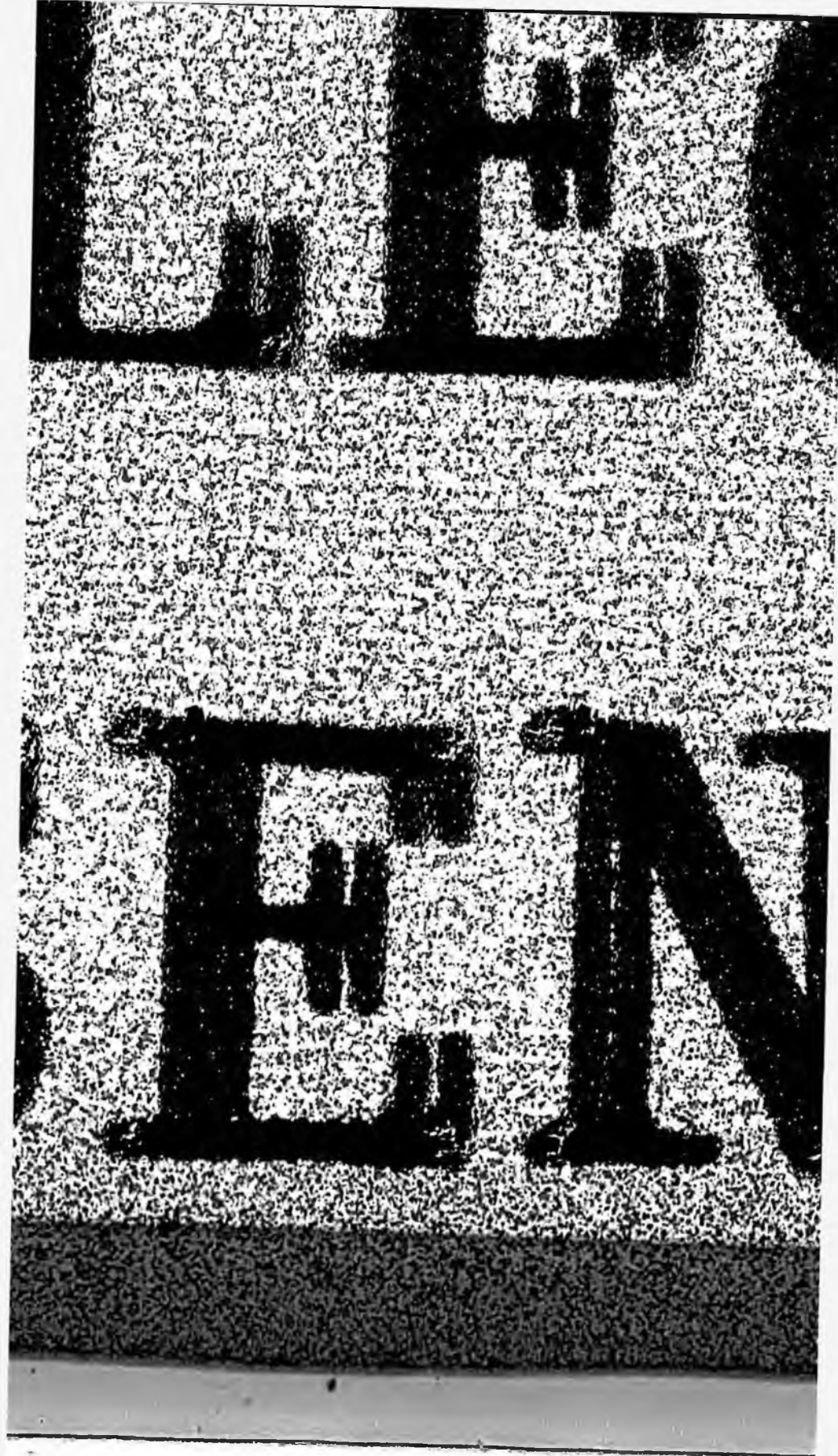


ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9570 SENATE JUDICIARY

207



1 (A) failure to contribute to a candidate, ballot proposition,
2 political party, or group;

3 (B) failure in any way to support or oppose a candidate, ballot
4 proposition, political party, or group; or

5 (C) supporting or opposing in any way a candidate, ballot
6 proposition, political party, or group.

7 (b) An employer or other person or entity responsible for the disbursement of
8 funds in payment of wages or salaries may not withhold or divert a portion of an
9 employee's wages or salaries for contributions to groups or for use as political
10 contributions unless the employee has filed a written authorization for the diversion
11 on a form prescribed by the commission. The form must inform the employee of the
12 prohibition against employer or labor organization discrimination described in (a)(2)
13 of this section. The written request is valid for no more than one calendar year from
14 the date of signing by the employee.

15 (c) For a period of at least four years after a disbursement under (b) of this
16 section, a person or entity who withheld a contribution under (b) of this section shall
17 maintain documents and books of accounts, including a copy of each employee's
18 written request, the amounts and dates funds were actually withheld, and the amounts
19 and dates funds were transferred to a group. These documents and books of account
20 are open to public inspection during normal business hours.

21 * Sec. 2. AS 23.40.220 is amended to read:

22 **Sec. 23.40.220. Labor or employee organization dues and employee**
23 **benefits, deduction, and authorization.** Upon written authorization of a public
24 employee within a bargaining unit, the public employer shall deduct from the payroll
25 of the public employee the monthly amount of dues, fees, and other employee benefits
26 as certified by the secretary of the exclusive bargaining representative and shall deliver
27 it to the chief fiscal officer of the exclusive bargaining representative. **If all or part**
28 **of a deduction under this section will be used to make a political contribution, the**
29 **written authorization must comply with AS 15.13.160.**

Decision Summary for Michigan AFL-CIO v. Miller

Rynnieva Moss, Rep. Vezey's Office

The Sixth Circuit Court of Appeals concluded that the Michigan statute that requires annual affirmative consent for automatic payroll deductions made to separate segregated accounts is content-neutral and that intermediate scrutiny is the appropriate standard review.

The U.S. Supreme Court has a litmus test that is applied to intermittent scrutiny of alleged restrictions on First Amendment freedoms:

1. Does the content-neutral law further an important or substantial governmental interest?

The Sixth Circuit determined that the right not to contribute to political causes that an individual does not favor is as pivotal a First Amendment right as is the right to solicit funds. "*The protection of this right is certainly at least 'important or substantial', if not compelling.*" Michigan State AFL-CIO v. Candice Miller, Nos. 95-1397/1858.

The court noted that requiring annual consent ensures that political contributions are in accordance with wishes of the contributors.

2. Is the governmental interest unrelated to the suppression of free expression?

The court determined that the Michigan statute does not impose any direct limits on speech.

3. Is the incidental restriction on alleged First Amendment freedoms no greater than is essential to the furtherance of that interest?

The court determined that an annual mailing asking employees and members to check a box and to return the notice would suffice the law and would not be a crushing administrative burden.

The Sixth Circuit also determined the unions argument that asking people to check a box once a year unduly interferes with the speech rights of those contributors "borders on the frivolous."

Purpose of HB 181 Separate Segregated Funds

1. Implement a statute that requires annual voluntary consent for automatic payroll deductions that will be spent for political purposes.
2. Require that the money be collected and disbursed from a separate segregated fund available for public access.
3. Define a separate segregated fund.
4. Include a separate segregated fund in the definition of "group".

Under existing statute, a person who violates a provision of this Chapter 13 is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year or by a fine of not more than \$5,000.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSSB 114(JUD)

Revision Date: _____
 Title: Employees: Political contrib & activitie
 Sponsor: Senate Judiciary
 Requestor: Senate Finance

Department Affected: Labor
 BRU: Office of the Commissioner
 Component: _____
Alaska Labor Relations Agency
COMPONENT SERIAL NO. 1200

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						
----------------	--	--	--	--	--	--

CHANGE IN REVENUE						
FUND SOURCE #						

FUNDING:

(Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY97) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)
 AS 23.40.220 addresses a public employee's written authorization for deductions for dues, fees, and other employee benefits. Section 2 of SB 114 would amend AS 23.40.220 as follows: "If all or part of a deduction under this section will be used to make a political contribution, the written authorization must comply with AS 15.13.160." It is not anticipated that the proposed amendment to AS 23.40.220 would have a fiscal impact on the operation of the Alaska Labor Relations Agency (ALRA). Since July 1, 1990, approximately eight unfair labor practice charges relating to dues deductions have been filed with ALRA, one of which concerned use of dues for political contribution purposes. Though the proposed amendment to AS 23.40.220 could increase the number of unfair labor practice charges filed, a significant increase is not anticipated. Additional staff would not be needed.

Prepared by: Jan Hart DeYoung, Hearing Examiner Phone: 269-4896
 Division: Alaska Labor Relations Agency Date: 4/3/97
 Approved by Commissioner: Tom Cashen, Commissioner
 Agency: Department of Labor Date: 4/3/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

CS
BILL NO. SB15 (JUD)

Revision Date: _____ Dept. Affected: Office of the Governor
 Title: "An Act relating to civil actions..." BRU: Human Rights Commission
 Sponsor: Senator Taylor Component: _____
 Requester: Senate Finance COMPONENT SERIAL NO. 1

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	57.7	59.6	61.4	63.4	65.3	67.3
TRAVEL						
CONTRACTUAL						
SUPPLIES	0.2					
EQUIPMENT	2.5					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	60.4	59.6	61.4	63.4	65.3	67.3

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (
-----------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	60.4	59.6	61.4	63.4	65.3	67.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	60.4	59.6	61.4	63.4	65.3	67.3

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

As a result of this bill, the Commission expects people will choose to file with the agency instead of filing in court, and will be referred to the agency more often by members of the private bar. While difficult to estimate, the Commission anticipates an increase in complaint filings of approximately 15%. In order to avoid unfair delay in the processing of these additional cases, the Commission will need to hire another investigator.

Prepared by: Paula M. Haley, Executive Director
 Division: HUMAN RIGHTS COMMISSION

Phone: 276-7474
 Date: 3/21/97

Approved by Commissioner: [Signature]
 Agency: _____

Date: 3/22/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSSB 70 (JUD)

Revision Date: 3/26/97 Dept. Affected: Corrections
 Title: Unlawful discharge of a firearm BRU: All
 Component: All
 Sponsor: Senator Donlay
 Requester: Senate Judiciary COMPONENT SERIAL NO. #0694

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	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Bruce Richards
 Division: Commissioner's Office
 Approved by Commissioner: Margaret M. Pugh Margaret M. Pugh
 Agency: Department of Corrections

Phone: 465-3307
 Date: 3/26/97
 Date: 3/26/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSSB 70 (JUD)

Revision Date: 04/03/97

Dept. Affected: Alaska Court System

Title: Unlawful Discharge of a Firearm

BRU: Trial Courts

Component: _____

Sponsor: Sen. Donkey

Requestor: _____

COMPONENT SERIAL NO. 768

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

Fund Source

(Thousands of Dollars)

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

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 70 redefines certain conduct that is already a crime, which should not result in a fiscal impact.

