

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9243 HOUSE JUDICIARY

SB

254

Alaska State Legislature

Senate



Official Business

State Capitol
Juneau, AK. 99801-1182

Labor & Commerce Committee

Sponsor Statement -- CS for Senate Bill 254 (FIN)

“An Act relating to the exemption from levy, execution, garnishment, attachment, or other remedy for the collection of debt as applied to a permanent fund dividend.”

Senate Bill 254 amends Title 43, Chapter 23 regarding the use of permanent fund dividends to satisfy debts. Existing law at AS 43.23.065 provides that 45 percent of a person's permanent fund dividend is exempt from garnishment, attachment, or any other remedy to collect on financial obligations when the debtor is in a state of default. Therefore, debtors in Alaska can under most circumstances shield 45 percent of their dividend check from persons or businesses seeking to collect.

There currently are some exceptions to this general rule: the 45 percent exemption does not apply to child support obligations, court ordered fines, claims on defaulted Alaska student loans, or any debt owed to an agency of the state. Under these and a few other narrowly defined circumstances, the state requires that 100 percent of the dividend be made available to meet the debtor's obligation.

The existing PFD garnishment provisions are inequitable and contradictory. The state can seize the entire amount of a dividend to satisfy its claims, but private parties such as small businesses, credit unions, landlords, or car dealers are limited in the amount they can garnish. The message sent, whether intentional or not, is that when contractual obligations are violated, agencies of the state have a greater right than private parties to settle their outstanding claims.

As originally introduced, Senate Bill 254 completely eliminated the dividend exemption, allowing state agencies and private parties alike to collect 100 percent. However, an amendment approved by the Labor & Commerce Committee restored the exemption but lowered it from 45 percent to 30 percent. The Senate Finance Committee further amended the bill by lowering the exemption from 30 to 20 percent. Thus, the amended bill allows private parties to collect 80 percent of a dividend check, while state agencies will continue to collect 100 percent.

SB 254 narrows the gap between what state agencies and businesses are able to collect. When businesses are unable to recover monies lawfully owed them by persons in default, the losses are recovered by passing the costs on to honest, law-abiding consumers. The current 45 percent exemption for dividends is essentially a “hidden tax” on the majority of financially responsible consumers. Defaulters get to keep their dividend checks, while the majority of Alaskans end up providing an involuntary subsidy for their financial irresponsibility.

Prepared by Mike Pauley, Staff Aide to Senator Loren Leman (465-3841)
Last updated: March 12, 1998

Revision Date: February 18, 1998 Dept. Affected: Revenue
 Title: Levy of Permanent Fund Dividends BRU: Revenue Operations
 Component: Permanent Fund Dividend
 Sponsor: S(L&C)
 Requestor: (S) FIN COMPONENT SERIAL NO. 981

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	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1001 CBRF						
1048 University of AK receipts						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year cost \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill reduces the exemption allowed on an individual's Permanent Fund Dividend (PFD) that was protected from levy, execution, garnishment, attachment, or any other remedy for the collection of debt, from 45% to 30%. Cumbersome wording regarding the timing of payment is also eliminated.

This amended version of the bill will have no fiscal effects on the Permanent Fund Dividend program.

Prepared by: Nanci A. Jones, Director
 Division: Permanent Fund Dividend
 Approved by Commissioner: Wilson L. Condon
 Agency: Revenue

Phone: (907) 465-2323
 Date: February 18, 1998
 Date: February 18, 1998

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
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Supporters of Senate Bill 254

(Legislation reducing PFD garnishment exemption from 45% to 20%)

- Affordable Loan Company
- Alaska Bankers Association
- Alaska Credit Union League
- Alaska State Chamber of Commerce
- Cal Worthington Ford
- Doctors' Collection Service
- Johnson Nissan/Jeep/Eagle (Anchorage)
- Ketchikan Credit Bureau, Inc.
- National Bank of Alaska
- Northland Credit
- Superior Financial Service Corporation



Headquarters:
217 2nd Street, Suite 201
Juneau, Alaska 99801
(907) 586-2323 FAX 463-5515



MAR 18 1998

March 18, 1998

Senator Loren Leman
Alaska State Capitol
Juneau, Alaska 99801

Dear Senator Leman:

The Alaska State Chamber of Commerce urges your support of CS for Senate Bill 254 (Finance), reducing the percentage of the Permanent Fund Dividend that is exempt from levy by creditors from 45% to 20%, which is on the Senate Calendar today.

Under current law, the State can take 100% of an individual's Permanent Fund Dividend for debts owed the State, such as student loans, child support, and so forth. However, creditors in the private sector have little more than half of the Dividend available to them to satisfy their credit claims. This legislation would increase to 80% the amount private sector business could levy for debt collection.

Uncollectible debts hamper business growth, and the Alaska State Chamber believes CS for SB 254 (Finance) is a measure to improve Alaska's business environment. We would appreciate your support.

Sincerely,

A handwritten signature in cursive script that reads "Pamela La Bolle".

Pamela La Bolle
President

*It's a good bill -
Thank you, Senator!*

March 10, 1998

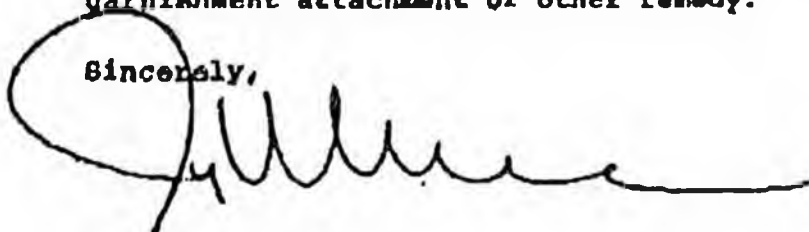
Senator Drue Pearce, Co-Chairman
Senator Bert Sharp, Co-Chairman
Senate Finance Committee
Alaska State Legislature
State Capitol, Mail Stop 3100
Juneau, Alaska 99801-1182

RE: SB 254 - Garnishment, Attachment and Levy of
Permanent Fund Dividends

Dear Co-Chairmen Pearce and Sharp

The Alaska Bankers Association supports and recommends passage of SB-254, an act increasing up to 100% the amount of an annual permanent fund dividend payable that may be taken through levy, execution, garnishment attachment or other remedy.

Sincerely,



Jerry K. Weaver
Secretary/Treasurer

cc: Senators Donley, Parnell, Phillips, Torgerson, Adams

National Bank of Alaska



Consumer Special Credit Services
P.O. Box 102880
Anchorage, AK 99510-2880

January 28, 1998

Senator Loren Leman's Office
716 West 4th Avenue, Suite 520
Anchorage, Alaska 99501

RE: Alaska Permanent Fund Dividend

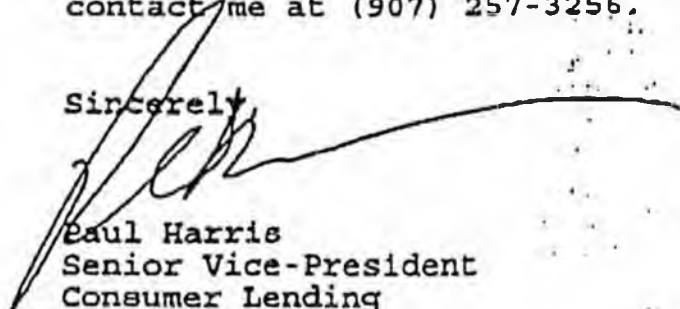
As a representative for National Bank of Alaska, I can't express enough the importance of receiving as much money as we can for unpaid loans that we have obtained a judgement on. At the present time we are only receiving 45% (garnishment) of Alaska's permanent fund dividend, for the most part, this only allows us to pay the interest due on most of our loans instead of reducing the principal balance.

If we were able to garnish 100% of the permanent fund dividend, we would be able to reduce the balance on these loans substantially and possibly pay most of them off. With individuals that are receiving the permanent fund dividend, we would not be taking anything away from them since this is "free money" that the state of Alaska is giving us. Nobody is above the law and our local business's should be treated the same as private citizens and benefit from this wonderful advantage of living or operating a business in the state of Alaska.

I feel that if you have a judgement against you, you should not have the right to a portion of the money distributed by the state of Alaska permanent fund dividend. I understand that child support and state agencies can garnish up to 100% of the permanent fund dividend and we should be given that same opportunity.

We at National Bank of Alaska fully support this bill that you are trying to pass and any assistance that we can provide, please contact me at (907) 257-3256.

Sincerely,



Paul Harris
Senior Vice-President
Consumer Lending



**NORTHLAND
CREDIT**

JAN 29 1998

January 28, 1998

Senator Loren Leman
716 West 4th Avenue Ste 520
Anchorage, Alaska 99501

Dear Senator Leman,

Northland Credit Corporation proudly supports Senate Bill 254, which would allow other entities other than those prescribed Title 43, Chapter 23 to use the permanent fund to satisfy debts on a much larger scale.

If businesses and private citizens were allowed to garnish 100% of the permanent fund, it would certainly send a message to those who choose not to pay their debts. We understand that state and federal agencies should be entitled to enforce the collection of child support payments or other obligations owed, but to allow those who may not fall under that criteria not to be subject to the same penalties is biased.

As a Branch Manager for the largest wholly-owned Alaskan consumer finance company, I feel it is imperative that some adjustment be made to this statute.

Sincerely,



Troy R. Ferguson
Branch Manager
Northland Credit Corporation

John E. Low
Post Office Box 90608
Anchorage, Alaska 99509-0608

January 28, 1998

The Honorable Loren Leman
Chairman, Senate Labor & Commerce Committee
State Capitol, Room 115
Juneau, Alaska 99801

Dear Senator Leman:

I am writing to express my support for Senate Bill 254. I strongly urge you and your colleagues to vote in favor of this legislation.

My reasons for supporting this bill go back to an unpleasant experience that began in 1995. I own a four-plex apartment in Anchorage with my mother. We had one tenant living there with her dog and cat when we purchased the property in 1993.

In September of 1995 I noticed several cats in the apartment and I had received complaints of smells coming from her unit. When I asked her about the cats, she stated she owned six of them. This prompted me to give her notice of my intent to terminate our rental agreement. All of this caught me by surprise. I had only entered the apartment on two occasions, and it seemed to have been well-maintained. I should have been suspicious as she generally wouldn't answer the door and all the curtains would be closed to keep her privacy. She also put wallpaper over her back sliding door, apparently to hide the mess. She was turning the apartment into a cat sanctuary.

When I reclaimed the unit on November 1, 1995, I found eight abandoned cats. The apartment was filled with pet waste. The kitchen window had been left open for the cats to come and go as they pleased. Other damage included shredded walls from cat claws, and urine-soaked carpets along with underlying wood floors. All carpets, vinyl, even the refrigerator and oven had to be replaced because of the cat waste.

The clean-up process was time consuming and discouraging. I tried to hire house cleaners, but when one potential cleaner entered the unit her eyes began to water from the urine smell. She ended up running out, saying she could not participate. Consequently I did most of the work myself with limited help from two others and a carpenter. I worked every day of November and most every day of December to prepare for a new tenant. I used three ozone machines to eliminate the smell, talked to every possible expert and analyzed every option. I could not resolve the problem -- the smell still returns each summer. It was the most frustrating job I ever undertook, and my time for repairs totaled more than two hundred hours.

