

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 86/2

9240 HOUSE JUDICIARY

**1994 LIFE, ANNUITY AND A AND H
BUSINESS FOR FRATERNAL ORGANIZATIONS
(\$000)**

COMPANY NAME	DOM	LIFE				A & H PREMIUMS		
		ISSUED DURING CURRENT YEAR	IN FORCE END OF YEAR	PREMIUMS WRITTEN	BENEFITS PAID	ANNUITY CONSIDERATIONS	COLLECTIVELY RENEWABLE	ALL OTHER
AID ASSOCIATION FOR LUTHERANS	WI	17,861	190,841	1,140	725	1,039	0	150
AMERICAN POSTAL WORKERS ACC BNFT ASN	NH	0	0	0	0	0	0	0
INDEPENDENT ORDER OF FORESTERS US BR	NY	555	42,113	356	195	5	0	1
KNIGHTS OF COLUMBUS	CT	17	2,679	20	27	0	0	2
LUTHERAN BROTHERHOOD	MN	15,016	134,390	947	712	203	0	129
SONS OF NORWAY	MN	1,748	23,406	286	1,271	339	0	2
WOODMEN OF THE WORLD LIFE INS SOC	NE	0	941	10	26	0	0	3
TOTAL		35,197	394,370	2,759	2,956	1,586	0	284

7 COMPANIES

**RECAP OF 1994 ALASKA ACCIDENT & HEALTH BUSINESS*
(LIFE, AND PROPERTY & CASUALTY INSURERS - \$000)**

	DIRECT WRITTEN PREMIUMS	DIRECT EARNED PREMIUMS	DIRECT LOSSES INCURRED
GROUP	249,670	197,668	158,812
CREDIT	4,628	4,525	2,437
COLLECTIVELY RENEWABLE	277	284	16
ALL OTHER	10,124	10,372	5,074
TOTAL	264,699	212,849	166,339

*Includes Canadian Life Insurers



Post-It® brand fax transmittal memo 7671		# of pages > 1
To Sen. Loren Leman	From Greg Eisert	
Co.	Co. Luth. Brotherhood	
Dept.	Phone # 907-277-0335	
Fax # 907-465-3210	Fax # 907-274-6841	

March 10, 1997

Senator Loren Leman
Chairman, Senate Labor and Commerce Committee

Dear Mr Chairman:

I am writing to indicate my support of H.P. 179 and S. F. 119, which would bring the Model Fraternal Code to Alaska. As a fraternalist, and a member of Lutheran Brotherhood, and also as a District Rep. for Lutheran Brotherhood, this bill is important to me as it will allow fraternalists the flexibility to meet the needs of their members now and into the future. It will not change our basic nature as not-for-profit, self-help membership organizations, with local lodges throughout our state and the rest of the nation.

Thank you for your support of this bill.

Gregory A. Eisert FIC,
2525 Blueberry Rd. Ste.102
Anchorage, AK 99503
(907) 277-0035

A handwritten signature in cursive script that reads 'Gregory A. Eisert'.

AMENDMENT #1

OFFERED IN SENATE LABOR AND COMMERCE COMMITTEE
BY Senator Leman

TO: SB 119

Page 1, Line 13 after "body" INSERT:

"or any intermediate assembly"

AMENDMENT #2

OFFERED IN SENATE LABOR AND COMMERCE COMMITTEE
BY Senator Leman

TO: SB 119

Page 18, line 7, INSERT:

"(15) AS 21.45:
(16) AS 21.56:"

Re-number existing (15) through (18) accordingly.

LEGAL SERVICES

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

(907) 465-3857 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

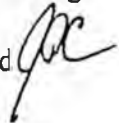
130 Seward Street, Suite 400
Juneau, Alaska 99801-2103

MEMORANDUM

March 12, 1997

SUBJECT: Sectional Summary of House Bill 179. (Work Order No. 20-LS0720\A)

TO: Representative Norman Rokeberg
Attn: Shirley Armstrong

FROM: James P. Crawford 
Assistant Revisor

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.

Additionally, there appear to be no cases in Alaska that substantively discuss Fraternal Benefit Organizations in a way that could provide guidance on issues presented in the bill. Consequently, the division of insurance is likely to be one of the best resources to tap should questions about the bill arise.

Finally, rather than trying to discuss every point in each bill section exhaustively, I have limited discussion where possible to the main points of each section in the interests of readability and brevity.

Section 1. This section adds Article 1.

AS 21.84.005 - This section relates to representative forms of government of societies, which, among other things, must have a supreme governing body that is either an assembly or a board. In subsection (c), there is in my mind a question whether a supreme governing body board is in addition to or in place of a board of directors. However, once the sponsor decides this issue, minor language changes could clear up any ambiguity. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.900(4).*

AS 21.84.015 - This section requires that societies provide benefits as set out in AS 21.84.201 and operate for certain purposes. It also allows societies to adopt laws and rules

Representative Norman Rokeberg

March 12, 1997

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relating to its government. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.200 and AS 21.84.060(2).*

Section 2. This section adds 21.84.025, which relates to qualifications for membership, classes and types of membership, rights and privileges of and limitations on membership, and nonassignability of membership rights. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.180.*

Section 3. This section adds AS 21.84.035, which relates to location of the principal office; business transacted at meetings; minutes of the proceeding, which must conform to the English language requirement set out in AS 21.84.070; the official publication; synopses of annual statements; and grievance and complaint procedures. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.160 and 21.84.340(c).* Please note that subsection (c) is essentially restated in 21.84.465(e), found in bill section 26. Because this material fits better in the context of AS 21.84.465, the material should be removed from this section if the sponsor wants to eliminate what appears to be a redundancy.

By cross-referencing AS 21.84.070, the bill incorporates an English-language requirement for certain documents. I have recently (this morning at 8:00 am) become aware that a challenge to the constitutionality of an English-only law in Arizona reached the U.S. Supreme Court. Before reaching the Supreme Court, lower courts held the law, which required Arizona state employees to express the "official acts" of the state in English, to be unconstitutional. However, the Supreme Court vacated the lower court holdings as moot because the state employee resigned from state employment a day after notices of appeal were filed. U.S. Sup Ct, No. 95-974, 3/3/97. I have not had time to research this issue more closely, but I think it is safe to say that the constitutionality of such laws is an open question in the Ninth Circuit, which encompasses Alaska. There may be a distinction between that case and the present situation in that the law in Arizona required use of English by public employees, where the law here requires the use of English by private organizations.

Section 4. This section adds AS 21.84.045, which provides that officers and members are not personally liable for a society's benefits; requires indemnification and reimbursement of certain persons, along with exceptions; allows purchase of insurance on behalf of directors, officers, employees, and agents for certain purposes; and provides limited immunity for certain persons serving without compensation. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.250.*

Section 5. This section adds AS 21.84.055, which allows a society to provide that laws may not be waived in certain circumstances, and AS 21.84.059, which relates to the process by which a society may amend its laws. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.150 and 21.84.140.*

Representative Norman Rokcberg

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Section 6. This section amends AS 21.84.060 by changing "society" to "domestic society"; by inserting a date relating to a domestic society's form of government; by deleting references to certain purposes of societies, which may now be found in AS 21.84.015(a)(2); and by changing "certificate" to "certificate of authority."

Section 7. This section amends AS 21.84.070, the most significant amendments being the increase in the amounts of bonds relating to the completion date of the organization of a society.

Section 8. This section amends AS 21.84.080 by changing "certificate" to "certificate of authority" and "society" to "domestic society."

Section 9. This section amends 21.84.090, the most significant amendments relating to requirements a society must satisfy before taking actions relating to incurring liabilities, issuing certificates, or paying certain benefits.

Section 10. This section amends AS 21.84.100 by changing "society" to "domestic society" and by changing "certificate" to "certificate of authority."

Section 11. This section amends AS 21.84.120 to change a date relating to an obligation for a society to reincorporate.

Section 12. This section amends AS 21.84.170(a) to provide that societies may operate not for profit institutions to further purposes permitted by AS 21.84.015.

Section 13. This section adds AS 21.84.175, which relates to reinsurance agreements by societies. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.310.*

Section 14. This section adds 21.84.185, which relates to procedures and requirements for consolidations and mergers between societies. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.500 and 21.84.510.*

Section 15. This section adds 21.84.195, which relates to plans of conversion from a fraternal benefit organization to a mutual life insurance company. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.520.*

Section 16. This section adds 21.84.201, which lists types of benefits a society may provide, requires a society to specify rules relating to persons who may be issued or covered by contractual benefits, and allows benefits on the lives of persons under the age of adult membership. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.200.*

Section 17. This section amends AS 21.84.230(a) to provide for irrevocable beneficiary designations.

Section 18. This section amends AS 21.84.230(c) to provide that benefit contract proceeds are payable to the owner of the benefit contract at the death of an insured person if the insured person was not the owner and if there are no beneficiaries.

Section 19. This section adds AS 21.84.255, which relates to benefit contracts. It describes materials comprising the benefit contract; it describes the effect on certificate owners and beneficiaries of amendments to a society's laws; it discusses certain persons below the age of majority; it describes requirements that apply if reserves of classes of certificates become impaired; it discusses requirements relating to certificates of benefit contracts; it discusses transferability of certain benefit contracts; and it discusses assignability of benefit contracts. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.260 and 21.84.270.*

Section 20. This section adds AS 21.84.265, which relates to the size of certain amounts and benefit values connected to certificates. These amounts and benefit values are treated differently based on the certificate's date of issuance. If the certificate was issued before a specified date, the size is set by the provision of laws applicable on the day before the effective date of the Act. Note that the Act has an effective date of January 1, 1998, assuming the effective date provision receives the required number of votes. On the other hand, if the certificate was issued on or after the specified date, the size is set by reference to interest rate and mortality tables authorized by state law and used in calculating similar benefits of life and health insurers. The pivotal specified date in this section is a date one year after the effective date of the act. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.220.*

Section 21. This section adds AS 21.84.275, which describes investments authorized for societies, including foreign and alien societies. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.330.*

Section 22. This section amends AS 21.84.320(a) by changing "contract" to "benefit contract."

Section 23. This section adds subsection (d) to AS 21.84.320. This subsection relates to the establishment and operation of separate accounts and contracts issued on a variable basis.

Section 24. This section adds AS 21.84.335, which provides that societies are governed by AS 21.84 but are exempt from all other provisions of the insurance laws of the state except for specific chapters and sections listed. These listed chapters and sections outside AS 21.84 apply to societies to the extent applicable unless they conflict with AS 21.84. *For purposes*

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of comparison, some analogous or similar provisions in existing law are found in AS 21.84.590.

Section 25. This section adds 21.84.455, which relates to standards of valuation of certificates issued by societies. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.350.*

Section 26. This section adds AS 21.84.465, which requires the filing of an annual statement of certain information about the society; requires the communication of synopses of the statement to benefit members; and allows the director of the division of insurance to require more frequent filing of statements. Note that subsection (e) essentially restates AS 21.84.035(c), set out in bill section 3. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.340.*

Section 27. This section adds AS 21.84.475, which relates to licences and renewals. Certain societies are authorized to conduct business through June 30 immediately following the effective date of the Act, which has an effective date of January 1, 1998, assuming the effective date provision receives the required number of votes. This authorization relates (1) to societies authorized to conduct business on the effective date of the act, and (2) to societies that become licensed after the effective date but before July 1 immediately following the effective date. The authority of these societies may be renewed annually but terminates on the first day of the succeeding July, which is also the case for all other societies. However, issued licenses continue until a new license is issued or specifically refused. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.030.*

Section 28. This section adds AS 21.84.485, which allows the director of the division of insurance to examine societies in the manner authorized under AS 21.06.120 - 21.06.230 for examination of insurers. Note that AS 21.06 has additional sections relating to examination that this section does not reference. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.370, 21.84.380, and 21.84.390.*

Section 29. This section adds 21.84.495, which relates to the licensing of foreign or alien societies. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.040.*

Section 30. This section adds AS 21.84.535, which relates to suspension, revocation, or refusal of licenses of foreign or alien societies. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.050.*

Section 31. This section adds 21.84.565, which requires agents of societies to be licensed in accordance with AS 21.27, which relates to licensing requirements in the insurance

Representative Norman Rokeberg

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industry in Alaska. It also creates an exception to requirements of examination and licensing.

Section 32. This section adds 21.84.575, which subjects societies and agents to AS 21.36, relating to unfair methods of competition or unfair or deceptive acts or practices in the business of insurance. This section also clarifies that the application of AS 21.36 does not affect certain activities by societies.

Section 33. This section adds Article 7 to AS 21.84.

AS 21.84.625 - This section requires a society to appoint the director of the division of insurance as its representative for receiving service of process. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.490.*

AS 21.84.650 - This section provides specific penalties for certain acts and a general penalty for acts that constitute a violation of AS 21.84 that are not penalized elsewhere.

AS 21.84.675 - This section provides for judicial review of decisions and findings of the director of the division of insurance. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.550.*

AS 21.84.700 - This section creates exemptions from the application and effect of AS 21.84 for certain categories of associations offering certain kinds of benefits. However, this section also removes the exemptions in some circumstances and places restrictions on activities of certain exempt associations. Also, please note that subsection (f) provides that societies that are exempt from the provision of AS 21.84 are "exempt from all other provisions of the insurance laws of this state," also found in existing law. *For purposes of comparison, some analogous or similar provisions in existing law are found in AS 21.84.020.*

Section 34. This section amends four definitions in AS 21.84.900, the chapter's definitions section, and repeals one definition, which is "representative form of government." This phrase is now found in AS 21.84.005, set out bill section 1.

Section 35. This section adds nine defined terms or phrases to AS 21.84.900.

Section 36. This section repeals those sections from AS 21.84 that have not been retained.

Section 37. This section provides an effective date of January 1, 1998.

JPC:glc

97-166.glc

625 Fourth Avenue South
Minneapolis, Minnesota 55415



STATEMENT CONCERNING THE NEED FOR
THE MODEL FRATERNAL CODE
IN THE STATE OF ALASKA

Mr. Chairman and members of the Committee, my name is Richard J. Kleven. I am Assistant Vice President of the Law Division of Lutheran Brotherhood, a fraternal benefit society domiciled in Minneapolis, Minnesota, and licensed in Alaska. I am appearing on behalf of the National Fraternal Congress of America (NFCA), the national trade organization for fraternal benefit societies, the author of the Model Fraternal Code that has been introduced as House Bill 179 and Senate Bill 119.

