Alaska is still a meaningful and important concept. Home rule gives authority and responsibility to the government which is closest and most responsible to the people. W are concerned that legislation such as House Bill No. 446 subverts this important principle. Over time effective home rule can be lost through repeated legislative mandates, all, or many, of which serve other useful public purposes.

House Bill No. 446 can be amended to serve a useful purpose while not undermining home rule. Instead of providing that home rule municipalities shall prosecute such actions, the bill could provide that home rule municipalities may bring such actions. This would clarify the ability of municipalities to pursue such actions while allowing local governments to prioritize them with other local needs. With such a change the bill could be expanded to include all municipalities regardless of their home rule status. If the State's concern is cost, the same discretionary authority could be given to the Attorney General.

We do not know the circumstances which gave rise to House Bill No. 446. Perhaps a legislator's constituents have been unable to get the State or a municipality to pursue such nuisances. If so, we suggest that they resolve this problem through the usual petitions to the city council and/or through municipal elections. Either of these alternatives can be as effective or more effective than the proposed legislation.

If you have any comments, questions, or additional information concerning this House Bill please feel free to contact me.

Yours very truly,

Steven H. Schweppe
City Attorney

cc: Karl R. Amylon

Municipality of Anchorage

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

Rick Mystrom, Mayor

OFFICE OF THE MUNICIPAL ATTORNEY

February 9, 1996

VIA FACSIMILE 465-2040
ORIGINAL SENT BY MAIL

Representative Norman Rokeberg
House of Representatives
Mail Stop 3101, Room 110
State Capitol
Juneau, AK 99801-1182

Re: House Bill No. 446

Dear Representative Rokeberg:

Thank you for sending a copy of Steve Schweppe's letter dated February 2, 1996. I appreciate Mr. Schweppe's concern that HB 446 may be interpreted to require a home rule municipality to take action when a public nuisance exists. Unlike the City of Ketchikan, these offenses in the Municipality of Anchorage are not prosecuted by the state. Under the current statute, the Municipality does not have the authority to pursue nuisance actions against persons maintaining houses of prostitution and places where illegal alcohol, gambling, or controlled substances are provided. The Municipality wants to have the ability to pursue these actions if it desires. The Municipality does not oppose an amendment to HB 446 which provides that home rule municipalities may bring such actions as opposed to current language which states a home rule municipality shall bring such actions. This amendment would provide a home rule municipality with the discretion to decide whether to pursue the abatement of these public nuisances. I have spoken with Mr. Schweppe. He does not oppose HB 446 with that amendment. If you have any questions, please feel free to contact me.

Sincerely,

Leslie K. Schumacher

Leslie K. Schumacher
Assistant Municipal Attorney

cc: Steven Schweppe
Senator Robin Taylor
Representative William Williams

HB

459

FISCAL NOTE

No. 1
Bill Version: CSHB 459(JUD)
(H) Publish Date: 2/12/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date:
Title: Trusts
Dept. Affected: Alaska Court System
BRU: Trial Courts
Component:
Sponsor: Representative Vezey
Requestor: House Judiciary
COMPONENT SERIAL NO. 758

Expenditures/Revenues (Thousands of Dollars)

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

Fund Source (Thousands of Dollars)

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

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

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel
Phone: 264-8228
Agency: Alaska Court System
Date: 02/09/96

Approved by: Arthur H. Snowden, II, Administrative Director
Date: 02/09/96
Agency: Alaska Court System

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

Rev 1/96

COMMITTEE COPY

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/23/96 FURTHER:

DATE TURNED INTO OFFICE: 3/27/96

The Judiciary Committee considered CS FOR HOUSE BILL NO. 459(JUD) am

Relating to the jurisdiction governing a trust, to challenges to trusts or property transfers in trust, to the validity of trust interests, and to transfers of certain trust interests.

and recommends:

[ ] be replaced with ____ CS ____________ (______)

[✓] adopt previous ____ CS ~~HB 459 (Title)~~

[ ] attached amendment(s)

[ ] adopt Letter of Intent by ____________ Committee

[ ] further referral to the ____________ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[✓] same title
[ ] technical title
[ ] new: SCR* ____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
[illegible]	✓	[illegible]	X		
[illegible]	✓				
CHAIR: [illegible]	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
AK Court System	2/6/96	—	

[ ] APPROPRIATION -- no fiscal note

*Include fiscal notes accompanying Governor's bill

Alaska State Legislature

House of Representatives

Official Business

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

House Majority Leader

SPONSOR STATEMENT

Alaska is in the unique position of having neither a state income tax nor a state sales tax. This fact has made Alaska a very favorable venue for managers of large investment portfolios, administrators of trusts and other investors who want the security and protection of the United States Government and the American banking system for their investments.

To attract these investments, certain changes have been suggested to the statutes governing trusts in Alaska. These changes when enacted, will open the door to Alaska management of billions of dollars that are now fleeing to offshore jurisdictions. According to the latest figures reported by Congress' Joint Committee on Taxation, American families transferred over $460 billion off-shore last year alone.

It is becoming increasingly obvious to policy-makers that this out-flow of U.S. capital comes at a steep cost. U.S. citizens who transfer assets in trust off-shore do not gain any tax advantages -- indeed unless structured carefully, there can be extortionate tax costs. Thus, there is no tax loss to U.S. jurisdictions. But the out-flow results in much more. It reduces the capital base available for other investment in the U.S., it increases the costs of capital and it reduces the increased banking and legal work in the U.S. associated with creating and administering Family Trusts. And there is no indication that Americans of good intention will stop seeking to use this very traditional method of preserving their family's wealth and protecting it from adversity. Currently, only one American state -- Missouri -- has enacted a statute to offset the tremendous capital out-flow, but it suffers from defects and ambiguities that make many practitioners uncomfortable recommending it as a viable option. Therefore, it could be a great asset to Alaska, and the U.S. generally, to enact legislation that would make it possible for Americans to create Family Trusts in the U.S.

Passage of HB-459 will be the key to opening this great opportunity for Alaska.

Alaska State Legislature

Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT

THE FAMILY TRUST ACT

Proposed Amendments to Titles 13 and 34 of the Alaska Statutes

I. Purpose of the Bill

Among the many traditional reasons for establishing trusts, one is the preservation of assets for one's family. This very ancient and common form of "asset protection" is not usually undertaken by one who is or who is about to become insolvent. If so, traditional rules will protect creditors who are harmed by the creation of the trust. Quite the contrary, trusts such as these are more typically created by individuals who are seeking to shelter a "nest egg" from the attendant risks of modern economic life and provide a source of support for the future. Such a trust is usually irrevocable and gives the trustee full discretion to accumulate income or to "sprinkle" income and principal among a class of beneficiaries that can include the grantor (a "Family Trust"). The key element for Family Trusts is that no person, not even a family member, can invade the trust.

However, under the laws of many states a Family Trust is not an effective shield against improvidence. This is so because of relatively modern innovations in trust law. For example, traditionally a Family Trust would be safe from the claims of the grantor's creditors. Under the laws of many states today,

however, it is possible for the creditors of the grantor (and in some cases, even creditors of the beneficiaries) to reach the assets of a Family Trust even though neither the grantor nor any beneficiary could do so. This result is often predicated on the public policy that a person should not be able to put assets beyond the reach of his creditors and yet retain their use. But in practice, the rule operates contrariwise. It actually makes it possible for the grantor to do indirectly what he otherwise cannot do directly. By racking up debts that he cannot repay, for example, the grantor is indirectly able to withdraw assets from the trust, to the detriment of the family. In the typical Family Trust, however, the grantor would not be able to withdraw the trust assets unilaterally.

It is clear that the rule in most jurisdictions makes sense when a trust is in fraud of creditors, a sham or created solely for the benefit of the grantor with the understanding that the grantor alone would continue to benefit from a trust. In those cases, the rule operates to enforce the public policy mentioned above. However, in respect to a traditional Family Trust, the rule operates a hardship on families and makes perfectly respectable--and many times important--family planning impossible.

