ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672
9623 SENATE LABOR & COMMERCE

customers happy. SSSB 202 would make more consumers unhappy by increasing their premiums to pay trial lawyers' fees.

Last year this Legislature enacted one of the best tort reform bills in the country (HB 58). Sponsor Substitute Senate Bill 202 is a poorly guarded attempt to reverse those reforms and increase the cost of insurance for all Alaskans. Thus, I respectfully request your NO vote on SSSB 202.

Sincerely,

Trisha Connors

Trisha M. Connors
Counsel

tmc/am
Enclosures
cc: Members of the Senate Labor and Commerce Committee
John George
Michael Duncan
Robert Zeman

USAA STATE LEGISLATIVE AFFAIRS
915 "L" Street, Suite 1100
Sacramento CA 95814
Phone: (916)552-6715
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Recipient:	Senator Loren Leman	Sent By:	James R. Jinks, AVP
Company:	Alaska State Senate	Company:	USAA Senior Legislative Counsel
Fax Number:	1 907 465 3810	Fax Number:	(916) 442-1328
Voice Number:		Voice Number:	(916)552-6715

Date: 4/1/98

Time: 3:28:43 PM

Total No. Pages: 3

Subject: AK SB 202

Message:

Please see attached.

USAA

April 1, 1998

The Honorable Loren Leman
Chairman, Senate Labor and Commerce Committee
State Capitol, Room 113
Juneau AK 99801-1182

Dear Senator ~~Leman~~ Loren:

I am writing on behalf of the United Services Automobile Association (USAA) to stress our continued opposition to Senate Bill 202 (Donley). USAA is a member owned company providing insurance and financial services to military families worldwide. More than 12,000 USAA owner-members live and work in Alaska and more than 700 reside in District G.

You may recall my February 4, 1998 letter in opposition to Senate Bill 202 when your committee first heard the measure. I have reviewed a working draft of the amended version of Senate Bill 202 that I am told the committee will hear this week. Notwithstanding the amendments, I believe that passage of Senate Bill 202 would completely reverse last year's meaningful tort reforms and drastically increase auto insurance rates for all Alaskans.

One of the most objectionable sections of Senate Bill 202 remains unchanged from the original version of the bill. Senate Bill 202 still requires insurers to pay loss claims within 30 days of receiving notice of the loss or face yet another possible payoff in excess of policy limits. If the insurer disputes the existence of the claim or the amount of the claim and the claimant prevails at trial or arbitration, the insurer must pay all damages up the policy limits and at least a 20 percent penalty. In addition, the insurer is subject to a second law suit (with more damages and attorneys' fees) for bad claims practices. You may recall that in the closing days of the passage of House Bill 58, Senator Donley proposed an amendment which would have created a similar bad faith cause of action. The Senate rejected that proposal because it would have negated the desired effect of the tort reform bill.

Referring again to the agreements made during the passage of House Bill 58, I believe there was an agreement not to alter the application of Civil Rule 82 as a part of the tort reform package. It would seem, then, that an effort to expand the application of Rule 82 violates the agreements that produced the 1997 reforms. The amended version of Senate Bill 202 would greatly expand Civil Rule 82's application and require payment of prejudgment interest without regard to policy limits. Thus, claimants would actually be forced to take cases to judgment rather than settle for policy limits in order to collect prejudgment interest as an additional benefit. Current law in Alaska does not permit a statutory increase in policy limits for prejudgment interest. This obvious attempt to provide litigants a windfall for taking a case to trial rather than settling at or below the policy limits seems to be a blatant attempt to eliminate

USAA State Legislative Affairs 915 L Street, Suite 1100 Sacramento, CA 95814
TELEPHONE (916) 552-6715 FACSIMILE (916) 442-1328

policy limits. Thus, all Alaska policyholders will pay premiums based on the increased policy limits created by this provision in Senate Bill 202.

Finally, I am perplexed at the motives behind Senate Bill 202. While in Juneau, we met with Senator Donley in an attempt to ascertain what problems he wants to address with his bill. Unfortunately, other than sharing some personal experiences and observations, he did not provide a great deal of insight as to his motivations nor did he relate any specific complaints received from constituents. USAA has not experienced complaints from policyholders but we believe the passage of Senate Bill 202 would result in complaints as premiums were forced to increase. In recent months, USAA has experienced reduced claims costs in Alaska and has been able to pass those savings along to our insureds. While it would be impossible to attribute all of the cost reductions to the influence of House Bill 58's tort reform provisions, I believe it is safe to say that those reforms have made a strong contribution to reducing insurance claims costs.

Last year the Alaska Legislature enacted one of the best tort reform bills in the country (House Bill 58). Senate Bill 202 is a poorly guarded attempt to reverse those reforms and increase the cost of auto insurance for all Alaskans. Thus, I respectfully request your NO vote on Senate Bill 202.

Sincerely,

James R. Jinks, AVP
USAA Senior Legislative Counsel

JRJ:djn

FEB 20 1998

ALLSTATE INSURANCE GROUP

LAW AND REGULATION
3100 Zinfandel Dr., Suite 400
Rancho Cordova, CA 95670

Writer's Direct Dial 916-852-4899
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THERESA BEDOY
Government Relations Manager

February 17, 1998

Senate Labor and Commerce Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

RE: SB 202 (Sen. Dave Donley) An Act amending Rules 79 and 82 - OPPOSE

Dear Senators:

I am writing on behalf of the Allstate Insurance Company which is the number 2 insurer in the state of Alaska. **Allstate strongly opposes SB 202. This expensive, anti-consumer bill will drive up the cost of every insurance policy in Alaska at a time when all concerned are working to lower costs.** The legislature worked hard last year to pass meaningful tort reform. Let us not rush to judgment and instead give last year's reforms a chance to make a difference.

SB 202 goes too far. Fair Insurance Claims Practices already exist in Alaska. Senator Donley's press release states that "Senate Bill 202 addresses the growing problem of unfair claims practices..." From Allstate's viewpoint, there is no demonstrated dramatic increase in complaints. Our Alaska claims complaint statistics show only an increase of six complaints from 1996 to 1997 based on a customer base of almost 147,000 customers.

I have listed our concerns about the bill by section.

Section 3. SB 202 interferes in the relationship between a company and its agents. It provides termination protection for insurance agents unlike any other employees or contractors receive. It installs a new bureaucratic review process by the Director of Insurance. It also requires the director to adopt regulations to define what a termination for "good cause" might look like. The "good cause" list developed would never be broad enough to consider what could happen or what reasonable people would all agree would be terminable actions.

This protectionism for agents actually works against consumers and gives agents license to be able to retain their position even if they are providing poor service.