Prepared by: C. S. Christensen III, General Counsel

Agency: Alaska Court System

Phone: 264-8228

Date: 04/03/97

Approved by: Stephanie J. Cele, Deputy Director

Agency: Alaska Court System

Date: 04/03/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 147

Revision Date: _____
 Title: " An Act relating to a retirement benefit for the surviving widow or widower or surviving divorced spouse of a governor or"
 Sponsor: Senate Judiciary by Request
 Requestor: (S) STA

Department Affected: Administration
 BRU: Retirement & Benefits
 Component: Retirement & Benefits
 COMPONENT SERIAL NO. 64

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
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: \$ zero

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact on the Division of Retirement & Benefits. If enacted, this bill would increase the Public Employees' Retirement System (PERS) unfunded accrued liability by \$80,000. This increase in unfunded liability would have no effect on the PERS' average employer contribution rate or the funding ratio.

Prepared by: Janet L. Parker
 Division: Retirement & Benefits

Phone: 465-4470
 Date: _____

Approved by Commissioner: Mark Bover
 Agency: Department of Administration

Date: 4/3/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSSB 114(JUD)

Revision Date:	Dept. Affected: <u>Department of Law</u>
Title: <u>"An Act relating to contributions from</u>	BRU: <u>Civil Division</u>
<u>employee compensation for political purposes; . . .</u>	Component: <u>General Legal Services</u>
Sponsor: <u>Senate Judiciary Committee</u>	
Requester: <u>Senate Judiciary Committee</u>	COMPONENT SERIAL NO. <u>2087</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	11.8	9.2	5.5	9.2	5.5	9.2
TRAVEL	0.8	0.7	0.6	0.7	0.6	0.7
CONTRACTUAL	2.3	1.9	1.3	1.9	1.3	1.9
SUPPLIES	0.2	0.2	0.1	0.2	0.1	0.2
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	15.0	12.0	7.5	12.0	7.5	12.0

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

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF	15.0	12.0	7.5	12.0	7.5	12.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	15.0	12.0	7.5	12.0	7.5	12.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

CSSB 114 (JUD) prohibits an employer or labor organization from increasing the salary of an officer or employee, or giving an emolument, with the intent that all or part of the increase or emolument be given as a political contribution ("giving in the name of another.") The bill also prohibits discrimination against an officer or employee for failure to contribute or otherwise support a political candidate, group or issue. CSSB 114 (JUD) further prohibits an employer from withholding wages for a political contribution without an annual written authorization from the employee.

Evidence in "giving in the name of another" cases are more time intensive and factually and legally complex than other Alaska Public Offices Commission (APOC) type cases. To do these cases, the Department of Law would need to commit more discovery, investigative, and research time. Employment discrimination cases would also be a new type of case for the commission and the Department of Law, as the APOC does not currently have this authority. They are also more factually complex. In addition, new regulations and criteria would need to be developed.

Prepared by: <u>Joan M. Kasson</u> <i>Joan M. Kasson</i>	Phone: <u>465-5370</u>
Division: <u>Administrative Services Division</u>	Date: <u>4/4/97</u>
Approved by Commissioner: <u>Bruce M. Botelho, Attorney General</u> <i>Bruce Botelho for</i>	Date: <u>4/4/97</u>
Agency: <u>Department of Law</u>	

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ANALYSIS CONTINUATION:

The Department of Law has based its fiscal note costs on the assumption that there would be three additional cases each election year, and two additional complaints in non-election year (one "giving in the name of another" case and one discrimination case). In addition, in the first year, regulations development would occur. The department estimates that approximately 125 hours of attorney time would be required for the election year projected caseload, plus \$1,125 for direct case travel and deposition costs. In non-election years, approximately 75 hours would be needed, plus \$975 in direct case travel and contractual. In addition, in FY 98 approximately 35 hours of attorney time would be required for promulgation of the new regulations.

If the employment discrimination cases could be handled by another regulatory agency with experience in these types of cases, the Department of Law's cost projections could likely decrease.

The cost estimates are based on the department's FY 97 standard attorney cost schedule (\$87/hour) and include clerical support, communications, space, supplies, data processing, and other normal overhead expenses. Direct case costs are included separately.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSSB 70 (JUD)

Revision Date:	Dept. Affected: <u>Department of Law</u>
Title: <u>"An Act relating to the discharge of firearms at or in the direction of buildings and dwellings."</u>	BRU: <u>Criminal Division</u>
Sponsor: <u>Senator Donley</u>	Component: <u>Criminal Division</u>
Requester: <u>Senate Judiciary Committee</u>	COMPONENT SERIAL NO. <u>2085</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	53.8	53.8	53.8	53.8	53.8	53.8
TRAVEL	0.7	0.7	0.7	0.7	0.7	0.7
CONTRACTUAL	8.0	8.0	8.0	8.0	8.0	8.0
SUPPLIES	1.1	1.1	1.1	1.1	1.1	1.1
EQUIPMENT	6.5					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	70.0	63.5	63.5	63.5	63.5	63.5

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	70.0	63.5	63.5	63.5	63.5	63.5
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	70.0	63.5	63.5	63.5	63.5	63.5

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

CSSB 70 (JUD) elevates the crime of discharging a firearm at or in the direction of a building, or a dwelling, from misdemeanor conduct to a class B felony. The Department of Law anticipates the greatest impact from the proposed committee substitute would be in the Anchorage area as many of these misdemeanor weapons and property crimes are most likely handed as municipal offenses under current law. CSSB 70 (JUD) would make these offenses felonies under state jurisdiction.

The department anticipates the need for one-half an attorney position in the Anchorage District Attorney's Office to respond to the increased caseload from this bill. Using the Civil Division's standard attorney cost schedule (\$127,000 per year), the fiscal impact would be \$63,500, including clerical support, communications, space, supplies, data processing and other normal overhead expenses. The standard cost does not include one-time new equipment purchases, and \$6,500 is added for this purpose in FY 98. (Proportionate support position funding is included in the standard attorney cost schedule to reduce clerical support vacancy so that the new attorney's clerical burden can be handled.)

Prepared by: Joan M. Kasson
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-5370
 Date: 4/4/97
 Date: 4/4/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: CSSB 70 (JUD)

Revision Date: 04/03/97
 Title: An Act relating to the discharge of firearms
at or in the direction of buildings &
 Sponsor: Senator Donley
 Requestor: S. Judiciary

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

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

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-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 97) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill would not have any significant fiscal impact on AST.

Prepared By: F/Sgt. Robert Gorder Phone: 269-5650
 Division: Alaska State Troopers Date: 04/03/97
 Approved by Commissioner: Ronald L. Otte *Dee Smith* Date: 4/7/97
 Agency: Department of Public Safety

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ALASKA STATE LEGISLATURE



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

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

Senate Judiciary Committee

SPONSOR STATEMENT for SB 114

SB 114 protects the rights of workers to make annual decisions regarding their involvement in the political process.

Constituents have contacted me about this issue and have expressed concern that employers automatically deduct contributions from their paycheck. Once the deduction has been made, the employee has no control over how the money is distributed or which candidates and issues it is used to support or oppose. This process of funding political actions by corporations and labor organizations is known as "reversed check-off", and was recently banned by a Michigan statute upheld by the Sixth Circuit Court of Appeals.

SB 114 prohibits an employer or labor organization from giving a salary increase with the intent that it be donated in support or opposition of a candidate or issue. The bill prohibits discrimination against an employee who fails to make a contribution intended to influence a political race.

It also requires that a public record be kept of payroll deductions made for disbursement as political contributions.

The most important provision of SB 114 says it takes written authorization from the employee before a deduction for political purposes can be made. The bill requires that such an authorization be issued annually by the employee and that the employee must be informed of the anti-discrimination provisions that apply if they choose not to make a contribution.

An employees' political convictions are private and deserve unequivocal respect rather than the intimidation allowed by the current process.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

ALASKA STATE LEGISLATURE



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

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

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It also requires that a public record be kept of payroll deductions made for disbursement as political contributions.

The most important provision of SB 114 says it takes written authorization from the employee before a deduction for political purposes can be made. The bill requires that such an authorization be issued annually by the employee and that the employee must be informed of the anti-discrimination provisions that apply if they choose not to make a contribution.

An employees' political convictions are private and deserve unequivocal respect rather than the intimidation allowed by the current process.

RECEIVED FEB 25 1997

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

JOHN ENGLER
GOVERNOR

February 12, 1997

The Honorable Robin Taylor
Senate Majority Leader
State Capitol, Room 30
Juneau, Alaska 99801

Dear Majority Leader:

I am writing to bring to your attention a recent ruling by the 6th Circuit Court of Appeals in Cincinnati, Ohio (*Michigan AFL-CIO v. Miller*), that deals with worker democracy, paycheck protection, and the issue of "reverse check-off." "Reverse check-off" is a payroll deduction by the employer of an annual amount -- determined by the union -- which is automatically deducted from an employee's paycheck and sent to the union for its Political Action Committee (PAC).

For example, the 130,000 Michigan Education Association (MEA) members have \$15.00 deducted annually for this purpose. Add it up -- it is \$3,900,000 in a 2-year election cycle. There is no way to distinguish this from the normal dues deduction -- so most MEA members do not know PAC money is being deducted. At the national level, 99 percent of all NEA contributions funded Democrats in 1996. Normally, a very limited opportunity, constricted by a narrow time limit and complex paperwork, is provided to any employee who wishes to seek a refund of the political deduction. Moreover, an employee's request not to contribute must be made annually and often subjects the requesting individual to unfavorable notice by other members and the leadership of the union local.

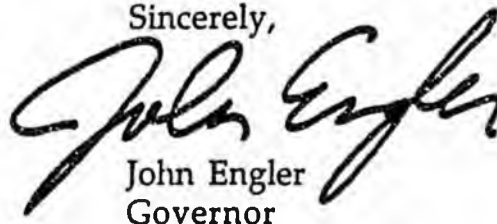
I strongly oppose this "reverse check-off" system for several reasons. To begin with, worker democracy demands that the individual employee make the decision as to how his or her money is spent -- not some other agency or union. Moreover, since this money is deducted at the same time as dues, the additional amount is virtually undisclosed to workers. There is also the issue of paycheck protection, of not allowing a third party automatically to deduct funds from someone's hard-earned paycheck. When money is automatically deducted from a paycheck, getting those dollars back is nearly impossible and subjects the requestor to "notice." Last but not least, the overwhelming majority of these contributions go to Democrats despite the fact that substantial percentages of teachers and other union members identify themselves as Republicans or Independents in national surveys.