The Honorable Loren Leman
Senate Labor & Commerce Committee
January 28, 1998
Page 2

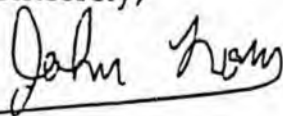
I tried to contact the former tenant responsible for the damage. She hung up on me, and I have never seen her again. Since she would not talk, I wrote a letter specifying the damage she caused. This was also ignored. Given that her security deposit had been only \$450, I began the long process of suing her. I filed a complaint and had her served. Once again, she did not respond. I estimated the damage at more than \$8,000. I asked for a judgment of \$5,000, which was the small claims limit at the time. The former tenant finally communicated via telephone at a default judgment hearing, and she admitted to the liability of \$5,000.

Then I proceeded to collect by hiring an investigator. I paid a process server the \$75 fee to seize any bank account in Anchorage held by the former tenant. She had no bank account. I then discovered I could not garnish her wages because of the generous exemptions that state law allows for debtors who have judgments against them.

It seemed my only hope was to seize her Permanent Fund dividend check, which I have done twice so far. It's a small help, but gains very little because of the exemptions that also apply to this area. Assuming that the amount of the annual dividend check remains reasonably stable, and assuming the debtor does not leave the state, it will take more than 13 years for me to collect this debt. If the Legislature eliminates the exemption on dividend checks, I could collect the debt in approximately 6 and 1/2 years.

This apartment is the only rental property my mother and I own. Because of what one irresponsible person did, we could not draw any income from it for eleven months. I trusted her not to ruin my property and she violated that trust. I urge the Legislature to change this law so that I can be justly compensated for my loss.

Sincerely,

A handwritten signature in cursive script that reads "John Low". The signature is written in dark ink and is positioned above a horizontal line.

John Low

Superior Financial Service Corporation

226 E 7th Avenue

Anchorage Alaska 99501

(907) 276-0444 • Fax (907) 254-9051

January 29, 1998

FEB 02 1998

Senator Loren Lemam
State Capitol Room #115
Juneau, AK 99801

RE: Senate Bill #254

Dear Senator Lemam:

I would like to extend my appreciation, on behalf of Superior Financial Service, Corp., for your efforts regarding SB 254.

SB 254 will give us, and other creditors, an equitable way to collect a debt that is legally due.

Superior Financial Service, Corp. strongly supports SB 254 and would like to show our support. If we can assist in any way please let us know.

Once again, thank you Senator Lemam.

Sincerely,



Linda Mendenhall
Account Representative
Superior Financial Service, Corp.
(907) 276-0444

AFFORDABLE LOAN COMPANY

JAN 28 1998

Senator Loren Leman
State Capital Room 115
Juneau, Ak. 99801

Ref: Senate Bill number 254

Dear Senator Leman:

I would personally like to thank your office for the efforts you have put forth with this bill. This will give us, and any other creditor, the right to be equal in our efforts to collect a debit that is legally due and payable.

We strongly support this bill and will be trying to gather other support for this bill. Please let us know if there is any way we can be of assistance.

Again, thank you for your efforts, and mostly for your concern of fairness for everyone. The creditors in the State of Alaska will benefit from this bill greatly.

Sincerely,

Jackie Brock

Jackie Brock
manager

JOHNSON

EXPECT THE BEST

NISSAN

Jeep
Eagle

JAN 28 1998

January 28, 1998

Senator Loren Loman
State Capitol Room #115
Juneau, AK 99801

RE: Senate Bill #254

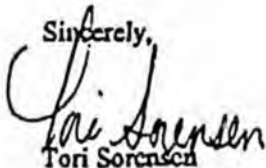
Dear Senator Loman:

I would like to extend my sincere appreciation to your office, for the effort you have put forward in regards to Senate Bill #254. This will help give us, and our fellow creditor's, the right to be equal in our efforts to collect a debt that is legally owed.

Johnson Nissan / Jeep / Eagle strongly supports Senate Bill #254. We are attempting, at this time, to rally as much support as we can for this bill. If there is any way we can be of assistance to you or your office, please call me at the number below.

Thank you for your efforts, and most of all your concern for everyone involved. We at Johnson Nissan / Jeep / Eagle promote fairness to everyone involved, including the debtor. All the creditor's in the State of Alaska will benefit greatly if it's passed. Again, if there's anything we can do, please let me know.

Sincerely,



Tori Sorensen
Johnson Nissan / Jeep / Eagle
Collections Manager
(907) 762-5253

cc: Kim
Juckie



Cal Worthington Ford

28 January 1998

Ref: Garnishment of PFD Checks

Dear Senator Lemau,

I strongly support Senate Bill 254. Since the Alaska PFD is basically a gift, not earned money, I feel that a person or private business should be able to garnish 100% of the PFD. I believe a private party who has a judgment to collect a bad debt should have just as much right to the whole PFD as the State of Alaska or the Federal Government. In most cases the PFD is the only means of garnishment and with only 55% of the PFD a lot of debts stay at the same amount due to the accrued interest between payments. Being able to seize 100% would actually reduce some of the principal amounts of the bad debts and therefore also reduce the accrued interest.

Again, I very strongly support Senate Bill 254.

Sincerely,



Ulrike M. Ward

(4) assist residents of the state, particularly in rural areas, who because of language, disability, or inaccessibility to public transportation need assistance to establish eligibility and to apply for permanent fund dividends;

(5) use a list of individuals ineligible for a dividend under AS 43.23.005(d) provided annually by the Department of Corrections and the Department of Public Safety to determine the number and identity of those individuals;

(6) adopt regulations that are necessary to implement AS 43.23.005(d);

(7) adopt regulations that establish procedures for the parent, guardian, or other authorized representative of a disabled individual to apply for prior year permanent fund dividends not received by the disabled individual because no application was submitted on behalf of the individual;

(8) adopt regulations that establish procedures for an individual to apply to have a dividend warrant reissued if it is returned to the department as undeliverable or it is not paid within two years of the date of its issuance; however, the department may not establish a time limit within which an application to have a warrant reissued must be filed. (§ 1 ch 102 SLA 1982; am § 2 ch 55 SLA 1983; am § 3 ch 43 SLA 1984; am § 3 ch 54 SLA 1988; am § 5 ch 68 SLA 1990; am § 14 ch 4 SLA 1992; am § 1 ch 64 SLA 1993; am § 5 ch 46 SLA 1996)

Revisor's notes. — Section 11, ch. 99, SLA 1985, amends this section. The amendment is effective if § 1, ch. 99, SLA 1985 is repealed (see § 25, ch. 99, SLA 1985). If the amendment becomes law, the section will read: "The department shall

"(1) annually make payments to individuals who elect to receive cash under AS 43.23.005(d);

"(2) adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for claiming a permanent fund dividend or for electing an annuity credit; the department shall set the time limit for applications for permanent fund dividends so that the number of eligible applicants is determined by October 1 of the year for which the dividend is declared and permanent fund dividends for a year are paid before April 30 of the year following that year;

"(3) adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for an individual upon emancipation or upon reaching majority to apply for permanent fund dividends not credited or received during minority because the parent, guardian, or other authorized representative did not apply on behalf of the individual;

"(4) assist residents of the state, particularly in

rural areas, who because of language, disability, or inaccessibility to public transportation need assistance to establish eligibility and to apply for permanent fund dividends; and

"(5) provide the commissioner of administration with information necessary to maintain individual annuity account records and administer the annuity program."

Under § 5, ch. 64, SLA 1993, the optional longevity bonus program of former paragraph (9) was repealed effective July 1, 1995 because, as of June 30, 1995, fewer than 5,000 individuals had elected to participate in the program.

Effect of amendments. — The 1988 amendment deleted "and" at the end of paragraph (3), and added paragraphs (5) and (6).

The 1990 amendment, effective January 1, 1991, added paragraph (7).

The 1992 amendment, effective January 1, 1993, rewrote paragraph (2) and added paragraph (8).

The 1993 amendment, effective September 20, 1993, added former paragraph (9).

The 1996 amendment, effective August 27, 1996, rewrote paragraph (5) and made a minor stylistic change.

NOTES TO DECISIONS

Applied in *Handley v. State*, Dep't of Revenue, 838 P.2d 1231 (Alaska 1992); *State, Dep't of Revenue v. Cosio*, 858 P.2d 621 (Alaska 1993).

Sec. 43.23.060. Duties of the department. [Repealed, § 22 ch 102 SLA 1982.]

Sec. 43.23.065. Exemption of and levy on permanent fund dividends.
 (a) Except as provided in (b) of this section, 45 percent of the annual permanent fund dividend payable to an individual is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual. No other exemption applies to a dividend. Notwithstanding other laws, a writ of execution upon a dividend that has not been delivered to the debtor may be served on

the commissioner by certified mail, return receipt requested. Upon receipt of a writ by certified mail, return receipt requested, the commissioner shall deliver that portion of the dividend executed upon to the court along with the case name and number.

(b) An exemption is not available under this section for permanent fund dividends taken to satisfy

(1) child support obligations required by court order or decision of the child support enforcement agency under AS 25.27.140 — 25.27.220;

(2) court ordered restitution under AS 12.55.045 — 12.55.051, 12.55.100, or AS 47.12.120(b)(4);

(3) claims on defaulted scholarship loans under AS 43.23.067;

(4) court ordered fines;

(5) writs of execution under AS 09.35 of a judgment that is entered

(A) against a minor in a civil action to recover damages and court costs;

(B) under AS 34.50.020 against the parent, parents, or legal guardian of an unemancipated minor;

(6) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired;

(7) a debt owed to a person for a program for the rehabilitation of perpetrators of domestic violence required under AS 12.55.101, AS 18.66.100(c)(15), AS 25.20.061(3), or AS 33.16.150(f)(2).

(c) Claims listed in (b) of this section have priority in the order listed over other claims on a permanent fund dividend whether payments are sought through legal actions for the collection of debts or through assignments from the debtor.

(d) An assignment of or levy, execution, garnishment, attachment, or other remedy for the collection of debt applied to a dividend for a year may not be accepted by the department before April 1 of that same year. AS 09.38.080(c) and 09.38.085 do not apply to a levy on a permanent fund dividend. The department shall include the case number with a dividend or portion of a dividend transmitted to the court in response to a writ of execution or other court order. At the time payment is made to the court, the department shall send to the individual at the address provided in the individual's dividend application and to the court that issued the writ or order a notice that contains

(1) notification that all or part of the individual's dividend has been seized under a writ of execution or court order;

(2) the name and address of the court that issued the writ or order;

(3) the case number for which the writ or order was issued;

(4) the amount seized under the writ or order; and

(5) notification that the individual has 30 days from the date the notice is mailed in which to file with the court an objection to the seizure if a mistake has been made. (§ 1 ch 102 SLA 1982; am § 1 ch 157 SLA 1984; am § 1 ch 57 SLA 1985; am § 67 ch 138 SLA 1986; am § 3 ch 26 SLA 1989; am § 3 ch 198 SLA 1990; am §§ 3, 4 ch 52 SLA 1992; am § 5 ch 113 SLA 1994; am § 3 ch 34 SLA 1995; am § 9 ch 59 SLA 1996; am § 63 ch 64 SLA 1996)

Revisor's notes. — Sections 12 and 13, ch. 99, SLA 1985, amend this section and add new (b) and (c). The amendments are effective if § 1, ch. 99, SLA 1985 is repealed (see § 25, ch. 99, SLA 1985). If the amendments become law, the section will read: "(a) Fifty percent of a cash permanent fund dividend payment is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual. An exemption is not available under this section for cash permanent fund dividend payments taken to satisfy (1) child support obligations required by court order or decision of the

child support enforcement agency under AS 47.23.140 — 47.23.220; (2) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired; or (3) court ordered restitution under AS 12.55.045 — 12.55.051 or 12.55.100. A child support obligation under (1) of this section has priority over a debt owed to an agency of the state, and a permanent fund dividend may not be taken to satisfy a debt under (2) of this section until any portion of the dividend necessary to satisfy a child support obligation has been taken.