Agent protectionism is not needed; Allstate has terminated only one agent involuntarily since 1985. Our agency distribution system in Alaska is multi-dimensional; it includes employee agents, exclusive agents and independent agencies. It is very costly for us to hire, train and maintain an agency force. And agent turnover is costly too, because many times when an agent leaves so do many customers. In fact, there is a built-in economic incentive for companies not to terminate agents.

Section 4. This section inhibits the claims department's communication with insureds and repair shops. It undermines the insurer's ability to investigate and prepare a proper defense in both first and third party claims. It also inhibits the insurer's ability to provide the best customer service possible, by limiting the company's ability to act as an advocate for the insured to the body shop. This section also adversely impacts the company's ability to investigate and fight fraud. This will lead to increased costs for all policyholders.

Section 6. This section imposes a statutory duty on the insurer to pay first party pre-judgment interest, regardless of the policy limits. Previously, this was a subject of claims settlement negotiations. By mandating the exposure to the insurer, the cost of litigation will increase leading to higher insurance premiums.

SB 202 assumes that the Unfair Claims Settlement Practices Regulations in place in Alaska are not tough enough. We disagree with that premise. Currently Alaska law sets out a strict timetable for insurers to pay claims. If an insurer fails to meet the requirements under the Unfair Claim Settlement Acts and Practices they face strict disciplinary action. The enforcement actions by the Division of Insurance could include the possibility of fines or revocation of an insurer's license to sell insurance in Alaska. Current law provides sound consumer protection against insurance companies who fail to abide by these requirements.

Section 7. This section requires that insurers pay claims 30 days from receiving notice of loss (as opposed to proof of loss). Though the new time frames are not significantly different from the current Unfair Claims Practice Act as imposed on first party claims, the application of these rules to third party claims will have a significant detrimental effect on claims handling procedures. This section does not allow for adequate time to investigate potential fraudulent claims.

It also allows a claimant to finance litigation with that part of the loss that cannot be contested, or in the alternative, encourages plaintiff attorneys to litigate for the possibility that attorney's fees will be paid should the plaintiff prevail. If applied to third party claims, the section will lead to increased litigation costs and higher premiums for policyholders.

Section 8. This section leads to an un-level playing field. It requires that insurers incur arbitration costs, except when granted relief by the arbitrator. It imposes a cost not currently rated for and will lead to higher premiums and costs.

Section 9. SB 202 creates mandates for insurers to provide a product and imposes an artificial price cap. It requires insurers to create a short term insurance product and then imposes an artificial price cap instead of sound actuarial principles. Currently if individuals want to purchase insurance for a short time, they can buy a policy when they need it and terminate it at will.

Section 10. SB 202 would prohibit an insurer from charging a higher premium or nonrenewing a policy if a minor had been convicted of an alcohol offense. An insurer should have the flexibility to price or take action on alcohol related offenses. If this provision becomes law, all law-abiding policyholders will pay for the increased costs associated with alcohol related offenses.

Section 11. This section creates another mandate that will increase costs. It states that insurers who sell auto insurance in Alaska must provide a statewide toll-free number in addition to any local listing. Currently our claims office already has a toll free number. Does this section mean that all of our agents and independent agents must purchase a toll free line into their offices? This may not be cost effective for a small business person. Agents and all insurers should have the right to determine if it is cost effective and competitive to incur the costs of setting up and staffing toll free numbers in a state. The free market system dictates customer supply and demand. If customers create a sufficient amount of demand and companies are losing business because of a competitor's toll-free number, good business sense will fill the void. The government should not dictate the practice.

Sections 12 & 13. These sections impose three new requirements on insurers that will lead to an increase in the premiums policyholders will be charged. The sections require that 1) medical payments coverage be offered at every renewal, 2) the insurer is to estimate the payment reasonably due an insured within 15 days, and 3) make payment within 30 days of notice of claim.

The medical payments sign-off creates a huge logistical problem, because of the need to maintain proof of the offer every six months that a policy is in force. The sections impose penalties on insurers that have not been rated for, leading to an increase in the premiums that all policyholders will pay.

Sections 15 & 16. These sections are an end run on the Code of Civil Procedure by providing for an award of costs that differs from an award under Rule 79 and by providing for attorney fee awards in certain cases that may differ from those awarded under Rule 82. Currently, the judges already have discretion by the Rules of the Court to award enhanced attorney fees and costs. Furthermore, these sections do not clearly define the way in which the Code is to be changed. **The cost of the changes to Civil Rules 79 and 82, measured against the benefits, is a missing factor and must be a primary consideration**. Alaskans have been working hard to address the cost of the insurance product. The emphasis on cost is important because cost ultimately determines the extent of the consumer's access to insurance products. An infusion of lawsuits will hurt the cost of the insurance product, draining off money better spent improving products and services.

I hope this analysis is helpful to the discussion on SB 202. Allstate would appreciate your "NO" vote on this legislation.

Respectfully Submitted,

Theresa Bedoy

Theresa Bedoy
Government Relations Manager

ct: National Association of Independent Insurers
John George

SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

Sponsor Statement
for Sponsor Substitute
for Senate Bill 202
"The Alaska Insurance Consumers Protection Act"

Senate Bill 202, the Alaska Insurance Consumers Protection Act, incorporates many consumer friendly reforms designed to give injured Alaskans a more even playing field when dealing with insurers.

Currently many Alaskans are not being fairly compensated by insurance companies who have skewed the current system to improperly and unfairly reduce claim payments.

Senate Bill 202 requires an insurer, within 15 days after a filed claim (either property or medical), to make an estimate of covered claims under the policy. The insurer has 30 days to pay this undisputed amount of the covered claim. In the event the claimant obtains a court judgment which is 10% greater than what the insurance company paid, the insurer would also be required to pay certain attorney fees and actual costs incurred by the claimant. In addition to the attorney fees, the insurer would be required to pay a penalty equal to at least 20 percent of the damages awarded. This will act as a deterrent to the current bad faith claims practice by which some insurance companies intentionally under value legitimate claims.

If a claim involving a covered loss cannot be reasonably determined within 15 days, the insurer shall make a determination within 15 days after the loss becomes determinable.

Senate Bill 202 prohibits the current practice of many insurance companies of denying payment for obviously legitimate damages and/or necessary medical expenses until the injured party agrees to the insurance company's terms of settlement.

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

Senate Bill 202 prohibits insurers from placing restrictions or limitations on communications between claimants and service providers. These provisions are added to list of unfair claim settlement practices in existing law and would not allow an insurance carrier or repair shop to withhold information pertinent to a claim settlement. Currently many repair service providers consider themselves to be working for the insurance company and not the customer. This can prevent full and fair repairs.