In Michigan, the legislature responded to these concerns for worker democracy, paycheck protection and constitutional rights by amending the state Campaign Finance Act. The Michigan law banning the use of a "reverse check-off" system for the collection of political contributions covers labor unions, corporations, and domestic dependent sovereigns (Indian tribes). In this important ruling, the 6th Circuit Court of Appeals overturned a lower court ruling and, in so doing, upheld a 1994 Michigan law which bans the use of "reverse check-off." As a result of this court ruling, contributions to all political action committees must be affirmatively made and a contributor must have the opportunity each year to decide whether or not to contribute. As soon as the 6th Circuit Court of Appeals directs the district judge to lift his restraining order, all PAC contributions in the state will require the annual affirmative written consent of the contributor.

For your convenience, I have attached a copy of the Michigan law pertaining to worker democracy, paycheck protection, and the "reverse check-off." For more information on the court ruling or how this might apply to your state, please contact my legal counsel, Lucille Taylor, at (517) 373-3400.

Sincerely,



John Engler
Governor

JE:rh
enclosure

AdTI ISSUE BRIEF - No. 138
 October 31, 1996



**The Teacher Union Leadership vs. Members:
 Update on NEA and AFT PAC Contributions**

Dr. John E. Berthoud, Vice President

"We needed to take a look at what our members were thinking before the election. They don't want us to be partisan. They don't want us to be political." -- Mary-Elizabeth Teasley, NEA Director of Government Relations¹

Earlier AdTI research has described the sharp partisanship of unions in their 1996 campaign activities.² Of the major unions analyzed, teacher union Political Action Committees (PACs) were found to be among the most lopsided in their support of Democratic candidates over Republican candidates. They were shown to be more partisan than the Teamsters and almost as partisan as the AFL-CIO. This Issue Brief provides the latest figures on National Education Association (NEA) and American Federation of Teacher (AFT) PAC contributions to federal campaigns.

The PAC contribution data are from the NEA's September Monthly Report to the Federal Election Commission (FEC) and from the AFT's July Quarterly Report and are the latest figures for the 1995-6 election cycle. It is also important to note that the teacher unions have been involved in political campaigns in other ways besides PAC contributions. For example, the NEA is spending \$500,000 on radio and television ads and direct mailings to defeat four Republican U.S. House Members.³ Although there are limits on PAC contributions, groups may spend unlimited sums on "independent expenditures."

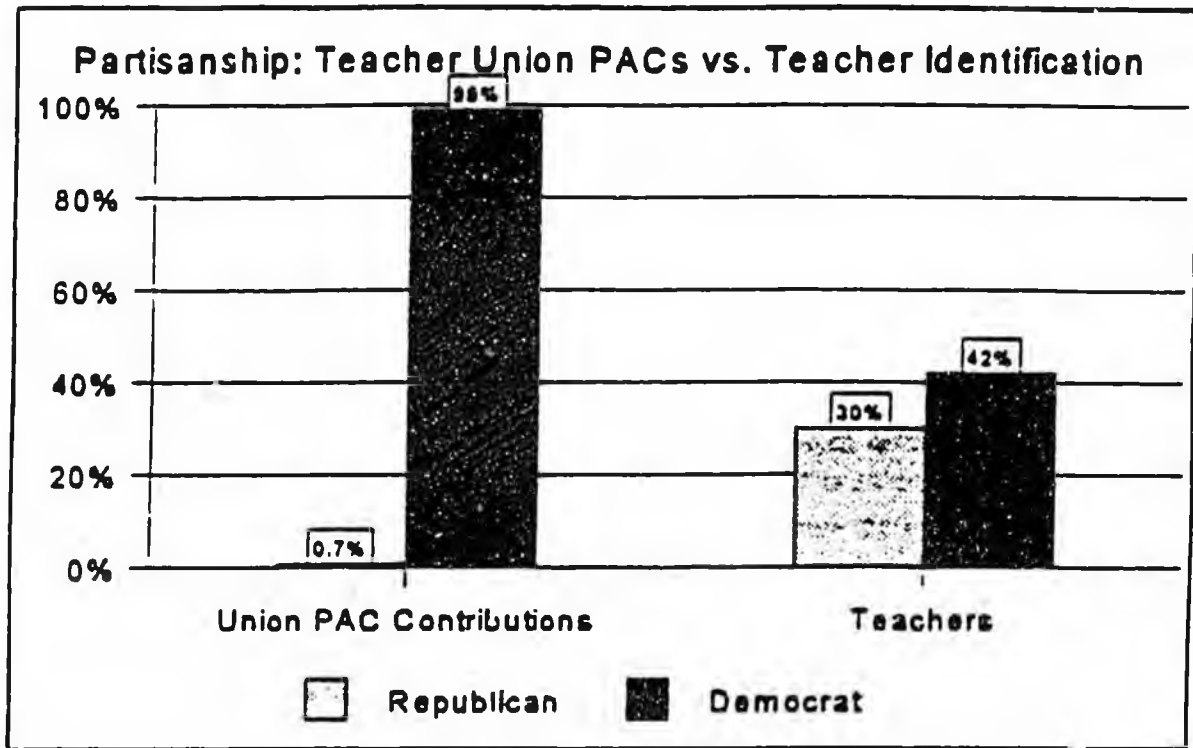
Table 1. Profiles of NEA and AFT PAC Campaign Contributions

	PAC Funds to Rep. Candidates	%	PAC Funds to Dem. Candidates	%	PAC Funds to Ind. Candidates	%	Total PAC Funds to Candidates
AFT	\$4,750	0.6%	\$832,647	99.2%	\$2,117	0.3%	\$839,514
NEA	\$11,350	0.7%	\$1,578,305	98.9%	\$6,000	0.4%	\$1,595,655
Total	\$16,100	0.7%	\$2,410,952	99.0%	\$8,117	0.3%	\$2,435,169

Source of data: the Federal Election Commission.

The Alexis de Tocqueville Institution
 1611 North Kent Street, Suite 901, Arlington, Virginia 22209
 Phone: 703-351-4969 Fax: 703-351-0090
 Email: adti@erols.com Home Page: <http://www.schoolreport.com/AdTI>

As Table 1 shows, the teacher unions have given 99 percent of their funds to Democratic candidates and less than 1 percent to Republicans. This partisanship contrasts sharply with recent figures about public school teacher party identification. A survey by the National Center for Education Information found 42 percent of teachers identify themselves as Democrats, 30 percent identify themselves as Republicans, and 28 percent as Independents.⁴ This survey data confirms the statement of NEA President Bob Chase who recently observed, "Our membership breaks down very similar to the general public as far as percentage being Democrat, Republican and Independent."⁵



The same survey found that 39 percent of public school teachers identify themselves as moderate, 35 percent as conservative, and 25 percent as liberal. These ideological positions again contrast sharply with teacher union policy positions, which AdTI has analyzed in earlier studies and found to be quite liberal. For the NEA for example, AdTI found that if every item in their *Legislative Program for the 104th Congress* were enacted, federal spending would increase by at least \$702 billion annually — an expansion of about 40 percent.⁶

While the NEA and AFT of course have a right to support whatever policies and candidates they wish, such extreme partisanship in the face of sharply differing views among teachers seriously calls into question the union leaders' claims to represent the interests of teachers.

169.255 Segregated fund for political purposes; establishment by corporation, joint stock company, or labor organization; limitations; solicitation of contributions; prohibited practices; violation; penalty. [M.S.A. 4.1703(55)]

Sec. 55. (1) A corporation organized on a for profit or nonprofit basis, a joint stock company, or a labor organization formed under the laws of this or another state or foreign country may make an expenditure for the establishment and administration and solicitation of contributions to a separate segregated fund to be used for political purposes. A separate segregated fund established under this section shall be limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, political committees, and independent committees.

(2) Contributions for a separate segregated fund established by a corporation, organized on a for profit basis, or a joint stock company under this section may be solicited from any of the following persons or their spouses:

(a) Stockholders of the corporation or company.

(b) Officers and directors of the corporation or company.

(c) Employees of the corporation or company who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(3) Contributions for a separate segregated fund established under this section by a corporation organized on a nonprofit basis may be solicited from any of the following persons or their spouses:

(a) Members of the corporation who are individuals.

(b) Stockholders of members of the corporation.

(c) Officers or directors of members of the corporation.

(d) Employees of the members of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(e) Employees of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(4) Contributions for a separate segregated fund established under this section by a labor organization may be solicited from any of the following persons or their spouses:

(a) Members of the labor organization who are individuals.

(b) Officers or directors of the labor organization.

(c) Employees of the labor organization who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(5) Contributions shall not be obtained for a separate segregated fund established under this section by use of coercion, physical force, or as a condition of employment or membership or by using or threatening to use job discrimination or financial reprisals. A corporation organized on a for profit or nonprofit basis, a joint stock company, or a labor organization shall not solicit or obtain contributions for a separate segregated fund established under this section from an individual described in subsection (2), (3), or (4) on an automatic or passive basis including but not limited to a payroll deduction plan or reverse checkoff method. A corporation organized on a for profit or nonprofit basis, a joint stock company, or a labor organization may solicit or obtain contributions for a separate segregated fund established under this section from an individual described in subsection (2), (3), or (4) on an automatic basis, including but not limited to a payroll deduction plan,

only if the individual who is contributing to the fund affirmatively consents to the contribution at least once in every calendar year.

(6) A person who knowingly violates this section is guilty of a felony punishable, if the person is an individual, by a fine of not more than \$5,000.00 or imprisonment for not more than 3 years, or both, or, if the person is not an individual, by a fine of not more than \$10,000.00.

Severability of amendatory act.

Section 2. If any portion of this amendatory act or the application of any portion of this amendatory act to any person or circumstance is found to be invalid by a court, the invalidity shall not affect the remaining portions or applications of this amendatory act that can be given effect without the invalid portions or application, if the remaining portions are not determined by the court to be inoperable, and to this end this amendatory act is declared to be severable.

Effective date.

Section 3. This amendatory act shall take effect April 1, 1995.

Approved May 10, 1994.

Filed with Secretary of State May 11, 1994.

[No. 118]

(SB 3)

AN ACT to amend sections 3 and 7a of Act No. 382 of the Public Acts of 1972, entitled as amended "An act to license and regulate the conducting of bingo and certain other forms of gambling; to provide for the conducting of charity games; to impose certain duties and authority upon certain state departments, agencies, and officers; to provide a tax exemption; and to provide penalties," section 3 as amended and section 7a as added by Act No. 229 of the Public Acts of 1981, being sections 432.103 and 432.107a of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Sections amended; Traxler-McCauley-Law-Bowman bingo act.

Section 1. Sections 3 and 7a of Act No. 382 of the Public Acts of 1972, section 3 as amended and section 7a as added by Act No. 229 of the Public Acts of 1981, being sections 432.103 and 432.107a of the Michigan Compiled Laws, are amended to read as follows:

432.103 Additional definitions. [M.S.A. 18.969(103)]

Sec. 3. (1) "Educational organization" means an organization within this state that is organized not for pecuniary profit, whose primary purpose is educational in nature and designed to develop the capabilities of individuals by instruction in any public or private elementary or secondary school that complies with the school code of 1976, Act No. 451 of the Public Acts of 1976, as amended, being sections 380.1 to 380.1852 of the Michigan Compiled Laws, or any private or public college or university that is organized not for pecuniary profit and that is approved by the state board of education.