Fraternal benefit societies are not for profit, self-help membership organizations formed by people of common ethnic, religious or vocational backgrounds or people holding similar moral, ethical and patriotic beliefs. By law, fraternal benefit societies must operate on a lodge system, maintain a representative form of government and offer benefits solely to members and their dependents.

The law governing fraternal benefit societies is Chapter 84 of Title 21 of the Alaska Insurance Laws. It was enacted in 1966 as Chapter 120, and has been amended several times. Despite numerous amendments, Chapter 84 does not give fraternal benefit societies authority to meet the insurance needs of their members in today's financial environment. In October of 1983, the NFCA adopted the Model Fraternal Code to govern fraternal benefit societies. This model was the product of several years of activity taking into account the needs and interests of the members of all societies: large - small - ethnic - occupational - religious - general.

Many of the provisions of the Model Fraternal Code are a response to conflicts with the administration of laws produced outside of state government, like those created by the Internal Revenue Service and the Securities Exchange. Those and other agencies have made rules affecting members of fraternal benefit societies which are either not addressed, or are inappropriately addressed, in existing statutes such as Chapter 84, Title 21 of the Alaska Insurance Laws. For example: the naming of irrevocable beneficiaries; the privilege to assign insurance to another owner; and the ability to purchase insurance on a third-party basis are all common transactions in estate planning and income tax planning. These issues have little or no effect on state regulations but they are important to consumers - including the members of fraternal benefit societies residing in Alaska.

Model Fraternal Code
State of Alaska
March 6, 1997
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The Model Fraternal Code contains provisions which give fraternal benefit societies authority to offer their members the products they demand in response to their needs in modern America. This new Code offers some flexibility which is not now available under Chapter 84, while maintaining the character of fraternal benefit societies.

REVIEW OF IMPORTANT PROVISIONS

Here is a list of important provisions contained in the Model Fraternal Code that are not now contained in Chapter 84:

1. Fraternal may form subsidiaries or nonprofit institutions to carry out their charitable or benevolent purposes.
2. Fraternal may use irrevocable beneficiary designations and absolute assignments in their insurance certificates, so that members can use their fraternal insurance for modern estate planning needs.
3. Fraternal may set up separate accounts and may issue variable insurance products to members, upon approval of the Director of Insurance and in keeping with SEC requirements.
4. Fraternal may issue, upon approval of the Director of Insurance, new life or health insurance products that may be developed in the future and that are approved for use by commercial insurers.

Certain outdated provisions of current Chapter 84 are deleted, while other provisions have been consolidated and re-written in "easy to understand" language that is gender neutral.

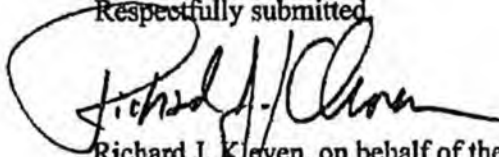
This Model Fraternal Code has been enacted in 33 states and four other states have enacted its essential features. There are no domestic fraternal benefit societies licensed in Alaska, but several societies from other states are. Those societies have over 8,000 members in Alaska, and through their 45 local lodges in your state in 1995 held 818 fraternal events, performed 9,587 fraternal acts of service represented by 57,988 hours of service. In addition, Alaska licensed fraternal benefit societies disbursed \$227,488 for fraternal, charitable and benevolent activities for the citizens of Alaska in 1995.

Model Fraternal Code
State of Alaska
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The revisions contained in the Model Fraternal Code will be of benefit to the Alaska Division of Insurance, to the licensed fraternal benefit societies in Alaska, to their 8,000+ members in the state, to the Alaska citizens who may in the future become members of a fraternal benefit society, and to the communities which we also serve.

Therefore, on behalf of the NFCA, I respectfully request that House Bill 179 and Senate Bill 119 be favorably considered and enacted by the Legislature of Alaska.

Respectfully submitted,



Richard J. Kleven, on behalf of the National Fraternal Congress of America
March 1997

A PROPOSAL FOR ENACTMENT OF THE MODEL FRATERNAL CODE
OF THE NATIONAL FRATERNAL CONGRESS OF AMERICA
IN LIEU OF CHAPTER 84 OF THE ALASKA INSURANCE CODE

A. The legislative history of the antecedents to Chapter 84 of the Alaska Insurance Code.

Alaska enacted a new comprehensive Insurance Code in 1966 as Title 21 of the Statute Law of Alaska (Chapter 120, SLA 1966). Chapter 84 of Title 21, Sections 21.84.010 to 21.84.590 and 21.84.900, govern fraternal benefit societies. The provisions in Chapter 84 as enacted in 1966 were nearly identical to the text of the Uniform Fraternal Code of 1962 that had been drafted and approved by the National Fraternal Congress of America (NFCA) and the National Association of Insurance Commissioners. Twenty-four other states and Puerto Rico also adopted the Uniform Fraternal Code.

Present Chapter 84 has been amended several times since 1966:

<u>Section</u>	<u>Caption</u>	<u>Amendment Date</u>
21.84.010	Scope	Sec. 211, C. 67, 1992
21.84.030	License	Sec. 21, C. 26, 1985
21.84.210	Children	Sec. 22, C. 21, 1985
21.84.220	Nonforfeiture	Secs. 4,5, C. 28, 1984
21.84.290	(repealed)	Sec. 223, C. 67, 1992
21.84.340	Statement	Sec. 22, C. 26, 1985
21.84.350	Valuation	Sec. 6, C. 28, 1984
		Sec. 212, C. 67, 1992
21.84.410 to		
21.84.460	(repealed)	Sec. 223, C. 67, 1992
21.84.470	Misrepresentation	Sec. 19, C. 149, 1984
21.84.480	Discrimination	Sec. 213, C. 67, 1992
21.84.490	Process	Sec. 24, C. 26, 1985
21.84.560 to		
21.84.580	(repealed)	Sec. 223, C. 67, 1992
21.84.590	Applicability of Code	Sec. 2, C. 40, 1981
		Sec. 2, C. 45, 1981
		Sec. 20, C. 149, 1984
		Sec. 25, C. 26, 1985

		Sec. 36, C. 50, 1989
		Sec. 3, C. 106, 1990
		Sec. 214, C. 67, 1992
21.84.900	Definitions(added)	Sec. 215, C. 67, 1992

Senate Bill S. 319. Laws of 1996 also amended various sections non-substantively in Chapter 84 [S. 319, Secs. 98 to 102].

In 1980, the NFCA undertook a project to revise and update the 1962 Uniform Code. The 1983 Model Fraternal Code draft was the result, adopted by the NFCA at its Annual Convention in Denver, Colorado, in October 1983.

Since then, the 1983 Model Fraternal Code (MFC), with some drafting changes to accommodate requests of the particular Insurance Department, has been enacted in thirty-one states:

Arizona	Illinois	Minnesota	North Dakota	Virginia
Arkansas	Indiana	Missouri	Oklahoma	Washington
Colorado	Iowa	Montana	Oregon	Wyoming
Florida	Kansas	Nebraska	Pennsylvania	
Georgia	Kentucky	Nevada	Rhode Island	
Hawaii	Louisiana	New Mexico	South Dakota	
Idaho	Michigan	North Carolina	Tennessee	

Fifteen of those states, like Alaska, had previously enacted the Uniform Code. California, Utah and Wisconsin also have modern fraternal benefit societies laws containing the essential features of the NFCA 1983 Model Code. MFC legislation is currently being considered in the District of Columbia, Maryland and New York. An MFC bill in Ohio, HB-468, has already passed the House and is pending in the Senate.

B. Why does Alaska need a new fraternal benefit society law?

Today's environment of rapid changes in the insurance industry demand that there also be major changes in the laws regulating insurers.

While one particular fraternal benefit society may be affected by current changes to a greater or lesser degree than would another society, no society is entirely immune from the environment in which it operates. When changes in the environment occur, each society must carefully evaluate the nature of the changes. Implicit

in this consideration is that each society has options from which to choose alternate courses of action. It is one thing to choose not to exercise an option and quite another to have no options from which to choose.

The 1983 Model Fraternal Code of the NFCA meets the challenges of the present and future in the following ways. The most sweeping additions to the revised code would give fraternal clear authority to own subsidiary corporations and to establish the separate accounts necessary for offering variable life insurance and variable annuities. Another addition would assure that the benefit authority of fraternal would be able to keep pace with any new authorities granted to commercial life insurers in the future.

In addition to these major changes, the revised code:

- Improves the presentation of fraternal purposes and characteristics through rewriting and reorganization.
- Maintains key fraternal characteristics--lodge system, representative form of government, membership--and traditional elements such as ritual.
- Improves provisions regarding juvenile contracts, designation of irrevocable beneficiaries, assignment of contracts and use of contracts for third-party insurance situations--to make contracts more useful to members in their personal, financial and tax planning.
- Integrates some regulatory provisions with commercial insurance standards to assure up-to-date regulation, while maintaining specific exceptions for unique fraternal practices.
- Uses updated language, uniform definitions, gender-neutral references, and consistent terminology.

C. The following is a section by section comparison of the MFC bill draft of new section numbers in Chapter 84 with corresponding sections in present Chapter 84:

<u>MFC</u>	<u>Ch. 84</u>	
<u>Section</u>	<u>Section</u>	<u>Caption and Commentary</u>
21.84.1010	21.84.900(1)	Fraternal Benefit Society description is substantially the same as present law.
21.84.1020	21.84.900(2)	Lodge System description is substantially the same as present law. Subsection (b) is essentially the same as present Section 21.84.210(a) relating to branches for children.

21.84.1030	21.84.900(4)	<p>Representative Form of Government - is similar to present law. Subsection (a) clearly recognizes two types of supreme governing bodies: (1) an assembly consisting of delegates elected by the members, and (2) a board elected directly by the members. Voting by mail has been authorized. At least one foreign society licensed in Alaska has the latter form of government.</p>
21.84.1040	21.84.900	<p>Terms Used -- Defines terms commonly used in the chapter. This section includes the definition of "premiums" and "society" in present Section 21.84.900 (3) and (5). The other definitions in that section are found in MFC Sections 21.84.1010, 21.84.1020 and 21.84.1030.</p>
21.84.1050	21.84.060(2)	<p>Purposes and Powers -- contains a listing of named purposes for which a society may be organized and states that these purposes may be carried out directly by the society, or indirectly through subsidiaries or affiliated organizations. The named purposes in subsection (a)(2) are the same as recited in present Section 21.84.060(2) with "patriotic" added. Owning subsidiary corporations which engage in activities beyond the stated purposes would be permitted only in accordance with the investment laws of the state of domicile of a society and whatever subsidiary authority can be derived therefrom. MFC Section 21.84.1210 covers investments generally, specifically authorizing societies to invest their funds in investments authorized for life insurers. The organization requirements are contained in MFC Section 21.84.1100.</p>
21.84.1060	21.84.180	<p>Membership -- emphasizes the importance of fraternalism as membership organizations, and gives societies authority to set eligibility standards and the rights and privileges of each membership class. This section stresses the society's right and duty to set membership qualifications. A conscious effort has been made to divorce concepts of membership from concepts of insurance, the latter taken up in MFC Section 21.84.1160 - Benefits, and Section 21.84.1190 - The Benefit Contract.</p>

21.84.1070	21.84.160; .340(c)	Location of Office. Meetings, Communications--Subsection (a) is similar to present law, except that a society may hold a meeting where it has only one branch (instead of five). Subsection (b)(1) permits notices, etc. to be distributed to members through the society's official publication. Subsection (b)(2) is similar to present section 21.84.340(c) (requiring the mailing of a synopsis of the annual statement to a society's members). Subsection (c) contains statutory authorization for grievance procedures.
21.84.1080	21.84.250	No Personal Liability-Subsection (a) is similar to present law. Subsections (b) and (c) provide authorization for indemnification of directors, officers, etc. and for the purchase of directors and officers liability insurance. Subsection (d) provides immunity from liability for directors, officers and employees serving without compensation.
21.84.1090	21.84.150	Waiver - provides that no subordinate body, officers or members may waive any provisions of the laws of the society, similar to present law.
21.84.1100	21.84.-060 to 21.84.100	Organization - This section includes all organizational requirements of present law, and increases the bond requirement to not less than \$300,000 nor more than \$1,500,000 as required by the Director. The amount of initial premiums required has been raised to \$150,000. The purpose of these changes is to bring the organizational requirements more in line with contemporary economic realities. However, to our knowledge no domestic society has ever been organized in Alaska.
21.84.1110	21.84.140	Amendments to Laws - provides for submission and approval of amendments to the laws of a domestic society, and the filing of any such amendments by licensed foreign or alien societies, the same as present law.
21.84.1120	21.84.170	Institutions -- permits societies to operate and maintain organizations relevant to their society's purposes, similar to present law. Subsection (b) is the same as present Section 21.84.170(c)

providing that a society may not own or operate funeral homes or undertaking establishments.

21.84.1130	21.84.130	Reinsurance - is substantially the same as present law, but provides that a society may not reinsure the business of another society other than in a consolidation or merger.
21.84.1140	21.84.500; .510	Consolidations and mergers - is substantively the same as present law.
21.84.1150	21.84.520	Conversion of Fraternal Benefit Society into Mutual Life Insurance Company - is similar to present law.
21.84.1160	21.84.200; .210	Benefits -- lists authorized benefits the same as present law, but without the \$300 limit on tombstone benefits, and includes benefits for children and adults instead of providing for them in separate sections. The words "health care" are used in subsection (a)(4) to reflect the amendment enacted by section 102 of S. 316, Laws of 1996. Subsection (a)(7) provides that a society may issue benefits as authorized for life insurers, and which are not inconsistent with the fundamental characteristics of fraternal benefit societies. The question of contractual benefits is addressed in subsection (b).
21.84.1170	21.84.230	Beneficiaries -- places control of beneficiary designations in the hands of each society. This section covers the various matters contained in present law, subsection (c) also providing that if the owner of the certificate is other than the insured, the proceeds shall be paid to the owner.
21.84.1180	21.84.240	Benefits Not Attachable - is the same as present law.
21.84.1190	21.84.260 to 21.84.300 and 21.84.190	

The Benefit Contract -- subsections (a) and (b) preserve the "open contract" concept of fraternal certificates contained in present Section 21.84.260(a) and (c). Likewise, the traditional "maintenance of solvency" provision in present Section 21.84.190 is preserved in subsection (d). Subsection (f) requires all fraternal certificates to be filed with the Director, the same as present law, and all certificates

issued after one year from the effective date of the Model Code must conform to the requirements for like policies issued by commercial life and health insurers. The provision in present Section 21.84.300(c) that a filing of a health certificate shall be considered approved unless disapproved within 60 days has been inserted in subsection (f) and made applicable also to a filing of a life certificate.