In many arbitration and mediation cases, the insurance company requires the insured to pay a portion of the costs of arbitration or mediation before the arbitrator's or mediator's decision regarding assessment of costs. This type of activity unfairly discourages claimants from pursuing arbitration. Insurance companies can intentionally make unfairly low offers knowing the cost of arbitration will make refusal by the injured person uneconomical. Senate Bill 202 ends this unfair practice and affords insured motorists the opportunity to pursue fair and equitable claims through arbitration.

Senate Bill 202 establishes that short term insurance policies shall be at least 7 days but no more than 30 days with premiums not exceeding 200% of the pro rata premium charged for longer term policies. In instances where consumers need short term insurance, they are often charged very expensive premiums for such coverage. SB 202 sets a fair and equitable limit on how much insurers can charge for such policies.

The legislation also requires insurers to provide a local or toll-free telephone number if the insurer sells automobile insurance.

Senate Bill 202 addresses and cures many of the inadequacies in our insurance laws and gives Alaskan consumers more equitable policy benefits.

DD/jja

SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

Senate Bill 202 would prohibit insurers from:

- terminating employment contracts with an agent, broker, or independent adjuster without good cause.

- placing restrictions on limitations on oral or written communications between an insurance agent, a representative or a person making repairs and an insured. These prohibitions are added to the list of unfair claim settlement practices contained in AS 21.36.125.

- refusing to pay prejudgment interest, legally due to an injured party, as a result of a claim covered under an insurance policy. This provision would apply even if the amount of prejudgment interest exceeded applicable policy limits.

- withholding or denying payment of claims legitimately owed. SB 202 requires an insurer, within 15 days after a filed claim, to make an estimate of covered claims under the policy. The insurer has within 30 days to pay the undisputed amount of the covered claim.

  If a claim involving a covered loss cannot be reasonably determined within 15 days, the insurer shall make a determination within 15 days after the loss becomes determinable.

  SB 202 also requires the insured to pay certain attorney fees and costs if the insured obtains judgment for damages resulting from the disputed claims and the judgment is at least 10% greater than the insurer's undisputed covered loss payment. In addition to the attorney fees, the insurer shall pay a penalty equal to at least 20 percent of the damages awarded.

Senate Bill 202 would require insurance companies to:

- pay the initial costs of arbitration or mediation. The arbitrator may require the claimant to reimburse the insurer for these costs.

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

Produced in House

- provide a local or toll-free telephone number if the insurer sells automobile insurance in this state.

- set premiums not exceeding 200% of the pro rata premium charged for longer term policies for short term automobile insurance policies of 7 to 30 days.

- offer coverage for medical payments as part of its automobile liability insurance policy. Should a claim arise under a medical payment policy provision, an insurer is required, within 15 days after a filed claim, to make a estimate of covered claims under the policy. The insurer has within 30 days to pay the undisputed amount of the covered claim.

SB 202 also requires the insured to pay reasonable attorney fees, actual costs plus interest, any related arbitration fees if a medical payment claim is denied, and the claim is later determined to be covered under the policy. In addition, the insurer shall pay a penalty equal to at least 20 percent of the value of claim.

DD/jja

SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

Sectional Analysis for Sponsor Substitute for Senate Bill 202 "The Alaska Insurance Consumers Protection Act"

Section #1 - refers to Section #1 of this act as "The Alaska Insurance Consumers Protection Act".

Section #2 - purpose statement of the legislation.

Section #3 - prohibits insurers from terminating contracts with an insurance producer, agent, broker, or independent adjuster without good cause. It also requires the Director of Insurance to adopt regulations to implement and enforce this section.

Rationale: in reported instances, large insurance companies have illegally coerced their contracted agents to perform illegal business practices. If these agents refuse to adhere to these often unfair and illegal directives, the parent company often threatens to terminate the contract with them. Under this threat, these smaller agents often have no recourse but to abide with these illegal practices, thereby breaking the law themselves.

Senate Bill 202 would help prevent this type of industry "strong-arming" by allowing these entities to report such illegal practices to the Director of Insurance.

Section #4 - prohibits restrictions or limitations on oral or written communications between an insured and an insurance agent, representative, or a person making repairs and adds these prohibitions to the list of unfair claim settlement practices contained in AS 21.36.125.

Rationale: under existing law, many repair shops consider themselves to be working for the insurer and not the claimant property owner. It may be in

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the insurance company's best interest to withhold pertinent information to the claimant concerning the damage to a vehicle. This language would remove any potential "gag rule" practices by requiring these entities to provide all information to the insured in a claims settlement.

Section #5 - this section was requested by the Division of Insurance and the Division of Motor Vehicles. It prohibits an insurance company from canceling a policy if an individual in the household has a driver's license suspended or revoked for minor consuming or minor in possession of drugs or alcohol. This section also relates to section #10 of this bill.

Rationale: it was the intent of the legislature when the "Use It, Lose It" bill passed the legislature not to require high-risk (SR22) insurance when a driver's license is administratively revoked for a non-driving violation. The insurance industry has been refusing to insure, or in some cases, cancel policies for families unless they purchase the high-risk insurance.

Section #6 - prohibits limitations or reductions of prejudgment interest, legally due to an insured party, as a result of a claim covered under an insurance policy. This provision would apply even if the amount of prejudgment interest exceeded applicable policy limits.

Rationale: in Phillips v State, the Alaska Supreme Court held that as a matter of general state policy, prejudgment interest is appropriate to fairly compensate injured parties. The addition of this section into state statute makes it clear that this state policy applies to all insurance policies.

Section #7 - requires an insurer, within 15 days after a filed claim, to make an estimate of covered claims under the policy. The insurer has within 30 days to pay the undisputed amount of the covered claim.

If a claim involving a covered loss cannot be reasonably determined within a 15 day time period, the insurer shall make a determination within 15 days after the loss becomes determinable.

This section also requires the insurer to pay certain attorney fees and costs if the insured obtains judgment for damages resulting from the disputed claims

and the judgment is at least 10% greater than the insurer's covered loss payment. In addition to the attorney fees, the insurer shall pay a penalty equal to at least 20 percent of the damages awarded.

Rationale: establishes a clear timeline for when insurers are required to make a payment after a determination has been made that the loss was covered under the policy. This section prevents insurers from unfairly denying or delaying payment of claims legitimately owed. This section imposes tough new penalties on those insurance carriers who improperly and unfairly withhold payments of legitimate claims.

Section #8 - requires the insurer to pay the costs of arbitration or mediation. However, the arbitrator may require the insured to reimburse the insurer for these costs.