In the face of this problem, and testament to their bona fides in creating Family Trusts, many American families have turned to off-shore jurisdictions such as the Cook Islands, Cayman Islands, Jersey, Bermuda and many others for their trust needs. These jurisdictions have enacted statutes that clarify the law and make it possible to create a Family Trust without the risk that the grantor's creditors will attach trust assets, unless the transfer in trust was in fraud of the transferor's creditors. According to the latest figures reported by Congress' Joint Committee on Taxation, American families transferred over $460 billion off-shore last year alone.

It is becoming increasingly obvious to policy-makers that this out-flow of U.S. capital comes at a steep cost. U.S. citizens who transfer assets in trust off-shore do not gain any tax advantages -- indeed unless structured carefully, there can be extortionate tax costs. Thus, there is no tax loss to U.S. jurisdictions. But the out-flow results in much more. It reduces the capital base available for other investment in the U.S., it increases the costs of capital and it reduces the increased banking and legal work in the U.S. associated with creating and administering Family Trusts. And there is no indication that Americans of good intention will stop seeking to use this very traditional method of preserving their family's wealth and protecting it from adversity. Currently, only one American state -- Missouri -- has enacted a statute to offset the tremendous capital out-flow, but it suffers from defects and ambiguities that make many practitioners uncomfortable recommending it as a viable option. Therefore, it could be a great asset to Alaska, and the U.S. generally, to enact legislation that would make it possible for Americans to create Family Trusts in the U.S.. This could be accomplished with little substantive change in the substantive law of trusts in Alaska and without working to the detriment of creditors. The proposed Bill therefore clarifies current law in Alaska by saying that irrevocable transfers to a fully discretionary trust -- even when one of the potential beneficiaries is the transferor -- are not liable to the claims of creditors unless the transfer is otherwise in fraud of creditors under Alaska law.

LEGAL SERVICES

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

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

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

MEMORANDUM December 26, 1995

SUBJECT: Sectional Summary of bill draft relating to trusts (Work Order No. 9-LS1335\F)

TO: Representative Al Vezey
Attn: Joe Ryan

FROM: Theresa Bannister
Legislative Counsel

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

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

Section 1. Modifies the statute that gives the superior court exclusive jurisdiction of certain trust proceedings. Includes trusts described in sec. 2 of the bill and coordinates the provisions of the statute with sec. 2. Makes a technical change by deleting "but are not limited to."

Section 2. Subsection (c) states that a provision in a trust that this state's laws govern the trust and that the trust is subject to this state's jurisdiction is valid, effective, and conclusive if either of two listed conditions is met. These conditions relate to the location of trust assets and the relationship of the trust asset manager or trustee to this state.

Subsection (d) states that a trust's validity, construction, and administration are determined by this state's laws, if the trust has a state jurisdiction provision. Identifies some of the matters covered by this provision.

Section 3. States that this state's superior court will not, if a party objects, handle a trust's proceedings under AS 13.36.035 if the trust is registered or has its principal place of administration in another state, unless certain conditions are met. Among these conditions is if the trust has a state jurisdiction provision and either (1) trust assets are deposited in this state or managed by a qualified person, or (2) the trustee is a qualified person.

Section 4. AS 13.36.310 states that, except as provided in AS 34.40.110, a trust, or a property transfer in trust, that is governed by this state's laws isn't void, voidable, liable to

be set aside, defective, or questionable as to the settlor's capacity, on the grounds described in the section.

AS 13.36.390 defines "qualified person," "settlor," and "state jurisdiction provision" for AS 13.36.

Section 5. States that a nonvested property interest is invalid unless, among the other listed reasons, the interest is in a trust and income or principal of the trust is subject to discretionary distribution by the trustee to a person living when the trust is created.

Section 6. Conforms this section to the amendment made in sec. 5 of the bill.

Section 7. Coordinates this section with the new provisions in sec. 8 of the bill.

Section 8. Subsection (a) allows a person who transfers property in trust and in writing to provide that a trust beneficiary's interest may not be transferred before payment or delivery of the interest to the beneficiary.

Subsection (b) states provides that the above transfer restriction prevents a creditor or other person from using the beneficiary's trust interest to satisfy a claim unless certain listed conditions are met.

Subsection (c) limits the part of a trust that may be used to satisfy a claim otherwise allowed under (b).

Subsection (d) defines "settlor" for the section.

Section 9. Indicates that the bill's provisions only apply to trusts created on or after the effective date of bill.

If I may be of further assistance, please advise.

TLB:glc
95-474.glc

Alaska State Legislature

HISTORICAL BACKGROUND

Official Business

State Capitol
Juneau, AK 99801-1182

The practice of placing property in trust in order to preserve it for the use of one's family is as old as the concept of the trust itself. In the 15th century, the trust developed under the common law of England as a means, among other things, to protect the property of the landed gentry as they did battle in Europe, thus preserving their property for family members. The trust assured the gentleman that rival nobles, the Church or others, could not rob his family of their fortune while their protector was absent. Over the centuries, the use of trusts has varied. Sometimes a trust was used to protect a family from the claims of the Church, at others to protect a family from the claims of the Crown. In more modern times, trusts have been used to protect the assets of Jews from seizure by the Nazis. Over its long history, the trust has consistently been a means of securing a family's wealth to its "natural" objects with minimal risks from the claims of others. In its origin, a trust was very much a Family Trust.

As old as the Family Trust is, so too is the notion that an irrevocable fully discretionary trust created solely for the benefit of the Settlor is void. The rule is grounded in the very good reason that such a "self-settled" trust is particularly prone to abuse and, more important, it violates a common sense of fairness. An individual should not be able to put his assets beyond the reach of his rightful creditors when the assets nevertheless remain available for his use.

For example, statutes dating back to the 16th Century in England have rendered void a trust created by a person primarily for his benefit. American jurisdictions have continued this type of rule in effect. For example, in New York, the Estates, Powers and Trusts Law provides:

> A disposition in trust for the use of the creator is void as against the existing or subsequent creditors of the creator.

And for well near 100 years, these statutes have been interpreted to mean that a "self-settled" trust, whether discretionary or not, is void only if the Settlor is the sole beneficiary. For example, cases in New York (until very recently) have consistently held that an irrevocable discretionary trust created for the benefit of a class that includes the grantor is not subject to the claims of the grantor's creditors.

In recent times, however, many American jurisdictions have expanded the basic "self-settled" trust rule and thus made it very difficult for a person to create a Family trust. In large part, this development has been the result of abusive (sometimes real, sometimes perceived) transactions. But in reacting to these abuses, state legislatures and courts have gone too far and effectively restricted the traditions and reasonable uses of Family Trusts.

In particular, state courts have begun to construe the "self-settled" trust rule to mean that an irrevocable trust which includes the Settlor as a permissible beneficiary, even if the Settlor has retained no powers over the trust or the trustee, will be void as against the Settlor's creditors. In a recent New York case, for example, the court found that such a trust (even though there was no evidence to suggest that the trustee exercised his discretion in favor of the Settlor alone) was void against the Settlor's creditors on public policy grounds because it put the Settlor's assets beyond the reach of her creditors while remaining available for her use. Vanderbilt.

Despite the intuitive appeal of this argument, the extension of the "self-settled" trust rule is unwarranted. Consider, for instance, that an irrevocable discretionary trust, by its nature, puts assets beyond the reach of a beneficiary's creditors. Indeed, that's the difference between an outright gift and a gift in trust.

Where a trust includes the Settlor as a permissible beneficiary and where there is nothing to suggest that the trust is primarily for the benefit of the Settlor or is a sham, there is no policy reason to alter the basic rule. Under these circumstances, the Settlor has no assurance that he will receive any of the assets of the trust. They are beyond his reach, unless the trustee determines to make a distribution. It does not offend notions of fairness, therefore, that the assets also be beyond the reach of the Settlor's creditors.

Indeed, fairness would require that the Settlor's creditors in such a case not be able to reach the assets of the trust. For example, if a family wishes to safeguard its wealth against disaster and therefore, the matriarch irrevocably creates a fully discretionary trust for the benefit of every member of the family, naming a bank as trustee, the family rightly would assume that no one of them (not even the Settlor) would be able to reach the assets of the trust. By allowing the Settlor's creditors to reach the assets in a case such as this, state courts make it possible for the Settlor to do indirectly what he is prohibited from doing directly. It makes it possible for the Settlor to amass debt that he cannot repay, knowing that the trust assets will be available to satisfy his creditors' claims. This is the equivalent of allowing the Settlor to make mandatory withdrawals from the trust.