Subsection (f) makes unnecessary the inclusion of the text of present Sections 21.84.270 to .300 (standard and prohibited provisions) because fraternal certificates will be subject to the same general requirements for commercial life and health insurance company policies.

Subsections (g) and (h) pertain to control over juvenile contracts, and the conditions under which benefit contracts may be assigned.

21.84.1200

21.84.220; 21.84.350 & 21.84.1250

Nonforfeiture Benefits (Section 21.84.1200), and Valuation (Section 21.84.1250) - The thrust of these two sections is essentially the same as present law relating to calculation of nonforfeiture benefits and valuation of reserves. They provide that existing law shall apply to outstanding certificates, but that for certificates issued on or after one year from the effective date of the Model Code, societies must use at least the Commissioner's 1941 CSO Table. These two sections incorporate the authorization in present Section 21.84.220(d) and 21.84.350(j) that a society may calculate nonforfeiture benefits and value reserves of newly issued policies on any more recent mortality table authorized for use by commercial life insurance companies.

21.84.1210

21.84.330

Investments- This section is the same as present law.

21.84.1220

21.84.320

Funds - Subsections (a) and (b) are the same as in present law. Subsection (c) gives societies specific authority to create separate accounts. This authority is new. It will give fraternal the ability to offer members variable benefits. If variable benefits are subject to federal securities laws, the supreme governing body is authorized to exclude these forms of benefits from the "open contract" and

"maintenance of solvency" requirements in subsections (b) and (d) of MFC Section 21.84.1190. The supreme governing body is also empowered to authorize that separate, independent control be set up over such accounts should that be necessary or desirable. The text of present Section 21.84.320(c) would be obsolete and unnecessary because of the reserve valuation requirements in MFC Section 21.84.1250.

21.84.1230 21.84.010 and 21.84.590 - Applicability of other code provisions.

Subsection (a) is the same as present Section 21.84.010. Subsection (b) is the same as 21.84.590 with explanatory captions added for clarity.

21.84.1240 21.84.400 Taxation - is the same as present law.

21.84.1250 21.84.350 Valuation - See comment under MFC Section 21.84.1200. The text of present Section 21.84.350 would be obsolete and unnecessary because of the modern valuation requirements in MFC Section 21.84.1250.

21.84.1260 21.84.340; .350; .360

Reports - Subsection (a) is the same as present Section 21.84.340(h). Subsection (b) requires the filing of valuation reports similar to the requirement in present Section 21.84.350, but the valuation standards are set forth in MFC Section 21.84.1250. Subsection (c) provides a penalty for late filing of an annual statement, the same as in present Section 21.84.360.

21.84.1270 21.84.030 Annual License - is essentially the same as present law.

21.84.1280 21.84.370; .380; .390

Examination of Societies; No Adverse Publications - This section covers both domestic, foreign and alien societies. The confidentiality requirement of present Section 21.84.390 is preserved. Insurance Department examination of fraternal would be on the same basis as for commercial life and health insurers.

21.84.1290	21.84.040	Foreign or Alien society - Admission - Is essentially the same as present law.
21.84.1300	21.84.530	Injunction - Liquidation - Receivership of Domestic Society - This section is essentially the same as present law.
21.84.1310	21.84.050	Suspension, Revocation or Refusal of License of Foreign or Alien Society - is substantially the same as present law.
21.84.1320	21.84.540	Injunction - This section provides that only the Director of Insurance may bring an injunction proceeding against a society, not private litigants.
21.84.1330	21.84.590(7); AS 21-27	

Licensing of Agents - Subsection (a) provides that full-time fraternal agents will be required to meet the same licensing and regulatory standards applicable to commercial life insurance agents under AS 21.27, the same as present law. AS 21.27.060(d)(1) provides that an applicant for a limited license under AS 21.27.150(5) [a fraternal benefit society limited producer license to a person whose sole purpose is to be appointed by and to act on behalf of a fraternal benefit society] shall not be required to take an examination.

Subsection (b) provides that no examination or license shall be required of salaried persons who devote substantially all of their services to other than solicitation of insurance and who receive no commission or compensation dependent upon the amount of business obtained.

Subsection (c) provides an exemption from licensing of persons who devote only part-time to the solicitation of insurance and who in one year write no more than \$50,000 of life insurance or other insurance on a maximum number of 25 persons.

The Alaska Producers Act, AS 21.27, does not have the exemptions provided in subsections (b) and (c).

21.84.1340	21.84.470; .480; .590(9); AS 26-36	
------------	------------------------------------	--

Unfair Methods of Competition - This section makes it clear that fraternal societies are subject to the unfair trade practices and frauds laws of Alaska contained in AS 26-36, the same as provided in present Section 21.84.590(9). This section also makes it clear that unfair trade practices laws are not to be interpreted to interfere with membership practices of fraternal societies. The application of AS 26-36 to fraternal societies makes obsolete and unnecessary retention of the text of present Sections 21.84.470 and 21.84.480.

21.84.1350	21.84.490	Service of Process - Is essentially the same as present law.
21.84.1360	(None)	Penalties - This section provides specific penalties for certain violations in addition to the penalties specified in other sections. Subsection (a) contains the penalty for misrepresentation in present Section 21.84.470(b). Subsection (d) is a general catch-all penalty for a violation for which a specific penalty is not provided.
21.84.1370	21.84.550	Review - is essentially the same as present law.
21.84.1380	21.84.020	Exemption of Certain Societies -- Is the same as present law. The words "health care" are used in subsections (a)(3), (a)(4), (b) and (d) to reflect the amendments enacted by sections 98, 99 and 100 of S. 319, Laws of 1996.
21.84.1390	(None)	Severability - This section creates a rule of construction for courts ruling on a provision or provisions of this chapter that may not affect other sections.

D. Why not further amend the existing Chapter 84 rather than enact a whole new fraternal code?

A review of the changes made by the NFCA 1983 Model Fraternal Code indicates that the improvements are so numerous that a piece-meal amendment process to Chapter 84, as has been done frequently in the past, would not produce the same effect.

Uniformity of regulations is important to multi-state operations. When a statute on a certain subject is different than the one in another state, it makes varying interpretations more likely. That produces the need for different forms, different member benefits, complicated operations, and frustrated management.

What amendments would be given what priority? How many times would amendments be needed? This new Code provides a means to keep pace with things without constantly seeking law changes. Also, the Model Code would be a more readily understandable statute than present law, and would give the Alaska Director of Insurance more regulatory authority over fraternal benefit societies than does present law.

The NFCA Model Fraternal Code is the product of professional deliberation and scholarship which accounted for all aspects of fraternal operations. Its enactment in Alaska would produce far better legislation than could piecemeal amendments to solve a problem here and a problem there.

E. Summary.

Enactment of the MFC in Alaska would in no way affect the rights of existing society members and certificate holders.

The MFC would, though, affect the future conduct of business of fraternal societies in Alaska. The MFC gives societies certain additional authority under Sections 21.84.1050, .160(a)(7) and .220(c). The MFC would also strengthen regulatory control over societies by the Insurance Director: particularly, (1) under Section 21.84.1100 by increasing the organizational financial requirements for new societies; (2) under Section 21.84.1190 (f), requiring that all new certificates filed after one year from the effective date of the code shall conform to the same policy requirements as established for the same kinds of policies issued by commercial life and health insurers; and (3) under Sections 21.84.1200 and 21.84.1250, requiring the calculation of nonforfeiture benefits and the valuation of certificate reserves on new business on at least the 1941 CSO Table of Mortality.

The provision of MFC Section 21.84.1160(a)(7) that a fraternal benefit society may provide such other benefits as authorized for life and health insurers (which are not inconsistent with the concepts and fundamental nature of fraternal as expressed in the MFC) should be a major benefit to present members and future members of societies. Under that provision, the Director of Insurance can approve new forms of insurance for fraternal that have likewise been approved for commercial life and health insurers, without having to wait for the Legislature to enact an otherwise necessary amendment to the fraternal chapter.

MFC Section 21.84.1170(a) authorizes a society to provide that the owner of a benefit contract may designate an irrevocable beneficiary, and Section 21.84.1190(h) would authorize assignment of a benefit contract to a third party.

In summary, it is believed that the MFC would provide a clearer and more comprehensive statute regulating fraternal benefit societies than present Chapter 84 and would give the Director of Insurance more authority and control over their operations. The MFC provisions would be more beneficial and provide more protection to the people in Alaska who are or may choose to become members of and insured by a fraternal

benefit society licensed in Alaska. In addition, several sections clarify the law by specifically providing for the particular regulatory authority under Chapter 84, with particular references to other applicable chapters and sections.

There are no domestic fraternal benefit societies in Alaska of which we are aware, but there are six member-societies of the National Fraternal Congress of America from other states licensed in Alaska.

These societies have nearly 7,600 life insurance certificates and over 280 health insurance certificates on their members residing in Alaska. It is desirable that these societies be able to offer to their members in Alaska the benefits afforded by this new Model Fraternal Code.

Therefore, on their behalf the NFCA urges the introduction and enactment of the Model Fraternal Code bill in the 1997 session of the Alaska Legislature.

A legislative bill draft in the Alaska format and style is submitted with this Proposal.

Attached are two cross-reference charts showing corresponding sections of the Model Fraternal Code bill with the sections in present Chapter 84, and vice versa.

Respectfully submitted,

National Fraternal Congress of America
1280 Iroquois Drive, Suite 300
P.O. Box 3087
Naperville, Illinois 60566-7087
(630) 355-6633
October 1996

SB

158

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

NO. 2
 BILL NO: Bill Version: CS SB 158 (L+C)
 (S) Publish Date: 2/20/98

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to motor vehicle liability
Insurance..." BRU: Motor Vehicles
 Component: Driver Services
 Sponsor: Senate Judiciary
 Requestor: (S) L&C COMPONENT SERIAL NO. 2150

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

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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 98) impact: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill will not fiscally impact the Division of Motor Vehicles

Prepared By: Juanita M. Hensley Phone: 465-5648
 Division: Motor Vehicles Date: 2/4/98
 Approved by Commissioner: Mark Boyer Date: 2/4/98
 Agency: Department of Administration

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 158

Revision Date (Note if correction) _____ Dept. Affected Commerce & Economic Development
 Title Insurance Changes For Driver's License BRU Insurance
 Revocation _____ Component Insurance
 Sponsor Senate Judiciary Committee
 Requester Senate Labor & Commerce Component Serial No. 354

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Section 1 amends the existing statute to prohibit canceling a personal automobile insurance policy when a minor's license is revoked for possession of alcohol.

Section 2 adds a new section that prohibits an insurer from canceling, nonrenewing, denying a claim, or increasing the premium on a motor vehicle liability insurance policy when a minor's license has been revoked for possession or consumption of alcohol.

Prepared by Marianne K. Burka, Director *[Signature]* Phone 465-2515
 Division Insurance Date 2/2/98
 Approved by Commissioner Deborah B. Sedwick *[Signature]* Date 2.2.98
 Agency Commerce and Economic Development

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ALASKA STATE LEGISLATURE



Sen. Robin Taylor, Chair
Sen. Drue Pearce, Vice Chair
Sen. Mike Miller
Sen. Sean Parnell
Sen. Johnny Ellis

State Capitol
Juneau, AK 99801-1182
(907) 465-3717
Fax: (907) 465-3922

Senate Judiciary Committee

SPONSOR STATEMENT FOR

CS FOR SENATE BILL 158 () "An Act relating to motor vehicle liability insurance covering a person who has had the person's driver's license revoked."

The "use it or lose it" provisions of current statute have had an unintended consequence. Minors who lose their drivers licenses for minor consuming offenses often find themselves and their families with increased insurance premiums and occasionally a policy cancellation.

Senate Bill 158 would correct this situation by prohibiting an insurer from raising rates and/or cancelling existing policies solely for suspension of a minor's drivers license as a result of minor consuming (where not involving driving).

This narrowly focused version of SB 158 does not address other offenses such as DWI, using false ID, or possession of controlled substances.

Sectional Analysis

CSSB 158

Section 1 adds language to the existing statute stating that AS 21.36.210 (a) (2) does not apply to an administrative revocation as described in AS 21.89.027, the new section which begins on page 2 of the bill.

AS 21.36.210 (a) specifies why an insurer may cancel a policy: nonpayment of premium or suspension or revocation of a drivers license.

Section 2 is the operative section of the bill and adds a new provision to state law. (a) says an insurer may not refuse to issue or renew motor vehicle liability insurance, cancel an existing policy, deny a covered claim, or increase the premium only because of an administrative or court ordered suspension for minor consuming. (b) says that (a) does not prevent an insurer from underwriting or rating a loss in the same manner as it would have had the suspension not occurred.

Section 3 says the bill would apply to policies issued or renewed on or after the effective date. This would mean that policies currently being charged a higher rate would have to be adjusted at the next renewal

prepared 1/29/98 by Joe Ambrose

Burden of drinking law for minors falls on parents

By TERRIL L. SMITH

The "Use it, lose it" law on its face sounds like a good law to get a message across to minors not to drink. You drink, you are fined and lose your driver's license for 90 days (first offense). But until you as a parent are in a situation that involves this issue, you cannot imagine the real repercussions of this law.