Rationale: in some instances, an insurer may require a policy holder to pay the costs of arbitration or mediation before the process even begins. This type of activity discourages claimants from pursuing a fair settlement, especially when the amount at issue is less than the cost of arbitration. This section prohibits this practice and affords insured motorists a fair opportunity to pursue equitable claims.

Section #9 - establishes that short term policies shall be at least 7 days but no more than 30 days with premiums not exceeding 200% of the pro rata premium charged for longer term policies.

Rationale: when consumers need short term insurance, as required by existing law to be offered, they currently may be charged very high premiums for such coverage. This section sets a fair and equitable limit on how much insurers can charge for such policies.

Section #10 - this section was requested by the Division of Insurance and the Division of Motor Vehicles. It prohibits an insurance company from charging a surcharge of high-risk insurance or increasing the premium to a person or a family when a minor in the household has had their license revoked for a non-driving offense.

Rationale: when the "Use it, Lose it" law was passed, the intent of the legislature was not to penalize the person or family by requiring high-risk (SR-22) insurance be filed when a driver license was revoked under this statute. The reason was because in almost all cases the violation did not involve driving a motor vehicle. Language was placed in AS 28.15 that prohibited DMV from requiring SR-22 insurance but the language was not placed in AS 21. The insurance companies are claiming that since the language is not in AS 21, they can add a surcharge and place the person in a high-risk category.

Section #11 - requires insurers to provide a local or toll-free telephone number if the insurer sells automobile insurance in this state.

Section #12 & 13 - requires insurers to offer coverage for medical payments as part its automobile liability insurance policy. Should a claim arise under a medical payment policy provision, an insurer is required, within 15 days after a filed claim, to make an estimate of covered claims under the policy. The insurer has within 30 days to pay the undisputed amount of the covered claim.

These sections also require the insured to pay reasonable attorney fees, actual costs plus interest, any related arbitration fees if a medical payment claim is denied, and the claim is later determined to be covered under the policy. In addition, the insurer shall pay a penalty equal to at least 20 percent of the value of claim.

These sections also prohibit insurance carriers from offsetting medical payment premiums from uninsured and underinsured policy limits.

Rationale: frequently, insurers "blackmail" injured claimants by refusing to pay for needed medical care until the injured party agrees to the insurer's settlement terms.

Senate Bill 202 establishes a clear timeline for when insurers are required to make a medical payment after a determination has been made that the claim was covered under the policy. These sections impose tough new penalties on those insurance carriers who improperly and unfairly withhold payments of legitimate claims.

Section #14 - amends Rule 79 of the Alaska Rules of Civil Procedure.

Rationale: language implemented in sections 7, 12 and 13 of this legislation necessitate amending Rule 79 of the Alaska Rules of Civil Procedure.

Section #15 - amends Rule 82 of the Alaska Rules of Civil Procedure.

Rationale: language implemented in sections 7, 12 and 13 of this legislation necessitate amending Rule 82 of the Alaska Rules of Civil Procedure.

Section #16 - defines the applicability of policies of insurance this act effects.

Rationale: clearly defines which insurance policies will be affected by this act and whether the terms of those polices may be subject to civil action.

Section #17 - sets the effective date of this act on January 1, 1999.

Rationale: gives insurance companies the necessary time to implement the provisions enacted in this legislation.

DD/jja

COMMITTEE:	Subject of meeting:
SENATE LABOR & COMMERCE	SB 202 - MOTOR VEHICLE INSURANCE
DATE: FEBRUARY 19	

SIGN-IN

PLEASE PRINT! NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY ?
√Senator Dalton				✓
√Joe Flood		789-1006		✓
Jim Douglas		789-3166		No
√Sarah McNair-Grove	SOB 9th Floor	465-4613	Div of Ins	yes
√John George	3328 Fritz Cove Rd Juneau	789-0172	NAIC	yes
√ Michael Lessmeier	124 W. Fifth, Juneau, AK	586-5912	State Farm	yes

Edward F Randolph Insurance Agency Inc.
Auto-Life-Health-Home and Business
1515 Mill Bay Road Kodiak, Alaska 99615
Phone (907)-486-6179 Fax (907)-486-8536

February 19, 1998

Senator Loren Leman
113 State Capitol Building
120 4th Street
Juneau, AK 99801-2133

Subject: Alaska Senate Bill 202

Dear Senator Leman:

Before the hearing on SB 202 this afternoon, I wanted to make sure you heard from me and knew of my position on this bill. **I recommend that this bill not be moved out of committee.** It is a bill which would disrupt the most fundamental of State Farm's business relationships and increase costs to all Alaska State Farm auto policyholders.

I have had a contractual relationship with State Farm Insurance for **15 years** and have found it to be mutually beneficial and satisfactory. I am strongly opposed to government interference with issues of private contracts.

I feel very strongly about this and would be willing to testify or talk to you in person.

Thank you for your consideration of my position.

Sincerely,

Ed Randolph
State Farm Agent

DICK RANDOLPH INSURANCE AGENCY, Inc.
DICK RANDOLPH, Agent
Auto - Life - Health - Home and Business

FEB 19 1998
~~FEB 18 1998~~

610 12th Avenue Fairbanks, Alaska 99701
Phone: Bus: 907-456-7787 Fax: 907-456-5766

Feb. 19, 1998

Senator Loren Leman
113 State Capitol Building
120 4th Street
Juneau, AK 99801-2133

Subject: Alaska Senate Bill 202

Dear Senator Leman:

I understand that a bill to change our contractual relationship with State Farm Insurance has been introduced and that the hearing is this afternoon. It is important to me that you understand my opposition to this piece of legislation. **I strongly suggest that this bill be allowed to die in committee.**

In my **34 year** relationship with State Farm, I have found the contracts to be beneficial to me and to the Company, and see no reason for the State of Alaska to interfere with a private contractual agreement affecting my business.

As I said, I feel very strongly about this. If appropriate, I would be willing to testify or speak with you about this issue.

Thank you.

Sincerely,

Dick Randolph

Dick Randolph
State Farm Agent

TO: Senator Loren Leman

Dear Loren SB 202!

SB 202 is so far fetched, and full of half-truths that I'm surprised it got this far-

We "The insurance industry" are are under continuing attact by attorneys and this is just one more example

Bury this bill !!!

CURTIS GREEN.

National Association of Independent Insurers

2600 River Road, Des Plaines, IL 60018-3286

Trisha M. Connors
Counsel

March 31, 1998

Honorable Loren Leman
Chair, Senate Labor and Commerce Committee
State Capitol
Juneau, AK 99801-1182

RE: SSSB 202 (Donley)
NAII POSITION: OPPOSE

Dear Senator Leman:

I am writing on behalf of the National Association of Independent Insurers (NAII) to stress our continued opposition to SSSB 202 (Donley). The NAII represents over 560 property and casualty insurance companies throughout the country, and many NAII member companies write business in Alaska. This letter addresses our continuing opposition to the March 9, 1998 working draft to be presented to your committee this week.