REVIEW & OUTLOOK

Exempt From Reform

When President Clinton endorsed a campaign reform bill by Senators John McCain and Russ Feingold in his State of the Union address last week, he left an obvious question unanswered. Before Congress plunges into yet another attempt to clean up politics, why not insist that President Clinton and his allies enforce or abide by the existing campaign laws?

We're not talking about the \$1.5 million or more in illegal foreign contributions that the Democratic National Committee has had to return. Nor what looks to be improper use of a giant White House data base to contact potential campaign contributors. We're referring to the *Beck* decision, a 1988 Supreme Court ruling written by

40% of union members who routinely vote Republican might want some of their money back.

Unions are terrified at losing the coercive power to extract dues money. Consider what happened in Washington state, where in 1992 the voters barred withholding an employee's wages "for use as political contributions except upon written request of the employee." In just a year, the number of union teachers who contributed to the Washington Education Association's PAC skidded to only 8,000 from 48,000.

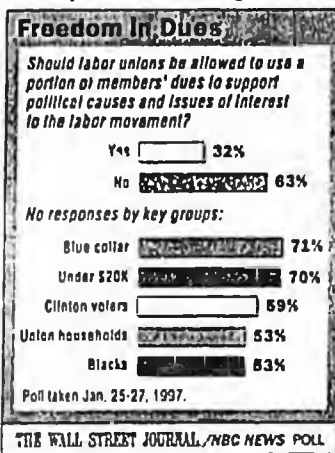
Undaunted, the WEA set up a new mandatory fund called the Community Outreach Program. WEA lobbyist Robert Maler has admitted in a deposition that the outreach program was "an internal ploy to raise more WEA-PAC money." After the Evergreen Freedom Foundation blew the whistle on this scheme, the state's Public Disclosure Commission found that the union had engaged in the largest violations of campaign law in the state's history. It turned over its evidence to Attorney General Christine Gregoire, a Democrat, who this week will announce her decision on whether the state will prosecute the union.

Other states are asserting the rights of workers who want to stay out of politics. In 1995, Michigan banned both unions and corporations from using automatic payroll deductions to finance their PACs. The state teachers union alone automatically collected \$3.9 million every election cycle from such deductions, and it bitterly contested the new law. However, the Sixth Circuit Court of Appeals recently upheld the law. Governor John Engler says workers will now have "the opportunity each year to decide whether or not to contribute to politics." This month, he wrote his fellow governors to inform them of the federal court's decision and to extol this extension of "worker democracy."

On the national level, the open defiance of *Beck* by unions prompted even the National Labor Relations Board, dominated by Clinton appointees, to rule last month that unions must supply financial data to workers who request a partial refund of their dues. But more must be done if Justice Brennan's decision is to stop gathering dust.

Requiring unions to get advance permission from their members before deducting money for their PACs is a worthy goal. At a minimum, any new campaign finance bill must codify the *Beck* decision and make certain that union members receive notification of their right to a partial refund. Ensuring some form of paycheck protection for workers is not merely desirable, it is the law of the land. Until President Clinton publicly commits to bringing the unions inside the tent of campaign finance reform, his breast-beating about past fund-raising "mistakes" will look like a dodge:

THE WALL STREET JOURNAL MONDAY, FEBRUARY 10, 1997



liberal icon William Brennan. What Justice Brennan said in *Beck* was simple: Workers cannot be forced to pay dues or fees to subsidize union activity unrelated to collective bargaining. Harry Beck, the worker who sued his union because it backed politicians he didn't like, won the right to keep a staggering 79% of his dues money.

After much delay, in 1992 the Bush Labor Department belatedly issued regulations requiring unions to publicly reveal what portion of their dues workers could keep. President Bush himself also ordered federal contractors to tell workers the same thing. Days after taking office, President Clinton rescinded both actions, leaving workers once again in the dark over what was happening with their dues money. Constitutional scholar Roger Pilon says President Clinton is violating his Constitutional obligation to "take care that the Laws be faithfully executed."

Thus, one reason President Clinton can endorse McCain-Feingold is that in its current form it does nothing to limit the role of unions in politics. GOP Senator McCain says he wants to include unions in his bill, but Democrats are resisting.

President Clinton certainly owes unions for their carpet-bombing of the GOP Congress on TV last year. The average dues paid by the 10 million private-sector union members has now climbed to more than \$100 a year. If *Beck* were enforced, many of the

ALASKA PUBLIC OFFICES COMMISSION

POSITION PAPER ON SB 114

Introduction:

The Public Offices Commission met on March 13, 1997 to discuss SB 114, which will amend AS 15.13 by prohibiting employers or labor organizations from giving officers or employees money to contribute to political campaigns; prohibiting discrimination for political activity; and requiring employers to obtain written authorization before withholding money for political purposes. The Commission identified the following concerns and makes the following recommendations:

Analysis of AS 15.13.160 as Proposed:

(1) Subparagraph (a)(1) is currently illegal under existing law which prohibits "giving in the name of another." See AS 15.13.120(a)(4); 2 AAC 50.357. The Commission had no objection to the inclusion of the provision in state statute.

(2) Subparagraph (a)(2) which prohibits discrimination for failure to make political contributions or otherwise support or oppose a political candidate, group, or issue requires that the Commission exercise authority over an area of law outside the purview of campaign finance law. It would require the Commission to delve into the complex field of employment discrimination. The Commission believes that authority over employment discrimination is best assigned to the regulatory entity with existing expertise in employment matters.

(3) In paragraph (b), the last sentence should be amended so that written requests be completed on a calendar year. This change will facilitate record keeping and investigation efforts by the Commission. The Commission recommends the sentence be amended to read as follows:

The written request is valid for no more than one calendar year [12 MONTHS] from the date of signing by the employee.

(4) The Commission is concerned about the chilling effect of the requirement in paragraph (c) that authorization forms and other documents be available for public inspection. Under current campaign disclosure law, the names of individuals who contribute more than \$250 to a candidate, group or party are accessible to the public via Individual Contributor's Statements (15-5 reports) and candidate, group and party reports. The names of individuals who give \$100 or less are kept on file by the candidate or group but need not be disclosed unless required by the Commission in the course of an investigation. The requirement that employers produce the names and amounts of any employee participating in a payroll deduction plan, extends the requirements of public disclosure to new levels. Rather than further the purposes of the campaign disclosure law, that the public be aware of

the potential influences on public officials, the Commission is concerned that this new requirement will discourage individuals from participating in the political process at all.

(5) Paragraph (c) requires that copies of the authorization forms along with documents and books of accounts be maintained by the "person or entity who withheld a contribution." The Commission is concerned that union political action committees have no responsibility to maintain authorization forms, even though they are the entities that participate in the political campaign.

With regard to labor organization political action committees (PACs), the employer withholds union dues for an employee, then the employer transfers those dues to the labor PAC for use in a political campaign. As currently written, the bill places the responsibility of maintaining the documents solely on the shoulders of the employer. The Commission believes that responsibility should be shared with the labor PACs that actually make the political contributions.

(6) The Commission anticipates that enforcement of AS 15.13.160 will occur in the context of complaints only. Copies of forms will not be filed with the Commission. As result, it is essential that they are available for complaint investigation if necessary. In AS 15.13.120(d), the statute of limitations for complaints is 4 years. The limitation period in AS 15.13.160(c) should be changed to 4 years to be consistent with AS 15.13.120(d).

To address the concerns in (5) and (6) above, the Commission recommends that paragraph (c) be amended to read as follows:

For a period of at least four [THREE] years after a disbursement under (b) of this section, a person or entity who withheld a contribution under (b) of this section shall maintain documents and books of accounts, including a copy of each employee's written request, the amounts and dates funds were actually withheld, and the amounts and dates funds were transferred to a group. In addition, copies of the form should be kept by the entity that files group reports with the APOC. These documents and books of account are open to public inspection at the entity that files group reports with the APOC during normal business hours.

SB

119

FISCAL NOTE

R... 1
 Bill Version: CS 119 (L & C)
 (S) Publish Date: 3-14-97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____
 Title: An Act relating to fraternal societies; and providing for
an effective date.
 Sponsor: Senate L & C
 Requestor: _____

Department: Commerce and Economic Development
 BRU: Insurance
 Component: Insurance

COMPONENT SERIAL NO. _____ 324

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						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)
 This bill will not have a fiscal impact on the component.

Prepared by: Marianne K. Burke, Director *Marianne K. Burke* Phone: 465-2515
 Division: Insurance Date: _____
 Approved by Commissioner: William L. Hensley *William L. Hensley* Date: 2-10-97
 Agency: Commerce and Economic Development

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ALASKA STATE LEGISLATURE



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

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

Senate Judiciary Committee

MEMORANDUM

TO: Senator Taylor, Chairman
Senator Pearce, Vice Chairman
Senator Miller
Senator Parnell
Senator Ellis

FROM: Laura Chase, Committee Aide *Laura Chase*

DATE: April 10, 1997

RE: SB 119 . Richard Klevens testimony

Mr. Klevens was scheduled to testify in support of SB 119: Fraternal Benefit Societies. He will be unable to testify when the committee reconvenes today because a teleconference line is unavailable; instead, Charlie Miller will present information in support of this bill.

If, for some reason, the committee encounters a problem or concern *that would prevent moving the bill from committee*, Mr. Klevens requests that it be held until the next available meeting when he can participate telephonically.

SENATE COMMITTEE REPORT

DATE: 3/14/97

FURTHER:

DATE TURNED
IN TO OFFICE: 4/11/97

Judiciary Committee considered

SENATE BILL NO. 119

"An Act relating to fraternal benefit societies; and providing for an effective date."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical change

new: SCR* _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mike Miller</i>	✓	<i>Sean P. Gornell</i>	✓		
<i>J. Ellis</i>	✓				
CHAIR: <i>Chris T. Taylor</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>(E.D.) / INSURANCE</i>	<i>3/14/97</i>	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

ALASKA STATE LEGISLATURE



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

State Capitol
Juneau, AK 99801-1182
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Senate Judiciary Committee

MEMORANDUM

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625 Fourth Avenue South
Minneapolis, Minnesota 55415



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

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

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

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

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

Model Fraternal Code
State of Alaska
March 6, 1997
Page 2

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

REVIEW OF IMPORTANT PROVISIONS

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

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

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

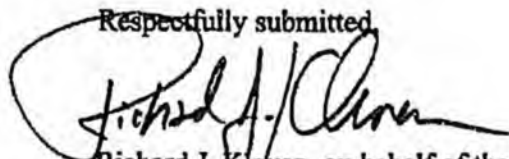
This Model Fraternal Code has been enacted in 33 states and four other states have enacted its essential features. There are no domestic fraternal benefit societies licensed in Alaska, but several societies from other states are. Those societies have over 8,000 members in Alaska, and through their 45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

Model Fraternal Code
State of Alaska
March 6, 1997
Page 3

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

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

Respectfully submitted,



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

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

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

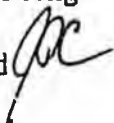
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 12, 1997

SUBJECT: Sectional Summary of House Bill 179. (Work Order No. 20-LS0720A)

TO: Representative Norman Rokeberg
Attn: Shirley Armstrong

FROM: James P. Crawford 
Assistant Revisor

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

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

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

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

Section 1. This section adds Article 1.