Criminal — minors are fined \$100 (first offense). They have a juvenile record until 18. This is a fair consequence for minors consuming alcohol.

Civil — DMV, minors lose their permits, driver's license or upon the age of obtaining a license, have it suspended for a period of 90 days. Sounds like a fair consequence. But the reality of this side of the law has run



stitutional issues. The minor's possession/consuming citation is on their driving record, even if no vehicle was involved. This citation stays on their record for five years. If caught at 16, they are punished until age 21. The insurance companies rate these citations as DWI offenses and the minors have to obtain SR 22 insurance, again, no motor vehicle has to be involved. For males, insurance can be as much as \$4,000 per year for five years. That is two years' college tuition. Even if the criminal charge is dismissed, the DMV suspension still stands. This is like being found not guilty, but ordered to pay

restitution. For a first offense, the punishment does not fit the crime, especially if no vehicle was involved. If an adult was in a park and cited for public drunkenness, his license is not affected.

Tell me what minor/college student can afford SR 22. The punishment ends up on the shoulders of the parents. This is more like a \$20,000 fine for drinking and not driving.

Minors are not supposed to drink, but it is a fact of life that they do. If alcohol and a vehicle are involved, by all means, the punishment fits. The message that is being sent to minors is "it makes no difference if you get behind the wheel of a car or not, the consequence is the same." Teens do not want adults to know that they have consumed alcohol. If they must

Teens do not want adults to know that they have consumed alcohol. If they must walk a mile to get home and have to make the choice to drive or walk, what decision do you think they will choose? If they walk and a police officer sees them, all the officer has to have is "probable cause" to cite them. We all know what decision the minor will make when the consequence is the same.

walk a mile to get home and have to make the choice to drive or walk, what decision do you think they will choose? If they walk and a police officer sees them, all the officer has to have is "probable cause" to cite them. We all know what decision the minor will make when the consequence is the same. This is a very bad message to send.

There should definitely be consequences for underage drinking, but the burden should be put on the minors, not the parents. There are parents, teachers, students and members of the public with positive ideas to develop fair consequences for the first offense, ideas that do not make the consequence the same for making the right decision not to get be-

hind the wheel or get in a car with someone else who has been drinking.

This law needs to be amended. Please write to your senators and representatives and maybe the life you save will be your own child's.

Terril L. Smith is founder of Parents Against Use It-Lose It.

SB

195

FISCAL NOTE

No. 2
 Bill Version: SB 195
 (S) Publish Date: 1-28-98

STATE OF ALASKA
 1998 LEGISLATIVE SESSION

Revision Date (Note if correction) _____ Dept. Affected Law
 Title An Act relating to common law liens, to remedies, BRU Criminal Division/Civil Division
costs, and fees imposed for the registration, filing or recording ... Component 1st-4th Jud Dist., OSPA; Collections
 Sponsor Senate Rules Committee & Support, Gov't Affairs, Special Lit.
 Requester Senate Labor and Commerce Committee Component Serial No. 2198-99, 2261, 79, 01, 03;

Expenditures/Revenues	(Thousands of Dollars)						2210, 2207, 2213
OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04	
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	0.0

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

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

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 195 makes it easier, and faster, to remove a nonconsensual common law lien against the personal property of a public servant that was not filed accompanied by a specific court order. In addition, a person filing such a lien would be liable for actual and punitive damages, as well as cost and reasonable attorneys fees. Criminal penalties for offering a false instrument for recording are created by this bill.

If the nonconsensual lien was filed against the property of a public servant employed by the Executive or Judicial Branch based on their performance or nonperformance of their duties, the Department of Law would represent them. Unless someone were to file wholesale liens against many public servants at once, as has happened in Montana and Texas, the department believes the effect of the bill to be minimal and is not submitting a fiscal note with costs.

Prepared by Joan M. Kasson Phone 465-5370
 Division Attorney General's Office Date 1/26/98
 Approved by Commissioner Bruce M. Botelho, Attorney General Date 1/26/98
 Agency Department of Law

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FISCAL NOTE

No. 1

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL Bill Version: SB 195
 (S) Publish Date: 1-28-98

Revision Date: 01/23/98 Dept. Affected: Alaska Court System
 Title: Common Law Liens BRU: Trial Courts
 Sponsor: Senate Rules by Request Component: _____
 Requestor: Senate L&C COMPONENT SERIAL NO. 788

Expenditures/Revenues		(Thousands of Dollars)				
OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

Fund Source		(Thousands of Dollars)				
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL						

Estimate of any current year (FY 98) cost: \$ None

Positions						
Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Doug Wooliver, Administrative Attorney
 Agency: Alaska Court System

Approved by: Stephanie J. Cole, Administrative Director
 Agency: Alaska Court System

Phone: 264-8265
 Date: 01/23/98

Date: 01/23/98

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 195

Revision Date: 01/23/98 Dept. Affected: Alaska Court System
 Title: Common Law Liens BRU: Trial Courts
 Component: _____
 Sponsor: Senate Rules by Request
 Requestor: Senate L&C COMPONENT SERIAL NO. 788

Expenditures/Revenues		(Thousands of Dollars)				
OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

Fund Source		(Thousands of Dollars)				
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL						

Estimate of any current year (FY 98) cost: \$ None

Positions						
Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Doug Wooliver, Administrative Attorney
 Agency: Alaska Court System

Approved by: Stephanie J. Cole, Administrative Director
 Agency: Alaska Court System

Phone: 264-8265
 Date: 01/23/98

Date: 01/23/98

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HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 6, 1998

FURTHER REFERRALS:

Finance

Date of Committee Action: April 6, 1998

The JUDICIARY Committee considered:

HB 406

HOUSE BILL NO. 406

SUBSISTENCE USES OF FISH AND GAME

"An Act relating to subsistence uses of fish and game."

recommends it be replaced with the following committee substitute CS HB 406 (JUD) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) H JUD CMTE
(Indeterminable)

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>		<input checked="" type="checkbox"/>		
<i>[Signature]</i>				<input checked="" type="checkbox"/>
<i>[Signature]</i>				<input checked="" type="checkbox"/>
<i>Brian S. Fortney</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>Jeanette James</i>			<input checked="" type="checkbox"/>	

Vice CHAIR'S SIGNATURE *[Signature]*

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 4, 1998

FURTHER REFERRALS:

Date of Committee Action: 4/3/98

The JUDICIARY Committee considered:

SB 195

SENATE BILL NO. 195

COMMON LAW LIENS

"An Act relating to common law liens, to remedies, costs, and fees imposed for the registration, filing, or recording of certain nonconsensual common law liens, and to penalties for recording common law liens."

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

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

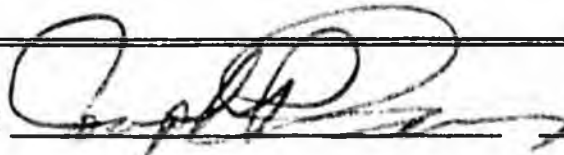
ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date)

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

zero fiscal note(s) LAW _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Alan Kately</i>	✓			
<i>Kevin S. Porter</i>	✓			
<i>Janet James</i>	✓			
<i>Chris B...</i>	✓			
<i>Joseph ...</i>	✓			

CHAIR'S SIGNATURE



FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 195

Revision Date (Note if correction) _____	Dept. Affected <u>Law</u>	
Title <u>An Act relating to common law liens, to remedies, costs, and fees imposed for the registration, filing or recording ...</u>	BRU	<u>Criminal Division/Civil Division</u>
Sponsor <u>Senate Rules Committee</u>	Component	<u>1st-4th Jud Dist., OSPA; Collections & Support, Gov't Affairs, Special Lit.</u>
Requester <u>Senate Labor and Commerce Committee</u>	Component Serial No.	<u>2198-99, 2261, 79, 01, 03;</u>

Expenditures/Revenues	(Thousands of Dollars)						2210, 2207, 2213
OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04	
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	0.0

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

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

FUND SOURCE	(Thousands of Dollars)						
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other (Specify Type)							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

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

SB 195 makes it easier, and faster, to remove a nonconsensual common law lien against the personal property of a public servant that was not filed accompanied by a specific court order. In addition, a person filing such a lien would be liable for actual and punitive damages, as well as cost and reasonable attorneys fees. Criminal penalties for offering a false instrument for recording are created by this bill.

If the nonconsensual lien was filed against the property of a public servant employed by the Executive or Judicial Branch based on their performance or nonperformance of their duties, the Department of Law would represent them. Unless someone were to file wholesale liens against many public servants at once, as has happened in Montana and Texas, the department believes the effect of the bill to be minimal and is not submitting a fiscal note with costs.

Prepared by <u>Joan M. Kasson</u>	Phone <u>465-5370</u>
Division <u>Attorney General's Office</u>	Date <u>1/26/98</u>
Approved by Commissioner <u>Bruce M. Botelho</u> , Attorney General	Date <u>1/26/98</u>
Agency <u>Department of Law</u>	

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SPONSOR STATEMENT / SECTIONAL SB 195 - Common Law Liens

Senate Bill 195 addresses the emerging problem of misuse of nonconsensual common law liens, the so-called nuisance liens, being placed against public officials and others as a means of retribution. Some groups and individuals have been able to file or record such liens against the property of officials and citizens with whom they disagree, without the affected party realizing it until they attempt to sell the property or take out loans. Often, the release of these unwarranted liens costs considerable time and money.

Nonconsensual common law liens differ from mechanics' liens, material liens, and the like, in that they can be vague, have questionable legal standing, and are not connected to the property filed against. Mechanics' liens and the like are very specific to a piece of property, and directly relate to improvements on that property by virtue of the materials, labor or service provided.

Common law liens are much less specific claims. For example, some militia groups elsewhere in the U.S. have recorded this type of lien against judges when they perceived their constitutional rights to be violated. Common law liens have the effect of clouding title to property, and can make financial and title companies reluctant to ignore them, even though they are rarely valid. Nonconsensual common law liens may be applied against real or personal property.

Last year, several employees and elected officials of the Municipality of Anchorage had nuisance liens filed against their properties, resulting in considerable, unanticipated work and ex-

pense in the municipal attorney's office. In these cases, the public officials and employees were simply doing their jobs.

SB 195 provides for relief from these invalid lien filings, and has had no opposition during the public hearing process. It is a priority of the Alaska Court System, and carries two zero fiscal notes.

Section 1 of the bill makes it a misdemeanor offense to record a nonconsensual common law lien without the specific authorization of a court, or when not consented to by the owner of affected property.

Section 2 allows for an attorney of an affected official or person to submit a "notice of invalid lien," with a copy going to the person who recorded or filed the common law lien.

It also provides for an expedited court proceeding to have the invalid, nonconsensual common law lien released. If grounds are not demonstrated, or if the lien filer fails to appear, a release of the lien is done, and court and attorney fees ordered paid by the lien filer.

Section 2 also establishes liability on the part of those who file an invalid nonconsensual common law lien. It also provides for actual and punitive damages, and reasonable attorney fees to be paid by the filer.

Definitions are made for "filed," "nonconsensual common law lien," "public servant," "record," and "recorder."

Section 3 makes a compatibility amendment to allow for establishing a new crime as spelled out in Section 4.

Section 4 establishes a new crime in the second degree of offering a false instrument for recording. This is now a Class A misdemeanor.

Section 5 amends the liens chapter in Title 34 to conform to the above.

Alaska Court System

Doug Wooliver
Administrative Attorney

Telephone: (907) 264-8265
Facsimile: (907) 264-8291

SECTIONAL ANALYSIS OF SB 195

Section 1 is a conforming amendment to AS 09.38.500(9) (the definition section of the Alaska Exemptions Act) that adds a reference to common law liens within the definition of "lien." The new reference states that, to be valid, a common law lien must either be consented to by the owner or accompanied by a court order.

Section 2 adds article 2A to AS 9.45 (Actions Relating to Real Property). The new article is entitled "Actions Relating to Nonconsensual Common Law Liens" and contains 4 sections.

- A) Section 09.45.161 states that if a nonconsensual common law lien is recorded or filed against the property of a public servant and is not accompanied by a court order, an attorney representing the public servant may submit for recording or filing a notice of invalid lien. A copy of the notice is sent to the person who recorded or filed the common law lien.
- B) Section 09.45.164 provides for an expedited court proceeding to have an invalid nonconsensual common law lien released. Under the provisions of this section, a person submits a request to the court containing an affidavit setting out the facts upon which the request is based. If the facts support the need for an expedited hearing, the court can order the person who recorded or filed the lien to appear at a hearing within 20 days. If the court finds that the lien is invalid, or if the person who recorded or filed the lien does not appear, the court can grant the order releasing the lien and order the lien claimant to pay the costs and actual reasonable attorney fees incurred by the party making the request.
- C) Section 09.45.167 states that a person who records or files an invalid nonconsensual common law lien is liable to the owner for actual and punitive damages as well as actual reasonable attorney fees. This section also provides for the liability of a person who is a grantee of an invalid nonconsensual common law lien if he or she refuses to release the lien when requested by the owner of the property affected.

- D) Section 09.45.169 provides definitions for "filed," "nonconsensual common law lien," "public servant," "record," and "recorder."

Section 3 amends AS 11.46.550 (offering a false instrument for recording) by making this current crime the crime of offering a false instrument for recording in the first degree. This section is a conforming amendment that is necessary for the creation of the new crime of "offering a false instrument for recording in the second degree" added by section 4 of the bill. Section 3 does not make any substantive changes.

Section 4 amends AS 11.46.550 by creating the new crime of offering a false instrument for recording in the second degree. This section makes it a class A misdemeanor to record or file an invalid common law lien against real or personal property.

Section 5 amends AS 34.35 (the liens chapter in title 34) by adding a new section entitled "Nonconsensual common law liens." This section prohibits the recording or filing of nonconsensual common law liens against real or personal property without an accompanying court order. This section also provides definitions for the terms "filed," "nonconsensual common law liens," "record," and "recorder."



*ALASKA COURT SYSTEM
State of Alaska
Office Of The Administrative Director*

820 West 4th Avenue
Anchorage, Alaska 99501
(907) 264-8265
FAX (907) 264-8291

Doug Wooliver
Administrative Attorney

February 26, 1998

Representative Norman Rokeberg, Chair
House Labor and Commerce Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Dear Representative Rokeberg:

The Alaska Court System respectfully requests that SB 195 be scheduled for a Labor and Commerce Committee hearing at your earliest convenience.