Like the earlier versions of the bill, SSSB202 reverses all of last year's meaningful tort reforms and actually increases the opportunities for Alaska's trial bar at policyholders' expense.

SSSB 202 **expands** Civil Rule 82 and erases any policy limits agreed to in an insurance contract. First, it requires insurers to pay loss claims within 30 days of receiving **notice** of the loss or face a possible payoff in excess of policy limits. Under this bill, if the insurer disputes the existence of the claim, the amount of the claim or does not **receive** notice of the claim within thirty days and the claimant prevails at trial or arbitration, the insurer must pay all damages up to the policy limits and at least a 20 percent penalty. In addition, the insurer is subject to a second lawsuit (with more damages and attorneys' fees) for unfair claims practices. Thus, under this provision alone, trial lawyers get more fees and a second lawsuit simply because the insurer did not settle a claim within thirty days of being told of the claim's existence!

SSSB 202 further expands Civil Rule 82 and eliminates the policy limits for insurance consumers because it requires insurers to pay prejudgment interest over and above the policy limits sold to the policyholder.

These two provisions will force all Alaskans to pay for maximum insurance coverage. Alaskans wanting to drive legally and purchase the liability limits required by law will pay the same premiums as those purchasing greater policy limits.

Finally, NAII member companies are perplexed at the motives behind SSSB 202. Insurers encourage their claims handlers to pay claims as quickly as possible to lower costs and to keep

customers happy. SSSB 202 would make more consumers unhappy by increasing their premiums to pay trial lawyers' fees.

Last year this Legislature enacted one of the best tort reform bills in the country (HB 58). Sponsor Substitute Senate Bill 202 is a poorly guarded attempt to reverse those reforms and increase the cost of insurance for all Alaskans. Thus, I respectfully request your NO vote on SSSB 202.

Sincerely,

Trisha M. Connors
Counsel

tmc/am
Enclosures
cc: Members of the Senate Labor and Commerce Committee
John George
Michael Duncan
Robert Zeman

ALLSTATE

THERESA BEDOY
ALLSTATE INSURANCE COMPANY
3100 ZINFANDEL, SUITE 400
OFFICE: (916) 852-4899
FAX: (916) 852-4953

FEB 17 1998

DATE: 2/17/98

TO: Labor + Commerce Committee Members

OFFICE: _____

FAX NUMBER: Various

SENT BY: Theresa Bedoy

WE ARE TRANSMITTING A TOTAL OF 5 PAGES INCLUDING THE COVER LETTER

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL NEDRA WILLIAMS AT (916) 852-4933.

ADDITIONAL COMMENTS:

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Telecopier 916-852-4953

THERESA BEDOY
Government Relations Manager

February 17, 1998

Senate Labor and Commerce Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

RE: SB 202 (Sen. Dave Donley) An Act amending Rules 79 and 82 - OPPOSE

Dear Senators:

I am writing on behalf of the Allstate Insurance Company which is the number 2 insurer in the state of Alaska. **Allstate strongly opposes SB 202. This expensive, anti-consumer bill will drive up the cost of every insurance policy in Alaska at a time when all concerned are working to lower costs.** The legislature worked hard last year to pass meaningful tort reform. Let us not rush to judgment and instead give last year's reforms a chance to make a difference.

SB 202 goes too far. Fair Insurance Claims Practices already exist in Alaska. Senator Donley's press release states that "Senate Bill 202 addresses the growing problem of unfair claims practices..." From Allstate's viewpoint, there is no demonstrated dramatic increase in complaints. Our Alaska claims complaint statistics show only an increase of six complaints from 1996 to 1997 based on a customer base of almost 147,000 customers.

I have listed our concerns about the bill by section.

Section 3. SB 202 interferes in the relationship between a company and its agents. It provides termination protection for insurance agents unlike any other employees or contractors receive. It installs a new bureaucratic review process by the Director of Insurance. It also requires the director to adopt regulations to define what a termination for "good cause" might look like. The "good cause" list developed would never be broad enough to consider what could happen or what reasonable people would all agree would be terminable actions.

This protectionism for agents actually works against consumers and gives agents license to be able to retain their position even if they are providing poor service.

Agent protectionism is not needed; Allstate has terminated only one agent involuntarily since 1985. Our agency distribution system in Alaska is multi-dimensional; it includes employee agents, exclusive agents and independent agencies. It is very costly for us to hire, train and maintain an agency force. And agent turnover is costly too, because many times when an agent leaves so do many customers. In fact, there is a built-in economic incentive for companies not to terminate agents.

Section 4. This section inhibits the claims department's communication with insureds and repair shops. It undermines the insurer's ability to investigate and prepare a proper defense in both first and third party claims. It also inhibits the insurer's ability to provide the best customer service possible, by limiting the company's ability to act as an advocate for the insured to the body shop. This section also adversely impacts the company's ability to investigate and fight fraud. This will lead to increased costs for all policyholders.

Section 6. This section imposes a statutory duty on the insurer to pay first party pre-judgment interest, regardless of the policy limits. Previously, this was a subject of claims settlement negotiations. By mandating the exposure to the insurer, the cost of litigation will increase leading to higher insurance premiums.

SB 202 assumes that the Unfair Claims Settlement Practices Regulations in place in Alaska are not tough enough. We disagree with that premise. Currently Alaska law sets out a strict timetable for insurers to pay claims. If an insurer fails to meet the requirements under the Unfair Claim Settlement Acts and Practices they face strict disciplinary action. The enforcement actions by the Division of Insurance could include the possibility of fines or revocation of an insurer's license to sell insurance in Alaska. Current law provides sound consumer protection against insurance companies who fail to abide by these requirements.

Section 7. This section requires that insurers pay claims 30 days from receiving notice of loss (as opposed to proof of loss). Though the new time frames are not significantly different from the current Unfair Claims Practice Act as imposed on first party claims, the application of these rules to third party claims will have a significant detrimental effect on claims handling procedures. This section does not allow for adequate time to investigate potential fraudulent claims.

It also allows a claimant to finance litigation with that part of the loss that cannot be contested, or in the alternative, encourages plaintiff attorneys to litigate for the possibility that attorney's fees will be paid should the plaintiff prevail. If applied to third party claims, the section will lead to increased litigation costs and higher premiums for policyholders.

Section 8. This section leads to an un-level playing field. It requires that insurers incur arbitration costs, except when granted relief by the arbitrator. It imposes a cost not currently rated for and will lead to higher premiums and costs.