"(b) The department shall require an individual to take 100 percent of the permanent fund dividend in

cash if the department receives a levy, execution, garnishment, attachment or other legal remedy for the collection of a past due debt described in (a)(1) or (2) of this section.

"(c) The courts of this state may, as a condition of any civil judgment or restitution order under AS 12.55.045 — 12.55.051 or 12.55.100, require the defendant to take the defendant's permanent fund dividend in cash."

Cross references. — For property exempt from execution generally, see AS 09.38.

Effect of amendments. — The 1985 amendment rewrote this section.

The 1989 amendment repealed former paragraph (b)(3), relating to the court ordered probation fee, and redesignated former paragraph (b)(4) as present (b)(3).

The 1990 amendment, effective January 1, 1991, in subsection (a), substituted "45 percent" for "50 percent" in the first sentence.

The 1992 amendment, effective June 11, 1992 added the last three sentences in subsection (a); in subsection (b), added paragraphs (3) and (4), redesignated former paragraph (3) as paragraph (5) (now (6)), and made stylistic changes; added "whether payments are sought through legal actions for the collection of

debts or through assignments from the debtor" to subsection (c); and added subsection (d).

The 1994 amendment, effective September 1, 1994, in subsection (b), added a reference to AS 47.10.080(b)(4) at the end of paragraph (2) and made related stylistic changes, added present paragraph (5), and redesignated former paragraph (5) as paragraph (6).

The 1995 amendment, effective August 17, 1995, rewrote paragraph (b)(5).

The first 1996 amendment, effective September 10, 1996, made a section reference substitution in paragraph (b)(2).

The second 1996 amendment, effective July 1, 1996, added paragraph (b)(7) and made a related stylistic change.

Editor's notes. — Section 5, ch. 26, SLA 1989 provides that the amendments to (b) of this section by § 3, ch. 26, SLA 1989 "do not affect the collection of probation fee payments ordered by a court under AS 12.55.105, repealed by § 4 of this Act, after June 30, 1986, and before May 12, 1989."

Section 16(1), ch. 113, SLA 1994 provides that the amendments to (b) of this section by § 5, ch. 113, SLA 1994 apply "to civil actions accruing on or after September 1, 1994."

NOTES TO DECISIONS

Cited in *Lauber v. Alaska (In re Browne)*, 101 Bankr. 188 (Bankr. D. Alaska 1989); *Camacho v.*

United States, 177 Bankr. 667 (Bankr. D. Alaska 1994).

Sec. 43.23.066. Claims on reimbursement for court-ordered treatment. (a) AS 09.38 does not apply to permanent fund dividends taken under AS 47.12.155(c). Notwithstanding AS 09.35, execution on a dividend claimed under AS 47.12.155(c) is accomplished by delivering a certified claim to the department containing the following information:

(1) the name and social security number of the individual whose dividend is being claimed;

(2) the amount the individual owes on the reimbursement claim; and

(3) a statement that

(A) the Department of Health and Social Services has notified the individual that future permanent fund dividends of the individual will be taken to satisfy the reimbursement claim;

(B) the individual was notified of the right to request a hearing and allowed 30 days after the date of the notice described in (A) of this paragraph to request the Department of Health and Social Services to hold a hearing on the reimbursement claim;

(C) the reimbursement claim has not been contested, or, if contested, that the issue has been resolved in favor of the Department of Health and Social Services; and

(D) if the reimbursement claim has been contested and resolved in favor of the Department of Health and Social Services, no appeal is pending, the time limit for filing an appeal has expired, or the appeal has been resolved in favor of the Department of Health and Social Services.

(b) The Department of Health and Social Services shall notify the individual if a dividend is claimed under (a) of this section. The notice shall be sent to the address provided in the individual's permanent fund dividend application and must provide the following information:

(1) the amount of the reimbursement claim;

(2) notice that the permanent fund dividend, or that portion of the permanent fund dividend that does not exceed the amount of the reimbursement claim, shall be paid to the Department of Health and Social Services; and

ALASKA DEPARTMENT OF REVENUE
 PERMANENT FUND DIVIDEND DIVISION
SUMMARY OF INVOLUNTARY ATTACHMENTS FOR DIVIDEND YEARS 1997 AND 1996
 As of January 29, 1998

Agencies	1997			
	Total Claims Requested	Total Claims Paid	Amount of Claims Paid	Unpaid Claims
Bankruptcy	201	178	226,358	23
CSED	12,051	10,890	11,325,803	1,161
PSED	10,916	9061	10,763,807	1,855
State Agencies	11,769	5,259	1,850,095	6,510
IRS*	20,206	1	713	*20205
Court Ordered Restitution	65	53	62,098	12
Court Ordered Fines	15,798	7,905	2,062,671	7,893
Other Writs & Certified Services	18,717	9,733	5,321,983	8,984

Totals: 89,723 43,080 31,613,528 26,438

Agencies	1996			
	Total Claims Requested	Total Claims Paid	Amount of Claims Paid	Unpaid Claims
Bankruptcy	136	114	126,965	22
CSED	11,751	10,804	9,948,642	947
PSED	8,952	7,443	7,836,429	1,509
State Agencies	10,257	5,033	1,643,122	5,224
IRS*	21,418	16,452	13,874,801	4,966
Court Ordered Restitution	46	32	31,521	14
Court Ordered Fines	12,281	5,348	1,270,722	6,933
Other Writs & Certified Services	15,543	7,210	3,558,836	8,333

Totals: 80,381 52,436 38,291,039 27,948

*In 1997, the IRS was experiencing difficulties with its computer system and, as a result, withdrew its attachments.

ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
SUMMARY OF VOLUNTARY AND INVOLUNTARY ATTACHMENTS FOR 1982 - 1997
As of January 29, 1998

<u>YEAR</u>	<u>AMOUNT</u>
1982	27
1983	88
1984	50
1985	185
1986	17,422
1987	35,286
1988	41,990
1989	31,204
1990	38,056
1991	42,961
1992	52,499
1993	59,888
1994	69,863
1995	84,554
1996	85,059
1997	<u>94,386</u>
Total:	<u>656,518</u>

SB

274

FISCAL NOT No. 2

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill Version: CSSB 274(FIN.)
(S) Publish Date: 4-22-98

Revision Date (Note if correction) 4/20/98 Dept. Affected Corrections
Title An Act relating to fees for probation and parole BRU Administration and Operations
Component ALL
Sponsor Senator Ward
Requester Senate Finance Component Serial No. #0694

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	158.9	94.4	94.4	94.4	94.4	94.4
Travel						
Contractual	151.0	150.5	150.5	150.5	150.5	150.5
Supplies	5.0					
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	246.7	246.7	246.7	246.7	246.7	246.7
TOTAL OPERATING	561.6	491.6	491.6	491.6	491.6	491.6

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

CHANGE IN REVENUES ()	305.9	305.9	305.9	305.9	305.9	305.9
-------------------------------	--------------	--------------	--------------	--------------	--------------	--------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	561.6	491.6	491.6	491.6	491.6	491.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	561.6	491.6	491.6	491.6	491.6	491.6

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary	1					

ANALYSIS: (Attach a separate page if necessary)

Please see attached analysis.

Prepared by Bruce Richards Phone 465-3307
Division Commissioner's Office Date 4/20/98
Approved by Commissioner Margaret M. Pugh Margaret M. Pugh Date 4/20/98
Agency Department of Corrections

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION
DEPARTMENT OF CORRECTIONS

BILL NO. CS SB 274 (FIN)
PAGE 2 of 3 #2
DATE 4/20/98

Assumptions

Section one and two of this legislation adds probation fees to AS 12.55.051 **Enforcement of fines and restitution**. This statute allows for the incarceration of people who do not pay their fines or restitution. If the probationer is found by the court to be in violation, the court may order the defendant imprisoned until the court order is satisfied. This could result in incarceration of one day for every \$50 owed. The Dept. of Corrections assumes that few if any of the over 4000 probationers/parolees will pay this fee. Under a previous law, the fee was only half of that proposed in SB 274 and approximately \$260.4 was collected over a two and a half year period; projected receipts were \$5,500,000 during the same period. The result was a collection rate of less than five percent. Research of the previous law indicates few probationers if any were put in jail for failure to pay. The Dept. assumes that approximately 146 probationers will be brought before the court for non-payment, and ten will be incarcerated.

Cost for Section 1= \$14,544 for CRC time (10 people 24dys), \$26,280 for PO time = \$40,854
Revenue for Section 1= \$0

Section 3 amends AS 12.55.100 **Conditions of probation**. The proposed language adds the probation fee that is required in AS 12.55.144.

Cost for Section 3= \$0
Revenue for Section 3= \$0

Section 4 adds a new section, AS 12.55.104 **Probation fee**. This section establishes a mandatory probation fee of \$3.30 per day. In addition, this section requires the probationer to assign his or her permanent fund dividend check to make probation fee payments. It further requires the Dept. of Corrections to attach the dividend check of a probationer who is in arrears. If the dividend check exceeds the total of the probation fee payments the DOC is required to refund the difference to the probationer. The DOC does not anticipate much if any revenue from PFD checks, since they are not eligible for at least one year after incarceration, and because probationers have many other requirements that are higher in priority to the probation fee, such as: victim restitution, child support, and court-ordered fines.

Cost for Section 4= \$0
Revenue for Section 4= \$269,808 (7% of population paying 224 people) PFD Revenue=\$0

Section 5 amends AS 33.16.150 **Conditions of Parole**. The proposed language adds a mandatory parole fee as a condition of parole, as provided in AS 33.16.155.

Cost for Section 5= \$0
Revenue for Section 5= \$0

Section 6 amends AS 33.16.155 **Parole fee**. This section adds a new subsection that requires the Board of Parole to assess a fee of \$3.30 per day. In addition, this section requires the parolee to assign his or her permanent fund dividend check to make fee payments. It further requires the Dept. of Corrections to attach the dividend check of a parolee who is in arrears. If the dividend check exceeds the total of the fee payments the DOC is required to refund the difference. The DOC does not anticipate much if any revenue from PFD checks for the reasons cited in section 4 above.

Cost for Section 6= \$0
Revenue for Section 6= \$36,135 (2% of population paying = 30 people)
(continued on page 3)

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION
DEPARTMENT OF CORRECTIONS

BILL NO. CS SB 274 (FIN)
PAGE 3 of 3
DATE 4/20/98 #2

Section 7 amends AS 33.16.220, **Revocation of Parole**. This new subsection will require the Board of Parole to revoke parole if a parolee defaults in the payment of the fee, unless the parolee shows by a preponderance of evidence that he or she is unable to pay despite having made continuing good faith efforts. The requirement will have a significant cost since the Board will have no choice but to revoke parole for those who refuse to pay the fee. A hearing will be required to determine the parolee's ability and effort to pay. It is anticipated this will require 11 days of additional hearings per year at a cost of \$28,600. It is estimated that 140 parolees will be found in violation of AS 33.16.150(a)(12), resulting in a revocation of parole. It is estimated the amount of parole revoked will be one day in a CRC for each \$50 owed in fees.

