

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9244 HOUSE JUDICIARY

S B

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Senate Bill 323 Comparison

Title of Offense	State Law	Current Bill Version	Original Bill Version
Distribution of Child Pornography	Class C Felony Requires Sex Offender Registration	Class B Felony Requires Sex Offender Reg.	Class B Felony Requires Sex Offender Reg.
Possession of Child Pornography	Class A Misdemeanor No Sex Offender Registration	Class C Felony Requires Sex Offender Reg.	Class B Felony Requires Sex Offender Reg.
Indecent Exposure in the First Degree (If offender masturbates within the presence of a person under 16 years)	New Offense – Offender may be charged with AS 11.41.460, Indecent Exposure, Class B misdemeanor No Sex Offender Registration	Class C Felony Requires Sex Offender Reg.	Class B Felony Requires Sex Offender Reg.
Indecent Exposure in the 2 nd Degree before a child under 16 years of age.	Class A Misdemeanor before a minor No Sex Offender Registration	Class A Misdemeanor Sex Offender Registration for Second Offense	Class C Felony Sex Offender Registration for the first offense
Indecent Exposure in the 2 nd Degree before a person 16 years or older	Class B misdemeanor before an adult No Sex Offender Registration	Class B misdemeanor No Sex Offender Registration	Class A Misdemeanor Sex Offender Registration

Additional Changes to SB 323 made by the Senate

- ◆ The Senate Finance Committee deleted language from current statute that allows a teacher to petition the Professional Teaching Practices Commission for re-certification after five years have elapsed after the person received an unconditional discharge for the conviction.
- ◆ The Senate Finance Committee also amended the bill to take out the sex offender registration requirement for Indecent Exposure in the Second Degree before a person 16 years or older. Current law does not require sex offender registration for this offense.
- ◆ On the Senate Floor prima facie language was added for possession of child pornography. The bill now allows a presumption to be made that an offender intends to distribute if the offender possesses 100 or more items of child pornography. Language was also adopted to clarify that each piece of child pornography possessed by an offender is a separate violation.

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Possession of Child Pornography	Class A Misdemeanor No Sex Offender Registration	Class C Felony Requires Sex Offender Reg.	Class B Felony Requires Sex Offender Reg.
Indecent Exposure in the First Degree (If offender masturbates within the presence of a person under 16 years)	New Offense – Offender may be charged with AS 11.61.123, Indecent Viewing or Photography, Class C Felony No Sex Offender Registration	Class C Felony Requires Sex Offender Reg.	Class B Felony Requires Sex Offender Reg.
Indecent Exposure in the 2 nd Degree before a child under 16 years of age.	Class A Misdemeanor before a minor No Sex Offender Registration	Class A Misdemeanor Sex Offender Registration for Second Offense	Class C Felony Sex Offender Registration for the first offense
Indecent Exposure in the 2 nd Degree before a person 16 years or older	Class B misdemeanor before an adult No Sex Offender Registration	Class B misdemeanor No Sex Offender Registration	Class A Misdemeanor Sex Offender Registration

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- ◆ The Senate Finance Committee also amended the bill to take out the sex offender registration requirement for Indecent Exposure in the Second Degree before a person 16 years or older. Current law does not require sex offender registration for this offense.
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Alaska State Legislature

During Interim: (June - Dec)
716 West 4th Avenue, Suite 500
Anchorage, AK 99501-2133
(907) 258-8185
Fax (907) 258-0226


During Session: (Jan - May)
State Capitol
Juneau, AK 99801-1182
(907) 465-4993
Fax (907) 465-3872

Drue Pearce

Memorandum

Date: March 31, 1998

To: Representative Joe Green, Chairman
House Judiciary Committee

From: Senator Drue Pearce 

Re: Request for Hearing for SB 323, An Act Relating to Sexual Offenses of a Minor

I respectfully request a Judiciary Committee hearing for SB 323 at your earliest convenience.

SB 323 will strengthen the penalties for sexual offenses against a child, such as: possession and distribution of child pornography, masturbation within the presence of a child, and mandatory sexual registration for each of these offenses.

This bill is one of many efforts to keep our children safe and healthy. I would appreciate your consideration to schedule this bill as soon as possible.

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Drue Pearce

Sectional Summary of SB 323 Child Sex Offenses and Offender Registration

Section 1: Adds indecent exposure in the first degree to the list of offenses covered by this limitation of actions provision.

Section 2: Adds indecent exposure in the first degree to the definition of sexual abuse regarding this tolling provision for youthful victims of sexual abuse.

Section 3: Creates the new offense of indecent exposure in the first degree, committed when a person violates AS 41.460 (indecent exposure in the second degree) by knowingly masturbating within the observation of a person under 16 years of age. This offense is a class C felony.

Section 4: Makes the existing offense of indecent exposure, indecent exposure in the second degree and reduces the mental state required to commit the offense from intentionally to knowingly.

Section 5: Increases the penalty for distribution of child pornography to a class B felony from a class C felony.

Section 6: Adds language to the bill that the possession of 100 or more pieces of child pornographic material is prima facie evidence of distribution.

Section 7: Increases the penalty for possession of child pornography to a class C felony from a class A misdemeanor.

Section 8: Clarifies language that each piece of child pornographic material that is possessed by a person is a separate violation.

Section 9: Provides that a prosecution for indecent exposure in the first degree may be commenced at any time.

Section 10: Allows a peace officer to arrest without a warrant a person the officer has reasonable cause to believe has violated the conditions of the person's release before trial on a charge of indecent exposure in the first degree.

Section 11: Allows the use of hearsay testimony before the grand jury when the offense in indecent exposure in the first degree and a child under 10 years of age is the victim of the offense.

Section 12: Requires a sentencing court to impose some period of consecutive sentence when the defendant has two or more previous convictions for various sex offenses, including indecent exposure in the first degree, committed against minors.

Section 13: Provides an aggravating factor for a person convicted of indecent exposure in the first degree with previous sexual offense convictions.

Section 14 and 15: Adds indecent exposure in the first degree, the second offense of indecent exposure in the second degree if committed before a person under 16 years of age, and possession of child pornography to the list of sex offenses requiring sex offender registration.

Section 16 and 17: Adds the offenses of incest and indecent exposure in the first and second degrees to the list of offenses that disqualify a person from receiving or holding a teaching certificate. Disqualifies a person from teacher certification who has been convicted of certain offenses involving a minor after the person received an unconditional discharge for the conviction.

Section 18: Adds the offenses of sexual assault in the third degree and indecent exposure in the first and second degrees to the list of offenses disqualifying a person from being a school bus driver.

Section 19: Requires Department of Health and Social Services to notify the nearest law enforcement when the department receives a report that a child may have been a victim of indecent exposure in the first degree.

Section 20: Amends Alaska Rule of Criminal Procedure 5 to correspond to the change made in section 11 of the bill.

Section 21: Provides an applicability section necessary to cover the new offenders required to register as sex offenders under sec. 12 of the bill.

Section 22: Provides an applicability section.

Section 23: Provides an immediate effective date.

Alaska State Legislature



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Drue Pearce

SPONSOR STATEMENT

SB 323: An Act Relating to Sexual Offenses and Sex Registration

The use of children in the production of sexually explicit material, including photographs, films, videos, and computer images is a form of sexual abuse that can result in physical or psychological harm to the children involved. Individuals who utilize children as sexual objects or are sexually attracted to children often seek out and collect sexually explicit materials for their own sexual gratification. Access to the Internet has become one of the preferred methods of distributing and collecting child pornographic materials; several investigations across the country have revealed thousands of pieces of child pornography in the hands of child pornographers. Congress passed the Child Pornography Prevention Act of 1996 and several states are taking action to strengthen their pornography laws.

The Alaska penalty for distribution of child pornography, a class C felony, is not more than five years. Law enforcement officers are encountering problems in trying to prove distribution. Offenders are often charged with or plead down to possession of child pornography, a class A misdemeanor offense with a penalty of not more than one year in prison, unless the offender is convicted of more than one count and receives a consecutive sentence. SB 323 increases the offense for possession of child pornography to a class C felony, and the offense for distribution to a class B felony offense, punishable by not more than 10 years in prison.

SB 323 also creates the offense of indecent exposure in the first degree if the offender knowingly masturbates within the observation of a person under 16 years of age. This crime will be a Class C felony offense. The bill makes the existing offense of indecent exposure, indecent exposure in the 2nd degree. The penalty for this offense is a class A misdemeanor when committed before a person under 16 years of age, and a class B misdemeanor when committed before a person 16 years or older.

SB 323 requires sex offender registration for the offenses of indecent exposure in the first degree, indecent exposure in the second degree if committed before a minor under the age of 16 for the second offense, and possession of child pornography. Currently, only offenders who are convicted for distribution of child pornography are required to register.

The existence and distribution of child pornographic images creates the potential for many types of harm in the community and presents a clear and present danger to all children. Strengthening the penalties for these crimes sends a clear message that the degradation and exploitation of our children will not be tolerated. Agencies in support of SB 323 include the Department of Public Safety, the Alaska Peace Officers Association, the Anchorage Police Department, UAF Police, and STAR.

*Kevin, this is for you, not the packets. I typed it up for Drew, & thought it would help you too.
Krisley*

SB 323 Bill Comparison with Current Law

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Indecent Exposure in the Second Degree before a child under 16 years of age.	Class A Misdemeanor before a minor No Sex Offender Registration	Same as current penalty Sex Offender Registration for Second Offense	Class C Felony Sex Offender Registration Beginning with the first offense
Indecent Exposure in the Second Degree before a person 16 years or older	Class B misdemeanor before an adult	Same as current penalty	Class A misdemeanor

Other Changes to SB 323 made in the Senate

The Senate Finance Committee deleted language from current statute that would allow a teacher to petition the Professional Teaching Practices Commission for recertification after five years have elapsed after the person received an unconditional discharge for the conviction.

The Senate Finance Committee also amended the bill to take out the sex offender registration requirement for Indecent Exposure in the Second Degree before a person 16 years or older. Current law does not require sex offender registration for this offense.

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Drue Pearce

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Section 20: Amends Alaska Rule of Criminal Procedure 5 to correspond to the change made in section 11 of the bill.

Section 21: Provides an applicability section necessary to cover the new offenders required to register as sex offenders under sec. 12 of the bill.

Section 22: Provides an applicability section.

Section 23: Provides an immediate effective date.



Rick Mystrom,
Mayor

ANCHORAGE POLICE DEPARTMENT

4501 South Bragaw Street • Anchorage, Alaska 99507-1599

Telephone (907) 786-8500



Service since 1921

February 17, 1998

Senator Drue Pearce
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Senator Pearce:

This letter is written in support of your efforts to strengthen the state's child pornography laws through Senate Bill 323. The current laws fall far short of protecting children in light of the new technologies available to anyone with a computer.

Typically, crimes against children involve, or at least begin with simple possession of these materials. Those who now receive sentences of less than one year for possession of child pornography have little chance to rehabilitate. Those who distribute are obviously actively involved in victimizing children, and deserving of stronger penalties.

Mandatory registration of these sex offenders is also a major step in the right direction. This will allow law enforcement to track all potential abusers and serve as a warning to others who might take advantage of Alaska's children.

Thank you for bringing this legislation forward.