Section 9. SB 202 creates mandates for insurers to provide a product and imposes an artificial price cap. It requires insurers to create a short term insurance product and then imposes an artificial price cap instead of sound actuarial principles. Currently if individuals want to purchase insurance for a short time, they can buy a policy when they need it and terminate it at will.

Section 10. SB 202 would prohibit an insurer from charging a higher premium or nonrenewing a policy if a minor had been convicted of an alcohol offense. An insurer should have the flexibility to price or take action on alcohol related offenses. If this provision becomes law, all law-abiding policyholders will pay for the increased costs associated with alcohol related offenses.

Section 11. This section creates another mandate that will increase costs. It states that insurers who sell auto insurance in Alaska must provide a statewide toll-free number in addition to any local listing. Currently our claims office already has a toll free number. Does this section mean that all of our agents and independent agents must purchase a toll free line into their offices? This may not be cost effective for a small business person. Agents and all insurers should have the right to determine if it is cost effective and competitive to incur the costs of setting up and staffing toll free numbers in a state. The free market system dictates customer supply and demand. If customers create a sufficient amount of demand and companies are losing business because of a competitor's toll-free number, good business sense will fill the void. The government should not dictate the practice.

Sections 12 & 13. These sections impose three new requirements on insurers that will lead to an increase in the premiums policyholders will be charged. The sections require that 1) medical payments coverage be offered at every renewal, 2) the insurer is to estimate the payment reasonably due an insured within 15 days, and 3) make payment within 30 days of notice of claim.

The medical payments sign-off creates a huge logistical problem, because of the need to maintain proof of the offer every six months that a policy is in force. The sections impose penalties on insurers that have not been rated for, leading to an increase in the premiums that all policyholders will pay.

Sections 15 & 16. These sections are an end run on the Code of Civil Procedure by providing for an award of costs that differs from an award under Rule 79 and by providing for attorney fee awards in certain cases that may differ from those awarded under Rule 82. Currently, the judges already have discretion by the Rules of the Court to award enhanced attorney fees and costs. Furthermore, these sections do not clearly define the way in which the Code is to be changed. **The cost of the changes to Civil Rules 79 and 82, measured against the benefits, is a missing factor and must be a primary consideration.** Alaskans have been working hard to address the cost of the insurance product. The emphasis on cost is important because cost ultimately determines the extent of the consumer's access to insurance products. An infusion of lawsuits will hurt the cost of the insurance product, draining off money better spent improving products and services.

I hope this analysis is helpful to the discussion on SB 202. Allstate would appreciate your "NO" vote on this legislation.

Respectfully Submitted,

Theresa Bedoy

Theresa Bedoy
Government Relations Manager

ct: National Association of Independent Insurers
John George

National Association of Independent Insurers

2600 River Road, Des Plaines, IL 60018-3286

TRISHA M. CONNORS
COUNSEL

FEB 16 1998

February 11, 1998

State Senator Loren Leman, Chair
Senate Labor and Commerce Committee
State Capitol (MS 3100)
Juneau, AK 99801-1182

RE: SB 202 (Donley)--Oppose

Dear Senator Leman,

I am writing on behalf of the National Association of Independent Insurers in opposition to SB 202 (Donley). If enacted, SB 202 would mandate all insurers to provide special services to their insureds regardless of whether the insured wants to pay the price for the service.

As you know, many insurers in Alaska compete in the marketplace and provide consumers with a choice of products, services and corresponding prices just as all other businesses do. This bill, however, imposes costly restrictions on the products and services insurers may use while raising the price of insurance for all consumers. In addition, it would provide plaintiffs' lawyers with yet another way to collect huge contingency fees from insurers while their clients are limited to the recovery provided under the insurance contract.

I will outline the NAII's objections to each section:

Section 3 would prohibit insurers from terminating agents without just cause and require the Director of Insurance to conduct hearings for agents who feel they were terminated illegally.

Right now, many insurers enter independent contracts with agents to sell their product, and the agent's grounds and procedures for termination are negotiated as part of those agreements. Other agents are employees of the insurer and have the same legal rights as other employees regarding their termination. Other insurers do not have agents and simply sell their product through the mail or internet.

This provision would requires insurers to provide much greater benefits to their employees and independent contractors than any other employer in the state. Thus, insurers would lose any incentive to contract or hire agents in Alaska. With fewer agents, Alaska's consumers will have a harder time finding insurance and current agents would lose their jobs. Finally, this provision would greatly increase the costs of the Insurance Department.

Phone: (847) 297-7800 FAX: (847) 297-5064
FAX on demand: 1-800-291-0229 Internet address: http://www.naii.org

Section 4 would prohibit insurers from restricting any employee or agent communications with auto shops or insureds about the repair of their vehicle.

We know of no practice in which an insurer prevents communications about the repair of an insured's vehicle. However, by providing this prohibition, any insured that thinks her insurer is restricting communications could file a lawsuit against her insurer and, of course, increase costs and litigation.

Section 7 would require insurers to pay loss claims within 30 days of receiving notice of the claim of loss.

If the insurer disputes the existence of the claim or the amount of the claim and the claimant prevails at trial or arbitration, the insurer must pay all damages up to the policy limits, attorneys fees and costs on the entire judgment regardless of the policy limits and at least a 20 percent penalty. In addition, the insurer is subject to a second lawsuit (with more damages and attorneys' fees) for bad faith claims practices.

As you can see, these provisions would eliminate any incentive for a plaintiff's lawyer to accept a settlement offer from an insurer. It would actually encourage plaintiffs' attorneys to incur the high costs of a trial since the insurer would pay them all if the plaintiff prevails. On the other hand, insurers would face an extreme risk in investigating suspected fraud or challenging a claimant's damages. Thus, insurers would be forced to settle claims high or pay fraudulent claims rather than face the risk of a bad faith civil suit and fines. All policyholders will pay higher premiums to cover the increased claims costs imposed by these provisions.

Section 8 would require insurers to cover the costs of arbitration.

Right now, the insurer and insured may agree to split the costs of arbitration so that all parties will participate fully in the procedure. The plaintiff's attorney usually advances the cost for her client and is reimbursed out of the settlement or judgment. If an insured is not represented, the insurer generally pays for the proceeding. Again, by requiring insurers to pay the full amount up front, all policyholders will pay the higher claims costs through higher premiums while plaintiff's lawyers get to spare a minor expense of representing their client.

Section 9 REQUIRES all insurers to offer a seven to thirty day policy, and restricts the price of the policy to 200 percent of the pro rata premium charged to policyholders with a full term.

This provision assumes Alaskans need short term automobile policies. If a viable market existed, insurers would offer the policy and sell it at a competitive rate. We have seen no indication that consumers have demanded such policies.