Cost for Section 7= \$203,616 (140 parolees revoked for 24 days each at \$60.60 per, \$28,600 for Board Costs (11 hearing days @ \$2600 per), \$25,200 for PO Time. Total = \$257,416
Revenue for Section 7= \$0

Section 9 amends AS 43.23.005(d) which makes all inmates who have been convicted of a felony or a three time misdemeanor ineligible for a PFD the first year they are released. The Dept. of Corrections will now have to program our computer system to generate a third list to send to the PFD division and deal with an increased number of appeals. The Dept. of Corrections has only received a fraction of the funding requested when the felony and third time misdemeanor provisions were passed. The workload for our data processing programmers is increasingly being taken up by the provisions under AS 43.23.005(d). Without additional support, our Data Processing section will be unable to carry out its day to day functions. The Department of Corrections is requesting one temporary Analyst Programmer IV to reprogram the DOC database for the amendment in section 9. In addition, a statistical technician will be needed to respond to and research appeals. The Dept. of Corrections has asked for this position each time AS 43.23.005(d) was amended and has been continually denied.

Cost for Section 9= Analyst Programmer IV 64.5; Statistical Technician I 43.0; Contractual 1.0, Supplies 1.0, Equipment (one time) 5.0 Total = \$114,500

Section 10 amends AS 43.23.065(b) **Exemption of an levy on PFD's**. The proposed language adds to the order of debts that are not available for an exemption and places the proposed probation and parole fees last in line for collection.

Cost for Section 10= \$0
Revenue for Section 8= \$0

Section 11 amends AS 44.28 by adding a new section requiring the Dept. of Corrections to contract with a collection agency or other entity for administration and collection of probation and parole fees. The Dept. has contacted collection agencies and was told that they would not bid on such a contract. They made it clear that they are only in the business of collecting on bad debt and would not be interested in administration and accounting functions that would be required under SB 274. The Dept. would be required to put out an RFP for the services required under this legislation and has estimated the cost.

Cost for Section 11= \$150,000
Revenue for Section 9= \$0

The Dept. of Corrections is unable to estimate the revenues collected from attached permanent fund dividend checks.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 1
Bill Version: CSB 274 (JUD)
(S) Publish Date: 2-19-98

Revision Date: _____
Title: "An Act relating to fees for probation and parole"
Sponsor: Senator Ward
Requestor: (S) JUD

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

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: \$ 0

POSITIONS:

FULL-TIME	**	**	**	**	**	**
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill would require a court or the parole board to impose a fee on probationers and parolees. Payment of the fees could be a condition of probation or parole. There would undoubtedly be a fiscal impact on the Public Defender Agency (PDA) as a result of this bill. Probationers and parolees would have to pay a minimum of \$3.30 per day, or about \$100 per month. Probationers and parolees facing revocation for non-payment would have a right to court-appointed counsel. It is expected that a lot of probationers and parolees, especially those newly released from jail, would have difficulty making these payments. However, it is difficult to determine the fiscal impact without an estimate of the number of new probation or parole revocation cases anticipated.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Mark Bover
Agency: Department of Administration

Date: 2/17/98

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FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 274

1998 LEGISLATIVE SESSION

ANALYSIS: (continued)

There may also be an additional impact resulting from litigation on this bill. In State v. Albert, 899 P.2d 103 (Alaska Supreme Ct. 1995), the court said that fees to recoup the cost of court-appointed attorneys were constitutional. One of the main factors that persuaded the court was that payment of attorneys' fees could not be a condition of probation. Thus, jail was not an enforcement mechanism for non-payment. It may be that probationers or parolees jailed for non-payment would challenge the bill based on the Albert case, and the Public Defender Agency would have the expense of representing them.

Another aspect of the bill that may cause difficulties is that it is not restricted to felony probation. Probation is routinely imposed in misdemeanor cases, but misdemeanor probation is unsupervised in the vast majority of cases. There are few, if any, costs associated with unsupervised misdemeanor probation. Therefore, a fee of about \$100 per month would be difficult to justify.

Alaska State Legislature

Senate

JERRY WARD

1000
Capitol Building
Juneau, AK 99801
Phone: (907) 586-1111
Fax: (907) 586-1111

1100 W. 10th Ave., Ste. 200
Anchorage, AK 99501
Phone: (907) 258-0000
Fax: (907) 258-0000

424 Municipal Center
Ketchikan, AK 99901
Phone: (907) 258-0000
Fax: (907) 258-0000



Sponsor Statement SB 274

"An Act relating to inmates paying for Probation and Parole"

With correctional costs skyrocketing in recent years, the notion that offenders should contribute to their own supervision has gained widespread political and public support. By 1988 as many as 48 states collected some type of correctional fees. While the numbers of states, which charge fees, is on the increase the idea is not new. In 1846 Michigan enacted the first correctional fee law in the country. Unlike financial obligations imposed to inflict punishment (e.g., fines, restoration of victim's losses or other civil obligations), correctional fees are imposed to generate revenues for correctional programs.

SB 274 requires the Department of Corrections to charge inmates under their supervision on probation or parole. In FY 97, probation and parole costs the state \$8.53 million. This legislation calls for each inmate on probation or parole to pay three dollars and thirty cents (\$3.30) per day to defer the cost of their supervision. With over 4600 inmates on probation or parole this legislation could generate over \$5.5 million dollars.

SB 274 would also allow for the garnishment of permanent fund dividend checks as a method of collecting probation and parole fees. The \$3.30 per day fee is roughly \$100 per month or approximately 45 minutes of work per day at minimum wage to reimburse the state for criminal supervision. For those who are able to pay and chose not to, this legislation calls for the revocation of parole. Alaska's correctional professionals are not and should not be "Collectors". That is why this legislation calls for a third party collection of probation and parole fees.

Twenty-three other states now charge fees for probation and parole. One example is Texas which funds over half of its \$90.6 million dollars probation and parole program through fees.

The citizens of Alaska can not be asked to "foot the bill" for criminals while things like medical care for the elderly and education go underfunded. It is time that criminals literally pay their "debt to society."

SB 274

HOUSE JUDICIARY STANDING COMMITTEE

Amend. # 4 (Croft)

DATE: 5-7-98

ISSUE: Sec. 8. Lines 5-15
deleted.

	YEA	NAY	PRESENT
Representative James	✓		
Vice Chair Bunde		✓	
Representative Berkowitz	✓		
Representative Croft	✓		
Representative Rokeberg		✓	
Representative Porter	✓		
Chairman Green	✓		
TOTALS:	5	2	

PASSED ✓ FAILED _____

HOUSE JUDICIARY STANDING COMMITTEE

SB 274

DATE: 5-7-98

ISSUE: amend # 3 ~~to~~ Croft
pg. 6, line 23 shall "may"
Replace with

	YEA	NAY	PRESENT
Vice Chair Bunde		✓	
Representative Berkowitz			not
Representative Croft	✓		
Representative Rokeberg			not
Representative Porter		✓	
Representative James		✓	
Chairman Green		✓	
TOTALS:	12	4	

PASSED _____ FAILED ✓

HOUSE JUDICIARY STANDING COMMITTEE

DATE: ⁷
5-8-98

ISSUE: move CS SB 319 (Rules)
out of JUD.

	YEA	NAY	PRESENT
Representative James	✓		
Vice Chair Bunde			—
Representative Berkowitz		✓	
Representative Croft			—
Representative Rokeberg	✓		
Representative Porter			—
Chairman Green			
TOTALS:			

PASSED _____

FAILED ✓

* no quorum

SB

284



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

Sponsor Statement for CSSB 284 (STA) "An Act relating to cruelty to animals"

CS SB 284 was introduced in response to concerns about the treatment of animals and the difficulty of prosecuting cases which involve animal cruelty.

There have been numerous incidents of serious animal cruelty and neglect in Alaska which have gone un-prosecuted because of the current statutory language. One district attorney testified that the language, which reads, "intentionally inflicts severe and prolonged physical pain or suffering on an animal", is "un-prosecutable". CS SB 284 gives the state a more workable statute. The following outlines the changes the bill would make.

- ❖ Changes "intentionally" to "knowingly" which lowers the state of mind the state must prove in prosecuting an animal cruelty case. This would help in cases of starving animals. An owner's actions may not have been "intentional", but a reasonable person would "know" that lack of food causes starvation.
- ❖ Changes "recklessly" to "with criminal negligence" which lowers the criminal standard. Recklessness is indicated by an awareness and conscious disregard. Criminal negligence is indicated by a "failure to perceive a substantial and unjustifiable risk that the result will occur..." AS 11.81.900.
- ❖ Adds "animal husbandry" to existing statute as an accepted practice and a defense to the prosecution.
- ❖ Does not affect existing statute which protects farmers, ranchers, hunters and trappers who are conducting accepted veterinary practices including castration, de-horning, branding, euthanizing, etc. AS 11.61.140
- ❖ Does not affect the existing statute which designates cruelty to animals as a class A misdemeanor.

Supporters of this bill include: The Department of Law, Mush With Pride, the Alaska Farm Bureau, the Alaska Livestock Producers Cooperative, the Alaska Animal Control Association, Alaska Society for the Prevention of Cruelty to Animals, Iditarod Race Winner Libby Riddles, Fairbanks Animal Control, Kenai Animal Control, Friends of Pets, and the Gastineau Humane Society.

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 258-8181 • FAX: (907) 258-1648

MEMBER: Senate Finance Committee • Legislative Budget & Audit Committee
• Senate Community & Regional Affairs Committee



Mush with PRIDE

Providing Responsible Information on a Dog's Environment

David Monson, President Mush with PRIDE
P.O. Box 60249
Fairbanks, AK 99706

Sen. Dave Donely
State Capitol
Juneau, AK 99801

March 18, 1998

RE: SB-284 ANIMAL CRUELTY BILL

Dear Sen. Donely,

Thank you for your continuing efforts to strengthen Alaska's animal cruelty laws. We believe that the lowering of the criminal standard for prosecution of cruelty to animals is a necessary step in protecting Alaska's domestic animals from negligent owners.

Sleddog medicine has become a specialty within the veterinary profession. Veterinary members of the International Sled Dog Veterinary Medical Association (an internationally recognized professional organization), as well as most veterinarians in the Alaska Veterinary Medical Association are well aware of the conditions and standards used in assessing care and well-being of sleddogs. In addition, Mush with PRIDE has issued Sleddog Care Guidelines which set standards for most common sleddog practices. These PRIDE standards, which have been endorsed by all major Alaskan racing organizations (Iditarod, Quest and ADMA) as well as most international sleddog racing groups (ISDRA and IFSS) were developed with constant input from several mushing veterinarians who are Directors of PRIDE. Therefore, we believe that the current statute does provide adequate protection against prosecution. We do not feel that any other musher-specific defense against prosecution is needed to protect mushers against prosecution.

We are hopeful that SB-284 will be passed this session so that state officials can better deal with the small minority of abusive owners who tarnish the image of our state and the official state sport of dogsledding.

Sincerely,

David Monson



THE ALASKA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, INC.

SPCA State Headquarters and Spay Clinic • 649 W. International Airport Road • Anchorage, Alaska 99518
Phone: 562-2999

March 2, 1998

To Whom It May Concern:

The Alaska Society for the Prevention of Cruelty to Animals, SPCA is in full support of SB 284. Efforts in past cruelty cases have been next to nothing. Alaska needs to have a stronger law to support our justice system in prosecution of animal abusers. The SPCA in past years, has witnessed animal abusers in the worst scenarios. Due to insufficient laws, the District Attorney's office was unable to penalize these people. Animal abuse is and has been occurring throughout the state. Most people are unaware of the severity of some of these cases. Public awareness is increasing and the state needs to update legislation to deal with cruelty offenders.

Statistics show that there is a definite link between animal cruelty and spousal, child abuse occurring within the home.

Again, the SPCA, as well as most of the general public, are in strong support of SB 284, and show a very strong interest in the passage of this bill.