Some jurisdictions have resisted the temptation of overreaching. In places such as Cayman, Bermuda and other off-shore jurisdictions, for example, statutes have been passed which adopt a rule that an irrevocable discretionary trust for the benefit of a class that includes the Settlor, is immune from the claims of the Settlor (or his creditors) unless the transfer was in fraud of his creditors, under local law. And in Missouri, the legislature recently enacted a similar statute. It provides:

> A provision restraining the voluntary or involuntary transfer of beneficial interests in a trust will prevent the Settlor's creditors from satisfying claims from the trust assets except:
>
> > (1) Where the conveyance of assets to the trust was intended to hinder, delay or defraud creditors or purchasers, pursuant to section 428.020, RSMo; or
> >
> > (2) To the extent of the Settlor's beneficial interest in the trust assets, if at the time the trust was established or amended:
> >
> > > (a) The Settlor was the sole beneficiary of either the income or principal of the trust or retained the power to revoke or amend the trust; or
> > >
> > > (b) The Settlor was one of a class of beneficiaries or retained a right to receive a specific portion of the income or principal of the trust that was determinable solely from the provisions of the trust instrument.

Thus, as in the off-shore jurisdictions, it would appear that an irrevocable discretionary trust established in Missouri for the benefit of the Settlor and his family would appear not to be subject to the claims of the Settlor's creditors if the trust so provides. Unfortunately, Section (2)(b) of the Missouri statute is ambiguous and the conclusion is not as obvious as it could be. As a result, few practitioners have sought to establish Family Trusts in Missouri.

These jurisdictions are not "asset protection" jurisdictions where creditors can expect an unfriendly reception or whether unscrupulous Settlors can defraud their creditors. Instead, these jurisdictions have returned to the traditional notion that, except where the Settlor has retained dominion and control over the assets in a trust or where the Settlor is the sole beneficiary or

where the transfer was in fraud of the Settlor's creditors, an irrevocable discretionary trust truly puts the trust assets beyond the reach of the Settlor and therefore should also be protected from the reach of the Settlor's creditors.

This notion of the use of Family Trusts is not only consistent with the tradition of the law of trusts but still rings true with property owners. Evidence the fact that last year alone, over $460 billion dollars was transferred to off-shore trusts such as the type described above. While it is possible, in some cases, that these trusts are abusive, it is likely that most of them are not. And for the likely majority that are not, American states with their over-reaching rules are forcing people to transfer their assets off-shore in order to obtain reasonable protection of their family's assets. This has the effect of transferring out of the US. the earning power, capital base and local banking and legal work that might otherwise be used here to promote local economies. And because foreign jurisdictions might in some cases have animosity toward foreign creditors, the result of the over-reaching rule is one that works to the collective detriment of creditors, property owners and the U.S. economy.

The conditions are therefore ripe for Alaska to fill the breach and provide a friendly jurisdiction to those who wish to establish Family Trusts. By the terms of the proposed legislation, only those trusts established with bona fides will successfully bar creditors' claims. So, for example, an irrevocable discretionary trust created for the benefit of the Settlor and his family, where the trustee is independent of the Settlor, makes distributions in response to the needs of the family and not the direction of the Settlor, and where their transfer does not leave the Settlor insolvent and is not motivated by a desire to avoid specific creditors, will be immune from the claims of the Settlor's creditors. Everything about such a trust suggests that the Settlor has parted with dominion and control over the trust assets. He could not compel the trustee to distribute

any of the assets nor could he exercise any other control over the assets. In such a case, it seems fair and reasonable to prohibit the Settlor from forcing a distribution to himself by racking up debt he cannot afford to repay.

If, however, a trust is created primarily for the benefit of the Settlor or if the Settlor retains powers over the trust or over the trustee (either explicit or implicit), the proposed bill would not protect the trust from the claims of the Settlor's creditors. For example, a trust over which the Settlor retains a power to revoke will remain liable to the claims of the Settlor's creditors. Or a trust which is created with the understanding that the trustee would make distributions to the Settlor any time he requested them, then that trust, too, would remain liable to the claims of the Settlor's creditors. In both circumstances, the Settlor has, either explicitly or implicitly, retained ownership of the trust assets and may force their distribution to him. Fairness therefore dictates that the Settlor's creditors have the same access to the trust assets as the Settlor.

The proposed Bill would provide generous flexibility for Family Trusts that fall in between those two extremes. For example, if the Settlor could not compel distribution but he could veto a proposed distribution by the trustee, the proposed Bill would nevertheless protect the trust assets from the claims of the Settlor's creditors. Likewise, if a Family Trust required that the Settlor receive the income of the trust quarterly, under the proposed Bill, only the income of the trust would be vulnerable to the claims of the Settlor's creditors. The integrity of the trust would nevertheless remain secure. In the first case, the power retained by the grantor enables him to <u>preserve</u> assets, not acquire them for his use. Thus, it is equitable that his creditors not be able to convert such a power into a power to distribute to the Settlor. In the second case, the creditors would not be able to undo the security of the family in the trust simply because

the Settlor retained a partial interest. Equity would require that the Settlor's creditors be able to recover exactly what the Settlor could demand, and no more.

By adopting the proposed Bill, Alaska will be returning to a more conservative position on trusts. It will be doing no more than making it possible for traditional Family Trusts to exist free from the over-reaching claims of creditors, where those claims against the trust would fail if made by the Settlor. It would not be expanding the ability of Settlors to evade creditors nor would it be restricting creditors fair access to a debtor's assets. Instead, Alaska would return itself to the more balanced and substantive view of Family Trusts that existed before the recent over-reaching.

And, collaterally, Alaska could bring to its economy a business boom unprecedented in the State since the oil boom. Even if only one-tenth of the trust business that goes off-shore were to come to Alaska, it would see $4 billion of assets move into the state. That, in turn, will increase the capital base in Alaska, and stimulate capital growth. This would give rise to banking and legal business, and serve as a catalyst to the economic "mushrooming" that has occurred in the off-shore jurisdictions that adopted such legislation.

It is notable that these off-shore jurisdictions, like Alaska, do not have an income tax. It is true that a tax-friendly regime creates an added incentive for property owners who wish to create Family Trusts. But it is often not the motivating reason. For example, Settlors will typically have to pay federal income tax on all income of the trust because it will be a grantor trust for federal income tax purposes. There is a temptation for states to reap a short-run gain by levying income tax on Family Trusts located in its jurisdiction. But Alaska would be well advised to avoid that temptation. For most families, an income tax would make Alaska a less desirable jurisdiction that Cayman or the Cook Islands. And in those jurisdictions that do not have an income tax, the

exponential effects of the trust business more than compensate for the loss of potential income tax revenue.

It should be stressed again that the proposed Bill is not a "device" for unscrupulous debtors and, therefore, should not create animosity among sister states. It does not make Alaska a "tax haven" or a jurisdiction unfriendly to creditors' claims. Indeed, the proposed Bill affords creditors broad protection when assets are transferred in fraud of their interests or when the Settlor retains powers over the trust assets. Quite the contrary of being anti-creditor, the proposed Bill is both creditor and family friendly. It rebalances the legal equities between individuals and creditors so that when an individual permanently and irrevocably parts with his property for the benefit of his family, he cannot squander the family's wealth through the inadvisable accumulation of debts.

V. Budgetary Implications

There are no costs associated with this legislation. Instead, it is projected that there will be a dramatic increase in state revenue as banks, lawyers and other businesses benefit from the increased economic activity in Alaska.