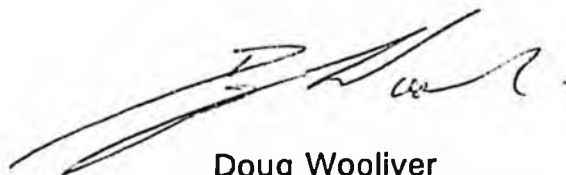
This bill seeks to address the growing problem of bogus common law liens being filed against the real and personal property of Alaskans. It has become common in recent years for patriot groups to record such liens against the property of public officials and private citizens with whom they disagree. The person generally finds out about the lien when he or she attempts to borrow against or sell property and discovers that he or she cannot do so until the lien has been released. This may take several months.

Until recently, this activity has not been of major concern in Alaska. Last year, however, a number of employees and elected officials of the Municipality of Anchorage discovered that nonconsensual common law liens had been recorded against their property. The long list of persons targeted by these liens included Mayor Rick Mystrom and the members of the Anchorage Assembly.

SB 195 amends the law to make nonconsensual common law liens invalid and makes it a misdemeanor to record or file them without specific authorization from a court. It streamlines the judicial process for releasing a lien and authorizes the attorney for a public servant to record a "notice of invalid lien" if such a lien is recorded against the property of a public servant. Finally, it provides for civil penalties against a person who records or benefits from a nonconsensual common law lien.

Thank you for your consideration of this bill. If I can be of any assistance or provide you with any additional information please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Wooliver', with a long horizontal flourish extending to the left.

Doug Wooliver
Administrative Attorney

HIGHLIGHTS - SB 195

The bill provides a way to prevent the recording or filing of nonconsensual common law liens as a form of harassment against public officials. Common law liens are the most legally nebulous form of lien, in that our courts have never specifically recognized their existence, and there is no precedent for the manner in which they are being used.

SB 195 does not eliminate this type of lien, but insists on a court order or the consent of the owner of affected property, should a party want to record or file one.

The bill does the following:

- + calls for owner consent or a court order prior to recording or filing against real or personal property
- + makes it a Class A misdemeanor to file an invalid non-consensual common law lien, punishable by up to a \$5,000 fine
- + allows an attorney for a public official to record or file a NOTICE OF INVALID LIEN
- + establishes an expedited court proceeding to have an invalid nonconsensual common law lien released
- + gives court authority to release an invalid lien
- + provides for recovery of court costs and attorney fees from wrongful filers, and establishes liability for actual and punitive damages

General backup on SB 195

Although common law liens are mentioned in statute, no Alaskan court has ever specifically recognized their existence. According to a 1980 Attorney General Opinion, the extensive statutory scheme that governs the recording of liens almost certainly preempts any common law rights that may have existed historically. 1980 Formal Op. Att'y Gen. 5.

(This bill does allow the recording of a common law lien that is either accompanied by a court order or consented to by the owner of the property. This option is left open to safeguard against inadvertently foreclosing a right to record a legitimate lien that is not otherwise specifically authorized by statute.)

It should be stressed that there is no historical precedent for the current manner in which common law liens are being used. According to the above referenced Attorney General Opinion, "[a] common law lien was simply a right to retain possession of personal property until a debt due on or secured by the property was paid, and the debt must have been incurred for services or work performed by the claimant on the property to which the lien attached." Id. At 2. Common law liens recorded as harassment tools, which are the focus of SB 195, are not connected in any way to the property recorded against and are not security for a debt owed. These liens were never historically recognized as "common law liens"; they are, and always have been, without any legal effect whatsoever.

Nevertheless, even bogus liens can cloud title because banks, title companies, and others are reluctant to ignore them without some specific authority to do so. SB 195 provides that authority by putting in statute a provision clearly stating that such liens are invalid unless accompanied by a court order or consented to by the owner of the property.

In addition to making it clear that common law liens are invalid, the bill contains expedited means for having a common law lien released if one is recorded. This will ensure that anyone reviewing the record will have notice that the lien is invalid without having to rely on his or her own judgement as to its legal status.

As a final tool to discourage the recording of these bogus liens, the bill subjects anyone who records them to criminal penalties and civil liability.

The reason the words "file" and "filed" are included in the bill is because people "record" liens on real property but "file" them on personal property through UCC filings. The language is intended to close a potential loophole that has become a problem in other states.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

MR. JIMMIE DREW LOCKHART, SR.)
)
 Plaintiff,)
)
 v.)
)
 THE MUNICIPALITY OF ANCHORAGE,)
 ET AL.)
)
 Defendants.)

FILED in the Trial Courts
 STATE OF ALASKA, THIRD DISTRICT
 Feb 14, 1997
 Clerk of the Trial Courts
 Der

Case No. 3AN 96-852 CI

CORRECTED ORDER AND RELEASE OF "REAL ESTATE LIENS"

Having held a hearing on the Motion for Preliminary Injunction, the Court hereby makes the following findings of fact:

1. Jimmie Drew Lockhart, Sr. has recorded multiple unjustified documents denominated "real estate liens." Some of these "real estate liens" have been filed against defendants in this action, and some have been filed against non-parties. These so-called "real estate liens" affect the real property described below.

2. These so-called "real estate liens" are not indicative of any debt.

The Court hereby makes the following conclusions of law:

1. The so-called "real estate liens" filed by Jimmie Drew Lockhart, Sr. against the real property described below are legally invalid.

2. These so-called "real estate liens" are causing irreparable harm to those persons whose properties are affected by the "real estate liens."

3. The potential injury to Jimmie Drew Lockhart, Sr. from ordering these so-called "real estate liens" released and declared null, void, invalid, and of no legal effect is slight in comparison

JAN '97

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 P.O. Box 196650
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 Telephone: 343-4545
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FILED

to the harm suffered by those whose properties are affected by the so-called "real estate liens."

4. The Municipality of Anchorage has raised serious and substantial questions going to the merits of the case.

Having made these findings of fact and conclusions of law, **IT IS HEREBY ORDERED** that the "real estate liens" recorded in the Anchorage Recording District by Jimmie Drew Lockhart, Sr. affecting the following described real property are **NULL, VOID, INVALID, AND OF NO LEGAL EFFECT** and are **RELEASED**:

PROPERTY OWNER LEGAL DESCRIPTION

Mary K. Hughes **Parcel No. 076-015-99-019-97 - Telequana Heights, Lot 1A, 2240 Kissee Ct., Book 2318, Page 0072. Date: 09/21/92. 2240 Kissee Ct., Anchorage, Alaska 99517-1003, filed in Book 02988, Page 806.**

Mary K. Hughes **Parcel No. 005-014-53-000-97 - Alyeska North #1, Block 3, Lot 3B, Alyeska North 610, Book 2305, Page 0453. Date: 08/17/92. Plat 730010. 2240 Kissee Ct., Anchorage, Alaska 99517-1003, filed in Book 02988, Book 806.**

Craig Campbell
Anne Marie Campbell **Parcel No. 050-904-03-000-97 - Parkview Terrace, Block 2, Lot 3.18324 N. Parkview Terrace Loop, Eagle River, Alaska 99577-8525. Book 0946, Page 0109. Plat 820448, filed in Book 02986, Page 806.**

Michael W. Kerr
Barbara Kerr **Parcel No. 007-234-75-000-97 - Comm. Council Turnagain Homes, Block G 14, 2425 Saint Elias Drive, Anchorage, Alaska 99517-1250, filed in Book 02973, Page 201.**

Michael W. Kerr
Barbara Kerr **Parcel No. 012-203-28-000-97 - Comm. Council Scenic Park, Block 3, Lot 30, Chugach Foothills #5, 4324 Butte Circle, Anchorage, Alaska 99504-4701, filed in Book 02973, Book 201.**

Mary Ann Moseley

Parcel No. 005-111-68-024-97 - College Alps, Tr. 2 College Alps Phase 3, P.O. Box 2111044, Anchorage, Alaska 99521-1044, Site #74, filed in Book 02973, Page 204.

Charles Jackson

Parcel No. 003-251-41-000-97 - Green Acres Subdivision, Block 8, Lots 5 and 6, P. 152, Grid 1733, 3722 Young Street, Anchorage, Alaska 99508-4528, filed in Book 02973, Page 197.

[DAVE] David L. Brennen

Parcel No. 006-282-46-000-97 - Collegetate East #3, Block 8, Lot 11, 5938 Glenkerry Dr., Anchorage Alaska 99504-3243, Book 2678, Page 0690. Date: 07/11/94, Plat 720049, filed in Book 02986, Page 802.

Kevin G. Meyer
Mary Ann Meyer

Parcel No. 014-141-66-000-97 - Bulen Heights, Lot 5, Book 1088, Page 0645, Plat 830230, 7240 Bulen Drive, Anchorage, Alaska 99507-2879, filed in Book 02986, Page 808.

George P. [WURECH] (Wuerch)
Brenda B. [WURECH] (Wuerch)

Parcel No. 003-246-31-000-97 - Geneva Woods, Block 3, Lot 6, 1332 Crescent Dr., Anchorage, Alaska 99504, Book 1178, Page 0062. Date: 10/24/84, Plat 670065, filed in Book 02986, Page 796.

Mark P. Begich
Margaret J. Begich

Parcel No. 006-323-25-000-97 - Commercial Apartment Garden, T13N R3W, Sec. 22, Lot 46, W70' of S117'. 5205 E. 26th Ave., Anchorage, Alaska. Book 2016, Page 0149. Date: 04/03/90. P.O. Box 201627, Anchorage, Alaska 99520-1627, filed in Book 02986, Page 798.

Mark P. Begich
Margaret J. Begich

Parcel No. 006-323-24-000-97 - Commercial Apartment Garden, T13N Sec. 22, Lot 46 W85' of E260' of S117. 5215 (5211) E. 26th Ave., Book 2016, Page 0149. Date: 04/03/90. Russian Jack PA, filed in Book 02986, Page 798.

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P.O. Box 196650
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Mark P. Begich
Margaret J. Begich

Parcel No. 006-313-25-000-97 - Commercial Apartment Garden, T13N R3W, Sec. 22, Lot 30, E2E2. 5233 E. 21st Ave., Anchorage, Alaska 99520-1627. P.O. Box 201627, Anchorage, Alaska 99520-1627. Book 2246, Page 0474. Date: 03/06/92, filed in Book 02986, Page 798.

Patrick E. Von Gemmingen
Fay I. Von Gemmingen

Parcel No. 001-224-04-000-97 - Hunnington (Huntington) Park #2, Lot 13, Block 4, Plat 68-12, 2132 Arlington Dr., Site 1305 W. 27th Anchorage, Alaska 99517-1367. Date 04/15/91 filed in Book 02986, Page 0800.

Charles P. [WHOLFORTH]
(Wohlforth)
Barbara E. [WHOLFORTH]
(Wohlforth)

Parcel No. 002-041-18-000-97 - North Addition, Lot 1, Block N, Plat NA4, 828 Erickson Street, Anchorage, Alaska 99502-1138, Book 02986, Page 0804.

Timothy G. Middleton
Joyce F. Middleton

Parcel No. 001-052-55-000-97 - Site 717 "M" Street, Anchorage, Alaska 99501-3307 Lot 10A, Block 85, Plat Nos. 80-45 and 67-30, Book 02986, Page 0810.

Timothy G. Middleton
Joyce F. Middleton

Parcel No. 001-161-45-034-97 - Petersons, Blk. 3, Lt 3 B. Woronzof # 700, 717 "M" Street, Anchorage, Alaska 99501-3307, Book 2539, Page 0721.

Rick Mystrom
Mary Mystrom

Lot 4, Block 32B, Plat C-78B
Lot 3B, Block 13, Plat 73-229
Lot 14, Block 1, Plat 72-69
Lot 3, Block 32B, Plat C-78AB
Lot 4, Block 32B, Plat C-78AB
Lot 12, Block 21, Plat 66-167
Lot 23, Block 3, Plat 83-419
Lot 22, Block 3, Plat 83-419
Lot 12, Block 21, Plat 66-167
Lot 2, Block 6, Plat P-580
Lot 6, Block 4, Plat 83-235

Lot 6, Block 4, Plat 83-235
Lot 24, Block 3, Plat 83-419
Lot 14A, Plat P-67G
Lot 2, Block 29A, Plat C-76
Lot 8A, Block 1, Plat 69-90

All filed in Book 02987, Page 0361.

Daniel W. Kendall
Dittbrender
Robert Dyal
Ellen Dyal

Parcel No. 851-383-83-889-97 - SE 30 T15N R1W, Wilbur NE4SW4SW4, filed in Book 02973, Page 0199. Located in Eagle River, Alaska 99577.

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P.O. Box 196650
Anchorage, Alaska
99519-6650
Telephone: 343-4545
Facsimile: 343-4550

John W. Groh, Jr.
John W. Groh, Jr.
(Cliff John Groh)

Parcel No. 011-101-43-000-97 - Brentwood, Lot 9, Block 4,
Plat 65-44, Site: 7908 Brentwood Dr., P.O. Box 100734,
Anchorage, Alaska 99510-0734. Book 02988, Page 0808.

DATED at Anchorage, Alaska, this 14th day of ~~January~~ ^{February}, 1997.

Robert A. Michalski
JUDGE OF THE SUPERIOR COURT

Certificate of Service

I hereby certify that I mailed a true and correct copy of the foregoing to: Jimmie Drew Lockhart, 3727 Randolph St., Anchorage, AK 99503 on this 2nd day of January, 1997.