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

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

Representative Norman Rokeberg
March 12, 1997
Page 2

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

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

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

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

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

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

Representative Norman Rokeberg
March 12, 1997
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Section 6. This section amends AS 21.84.060 by changing "society" to "domestic society"; by inserting a date relating to a domestic society's form of government; by deleting references to certain purposes of societies, which may now be found in AS 21.84.015(a)(2); and by changing "certificate" to "certificate of authority."

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

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

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

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

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

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

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

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

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

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

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March 12, 1997
Page 4

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JPC:glc
97-166.glc

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

COMPANY NAME	DOM	LIFE					A & H PREMIUMS	
		ISSUED DURING CURRENT YEAR	IN FORCE END OF YEAR	PREMIUMS WRITTEN	BENEFITS PAID	ANNUITY CONSIDERATIONS	COLLECTIVELY RENEWABLE	ALL OTHER
AID ASSOCIATION FOR LUTHERANS	WI	17,861	190,841	1,140	725	1,039	0	150
AMERICAN POSTAL WORKERS ACC BNFT ASN	NH	0	0	0	0	0	0	0
INDEPENDENT ORDER OF FORESTERS US BR	NY	555	42,113	356	195	5	0	1
KNIGHTS OF COLUMBUS	CT	17	2,679	20	27	0	0	2
LUTHERAN BROTHERHOOD	MN	15,016	134,390	947	712	203	0	129
SONS OF NORWAY	MN	1,748	23,406	286	1,271	339	0	2
WOODMEN OF THE WORLD LIFE INS SOC	NE	0	941	10	26	0	0	0
TOTAL		35,197	394,370	2,759	2,958	1,586	0	284

7 COMPANIES

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

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

*Includes Canadian Life Insurers

**WOODMEN OF THE WORLD/OMAHA WOODMEN
LIFE INSURANCE SOCIETY**



WOODMEN TOWER, 1700 FARNAM ST.
OMAHA, NEBRASKA 68103
TELEPHONE (402) 843-1800
FACSIMILE (402) 841-0668

March 11, 1997

VIA FACSIMILE 907-465-3810

The Honorable Loven Leman
Alaska State Senate
Juneau, Alaska

MARK D. THEISEN
*Vice President and
General Counsel*

CALVIN E. ROBINSON
*Vice President and
Assistant General Counsel*

JAMES M. GLEASON
*Assistant Vice President and
Associate General Counsel*

LYNN L. ESPELAND
Assistant General Counsel

S. JAMES PATTERSON
Assistant General Counsel

Dear Senator Leman:

Re: S.119 (Model Fraternal Code)

On behalf of our 117 members in the State of Alaska, Woodmen of the World/Omaha Woodmen Life Insurance Society strongly supports the adoption of the Model Fraternal Code in Alaska. We hope that Alaska will join the over two-thirds of other states who have adopted the Model Code on behalf of fraternal benefit societies and fraternalists in their states.

Again, we support S.119 and concur with statements made in support of S.119 by the individual who will be representing the National Fraternal Congress of America (NFCA), who I believe will be Mr. Rick Kleven of Lutheran Brotherhood.

Sincerely,

Mark D. Theisen
Vice President and
General Counsel

lj

cc: David Brummond, General Counsel
National Fraternal Congress of America



Post-It™ brand fax transmittal memo 7671		# of pages > 1	
To	Sen. Loren Leman	From	Greg Eisert
Co.		Co.	Luth. Brotherhood
Dept.		Phone #	907-277-0035
Fax #	907-465-380	Fax #	907-274-6841

March 10, 1997

Senator Loren Leman
Chairman, Senate Labor and Commerce Committee

Dear Mr Chairman:

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

Thank you for your support of this bill.

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

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



**LUTHERAN
BROTHERHOOD**

H. Wayne Berg
District Representative

P.O. Box 3247
Ketchikan, AK 99901
Phone: (907) 225-8963

March 10, 1997

Senator Loren Leman
Chairman, Senate Labor and Commerce Committee
Alaska State Legislature

Dear Mr. Chairman;

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

Thank you for your support of this bill.

Sincerely,

H. Wayne Berg
600 Main St.
Ketchikan, Ak. 99901

John L. George & Associates
3328 Fritz Cove Road
Juneau, Alaska 99801
Tel. 907 789-0172 Fax 907 789-6964

March 10, 1997

The Honorable Loren Leman
Chairman Senate Labor and Commerce Committee
State Capitol
Juneau, Alaska 99801

Reference: SB 119

Dear Senator Leman,

On behalf of the American Council of Life Insurance, I would like to express our support for SB 119 which up dates the insurance statutes relating to fraternal benefit societies. Fraternal provide insurance products to their members in competition with products provided by stock and mutual life insurance companies. Although fraternal serve a relatively small and specialized membership, we believe that they are an important provider of coverage to their members.

The proposed legislation modernizes the current statutes and does not create a significant competitive advantage or disadvantage for fraternal benefit societies. Although I do not plan to testify on this bill before your committee, I wanted to express to you that we support passage of this legislation.

Sincerely,


John L. George

March 12, 1997

Senator Loren Leman
Chair, Senate Labor And Commerce
State Capitol
Juneau, AK 99801-1182

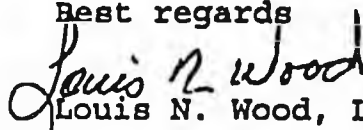
Dear Senator Leman

I am writing to ask your support for a bill now pending in the Alaska Senate that affects the future of the fraternal benefit system in this state. Senate Bill 119 would implement the provisions of the Model Fraternal Code of the National Fraternal Congress of America in Alaska.

Fraternal benefit societies are nonprofit, self-help membership organizations formed by people of common ethnic, religious, or vocation backgrounds or people holding similar moral, ethical, or patriotic beliefs. By law, fraternal benefit societies must operate on a lodge system, maintain a representative form of government and offer benefits solely to members and their dependants. The Model Fraternal Code is needed in Alaska to update the law governing fraternal benefit societies and modernize the authority for fraternal to offer meaningful benefits to members.

I ask for your support for Senate Bill 119 so that fraternal benefit societies can continue their work in addressing community needs in this state. Thank you for your consideration of this measure.

Best regards


Louis N. Wood, LUTC

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

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

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

Present Chapter 84 has been amended several times since 1966:

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

21.84.900

Definitions(added)

Sec. 36, C. 50, 1989

Sec. 3, C. 106, 1990

Sec. 214, C. 67, 1992

Sec. 215, C. 67, 1992

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

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

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

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

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

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

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

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

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

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

In addition to these major changes, the revised code:

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

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

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

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

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

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

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

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

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

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

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

21.84.1200 21.84.220; 21.84.350 & 21.84.1250

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

21.84.1210 21.84.330

Investments- This section is the same as present law.

21.84.1220 21.84.320

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

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

21.84.1230 21.84.010 and 21.84.590 - Applicability of other code provisions.

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

21.84.1240 21.84.400 Taxation - is the same as present law.

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

21.84.1260 21.84.340; .350; .360

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

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

21.84.1280 21.84.370; .380; .390

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

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

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

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

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

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

21.84.1340	21.84.470; .480; .590(9); AS 26-36	
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Unfair Methods of Competition - This section makes it clear that fraternal organizations are subject to the unfair trade practices and frauds laws of Alaska contained in AS 26-36, the same as provided in present Section 21.84.590(9). This section also makes it clear that unfair trade practices laws are not to be interpreted to interfere with membership practices of fraternal organizations. The application of AS 26-36 to societies makes obsolete and unnecessary retention of the text of present Sections 21.84.470 and 21.84.480.

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

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

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

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

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

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

E. Summary.

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

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

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/6/97

FURTHER: Judiciary

Date of 5-Day Notice: 3-6-97
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3-14-97

Labor and Commerce Committee considered SENATE BILL NO. 119

"An Act relating to fraternal benefit societies and providing for an effective date."

and recommends:

- be replaced with CS SB 119 (etc.)
- adopt previous CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
 same title
 new title
House Bill:
 same title
 technical title
 new: SCR# _____

SIGNING DP PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
Tim Kelly	✓	<i>[Signature]</i>	✓		
Mike Miller	✓	<i>[Signature]</i>			
		<i>[Signature]</i>			
CHAIR: <i>[Signature]</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
C+ED	3/10/97	✓	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Previous Committee Report(s)

to bill + CS

S B

1 3 2

FISCAL NOTE

NO. 1
 Bill Version: SB 132
 (S) Publish Date: 3/12/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: _____

Revision Date: 3/10/97
 Title: Sex Offender Registration Update
 Sponsor: Rules Committee
 Requestor: Governor

Dept. Affected: Public Safety
 BRU: Alaska State Troopers
 Component: AST Director's Office
 COMPONENT SERIAL NO. 508

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	7.7	7.7	7.7	7.7	7.7	7.7
TRAVEL						
CONTRACTUAL	1.5	1.5	1.5	1.5	1.5	1.5
SUPPLIES	.3	.3	.3	.3	.3	.3
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	9.5	9.5	9.5	9.5	9.5	9.5

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program	9.5	9.5	9.5	9.5	9.5	9.5
1006 GF/MHTIA						
Other						
TOTAL	9.5	9.5	9.5	9.5	9.5	9.5

Estimate of current year (FY 97) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

A consequence of not passing this bill would be to have Alaska fail to comply with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1996 which would put in excess of \$200.0 in jeopardy of being withdrawn from Alaska's share of the Byrne Formula Grant moneys. This bill will require contact every 90 days with an estimated 500 lifetime registrants. Additional agencies will have to be notified whenever a change occurs or whenever an offender fails to make the required contacts. Registrants who fail to comply will have to be located and appropriately charged.

Prepared By: Capt. Ted Bachman
 Division: Alaska State Troopers
 Approved by Commissioner: *Ronald L. Otte*
 Agency: Ronald L. Otte, Department of Public

Phone: 269-5650
 Date: February 3, 1997
 Date: 3/10/97

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FISCAL NOTE

No. 2
 Bill Version: SB 132
 (S) Publish Date: 9/12/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: _____

Revision Date: _____ Dept. Affected: Public Safety
 Title: Sex offender registration/release of criminal BRU: Statewide Support
justice information Component: Information Systems
 Sponsor: Rules Committee
 Requestor: Governor COMPONENT SERIAL NO. 0528

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	\$15.0	0	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	\$15.0	0	0	0	0	0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GE Match						
1004 GE	\$15.0	0	0	0	0	0
1005 GE/Program Receipts						
1006 GE/MHTIA						
Other						
TOTAL	\$15.0	0	0	0	0	0

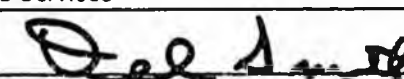
Estimate of current year (FY 97) impact: \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Section 10. Modify Alaska Public Safety Information Network (APSIN) and sex offender registration application software to track 15 year cumulative registration instead of registration based on estimated unconditional discharge date: 200 hours X \$75/hour = \$15,000.