HB

462

Alaska State Legislature

Representative Brian S. Porter

CHAIRMAN
HOUSE JUDICIARY COMMITTEE

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

MEMBER
FINANCE SUBCOMMITTEES
DEPARTMENT OF LAW
DEPARTMENT OF EDUCATION
COURTS

SESSION
STATE CAPITOL ROOM 118
JUNEAU, ALASKA 99801-1182
PHONE (907) 465-4930
FAX (907) 465-3811

INTERIM
310 W. 8TH AVE., SUITE 140
ANCHORAGE, AK 99501-2111
PHONE (907) 258-8197
FAX (907) 258-5510

DISTRICT 20

MEMORANDUM

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee

FROM: Rep. Brian Porter, Chair
House Judiciary Committee

SUBJECT: HB 462, Drunk Driving: Evidence & Sentencing

DATE: March 27, 1996

I respectfully request a hearing for HB 462 be scheduled in your committee at your earliest convenience.

In creating the felony driving while intoxicated and refusal offenses last session, the law was inadvertently changed to require the court to automatically impose all suspended time on felony offenses who fail to complete treatment (ch. 80, SLA 1995). This automatic imposition of all suspended time for those offenders creates legal and practical problems.

Legally, mandating that all suspended time be imposed for only one class of criminal offenders may violate the constitutional guarantee of Equal Protection of the Law. Practically, the ultimate goal is to curtail the practice of drinking and driving. Some offenders require more than one exposure to a treatment program before it becomes effective. This is often accomplished by imposing a portion of the suspended jail time followed by a forced return to treatment.

This bill amends the law to give the sentencing court the discretion to decide how much of the suspended term the defendant should serve for failure to complete a treatment program.

Thank you for your consideration.

Alaska State Legislature

Representative Brian S. Porter

CHAIRMAN
HOUSE JUDICIARY COMMITTEE

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

MEMBER
FINANCE SUBCOMMITTEE
DEPARTMENT OF LAW
DEPARTMENT OF EDUCATION
COURTS

SESSION
STATE CAPITOL ROOM 116
JUNEAU, ALASKA 99801-1182
PHONE (907) 465-4930
FAX (907) 465-3014

INTERIM
310 W. 4TH AVE., SUITE 640
ANCHORAGE, AK 99501-2111
PHONE (907) 258-8197
FAX (907) 258-5510

DISTRICT 20

Sponsor Statement

HB 462, Drunk Driving: Evidence & Sentencing

The bill would change a part of the sentencing scheme for persons convicted of felony driving while intoxicated or refusal to take a breath test. A sentencing court may order a defendant convicted of DWI or breath test refusal to receive inpatient treatment as a condition of the sentence.

Normally, if the defendant fails to complete treatment the court may impose some or all of the suspended jail time. However, in creating the felony driving while intoxicated and refusal offenses last session, the law was inadvertently changed to require the court to automatically impose all suspended time on felony offenders who fail to complete treatment (ch. 80, SLA 1995). This automatic imposition of all suspended time for those offenders creates legal and practical problems.

Legally, mandating that all suspended time be imposed for only one class of criminal offenders may violate the constitutional guarantee of Equal Protection of the Law. Practically, the ultimate goal is to curtail the practice of people drinking and driving. Some offenders require more than one exposure to a treatment program before it becomes effective. This is often accomplished by imposing a portion of the suspended jail time followed by a forced return to treatment. This bill amends the law to give the sentencing court the discretion to decide how much of the suspended term the defendant should serve for failure to complete a treatment program.

SPONSOR STATEMENT

The bill additionally amends Rule 6(r)(1) of the Alaska Rules of Criminal Procedure to allow prior convictions of driving while intoxicated and breath test refusal to be presented at the grand jury proceedings by hearsay evidence. Because grand jury presentations must occur within 10 days after arrest, there is not sufficient time to obtain certified judgments of prior convictions, particularly if the convictions are from another jurisdiction. This court rule amendment is necessary in order to ensure that repeat offenders from out of state are not treated more leniently than Alaskans.

Finally, the bill amends Rule 32.1 of the Alaska Rules of Criminal Procedure to provide that a presentence investigation by the Department of Corrections is not required in most cases in which a person is convicted of felony driving while intoxicated or breath test refusal. Offenders convicted of driving while intoxicated and breath test refusal have been sentenced successfully for many years without the benefit of a presentence investigation. The bill would require that a presentence report be prepared for a repeat felony offender convicted of driving while intoxicated or breath test refusal.

LEGAL SERVICES

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

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

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

MEMORANDUM February 26, 1996

SUBJECT: Sectional Summary of HB 462.

TO: Representative Brian Porter

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. Allows a court to impose part or all of the remaining portion of a suspended sentence for driving while intoxicated, if the convicted person fails to meet required alcohol rehabilitation treatment conditions.

Section 2. Allows a court to impose part or all of the remaining portion of a suspended sentence for refusing to take a chemical breath test, if the convicted person fails to meet required alcohol rehabilitation treatment conditions.

Section 3. Technical amendment to allow certain hearsay evidence in a felony prosecution to be presented to the grand jury.

Section 4. Allows hearsay evidence of prior convictions to be presented to the grand jury, in a felony prosecution for driving while intoxicated under AS 28.35.030(n) or refusal to take a chemical breath test under AS 28.35.032(p).

Section 5. Technical amendment regarding pre-sentence investigations by the Department of Corrections.

Section 6. Provides that unless the defendant is subject to a presumptive term of imprisonment, a pre-sentence investigation by the Department of Corrections is not required for a person convicted of felony driving while intoxicated or felony refusal to take a chemical breath test.

Section 7. Applicability clause.

Section 8. Effective date.

MFF:glc
96-126.glc

(3) The presentment shall not mention the names of individuals. The presentment shall not be filed with the court, nor shall it be kept by the court beyond the time that the grand jury is discharged.

(4) When the presentment is made the court shall give such instructions on the law as it considers necessary.

(p) **Defense Witnesses.** Although the grand jury has no duty to hear evidence on the behalf of the defendant, it may do so.

(q) **Sufficiency of Evidence.** When the grand jury has reason to believe that other available evidence will explain away the charge, it shall order such evidence to be produced and for that purpose may require the prosecuting attorney to subpoena witnesses. An indictment shall not be found nor a presentment made upon the statement of a grand juror unless such grand juror is sworn and examined as a witness. The grand jury shall find an indictment when all the evidence taken together, if unexplained or uncontradicted, would warrant a conviction of the defendant.

(r) **Admissibility of Evidence.**

(1) Evidence which would be legally admissible at trial shall be admissible before the grand jury. In appropriate cases, however, witnesses may be presented to summarize admissible evidence if the admissible evidence will be available at trial. Except as stated in subparagraphs (2) and (3), hearsay evidence shall not be presented to the grand jury absent compelling justification for its introduction. If hearsay evidence is presented to the grand jury, the reasons for its use shall be stated on the record.

(2) In a prosecution for an offense under AS 11.41.410 — 11.41.440 or 11.41.455, hearsay evidence of a statement related to the offense, not otherwise admissible, made by a child who is the victim of the offense may be admitted into evidence before the grand jury if

(i) the circumstances of the statement indicate its reliability;

(ii) the child is under 10 years of age when the hearsay evidence is sought to be admitted;

(iii) additional evidence is introduced to corroborate the statement; and

(iv) the child testifies at the grand jury proceeding or the child will be available to testify at trial.

(3) Hearsay evidence related to the offense, not otherwise admissible, may be admitted into evidence before the grand jury if

(i) the individual presenting the hearsay evidence is a peace officer involved in the investigation; and

(ii) the hearsay evidence consists of the statement and observations made by another peace officer in the course of an investigation; and

(iii) additional evidence is introduced to corroborate the statement.

(4) If the testimony presented by a peace officer under paragraph (3) of this section is inaccurate because of intentional, grossly negligent, or negligent misstatements or omissions, then the court shall dismiss an indictment resulting from the testimony if the defendant shows that the inaccuracy prejudices substantial rights of the defendant.

(5) In this section "statement" means an oral or written assertion or nonverbal conduct if the nonverbal conduct is intended as an assertion.

(s) **Discharge and Excuse.** A grand jury shall serve until discharged by the presiding superior court judge of the judicial district but no grand jury may serve more than 4 months, unless for good cause such period is extended. At any time for cause shown the presiding judge may excuse a juror either temporarily or permanently and may impanel an alternate juror in place of the juror excused. In order to vote on the proposed bill, the alternate juror must be present during the presentation of all evidence related to that case.