Sincerely,

Duane S. Udland
Chief of Police

DSU/ros

"To Serve and Protect"



Terry E. Vrabec, Chief
Confidential Fax (907) 474-1971

UNIVERSITY OF ALASKA FAIRBANKS

Police Department

PO Box 755560 • Fairbanks, Alaska 99775-5560
(907) 474-6200 • Fax (907) 474-5555

RECEIVED

MAR 09 1998

March 5, 1998

Senator Drue Pearce
Alaska State Legislature
State capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Senator Pearce,

I recently received some information from the Legislative Affairs Agency in reference to Senate Bill 323. I was very interested in this bill for our agency along with several other law enforcement agencies, have been working some related criminal cases that this bill will effect.

In some of our cases we feel that stronger laws might be a better deterrent to prevent future occurrences. I also think that we would be sending a message that we are not going to allow these type of violations to occur without serious punishment.

It is my understanding that you have received support of this bill from Chief Udland out of Anchorage. I agree with him on the issue of registering these sex offenders. This will also help us track individuals who have been convicted. I support your efforts on this bill and would gladly provide more information if necessary. Thank you for your help.

Sincerely,

A handwritten signature in cursive script that reads "Terry Vrabec".

Terry E. Vrabec
Chief of Police



1057 W. Fireweed Ln, Suite 230
Anchorage, Alaska 99503

Business 907/276-7279
24 Hour Crisis 907/276-7273
Toll Free 1-800-478-8999
Fax 907/278-9983
TTY 907/278-9988

RECEIVED

MAR 19 1998

March 9, 1998

Senator Drue Pearce
State Capitol
Room 518
Juneau, AK 99801

Dear Senator Pearce:

This letter is in support of Senate Bill 323. We are pleased to see that you are bringing attention to cases of indecent exposure and child pornography, and working to raise penalties for those crimes.

STAR provides crucial crisis intervention to victims of sexual assault and abuse. This includes child victims as well as adults that are touched by these devastating crimes. Although specific cases are not available due to confidentiality, I can say that masturbating in front of a minor has been an issue that we have addressed at STAR in the last year. Raising penalties for committing this act would no doubt assist law enforcement and the criminal justice system in supporting victims.

Thank you again for sponsoring this legislation. Please feel free to contact our office for further information about this or any other issue related to sexual assault.

Sincerely,

Trisha Gentle
Executive Director

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



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Pres. Prince of Wales Chapter

John Lucking, Jr., Member
Unalaska
Pres. Aleutian Islands Chapter

Senator Drue Pearce
Alaska State Legislature
State Capital
Juneau, Alaska 99801-1182

March 26, 1998

Dear Senator Pearce,

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing SB 323 relating to increasing penalties for possession and distribution of child pornography.

At a recent meeting of the APOA Board of Directors, we unanimously agreed to endorse this legislation.

Please contact us if there is anything we can do to assist you with this bill as it proceeds through the legislative process. You may contact us at the APOA office in Anchorage at 277-0515.

Once again, thank you for sponsoring this legislation.

Sincerely,

John Charbonneau
State President
Alaska Peace Officers Association

Eagle River man pleads guilty in child-porn case

By PATTY SULLIVAN
Daily News Reporter

An Eagle River man accused of taking pictures of girls' feet and posting them on the Internet for profit pleaded guilty to some of the charges in U.S. District Court Friday.

In a deal with federal prosecutors, Melford Ray Willis pleaded guilty to wire fraud and possession of child pornography, in exchange for the dismissal of two counts of mail fraud and four counts of wire fraud.

Willis, an Air Force master sergeant who has worked as a financial adviser on Elmendorf Air Force Base, will be sentenced in March. His prison time will range from 27 to 33 months, said assistant U.S. attorney Retta-Rae Randall.

Neither he nor his federal public defender, Kevin McCoy, could be reached late Friday afternoon for comment.

Randall said the plea bargain avoids a costly trial. "It saves us the money of proceedings and bringing in the witnesses and experts, and of putting the victims through all of this," she said. The victims include 15 local children, she added.

Willis ran a photography business called Mel's Imaging out of his apartment at 11407 Heritage Court, where

The plea agreement states that Melford Ray Willis posted close-ups of girls' faces and feet on the Internet page of "The Young Foot Lover's Adoration Society."

he took a series of photographs and videos of children last summer and fall.

According to the written plea agreement, Willis ran a newspaper advertisement requesting models, to be paid \$40 an hour. He met with parents of young girls, telling them the photographs would be used in a children's poetry book written in England. The parents attended the modeling sessions and signed release forms. Willis also videotaped the children, telling parents the video would capture shots his still camera missed.

The girls were clothed during the sessions but prosecutors said Willis captured footage of the girls' crotches and underwear when they adjusted their skirts.

The agreement states that Willis posted close-ups of the girls' faces and feet on the Internet page of "The Young Foot Lover's Adoration Society." The photos were used to advertise videotapes of the

children for \$50 each. The web site noted that there were many barefoot scenes and close-ups.

The original indictment said five men paid for the videos over the Internet, but in the agreement Willis admitted to just one customer. Willis received orders for the videos over his electronic mail address.

In connection with the child pornography charge, investigators found 7,000 pictures of children ages 3 to 16 on his computer hard drive, prosecutors said. None of them were taken during local photo sessions. Willis downloaded them from the Internet. More than 100 were pornographic, the agreement said.

nude

Note: more than 500 of the images found on Willis computer were deemed child pornography under federal standards, the other 8000 were photographs of nude juvenile females.

Former UAF worker pleads innocent in child-porn case

The Associated Press

FAIRBANKS — A former University of Alaska Fairbanks employee has pleaded innocent in federal court to three felony counts of possessing child pornography.

William Tuttle, 47, is accused of downloading the pornography at his work station last summer while employed at the university.

Tuttle was not required to post \$5,000 in bail after his initial appearance Thursday before U.S. District Judge Harry Branson.

State prosecutors dropped their misdemeanor charges against Tuttle after he was indicted by the federal government last month. He also had pleaded innocent in that case.

Tuttle's lawyer, William Satterberg, claims university officials had no right to

search his client's computer or download images from computer discs that were kept in a filing cabinet.

Satterberg wanted the evidence thrown out when he was dealing with the case in state court, but Superior Court Judge Charles Pengilly disagreed and ruled that university officials had the right to monitor computer traffic.

Tuttle then asked the state Court of Appeals to overturn Pengilly's decision. But the appellate court dismissed the petition for review after the federal indictment came down.

Federal authorities were not aware of Tuttle until December, when investigator Lantz Dahlke of the Alaska State Troopers attended a conference in Anchorage.

One of the speakers was assistant U.S. attorney

Steven Skrocki, who discussed the application of federal statutes in child pornography cases.

Dahlke told Skrocki about the case.

In a December interview with the Fairbanks Daily News-Miner, Skrocki said his office would have taken the case originally but hadn't been contacted.

Tuttle faces up to 15 years in prison if convicted of the federal charges.

UAF worker faces more porn charges

The former University of Alaska Fairbanks carpenter facing misdemeanor criminal charges in state court for possession of child pornography was indicted by a federal grand jury Wednesday on three federal felony charges stemming from the same incident. William Tuttle, 47, was arrested and fired this past summer after the pornography reportedly was found on his computer at work. Tuttle pleaded innocent to the state charges and maintains that he had logged on to the Internet during working hours to show co-workers that computer pornography is easily accessible. Under state law, possession of child pornography is punishable by up to a year in jail and a \$1,000 fine. Under federal law, the felony offense carries up to a five-year prison term and a fine of up to \$250,000 for each offense. Federal prosecutors said Tuttle had three computer Zip disks that contained multiple images of child pornography.

Senate Passes Child Porn Bill

Possession of such materials would be fourth-degree felony under proposed law

By Peter Eichstaedt
Journal Capitol Bureau

SANTA FE -- Possession of child pornography would be a felony under a bill passed Monday by the state Senate after three hours of debate.

Senate Bill 15, sponsored by Sen. Phil Maloof, D-Albuquerque, was approved first by a vote of 34 to 5. The bill now goes to the House.

The Senate rejected a number of amendments, including one to make possession of child pornography punishable by death, but adopted others to exclude "erotic clothed dancing" and viewing of child pornography on a computer screen.

As the bill stands, possession of child pornography would be a fourth-degree felony, punishable by a fine and up to 18 months in jail.

"I think it is long overdue," Maloof said of the bill.

Current law bans the production and distribution of child pornography, but not the possession of such material Maloof said.

New Mexico is one of only eight states that does not ban possession of such material, Maloof said. Police need the new law to help control such material, he said.

The bill bans possession of material that depicts sex acts or the simulation of sex acts if a person knows the subjects are under the age of 18.

Sen. Tim Jennings, D-Roswell, was among several senators who complained that because the bill included "simulation" of sex acts, it was too broadly written. Jennings said the bill apparently would ban the possession of a tape of the late Elvis Presley as a teen-ager shaking his hips.

Despite his concerns, Jennings attempted to make the crime subject to the death penalty.

"I think we should kill them," Jennings said. People who deal in child pornography cannot be rehabilitated, he said.

"You can't fix people who exploit children," Jennings said. "I don't want them around. What this does is solve a problem and solve it once and for all."

Sen. Joe Carraro, R-Albuquerque, agreed, saying that once a child is subjected to sexual exploitation that child's spirit and self-worth are killed. "What you've done is kill that child," he said.

Sen. Bill Davis, R-Albuquerque, said Jennings' proposal was out of line because it would make possession of pornography subject to a more stiff

penalty than production and distribution of it.

Jennings' amendment failed by vote of 14 in favor and 26 against.

The Senate also narrowly rejected, 19 to 20, an amendment by Sen. Manny Aragon, D-Albuquerque, to make "simulated" sex acts permissible and to reduce the penalty for possession to a misdemeanor rather than a felony.

Aragon complained that the bill was so broadly worded that legitimate films such as "Blue Lagoon," which is about a teen-age boy and girl shipwrecked on an island, could be banned.

Aragon said that most people have a good idea what is defined as child pornography but more specific definitions need to be put in the law.

Malooof argued that Aragon's amendment would tie the hands of law enforcement officials and make the law unenforceable. "This amendment really waters the bill down," Malooof said, before the amendment was killed.

Voting against the bill were Aragon and Sens. William Davis, R-Albuquerque; Michael Sanchez, D-Belen; Arthur Rodarte, D-Ojo Caliente; and Leonard Tsosie, D-Crownpoint.

Material from The Associated Press was used in this report.

HOUSE JUDICIARY STANDING COMMITTEE

DATE: 4/29/98

ISSUE: Amend #1 - SB323

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

PASSED _____

FAILED ✓

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3 2 4

FISCAL NOTE

Revision Date: _____ Dept. Affected: Community & Regional Affairs
 Title: An Act relating to liens for municipal BRU: none
assessments for certain utility ... Component: none
 Sponsor: Rep. Ogan, Kohring
 Requestor: House Labor and Commerce COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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	0.0	0.0	0.0	0.0	0.0	0.0

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current (FY98) impact \$ none

ANALYSIS: (Attach a separate page if necessary)
 This bill removes the ability of a municipality to place a lien on property located within a local improvement district (LID) for payment of the cost of constructing, installing or acquiring utility improvements, such as natural gas, if the utility is not owned by the local government or a cooperative. If payment for the utility construction is not made, the property may not be foreclosed upon by the municipality. This legislation would have no fiscal impact on the department.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
 Division: Division of Administrative Services Date: 2/06/98
 Approved by Commissioner: *Miles Durie* Date: 2/06/98
 Agency: Community & Regional Affairs

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OLDER PERSONS ACTION GROUP, Inc.