Marilyn Bennett
Marilyn Bennett

I certify that on 2-19-97
a copy of the above was mailed to each
of the following at their addresses of
record: J. Newby MA - Groh
J. Lockhart, pro per
Secretary/Deputy/Clerk

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OFFICE OF THE
MUNICIPAL ATTORNEY
P.O. Box 196650
Anchorage, Alaska
99519-6650
Telephone: 343-4545
Facsimile: 343-4550

[37083-1]

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

MR. JIMMIE DREW LOCKHART, SR.,)
)
 Plaintiff,)
)
 v.)
)
 THE MUNICIPALITY OF ANCHORAGE,)
 et al.)
 Defendants.)
)

Case No. 3AN 96-852 CI

MEMORANDUM IN SUPPORT OF TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

Plaintiff Jimmie Drew Lockhart, Sr. (Lockhart) is engaged in a calculated campaign to injure officials and employees of the Municipality of Anchorage by filing liens against real estate owned by those individual officials and employees. Preliminary injunctions are made to stop abuses like those perpetuated by Lockhart, and defendants meet the three-part test for preliminary injunctions. Defendants ask that the court: order the liens expunged; order Lockhart to stop filing liens; and order the Recorder to refuse to record any liens by Lockhart without a court order authorizing such liens.

A party is entitled to a preliminary injunction if: (1) the moving party is faced with irreparable harm; (2) the opposing party is adequately protected; and (3) the moving party raises serious and substantial questions going to the merits of the case. State v. Kluti Kaah Native Village, 831 P.2d 1270, 1273 (Alaska 1992). Defendants meet all three prongs.

The increasing number of liens on the real property of Municipal officials and employees puts the Municipality in an intolerable position. These officials and employees may find it difficult to sell their homes and may find their credit ratings damaged merely for doing their jobs. Others

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P.O. Box 196650
Anchorage, Alaska
99519-6650
Telephone: 343-4545
Facsimile: 343-4550

may suffer similar harm merely because they hold posts which Lockhart imagines gives them the power to conspire against him. This injury is irreparable. See id. at 1273 n. 5.

Expunging these unjustified liens and ordering Lockhart to stop filing such liens will in no way remove any legitimate protections from Lockhart. He would remain completely free to litigate his positions in accordance with the law.

Michael Kerr's affidavit establishes there are serious and substantial questions going to the merits of the case. Indeed, the Municipality has prevailed entirely in the current code enforcement case. Moreover, Lockhart's liens are defective on their face because they do not fit in any of the categories for pre-judgment liens on real property set out in AS 34.35.

Lockhart's liens are an abuse of process. The Municipality respectfully requests that the court remove them forthwith and stop him from filing any more.

DATED this 23rd day of October, 1996.

MARY K. HUGHES
Municipal Attorney

By: C. J. Groh
Cliff John Groh
Assistant Municipal Attorney

Certificate of Service

I hereby certify that I mailed a true and correct copy of the foregoing to: Jimmy Lockhart, 3727 Randolph St., Anchorage, AK 99508 on the 23rd day of October, 1996.

Maig Bennett

**MUNICIPALITY
OF
ANCHORAGE**
OFFICE OF THE
MUNICIPAL ATTORNEY
P.O. Box 196650
Anchorage, Alaska
99519-6650
Telephone: 343-4545
Facsimile: 343-4550

REAL ESTATE LIEN

Mr. Jimmie Drew Lockhart Sr.,
Et Al,

Claimant,

vs.

Kevin G. and Mary Ann Meyer,
Respondant(s).

Please take notice, That the above CLAIMANT, Mr. Jimmie Drew Lockhart Sr., et al, Hereby attaches a claim of lien against the real property more particulary described as follows:

ANCHORAGE RECORDING DISTRICT

1. Partial: 014-141-66-000-97. Card 01 of 01. Bulen Heights, LT 5. Book: 1088. Page: 0645. Date: 00/00/00. Plat: 830230. Plat: 830230. 7240 Bulen Dr., Anchorage, Alaska 99507-2879. Site: 7240 Bulen Dr.

This lien is placed against the Municipality of Anchorage, Kevin G. and Mary Ann Meyer, et al. Whom jointly conspired with labors, office staff, lawyers, and servants to obstruct the administration of justice, By alleging false jurisdiction and allegations, while other employees trespassed upon Lockharts' real property without prior written or verbal consented notice(s) making photo pictures of said real prorerty, also including streets and alley photos as well to be used as their evidence of their un-constitutional kangaroo styled court hearings against the Lockharts' more particular Mr. Jimmie Drew Lockhart Sr., et al., without a trial by jury of his peers. The SUPRA, named respondant parties used their ingenious malversation doctrine acts without the show of recipocity or (treaty) treaise agreements between the parties, furthermore, such M.O.A, doings are proof of it's personal ignoring the Alaska Superior Court jurisdiction, See case No: 3AN 96-852 Civil, by continuance harrassing, and stalking the Lockharts' said real properties where the black parties resides there upon the inquestioned real property.

Page -1-

Exhibit E

Page 11 of 16 Pages

Case # 3AN 96-853 CI

This lien is for monetary damages in the amount of Two hundred fifty (\$ 250.000.00) thousand dollars per above set out piece of real property for punitive damages and causing the Lockharts,' et al., mental anguish and suffering, fearing the police, and brutally in the episode intra alia.

Moreover, the M.O.A. and parties doings reflects practicing racial prejudice against blacks as a whole and especially against the Lockharts', by making false un-reliable, liable and slanderous statements against the said real properties, etc.

I Mr. Jimmie Drew Lockhart Sr., being duly sworn, depose and state; I am personally aware of the facts, and the said facts are true and correct to the best of my ability, belief and aknowledgement.

By Jimmie D. Lockhart Sr.
CLAIMANT

SUBSCRIBED AND SWORN to before me the undersigned on this 15th day of October 1996, at Anchorage, Alaska.



Victoria Valere
NOTARY PUBLIC in and for the state of Alaska

My commission expires 6/22/99

Please return to:
Mr. Jimmie Drew Lockhart Sr.
3723 Randolph street
Anchorage, Alaska 99508
Phone (907) 563-1807 (message)

96 050402
ANCHORAGE REC. 18 CC
DISTRICT
REQUESTED BY J. D. Lockhart Sr.
'96 OCT 15 PM 12 08.

BILL: SB 195

SHORT TITLE: COMMON LAW LIENS

BILL VERSION:

SPONSOR(S): RULES BY REQUEST

CURRENT STATUS: (H) L&C
THEN JUD

STATUS DATE: 02/25/98

TITLE: "An Act relating to common law liens, to remedies, costs, and fees imposed for the registration, filing, or recording of certain nonconsensual common law liens, and to penalties for recording common law liens."

05/06/97	1717	(S)	READ THE FIRST TIME - REFERRAL(S)
05/06/97	1717	(S)	L&C, JUD
01/28/98	2328	(S)	L&C RPT 3DP
01/28/98	2328	(S)	DP: LEMAN, KELLY, MACKIE
01/28/98	2328	(S)	ZERO FISCAL NOTES (COURT, LAW)
02/17/98	2542	(S)	JUD RPT 2DP 2NR
02/17/98	2542	(S)	DP: TAYLOR, MILLER NR: PARNELL, PEARCE
02/17/98	2542	(S)	PREVIOUS ZERO FNS (COURT, LAW)
02/24/98	2630	(S)	RULES TO CALENDAR 2/24/98
02/24/98	2631	(S)	READ THE SECOND TIME
02/24/98	2631	(S)	ADVANCED TO THIRD READING UNAN CONSENT
02/24/98	2631	(S)	READ THE THIRD TIME SB 195
02/24/98	2632	(S)	PASSED Y20 N-
02/24/98	2636	(S)	TRANSMITTED TO (H)
02/25/98		(H)	READ THE FIRST TIME - REFERRAL(S)
02/25/98		(H)	L&C, JUDICIARY

Alaska State Legislature

Sen. Tim Kelly, Chairman
Anchorage
Sen. Loren Leman, Vice-Chair
Anchorage
Sen. Robin Taylor
Wrangell
Sen. John Torgerson
Kasilof
Sen. Jim Duncan
Juneau



Official Business

Senate Rules Committee

State Capitol
Juneau, AK 99801-1182
(907) 465-3822
Fax: (907) 465-3756
1-800-770-3822
(JANUARY - MAY)
INTERNET: //http://www.state.ak.us

716 West 4th, Suite 400
Anchorage, AK 99501
(907) 258-8180
Fax: (907) 258-4524

M E M O R A N D U M

DATE: February 25, 1998

TO: Rp. Norman Rokeberg, Chairman
House Labor & Commerce Committee

FROM: Senator Tim Kelly, Chairman
Senate Rules Committee *TDK*
(TB)

SUBJ: Hearing On Senate Bill 195

Please consider scheduling a committee hearing on SB 195, the bill to address the emerging problem of invalid nonconsensual common law liens, the so-called nuisance liens, being filed against public officials and others as a means of political retribution.

This measure passed the senate yesterday with a unanimous vote, and carries two zero fiscal notes.

Support material is attached. If there are further questions, please contact Tim Benintendi of my office at 3770.

TDK/tb/m15

RS-25-00903:17 RC

AMENDMENT

OFFERED IN THE HOUSE

by Representative Berkowitz

TO: SB 195

- 1 Page 7, following line 4:
- 2 Insert "Sec. 6. This Act takes effect immediately under AS 01.10.070(c)."

THE ALASKA COURT SYSTEM

Doug Wooliver
Administrative Attorney

Telephone (907) 264-8265
Facsimile (907) 264-8291

Sponsor Statement SB 195

The Alaska Court System asks that the legislature consider SB 195. This bill addresses the growing problem of bogus common law liens being filed against the property of Alaskans. It has become common in recent years for patriot groups and others to record such liens against the property of public officials and private citizens with whom they disagree. The person generally finds out about the lien when he or she attempts to obtain a loan or sell property, and discovers that he or she cannot do so until the lien has been released. This may take many months.

Until recently, this activity has not been of major concern in Alaska. Last year, however, a number of employees and elected officials of the Municipality of Anchorage discovered that nonconsensual common law liens had been recorded against their property. The long list of persons who were targeted by these liens included Mayor Rick Mystrom, and the members of the Anchorage Assembly.

SB 195 makes it a misdemeanor to record a nonconsensual common law lien without the specific authorization of a court. It streamlines the judicial process for releasing a lien, and authorizes the attorney for a public servant to record a notice of invalid lien if such a lien is recorded against the property of a public servant. Finally, it provides for civil penalties against persons who record or benefit from nonconsensual common law liens.

The Alaska Court System requests your support for this bill.



ALASKA COURT SYSTEM
State of Alaska
Office Of The Administrative Director

820 West 4th Avenue
Anchorage, Alaska 99501
(907) 264-8285
FAX (907) 264-8291

Doug Wooliver
Administrative Attorney

March 2, 1998

Representative Joe Green, Chair
House Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Dear Representative Green:

The Alaska Court System respectfully requests that SB 195 be scheduled for a Judiciary Committee hearing at your earliest convenience.

This bill seeks to address the growing problem of bogus common law liens being filed against the real and personal property of Alaskans. It has become common in recent years for certain groups to record such liens against the property of public officials and private citizens with whom they disagree. The person generally finds out about the lien when he or she attempts to borrow against or sell property and discovers that he or she cannot do so until the lien has been released. This may take several months.

Until recently, this activity has not been of major concern in Alaska. Last year, however, a number of employees and elected officials of the Municipality of Anchorage discovered that nonconsensual common law liens had been recorded against their property. The long list of persons targeted by these liens included Mayor Rick Mystrom and the members of the Anchorage Assembly.

SB 195 amends the law to make nonconsensual common law liens invalid and makes it a misdemeanor to record or file them without specific authorization from a court. It streamlines the judicial process for releasing a lien and authorizes the attorney for a public servant to record a "notice of invalid lien" if such a lien is recorded against the property of a public servant. Finally, it provides for civil penalties against a person who records or benefits from a nonconsensual common law lien.

Thank you for your consideration of this bill. If I can be of any assistance or provide you with any additional information please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Doug Wooliver', written in a cursive style.

Doug Wooliver
Administrative Attorney

SB

216

HOUSE COMMITTEE REPORT

5.98

(7)
Date Referred to Committee: April 30, 1998

FURTHER REFERRALS:

Finance

Date of Committee Action: 5/6/98

The JUDICIARY Committee considered:

CSSB 216(JUD)

CS FOR SENATE BILL NO. 216(JUD)

CIVIL COMMITMENT OF SEXUAL PREDATORS

“An Act providing for the civil commitment of sexually violent predators.”

recommends it be replaced
with the following committee substitute

^{CS}
HCS^{CS} SB 216 (JUD)

the same title
 a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Due)

fiscal note(s) _____

^{Senate} fiscal note(s) Adm 4.22.98, Adm 4.23.98, COR 4.22.98, Law 4.23.98, DHSS 4.22.98, COURTS 4.22.98

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Rokeberg			✓	
Bunde			✓	
Green	✓			
James			✓	
	(1)		(3)	

CHAIR'S SIGNATURE

Green

HOUSE CS FOR CS FOR SENATE BILL NO. 216(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS HALFORD, Green, Donley, Taylor, Wilken, Leman, Duncan, Lincoln, Ward, Mackie

A BILL

FOR AN ACT ENTITLED

1 "An Act providing for the civil commitment of sexually violent predators."

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

3 * Section 1. AS 47.30 is amended by adding new sections to read:

4 Article 9A. Commitment of Sexually Violent Predators.

5 Sec. 47.30.816. Findings. The legislature finds that a small but extremely
6 dangerous group of sexually violent predators exist who do not have a mental disease
7 or defect that renders them appropriate for the existing involuntary treatment
8 procedure, AS 47.30.700 - 47.30.815, which is intended to be a short-term civil
9 commitment system primarily designed to provide short-term treatment to individuals
10 with serious mental disorders and then return them to the community. In contrast to
11 persons appropriate for civil commitment under AS 47.30.700 - 47.30.815, sexually
12 violent predators generally have antisocial personality features that are not amenable
13 to existing mental illness treatment methods, and those features render them likely to
14 engage in sexually violent behavior. The legislature further finds that the likelihood
15 of engaging in repeat acts of predatory sexual violence is high among this group. The

1 existing involuntary treatment procedure, AS 47.30.700 - 47.30.815, is inadequate to
2 address the risk to reoffend because during confinement these offenders do not have
3 access to potential victims and, therefore, will not engage in specific overt acts
4 evidencing their risk of harm to others during confinement as required by the
5 involuntary treatment procedure for continued confinement. The legislature further
6 finds that the prognosis for curing this group of sexually violent offenders is poor, the
7 treatment needs of this population are very long term, and the treatment methods for
8 this population are very different than the traditional treatment methods for people
9 appropriate for commitment under the involuntary treatment procedures.