Prepared By: Diane Shenker Phone: (907) 269-5092
 Division: Administrative Services Date: 2/4/97
 Approved by Commissioner:  Date: 2/5/97
 Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

No. 3
 Bill Version: SB 132
 (S) Publish Date: 3/12/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act relating to registration of sex offenders..."
 Sponsor: Rules Committee
 Requestor: Governor

Department Affected: Administration
 BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 COMPONENT SERIAL NO. 43

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	***	***	***	***	***	***

CAPITAL EXPENDITURES	***	***	***	***	***	***
----------------------	-----	-----	-----	-----	-----	-----

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

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	***	***	***	***	***	***
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	***	***	***	***	***	***

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill will increase both the number of potential defendants in failure to report cases and the time of exposure to such charges of some classes of sex offenders. Further, it will increase the number of sex offense trials because defendants will be less likely to plead guilty if they are subject to branding as sex offenders and many years of reporting. It is not possible to estimate the fiscal impact of this legislation with any precision.

Prepared by: Brant McGee, Public Advocate
 Division: Office of Public Advocacy

Phone: 269-3500
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Administration

Mark Boyer
 Date: 2/5/97

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FISCAL NOTE

No. 4
 Bill Version: SB 132
 (S) Publish Date: 3/12/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act relating to registration of sex offenders..."
 Sponsor: Rules Committee
 Requestor: Governor

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	***	***	***	***	***	***

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

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	***	***	***	***	***	***
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	***	***	***	***	***	***

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill amends sex offender registration laws in a number of ways. It adds to the offenses that give rise to the requirement to register upon conviction, including even misdemeanors if the offense included a sixteen or seventeen-year old. It enlarges the category of sex offenders who must register for life from recidivists only, to even first offenders if convicted of sexual assault or sexual abuse in the first degree. It is a misdemeanor crime to fail to comply with the provisions of sex offender registration. Each of these charges enlarges the pool of people who may be charged with a crime for noncompliance. Fiscal impact is certain, but with no accurate forecast of numbers of cases, unquantifiable.

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

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Mark Bover
 Agency: Department of Administration

Date: 2/5/97

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SENATE BILL 132

Sectional Analysis

Senate Bill 132 amends the sex offender registration provisions of Alaska law to bring them into compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 U.S.C. 14071, and with the final guidelines adopted under the Wetterling Act. It also simplifies release of state criminal history records by removing unworkable release restrictions based on the length of time since unconditional discharge for past convictions. Finally, by clarifying the state's current compliance with federal guidelines for obtaining national criminal background checks, it allows Alaskans continued access to FBI criminal history records to screen people for positions involving children and dependent adults.

Section 1 makes it a violation for a sex offender required to register for life as a sex offender to fail to cooperate with the Department of Public Safety in its address verification program.

Section 2 would allow the release of past conviction information to any person, for any purpose, as long as the record subject consents to the release. This is the same standard for the release of current offender information. Current law restricts the release of past conviction information based on the length of time that has elapsed since the record subject's unconditional discharge date. The unconditional discharge date has proved to be complicated to determine, and is not readily available to the Department of Public Safety. Errors in calculating this date result in the illegal release or withholding of information. Because the record subject must consent to the release, the inclusion of all past convictions will avoid problems with illegal release or withholding of information without unreasonably compromising the privacy of the record subject.

Section 3 clarifies that an "interested person" may request a *national* criminal history record from the FBI. Since Section 2 eliminates the need for "interested person" status to obtain state records, it is necessary to restate this requirement for FBI records.

An Alaskan may not request a national criminal history from the FBI unless the U.S. Attorney General as approved the Alaska statute authorizing release of the information. The U.S. Attorney General has approved Alaska's law allowing access to national criminal history information for an "interested person". However, the FBI requires that the statute explicitly state that 1/ fingerprints of the record subject are required; 2/ the information will be released only to a government entity; and 3/ a non-government entity may be told only whether the

record contains disqualifying information. Section 3 is drafted to meet federal requirements for access to FBI records and will not change current procedures.

Sections 4 and 5 amend the definitions of "current offender information" and "past conviction information" to eliminate redundancy, because both categories of information would be subject to the same release criteria under the bill.

Section 6 corrects a technical error in the definition of "serious offense" which currently refers to a subsection of AS 11.51.130 that does not exist.

Section 7 defines "applicant" and "national criminal history system" to correspond with the provisions for requesting national criminal history records from the FBI in Section 3.

Section 8 requires that a person, when registering as a sex offender, provide information about his or her appearance, future residences, and whether the person has had treatment for a mental abnormality or personality disorder since conviction of the offense requiring registration as a sex offender.

Section 9 specifies that a sex offender who must register for life comply with the laws and regulations adopted by the Department of Public Safety for address verification.

Section 10 adds to those sex offenders who must register for life, presently recidivists, persons convicted for the first time of Sexual Assault in the First Degree and Sexual Abuse of a Minor in the First Degree, both unclassified felonies. Section 10 also provides that the period of registration for other sex offenders is 15 years from the date of registration, rather than from the date of unconditional discharge. It also provides that a sex offender doesn't get credit toward the 15 year registration requirement if he or she fails to notify the department of address changes or to check in with the department annually; further, it provides that an offender can get credit toward the 15 year registration requirement for complying with sex offender registration laws in another state or with regulations adopted by the FBI.

Section 11 adds offenses to the definition of "sex offense" for sex offender registration as required by the Wetterling Act. The additional offenses include kidnaping by a person who is not a parent of a person under 18 years of age and inducing a person who is 16 or 17 years of age to engage in prostitution (the statute presently includes inducing a person under 16 years of age to engage in prostitution).

Section 12 is a technical correction that provides that a person convicted of incest be identified as convicted of "felony sexual abuse" rather than "felony sexual abuse of a minor", because incest does not necessarily involve a minor.

Section 13 requires the Department of Public Safety to adopt regulations addressing the notification of the FBI and local law enforcement agencies when a sex offender changes

residence, and to notify the FBI if the department is unable to locate a sex offender. It also requires the department adopt regulations for address verification every 90 days of sex offenders registered for life .

Section 14 provides that the Department of Public Safety and other law enforcement agencies may not be found civilly liable for an error in administering the sex offender registration requirements.

Section 15 clarifies the duties of the Departments of Public Safety and Corrections for registration as a sex offender of an inmate being released from prison.

Section 16 requires the Department of Corrections to inform a person of sex offender registration requirements when taking supervision of the person under the Interstate Corrections Compact.

Sections 17 and 18 contain repealers. They are described in two sections because of different effective dates.

Section 19 attributes the burden of showing that a person is not required to register as a sex offender as a result of being unconditionally discharged before July 1, 1984, to the person claiming the exempt status.

Sections 20 - 22 contain procedural and effective date provisions.

SENATE BILL 132/ HOUSE BILL 186

Prepared by the Department of Public Safety

EXPLANATIONS RE. AMENDMENTS TO AS 12.62:

Section 2 would allow Public Safety to include all past convictions in a criminal history report, instead of excluding those convictions for which the subject has been unconditionally discharged for ten years or more. This change is needed because

- (1) Public Safety cannot accurately calculate the unconditional discharge date, and
- (2) the 10-year limit excludes many convictions that may be important for a potential employer, licensing agency, or other record user to consider.

UNCONDITIONAL DISCHARGE DATE COMPUTATION EXAMPLE

Greg was arrested on May 1, 1976 and convicted of 8 counts of Forgery on May 1, 1977. He received a sentence of 6 years in jail and 5 years probation. One third of his jail time is automatically deducted for "mandatory good time." Here's how Public Safety *could* compute his unconditional discharge date:

Date of Sentence	5/1/77
Add Jail	+ 6 years
Deduct "good time"	- 2 years (1/3 of 6 years)
Add Probation	+ <u>5 years</u>
Discharge Date	= 5/1/86

But there's a problem: Greg received "credit for time served" while awaiting sentencing in this case. This means he essentially started serving his sentence earlier, so his unconditional discharge date would also be earlier. Unfortunately, information about credit for time served is not recorded in APSIN. The only way to avoid "overestimating" discharge dates, then, is to use the arrest date, rather than the sentence date, as the beginning point to calculate the discharge date. This is the formula Public Safety must use:

Date of Arrest	5/1/76
Add Jail	+ 6 years
Deduct "good time"	- 2 years (1/3 of 6 years)
Add Probation	+ <u>5 years</u>
Discharge Date	= 5/1/85

Post-it [®] Fax Note	7671	Date	5/2	# of pages	7
To	Sandy Peay-Proctor		From	Kerrine	
Co./Dept		Co.			
Phone #		Phone #			
Fax #		Fax #			

The problem is that Greg's credit for time served really didn't include the entire year between the arrest date and sentence date. Although it is not recorded in APSIN, Greg was actually released on bail immediately after his arrest. It was not until six months later, when he violated his bail conditions, that the court revoked his bail and he went to jail to await his trial and sentencing. So Greg really only received six months of credit for time served. Greg's *actual* unconditional discharge date should be figured as follows (the shaded information is not available in APSIN):

Date of Sentence	5/1/77
Add Jail	+ 6 years
Deduct "good time"	- 2 years (1/3 of 6 years)
<i>Less Credit for Time Served</i>	<i>- 6 months</i>
Add Probation	<u>+ 5 years</u>
Discharge Date	= 11/1/85

But there are more factors to consider in Greg's case - none of which can be discerned from data in APSIN. When Greg was released from prison on 11/1/80, he began serving 5 years of probation, concurrent to serving mandatory parole for the 2 years he received as credit for "good time." The Parole Board revoked Greg's "mandatory parole" on 11/1/81, after he'd already completed 1 year of the mandatory parole period. The Parole Board has the discretion to revoke the entire 2 years of Greg's mandatory parole, not just the year he has remaining, and the board did so in Greg's case. So on 11/1/81, Greg returned to prison to serve 2 years of mandatory parole time. Greg didn't have to serve 2 years, though, because he again received the "mandatory good time" reduction for his revoked "mandatory parole" which reduced his new jail time to only 16 months (2/3 of 2 years). But during that time, Greg was found guilty by a correctional disciplinary board of possessing drugs. As punishment, the disciplinary board took away Greg's 8 months of "good time credit." That delayed Greg's jail release date until 11/1/83. After he successfully finishes his 4 remaining years of probation, Greg is finally unconditionally discharged on 11/1/87:

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Discharge Date	= 11/1/87

If someone requested Greg's criminal history record on May 1, 1995, Public Safety would exclude Greg's eight Forgery convictions from the report, having erroneously calculated Greg's discharge date to be 5/1/85 based on data available in APSIN. Believing that Greg was unconditionally discharged ten years prior to the record request, Public Safety would have

continued making this same error anytime Greg's record was requested over the next 2 ½ years. Not until 11/1/97 would Public Safety actually be correct to exclude Greg's convictions from a criminal history report.