This provision would require all insurers to file new forms, rates and procedures for the slim chance that someone might want a short term policy. Second, the administrative costs of insuring a person for one day are the same as insuring a person for a full term. Thus, the 200 percent rate limitation essentially forces insurers to offer and sell a product at a loss.

Section 10 would prohibit an insurer from charging a higher premium or nonrenewing a policy if a minor had been convicted of an alcohol offense.

In Alaska, if a minor is caught with alcohol at any time or place, he or she loses her license. This provision apparently attempts to prohibit insurers from using the revocation to surcharge the minor's auto insurance if the alcohol was not used in connection with the vehicle. However, the measure precludes insurers from raising rates or nonrenewing a policy regardless of whether the minor used the alcohol in connection with driving or not. Insurers need to be able to price a product based on drunk driving or the potential for drunk driving. If a minor loses his or her license for having alcohol or for being intoxicated in the car, the insurer should be able to raise the minor's rates. Again, if this provision becomes law, all policyholders will pay for the costs of insuring teenagers with a history of drunk driving.

Section 11 would require <u>all</u> insurers to have toll-free telephone numbers.

This section may sound reasonable, but it is completely unworkable and costly. First of all, "insurer" in this section means agents and brokers as well as companies. Thus, even the smallest agency would be required to incur the costs of a toll-free number. Second, this provision interferes with the competitive marketplace for insurers. If a consumer wants his or her insurer to have a toll-free number, he or she will find and buy insurance from the company with a toll-free number. On the other hand, if a consumer wants a no-frills, low cost policy and doesn't care about a toll-free telephone number, he or she will find that insurer. Banks, hotels and other service industries are not <u>required</u> to have toll-free numbers, but most choose to do so as a way to compete in the marketplace. Insurers should have that same choice.

Sections 12 and 13 would require insurers to make medical payments claims within 30 days of notice of the claim. Further, it would preclude the insurer from deducting medical payments from any other payments it makes to the insured under uninsured motorist provisions.

Like section 7 above, if the insurer initially disputes the existence of the medical payments claim or the amount of the claim and the insured prevails in court or arbitration, the insurer shall pay the insured's actual costs plus interest, attorneys' fees without the limitations of Civil Rule 82 and a minimum 20 percent penalty.

As above, these provisions simply make an insurer's investigation of fraud too expensive. The risk of having an honest dispute regarding certain medical payments falls solely on the insurer. The insured, on the other hand, has no incentive to keep costs down or treatment reasonable. The provision will seriously increase the cost of medical payments coverage for all insureds.

By prohibiting an insurer from deducting the medical payments from an uninsured motorist settlement under the same policy, the policyholder would recover twice for the same accident. The insurer would pay the medical provider under the medical payments portion and pay the same damages as part of the total settlement under the uninsured motorist provision. Again, this provision places requirements on auto insurers that no other providers face. If a policyholder's health insurer (rather than the auto insurer) had paid for the medical costs associated with the loss, the health insurer would be entitled to repayment from the insured's total recovery.

Based on the foregoing, we respectfully request your NO vote on this bill when it is heard in your committee.

Sincerely,

Trisha M. Connors

TMC/am
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cc: Members, Senate Labor and Commerce Committee
State Senator Dave Donley
John George

S.L. Trial Targets Top Auto Insurer

Ex-Agents Say State Farm Urged Them to Deceive Policyholders

BY SHEILA R. McCANN
THE SALT LAKE TRIBUNE

State Farm Mutual Automobile Insurance Co. vows it fairly pays claimants what they are owed — "not a penny more, not a penny less."

But in damning testimony about the nation's largest auto insurer, former agents claim in a Salt Lake City trial that they were trained and encouraged to cheat and deceive policyholders.

With pay raises and promotions linked to containing costs, former agents contend they were forced to examine claims of accident victims with a shrewd eye on the company's bottom line.

The agents are testifying in Campbell vs. State Farm, a two-month trial that stems from a tragic 1981 car accident. It has evolved into an examination of the company's national claims-handling policies.

Curtis Campbell was driving through Sardine Canyon near Logan when he passed a truck, narrowly missing an oncoming car driven by 19-year-old Todd Ospital, who then swerved and hit a van, critically injuring driver Robert Slusher, 26.

Ospital was killed.

Ray Summers, then a State Farm agent in Cache County who represented the Campbells, said he immediately saw evidence that Campbell was at fault and wrote a report indicating the insurance company would be liable.

But Summers claims his supervisors ordered him to alter the report because State Farm wanted to go to trial rather than pay Campbell's $50,000 policy limit.

"We were placing our insured [Campbell] in a situation of jeopardy," Summers testified.

State Farm hired an attorney to fight lawsuits filed by Slusher and Ospital's parents. But a Logan jury put 100 percent of the fault on Campbell, assessing him $253,000 in damages.

Campbell and his wife, Inez, then sued State Farm, contending the insurance company betrayed them by hiding evidence implicating Campbell — and rejecting offers to settle the case.

The Salt Lake Tribune 6/30/96

Last fall, a Salt Lake City jury decreed that State Farm acted unreasonably — or in bad faith — by refusing to settle and risking the Campbells' house and assets at trial.

A second jury now is hearing the Campbells' multimillion-dollar claims of fraud, infliction of emotional distress and punitive damages. Any award the jury may hand down will be shared with Slusher and the Ospital family, who in exchange agreed not to foreclose on the Campbell home.

State Farm's defense is expected to begin this week before 3rd District Judge William Bohling. With rebuttal testimony from both sides, the trial is expected to run through July.

Despite the first jury's verdict that it acted unreasonably, the insurer defends its decision to take the Campbell case to trial. State Farm also denies any scheme to defraud claimants.

Under cross-examination by State Farm attorneys, the critical agents have acknowledged the company's average payments to claimants increase each year.

The insurance lawyers have criticized the former agents — some of whom were fired — as having "an ax to grind." They have challenged the agents to produce a single State Farm Auto manual or memo directly instructing employees to "cheat."

Agents acknowledge they are describing unwritten rules, but they insist those rules were passed on by supervisors.

State Farm also challenges the agents to explain — if the alleged fraud is so widespread — why the 14 million claims State Farm handles annually have not led to a flood of lawsuits and complaints with state insurance commissions.

Answered Gary Fye, a former independent insurance adjuster called as an expert witness on claims handling: "Most people never know they've been the victim of bad-faith conduc."

Pattern of Deceit. Cache County agent Summers claims his 1981 altering of the Campbell report was just one ruse in a pattern of deceit that spanned his 19-year career at State Farm.