(t) **Delegation of Duties.** Whenever a superior court is sitting other than where the presiding judge is sitting, or the presiding judge is unavailable, the presiding judge may delegate duties under this rule to another judicial officer. However, the presiding judge may delegate duties under Criminal Rule 6.1 only to another superior court judge.

(u) **Telephonic Testimony.**

(1) A witness may participate telephonically in grand jury proceedings if the witness is not a victim and the witness:

(A) would be required to travel more than 50 miles to the situs of the grand jury; or

(B) lives in a place from which people customarily travel by air to the situs of the grand jury.

(2) A witness who is not entitled to participate telephonically under subparagraph (1) may participate telephonically with approval of the presiding judge of the judicial district, or the presiding judge's designee. A motion to allow telephonic testimony under this subparagraph may be ex parte and shall be accompanied by an affidavit of the prosecuting attorney that states the reason telephonic testimony is requested.

(3) If a witness participates telephonically in grand jury proceedings, after the witness is sworn, the prosecuting attorney shall require the witness to

(A) state the location from which the witness is testifying; and

... of another is not improper in determining a sentence to be ...osed against the accused. **Burleson v. State**, Op. No. 1222, ... P2d 1195 (Alaska 1975).

The supreme court's function, in a sentence appeal, is to ...rtain whether the trial court was clearly mistaken in ...osing the particular sanction. **Burleson v. State**, Op. No. ...2, 543 P2d 1195 (Alaska 1975).

Sentencing court must unequivocally bring home to ...ndant that he has right to make a statement in his own ...alf and to present any information in mitigation of punish... **Nattrass v. State**, Op. No. 1314, 554 P2d 399 (Alaska ...).

Actual consideration of police contacts will not invalidate ...ence if from the record or by witnesses' testimony the ...e is aware of the circumstances and outcome of the ...acts. **Buchanan v. State**, Op. No. 2553, 561 P2d 1197 ...aska 1977).

Sentencing court may rely on psychiatric report which ...ders explained police contacts in reaching a diagnosis. ...chanan v. State, Op. No. 1316, 561 P2d 1197 (Alaska ...).

Mere awareness by sentencing court of other police ...acts will not serve to invalidate an otherwise valid ...ence. **Buchanan v. State**, Op. No. 1316, 561 P2d 1197 ...aska 1977).

Sentencing judge may consider instances of past anti-social ...avior, substantiated by supporting information, even though ...ndant was not charged or convicted. **Nukapigak v. State**, ...No. 1410, 562 P2d 697 (Alaska 1977).

Question, "Do you have anything you want to say before ...pose sentence?" was minimal compliance with allocution ...irement of this rule, where defendant was sentenced four ... before Supreme Court imposed more stringent Nattrass ...dard. **Capwell v. State**, Op. No. 1482, 568 P2d 10 (Alaska ...).

Trial court's failure to afford defendant the opportunity to ...e a statement on his own behalf at sentencing hearing was ...harmless error. **Mohn v. State**, Op. No. 1719, 584 P2d 40 ...aska 1978).

Under Rule 32(a) the obligation is on the court to afford ...defendant the opportunity to speak and not on the defen... to request such an opportunity, hence defendant's failure ...assert actively his right of allocution did not constitute ...ver. **Mohn v. State**, Op. No. 1719, 584 P2d 40 (Alaska ...).

Defendant's contention that consideration of his juvenile ...ord by the court imposing sentence violated his right to ...acy was rejected. **Penn v. State**, Op. No. 1774, 588 P2d ... (Alaska 1978).

Despite the fact that defendant spoke at some length under ...ct examination by his counsel at the sentencing hearing, ... court's failure to inform him of his right of allocution ...ired resentencing. **Law v. State**, Op. No. 2301, 624 P2d ... (Alaska 1981).

In order to establish a claim of racial bias in sentencing ...endant must show that the sentence was probably higher ...an that which would have been imposed upon a defendant of ...different race with a like criminal history who committed a ...ilar offense. **Coleman v. State**, Op. No. 2190, 621 P2d 869 ...laska 1980).

Trial court, in conducting a hearing pursuant to this rule to determine whether mitigating and aggravating factors have been established, may consider evidence previously introduced at the trial. **Wolf v. State**, Op. No. 99, 647 P2d 609 (Alaska App. 1982).

Where defendant was given a chance to exercise his right of allocution just prior to sentencing and did not exercise that right on the ground that he needed more time to prepare, failure of the trial judge to give the defendant more time was not error. **Hastings v. State**, Op. No. 706, 736 P2d 1157 (Alaska App. 1987).

Denial of allocation may be harmless where the defendant is subject to presumptive sentencing, no aggravating or mitigating factors are established, and the totality of the circumstances would not warrant referral to a three-judge panel for sentencing. **Johnson v. State**, Op. No. 858, 762 P2d 49... (Alaska App. 1988).

Trial judge's overnight in denying defendant allocation was harmless beyond a reasonable doubt where the judge had already rejected proposed mitigating factors and possible referral to a three-judge panel for sentencing. **Johnson v. State**, Op. No. 858, 762 P2d 493 (Alaska App. 1988).

Rule 32.1. Presentence Procedure for Felony Sentencings.

(a) **Scheduling.** At the time guilt in a felony case is established by verdict or plea, the judge shall establish the date for a sentencing hearing and a presentencing hearing, if appropriate, and shall order a presentence investigation by the Department of Corrections. If the judge elects to schedule a single hearing, all of the procedures for the presentencing and sentencing hearings shall be applicable at the single hearing.

(b) **Presentence Investigation and Report.**

(1) The Department of Corrections shall prepare and deliver the report of the presentence investigation not less than 30 days before the presentencing hearing. The report shall contain any prior criminal conviction and any finding of delinquency of the defendant and such information about the defendant's characteristics, financial condition, and the circumstances affecting the defendant's behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the judge. The presentence report shall comply with the Victims' Rights Act, AS 12.61.100-.150.

The report shall be submitted to the judge, the state's attorney, and the attorney for the defendant; the defense attorney shall not be prohibited from providing a full copy to the defendant unless the judge enters on the record findings why providing specific portions of the report to the defendant would prove detrimental to the rehabilitation of the defendant or the safety of the public.

Unless otherwise ordered, or except as specifically allowed by other provisions of law, further disclosure of the report shall be limited to agents of the state's attorney or the defendant's attorney, any reviewing courts, and the agencies having charge of the defendant's rehabilitation.

(2) In the event the parties request preparation of a presentence report to aid them in reaching a plea agreement, the judge may order such a report made prior to the time stated in this rule. If a report is prepared prior to entry of a verdict or plea of guilty or no contest, the report shall be submitted only to the parties and not to the judge.

(3) Notwithstanding subparagraph (b)(2), the judge may use the presentence report to determine whether to accept a plea agreement under Criminal Rule 11.

(c) Notice of Aggravating and Mitigating Factors, Extraordinary Circumstances, Prior Convictions, and Other Information to be Relied on at Sentencing. (1) Within ten days after receipt of the presentence report, each party shall file:

(A) notice of any aggravating or mitigating factors, pursuant to AS 12.55.155, or extraordinary circumstances, pursuant to AS 12.55.165, on which it intends to rely, supported by a written statement outlining, as an offer of proof, the evidence that counsel contends establishes each aggravating or mitigating factor or extraordinary circumstance; and

(B) a memorandum giving notice of any evidence which the party intends to rely on at sentencing which was not previously presented at a prior proceeding in the case, in the notice described in (c)(1)(A), or in the presentence report. If the party intends to present additional witnesses, the memorandum shall include a list of these witnesses and a brief summary of their anticipated testimony. The memorandum need not give notice of matters to be mentioned in a defendant's allocution or a victim's oral statement.

(2) Within ten days after receipt of the presentence report, the state shall file:

(A) notice of the prior convictions, if any, on which it intends to rely for presumptive sentencing purposes; and

(B) notice of the amount of restitution, if any, it intends to request, supported by a memorandum or exhibits that establish the basis for the restitution request.