325 E. 3rd. Ave., #300
Anchorage, AK 99501-2606
(907) 276-1059 (Toll free 800-478-1059)
FAX (907) 278-6724

April 16, 1998

To All Legislators for the State of Alaska

Dear Legislators;

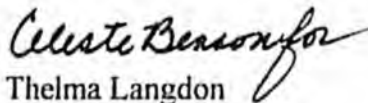
Subject: CS for HB No. 324 (L&C)
Sponsored by Representatives Ogan and Kohring

Older Person Action Group, Inc. (OPAG) supports Section 1. AS 29.46.020 (d), dated March 30, 1998, "An Act relating to deferral of certain municipal assessment payments."

We understand this to mean such things as sewer, water, streets, etc., and not personal property tax exemption.

Thank you for advocating for seniors.

Sincerely,
OPAG


Thelma Langdon
Vice President

To be distributed by Representative Ethan Berkowitz



REPRESENTATIVE SCOTT OGAN

Alaska State Legislature

House District 27 • Palmer • Greater Palmer • Sutton • Chickaloon • Sheep Mountain

SPONSOR STATEMENT
LABOR AND COMMERCE CS FOR HB-324

This legislation as presently written will enable local governments to grant relief to those property owners who can not afford LID assessments.

It does not require local governments to provide relief, nor does it establish the structure by which the relief is provided.

What CSHB-324 does do is to make it clear the legislature is sensitive to those who can not afford LID assessments by granting an option to local governments to provide relief to such persons if they so choose.

S B

3 2 9



Official Business

Alaska State Legislature

SENATE

State Capitol
Juneau, AK 99801-1182

Senate Labor & Commerce Committee

SPONSOR STATEMENT

SENATE BILL 329

Investment Club License Exemption

The Senate Labor & Commerce Committee introduced Senate Bill 329: Investment Club License Exemption, at the request of the Alaska Regional Council, National Association of Investors Corporation.

Current Alaska law defining "business" is so broad that it is unclear whether nonprofit, educational organizations like investment clubs must apply for a business license. This bill amends AS 43.70.110 to exclude investment club members from the business license requirement.

There are over 108 investment clubs in Alaska, consisting on average of 15 individuals. These clubs are formed for the purpose of making group investments in a learning atmosphere. The monthly contributions are around \$10 to \$50 per month per student.

Investment clubs do not advertise, offer any product or service to the general public and do not have a place of business since they usually meet in members' homes.

No other state requires a business license fee, according to the National Association of Investors Corporation.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 329

Revision Date: _____
 Title: An Act establishing an exemption for investment clubs from the business license requirement.
 Sponsor: Senate Labor & Commerce by request
 Requestor: Senate Labor & Commerce

Department: Commerce and Economic Development
 BRU: Occupational Licensing
 Component: Operations

COMPONENT SERIAL NO. 1844

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	[0.3]	[0.3]	[0.3]	[0.3]	[0.3]	[0.3]
--------------------	-------	-------	-------	-------	-------	-------

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
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 (FY 98) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SB 329 exempts investment clubs from the business license requirement. The division estimates there are very few investment clubs which actually hold a business license. This fiscal note assumes that at least six (6) licensees will fall under the new exemption, therefore reducing business license revenue by \$300 (\$50 fee x 6).

Prepared by: Jennifer Strickler, Administrative Manager
 Division: Occupational Licensing
 Approved by Commissioner: Deborah B. Sedwick
 Agency: Commerce and Economic Development

Phone: 465-2144
 Date: 2/26/98
 Date: 3/2/98

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LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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Mail Stop 3101


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

MEMORANDUM

February 10, 1998

SUBJECT: Bill draft relating to investment clubs (Work Order No. 20-LS1505A)

TO: Senator Loren Leman, Chair
Senate Labor and Commerce Committee
Attn: Annette

FROM:  Theresa Bannister
Legislative Counsel

This memo accompanies a draft of the bill you requested to exempt investment clubs from the business license requirement of AS 43.70.110.

1. Coverage of AS 43.70.110(1). It is my understanding that an investment club is primarily for educational purposes and that it does not sell any services or products to third parties. It is unclear whether the definition of "business" in AS 43.70.110(1) covers investment clubs. The definition is broad, covering, with exceptions, "all activities or acts, personal, professional, or corporate." However, this broad coverage may be qualified by the words, "engaging...in a trade, profession, or business," although this is not clear from the language in the definition. However, if this is not the case, the definition would cover any act for profit, including an individual buying stock, and this result is not consistent with the common concept of "business." Applying this criteria, an investment club does not appear to be a profession, because that usually denotes training beforehand, which does not appear to be the case here where the investment club is trying to learn about investing in stock. An investment club does not appear to be a trade or a "business" in the ordinary sense because the club does not sell its services or products to third persons.

Since an investment club attempts to increase the value of its investments, it arguably falls under the phrase, "with the object of financial or pecuniary gain, profit or benefit." However, if the primary goal of an investment club is to educate itself about investing in securities rather than to make a profit, then profit might not be considered to be the "object" of the club. In my opinion, after a quick review, the better reading of this definition is that investment clubs would not be considered businesses because they are not professions, and do not sell to third parties, and because their primary purpose is educational. However, this is not at all clear from the definition.

2. Amendment recommended. Since it is unclear whether or not AS 43.70.110(1) would be interpreted to cover investment clubs, it is safer to amend AS 43.70.110(1) to expressly

Senator Loren Leman
February 10, 1998
Page 2

exclude them than to rely on interpreting the definition. The draft expressly excludes investment clubs from the definition.

3. Other law. I have not been able to find any obvious coverage of investment clubs under Oregon or Washington law.

If I may be of further assistance, please advise.

TLB:jdr
98.072.jdr

Enclosure

DEPARTMENT OF REVENUE
INCOME AND EXCISE AUDIT DIVISION
April 27, 1998

SB 329 requires a technical correction to make sure certain businesses who's only activity is coin operated devices (i.e. pool tables and juke boxes). Current law as reflected in SB 329 exempts businesses from the Business License Act who have "sales through coin operated devices and gaming machines". These businesses are exempted because they currently get a separate license under AS 43.35. SB 240 which has passed the legislature this year repeals AS 43.35. Thus it is no longer appropriate to exempt these businesses from the general business license program.

The attached amendment to SB 329 has been prepared to remove the business license exemption for coin operated devices businesses.

AMENDMENT

OFFERED IN THE HOUSE

BY _____

TO: CSSB 329 (JUD) am

1 Page 1, line 14:

2 Delete all material.

3 Page 2, line 1:

4 Delete "(6)"

5 Insert "(5)"

6 Page 2, line 2:

7 Delete "(7)"

8 Insert "(6)"

9 Page 2, line 4:

10 Delete "(8)"

11 Insert "(7)"

Damron, Floyd/ANC

From: suep@better-investing.org
Sent: Thursday, January 22, 1998 9:25 AM
To: Damron, Floyd/ANC
Subject: Re: Help for Alaska Legislature

January 22, 1998

Mr. Floyd Damron
Co-President, Alaska Council, NAIC

Dear Mr. Damron:

There is no other state that we know of that charges a fee for a business license. Some partnerships are required to file under the Assumed Names Act in various states, but generally that is once every five years and the fee varies from \$5 up to \$25 for that entire period of time.

An investment club is a group of associates who meet together, usually monthly, to discuss the stock market and make group decisions on investing.

The definition probably does not do an investment club justice. In the 37 years that I have been with NAIC, our surveys have consistently shown that when a new investment club is formed with an average number of members, 16, that only one person has ever had any experience in investing. At the end of five years, the figures are completely reversed and 15 of the 16 members are investing on their own, in addition to their investment club. It serves to point out the educational aspect of an investment club. The club serves as an introduction to the stock market and should be considered an educational organization.

Profits for investment clubs starting out are relatively small. It is not unusual for a new investment club to only have \$5, or \$6 total income per member in the first two, or three years of operation. In many cases, the expenses (dues to NAIC, postage, materials, etc.) exceed income for a number of years.

I hope this information is helpful to you.

Sincerely,

Kenneth S. Janke
President & CEO

Sue Peterman NAIC

suep@better-investing.org
248.583.6242x303

ALASKA REGIONAL COUNCIL
NATIONAL ASSOCIATION OF INVESTORS CORPORATION
P. O. Box 141503
ANCHORAGE, ALASKA 99514-1503

JAN 15 1999

January 10, 1998

Senator Loren Leman
Chairman, Labor and Commerce Committee
Alaska State Legislature
State Capitol MS 3100
Juneau, AK 99801-1182

Dear Senator Leman:

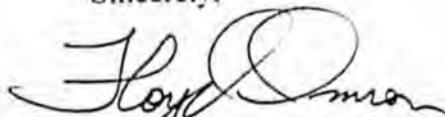
The recently formed Alaska Council of the National Association of Investors Corporation (NAIC), a not-for-profit educational organization, requests that AS 43.70.110 of the Alaska Business License Act be amended to specifically exclude individual investment clubs from the definition of "business" thus eliminating the necessity of obtaining a business license.

The over 108 investment clubs in Alaska (about 1,500 total members) are small groups of from 10 to 20 individuals who join together to learn about investing in the stock market. The members of each club meet usually once a month and pool their monthly contribution of from \$10 to \$50 per month to invest in the stock market. The members pro-rata share of any profits or losses are reported on each member's personal tax return. In essence, the members are learning about and making personal investments from the supportive atmosphere of a club.

Investment clubs do not advertise, they do not offer any product or service to the general public, they usually meet in members' homes and do not have a place of business.

According to the staff at the NAIC headquarters (248-586-6242), no other state requires investment clubs to obtain a business license. Therefore, we respectfully request that an amendment be made to the Statute to exempt individual investment clubs from buying a business license.

Sincerely,



Floyd Damron
Co-President

cc: Senator Jerry Mackie
Senator Tim Kelly
Senator Mike Miller
Senator Lyman Hoffman

Officers and Directors of the Alaska Regional Council

Michelle Tabler, Co-President

Nancy King, Vice President

Leslie Williams, Treasurer

Bill Mann, Assistant Treasurer

Ellen Schwenne, Secretary

Directors, Gina McBride, Libby McKinney, Janice Baber, Lynne Bettin, Carol
Connell, Zona Dahlmann, Carol Hatch, Tim Janneck, Roy Daw, Joni Fleetwood,
Delores Skripps, Jane Ringler, Tim Ryherd, Bonnie Whittier, Sue Jensen, Ruth
Marcy, Kathy Peterson, Shery Lovell, Yvonne Mull, Lisa May, Jean von Dohrmann,
Geri DeBoer, Susan Smith, Edwin Franklin

ALASKA REGIONAL COUNCIL
NATIONAL ASSOCIATION OF INVESTORS CORPORATION
P. O. Box 141503
ANCHORAGE, ALASKA 99514-1503

JAN 15 1998

January 10, 1998

Senator Loren Leman
Chairman, Labor and Commerce Committee
Alaska State Legislature
State Capitol MS 3100
Juneau, AK 99801-1182

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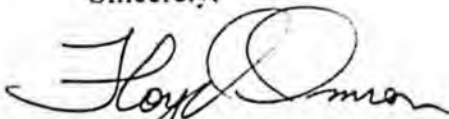
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Delores Skripps, Jane Ringler, Tim Ryherd, Bonnie Whittier, Sue Jensen, Ruth
Marcy, Kathy Peterson, Shery Lovell, Yvonne Mull, Lisa May, Jean von Dohrmann,
Geri DeBoer, Susan Smith, Edwin Franklin

SJR

3

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 21, 1997

FURTHER REFERRALS:

Finance

Date of Committee Action: 1-21-98

The JUDICIARY Committee considered:

CSS, JR 3(JUD)

CS FOR SENATE JOINT RESOLUTION NO. 3(JUD) PRISONER RIGHTS LIMITED TO FEDERAL RIGHTS

Proposing an amendment to the Constitution of the State of Alaska limiting the rights and protections of prisoners to those required under the Constitution of the United States.

recommends it be replaced with the following committee substitute HC SCSS, TR 3 (Jud) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)	APPROVES PREVIOUS: _____ (Dept/Date)
<input checked="" type="checkbox"/> fiscal note(s) <u>1-21-98 Gov</u>	<input type="checkbox"/> fiscal note(s) _____
<input type="checkbox"/> zero fiscal note(s) _____	<input type="checkbox"/> zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Don Brund</i>	✓			
<i>John A. ...</i>		✓		
<i>Donna L. James</i>	✓			
<i>Wendell ...</i>	✓			
<i>Brian P. Porter</i>	✓			
<i>Wm ...</i>		✓		
<i>Ann ...</i>	✓			

CHAIR'S SIGNATURE *[Signature]*

FISCAL NOTE

No. 1
 Bill Version: STR 3
 (S) Publish Date: 2/27/97

STATE OF ALASKA
 1 97 LEGISLATIVE SESSION

Revision Date: _____
 Title: "Proposing an amendment to the Constitution limiting the rights of prisoners..."
 Sponsor: Senator Donloy
 Requestor: (S) Judiciary

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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
------------------------	-----	-----	-----	-----	-----	-----

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 97) cost: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

The resolution places before the voters of Alaska an amendment limiting the rights and protections of Alaskan prisoners against infliction of cruel and unusual punishment to those rights and protections required under the federal constitution.

There is 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 Bover
 Agency: Department of Administration

Alison M. Slay
 Date: 2/5/97

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Cawk/Luckhaupt
10/14/97

HOUSE CS FOR CS FOR SENATE JOINT RESOLUTION NO. 3()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS DONLEY, Halford, Pearce, Phillips, Sharp, Leman, Green, Ward, Miller, Kelly

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska limiting the
2 rights and protections of prisoners to those required under the Constitution of the
3 United States.

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * Section 1. Article I, Constitution of the State of Alaska, is amended by adding a new
6 section to read:

7 **Section 25. Rights of Prisoners.** Notwithstanding Section 12 of this article,
8 the rights and protections, including the principle of reformation, and the extent of
9 those rights and protections, afforded by this constitution to prisoners convicted of
10 crimes shall be limited to those rights and protections, and the extent of those rights
11 and protections, afforded under the Constitution of the United States to prisoners
12 convicted of crimes.

13 * Sec. 2. The amendment proposed by this resolution shall be placed before the voters of
14 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
15 State of Alaska, and the election laws of the state.

**Letter of Intent
by Senator Donley
for
SJR 3**

"Senate Joint Resolution 3 is intended to limit the rights of convicted prisoners in the State of Alaska to only those rights required by the United States Constitution.

This limitation is intended to apply to all language contained in the Alaska State Constitution. This limitation is intended to apply to any rights conferred on convicted prisoners by any and all language of Article 1, Section 12 of the Alaska State Constitution. This limitation is intended to apply to language contained in the Alaska State Constitution that does not appear in the United States Constitution including but not limited to "the principle of reformation" and "the rights of victims".

This amendment is intended to reverse any and all findings by the Alaska Supreme Court that give convicted prisoners in Alaska greater rights under the Alaska State Constitution than those provided under the United States Constitution. This specifically includes:

McGinnis v. Stevens 543 P.2d 1221, appeal after remand 570 P. 2d 735 (Alaska 1975)

Ferguson v. State, 816 P.2d 134 (Alaska 1991)

Brandon v. State, 938 P.2d 1029 (Alaska 1997)

This amendment is intended to authorize the State of Alaska to request court modification of the settlement in the Superior Court Case Cleary v. Smith, 3AN-81-5274 CIV to remove any settlement terms not required by the United States Constitution."

DD/jja



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

SPONSOR STATEMENT SJR 3 (JUD) LIMITING PRISONER RIGHTS UNDER THE ALASKA CONSTITUTION TO THE REQUIREMENTS OF THE U.S. CONSTITUTION

Senate Joint Resolution 3 would limit the rights of convicted prisoners in the State of Alaska to the requirements of the U.S. Constitution.

The Alaska State Constitution provides Alaskans with individual rights and liberties that the United States Constitution does not. Unfortunately these additional constitutional rights protect not only law abiding Alaskans but also give special rights to convicted criminals currently incarcerated in Alaska. This creates difficulties with prison administration in Alaska and encourages law suits by prisoners under the Alaska constitution.

While such special State Constitutional rights are highly desirable for the general public, they are not appropriate for convicted imprisoned criminals. SJR 3 prevents this confusion and undesirable results by adopting a single constitutional standard - the Federal standard - for determining prisoner's rights.

Another related difficulty is the Cleary consent decree which has hamstrung the administration of prisons in Alaska. The Cleary consent decree did not distinguish between Federal and State constitutional standards. But this decree does require greater prisoner's rights in Alaska than are required by the U.S. Constitution. SJR 3 cannot directly overrule Cleary since it was a consent decree. SJR 3 can, however, assure that the U.S. Constitution, and not a more protective state constitutional standard, will be the standard for future decisions on prisoner's rights in Alaska.

Additionally, pursuant to recent legal developments, the state may be able to modify or overturn the Cleary consent decree in which case the new single standard adopted by SJR 3 could be applied. SJR 3 itself may give the state sufficient basis to request a court to re-open the Cleary settlement and at the least will add to any legal justification to do so. The immediate impact of passage of SJR 3 may be small, but as the Federal courts allow tougher Federal prisons and limit prisoner's rights the standard for Alaskan prisoners will get tougher also.

DD/jja

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

Produced in House



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

SJR 3 PRISONER'S RIGHTS FEDERAL CONSTITUTIONAL RIGHTS VS. STATE CONSTITUTIONAL RIGHTS

1) DISCIPLINE & CLASSIFICATION

The United States Supreme Court held that prisoners facing loss of good time or solitary confinement are entitled to due process protections. Prisoners facing a mere loss of privileges are not entitled to these protections. Wolff v. McDonnell (1974).

The Alaska Supreme Court has expanded upon these protections for Alaska inmates facing disciplinary charges, finding greater protections under the Alaska Constitution. McGinnis v. Stevens (1975).

2) PROGRAMS AND REHABILITATION

Under the United States Constitution courts have not articulated a right of prisoners to participate in particular programs or to receive rehabilitative treatment. Each circuit that has considered the issue has held that enforced idleness does not constitute cruel and unusual punishment. Toussaint v. McCarthy (1986)

The Alaska Supreme Court has found that prisoners have a right of access to rehabilitation programs under the Alaska Constitution. Ferguson v. State, Department of Corrections (1990)

3) LAW LIBRARIES AND ACCESS TO COURTS

The United States Supreme Court held that the right of access to the courts is such a fundamental right that prison officials are under an affirmative duty to ensure that it is maintained. To ensure that it is maintained, prison officials are required to either provide law libraries in prisons or any alternative means that guarantee prisoners their right of access to the courts. Bounds v. Smith (1977)

In Alaska the Cleary settlement does not allow any alternatives to providing expensive law libraries at each institution.

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

Produced in House

The 9th Circuit Court of Appeals recently held that in Alaska case a prisoner has a constitutional right to a photocopier. *Hiser v. Franklin* (1996)

4) **SQUARE FOOTAGE REQUIREMENTS ON CELL SIZES**

The Department of Corrections is required, under the Cleary consent decree, to provide a specific amount of square footage in inmate's cells. These square footage requirements vary on the number of inmates in a cell and the number of hours a prisoner is required to be in the cell. Additionally, there are specific requirements on the number of inmates that may occupy "dormitory" type cells. There are also different square footage requirements for any new facility built in Alaska.

The Federal constitution does not make such square footage requirements for prisoner's cells or limits on dormitory style housing.

DD/jja

**PUBLIC SAFETY EMPLOYEES ASSOCIATION
"REPRESENTING ALASKA'S FINEST"**

4300 Boniface Parkway, #116
Anchorage, AK 99504-4387
(907)337-1979 FAX (907)337-1753

Senator Dave Donley
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

April 15, 1997

Dear Senator Donley:

On behalf of the Public Safety Employees Association, I would like to thank you for introducing Senate Joint Resolution 3 proposing a State Constitutional amendment limiting the rights of prisoners to what the U.S. Constitution will allow. PSEA wholeheartedly supports this resolution.

The criminal justice system is suppose to aid society in the protection of its citizens. To this end, prisons should protect society from convicted criminals doing their time without unnecessary frills, benefits or privileges being given to them. This resolution is a very positive step towards changing the system to meet this end.

We encourage you to call on us when there are hearings in the House on this bill, so that we may testify in favor of this legislation.

Sincerely,



Keith Perrin
PSEA President

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: HCS CSSJR 3(), ("H" Version, Draft, Dated 10/14/97)

- 1 Page 1, lines 1 - 2:
- 2 Delete **"the rights and protections of prisoners"**
- 3 Insert **"rights and protections"**

- 4 Page 1, line 7:
- 5 Delete **"Rights of Prisoners."**
- 6 Insert **"Limitations of Rights."**

- 7 Page 1, lines 9 - 10:
- 8 Delete **"to prisoners convicted of crimes"**

- 9 Page 1, lines 11 - 12:
- 10 Delete **"to prisoners convicted of crimes"**

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: HCS CSSJR 3(), ("H" Version, Draft, Dated 10/14/97)

1 Page 1, lines 1 - 3:

2 Delete all material.

3 Insert **"Proposing an amendment to the Constitution of the State of Alaska**
4 **providing that a certain class of persons have no enforceable rights under the**
5 **Constitution of the State of Alaska."**

6 Page 1, lines 7 - 12:

7 Delete all material and insert:

8 **"Section 25. Prisoners. Prisoners convicted of crimes shall have no enforceable**
9 **rights under this constitution."**

Alaska State Legislature



House of Representatives House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

Distribution of Senator Donley's Letter of Intent for Inclusion in Committee Member Packets.

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Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

*House Judiciary Standing Committee
10/16/97, 9:10am, Anchorage, Ak.*

SJR

42

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SJR42

Revision Date (Note if correction) _____ Dept. Affected Office of the Governor
 Title Const. Amend: Relating to marriage BRU Elective Operations
 Component General and Primary
 Sponsor Senate HESS Committee
 Requester Senate Judiciary Committee Component Serial No. #22

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual	3.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	3.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	3.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	3.0	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)

This figures includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

Prepared by Gail Fenwick
 Division Division of Elections
 Approved by C Lt. Governor Fran Ulmer
 Agency Office of the Lieutenant Governor

Phone 465-3935
 Date 3/6/98
 Date 3/6/98

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Juneau, Alaska 99801
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Senate Committee on Health, Education and Social Services Sponsor Statement – Senate Joint Resolution 42

Senate Joint Resolution 42 proposes an amendment to the state constitution that defines marriage as a union between one man and one woman. When approved by voters, SJR 42 will protect the definition of marriage in current statute. That statute was declared to be potentially unconstitutional by Superior Court Judge Peter Michalski in a Feb. 27 ruling in the case of *Brause and Dugan vs. State of Alaska*. In a decision rich with ironies, Judge Michalski concluded that the state's "failure... to provide public recognition" of a person's homosexual relationship is contrary to the state constitution's right to *privacy* [emphasis added]. Michalski's ruling applies the "strict scrutiny test" to the state's law, meaning that the state cannot deny marriage licenses to same-sex couples unless it can prove a "compelling governmental interest." The compelling interest test is an exceedingly difficult legal burden.