Greg's hypothetical case is actually uncharacteristically simple. It involved only one court case, only one "statutory good time" formula, no consecutive sentences, no discretionary parole, nor any suspension of jail or probation. It is not uncommon for actual cases to involve dozens of overlapping charges (or "counts"). There are frequently overlapping periods of jail, probation, discretionary parole, mandatory parole, and pretrial detention time during which "credit for time served" applies to some, but not other charges, any of which may be served concurrently or consecutively. Neither does Greg's example address the varying "statutory good time" formulae and rules which have been in effect at different times over the past decades. The Department of Corrections uses a voluminous "time accounting" manual to track the rules for computing discharge dates and is nevertheless faced with constant litigation disputing computation of discharge dates. Removing the 10-year unconditional discharge date limit for criminal history reports will allow Public Safety to escape similar endless litigation.

EXAMPLES OF EXCLUDING RELEVANT CONVICTIONS FROM REPORTS

It is important to remember that a person cannot anonymously request another person's criminal history report. To get the report, the requester must submit the subject's fingerprints to Public Safety or ask the subject to get his or her own report from Public Safety, based on photo ID. The record subject's past convictions are therefore available to another person only if the record subject agrees to the background check. Because of this, most records are requested when someone is applying for a job or license for which a background check is required.

Another problem with the "10-year limit" is that some convictions, no matter how old, may be very relevant to the purpose of the record check. Recognizing this, the current law exempts "serious offense" convictions from the 10-year limit, but only if the report is for an "interested person" - one who is screening an applicant to have "supervisory or disciplinary power over a minor or dependent adult." This definition of "serious offense" poses yet another problem - it includes all felonies, and certain misdemeanors, including those that involve domestic violence. Unfortunately, APSIN "rap sheets" don't describe the relationship between a victim and an offender, so there's no way to know if a misdemeanor conviction "involves domestic violence." Public Safety plans to begin "flagging" domestic violence convictions in APSIN if the courts will provide that information on criminal judgments. Unfortunately, this solution won't help identify "serious offense - domestic violence" convictions among the tens of thousands of existing APSIN criminal history records.

Even if APSIN could accurately compute the unconditional discharge date *and* accurately identify all "serious offenses" many relevant convictions would be withheld, either because a record requester doesn't qualify as an "interested person" or because a crime is not considered "serious" or both. The following examples illustrate the why limits should not be placed on conviction records. It is impossible to predict every appropriate consideration for every

individual record check – it is better simply provide all past convictions and let the record user weigh the importance of them in light of the particular job, license, or other privilege being considered. This is why:

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Example 2. The same volunteer fire department also screens volunteer paramedics. Joe was convicted of multiple counts of Sexual Abuse of a Minor in the Second Degree (a class B felony) after sexually abusing young children under the guise of “playing doctor.” Joe was unconditionally discharged in 1983. Again, the volunteer fire department will not learn of Joe’s past even if it requests a criminal history record check, because of the 10-year rule. A paramedic would certainly have opportunities to be alone with and touch children, especially vulnerable children who may be injured or unconscious. A paramedic might even be seen as an “authority figure” during an emergency situation. However, the fire department does not fall under the definition of an “interested person” because a paramedic does not actually have “supervisory or disciplinary power” over a minor or dependent adult.

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Example 8. Jerry was convicted twice for Assault in the Third Degree (a class C felony), once for Stalking in the First Degree (a class C felony), and ten more times for Assault in the Fourth Degree (a class A misdemeanor). In all the cases, the victims were Jerry's wives, ex-wives, women he had dated, or the children of those women. Jerry was unconditionally discharged for the last of the charges ten years ago. Nine years ago he was indicted for Assault in the First Degree, (a Class A felony) for allegedly attacking his then-wife with a kitchen knife, causing her permanent blindness in one eye, a ruptured spleen, and other serious injuries. However, after spending two years in jail awaiting trial, he was found "Not Guilty By Reason of Insanity." The court immediately committed Jerry to the custody of the Commissioner of Health and Social Services. Jerry was released from a mental institution seven years later - he's been out for two months now. Jerry has just moved to a rural Alaskan village and has volunteered to provide building maintenance services at a counseling center for battered women. The center requests a criminal history report, which contains none of Jerry's convictions because of the 10-year limit. Naturally, Jerry's acquittal is not included in the report, so the center has no way of knowing that Jerry's past ten years of "crime-free" behavior coincided with ten years of institutionalization. Since Jerry's duties don't involve "supervisory or disciplinary power" over children or dependent adults, the center does not qualify for an "interested person" report that would include Jerry's convictions - all of which meet the definition of "serious offense."

EXPLANATION OF "INTERESTED PERSON" REPORTS FROM FBI

Section 3 is a technical amendment to ensure that Alaska's law will continue to allow "interested persons" to request national criminal history records as well as state criminal history records.

Federal law restricts access to F.B.I. (national criminal history) records to (1) criminal justice agencies, and (2) persons authorized access by a state or federal law that has been approved by the U.S. Attorney General. This means that when Alaska enacts a law specifically requiring school teachers, school bus drivers, or foster parents to undergo a criminal history check, Public Safety can submit it to the FBI for federal approval. If approved, Public Safety enters the "approved statute" citation on fingerprint cards that it sends to the FBI for national criminal history record checks under that law.

The F.B.I. has already approved Alaska's law allowing "interested persons" to get national criminal history records to screen applicants for working with children or vulnerable adults. If Alaska eliminates the need for an "interested person" report at the state record level, by making all past convictions available to all persons, it needs to retain the "interested person" provisions that have already been approved by the FBI for record checks at the national level.

Only a government agency may view the FBI report. If the record is requested by someone other than a government agency, some government agency must "screen" the report. The government agency may only tell the requester whether or not the subject has been convicted of a "serious offense" but cannot tell the details of the record.

Many "interested persons" are government agencies, for example the Department of Education may screen teachers, the Department of Administration may screen state nursing home employees, and the Department of Health and Social Services may screen day care centers. In each of these examples, Public Safety may release F.B.I. records to the government agency with jurisdiction over the particular employment, license, or permit being sought.

However, if DHSS contracts with a private firm to handle background screening for foster parents, Public Safety cannot give the F.B.I. record to the private contractor. Instead, Public Safety must give it to the government agency responsible for the private contractor's work (DHSS).

Sometimes there is no government agency with jurisdiction over an activity that involves "supervisory or disciplinary power over a minor or dependent adult." For example, no state agency is responsible for licensing or otherwise screening Boy Scout volunteers or privately employed babysitters. Since these examples meet the "interested person" definition that has already been approved by the F.B.I., however, national criminal history checks may be requested. Public Safety must screen the FBI record since no other government agency is involved. Public Safety will tell the Boy Scout Troop or private person whether or not the FBI record shows any "serious offense" convictions but may not provide details of the FBI record.

SENATE BILL 132/ HOUSE BILL 186

Prepared by the Department of Public Safety

EXPLANATIONS RE. AMENDMENTS TO AS 12.62:

Section 2 would allow Public Safety to include all past convictions in a criminal history report, instead of excluding those convictions for which the subject has been unconditionally discharged for ten years or more. This change is needed because

- (1) Public Safety cannot accurately calculate the unconditional discharge date, and
- (2) the 10-year limit excludes many convictions that may be important for a potential employer, licensing agency, or other record user to consider.

UNCONDITIONAL DISCHARGE DATE COMPUTATION EXAMPLE

Greg was arrested on May 1, 1976 and convicted of 8 counts of Forgery on May 1, 1977. He received a sentence of 6 years in jail and 5 years probation. One third of his jail time is automatically deducted for "mandatory good time." Here's how Public Safety could compute his unconditional discharge date:

Date of Sentence 5/1/77
 Add Jail + 6 years
 Deduct "good time" - 2 years (1/3 of 6 years)
 Add Probation + 5 years
 Discharge Date = 5/1/86

But there's a problem: Greg received "credit for time served" while awaiting sentencing in this case. This means he essentially started serving his sentence earlier, so his unconditional discharge date would also be earlier. Unfortunately, information about credit for time served is not recorded in APSIN. The only way to avoid "overestimating" discharge dates, then, is to use the arrest date, rather than the sentence date, as the beginning point to calculate the discharge date. This is the formula Public Safety must use:

Date of Arrest 5/1/76
 Add Jail + 6 years
 Deduct "good time" - 2 years (1/3 of 6 years)
 Add Probation + 5 years
 Discharge Date = 5/1/85

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The problem is that Greg's credit for time served really didn't include the entire year between the arrest date and sentence date. Although it is not recorded in APSIN, Greg was actually released on bail immediately after his arrest. It was not until six months later, when he violated his bail conditions, that the court revoked his bail and he went to jail to await his trial and sentencing. So Greg really only received six months of credit for time served. Greg's *actual* unconditional discharge date should be figured as follows (the shaded information is not available in APSIN):

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But there are more factors to consider in Greg's case - none of which can be discerned from data in APSIN. When Greg was released from prison on 11/1/80, he began serving 5 years of probation, concurrent to serving mandatory parole for the 2 years he received as credit for "good time." The Parole Board revoked Greg's "mandatory parole" on 11/1/81, after he'd already completed 1 year of the mandatory parole period. The Parole Board has the discretion to revoke the entire 2 years of Greg's mandatory parole, not just the year he has remaining, and the board did so in Greg's case. So on 11/1/81, Greg returned to prison to serve 2 years of mandatory parole time. Greg didn't have to serve 2 years, though, because he again received the "mandatory good time" reduction for his revoked "mandatory parole" which reduced his new jail time to only 16 months (2/3 of 2 years). But during that time, Greg was found guilty by a correctional disciplinary board of possessing drugs. As punishment, the disciplinary board took away Greg's 8 months of "good time credit." That delayed Greg's jail release date until 11/1/83. After he successfully finishes his 4 remaining years of probation, Greg is finally unconditionally discharged on 11/1/87:

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If someone requested Greg's criminal history record on May 1, 1995, Public Safety would exclude Greg's eight Forgery convictions from the report, having erroneously calculated Greg's discharge date to be 5/1/85 based on data available in APSIN. Believing that Greg was unconditionally discharged ten years prior to the record request, Public Safety would have

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"supervisory or disciplinary power" over the Parkinson's patient) she would not learn of Ted's past convictions because Cruelty to Animals, even when a person "intentionally inflicts severe and prolonged pain or suffering on an animal" is not a "serious offense."