Sincerely,

Ethel Christensen, Director

Diane Zarfoss

John McLaure

Diane Vuckovich

Lori Cornett



7705 GLACIER HWY.

JUNEAU, ALASKA 99801

(907) 789-0260

FAX (907) 789-1795

February 26, 1998

Senator Dave Donley
State Capitol Building
Juneau, Alaska 99801

Senator Dave Donley:

On behalf of the Gastineau Humane Society we would like to go on record as being in support of Senate Bill 284. The statutory language currently in AS 11.61.140 is very difficult to prove and courts have been unable to prosecute a number of neglect and cruelty cases. Bill 284 will improve the language in AS 11.61.140 and enable prosecutors to convict those that have participated in obvious acts of neglect and cruelty.

Currently both the Humane Society of the United States and American Humane have initiated campaigns, "First Strike Animal Cruelty / Human Violence" and "Campaign Against Violence", this year to increase the awareness and alert all agencies involved in addressing issues of child abuse and neglect that there is a high correlation between animal abusers and child abusers. If the animal abuser can be prosecuted under AS 11.61.140 this could be a tool not only to prevent further animal cruelty but also provide opportunity for intervention in cases where children are also victims.

If there is anything I can do to facilitate passage of Bill 284 please let me know.

Sincerely,

A handwritten signature in cursive script, reading "Linda M. Blefgen". The signature is written in black ink and is positioned above the typed name and title.

Linda M. Blefgen
Executive Director



FAIRBANKS NORTH STAR BOROUGH

2408 Davis Road * P.O. Box 71267 * Fairbanks, Alaska 99707-1267

Department of Direct Services
Division of Animal Control

(907) 459-1451 * FAX (907) 459-1120

March 13, 1998

The Honorable Dave Donley
Alaska State Capitol, Room 508
Juneau, AK 99801

Dear Senator,

I support passage of CSSB 284, an act relating to cruelty to animals.

The proposed changes create a more useful tool for investigators and prosecutors of cruelty to animals cases than the current language. It has long been known that under the current statute the only good evidence to prove the crime of cruelty to animals is a dead animal. The proposed changes will give enforcement officers the ability to intervene and hopefully save animals before they die or suffer severe injury due to inhumane treatment.

With the strong connection between cruelty to animals and abuse of children and other humans it is essential that we take cruelty to animals very seriously. Recognition, intervention and effective prosecution of cruelty to animals cases may help prevent the cycle of abuse from continuing in Alaskan families. Cruelty to animals cannot be tolerated, and an enforceable law is the first step in addressing the problem. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Laura Hood".

Laura Hood, Manager
Division of Animal Control

SB

304

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSSB 304 (RLS)

Revision Date _____	Dept. Affected <u>DOT&PF</u>
Title <u>Regulation of Motor Vehicles & Highways</u>	BRU <u>Office of the Commissioner</u>
Sponsor <u>Donley</u>	Component <u>Commissioners Office</u>
Requester <u>H TRA</u>	Component Serial No. <u>530</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
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	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

Prepared by	<u>Dennis Poshard, Special Assistant</u>	Phone	<u>465-3907</u>
Division	<u>Commissioners Office</u>	Date	<u>4/14/98</u>
Approved by	<u>Commissioner</u>	Date	<u>4/14/98</u>
Agency	<u>Department of Transportation and Public Facilities</u>		

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SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

Sponsor Statement for CS for SB 304 (RLS)

Senate Bill 304 would double the fines for moving traffic violations in construction zones in an effort to protect highway construction workers. If passed, Alaska would join 26 other states which have increased sanctions for motorists who recklessly endanger the safety of roadway workers.

Work zone accidents and deaths have increased due to motorists speeding in highway construction zones. In 1994, work zone fatalities in the United States climbed to an all-time high when 833 people were killed. Senate Bill 304 imposes stiffer fines on motorists who disregard speeding laws in construction zones.

DD/jja

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MEMBER: Senate Finance Committee • Legislative Budget & Audit Committee
• Senate Community & Regional Affairs Committee

Produced in House

**Summary Table of Special Sanctions for Exceeding the
Speed Limit in Either a Construction or School Zone**

S T A T E	Sanctions for Speeding in a Construction Zone	Sanctions for Speeding in a School Zone
AK		Six (6) points are assessed on a person's record for exceeding the speed limit in school zone.
AR		<u>1st offense</u> : Jail - 1 to 10 days/fine - \$25 to \$100 <u>2nd offense</u> (within 1 year): Jail - 5 to 25 days/fine - \$50 to \$250 <u>Subsequent offense</u> (within 1 year): Jail -25 days to 6 months/fine - \$250 to \$1,000 <u>3rd offense</u> (within 1 year): License suspension for 1 year.
D	(CO)	If a speeding offense occurs in a construction zone, the designed fine is double the usual amount.
D	(CT)	If a speeding offense occurs in a construction zone, the designed fine is double the usual amount.
D	(FL)	If a speeding offense occurs in a construction zone, the designed fine is double the usual amount.
C	GA	Jail - not more than 12 months /fine - \$100 to \$2,000
O	IL	There is a minimum fine of \$150.
D	(IA)	The fine is double the amount in the fine schedule.
D	(KS)	The fine is double the usual amount.
D	(KY)	If a speeding offense occurs in a construction zone, the designed fine is double the usual amount.
D	(MI)	A fine is double that prescribed by law.
		A surcharge is assessed

0	MN	A surcharge is assessed which equals the fine. However, the surcharge cannot be <\$25.	which equals the fine. However, the surcharge cannot be <\$25.
0	MS	For exceeding the posted speed limit in a "highway work zone," there is a fine of no more than \$250.	
0	MO	For speeding in a construction zone, a person is assessed an additional fine of \$35.	
D	MT	If a speeding offense occurs in a construction zone, the designed fine is double the usual amount.	
D	NE	If a speeding offense occurs in a construction zone, the designed fine is double the usual amount.	If a speeding offense occurs in a school crossing zone, the designed fine is double the usual amount.
D	NV	There is an additional sanction which is equal to the original sanction imposed for exceeding such limit. Imprisonment sanctions for the original and additional sanctions must run consecutively. However, the combined sanctions cannot exceed 6 months of imprisonment, \$1,000 or 120 hours of community service.	
D	NJ	The fine is double the usual amount.	
0	NY	Exceeding the speed limit 10 MPH: Fine - \$60 to \$100. Exceeding the speed limit >10 MPH but <30MPH: Jail Not more than 30 days/fine - \$100 to \$120. Exceeding the speed limit >30MPH: Jail - not more than 30 days/fine - \$240 to \$400 For a 2nd offense (within 18 months) for any of the above offenses, the fine is increased by \$100. For a subsequent offense (within 18 months) for any of the above offenses, the fine is increased by \$250.	
0	NC	There is a mandatory \$100 fine.	There is a mandatory \$25 fine and 3 points are assessed against a person's driving record.
0	ND	Fee schedule for exceeding the speed limit by 1 to 10 MPH - \$40. Fee schedule for exceeding the speed limit by >10 MPH - \$40 plus \$1 for each MPH over 10 MPH.	
D	OH	If a speeding offense occurs in a construction zone, the designed fine is double the usual amount.	
D	PA	If a speeding offense occurs in a construction zone, the designed fine is double the usual amount.	Exceeding the speed limit in a school zone - \$35 plus \$2 for every MPH in excess of 5 MPH.
D	SD	If a speeding offense occurs in a construction zone, the designed fine is double the usual amount.	

<p>0</p> <p>TN</p>	<p>For speeding in a construction zone, a person is subject a fine from \$250 (mandatory) to \$500.</p> <p>The following points have been assigned for speeding in a construction zone: Speeding violations where the vehicle's speed was not noted on the citation - 3 points; exceeding the speed limit 1 through 5 MPH - 2 points; exceeding the speed limit 6 through 15 MPH - 6 points; exceeding the speed limit 16 through 35 MPH - 7 points; and, exceeding the speed limit by 36 or more MPH - 8 points.</p> <p>The following points have been assigned for speeding in a construction zone by a commercial vehicle: Speeding violations where the vehicle's speed was not noted on the citation - 4 points; exceeding the speed limit 1 through 5 MPH - 2 points; and, exceeding the speed limit 6 through 14 MPH - 5 points.</p>	
<p>0</p> <p>TX</p>	<p>If a speeding offense occurs in a construction zone, the minimum and maximum fines are doubled.</p>	
<p>0</p> <p>VA</p>	<p>The fine for exceeding the speed limit in a construction zone is not more than \$250.</p>	<p>The fine for exceeding the speed limit in a school crossing zone is not more than \$250.</p>
<p>WA</p>		<p>There is a mandatory fine for exceeding the speed limit in a school zone which is double the normal amount.</p>
<p>WV</p>		<p><u>1st or subsequent offense:</u> Fine - \$100 to \$500 <u>Subsequent offense (within 2 years):</u> Jail - not more than 6 months.</p>
<p>0</p> <p>WI</p>	<p>If a speeding offense occurs in a construction zone, the designed fine is double the usual amount.</p>	<p><u>1st offense:</u> Fine - \$40 to \$300 <u>Subsequent offense:</u> Fine - \$80 to \$600.</p>

**SUMMARY TABLE OF SPECIAL SANCTIONS FOR EXCEEDING THE
SPEED LIMIT IN EITHER A CONSTRUCTION OR SCHOOL ZONE**

STATE	SANCTIONS FOR SPEEDING IN A CONSTRUCTION ZONE	SANCTIONS FOR SPEEDING IN A SCHOOL ZONE
AK		Six (6) points are assessed on a person's record for exceeding school zone.
AR		<p>1st offense: Jail-1 to 10 days jail/fine-\$25 to \$100</p> <p>2nd offense (within 1 year): Jail-5 to 25 days/fine-\$50 to \$100 (within 1 year): Jail-25 days to 6 months/fine-\$250 to \$500</p> <p>3rd offense (within 1 year): License suspension for 1 year</p>
CT	If a speeding offense occurs in a construction zone, the designed fine is <u>double</u> the usual amount.	
FL	If a speeding offense occurs in a construction zone, the designed fine is <u>double</u> the usual amount.	If a speeding offense occurs in a school zone, the designed fine is double the usual amount.
GA	Jail-not more than 12 months/fine-\$100 to \$2,000	
IL	There is a minimum fine of \$150.	There is a minimum fine of \$150
KY	If a speeding offense occurs in a construction zone, the designed fine is <u>double</u> the usual amount.	
MI		Jail-not more than 90 days/fine-not more than \$100
MO	For speeding in a construction zone, a person is assessed an additional fine of \$35	
NE	If a speeding offense occurs in a construction zone, the designed fine is <u>double</u> the usual amount.	
NY	<p><u>Exceeding the speed limit 10 MPH</u>: Fine-\$60 to \$100</p> <p><u>Exceeding the speed limit >10 MPH but <30 MPH</u>: Jail-Not more than 30 days/fine-\$120 to \$100</p> <p><u>Exceeding the speed limit >30 MPH</u>: Jail-Not more than 30 days/fine-240 to \$400</p> <p>For a 2nd offense (within 18 months) for any of the above offenses, the fine is increase by \$100</p> <p>For a subsequent offense (within 18 months) for any of the above offenses, the fine is increase by \$250</p>	

0	ND Fee schedule for exceeding the speed limit by 1 to 10 MPH-\$40 Fee schedule for exceeding the speed limit by >10 MPH-\$40 plus \$1 for each MPH over 10 MPH	
D	OH If a speeding offense occurs in a construction zone, the designed fine is <u>double the usual amount.</u>	
D	PA If a speeding offense occurs in a construction zone, the designed fine is <u>double the usual amount.</u>	Exceeding the speed limit in a school zone-\$35 plus \$2 of 5 MPH
D	SD If a speeding offense occurs in a construction zone, the designed fine is <u>double the usual amount.</u>	
0	TN For speeding in a construction zone, a person is subject to a fine of from \$250 to \$500. If the offense occurred while operating a commercial vehicle, 2 to 5 points are added to the person's driving record	
	VA The fine for exceeding the speed limit in a construction zone is not more than \$250.	
	WV	<u>Subsequent offense (within 2 years):</u> Jail-not more than <u>1st or subsequent offense:</u> Fine-\$100 to \$500
D	WI If a speeding offense occurs in a construction zone, the designed fine is <u>double the usual amount.</u>	<u>1st offense</u> Fine-\$40 to \$300 <u>Subsequent offense</u> Fine-\$80 to \$600



Work Zone Safety Legislation

WORK ZONE SAFETY LEGISLATION GIVES WORKERS ADDED PROTECTION

"All it takes is one careless motorist and in the blink of an eye, many lives can be tragically changed forever"... These were the words of Tammy Malone, widow of WSDOT/Northwest Region engineer Michael D. Malone, as she testified in support of work zone safety measures before the Senate Transportation Committee on January 18, 1994. Her husband, Mike Malone, was killed after being struck by a drunk driver last June while working on Interstate 5 in Seattle.