The court's ruling ignores the clear public policy statement made by the Legislature in 1996 when it passed Senate Bill 308 by overwhelming margins. Introduced by the Senate HESS Committee, SB 308 reaffirmed the "one man, one woman" definition of marriage that has been operative in Alaska since statehood and also under the territorial government. The laws of all 50 states currently limit marriage to individuals of opposite sex. If the court orders the state to recognize homosexual marriages, thousands of same-sex couples can be expected to travel to Alaska and obtain marriage licenses. Many of these couples will then return to their home states and seek to have their unions recognized under the "full faith and credit clause" of the U.S. Constitution, which generally provides that rights acquired under the public acts or judicial proceedings of one state must be held valid in other states. This will precipitate multiple constitutional crises across the country as dozens of state governments are forced to confront the issue.

If a court orders recognition of homosexual marriages, it will place Alaska in conflict with federal law in incredibly diverse ways. In 1996 the U.S. Congress approved and President Clinton signed into law H.R. 3396, now Public Law 104-199. Known as the "Defense of Marriage Act," this law specifies that marriage under federal law means a union *only* of one man and one woman. According to the U.S. House Judiciary Committee, the word "marriage" appears in more than 800 sections of federal statutes and regulations, and the word "spouse" appears 3,100 times. In the administration and enforcement of these laws, the federal government defines marriage as a union of "one man and one woman" – regardless of what Alaska law states. The I.R.S. will probably not recognize joint tax returns filed by homosexual "married" couples, nor will these couples be eligible for the leave benefits provided by the Family & Medical Leave Act of 1993. Hundreds of other programs and benefits are also implicated, and an explosion of litigation can be expected to result.

Because recognition of same-sex marriages raises the most profound cultural and legal issues, it is only appropriate that the issue be decided by voters, as SJR 42 will allow. It is not appropriate for one unelected and unaccountable judge to set social policy for the entire state of Alaska.

AMENDMENT

OFFERED IN THE SENATE

TO: CS for SJR 42 [work draft 0-LS1655\E]

Page 1, lines 6-11:

Delete all material and insert:

Section 25. Marriage. To be valid or recognized in this State, a marriage may exist only between one man and one woman. No provision of this Constitution may be interpreted to require the State to recognize or permit marriage between individuals of the same sex. Additional requirements related to marriage may be established to the extent permitted by the Constitution of the United States and the Constitution of the State of Alaska.

UNITED STATES PUBLIC LAWS
104TH CONGRESS--SECOND SESSION

PUBLIC LAW 104-199 [H.R. 3396]
SEPTEMBER 21, 1996
DEFENSE OF MARRIAGE ACT

An Act

To define and protect the institution of marriage.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[*1] SECTION 1. <1 USC 1 note> SHORT TITLE.

This Act may be cited as the "Defense of Marriage Act".

[*2] SEC. 2. POWERS RESERVED TO THE STATES.

(a) In General.--Chapter 115 of title 28, United States Code, is amended by adding after section 1738B the following:

[*1738C] "Sec. 1738C. Certain acts, records, and proceedings and the effect thereof

"No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship."

(b) Clerical Amendment.--The table of sections at the beginning of chapter 115 of title 28, United States Code, is amended by inserting after the item relating to section 1738B the following new item:

"1738C. Certain acts, records, and proceedings and the effect thereof."

[*3] Sec. 3. DEFINITION OF MARRIAGE.

(a) In General.—Chapter 1 of title 1, United States Code, is amended by adding at the end the following:

7 "Sec. 7. Definition of 'marriage' and 'spouse'

"In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife."

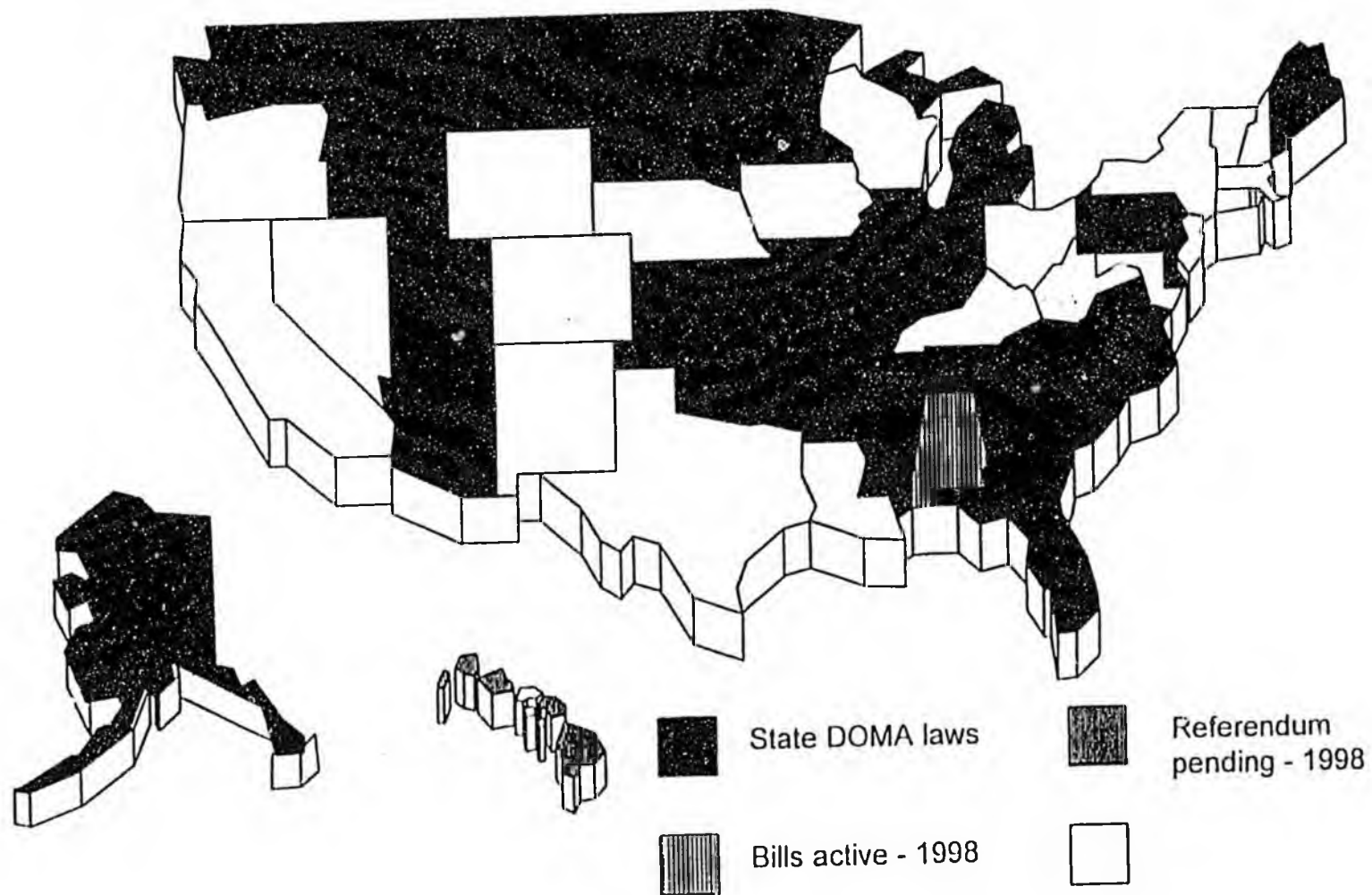
[**2420] (b) Clerical Amendment.—The table of sections at the beginning of chapter 1 of title 1, United States Code, is amended by inserting after the item relating to section 6 the following new item:

"7. Definition of 'marriage' and 'spouse'."

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

State Defense of Marriage (DOMA)



JUNEAU EMPIRE

Alaska should ban same-sex marriages

While Hawaii argues its case in court against issuing marriage licenses to same sex-couples and California flirts with the issue by setting up "domestic partner registries," legislators here have been considering a bill that would outlaw such marriages in Alaska.

On Thursday, the Senate approved the legislation, Senate Bill 308, by a 16-3 margin.

Juneau Democrat and Senate Minority Leader Jim Duncan, who opposes same-sex marriages, voted against the bill because, he said, such marriages already are prohibited by state law.

"We're really correcting a nonproblem," he said. "I really think this causes a controversy that doesn't need to be caused."

But proponents argue the bill is necessary because it extends the prohibition to include marriages in other states.

Anchorage Sen. Loren Leman, who supports the measure, said, "It's important that be clearly stated as Alaska public policy."

Similar legislation is being considered in 15 other states because of the Hawaii court case that could legalize same-sex marriages. Three already have passed such laws.

Opponents claim the bill is an anti-gay proposal, while supporters say it reaffirms the moral value of traditional marriages — those entered into by one man and one woman — and provides protection against lawsuits like the one in Hawaii.

Daniel Collison, of the Southeast Alaska Gay and Lesbian Alliance said the measure was an attempt to legislate sexual preference.

"Does Senator Leman think that I and every other gay man and lesbian are going to go back into the closet and maintain the front of a heterosexual relationship?" Collison said. "The reality is more gay men and lesbians are coming out of the closet."

Every adult individual has a right to express his or her own sexual preference within certain limits. It is the matter of a state-sanctioned practice with which we have a concern

The Juneau Empire supports this bill. For more than 200 years, this country's marriage laws have undergirded traditional one man-one woman marriages. In the 19th century, adherents to the Mormon faith practiced polygamy that practice, however, was contrary to American tradition and laws were written to ban it. Even today, polygamy persists in other religions and cultures, but it remains banned in the United States. While religious freedom is an American tenet, courts and the Congress have limited certain practices when they are not deemed to be in the best interest of the family or society in general.

Likewise, the tradition of one man-one woman marriages is a strongly held one in this country. National polls have indicated nearly two-thirds of the American public opposes same-sex marriages. While others may differ from our views, we are not obligated to embrace their beliefs and practices, or make them a part of our legal system. Tradition is an integral part of our body of laws; those laws reflect the majority culture and the state has a right — no, an obligation — to write legislation that undergirds and protects it.

"Alaska should continue to protect and reinforce the tradition of one man-one woman marriage; it is in the best interest of the larger culture. We urge the House to follow the Senate's example and pass this bill."

and ice links, at least not one that would justify the kind of expenditure Mysterion is talking about. But he thinks we need one — and need it in an area inaccessible to most Mountain View. Follow and



the proposed business improvement district (BID) for downtown Anchorage. I would caution everyone involved to take care at the impact on downtown Anchorage from the Native Cultural Center opening next summer.

FORUM / LETTERS

Hawaii's step toward gay marriage too far for U.S.

By LISA SCHIFFREN

As study after study and victim after victim testify to the social devastation of the sexual revolution, easy divorce and out-of-wedlock motherhood, marriage is fashionable again.

And parenthood has transformed many baby boomers into advocates of bourgeois norms.

Indeed, we have come so far that the surprise issue of the political season is whether homosexual "marriage" should be legalized. The Hawaii courts will likely rule that gay marriage is legal, and other states will be required to accept those marriages as valid.

Considering what a momentous change this would be — a radical redefinition of society's most fundamental institution — there has been almost no real debate. This is because the premise is unimaginable to many, and the forces of political correctness have descended on the discussion, raising the cost of opposition.