(d) Disputing Aggravating and Mitigating Factors, Extraordinary Circumstances, Prior Convictions, or Other Information. (1) Within ten days after receipt of the notices required by paragraph (c), each party shall file:

(A) notice whether the party concedes or disputes each aggravating or mitigating factor or extraordinary circumstance asserted by the opposing party; and

(B) notice of objection to any information in the presentence report or in any other material the judge or opposing party has identified as a source of information to be relied on at sentencing on the ground that such information is insufficiently verified or is inaccurate. For each item a party contests as inaccurate, that party shall submit an affidavit from the party or another witness with personal knowledge outlining the testimony the witness is prepared to provide to refute or to explain the allegation, or a notice that the party has served or attempted to serve a subpoena upon the person who provided the contested information and intends to examine the person at the presentencing hearing.

(2) Within ten days after receipt of the notices required by paragraph (c), the defense shall file:

(A) notice of any objection to any of the prior convictions relied on by the state and a statement of the grounds for the objection as provided in AS 12.55.145(c), which shall be supported by affidavit if the objection is based on facts outside the record; and

(B) notice of any objection to any restitution request and a statement of grounds for the objection.

(e) Presentencing Hearing. At the presentencing hearing, the judge shall review the notices filed pursuant to paragraphs (c) and (d). The judge shall enter findings as to undisputed facts. For each allegation a party contends is based on insufficiently verified information, the judge shall determine whether the allegation is sufficiently verified and shall order stricken from the presentence report any allegation the judge finds is not sufficiently verified. The judge shall provide an opportunity for argument and then shall enter conclusions on legal issues that may be resolved without an evidentiary hearing. The judge shall clarify the material disputed facts, so that the parties can be prepared to present witnesses at the sentencing hearing.

(Added by SCO 157 effective February 15, 1973; amended by SCO 218 effective January 15, 1976; by SCO 536 effective October 1, 1982; by SCO 643 effective September 15, 1985; repealed and reenacted by SCO 1136 effective July 15, 1993)

Annotations

Cases

Sentence of five years' imprisonment for burglary, two of which were suspended, was not clearly mistaken, even though the defendant was 19 years old and it was his first felony offense. Zurfluh v. State, Op. No. 2238, 620 P.2d 690 (Alaska 1980).

Where defendant was convicted of assault with a dangerous weapon for striking another person in the face with a beer bottle, sentencing court was not clearly mistaken in imposing

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION
February 27, 1996

PLEASE REPLY TO

X CRIMINAL DIVISION CENTRAL OFFICE
P O BOX 110300
JUNEAU ALASKA 99811-0300
PHONE (907)465-3428
FAX (907)465-4043

☐ OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE ALASKA 99501-2054
PHONE (907)269-6250
FAX (907)269-6270

The Hon. Brian Porter, Chairman
House Judiciary Committee
House of Representatives
State Capitol, Room 118
Juneau, Alaska 99801

Re: House Bill 462

Dear Representative Porter:

This is in response to your request for a legal analysis of HB 462, an act addressing driving while intoxicated offenses, Rules of Criminal Procedure, and providing for an effective date.

HB 462 amends the provisions of AS 28.35.030 and AS 28.35.032 as they relate to the powers and duties of the court if a person fails to complete a program of alcohol rehabilitation authorized by the court, after having been convicted of felony driving while intoxicated or felony refusal to submit to a chemical test. Present law requires the court to impose the entire remaining suspended sentence in these circumstances. Under HB 462, the court would have the discretion to impose either a part or all of the remaining sentence. This discretion would be very useful to the court in encouraging a defendant to return to treatment by having additional time to impose if the defendant again fails to finish the treatment program.

The bill also amends the Alaska Rules of Criminal Procedure to allow hearsay evidence of prior convictions to be used before the grand jury in felony driving while intoxicated and refusal to submit to a chemical test cases. This is particularly important in cases where prior convictions have occurred in other states. Although grand juries must be conducted within 10 days of arrest, it is often very time consuming to obtain certified copies of judgments. The use of criminal records to establish prior offenses would enable the cases to be brought to the grand jury in a timely way.

Finally, HB 462 amends the Alaska Rules of Criminal Procedure to allow felony driving while intoxicated and refusal to submit to a chemical test cases to proceed to sentencing without a presentence report, unless a presumptive sentence applies to the case. Defendants in these cases have been fairly and efficiently sentenced without a presentence report for many years; the expense and time of preparing a presentence report is not justified unless presumptive sentencing applies.

The Department of Law strongly supports the passage of HB 462. We will be pleased to assist in its progress through the legislature in any way.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:
Anne D. Carpeneti
Assistant Attorney General

ADC:rew

FISCAL NOTE

STATE OF ALASKA **BILL NO: HB 462**

1996 LEGISLATIVE SESSION

Revision Date

Title: An Act relating to the offenses of driving while intoxicated and refusal to submit

Sponsor: Rep Porter

Requestor: House Transportation

Dept Affected: Public Safety

BRU: Motor Vehicles

Component: Driver Services

COMPONENT SERIAL NO.: 0500

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

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES (1006)) Revenue Code	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 96) impact $ 0

POSITIONS:

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

ANALYSIS (Attach a separate page if necessary)

This bill has no fiscal impact on Division of Motor Vehicles

Prepared By: Charles R Hosack Phone: 269-5559

Division: Motor Vehicles Date: 2/26/96

Approved by Commissioner: Del Smith Date: 2/27/96

Agency: Ronald L Otte, Dept of Public Safety

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

For further distribution information call the Governor's Legislative Office

Rev 11/94

FISCAL NOTE

STATE OF ALASKA **BILL NO:** HB 462

1996 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Public Safety

Title: Drunk driving: Evidence and Sentencing BRU: Alaska State Troopers

_____ Component: Detachments

Sponsor: Representative Porter

Requestor: H. Transportation **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)

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:

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

ANALYSIS: (Attach a separate page if necessary.)

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

Prepared By: Lt. Dan Lowden Phone: 465-5505

Division: Alaska State Troopers Date: February 28, 1996

Approved by Commissioner: Del Smith Date: 2/28/96

Agency: Ronald L. Otte, Department of Public Safety

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

For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 462

Revision Date: 12/1/95
Title: "An Act relating to the offenses of driving while intoxicated and refusal to submit to a chemical test..."
Sponsor: Representative Porter
Requester: House Transportation

Dept. Affected: Corrections
BRU: Statewide Programs
Component: Community Corrections
COMPONENT SERIAL NO. 1382

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	(104.0)					
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	(104.0)	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	(104.0)					
1005 GF/Program receipts						
1006 GF/MHTIA						
Other						
TOTAL	(104.0)	0.0	0.0	0.0	0.0	0.0

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

POSITIONS

FULL-TIME	-2					
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The impact of automatic imposition of a suspended sentence was not previously considered. The more permissive language will not result in reduced costs allocated to incarceration costs in the fiscal note submitted with HB 159 signed by the Governor in 1995.

Rule 32.1(a) as amended in Sec. 5 of this bill will require pre-sentence investigations in 69 cases annually. 261 cases will be subject to the discretion of the trial court judge. It is assumed the court will chose to order a pre-sentence investigation in 50 percent of these cases. This will result in a projected decrease of 130 Pre-sentence investigations annually. Staff will be reduced by two probation officers and personal services will be reduced by $104.0.

2 PO II X 52.0 annual salary = $104.0 (decrement)

This decrement assumes that the 5 positions and funding related to HB 159 are annualized and will be funded in FY 97 without this legislation

Prepared by: Jerry Shriner
Phone: 465-4640
Division: Office of the Commissioner
Date: 2/12/96

Approved by Commissioner: Margaret M. Pugh
Margaret Pugh
Date: 2/12/96
Agency: Department of Corrections

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

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

DEPARTMENT OF LAW

CRIMINAL DIVISION

April 11, 1996

The Hon. Robin Taylor
Alaska State Legislature
State Capitol, Room 30
Juneau, AK 99801-1182

Re: HB 462am - "An Act relating to the offense of driving while intoxicated and refusal to submit to a chemical test of breath or blood; amending Rules 6 and 32.1, Alaska Rules of Criminal Procedure; and providing for an effective date."