Example 7. Eleven years ago in Fairbanks, Susan was convicted of Criminal Use of a Computer (a Class C felony). She was unconditionally discharged ten years ago. Susan applies for a job as a computer programmer for the State of Alaska, in Ketchikan. She lies on the state's employment application, checking "No" in response to the question "Have you ever been convicted of a felony?" She knows that even if her employer requests a criminal history background check, it won't show her conviction because of the ten-year limit. She's hired. Her supervisor later mentions Susan's name to a relative in Fairbanks, who happened to know about Susan's conviction because of extensive local news coverage at the time. Armed with this information, including the approximate date of conviction, the supervisor in Ketchikan may dispatch someone to go through the manual records at the Fairbanks courthouse, a time-consuming process. (The court records are not protected by the same kinds of confidentiality as Public Safety's records.) Upon finding court documentation of Susan's conviction, the supervisor can begin the lengthy, costly process of termination since Susan lied on her employment application.

Example 8. Jerry was convicted twice for Assault in the Third Degree (a class C felony), once for Stalking in the First Degree (a class C felony), and ten more times for Assault in the Fourth Degree (a class A misdemeanor). In all the cases, the victims were Jerry's wives, ex-wives, women he had dated, or the children of those women. Jerry was unconditionally discharged for the last of the charges ten years ago. Nine years ago he was indicted for Assault in the First Degree, (a Class A felony) for allegedly attacking his then-wife with a kitchen knife, causing her permanent blindness in one eye, a ruptured spleen, and other serious injuries. However, after spending two years in jail awaiting trial, he was found "Not Guilty By Reason of Insanity." The court immediately committed Jerry to the custody of the Commissioner of Health and Social Services. Jerry was released from a mental institution seven years later - he's been out for two months now. Jerry has just moved to a rural Alaskan village and has volunteered to provide building maintenance services at a counseling center for battered women. The center requests a criminal history report, which contains none of Jerry's convictions because of the 10-year limit. Naturally, Jerry's acquittal is not included in the report, so the center has no way of knowing that Jerry's past ten years of "crime-free" behavior coincided with ten years of institutionalization. Since Jerry's duties don't involve "supervisory or disciplinary power" over children or dependent adults, the center does not qualify for an "interested person" report that would include Jerry's convictions - all of which meet the definition of "serious offense."

EXPLANATION OF "INTERESTED PERSON" REPORTS FROM FBI

Section 3 is a technical amendment to ensure that Alaska's law will continue to allow "interested persons" to request national criminal history records as well as state criminal history records.

Federal law restricts access to F.B.I. (national criminal history) records to (1) criminal justice agencies, and (2) persons authorized access by a state or federal law that has been approved by the U.S. Attorney General. This means that when Alaska enacts a law specifically requiring school teachers, school bus drivers, or foster parents to undergo a criminal history check, Public Safety can submit it to the FBI for federal approval. If approved, Public Safety enters the "approved statute" citation on fingerprint cards that it sends to the FBI for national criminal history record checks under that law.

The F.B.I. has already approved Alaska's law allowing "interested persons" to get national criminal history records to screen applicants for working with children or vulnerable adults. If Alaska eliminates the need for an "interested person" report at the state record level, by making all past convictions available to all persons, it needs to retain the "interested person" provisions that have already been approved by the FBI for record checks at the national level.

Only a government agency may view the FBI report. If the record is requested by someone other than a government agency, some government agency must "screen" the report. The government agency may only tell the requester whether or not the subject has been convicted of a "serious offense" but cannot tell the details of the record.

Many "interested persons" are government agencies, for example the Department of Education may screen teachers, the Department of Administration may screen state nursing home employees, and the Department of Health and Social Services may screen day care centers. In each of these examples, Public Safety may release F.B.I. records to the government agency with jurisdiction over the particular employment, license, or permit being sought.

However, if DHSS contracts with a private firm to handle background screening for foster parents, Public Safety cannot give the F.B.I. record to the private contractor. Instead, Public Safety must give it to the government agency responsible for the private contractor's work (DHSS).

Sometimes there is no government agency with jurisdiction over an activity that involves "supervisory or disciplinary power over a minor or dependent adult." For example, no state agency is responsible for licensing or otherwise screening Boy Scout volunteers or privately employed babysitters. Since these examples meet the "interested person" definition that has already been approved by the F.B.I., however, national criminal history checks may be requested. Public Safety must screen the FBI record since no other government agency is involved. Public Safety will tell the Boy Scout Troop or private person whether or not the FBI record shows any "serious offense" convictions but may not provide details of the FBI record.

CS FOR SENATE BILL NO. 132(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to registration of sex offenders and child kidnappers and to the
2 central registry of sex offenders and child kidnappers; and amending Rules 11(c)
3 and 32(c), Alaska Rules of Criminal Procedure."

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

5 * Section 1. AS 11.56.840 is amended to read:

6 Sec. 11.56.840. Failure to register as a sex offender or child kidnapper.

7 (a) A person commits the crime of failure to register as a sex offender or child
8 kidnapper if the person [WHO] knowingly fails to (1) register, (2) file the written
9 notice of change of address, [OR] (3) file the annual or quarterly written notice,
10 verification, or statement, or (4) or supply all of the information required to be
11 submitted under (1) - (3) of this subsection, as required in AS 12.63.010,

12 (b) Failure to register as a sex offender or child kidnapper is [, IS
13 GUILTY OF] a class A misdemeanor.

14 * Sec. 2. AS 12.55.148 is amended to read:

1 **Sec. 12.55.148. Judgment for sex offenses or child kidnappings.** (a) When
2 a defendant is convicted of a sex offense or child kidnapping by a court of this state,
3 the written judgment must set out the requirements of AS 12.63.010.

4 (b) In this section, "sex offense" and "child kidnapping" have [HAS] the
5 meanings [MEANING] given in AS 12.63.100.

6 * **Sec. 3.** AS 12.63.010(a) is amended to read:

7 (a) A sex offender or child kidnapper who is physically present in the state
8 shall register as provided in this section. The sex offender or child kidnapper shall
9 register within

10 (1) seven days of release from an in-state correctional facility;

11 (2) seven days of conviction for a sex offense or child kidnapping if
12 the sex offender or child kidnapper is not sentenced to a term of incarceration; or

13 (3) 14 days of becoming physically present in the state, except the sex
14 offender or child kidnapper shall register within seven days of becoming physically
15 present in the state if the sex offender or child kidnapper

16 (A) is a probationer or parolee being supervised by the state as
17 the receiving state under AS 33.36.110 - 33.36.120; or

18 (B) has been released from an out-of-state correctional facility
19 where the sex offender or child kidnapper was serving a term of incarceration
20 for a sex offense or child kidnapping conviction in this state.

21 * **Sec. 4.** AS 12.63.010(b) is amended to read:

22 (b) A sex offender or child kidnapper required to register under (a) of this
23 section shall register in person at the Alaska state trooper post or municipal police
24 department located nearest to where the sex offender or child kidnapper resides at the
25 time of registration. To fulfill the registration requirement, the sex offender or child
26 kidnapper shall

27 (1) complete a registration form that includes, at a minimum, the sex
28 offender's or child kidnapper's name, address, place of employment, date of birth,
29 each conviction for a sex offense or child kidnapping for which the duty to register
30 has not terminated under AS 12.63.020, date of sex offense or child kidnapping
31 convictions, place and court of sex offense or child kidnapping convictions, the date

1 the sex offender or child kidnapper was unconditionally discharged from a
2 conviction for a sex offense or child kidnapping, all aliases used, [AND] driver's
3 license number, any identifying features of the sex offender or child kidnapper,
4 anticipated changes of address, and a statement concerning whether the offender
5 or kidnapper has had treatment for a mental abnormality or personality disorder
6 since the date of conviction for an offense requiring registration under this
7 chapter;

8 (2) allow the Alaska state troopers or municipal police to take a
9 complete set of the sex offender's or child kidnapper's fingerprints and to take the
10 sex offender's or child kidnapper's photograph.

11 * Sec. 5. AS 12.63.010(c) is amended to read:

12 (c) If a sex offender or child kidnapper changes residence within the state
13 after having registered under (a) of this section, the sex offender or child kidnapper
14 shall provide written notice of the change to the Alaska state trooper post or municipal
15 police department located nearest to the new residence within 10 days of the change.

16 * Sec. 6. AS 12.63.010(d) is amended to read:

17 (d) A sex offender or child kidnapper required to register

18 (1) for 15 years under (a) of this section and AS 12.63.020(a)(2) shall,
19 annually, during the term of a duty to register under AS 12.63.020, on a date set by
20 the department at the time of the sex offender's or child kidnapper's initial
21 registration, provide written verification [NOTICE] to the department, in the manner
22 required by the department, of the sex offender's or child kidnapper's address
23 and any changes to the information previously [INITIALLY] provided under (b)(1)
24 of this section;

25 (2) for life under (a) of this section and AS 12.63.020(a)(1) shall, not
26 less than quarterly, on a date set by the department, provide written verification
27 to the department, in the manner required by the department, of the sex
28 offender's or child kidnapper's address and any changes to the information
29 previously provided under (b)(1) of this section [, OR IF THERE ARE NO
30 CHANGES, A STATEMENT TO THAT EFFECT].

31 * Sec. 7. AS 12.63.020 is amended to read:

1 Sec. 12.63.020. Duration of sex offender or child kidnapper duty to
2 register. (a) The duty of a sex offender or child kidnapper to comply with the
3 requirements of AS 12.63.010 for each sex offense or child kidnapping

4 (1) continues for the lifetime of a sex offender or child kidnapper
5 convicted of

6 (A) one aggravated sex offense; or

7 (B) two or more sex offenses, two or more child kidnappings,
8 or one sex offense and one child kidnapping;

9 (2) ends 15 years following the sex offender's or child kidnapper's
10 unconditional discharge from a conviction for a single sex offense that is not an
11 aggravated sex offense or a single child kidnapping; the registration period under
12 this paragraph

13 (A) is tolled for each year that a sex offender or child
14 kidnapper fails to comply with the requirements of this chapter; and

15 (B) may include the time a sex offender or child kidnapper
16 has complied with the sex offender or child kidnapper registration
17 requirements of another jurisdiction if the sex offender or child kidnapper
18 provides the department with proof of compliance while the sex offender
19 or child kidnapper was absent from this state.

20 (b) The department shall adopt, by regulation, procedures to notify a sex
21 offender or child kidnapper who, on the registration form under AS 12.63.010, lists
22 a conviction for a sex offense or child kidnapping that is a violation of a former law
23 of this state or a law of another jurisdiction, of the duration of the offender's or
24 kidnapper's duty under (a) of this section for that sex offense or child kidnapping.
25 As a part of those regulations, the department shall require the offender or
26 kidnapper to supply proof of unconditional discharge and the date it occurred.

27 * Sec. 8. AS 12.63 is amended by adding a new section to read:

28 Sec. 12.63.030. Notification of other jurisdictions. (a) If a sex offender or
29 child kidnapper notifies the department that the sex offender or child kidnapper is
30 moving from the state, the department shall notify the Federal Bureau of Investigation
31 and the state where the sex offender or child kidnapper is moving of the sex offender's