But one may feel the same

affection for one's homosexual friends and relatives as for any other, and be genuinely pleased for the happiness they derive from relationships, while opposing gay marriage for principled reasons.

"Same-sex marriage" is inherently incompatible with our culture's understanding of the institution. Marriage is essentially a lifelong compact between a man and a woman committed to sexual exclusivity and the creation and nurture of offspring.

For most Americans, the marital union — as distinguished from other sexual relationships and legal and economic partnerships — is imbued with an aspect of holiness. Though many of us are uncomfortable using religious language to discuss social and political issues, Judeo-Christian morality informs our view of family life.

Though it is not polite to mention it, what the Judeo-Christian tradition has to say about homosexual unions could not be clearer. In a diverse,

open society such as ours, tolerance of homosexuality is a necessity.

But for many, its practice depends on a trick of cognitive dissonance that allows people to believe in the Judeo-Christian moral order while accepting, often with genuine regard, the different lives of homosexual acquaintances. That is why, though homosexuals may believe that they are merely seeking a small expansion of the definition of marriage, the majority of Americans perceive this change as a radical deconstruction of the institution.

Some make the conservative argument that making marriage a civil right will bring stability, an end to promiscuity and a sense of fairness to gay men and women. But they miss the point.

Society cares about stability in heterosexual unions because it is critical for raising healthy children and transmitting the values that are the basis of our culture.

Whether homosexual relationships endure is of little concern

to society. That is also true of most childless marriages, harsh as it is to say. Society has wisely chosen not to differentiate between marriages, because it would require meddling into the motives and desires of everyone who applies for a license.

In traditional marriage, the tie that really binds for life is shared responsibility for the children.

A small fraction of gay couples may choose to raise children together, but such children are offspring of one partner and an outside contributor. What will keep gay marriages together when individuals tire of each other?

Similarly, the argument that legal marriage will check promiscuity by gay males raises the question of how a "piece of paper" will do what the threat of AIDS has not. Lesbians seem to have little problem with monogamy, or the rest of what constitutes "domestication," despite the absence of official status.

Finally, there is the so-called

fairness argument. The government gives tax benefits, insurance rights and employee benefits only to the married. All these financial benefits exclude help couples raise children. reform is an effective way to remove distinctions among earners.

If the American people interested in a radical experiment with same-sex marriage then subjecting it to the political process is the right route. For court in Hawaii to assume the has the power to radically refine marriage is a stunning act of power.

To present homosexual marriage as a fait accompli, with national debate, is a serious political error. A society struggling to recover from 30 years of weakened norms and broken families is not likely to respond gently having an institution central to most people's lives altered.

□ Lisa Schiffren was a speechwriter for Vice President Dan Quayle.

THE IMPORTANCE OF FAMILIES AND MARRIAGE

Testimony of Robert H. Knight
before the
Senate Health, Education and Social Services Committee,
State of Alaska
regarding SB 308, which would amend the state's marriage statute
March 18, 1996

Thank you for inviting me to testify on behalf of the Family Research Council. I've been asked to give a brief statement summarizing the importance of families and of marriage.

One of the Family Research Council's functions is that of a clearinghouse on research about families. Over the years, we have seen studies pile up to an overwhelming magnitude which show that children do best in mother-and-father families, and that communities are healthier where you find the most intact families.

Likewise, numerous studies show that marriage is a societal good, leading to more fulfilled, and even longer lives. Typical is a study in the *American Journal of Sociology* that finds married couples have longer lifespans than unmarried people. The authors conclude that "for both sexes, the hazard of dying falls significantly with marital duration, suggesting a cumulation of the benefits of marriage over time." The researchers say their findings are hardly surprising: "The relationship between marriage and death rates has now reached the status of a truism, having been observed across numerous societies and various social and demographic groups."¹

The heart of family life is marriage, the key organizing principle behind all civilization. Marriage, which brings the two sexes together in a unique, legal, social, economic and spiritual union, has had special protection within the law and the culture because it is indispensable to civilized life. No other relationship provides society what marriage does. No other relationship transforms young men and women into more productive, less selfish and more mature husbands and wives, and fathers and mothers, than marriage. No other relationship affords children the best economic, emotional and psychological environment. Only as we have drifted from

the defense of marriage have we experienced soaring social problems, such as divorce, illegitimacy, sexually-transmitted diseases, and crime. The answer is not to push the envelope further but to restore the primacy of marriage within the law and the culture.

Over the years, there have been attempts to redefine marriage outside the one-man, one-woman definition. In the mid-1800s, some people tried to legalize multiple-partner unions, but were soundly rebuffed. In fact, the U.S. Supreme Court declared in 1885 that any prospective state had to have law resting on "the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization, the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement." (*Murphy v. Ramsey*)²

Marriage is not something that can be taken lightly, or altered without much impact. Same-sex proponents often point out that some states once banned interracial marriage, but the comparison is invalid. Skin color is inborn and benign, while sexual behavior has everything to do with character, morality and society's basic rules of conduct. Eliminating one entire sex from an institution defined as the bringing together of the two sexes is a quantum leap from eliminating racial discrimination, which did not alter the fundamental character of marriage.

Marriage reflects the natural moral and social law which is in evidence all over the world. No society has loosened sexual morality outside of man-woman marriage and survived. Analyzing studies of cultures spanning several thousands of years on several continents, Harvard sociologist Pitirim Sorokin found that virtually all political revolutions that brought about societal collapse were preceded by a sexual revolution in which marriage and family were devalued.³ When marriage lost its unique status, women and children most frequently were the direct victims.

Giving same-sex relationships or out-of-wedlock heterosexual couples the same special status and benefits as the marital bond would not be the expansion of a right but the destruction of a principle. One can no more expand a definition of marriage than one can expand the definition of a yardstick and still use it as a reliable measure.

If the one-man, one-woman definition of marriage is broken, there is no logical stopping point for continuing the assault on marriage. If feelings are the key requirement, than why not let three people marry, or two people and a child, or consenting blood relatives of legal age?

Marriage-based kinship is essential to stability and continuity. A man is far more apt to sacrifice himself to help a bona fide son-in-law than some unrelated man (or woman) who lives with his daughter. Kinship imparts family names, heritage and property, secures the identity and commitment of fathers for the sake of the children, and entails mutual obligations to the community. Same-sex relations are a negation of the ties that bind, which are the continuation of kinship through the procreation of children.

Even childless married couples retain the possibility of becoming parents either biologically or through adoption, thus providing children with role models of both sexes. Marriages benefit more than the two people involved, or even the children who are created. Their influence reaches children living nearby, as young minds seek out clues to appropriate sexual behavior. Deliberately creating motherless or fatherless families is not remotely in the interests of children or the community, and benefits only a particular political agenda.

Homosexual activist Michaelangelo Signorile put it candidly when he wrote that activists should "fight for same-sex marriage and its benefits and then, once granted, redefine the institution of marriage completely, to demand the right to marry not as a way of adhering to society's moral codes but rather to debunk a myth and radically alter an archaic institution..."⁴ Likewise, homosexual activist Tom Stoddard admits that "I am no fan of marriage" but he sees "gay marriage" as a way of forcing society to accept homosexuality because marriage "is the centerpiece of our entire social structure, the core of the traditional notion of 'family.'"⁵ But when homosexuals talk about marriage and monogamy, they mean something different from what folks usually mean. Evidence is overwhelming that few gay couples are stable, and those that are, have an understanding to have outside sexual contacts. Andrew Sullivan, the homosexual editor of *The New Republic*, concedes in his book *Virtually Normal* that homosexual relationships are quite different. He contends that many homosexual households reflect "greater understanding of the need for extramarital outlets between two men than between a man and a woman."

Clearly, those who care deeply about children, about morality, about the well being of the larger society, must resist the attempts by a tiny segment of the population to seize marriage for their own purposes. The aggressors here are not ordinary people, who are doing their best to live according to ages-old, time-tested morality and family definition, but those who are trying to harness the power of the law to force acceptance of their agenda. Individuals struggling with same-sex desires should be accorded compassion, but this does not mean they should be given a mandate to radically redefine marriage. ✨

Marriage must be protected, and creating counterfeit versions would undermine the special status of marriage in the law and in the culture--to the detriment of children, families and, finally, to civilization itself.

Thank you.

3/18/96

Robert H. Knight is director of cultural studies at the Family Research Council, a Washington, D.C.-based research and advocacy organization.

ENDNOTES

- ¹ Lee A. Lillard and Linda J. Waite. "'Til Death Do Us Part': Marital Disruption and Mortality." *American Journal of Sociology* 100 (1995). Pp. 1131-1156. Cited in "Living Longer, New Research." *The Family in America*. Rockford Institute. July 1995.
- ² *Murphy v. Ramsey* 114 U.S. 15, 45 (1885).
- ³ Pitirim Sorokin. *The American Sex Revolution*. (Boston: Porter Sargent Publishers. 1956.)
- ⁴ Michaelangelo Signorile. "Bridal Wave." *Out*. December/January 1994. P. 161.
- ⁵ Thomas Stoddard. "Why Gay People Should Seek the Right to Marry." *Lesbians, Gay Men and the Law*. William B. Rubenstein, ed. (New York: New York Press. 1993) Pp. 398, 400.

Legislative Research Agency

Alaska State Legislature



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March 8, 1995

MEMORANDUM

TO: Representative Norman Rokeberg

FROM: Carol R. Vandor *CRV*
Legislative Analyst

RE: Legislative History of AS 25.05.011 (Requirements for Marriage)
Research Request 95.152

You asked for a legislative history of AS 25.05.011 which addresses marriage requirements. Alaska Statute 25.05.011 states that marriage is a civil contract requiring a license and solemnization which may be entered into by a person who is 18 years of age or older; those who qualify for a license under section 171¹; or a member of the armed forces of the U.S. while on active duty.

This provision has been simplified over the years. Initially, it established a minimum age for a *male* as 21 years and for a *female* as 18 years. In 1970 the minimum age of a male was lowered to 19. In 1974 the legislature amended the law again to specify that a *person*, rather than a male or female, be at least 19 years of age. A year later the minimum age was lowered to 18, and members of the armed forces on active duty were included.

Alaska Statute 25.05.011 traces its origin to a territorial law (§ 21-1-1) which read

Marriage is a civil contract, which may be entered into by males of the age of twenty-one years, and females of the age of eighteen years who are otherwise capable; provided, however, that no person shall be joined in marriage in this Territory until a license shall have been obtained for that purpose from a duly appointed and qualified United States Commissioner, or Marriage Commissioner as provided by Section 1211, Compiled Laws of Alaska, 1933 [§ 21-1-31 herein]. That nothing in Section 1189, Compiled Laws of Alaska, 1933, as amended [§ 21-1-11 herein], shall prevent a Marriage Commissioner from issuing a marriage license.

¹AS 25.05.171 addresses persons capable of consenting to marriage, minimum ages, and consent of parents or guardian.

Representative Rokeberg

March 8, 1995

Page 2

After statehood, the legislature began to adopt territorial laws as Alaska statutes. The territorial law was revised somewhat and formally adopted as a state law by Chapter 1 SLA 1963. It was renumbered as AS 25.05.010 which read

Marriage is a civil contract, which may be entered into by males of the age of 21 years, and females of the age of 18 years who are otherwise capable. However, no person shall be joined in marriage in the state until he obtains a license from a person authorized by law to issue marriage licenses.