Also testifying was Pat Forinash who was struck by a driver going 65 mph through a work zone in Seattle in August, 1993. He experienced first hand how current safety measures have failed to protect workers from drivers who show blatant disregard for other people's well being, or from drivers who are under the influence of alcohol or other substances or both. "Highway workers no longer wonder whether or not they will be injured by a driver or their passengers. Rather we wonder when and how badly," said Forinash.

As a result of the increasing numbers of work zone accidents, a new law was enacted by the Legislature in 1994 aimed at protecting highway workers. The two major provisions of the law are doubled fines for speeding in work zones and provisions for citing persons who drive negligently in work zones for endangerment of roadway workers.

Statewide, traffic collision reports indicate 17,297 incidents were reported within construction work zones from January 1, 1991 to June 30, 1996. These incidents included 12,184 injuries and 69 fatalities.

WSDOT's Work Zone Safety Task Force convened in September 1993 to study the problem. They found that drivers speeding through work zones created a substantial risk of injury or death to flaggers and other construction crew workers within highway work zones.

This new protective legislation, combined with the task force's 27 other recommendations, will ultimately lead to safer work zones and fewer injuries and deaths for WSDOT personnel. Task force recommendations call for increased and improved worker protection, operating procedures, worker and contractor training and incident reporting.

Some of those improvements will come through the use of innovative work zone safety devices, such as water-filled barriers, truck-mounted attenuators and movable barriers. Other changes include making workers' clothing more visible, using more law enforcement vehicles at work sites, and closely monitoring traffic control operations to make sure unneeded barrels and signs are removed. An added emphasis on safety in the work zone is also being provided for employees at district safety meetings.

Another major part of the work zone safety program is the Washington "Give 'em a Brake" public education campaign. Entering into its fifth year, the campaign will focus on developing a "partnering" agreement with the traveling public. Busboards, media packets, radio and television

public service announcer ts will be used to develop driver apprtion for what goes on in a construction work zone from a safety standpoint. In return, the deparument will keep the public informed of work, while minimizing delays by using various techniques to expedite work.

As construction and maintenance activities gear up, we can all do our part to raise awareness of safety in the work zones. Talk to your neighbors and friends. Write a letter to the editor. Let them know we are out there doing an important job and that we matter. If you have a good idea for spreading the word that you want to share, contact the Eastern Region Public Information Office at (509)324-6015 or Headquarters Communications in Olympia at (360)705-7075.

(This story was written by Ann Briggs of the WSDOT Olympic Region Communications Office.)

Washington State Department of Transportation/Eastern Region
2714 N. Mayfair St.
Spokane, WA 99207
(509)324-6000

[Top of page](#)

Last updated: May 05, 1997



Texas

FOR IMMEDIATE RELEASE, June 17, 1997

Speeding in work zones becomes costlier with passage of new state law

(Austin, Texas) — Motorists who blatantly disregard construction laws will have to ante up more money for their transgressions. Under House Bill 981, which passed this last legislative session, fines will double for speeding in construction zones or ignoring warning signs. That means that motorists who don't obey posted construction warning signs could pay as much as \$400 for the offense. And for highway construction workers, the news couldn't have come at a better time, say officials with the Texas Department of Transportation (TxDOT).

"Summer is probably our busiest time since a lot of our roadway construction and maintenance is done in the warmer, drier months. That's also the time more Texans are on the roadways traveling. Each year between May and August, on-the-job accidents and injuries at TxDOT increase significantly. HB 981 is just one more tool we can use to better our workers' chances of being safe on the roadway," said Bill Burnett, executive director for TxDOT. Burnett and Rep. Clyde Alexander were on hand in Athens today for the first unveiling in the state of a new work zone warning sign that will be posted in construction work zones. Rep. Alexander, as chairman of the House Transportation Committee, authored the legislation.

Instead of the usual "Observe Warning Signs" that motorists typically see in construction zones, the new 3 feet by 6 feet "Traffic Fines Double" sign will greet drivers as they enter work zones. The signs, which bear the typical construction orange and black, are strikingly different from most construction signs. They, according to Rep. Alexander, carry more punch.

"Call it friendly caution from the state to speeders: you've been warned. The next time you speed in a construction zone or ignore a construction warning, it's going to cost you," said Rep. Alexander.

Although the signs were unveiled today, enforcement won't begin until January, the effective date of the legislation. The early posting of the signs, Burnett said, are simple reminders to the public of the importance of the law.

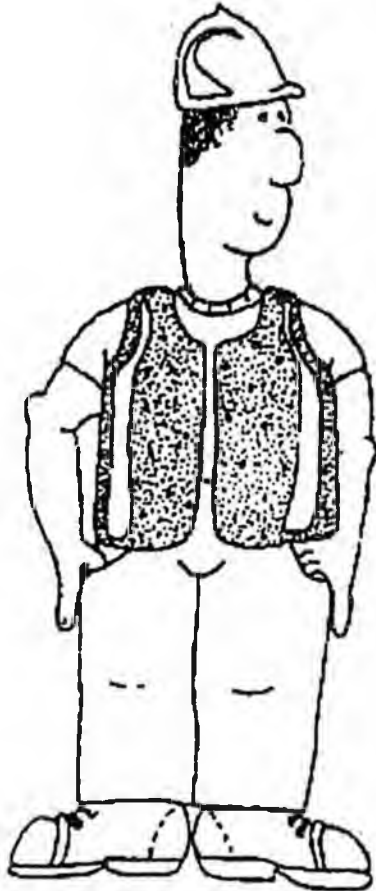
In 1995, there were 9,337 work-zone accidents in Texas, claiming the lives of 112 Texans. More than 19 percent of those accidents were caused by drivers either speeding or driving too fast for conditions.

"Everyday our workers put their lives on the line to make Texas roads better, to help Texans get to their destinations. All we want in return is to work in a safe environment. We don't think that's asking too much," Burnett said.

For more information, call Randall Dillard, (512)463-9896.

TxDOT Phone Numbers

Give Us a Brake!



Slow down and save a life.

Meet Homer. He's your typical kind of guy. He's your neighbor, your friend, your relative. Every day Homer puts on his flashy orange vest, hard hat and steel-toed boots to protect himself from the dangers he faces at work. Homer is a highway worker. Orange signs, flashing yellow warning lights and winding lanes mark the area that Homer calls his "office." Construction work zones are perceived by motorists as inconvenient, but for highway workers like Homer, they are a way of life. Highway workers know how to make construction work zones safe for motorists and themselves, but Homer needs your help.

Slow down and save a life.

Work zones are designed to keep travelers and workers safe on Texas roads. When motorists fail to obey traffic signs in work zones, both highway workers and motorists can lose.

Slow down and save a life.

Imagine going to work each morning knowing you are putting your life on the line. In 1994, 89 fatal work-zone accidents occurred on Texas highways. The increasing rate of work-zone accidents has cost hundreds of Texas highway workers and motorists their lives.

So drive smart - slow down and save a life.

Highway workers put their lives on the line to improve roads that make your trip safer, faster and more enjoyable. They join Homer in his plea for motorists to slow down and save a life: **GIVE US A BRAKE!**

Don't speed.

Observe orange work-zone warning signs calling for reduced speed. Eighteen percent of work-zone accidents are caused by motorists driving too fast for conditions.

Keep a safe distance from the vehicle in front of you.

Most accidents in work zones involve rear-end collisions.

Stay alert.

Keep your eyes peeled for orange work-zone traffic signs. Pay attention to flaggers in orange vests directing traffic.

Be patient.

Traffic delays in work zones are unavoidable as improvements are made to Texas roads. Patience can prevent accidents.

Highway work-zone accident facts

- High speed causes 18 percent of accidents
- Most accidents occur in July
- Most accidents occur on a Friday
- Most accidents occur between 5 and 6 p.m.

For information about work zone safety, contact the TxDOT office nearest you.

[TxDOT Phone Numbers]





ASSOCIATED GENERAL CONTRACTORS of ALASKA

4041 B STREET • ANCHORAGE, ALASKA 99503
P.O. BOX 240609 • ANCHORAGE, ALASKA 99524-0609
TELEPHONE (907) 561-5354 • FAX (907) 562-6118

*Kevin
F+I*

28. April 1998

To
Judiciary Committee
House of Representatives
Juneau, AK.

The Honorable
Joe Green, Chairman

*Dorley's bill in
(H) JUD.*

Subject: CSSB No. 304 "An Act relating to regulation of highways..."

Dear Committee members:

AGC of Alaska, a 600+ member organization serving and representing the construction industry in Alaska supports this bill.

Safety in construction- and workzones is of paramount importance to the contractors and the employees. Despite continous efforts, the accident rate in construction zones is still way above the rates in other comparable worksettings and directly the result of carelessness by the travelling public.

Implementation of this bill will have positive effects and results from other states which have passed similar legislation have been encouraging.

We urge you to pass this bill out of committee.

Sincerely,

Heinrich Springer
Exec. Director

SB

305

FISCAL NOTE

Bill Version: 2
 (S) Publish Date: CS SB 305(LAC)
3/12/98

STATE OF ALASKA
 1998 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act relating to rehabilitation of injured workers."

Department Affected: Administration
 BRU: Risk Management

Sponsor: Senator Duncan
 Requestor: (S) L&C

Component: Risk Management
 COMPONENT SERIAL NO. 71

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	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE: (Thousands of Dollars)

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

Estimate of any current year (FY 97) cost: \$ -0-

POSITIONS:

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

Analysis: (Attach a separate page if necessary.)

There is no fiscal impact to the Division of Risk Management.

Prepared by: J. Brad Thompson, Director
 Division: Risk Management

Phone: 465-5723
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 3/9/98

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FISCAL NOTE

No. 1
 Bill Version: CSSB305(L&C)
 (S) Publish Date: 3/12/98

STATE OF ALASKA
 1998 LEGISLATIVE SESSION

Revision Date (Note if correction) _____	Dept. Affected <u>Labor</u>	_____
Title <u>Implementation of Work Comp Edition</u>	BRU _____	<u>Workers' Compensation</u>
_____	Component _____	<u>Workers' Compensation</u>
Sponsor <u>Senator Duncan</u>	_____	_____
Requester <u>Senate L&C</u>	Component Serial No. <u>344</u>	_____

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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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)

This bill proposes a provision for an automatic adoption by reference of the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles" to the most recent version. Activity as a result of this proposal can be absorbed into the existing workload.