10 **Sec. 47.30.817. Screening and notice to attorney general before release.**

11 (a) When it appears that a person may meet the criteria for a sexually violent
12 predator, the agency with custody shall request a referral examination by the
13 department, and give written notice to the attorney general, three months before the
14 anticipated release from confinement of the person. The criteria to be used by the
15 agency with custody to evaluate a person for referral under this subsection shall be
16 developed by the department in cooperation with the Department of Law and the
17 Department of Corrections.

18 (b) When a referral has been made to the department under (a) of this section,
19 the department shall assemble the person's criminal records, juvenile records, and any
20 other information that is relevant to evaluate the person according to standards adopted
21 by the department for screening a person who may be a sexually violent predator.
22 The standards for screening persons referred under (a) of this section shall be adopted
23 by the department in consultation with the Department of Law and the Department of
24 Corrections. Notwithstanding any other provision of law, all records in the custody
25 of a state agency requested by the department for the referral examination shall be
26 provided to the department. The department shall complete the referral examination
27 within 30 days and shall forward the results of the examination to the agency with
28 custody and to the attorney general. If the department determines that the person may
29 be a sexually violent predator or upon the request of the attorney general, the agency
30 with custody shall provide the following information to the attorney general:

31 (1) information concerning an anticipated plan for employment,

1 residence, conditions of release, and supervision if the person is released as scheduled;

2 (2) a summary of the person's institutional adjustment and any
3 treatment received;

4 (3) the results of the referral evaluation under this section, including
5 the documents obtained by the department for use in the evaluation;

6 (4) reports of any previous mental health examination of the person.

7 (c) In this section, "agency with custody" means the department with the
8 authority to direct the release of a person serving a sentence or term or period of
9 confinement.

10 **Sec. 47.30.818. Sexually violent predator petition; filing; judicial**
11 **determination; evaluation.** (a) The attorney general may file a petition in the
12 superior court alleging that a person is a sexually violent predator and stating sufficient
13 facts to support the allegation when it appears that the person may be a sexually
14 violent predator and it appears that

15 (1) the term of confinement of a person who has been convicted of a
16 sexually violent offense is about to expire or has expired;

17 (2) the term of confinement of a person found to have committed a
18 sexually violent offense as a juvenile is about to expire or has expired;

19 (3) a person who has been charged with a sexually violent offense and
20 who was determined to be incompetent to stand trial is about to be released or has
21 been released; or

22 (4) a person who has been found not guilty by reason of insanity of a
23 sexually violent offense is about to be released or has been released.

24 (b) Upon the filing of a petition, notice shall be provided to the person and the
25 court shall schedule a hearing within 72 hours at which the person has a right to
26 appear. At the hearing, the judge shall determine whether probable cause exists to
27 believe that the person named in the petition is a sexually violent predator. If probable
28 cause is found, the judge shall direct that the person be taken into custody, and the
29 person shall be transferred to an appropriate facility for an evaluation as to whether
30 the person is a sexually violent predator. The evaluation shall be conducted by a
31 person professionally qualified to conduct the examination assigned or retained by the

1 department. The results of the examination conducted under this section are
2 admissible in all further proceedings conducted under AS 47.30.816 - 47.30.824.

3 **Sec. 47.30.819. Trial; rights of parties; determination; commitment**
4 **procedures.** (a) Within 60 days following a judicial determination of probable cause
5 under AS 47.30.818, the court shall conduct a trial to determine whether the person
6 is a sexually violent predator. The trial may be continued upon the request of either
7 party and a showing of good cause or by the court on its own motion in the interests
8 of justice and when the person will not be substantially prejudiced. At all stages of
9 the proceedings under AS 47.30.816 - 47.30.824, a person who is the subject of a
10 petition filed under AS 47.30.818 is entitled to the assistance of counsel, and, if the
11 person is indigent, the court shall appoint counsel under AS 18.85 to represent the
12 person. A person examined under AS 47.30.818(b) may retain experts or professionals
13 to perform an examination on the person's behalf; the expert or professional shall be
14 permitted reasonable access to the person for the purpose of an examination, and to
15 all relevant medical and psychological records and reports. Upon motion of the person
16 or the attorney general, or on the court's own motion, the trial shall be before a jury.
17 If no motion is made, the trial shall be before the court.

18 (b) The court or jury shall determine, beyond a reasonable doubt, whether the
19 person is a sexually violent predator. If trial is to a jury, the jury must make the
20 determination unanimously. Upon a determination that the person is a sexually violent
21 predator, the court shall consider less restrictive alternatives to confinement and
22 whether these alternatives, if any, will adequately protect the public so it is safe for
23 the person not to be confined and will prevent the person from committing a sexually
24 violent predatory offense. If the court determines that the less restrictive alternatives
25 will not (1) adequately protect the public so it would be safe for the person to be at
26 large, or (2) prevent the person from committing a sexually violent predatory offense,
27 the court shall order the person committed to the custody of the department for control,
28 care, and treatment until the person's mental illness has so changed that the person is
29 safe to be at large. If the court or jury is not satisfied beyond a reasonable doubt that
30 the person is a sexually violent predator, the court shall direct the person's release
31 from the custody of the department.

1 (c) If the state files a petition under AS 47.30.816 - 47.30.824 to commit a
2 person who has been charged with a sexua'ly violent offense and been found
3 incompetent to be tried for the offense, the trier of fact, in conjunction with the
4 commitment proceeding, shall make a determination beyond a reasonable doubt
5 whether the person committed the offense charged. The finding that the perso:
6 committed the offense may not be used for another purpose than for consideration of
7 commitment. If the trier of fact finds that the person committed the offense, the trier
8 of fact may proceed to determine whether the person is a sexually violent predator
9 under this section.

10 (d) The department shall confine a person who is ordered committed under this
11 section in a secure mental health facility. The department may contract with a public
12 or private entity inside or outside the state for the confinement of persons committed
13 under AS 47.30.816 - 47.30.824 but may not provide treatment for these persons in the
14 state's central psychiatric facility. Persons committed to the department shall be
15 segregated at all times from other persons under the supervision of the department.
16 The department may not confine a person committed under AS 47.30.816 - 47.30.824
17 in a correctional facility or institution operated by the Department of Corrections. This
18 subsection does not prohibit the department from confining a person committed under
19 AS 47.30.816 - 47.30.824 in a mental health facility operated by the department and
20 located within or on the grounds of a correctional facility. Persons confined in a
21 mental health facility within or on the grounds of a correctional facility shall be
22 segregated at all times from the inmates of the correctional facility. Following
23 confinement of the committed person, the department shall inform the person of the
24 person's rights under AS 47.30.821. The involuntary detention or commitment of a
25 person under AS 47.30.816 - 47.30.824 shall conform to the constitutional
26 requirements for care and treatment.

27 **Sec. 47.30.820. Annual examination.** The department shall provide an
28 examination of the current mental condition of a person committed under
29 AS 47.30.816 - 47.30.824 at least once each year. In addition to the annual
30 examination provided by the department, the person may retain a qualified expert or
31 a professional to examine the person, and the expert or professional shall have access

1 to all records concerning the person. The results of the examination shall be provided
2 to the court that committed the person.

3 **Sec. 47.50.821. Petition for release.** (a) If the commissioner determines that
4 the person's mental illness has so changed that the person is safe to be at large and is
5 not likely to commit a sexually violent predatory offense if released, the commissioner
6 shall authorize the person to petition the court for release. The petition shall be served
7 upon the attorney general as the attorney for the state. The court, upon receipt of the
8 petition for release, shall order a hearing within 45 days. The state has the right to
9 have the petitioner examined by an expert or professional person of their choice. The
10 hearing shall be before a jury if demanded by either the petitioner or the state. The
11 burden of proof is upon the state to show beyond a reasonable doubt that the
12 petitioner's mental illness remains such that the petitioner is not safe to be at large and
13 that, if discharged, is likely to commit a sexually violent predatory offense. If the
14 hearing is before a jury, the jury must make this determination unanimously.

15 (b) This section does not prohibit the person from otherwise petitioning the
16 court for discharge without the commissioner's approval. The commissioner shall
17 provide the committed person with an annual written notice of the person's right to
18 petition the court for release over the commissioner's objection. The notice must
19 contain a waiver of rights. The commissioner shall forward the notice and waiver
20 form to the court with the annual examination. If the person does not affirmatively
21 waive the right to petition, the court shall hold a show cause hearing to determine
22 whether facts exist that warrant a hearing on whether the person's condition has so
23 changed that the person is safe to be at large and is not likely to commit a sexually
24 violent predatory offense if discharged. The committed person has the right to have
25 an attorney represent the person at the show cause hearing and, if the person is
26 indigent, the court shall appoint counsel under AS 18.85 to represent the person. The
27 committed person is not entitled to be present at the show cause hearing. If the court
28 at the show cause hearing determines that probable cause exists to believe that the
29 person's mental illness has so changed that the person is safe to be at large and is not
30 likely to commit a sexually violent predatory offense if discharged, the court shall set
31 a hearing on the issue. At the hearing, the committed person is entitled to be present

1 and to the benefit of all constitutional protections that were afforded to the person at
2 the initial commitment proceeding. The attorney general shall represent the state and
3 has the right to a jury trial and to have the committed person evaluated by experts
4 chosen by the state. The committed person may also have experts evaluate the person
5 on the person's behalf. The burden of proof at the hearing is upon the state to prove
6 beyond a reasonable doubt that the committed person's mental illness remains such
7 that the person is not safe to be at large and, if released, is likely to commit a sexually
8 violent predatory offense.

9 (c) If a person has previously filed a petition for discharge without the
10 commissioner's approval and the court determined, either upon review of the petition
11 or following a hearing, that the petitioner's petition was frivolous or that the
12 petitioner's condition had not so changed that the person was safe to be at large and
13 was not likely to commit a sexually violent predatory offense if discharged, the court
14 shall deny the subsequent petition unless the petition contains facts upon which a court
15 could find that the condition of the petitioner has so changed that a hearing is
16 warranted. Upon receipt of a second or subsequent petition from a committed person
17 without the commissioner's approval, the court shall review the petition and determine
18 if the petition is based upon frivolous grounds and, if so, shall deny the petition
19 without a hearing.

20 **Sec. 47.30.822. Duties of department; regulations; immunity.** (a) The
21 department is responsible for costs relating to the evaluation and treatment of persons
22 committed to its custody under the provisions of AS 47.30.816 - 47.30.824.
23 Reimbursement may be obtained by the department for the cost of care and treatment
24 of persons committed to its custody under AS 47.30.819.

25 (b) The department may adopt regulations to implement the provisions of
26 AS 47.30.816 - 47.30.824. The department shall consult with the Department of Law
27 and the Department of Corrections when adopting regulations.

28 (c) The state, agencies of the state, employees of agencies of the state, and
29 officials are immune from liability for conduct under AS 47.30.816 - 47.30.824 except
30 that this subsection does not preclude liability for civil damages as a result of gross
31 negligence or reckless or intentional misconduct.

1 **Sec. 47.30.823. Release of information authorized.** Notwithstanding any
 2 other provision of law and in addition to any other information required to be released
 3 under AS 47.30.816 - 47.30.824, the department may release relevant information that
 4 is necessary to protect the public concerning a specific sexually violent predator
 5 committed under AS 47.30.816 - 47.30.824.

6 **Sec. 47.30.824. Definitions.** In AS 47.30.816 - 47.30.824,

7 (1) "mental illness" has the meaning given in AS 12.47.090;

8 (2) "predatory" means that acts are directed towards

9 (A) strangers;

10 (B) individuals with whom a relationship has been established
 11 or promoted for the primary purpose of victimization; or

12 (C) family members if the familial relationship has been
 13 exploited for the purpose of victimization; in this subparagraph "family
 14 member" means a person who

15 (i) is related up to the fourth degree of consanguinity,
 16 whether of the whole or half blood or by adoption computed under the
 17 rules of civil law; or

18 ii) lives in the same household;

19 (3) "sexually violent offense" means an act that is

20 (A) a violation of AS 11.41.410, 11.41.420(a)(1), or 11.41.434 -
 21 11.41.438, or a felony offense in this or another jurisdiction formerly, or
 22 currently, having elements similar to AS 11.41.410, 11.41.420(a)(1), or
 23 11.41.434 - 11.41.438;

24 (B) a violation of AS 11.41.100, 11.41.110, 11.41.200, or
 25 11.41.300, or a felony offense in this or another jurisdiction formerly, or
 26 currently, having elements similar to AS 11.41.100, 11.41.110, 11.41.200, or
 27 11.41.300 if the state proves beyond a reasonable doubt, in civil commitment
 28 proceedings under AS 47.30.816 - 47.30.824, that, during the course of the
 29 offense, the person engaged in or intended to engage in sexual penetration,
 30 sexual contact, or sexually gratifying conduct; or

31 (C) a violation of AS 11.31.100 - 11.31.120, or a felony offense

1 in this or another jurisdiction formerly, or currently, having elements similar
2 to AS 11.31.100 - 11.31.120, that is an attempt, criminal solicitation, or
3 conspiracy to commit one of the felonies designated in (A) or (B) of this
4 paragraph;

5 (4) "sexually violent predator" means a person who

6 (A) has been

7 (i) convicted of a sexually violent offense;

8 (ii) found to have committed a sexually violent offense
9 as a juvenile;

10 (iii) charged with a sexually violent offense and who
11 was determined to be incompetent to stand trial under AS 12.47.100; or

12 (iv) found not guilty by reason of insanity of a sexually
13 violent offense under AS 12.47.040; and

14 (B) suffers from a mental illness that makes the person
15 substantially likely to commit a sexually violent predatory offense.

16 * Sec. 2. APPLICABILITY. This Act applies to all acts committed before, on, or after the
17 effective date of this Act.