Section 1, Chapter 58 SLA 1963, repealed AS 25.05.010 and enacted AS 25.05.011 as follows:

(a) Marriage is a civil contract requiring both a license and solemnization which may be entered into by

(1) a male who is 21 years of age or older with a female who is 18 years of age or older, who are otherwise capable, or

(2) those who qualify for a license under sec. 171 of this chapter.

(b) No person may be joined in marriage in this state until a license has been obtained for that purpose as provided in this chapter. No marriage performed in this state is valid without solemnization as provided in this chapter.

Section 9, Chapter 245 SLA 1970 amended AS 25.05.011(a)(1) to read (emphasis added):

(a) Marriage is a civil contract requiring both a license and solemnization which may be entered into by

(1) a male who is 19 years of age or older with a female who is 18 years of age or older, who are otherwise capable, or

(2) those who qualify for a license under § 171 of this chapter.

(b) No person may be joined in marriage in this state until a license has been obtained for that purpose as provided in this chapter. No marriage performed in this state is valid without solemnization as provided in this chapter.

Section 92, Chapter 127 SLA 1974 amended AS 25.05.011(a)(1) to read (emphasis added):

(a) Marriage is a civil contract requiring both a license and solemnization which may be entered into by

(1) a person who is 19 years of age or older, who is otherwise capable, or

(2) those who qualify for a license under § 171 of this chapter.

(b) No person may be joined in marriage in this state until a license has been obtained for that purpose as provided in this chapter. No marriage performed in this state is valid without solemnization as provided in this chapter.

Representative Rokeberg
March 8, 1995
Page 3

Section 1, Chapter 28 SLA 1975 amended AS 25.05.011(a) to read (emphasis added):

(a) Marriage is a civil contract requiring both a license and solemnization which may be entered into by

- (1) a person who is 18 years of age or older, who is otherwise capable, or
- (2) those who qualify for a license under § 171 of this chapter, or
- (3) a member of the armed forces of the United States while on active duty.

(b) No person may be joined in marriage in this state until a license has been obtained for that purpose as provided in this chapter. No marriage performed in this state is valid without solemnization as provided in this chapter.

Minor revisions were made in the law after 1977. Alaska Statute 25.05.011 currently reads (emphasis added):

(a) Marriage is a civil contract requiring both a license and solemnization that may be entered into by

- (1) a person who is 18 years of age or older, who is otherwise capable,
- (2) those who qualify for a license under AS 25.05.171, or
- (3) a member of the armed forces of the United States while on active duty.

(b) A person may not be joined in marriage in this state until a license has been obtained for that purpose as provided in this chapter. A marriage performed in this state is not valid without solemnization as provided in this chapter.

Copies of the session laws and the replacement statutes are attached. We hope this information is useful to you. If we may be of further assistance, please contact this office.

Attachments

MEMORANDUM

TO: Kris Waugh
Marriage License Clerk

FROM: Larry R. Weeks
Presiding Judge
First Judicial District

Re: Same sex marriages

Date: April 3, 1995

You referred the marriage license application submitted by _____ and _____ to me. It is my understanding that it has long been the policy of the First Judicial District not to issue marriage licenses to same sex applicants. These applicants asked that the matter be referred to the Presiding Judge when you declined to issue a license.

I have reviewed the statutes involved and instruct you not to issue a marriage license to these same sex applicants. I do this based upon my reading of the legislative history and the statutory construction of marriage laws of Alaska.

AS 25.05.011¹, the statute authorizing issuance of marriage licenses, talks about a "person" not "male" and "female". The origin of that statute goes back to section 21-1-1 Alaska Compiled Law Annotated (ACLA). The law has been interpreted by our Supreme Court to mean that a marriage license is mandatory. Edwards v Frank, 364 P.2d 60 (Alaska 1961).

¹AS 25.05.011 Civil contract. (a) marriage is a civil contract requiring both a license and solemnization that may be entered into by.

- (1) a person who is 18 years of age or older, who is otherwise capable,
- (2) those who qualify for a license under AS 25.05.171, or
- (3) a member of the armed forces of the United States while on active duty.

(b) A person may not be joined in marriage in this state until a license has been obtained for that purpose as provided in this chapter. A marriage performed in this state is not valid without solemnization as provided in this chapter. (S 1 ch 58 SLA 1963; am S 9 ch 245 SLA 1970; am S 92 ch 127 SLA 1974; am S 1 ch 28 SLA 1975)

Section 21-1-1 ACLA provided:

Marriage is a civil contract, which may be entered into by males of the age of twenty-one years, and females of the age of eighteen years who are otherwise capable; provided, however, that no person shall be joined in marriage in this Territory until a license shall have been obtained for that purpose from a duly appointed and qualified United State Commissioner, or Marriage Commissioner as provided by Section 1211, Compiled Laws of Alaska, 1933 (§ 21-1-31 herein). That nothing in Section 1189, Compiled Laws of Alaska, 1933, as amended (§ 21-1-11 herein), shall prevent a Marriage Commissioner from issuing a marriage license.

In order to qualify for the issuance of a marriage license, ACLA 21-1-1 provides that males must be 21, and females 18 years of age. ACLA 21-1-1 was adopted by Alaska as the state law in 1 SLA 1963 and incorporated into the Alaska Statutes as AS 25.05.011. AS 25.05.011 was subsequently amended on two occasions before the term "person" was substituted for the terms "male" and "female".² Both of those amendments referred to males and females. The 1974 Legislature at section 92 chapter 127 again amended AS 25.050.011. That amended statute provided:

(a) Marriage is a civil contract requiring both a license and solemnization that may be entered into by (1) a person who is 18 years of age or older, who is otherwise capable, (2) those who qualify for a license under AS 25.05.171 or (3) a member of the armed forces of the United States while on active duty. (b) A person may not be joined in marriage in this state until a license has been obtained for that purpose as provided in this chapter. A marriage performed in this state is not valid without solemnization as provided in this chapter.

A search through the legislative history of this act indicates that the 1974 amendment was an attempt to make gender language consistent throughout the Alaska statutes. There is no legislative history to indicate the legislature intended to authorize licenses for same sex marriages. The Omnibus Bill amending AS 25.050.011 was passed at the request of the revisor of statutes. The duties of the revisor of statutes are normally to make the law consistent as to form.³ Numerous revisions in that act were made to a wide variety of statutes to make the references to gender consistent. There was no apparent attempt to change the substantive law.

² Sec 1, 58 SLA 1963 and Sec 9, 245 SLA 1970.

³ See AS 01.05.011.

If the Legislature had intended to change the marriage requirements in Alaska from "male" and "female" to "persons" for substantive reasons, the Legislature would have clearly expressed such an intention.

Beyond the history of this particular statute it is clear from a review of Title 25, "Marital and Domestic Relations," that the Legislature intended to provide for the issuance of a marriage license to a "husband" and "wife" in a marriage.⁴

Courts are to interpret words in statutes according to their common usage unless there is some indication that they should be interpreted differently.⁵ Webster's New Collegiate Dictionary defines husband as "a married man," and wife as "a married woman."⁶ Based on the above referenced legislative history and statutory interpretation, I believe that same sex marriages have not been authorized by the Alaska State Legislature. Marriages in this state are a creature of statute. Same sex marriages are not authorized, and you should not issue certificates for a same sex marriages, unless authorized by the Alaska Legislature.

⁴ See AS 25.05.021, AS 25.05.051, AS 25.05.301, AS 25.05.361 and generally the chapter AS 25.15 et seq.

⁵ Perrin v U.S., 444 U.S. 17 (1979) and Fagan v State, 779 P.2d 1258 (Alaska App. 1989).

⁶ Webster's New Collegiate Dictionary (1976).

Contact: **Robert H. Wagstaff**, lead counsel
907 277-8611 office

Jay Brause or Gene Dugan, plaintiffs
907 568-1663 voice mail

Same-Sex Marriage Legal Action Filed in Alaska

(August 4, 1995) In Anchorage Superior Court today, two men filed legal action against the Bureau of Vital Statistics, Alaska Department of Health & Social Services, for denying their application for a marriage license one year ago on August 4, 1994.

The two men, Jay Brause and Gene Dugan, are 16-year life-partners; who, with their attorneys, Robert Wagstaff and Erik LeRoy, assert that prohibiting Dugan and Brause's marriage was unconstitutional under Alaska's constitutional equal protection and right to privacy provisions.

Today's action was taken to overturn an administrative memorandum issued by the Anchorage Superior Court presiding judge in 1993 which stated in part that, ". . . I have concluded that marriage between persons of the same sex is not contemplated by our statutory scheme. Therefore, a marriage license shall not be issued for the purpose of marrying two persons of the same sex."

The action by Dugan and Brause follows the 1993 decision by the Hawai'i Supreme Court that the State of Hawai'i must show a "compelling interest" in denying an application for marriage from persons of the same sex, as based on its interpretation of the Hawai'i Constitution's equal protection provisions. Alaska's Constitution contains an almost unique provision specifically guaranteeing its citizens privacy. Dugan and Brause's claim focuses on this provision of Alaska's Constitution.

• • •

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

JAY BRAUSE and GENE DUGAN,

Plaintiffs,

vs.

BUREAU OF VITAL STATISTICS,
ALASKA DEPARTMENT OF HEALTH &
SOCIAL SERVICES, and the STATE
OF ALASKA.

Defendants.

CASE NO. _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. Plaintiff Jay Brause, a thirty-five year Alaskan, and plaintiff Gene Dugan, a seventeen year Alaskan, at all material times have been and are residents of the Municipality of Anchorage, State of Alaska. They bring this lawsuit in the public interest.

2. Defendants are empowered by law to issue marriage licenses in the State of Alaska.

3. On or about August 4, 1994, plaintiffs Jay Brause and Gene Dugan personally appeared at the Bureau of Vital Statistics in the State of Alaska Courthouse in Anchorage before an agent of defendant authorized to issue marriage licenses and filed with said agent an application for a marriage license pursuant to A.S. § 25.05.091.

4. Mr. Brause's and Mr. Dugan's application for a marriage license was denied by defendant's agent solely for the reason that Mr. Brause and Mr. Dugan are of the same sex, as directed in a memorandum dated May 17, 1993, a true copy of which is attached as Exhibit 1 to this complaint. Upon information and belief,

1 - Complaint for Injunctive
and Declaratory Relief

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defendants adhere to the construction of the Alaska Marriage Code set forth in Exhibit 1.

5. Plaintiffs have complied with all marriage license requirements under Alaska Statute §§ 25.05.091-25.05.171, and any other applicable provision of Title 25 of the Alaska Statutes on marriage.

6. Plaintiffs are otherwise eligible to secure a license to marry from a licensing officer of the State of Alaska absent the construction of Alaska Statute § 25.05 et seq. excluding couples of the same sex from securing licenses to marry.

7. The construction and application of AS § 25.05 et seq. to deny a couple of the same sex from securing a license to marry unconstitutionally violates plaintiffs' rights to privacy under § 22 of Article I of the Alaska Constitution.

8. The construction and application of AS § 25.05 et seq. to deny plaintiffs' application for licenses to marry unconstitutionally deny plaintiffs equal protection and due process of the law under Article I, §§ 1 and 7, respectively, of the Alaska Constitution.

9. The construction and application of AS § 25.05 et seq. to deny plaintiffs' application for licenses to marry unconstitutionally deny plaintiffs due process of law under Article I, § 1 of the Alaska Constitution.