Dear Senator Taylor:

I spoke with your aide, Joe Ambrose, last week, who suggested that a summary explanation of HB 462am, which has been assigned to the Senate Judiciary Committee, would be helpful to the committee.

HB 462am was introduced to make four relatively minor, but important, changes to the felony driving while intoxicated and refusal to submit to a breathalyzer offenses. These changes are in the nature of "clean up" changes, and address problems that were not recognized last year when the felony offenses for DWI and refusal were adopted.

First, the DWI and refusal statutes presently require a court sentencing a person to refer the person to evaluation and treatment by an authorized alcohol rehabilitation program. An inpatient treatment program may be ordered by the agency if authorized in the court's judgment. The felony provisions passed last year provide that if a person does not complete the inpatient treatment, the court is then required to impose the entire remaining suspended time of imprisonment. HB 462am allows the court the discretion to impose a part or all of the remaining suspended jail time. This discretion is important, as the automatic imposition of all remaining time does not allow the court

to require the person to return to treatment. Experience shows that it often takes more than one attempt at treatment for the treatment to be successful. Further, there may be other factors present which would make the imposition of less than the entire remaining time more appropriate.

Second, the bill clarifies an issue which is presently being litigated in district court in Anchorage. Current law allows convictions in the 10 year period before the current offense to be considered for sentencing purposes in DWI and refusal cases. The felony provisions of both the DWI and refusal offenses provide that only convictions occurring in the five years preceding the present offense may be considered in determining whether the offense is a felony. It is being claimed that the legislature intended, then, that only convictions occurring in the preceding five years may be considered for sentencing purposes. The state's position is that this clearly was not the legislative intent, as the felony provisions reference the definition of "previously convicted", which specifically refers to offenses occurring in the prior 10 years. However, in case the court decides against the state, and to make the intent perfectly clear, HB 462am amends the felony DWI and refusal provisions to provide that the number of offenses in the prior 10 years dictate the sentence.

Third, Sections five and six of HB 462am amend the Alaska Rules of Criminal Procedure to allow that Alaska Public Safety Information Network (APSIN) reports and other computerized criminal history records to be used at the grand jury to establish the prior convictions for DWI and refusal for the felony offense. The reason is to allow people with prior convictions of DWI or refusal from another state to be treated the same as people with prior convictions in Alaska. A felony charge must be brought before the grand jury within 10 days of arrest. This is not enough time to obtain certified copies of judgments from prior offenses from other states. Thus the use of APSIN and NCIC reports is important to establish the prior convictions.

Finally, the bill provides that a presentence investigation is not required for a person convicted of felony DWI or refusal, unless the person is subject to a presumptive sentence. The rationale is that the expense of a presentence investigation is not justified in these cases; people have been sentenced for these offenses for many years without the benefit of a presentence report, and the sentences are not sufficiently different under the new felony provisions to justify them.

If you have any questions about the bill, please call me any time.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:
Anne D. Carpeneti
Assistant Attorney General

ADC:jf

HB

474

Alaska State Legislature
HOUSE OF REPRESENTATIVES

Official Business

REPRESENTATIVE CYNTHIA TOOHEY
DISTRICT 13

State Capitol
Juneau, AK 99801-1182

MEMORANDUM

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee

FROM: Representative Cynthia Toohey

DATE: April 17, 1996

RE: Request for hearing for **House Bill 474, "An Act relating to civil violations of municipal ordinances, and to civil penalties for violation of municipal ordinances by juveniles."**

I respectfully request that, at your earliest convenience, the above-referenced bill be scheduled for a hearing in the Senate Judiciary Committee. It passed the House 33-0.

Attached herewith are:

Sponsor statement
Zero fiscal notes
Letters of support

This bill has the support of the Department of Health and Social Services and the Department of Law.

Please contact Marveen Coggins at extension 6820 if you have any questions. Your consideration of this request is appreciated. Thank you.

INTERIM ADDRESS: 716 West 4th Avenue, Suite 330, Anchorage, 99501-2133

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

REPRESENTATIVE CYNTHIA TOOHEY

DISTRICT 13

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT

HOUSE BILL 474

"An Act relating to civil violations of municipal ordinances, and to civil penalties for violation of municipal ordinances by juveniles."

We hear more and more frequently about the need to improve the juvenile justice system in Alaska. Due to the increased number of serious offenses by juveniles, some of the less serious violations, in reality, offer no consequences. That is the wrong message to send to a juvenile offender.

According to the Anchorage Police Department, juvenile offenders have become increasingly dangerous and increasingly blatant regarding their offenses with the knowledge that the system can do very little to them.

House Bill 474 would expand the jurisdiction of a municipality to allow the municipality to better respond to a civil violation of an ordinance by a minor. For civil violations of ordinances which are punishable by only a fine, juveniles would be treated in the same manner as adults. Allegations against a minor for a civil penalty under a municipal ordinance could be assigned to a hearing officer if it is provided for by municipal ordinance.

The expansion of jurisdiction would enable juveniles to realize <u>there are consequences</u> to all wrongful acts. This realization may help to prevent juveniles from progressing to more serious offenses.

HB474 passed the House by a vote of 33-0. Your support would be appreciated.

INTERIM ADDRESS 716 West 4th Avenue, Suite 330, Anchorage, 99501-2133

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 474 (JUD)

Revision Date: 03/25/96
Title: Juvenile infractions
Sponsor: Rep. Toohey
Requestor: House Judiciary

Dept. Affected: Alaska Court System
BRU: Trial Courts
Component:
COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

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

Fund Source (Thousands of Dollars)

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

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

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel
Agency: Alaska Court System
Phone: 264-8228
Date: 03/25/96

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System
Date: 03/25/96

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

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB474(JUD)

Revision Date:
Title: Violations of Municipal Ordinances
Sponsor: Representative Toohey
Requestor: Senate (CRA)

Dept. Affected: Health and Social Services
BRU: Family and Youth Services
Component: DFYS Central Office
COMPONENT SERIAL NO. 259
See also (SN#):

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGES IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY97	FY98	FY99	FY00	FY01	FY02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

POSITIONS	FY97	FY98	FY99	FY00	FY01	FY02
FULL-TIME						
PART-TIME						
TEMPORARY						

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

ANALYSIS: (Attach a separate page if necessary)

There would be no fiscal impact on the Division if this bill were passed.

4/5/96

Prepared by: for L. Diane Worley, Director
Division: Family & Youth Services
Phone: 465-3191
Date: 04/05/96

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services
Date: 4/6/96

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

Rev 11/95 [illegible]

FISCAL NOTE

STATE OF ALASKA **BILL NO:** CSHB 474(JUD)(title am)

1996 LEGISLATIVE SESSION

Revision Date: April 12, 1996 Dept. Affected: Public Safety

Title: Violations of Municipal Ordinances BRU: Alaska State Troopers

Component: Detachments

Sponsor: Representative Toohey

Requestor: S. Community and Regional Affairs **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)

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:

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

ANALYSIS: (Attach a separate page if necessary)

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

Prepared By: Lt Dan Lowden Phone 465-5505

Division: Alaska State Troopers Date: April 12, 1996

Approved by Commissioner: [signature] Date: 4/15/96

Agency: Ronald L. Otte, Department of Public Safety

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

For further distribution information call the Governor's Legislative Office

Rev 11/95

FISCAL NOTE

No. 2

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO:

Bill Version: HB 474
(H) Publish Date: 3/8/96

Revision Date: 2/29/96
Title: An Act relating to violations of municipal ordinances and regulations; and amending...
Sponsor: Rep. Toohey
Requestor: House C&RA Committee

Dept. Affected: Community & Regional Affairs
BRU: none
Component: none
COMPONENT SERIAL NO.