Prepared by: <u>Paul Grossi, Director</u> <i>[Signature]</i>	Phone: <u>465-2790</u>
Division: <u>Workers' Compensation</u>	Date: <u>3/9/98</u>
Approved by Commissioner: <u>Tom Cashen</u> <i>[Signature]</i>	Date: <u>3/9/98</u>
Agency: <u>Department of Labor</u>	

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SB

309

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 2
Bill Version: SB 309
(S) Publish Date: 3/19/98

Revision Date: _____
Title: "An Act relating to the use of force by peace officers and correctional officers."
Sponsor: Senator Ward
Requestor: (S) JUD

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

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						
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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	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill expands the level of force a correctional officer or peace officer can use by authorizing "non-lethal firearms" and "defensive weapons" to be used in situations where only non-deadly force is allowed. Normally a deadly weapon is defined as "any firearm or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles or an explosive." While it might seem obvious that a non-lethal firearm could fit the definition of deadly weapon because of its capabilities, this bill makes it acceptable for police and correctional officers to use such weapons even where deadly force is not allowed.

This bill has no fiscal impact on the Public Defender Agency.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 3/18/98

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FISCAL NOTE

No. 1

STATE OF ALASKA
199 LEGISLATIVE SESSION

BILL NO.

Bill Version: SB309

(S) Publish Date: 3/4/98

Revision Date (Note if correction) _____	Dept. Affected <u>Corrections</u>	
Title <u>An Act relating to the use of force by peace officers and correctional officers</u>	BRU <u>Administration and Operations</u>	
Sponsor <u>Senator Ward</u>	Component <u>ALL</u>	
Requester <u>Senate State Affairs</u>	Component Serial No. <u>#0694</u>	

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

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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)

No fiscal impact is anticipated.

Prepared by <u>Bruce Richards</u>	Phone <u>465-3307</u>
Division <u>Commissioner's Office</u>	Date <u>2/23/98</u>
Approved by <u>Commissioner Margaret M. Pugh</u> <i>Margaret M. Pugh</i>	Date <u>2/23/98</u>
Agency <u>Department of Corrections</u>	

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Senate



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Fax (907) 283-3073

Sponsor Statement SB 309

“An Act relating to the use of force by peace officers and correctional officers.”

SB 309 will protect law enforcement officers from legal action when acting within their training and operational guidelines. The use of non-lethal munitions, such as rubber bullets and bean bag rounds, are an accepted method of rendering certain suspects harmless without doing long-term or permanent injury. A bean bag round or other non-lethal projectile is designed to serve as a far reaching baton which does not require the officer to get too close to a person who might want to harm themselves or others. However, accidents do happen. It is this unlikely accident that SB 309 addresses.

Under current law, a fully trained police officer acting within departmental guidelines could be held civilly liable for injuries resulting from the use of non-lethal projectiles. SB 309 would protect law enforcement officers and continue to allow police departments the full range of tools needed to protect the citizens of Alaska.

Anchorage Daily News

* FINAL EDITION

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ANCHORAGE, ALASKA, FRIDAY, FEBRUARY 20, 1998

50 CENTS
VOL. LII, NO. 51

Bullet stops suicide

Beanbag draws bruise, not blood

By RACHEL GORDO
Daily News reporter

A woman sat on the steps outside of her Muldoon home Tuesday with a butcher knife in her hand.

Twenty feet away, Anchorage police crouched behind a mailbox, a parked car and a snow berm in case the woman charged them with the knife.

Sobbing, she told officers she wanted to hurt herself. She asked police to kill her. Then she pressed the knife to her wrist.

A member of the Crisis Intervention Response Team took aim and shot the woman in the thigh. But instead of a bullet, he fired a beanbag made from lead shot and canvas. The round, flat bullet shot out of a 37 mm tear-gas gun only bruised the woman. She dropped the knife and ended up in the hospital for psychiatric evaluation.

Anchorage police have joined a growing number of law enforcement agencies across the country to add beanbag ammunition to their cache of what are called "less-lethal" weapons. The idea of shooting beanbags is decades old but in the last few years has been refined to make them more accurate and easier to use.

The technology became part of the Anchorage arsenal two years ago, but CIRT officers use it very infrequently and, so far, only in certain cases of attempted suicide. Alaska State Troopers have never used the bullets, although they've had them on hand for a year.

"It's a very good intermediate tool for resolving a cri-

Please see Back Page,
BEANBAG

BEANBAG: When a bullet isn't needed

Continued from Page A-1

sis," said CIRT supervisor Sgt. Ken Spadafora. "We would rather send someone home with a few bruises than have them kill themselves."

But beanbag bullets are not without controversy. Delivering the punch of a heavyweight boxer or a fastball, they have caused at least five deaths outside, including that of a suicidal Canadian man who died last year after Ottawa-Carleton police shot him with a beanbag from a 12-gauge shotgun. The beanbag struck him right above the heart, lodging in his chest.

Sometimes they don't work at all, especially when the targets are feeling no pain, either because they are seriously wounded or hyped-up on drugs, police agree.

The first time police in Springfield, Mo., used beanbag bullets four years ago, nine 12-gauge rounds failed to stop a frail, 72-year-old man who had already shot himself in the head, said Lt. Ron Hartman of the Springfield Police Department. Hartman trained Anchorage police in the proper technique two years ago and trains officers nationwide. The elderly man finally sat down, and an officer grabbed him while he was momentarily distracted, he said.

Beanbag mishaps are rare, and the bullets save more lives than not, authorities say. Mistakes can happen when the bullets, which are packed inside shells, fail to properly unfold. Serious injury or death is possible if the bullets strike vulnerable body parts instead of large muscle masses like legs or abdomens, Hartman said.

"The bottom line is, they are important tools for preventing further deaths," he said. "Basically, it's like delivering a baton strike from a safe distance. Everybody's getting in on it."

Anchorage police have used beanbag bullets at least a dozen times since they got them, Spadafora said. In one case, a round broke a small bone of one suicidal person. All the others caused only bruises. As far as he's concerned, making too much of the risk factor is misleading.

"A baton can kill you if it hits you in the wrong place too many times," he said.

In the '60s, some police agencies used a crude and clumsy version of beanbag ammunition for riot and crowd control, said Larry Glick, executive director of the National Tactical Officers Association in Pennsylvania. The old-style beanbags were inaccurate, however, and fell from favor until the improved version came out in mid-1990s.

"They're a real hot item right now," said Glick, who added that about 3,000 officers year are trained to use beanbags instead of bullets. "They're definitely a wave of the future."

Police have used the new beanbags for such a short time that no one yet keeps complete statistics, Glick said.

Hartman's colleague, Springfield Police Capt. Steve James, told the Ottawa Citizen newspaper last year, however, that four people had died from beanbags before the Ottawa death. And none of the beanbags in those earlier cases pierced the skin. For example, a Texas man died in 1994 after a beanbag struck him in the throat, said James, a leading authority on less-lethal weapons, who also helped train Anchorage CIRT officers.

Locally, police use two sizes of beanbag bullets, Spadafora said. The smaller, square bullets can be fired from 12-gauge shotguns while the larger, round ones are fired from 37 mm tear gas guns.

So far, only about 30 of the 325 officers in Anchorage have been trained in the use of beanbag ammunition. Eventually, all officers

Non-lethal bullets



Material: Canvas and lead shot
Sizes: 12-gauge shotgun and 37 mm tear-gas gun are the two sizes that Anchorage police use.

12 gauge:
Surface: Two-inch square (pictured above upper right)

Weight: 40 grams or 1.4 ounces

Velocity: 300 feet per second

Operating range: 10 to 25 yards

Cost: \$5 per bullet

37 mm:

Surface: Three-inch diameter circle (pictured above lower left)

Weight: 150 grams or 5.2 ounces

Velocity: 180 feet per second

Cost: \$18-20 per bullet

What happens:

The bag is wrapped tightly into a shell and is shot out of a 12-gauge shotgun or a 37 mm tear-gas gun. As it moves toward the target, the bag unfolds. Upon impact, the bag collapses and conforms to the target. The lead shot acts as a fluid medium, distributing the energy over the whole surface.

What can go wrong:

The 12-gauge bag doesn't completely unfold until it reaches 25 yards.

If shot at close range, 30 or 40 feet away, the impact could cause serious injury or death.

Sources: Anchorage Police Department, The Oregonian

RON ENGSTROM / Anchorage Daily News

Anchorage police have used beanbag bullets at least a dozen times since they got them, Sgt. Ken Spadafora said. In one case, a round broke a small bone of one suicidal person. All the others caused only bruises. As far as he's concerned, making too much of the risk factor is misleading.

will be trained. But the new bullets will never supplant real guns or bullets, which always will be on hand as a back-up in every situation, Spadafora said.

"Beanbags are just another option," he said. "They're not replacing anything."

S B

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Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

SPONSOR STATEMENT

SB-313

BY: SENATOR BERT SHARP

IT IS OFTEN ASSUMED THAT PERSONS OBTAINING SIGNATURES ON A BALLOT INITIATIVE ARE VOLUNTEERS WHO BELIEVE STRONGLY IN THEIR CAUSE. UNFORTUNATELY, THAT IS MORE OFTEN NOT THE CASE. INSTEAD, IT IS MORE LIKELY THESE SOLICITORS ARE SIGNATURE BOUNTY HUNTERS WHO ARE PAID BY THE SPONSOR OF THE INITIATIVE .

IN AN EFFORT TO BRING THE INITIATIVE PROCESS BACK TO A MORE GRASSROOTS EFFORT, SB-313 REQUIRES VISUAL IDENTIFICATION OF NAME AND A VOTER REGISTRATION IDENTIFICATION NUMBER OF THE PETITION CIRCULATORS AND ALSO PROHIBITS PAYMENT PER SIGNATURE BY THE SPONSOR.

THIS BILL ALSO PROHIBITS PAYING A PERSON TO SIGN A PETITION.

IN ADDITION, EXISTING LAW GRANTS A 30 DAY EXTENSION TO A SPONSOR IF THEY ARE UNSUCCESSFUL IN OBTAINING THE REQUIRED NUMBER OF VERIFIED SIGNATURES WITHIN THE ALLOWED TIME FRAME. SB-313 WILL ELIMINATE THIS 30 DAY EXTENSION. THIS WAY, IF THE REQUIRED NUMBER OF SIGNATURES ARE NOT SUCCESSFULLY OBTAINED, THE INITIATIVE SIMPLY DOES NOT APPEAR ON THE BALLOT.

SIMPLY PUT, YOU EITHER GOT'EM OR YOU DON'T!!!

LEGAL SERVICES

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

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

MEMORANDUM

February 23, 1998

SUBJECT: Sectional Summary of SB 313

TO: Senator Bert Sharp
Attn: Marilyn Wilson

FROM: Richard A. Glover - *RAG*
Legislative Counsel

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

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

Section 1 of the bill enacts a requirement for petition circulators to display identification. The section enacts a provision that prohibits payments to petition circulators if the payments are based on the number of signatures gathered. Payments to signatories of initiative petitions are also prohibited. A violation is made a class B misdemeanor.

Section 2 of the bill enacts additional requirements of petition sponsors filing initiative petitions. The sponsors must state in the filing affidavit (in addition to the current requirements) that the signatories are qualified voters, that no payments to the sponsor on a per signature basis were received or agreed to, and the sponsor did not pay or offer payment to signatories.

Section 3 of the bill makes technical corrections required by section 6 of the bill.

Section 4 of the bill makes a technical correction required by sec. 6 of the bill.

Section 5 of the bill makes acts of accepting, soliciting, or agreeing to accept payment for signing a petition, crimes of improper subscription to a petition.

Section 6 of the bill eliminates the provisions for supplemental initiative petitions, and repeals the statute that prohibits invalidation of an initiative based on an insufficiency of the initiative's application or petitions.