10. The acts and omissions of defendants, including its agents and employees acting in their official capacities, were under color of State law and have deprived plaintiffs of their

2 - Complaint for Injunctive
and Declaratory Relief

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constitutional rights under the Alaska Constitution as described in this complaint.

11. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs alleged in this complaint. Plaintiffs are now suffering and will continue to suffer irreparable injury from defendant's acts, policies, and practices unless plaintiffs are granted the relief prayed for in this complaint.

WHEREFORE, Plaintiffs pray that this Court:

A. Declare the construction and application of AS § 25.05 et seq. to deny an application for a license to marry because the applicant couple is of the same sex is unconstitutional;

B. Enter a permanent injunction against defendants and his agents, prohibiting the construction and application of AS 25.05 et seq. to deny an application for a marriage license solely because the applicant couple is of the same sex;

C. Award costs and attorneys fees to plaintiffs as public interest litigants; and

D. Award such further relief as may be just and proper.

DATED this 2nd day of August, 1995.

Robert H. Wagstaff
425 G Street, Suite 610
Anchorage, Alaska 99501
(907) 277-8611

Erik LeRoy, P.C.
1016 W. 6th Avenue, Suite 420
Anchorage, Alaska 99501
(907) 277-2006
Attorneys for Plaintiffs


3 - Complaint for Injunctive
and Declaratory Relief

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Memorandum

Alaska Court System

TO: Vital Statistics

FROM: Karl S. Johnstone 
Presiding Judge

DATE: May 17, 1993

SUBJECT: Application for Marriage License by Two Persons of the Same Sex

Recently we had an application for a marriage license by two persons of the same sex. I have reviewed the statutory provisions relating to marriage and considered the historical foundations for this institution in our society, and I have concluded that marriage between two persons of the same sex is not contemplated by our statutory scheme.

Therefore, a marriage license shall not be issued for the purpose of marrying two persons of the same sex.

KSJ:ln

MARRIAGE LICENSE FORM

ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES
BUREAU OF VITAL STATISTICS
JUNEAU, ALASKA 99801

941842

CITY OR TOWN

IN THE MATTER OF A MARRIAGE LICENSE FOR

AND

APPLICATION

APPLICANT

APPLICATION MADE BY:

DATE OF APPLICATION

RESIDING ADDRESS OF APPLICANT

08-04-94

IDENTIFYING STATEMENT (To be given before the Marriage License is issued)

—IDENTIFYING STATEMENT—			
NAME	FIRST	LAST	MALE
GENE	-	DUGAN	JAY
			KARL BRAUSE
RESIDENCE CITY, STATE		RESIDENCE CITY, STATE	
ANCHORAGE, ALASKA		ANCHORAGE, ALASKA	
DATE OF BIRTH		DATE OF BIRTH	
DECEMBER 10, 1951		JANUARY 11, 1954	
PLACE OF BIRTH		PLACE OF BIRTH	
BROOKLYN, NEW YORK		BRUNNEN, MINN	

IMPORTANT: IF MARRIED PREVIOUSLY, REVERSE SIDE MUST BE COMPLETED	
RELATIONSHIP TO APPLICANT (Any blood relationship between bride and groom?)	RELATIONSHIP TO APPLICANT (Any blood relationship between bride and groom?)
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
ANY LEGAL REASON WHY MARRIAGE SHOULD NOT BE SOLICITED?	ANY LEGAL REASON WHY MARRIAGE SHOULD NOT BE SOLICITED?
NO	NO

BOTH PARTIES SIGN HERE

I do solemnly swear that the information given above is true and correct to the best of my knowledge and belief.	I do solemnly swear that the information given above is true and correct to the best of my knowledge and belief.
SIGNATURE	SIGNATURE

MAYOR OR COMMISSIONER

Subscribed and sworn to before me on _____ 19 _____	Subscribed and sworn to before me on _____ 19 _____
8-4-94 W. Charlene Davis M	
SIGNATURE, TITLE, AND SEAL	SIGNATURE, TITLE, AND SEAL

CONSENT (GROOM)

—CONSENT—	
MALE	FEMALE
Primarily of legal age 18	Primarily of legal age 18
<input checked="" type="checkbox"/> GIVEN	<input checked="" type="checkbox"/> GIVEN
MARRIAGE LICENSE NO.	DATE ISSUED

REMARKS: DO NOT ISSUE WITHOUT WRITTEN AUTHORIZATION OF PRESIDING JUDGE

GROOM		BRIDE	
NUMBER OF THIS MARRIAGE (Specify First, Second, etc.)	IF PREVIOUSLY MARRIED, LAST MARRIAGE ENDED BY	NUMBER OF THIS MARRIAGE (Specify First, Second, etc.)	IF PREVIOUSLY MARRIED, LAST MARRIAGE ENDED BY
1st	Death <input type="checkbox"/> Divorced <input type="checkbox"/>	1st	Death <input type="checkbox"/> Divorced <input type="checkbox"/>
RACE—Specify Filipino, Black, Asian, White, etc.		RACE—Specify Filipino, Black, Asian, White, etc.	

16 FORM 204 (8-88) REV 1-89

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

JAY BRAUSE and GENE DUGAN,

Plaintiffs,

vs.

BUREAU OF VITAL STATISTICS,
ALASKA DEPARTMENT OF HEALTH &
SOCIAL SERVICES, and the STATE
OF ALASKA.

Defendants.

CASE NO. _____

AFFIDAVIT OF JAY BRAUSE

STATE OF ALASKA)

THIRD JUDICIAL DISTRICT)

ss.

JAY BRAUSE, being first duly sworn, states as follows:

1. I am a plaintiff in this case. I make this affidavit upon personal knowledge and belief.

2. I have lived in Alaska and in the Municipality of Anchorage since 1959. In 1978, I met my co-plaintiff Gene Dugan. Since 1979, we have shared our lives as a couple.

3. On August 4, 1994, Gene and I went to the Vital Statistics office in the Alaska State Courthouse in Anchorage. We submitted for filing an application for a marriage license. We were told by the person who accepted the application for filing that it was denied because we were of the same sex. We were given a memorandum from the Presiding Judge of the Superior Court, a true copy of which is Exhibit 1 to the complaint in this case. We were not given any other reason for the denial of our application for a marriage license.

1 - Affidavit of Jay Brause

Law Offices of
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First National Bank Building
425 G Street, Suite 610 • Anchorage, Alaska 99501
Telephone (907) 277-8611 • Facsimile (907) 358-7329

4. My date of birth is June 3, 1954. I do not have a husband or wife now living. I am not related to Gene by the fourth degree of consanguinity or closer, whether of the whole or half blood, computed according to the rules of the civil law.

5. The application we submitted for filing was completed and our signatures affirmed before D. Charlene Doris, deputy clerk, according to law. At the time of filing, we identified ourselves to the satisfaction of the licensing officer, and neither of us was under the influence of intoxicating liquor or otherwise incapable of understanding the seriousness of the proceeding.

DATED AT ANCHORAGE, ALASKA this ___ day of _____,
1995.

JAY BRAUSE

SUBSCRIBED and sworn to before me this ___ day of _____, 1995.

Notary Public in and for Alaska
My Commission expires: _____

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Telephone (907) 377-8611 • Facsimile (907) 258-7329

2 - Affidavit of Jay Brause

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

JAY BRAUSE and GENE DUGAN,)
)
 Plaintiffs,) CASE NO. _____
)
 Vs.)
)
 BUREAU OF VITAL STATISTICS,)
 ALASKA DEPARTMENT OF HEALTH &)
 SOCIAL SERVICES, and the STATE)
 OF ALASKA.)
)
 _____ Defendants.)

AFFIDAVIT OF GENE DUGAN

STATE OF ALASKA)
) ss.
 THIRD JUDICIAL DISTRICT)

GENE DUGAN, being first duly sworn, states as follows:

1. I am a plaintiff in this case. I make this affidavit upon personal knowledge and belief.

2. I have lived in Alaska and in the Municipality of Anchorage since 1978. In that year, I met my co-plaintiff Jay Brause. Since 1979, we have shared our lives as a couple.

3. On August 4, 1994, Jay and I went to the Vital Statistics office in the Alaska State Courthouse in Anchorage. We submitted for filing an application for a marriage license. We were told by the person who accepted the application for filing that it was denied because we were of the same sex. We were given a memorandum from the Presiding Judge of the Superior Court, a true copy of which is Exhibit 1 to the complaint in this case. We were not given any other reason for the denial of our application for a marriage license.

1 - Affidavit of Gene Dugan

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Telephones (907) 277-8611 • Facsimile (907) 258-7129

4. My date of birth is December 10, 1951. I do not have a husband or wife now living. I am not related to Jay by the fourth degree of consanguinity or closer, whether of the whole or half blood, computed according to the rules of the civil law.

5. The application we submitted for filing was completed and our signatures affirmed before D. Darlene Doris, deputy clerk, according to law. At the time of filing, we identified ourselves to the satisfaction of the licensing officer, and neither of us was under the influence of intoxicating liquor or otherwise incapable of understanding the seriousness of the proceeding.

DATED AT ANCHORAGE, ALASKA this ___ day of _____, 1995.

GENE DUGAN

SUBSCRIBED and sworn to before me this ___ day of _____, 1995.

Notary Public in and for Alaska
My Commission expires: _____

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2 - Affidavit of Gene Dugan

BACKGROUND: The Attorneys

Robert H. Wagstaff (lead counsel) was born in Kansas City, Missouri and graduated from Dartmouth College and the University of Kansas School of Law. He was admitted to the Alaska Bar in 1968. Mr. Wagstaff has personally argued over 50 cases before the Supreme Court of the State of Alaska including the landmark privacy case of Ravin v. State of Alaska which decriminalized the private possession and use of marijuana by adults. He has personally argued two cases before the United States Supreme Court: Davis v. Alaska (1974) involving the right of the defendant to cross-examination when accused by a juvenile witness and Hicklin v. Orbeck (1978) in which the United States Supreme Court held that the Alaska Hire law requiring oil and gas employers to first hire and last fire Alaska residents violated the privilege and immunities clause of the federal constitution. Mr. Wagstaff is a former member of the National Board of Directors of the American Civil Liberties Union in New York and was president of the Alaska Bar Association in 1988.

Erik LeRoy (cooperating counsel) graduated from the Evergreen State College and the University of Wisconsin Law School. He has practiced commercial and bankruptcy law in Alaska since 1983. He has climbed extensively in Alaska and the Western United States. He is an avid amateur cabinetmaker and boatbuilder. He has been married for 13 years and he and his wife have two children and live in Anchorage.

STATEMENT: Jay Brause and Gene Dugan, the plaintiffs

WE BELIEVE that the denial of legal recognition of same-sex couples by the State of Alaska is illegally discriminatory, unconstitutionally limiting marriage benefits to opposite-sex couples, while depriving a whole class of persons those important benefits. Our Constitution was designed specifically to protect such civil rights.

If opposite-sex couples who planned to be married were denied the right to marry by the state, they would speak out against such injustice. So must we.

ONE.

WE BELIEVE that love, economic partnership, and commitment are the bedrock of marriage—not the sex of the partners or their potential to procreate.

WE BELIEVE the proof of our relationship of 16 years and that of many other same-sex couples secures our demand for marriage as rightful and legitimate.

WE BELIEVE that with the rights accrued with marriage there are corresponding responsibilities. We recognize that we are first responsible for our partner's physical and emotional health, financial welfare, and relationship to family, friends, and community. In fact, it is these responsibilities that keep many people—heterosexual and homosexual—from forming committed (married) relationships. We claim the right to become responsible marriage partners in our society.