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

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
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
CHANGE IN REVENUES ( ) Revenue Code						

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 95) impact: $ none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson — Remond Henderson — Phone: 465-4708
Division: Director, Div. of Administrative Services — Date: 2/29/96

Approved by Commissioner: — Date: 2/29/96
Agency: Mike Irwin, Dept. of Community & Reg. Affairs

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

For further distribution information call the Governor's Legislative Office

Rev 1/96

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

DEPARTMENT OF LAW

CRIMINAL DIVISION

March 28, 1996

The Hon. Cynthia Toohey
House of Representatives
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Representative Toohey:

I am writing in response to your request for an analysis of CSHB 474, An Act relating to violations of municipal ordinances and regulations, and to civil penalties for violation of municipal ordinances by juveniles.

The bill allows a municipality to bring an action for a civil penalty against a minor for up to $1,000 for violation of a municipal ordinance. Such an action will be heard in the district court, or may be assigned to a hearing officer if the municipality provides by ordinance for such an assignment.

Notice of an action for civil penalties against a minor by a municipality must be sent to the commissioner of health and social services.

The Department of Law supports this bill.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:
Laurie H. Otto
Deputy Attorney General

LHO:jf

FEB 14 1996

Municipality of Anchorage

P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-4433

Rick Mystrom, Mayor

OFFICE OF THE MUNICIPAL MANAGER

February 9, 1996

Representative Cynthia Toohey
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Re: H. B. 474

Dear Representative Toohey:

Thank you for sponsoring H. B. 474, regarding the jurisdiction of municipalities over certain juvenile infractions.

This bill offers an important reform to the way in which juvenile criminal activity is addressed.

Attached is an issue summary supporting the need for the proposed change.

Thank you again for sponsoring this legislation. If we can offer further information, please let me know.

Sincerely,

Tim Rogers

Tim Rogers
Legislative Program Coordinator

MUNICIPALITY OF ANCHORAGE
PUBLIC SAFETY PARTNERSHIP PROGRAM
LEGISLATIVE ISSUES

Allow municipalities to respond to less serious juvenile behavior by expanding its jurisdiction to include the ability to subject juvenile offenders to civil infractions and/or mediation

Early intervention has been proven an effective means of changing young people's attitudes and behaviors. Because the current juvenile justice system is overwhelmed with serious offenses and offenders, many offenders who begin with lower level or less dangerous conduct receive no meaningful consequences until they graduate to the higher level.

According to the 1994 Anchorage Police Department Annual Report, juvenile arrests have increased 66% since 1990. Juvenile offenders have become increasingly dangerous and increasingly blatant regarding their offenses in the knowledge that the system can do very little to them.

Recognizing this situation, the Municipality of Anchorage would like the ability to respond to less serious juvenile behavior by expanding its jurisdiction to include the ability to subject juvenile offenders to civil infractions and/or mediation. This will allow the juvenile justice system to focus on the more serious criminal activity while assuring that juvenile offenders of less serious offenses receive more immediate consequences for their actions.

SUPPORT

Anchorage·*Star of the North*
Chamber of Commerce

February 28, 1996

Members: House Community & Regional Affairs Committee
Al Austerman & Ivan Ivan - Co-Chairs
Fax: 1-907-465-4589

Dear Committee Members:

The Anchorage Chamber of Commerce Crime Prevention Committee has worked with the Municipality of Anchorage on a criminal justice package. The chamber has passed Resolution 95/96-5 supporting the Municipality's efforts on criminal justice reform.

It is our understanding that HB 474 and HB 475 address part of the criminal justice reform package. We would like to encourage passage of both bills.

We appreciate the spirit of cooperation between the Legislature and the Municipality. The chamber applauds your work on reducing crime. Please let us know if the chamber can be of any assistance.

Again, we encourage the passage of HB 474 and HB 475. Thank you for your consideration.

Sincerely,

Carol Heyman

Carol Heyman
President

cc: Representive Cynthia Toohey
Bob Bailey, chair, Anchorage Chamber Crime Prevention Committee

441 West 5th Avenue, Suite 300, Anchorage, Alaska 99501-2309 (907) 272-2401 FAX (907) 272-4117
Founded 1915

HB

479

Alaska State Legislature

Interim:
145 Main Street Loop #223
Kenai, Alaska 99611
(907) 283-7095
(907) 283-3075 (fax)
(907) 262-7574 (h)

Session:
State Capitol
Juneau, Alaska 801
(907) 465-269?
(fax) (907) 465-3835

Representative Gary L. Davis

MEMORANDUM

To: Senator Robin Taylor, Chairman
Senate Judiciary Committee

From: Rep. Gary L. Davis

Re: HB 479

Date: April 10, 1996

Enclosed is some additional information to accompany your packet on HB 479, "An Act relating to civil liability for injuries or death resulting from equine activities."

I would appreciate your consideration to hear this bill in the Senate Judiciary Committee at you earliest convenience.

April 8, 1996

Re: HB 479

The Honorable Robin Taylor
State Capitol
Juneau, Alaska 99801

Dear Senator Taylor:

This letter is in support of HB 479 which would limit liability for injuries or death resulting from equine activities.

There are people who would like to learn equestrian events such as jumping, rodeo events like barrel racing, team roping, calf roping, breakaway roping or to just learn to ride. Due to the nature of my business, I hear from people frequently who want to learn to rope or barrel race. I have taught a ground roping class at the community schools for the past three years. These individuals want to take it further and put what they have learned to horseback but I just can not allow them to come to my home to learn. My family and I have rodeoed for many years in Alaska and have helped many people by providing a place for them to learn in the past, but in this day and age the risk is just too great.

Until 1984, I had allowed people to come to my home and helped them to learn how to barrel race and/or team rope or to just provide a place for them to practice. It is common knowledge that equestrian/rodeo related activities have an element of risk involved. I had always appreciated people helping me learn the sport and felt I could also help others who had no place to go to learn. When an acquaintance asked if he could come out to practice, I was glad to accommodate. He ended up being taken to the hospital when his own horse fell with him and he sustained broken bones in the shoulder and leg. A few days later I found out he was suing me when an article appeared in the local paper. While it is true that many people would never consider doing such a thing, it is the few who would, and do, that ruin it for everyone. I, as a homeowner, can not afford the risk anymore. My insurance company took care of the lawsuit and it was eventually settled prior to actual trial, but they dropped my coverage on the arena itself leaving me no choice but to limit my facilities to my own use.

It is a very sad fact that there are people who are out to get all they can at the expense of others with no remorse of how they can get it and taking no personal responsibility for their own actions. The proposed HB 479 would help tremendously for those of us who would like to provide a place for people to learn.

If you have any questions regarding this subject, feel free to contact me at (907)376-2668.

Sincerely,

Charlie N. Willis
Owner/Operator
CW Tackle and Western Wear

Honorable Robin Taylor
State Capitol
Juneau, Alaska 99801

4/4/9[illegible]

Dear Senator Taylor:

We are writing to express our sincere interest in the passing of House Bill Number 479. We are lifelong Alaskans in an equine related business. We provide the best insurance coverage possible at astronomical costs to us, yet still we feel extremely vulnerable to lawsuits. Please allow us to remain in business by helping in the passing of this bill. Thank you for your time.

Circle R Rodeo

Abby Rutherford

Abby Rutherford
HC01 Box 6225
Palmer, Alaska 99645

APR 05 1996

To Whom it May Concern,

I heartily support the bill [illegible] for horse [illegible] horses. While domesticated and by nature gentle, are by their very size and [illegible] required of them [illegible] dangerous to people. Horse people need this legislation to protect our rights to a hobby or profession that brings with it a certain amount of risk not generally understood by the novice or non-horseman.

I graduated from Colorado State University in 1980 with a Bachelor of [illegible] degree in the field of animal science. My specialty was horses and I received a Certified Riding Instructors rating upon completion of my [illegible]. I was graduated [illegible] participated in numerous riding [illegible] [illegible] [illegible] and international horsemen. My training and my desire was to teach all aspects of riding and horse management on the level of Pleasure and I in fact fulfilled that dream in the years 1983 - 1991. I no longer teach not because I wanted to give it up but because the [illegible] [illegible] [illegible] my own horses to [illegible] [illegible] [illegible] by their nature and known to [illegible] become injured and sue me for [illegible].