Senator Bert Sharp
February 23, 1998
Page 2

Section 7 of the bill specifies the applicability of the bill sections to conform to various constitutional requirements.

RAG:pljr
98-036.plm

SB

319

FISCAL NOTE

No. 1
 Bill Version: CS SB 319(L&C)
 (S) Publish Date: 3/13/98

STATE OF ALASKA
 1998 LEGISLATIVE SESSION

Revision Date (Note if correction) _____	Dept Affected _____ Law _____
Title <u>An Act relating to arbitration, amending Rules 57(a)</u>	BRU <u>Civil Division</u>
<u>and 77(g) Alaska Rules of Civil Procedure</u>	Component <u>Commercial</u>
Sponsor <u>Senator Phillips</u>	
Requester <u>Senate Labor and Commerce Committee</u>	Component Serial No <u>2211</u>

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)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 319 amends Title 9, Chapter 43, relating to arbitration. The bill adds a new section requiring that arbitration agreements contain a prominent notice that states that a party has the option to compel arbitration and to bind the other party to the arbitration decision, as well as identifying the rights and remedies available under arbitration, as compared to those available under the law. Failure to comply with the notice agreement would be grounds to stay an arbitration proceeding, or to vacate an award procured through arbitration.

The bill also makes a substantial modification to AS 09.43.010. It leaves intact the requirement of enforcing agreements to arbitrate claims or disputes which arise before the agreement to arbitrate is executed. However, a new subsection (b) is added which prevents consumers from being required to arbitrate certain types of claims, when these claims arise after the execution of the contract which includes the arbitration requirement. Thus, this bill will shelter consumers from form

Prepared by <u>Joan M. Kasson</u>	Phone <u>465-5370</u>
Division <u>Attorney General's Office</u>	Date <u>2/10/98</u>
Approved by Commissioner <u>Bruce M. Botelho, Attorney General</u>	Date <u>2/10/98</u>
Agency <u>Department of Law</u>	

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 319
#1

ANALYSIS CONTINUATION

agreements or other non-negotiated contracts (e.g., adhesion contracts) which include arbitration clauses by making those clauses unenforceable unless the parties agree, after the claim arises, to arbitrate the dispute. The claims covered by this new subsection include, in part, personal injury claims, insurance contract coverage disputes, and property or services purchase agreements valued at less than \$5,000.

This bill will have no fiscal impact on the Department of Law.



ALASKA STATE LEGISLATURE

SENATOR RANDY PHILLIPS

SENATE DISTRICT L

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SPONSOR STATEMENT

CSSB 319 (RLS), "An Act relating to arbitration; amending Rules 57(a) and 77(g), Alaska Rules of Civil Procedure; and providing for an effective date."

Last year, the Legislature directed the Alaska Judicial Council to propose a program for alternative dispute resolution (arbitration). An arbitration clause is now being used as a standard procedure in contracts. Possibly the most common use, and the one that effects the most people, is in real estate contracts. It is all too easy for anyone purchasing or selling a house to sign a real estate contract that includes this arbitration clause without fully understanding the implications of arbitration. In addition, there are no guidelines established anywhere governing many aspects of an arbitration proceeding. Questions such as what can be arbitrated, and what are the qualifications of the arbitrator and who decides those qualifications remain unanswered. In addition, there is no provision that arbitration be preceded by mediation. The arbitrator does not have to follow state law, or any law, during proceedings or in making a decision. There is no limit on the amount of money requested by a party to arbitration by another, and no limit on the time an arbitration can be pursued after a contract is signed.

Absent ground rules, it is important that parties subject to arbitration are aware of the implications of an agreement to arbitrate. SB 319 requires that in a contract subject to arbitration, language to that effect will be typed in capital letters within the arbitration agreement or separate document. This language will state clearly that a party to arbitration may be limiting or waiving rights to other remedies, including appeal of an arbitrator's decision to a court of law. It limits the amount that can be arbitrated to \$7,500.

CSSB 319 (RLS) clarifies provisions in the Labor and Commerce Committee Substitute. It excludes labor management agreements unless the parties agree that they want to include an arbitration clause. It also adds that these provisions do not apply to (1) personal injury claims, very small claims where the total consideration, not the amount to be arbitrated, is less than the small claims amount, and (3) insurance claims or annuity contracts, except for contracts between insurance companies.

**Testimony Before the Senate Judiciary Committee re: SB 319 Amending
Alaska's Arbitration Statutes**

**Offered by Francine D. Harbour, Attorney at Law
May 6, 1998**

My law firm represents many consumers and small businesses involved in real estate transactions and other contracts. My colleague, attorney Bill McNall, and I drafted the original version of SB 319.

This bill is important consumer protection legislation. The essence of the bill is the requirement of specific disclosures about the consequences of mandatory arbitration. These disclosures are necessary so that the consumer or small businessperson can be on a level playing field with more sophisticated people or companies.

Sophisticated business people know both the upside and the downside of mandatory arbitration. They know that arbitration can offer the advantages of speed, privacy and cost savings that litigation cannot offer. They also know, however, that arbitration can expose them to totally unfair results. So what do these sophisticated parties do to get the efficiencies of arbitration but avoid the unfairness? They negotiate whether certain due process protections available in a court should also be available in arbitration.

Unsophisticated consumers and businesses, however, are not being informed about the consequences of arbitration. As a result, they do not have even the opportunity to negotiate a better deal.

Testimony has already been provided about the downside of mandatory arbitration. For example, in arbitration:

- there is no right to appeal an unfair decision to a court of law**
- statutory and constitutional rights that can only be enforced in a court of law will be lost if the arbitrator decides not to enforce those rights**

- even if the contract is procured by fraud, an arbitration clause in the contract "survives" and the victim has no right to go to court
- due process rights such as discovery and confrontation of witnesses will be lost if the arbitrator decides not to grant those rights

The proposed legislation would require written, conspicuous disclosure of these and other significant consequences of mandatory arbitration.

With disclosure of this information, all parties to the contract can make an informed decision about whether to agree to arbitration.

Without disclosure of this information, consumers and small businesses are misled to believe that arbitration will give them a quick, cheap, fair resolution of a contract dispute, when in reality, arbitration may give them a long, expensive, terribly unfair result.

Also, without disclosure of this information, advisors such as real estate agents are exposed to liability for failure to explain the consequences of the mandatory arbitration clauses in their standardized real estate forms.

Many other states have provisions in their arbitration statutes that regulate the disclosure and process of arbitration. Some states, such as Montana, take a minimalist approach and only require a conspicuous statement that the clause is in the contract. Other states, such as Florida, are more heavy-handed and have detailed regulations about who can serve as an arbitrator, how that arbitrator must be selected, how the arbitration hearing must be conducted, how the decision must be made, and so on.

SB 319 takes the middle approach of requiring fairly detailed disclosures about the consequences of arbitration, but then leaving it up to the parties to decide what to do.

#

85

Ln 3

Sec 11

Jan 1

1989

A M E N D M E N T

OFFERED IN THE HOUSE
TO: CSSB 319(RLS)

BY REPRESENTATIVE ROKEBERG

1 Page 3, line 24, following "parties":
2 Insert "(1)"

3 Page 3, line 26:
4 Delete "(1)"
5 Insert "(A)"

6 Page 3, line 28:
7 Delete "(2)"
8 Insert "(B)"

9 Page 4, line 1:
10 Delete "(3)"
11 Insert "(C)"

12 Page 4, line 2, following "companies":
13 Insert ", or
14 (2) if the agreement allows the parties complete and unlimited court
15 review and appeal of the award and arbitration process, and the review and appeal are
16 not limited to the court review and appeals provisions of this chapter"

EARNEST MONEY RECEIPT AND AGREEMENT TO PURCHASE

Regarding Property described as _____

request or closing any and all information and copies of documents related to this sale to both the Listing and Selling Brokers and their agents.

7 **AGENCY DISCLOSURE.** The following agency relationship(s) are hereby confirmed for this transaction: The Listing Broker and his/her agents are considered the agent of the Seller exclusively unless otherwise acknowledged and approved in writing by the Seller and Buyer. The Selling Broker and his/her agents are considered the agent of THE BUYER EXCLUSIVELY, THE SELLER EXCLUSIVELY, BOTH THE BUYER AND SELLER UNDER DUAL AGENCY. The Seller acknowledges that if the Selling Broker is an agent of the Buyer, the Selling Broker is sharing in the compensation paid by the Seller to the Listing Broker unless otherwise described here: _____

Buyer's Initials _____ / _____ Seller's Initials _____ / _____

8. **EARNEST MONEY - DISPOSITION.** If either Buyer or Seller fail to comply with this agreement, then the other party may terminate this agreement with written notice. In the event that the Broker holding the earnest money is unable to determine to the Broker's satisfaction which party is responsible for failing to perform the requirements of the contract, the Broker may require the parties to execute an agreement for release of the earnest money. If they are unwilling to execute such an agreement, Buyer and Seller agree to submit the matter to mediation. If mediation is not successful, the Broker holding the earnest money may file an interpleader action in a court of competent jurisdiction for determination of disposition of the earnest money. If interpleaded, the Broker shall be entitled to an award, from the earnest money, of attorney's fees and costs.

Buyer's Initials _____ / _____ Seller's Initials _____ / _____

9 **MEDIATION/ARBITRATION OF DISPUTES.** Outside of earnest money disputes, Buyer and Seller agree to mediate any dispute or claim between them, or by or against Broker(s) and/or their Agent(s), which arises out of this contract or any resulting transaction before arbitration or litigation can proceed. Buyer and Seller recognize that settlement through mediation is almost always a better economic solution than continuing the cost of formally resolving a dispute. Buyer and Seller understand that reducing costs and reaching an agreement for parties involved in dispute resolution are recognized as the primary goals.

If a matter is not resolved through mediation, the matter shall then be submitted and decided by binding arbitration pursuant to Rules of the American Arbitration Association, or litigation, but not both. Please choose one: Arbitration Litigation

Buyer's Initials _____ / _____ Seller's Initials _____ / _____

10. **PROPERTY DISCLOSURE.** Buyer has has not received a copy of a written disclosure statement.

Buyer's Initials _____ / _____ Seller's Initials _____ / _____

11. **LEAD-BASED PAINT INSPECTION.** This Agreement is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards at the Buyer's expense. (Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet *Protect Your Family From Lead in Your Home* for more information.) Within ten (10) days after acceptance, Buyer will report to Seller in writing a list of the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within five (5) days after delivery of the report, elect in writing whether to correct the conditions prior to close of escrow. If the Seller elects to correct the condition, the Seller will furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the close of escrow. If Seller does not elect to make the repairs, or if the Seller makes a counter-offer, the Buyer will have five (5) days to respond to the counter-offer or waive this contingency and take the property in an "as is" condition with respect to this matter, or this Agreement will terminate. Buyer may waive this contingency at any time without cause.

Buyer's Initials _____ / _____ Seller's Initials _____ / _____

12. **ENTIRE AGREEMENT.** Seller's acceptance of this Agreement will be based upon Buyer's apparent ability to qualify for this purchase within the agreed time and according to the agreed terms. This Agreement is not assignable without the express written consent of Seller.

In any action, proceeding or arbitration arising out of this agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

This agreement has significant legal and financial consequences. If you do not understand the effect of any part of this agreement, you are advised to seek independent legal and financial counsel, including tax advice from a tax attorney or CPA, before signing. The broker or agent cannot give legal advice.

This document and any referenced attachments, totaling _____ pages contain the entire agreement between the parties. It may not be modified except in writing and signed by the Parties. Time is of the essence in this contract.

BUYER SELLER