FISCAL NOTE

No. 6
 Bill Version: CS SB 216 (JUD)
 S) Publish Date: 4/22/98

STATE OF ALASKA
 1998 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: An Act providing for the civil commitment of sexually violent predators BRU: Trial Courts
 Sponsor: Senator Halford Component: _____
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 788

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	57.9	64.7	73.9	73.9	73.8	73.9
TRAVEL						
CONTRACTUAL	26.3	26.3	26.3	26.3	26.3	26.3
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	84.2	91.0	100.2	100.2	100.2	100.2
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	84.2	91.0	100.2	100.2	100.2	100.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	84.2	91.0	100.2	100.2	100.2	100.2

Estimate of any current year (FY 98) cost: \$ None

Positions

Full-Time						
Part-Time	8	3	3	3	3	3
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Doug Wooliver, Administrative Attorney Phone: 264-8265
 Agency: Alaska Court System Date: 04/16/98

Approved by: Stephanie J. Cole, Administrative Director Date: 04/16/98
 Agency: Alaska Court System

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This bill establishes procedures governing the civil commitment of "sexually violent predators". The court first becomes involved in the process when it receives a petition filed by the Department of Law seeking to have a sex offender committed. Upon receipt of the petition the court is required to schedule a hearing within 72 hours to determine whether there is probable cause to believe that the person is a sexually violent predator.

Because the consequences of a determination that a person is a sexually violent predator are severe, it is anticipated that each stage of the process, including the initial probable cause hearing, will be vigorously defended.

If the court determines there is probable cause to believe that the person is a sexually violent predator, the person is taken into custody for the purposes of evaluation. If the results of the evaluation indicate that the person is a sexually violent predator the court is to schedule a trial to be held within 60 days. The trial date can be continued upon the motion of either party or the court.

Because there is no opportunity to plead to a reduced charge (as in criminal cases), it is anticipated that all persons evaluated as sexually violent predators will exercise their right to a jury trial and their right to procure their own experts to conduct evaluations and testify on their behalf. These cases are anticipated to be complex with competing expert testimony regarding the person's mental state and likely future behavior.

If a person alleged to be a sexually violent predator has been found incompetent to stand trial for the underlying sexual offense, the court is to hear evidence to determine whether the person committed the act or acts charged. At the hearing the person is entitled to all the rights available to a defendant in a criminal trial other than the right to a jury trial and the right not to be tried while incompetent. This hearing will be the equivalent of a bench trial and is expected to require the same judicial resources.

After hearing evidence relating to whether the incompetent person committed the act or acts charged, the court is to make specific findings of fact as to whether the person committed the alleged act or acts, the extent to which the person's incompetence affected the outcome of the hearing, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the state's case. If the court finds beyond a reasonable doubt that the person committed the alleged act or acts it may proceed to determine whether the person should be committed. The person has a right to appeal a decision made under this section.

If a sex offender (competent or incompetent) is found by either the court or a jury to be a sexually violent predator, the court is to consider whether less restrictive alternatives to confinement would adequately protect the public. If no alternatives are found, the court is to order the person committed until such time as he or she is safe to be at large.

A person committed as a sexually violent predator has the right to an annual examination of his or her mental condition. He or she also has the right to petition the court for release. It is anticipated that every person in confinement will petition the court each year for release.

There are two ways to petition the court for release: 1) If the Commissioner of the Department of Health and Social Services determines that the person is safe to be at large, he or she will authorize the person to petition the court for release. 2) If the commissioner does not so authorize, the person may petition the court on his or her own.

If the commissioner authorizes the person to petition the court for release, the court shall order a hearing to be held within 45 days of receipt of the petition. The hearing is to be before a jury upon the motion of either the state or the person. The state has the right to obtain its own experts and to have them examine the person. It is estimated that most or all of these hearings will be before a jury.

If a person files a petition for release without authorization from the commissioner, the court is to hold a show cause hearing to determine whether facts exist that warrant a hearing on whether the person is now safe to be at large. The petitioner has the right to be represented by counsel at the hearing but not the right to be present.

If the court finds that probable cause exists that the person is now safe to be at large, it shall set a hearing on the issue. At the hearing, the person is entitled to be present and represented by counsel. He or she is also entitled to all the rights afforded him or her at the initial commitment proceeding. Both the state and the person have the right to retain their own experts and to request a trial by jury. It is anticipated that all cases will be tried before a jury and that the hearings will consume the same judicial resources as the initial civil commitment trial.

If a person has previously filed a petition for release without the approval of the commissioner and the court found, either upon initial review of the petition or following a hearing, that the petition was frivolous or that the petitioner was not safe to be released, the court is to deny any subsequent petition unless it contains new facts upon which the court could find that the person has so changed that a hearing is warranted.

This note is based on the following estimates provided by the Department of Law:

- 1) 5 civil commitment petitions filed per year.
- 2) 5 civil commitment jury trials per year resulting in 4 civil commitments per year.
- 3) 4 petitions for release that result in show cause hearings in FY 2000
8 petitions for release that result in show cause hearings in FY 2001
10 petitions for release that result in show cause hearings in FY 2002 and each year thereafter.
- 4) 4 appeals filed in FY 99 and FY 2000
7 appeals (including appeals from denials of petitions for release) filed in FY 2001.
8 appeals filed in FY 2002 and each year thereafter.

This note assumes that both the number of petitions for release and the number of appeals filed each year will stabilize after FY 2002. It also assumes that once a person is committed, the commissioner will not (at least by FY 2004) authorize a person to petition the court for release and, additionally, that the court will not (at least by FY 2004) find probable cause that a person is safe to be at large. Because of this, this note does not include any estimated expenses resulting from trials regarding the release of a petitioner. If any of these conservative estimates turn out to be in error, or if the number of civil commitment petitions filed with the court each year should increase, the court may return to the legislature for additional funding. Finally, this note does not reflect the costs associated with the additional 4 to 8 appeals the Supreme Court will hear each year. However, if the number of appeals should increase, the court may return to the legislature for additional funding.

Alaska Court System

SBZ16#6

Fiscal Analysis

CSSR 218 (JUD) Work Draft E, dated 4/13/88

FY 99 5 new commitments (with probable cause hearings @ 2 days each & jury trials @ 15 days each)

Personal Services

	Salary	Benefits	Total
Superior Court Judge Pro Tem, Anchorage, PPT, 4.25 months	\$ 20,719	\$ 10,089	\$ 30,818
In-Court Clerk, 12A, Anchorage, PPT 4.25 months	10,247	2,222	12,469
Law Clerk, 13D, Anchorage, PPT, 4.25 months	12,036	2,609	14,645
Total Personal Services			\$ 57,932

Contractual Services

Jury fees for 14 person jury for 15 days at \$25 a day for 5 trials	26,250
FY 99 Total Cost	84,182

FY 00 5 new commitments (with probable cause hearings @ 2 days each & jury trials @ 15 days each) & 6 petitions to release (with probable cause hearings @ 2 days each)

Personal Services

	Salary	Benefits	Total
Superior Court Judge Pro Tem, Anchorage, PPT, 4.75 months	\$ 23,156	\$ 11,287	\$ 34,443
In-Court Clerk, 12A, Anchorage, PPT 4.75 months	11,452	2,483	13,935
Law Clerk, 13D, Anchorage, PPT, 4.75 months	13,452	2,916	16,368
Total Personal Services			\$ 64,746

Contractual Services

Jury fees for 14 person jury for 15 days at \$25 a day for 5 trials	26,250
FY 00 Total Cost	90,996

FY 01 - FY 04 5 new commitments (with probable cause hearings @ 2 days each & jury trials @ 15 days each) & 8 (10 in FY 02-04) petitions to release (with probable cause hearings @ 2 days each)

Personal Services

	Salary	Benefits	Total
Superior Court Judge Pro Tem, Anchorage, PPT, 5.25 months	\$ 25,504	\$ 12,475	\$ 38,069
In-Court Clerk, 12A, Anchorage, PPT 5.25 months	12,658	3,929	16,587
Law Clerk, 13D, Anchorage, PPT, 5.25 months	14,888	4,409	19,277
Total Personal Services			\$ 73,933

Contractual Services

Jury fees for 14 person jury for 15 days at \$25 a day for 5 trials	26,250
FY 01 - FY 04 Total Cost	100,183

STATE OF ALASKA
 1998 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: Commitment of Sexually Violent Predators BRU: Institutions and Administration
 Sponsor: Halford, Green, Donnelly Component: Alaska Psychiatric Institute
 Requestor: Senate (JUD) COMPONENT SERIAL NO. 311
 See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY99	FY00	FY01	FY02	FY03	FY04
PERSONAL SERVICES	48.0	49.4	233.7	240.7	248.0	255.4
TRAVEL	4.5	4.6	8.8	9.0	9.3	9.6
CONTRACTUAL	619.0	1,239.1	1,845.6	2,442.1	3,043.7	3,645.2
SUPPLIES	5.0	5.2	10.3	10.6	10.9	11.3
EQUIPMENT	10.0		5.0	5.0		
LAND & STRUCTURES						
GRANTS, CLAIMS	40.0	140.2	243.4	349.7	459.2	572.0
MISCELLANEOUS						
TOTAL OPERATING	726.5	1,438.5	2,346.8	3,057.2	3,771.0	4,493.4

CAPITAL EXPENDITURES			Placeholder			
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CHANGES IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	726.5	1,438.5	2,346.8	3,057.2	3,771.0	4,493.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	726.5	1,438.5	2,346.8	3,057.2	3,771.0	4,493.4

POSITIONS:

FULL-TIME	1	1	2	2	2	2
PART-TIME						
TEMPORARY						

Estimate of any current year (FY98) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

Fiscal Assumptions:

1 This fiscal note assumes DHSS/API staff will provide 20 evaluations yearly, resulting in only 4 commitments yearly; under these assumptions, then, the number of persons committed to DHSS' custody as a sexually violent predator will increase by a total of 4 each year, so that the number of predators in DHSS custody by the end of the first year (FY99) is 4, 8 by the end of FY00, 12 in FY01, etc.. This increment in the number of predators in DHSS' custody significantly increases DHSS costs in a very short time, because the same new 20 evaluations must be performed each year, but the required annual review evaluations of predators already committed to DH&SS custody increases the workload until, effectively it is clear that the annual reviews of persons previously committed as sexually violent predators, combined with evaluations of prisoners soon to be released for a determination as to whether they meet the commitment criteria as a predator, will require full-time professional staff to maintain the program of initial screening referrals, evaluations, and annual reviews required by this bill.

Prepared by: Randall Burns, Director API
 Division: Mental Health and DD

Phone: 907-269-7103
 Date: 04/14/98

Approved by Commissioner: Karen Perdue, Commissioner
 Agency: Department of Health & Social Services

Date: _____

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ANALYSIS (cont.):

2. This fiscal notes assumes that a person determined after trial to be a sexually violent predator will not be treated and cared for at Alaska Psychiatric Institute; therefore, the treatment and twenty-four hour care required by this bill for all persons committed to DHSS custody as sexually violent predators will be contracted out. At present, there appears to be one facility in Florida that provides such treatment; the present cost for this service is \$400.00 per day. $\$400 \times 365 \text{ days} \times 4 \text{ persons}$ totals \$579,200. While first year start up delays may not see this total cost achieved in FY99, this will be the annual cost once the program is up and running; an inflation factor of 3% has been added beginning in FY00. It should be further noted that these costs multiply by a factor of four each year, as persons newly determined to meet commitment criteria are identified and sent for treatment. The State will, through a competitive RFP process, attempt to get the lowest per day cost available to treat and care for this difficult, risk-intensive population of individuals.

It should be noted, however, that even if DHSS contracts out for the treatment and care of committed predators, that the screening referrals, evaluations, and annual reviews will have to be done by the State and in-state, as will any hearings related to any petitions for release filed by committed predators. All the screenings, evaluations, trials, reviews, and hearings anticipated by this legislation will take significant time and may well require at some point in the not-too-distant future that the State invest in the purchase and renovation or construction of a facility, in order to house and care for those inmates and predators attending to the various evaluations and legal processes required by this bill, even if the State always contracts out the treatment portion of this business.

In the short run, however, and despite DHSS' unwillingness to house at API those persons found to be sexually violent predators, this bill will require, prior to an actual commitment determination, that when a court determines that there is probable cause to believe that an inmate is a sexually violent predator, that the inmate be transferred to API's forensic unit for the purpose of an evaluation by API staff. The person will be housed on API's forensic unit during the approximately four weeks required for the evaluation and then up until the person has gone to trial and a determination has been made as to whether the inmate is to be committed to DHSS as a sexually violent predator (a process that, at minimum, will take at least three months). Once a formal determination as to commitment status is made at trial, the person found to be a sexually violent predator will be transferred to the facility with whom DHSS has contracted to treat and care for these persons.

It is our view that API will be able to provide space for this service for a maximum of two fiscal years. At that point, both because of long-standing API 2000 Project plans and the significant number of inmates and predators involved in either evaluations or annual reviews and the attendant legal proceedings, API will no longer have sufficient beds to house the inmates and predators impacted by this bill.

3. At least initially, during the first two fiscal years, this fiscal notes assumes the use existing API psychiatrists and psychologists for the performance of the screening referrals, formal evaluations, and commitment reviews; we have, from the outset, added one administrative assistant to handle the significant paper work, scheduling complexities, and tracking required by this bill. However, beginning in FY01, we believe that the screening, evaluation, and review activities in this bill will require the employment of a full-time forensic psychiatrist or psychologist. The staffing cost assumptions are based on current State of Alaska salaries; costs are inflated 3% each year.

4. The fiscal note assumes that travel associated with inmate or predator screening referrals, evaluations, and annual reviews should be contained in the Grants line of the budget. Travel costs in the Grants line includes in-state costs for API staff to travel from API to various DOC facilities for the first referral screening of identified inmates by API staff (\$20.0), as well as for the cost of escorted travel when transferring a committed predator to the treatment facility (round-trip costs of \$2.0 per person). The cost of travel to API by inmates, where the court has found that probable cause exists to believe that an inmate may be a sexually violent predator and must be transferred to API for evaluation would be borne by DOC. Following commitment as a predator, and upon time for that predator's annual review, the cost of transporting the predator, with escorts, from their place of treatment back to Anchorage must also be factored in (round-trip costs of \$2.0 per person).