He cited example after example to the jury. Summers claims he once eliminated documents that would have revealed a State Farm-insured driver was drinking and used drugs before a crash.

The purge helped State Farm push a lower settlement, Summers said.

Or, he would try to convince State Farm-insured drivers that they were partially at fault — despite the facts — or exaggerate their negligence, to cut a lower settlement with them.

Claimants commonly received fewer benefits than they had coming for, Summers said. As a psychological ploy, he would offer a few dollars more than the medical bills and urge an injured policyholder to go to dinner. But the unwitting victim would be cheated of benefits for lost wages, pain or the lost assistance of a spouse.

Summers said he underpaid claimants "in the majority of instances."

Marilyn Paulson, a secretary in State Farm's Cache County office, testified she complained to a supervisor about Summers as early as 1970, but was told his schemes were "good business."

Former State Farm supervisor Samantha Bird testified she treated claimants fairly and was not trained to use Summers' tricks. But Bird said supervisor Robert Noxon routinely pressured her to change documents to lower her estimates of settlement values.

Agent Felix Jensen, who still works for State Farm in Salt Lake City, said he was asked more than 100 times to change information in his case files but refused. He said Noxon, acting through Bird, made the requests.

"We had a continuous conflict," Jensen said.

But on cross-examination by State Farm, Jensen defended State Farm's official training and said his current co-workers are "highly competent."

Aside from Noxon, Jensen said he never has been pressured to reduce his average payments.

"I've been taught to treat people as fairly as possible, not being Santa Claus," Jensen said. He added he will re-negotiate with claimants if more serious injuries become apparent, refuting testimony from Summers that State Farm insists that once resolved, the case is closed.

Summers was terminated in May 1982 and lost a discrimination case against State Farm, the company's attorneys pointed out. Also under cross-examination, Summers acknowledged that instructors at the State Farm claims school never advocated cheating — nor did any company manuals.

Summers also said he could not determine whether the unfair practices were changes sanctioned by State Farm, or those pushed by his own supervisors.

Earnings Yearnings: But independent adjuster Fye, an expert witness called by the Campbells, alleges that State Farm improperly injects a profit motive into its claims-handling on a national basis.

Through "performance, planning and review" forms, agents are given goals to slice average payments, Fye said, and promotions and pay raises depend on it.

about dozens of performance reviews. The forms may instruct an agent to cut claim payments by 5 percent or keep level with the year before — despite inflation, increasing costs of medical technology and other forces pushing up claim expenses, Fye said.

The result: A culture rewarding employees "for driving claims down, not for paying claims generously or appropriately."

If agents pay one large settlement, "they'll basically underpay as many people as it takes to make up," Fye testified. "It creates a situation where people will handle a claim to achieve an average and not handle it on its merits."

Under cross-examination by State Farm lawyer Paul Belnap, Fye acknowledged the average amount State Farm pays to claimants has increased every year. Fye also conceded he does not object to a company carefully tracking its costs, making prompt contact with injured customers or negotiating to settle claims.

Belnap pointed to a 1992 State Farm manual that warned "it is inappropriate" to include reduction in claim payments as a measure of job performance or condition of promotion.

Fye called the statement a "very hopeful sign," adding, "It's an acknowledgment that it was wrong."

The Campbells' attorneys, Roger Christensen and Rich Humpherys, have shown employee reviews dated 1994 through 1996 that still focus on reductions in payments.

The plaintiffs' attorneys have called agents from out of state to buttress Summers' descriptions of cost-saving tactics.

Bruce Davis, a State Farm agent in Colorado between 1978 and 1984, testified he was not allowed to remind people of the benefits they deserved. He also acknowledged purging files.

Davis added that he was urged to place partial blame on a State Farm policyholder — even if the customer was "clearly innocent" — to reduce the settlement value with the client.

The former Colorado agent also described in-house contests and said statistics were kept on how much money agents shaved.

For example, agents were encouraged to push foreign-made replacement parts to repair policyholders' cars, he said. An American-made car grille and other parts were put on display with their foreign equivalents, and an accompanying sign read, "Can You Tell the Difference?"

The parts were lower quality, fit poorly and rusted more quickly than American-made parts, he said. But with savings of up to 65 percent above U.S. parts, the "equivalent parts" saved the office $234,189 between September 1980 and January 1982.

Yet the display backfired when the foreign parts mounted on the wall began to rust and pit, Davis said. Policyholders would glance up at the display and announce, "Hell, yeah, I can tell the difference, and I don't want any of those parts!"

Ina DeLong, a former California agent for State Farm Fire, also recounted tactics to trim settlements.

DeLong has appeared on "60 Minutes" and other national media to publicize her claims that State Farm cheated California earthquake victims. She has created United Policyholders, a nonprofit organization to help people understand their policies after an accident or natural disaster.

She told jurors she saw State Farm Fire use its "economic superiority" to defeat upset policyholders — like the Campbells — who threatened to sue.

"So what if they're upset?" she said of State Farm's attitude. "We can wear them down or we can use the [legal] system against them. We have more money. We have attorneys that we pay hourly rates to [who will] defend our conduct."

But State Farm attorney James Crandall, also from California, called DeLong a "mad woman" on an "anti-State Farm crusade." United Policyholders is a front to funnel policyholders to lawyers who sue insurance companies, he alleged.

DeLong retorted: "That is about as far from truth as you could get."

Confessions of Insurance Agents: How State Farm Handled Claims

Former State Farm agents from Utah, Colorado and California have testified under oath they used numerous tactics to reduce the amount paid to policyholders and claimants. State Farm denies approving examples outlined below:

- Agent makes contact within 24 hours with anyone who has a bodily injury claim and tries to convince him or her to settle without obtaining a lawyer. If a claimant already has an attorney, ask why. Make him or her wonder whether the expense is necessary.
- Agent tries to get an early settlement while claimant still is under a doctor's care. Agent promises to reopen the case if further injuries are revealed. But if that happens, agent points to the signed release and refuses to renegotiate.
- Some injuries don't show up for several days after an accident, so agent downplays them before they appear – especially if a person is in financial straits or has difficulty communicating.
- Agent encourages claimants to sue doctors for malpractice.
- Agent withholds information about what payments claimants are entitled to. Even if claimants have paid for coverage to handle pain, lost wages, or the lost service of an injured spouse, agent offers out-of-pocket expenses only – and does not mention other coverage.
- Unless policyholder recalls paying for rental car coverage, agent does not offer it.
- Agent forces claimants to litigate to get full benefits.
- Agent does not reveal the calculated worth of the claim, because he may be able to settle it for less. A common pressure play: Agent makes a low-ball offer on Friday afternoon and simultaneously seizes the rental car. "The victim would oftentimes call back before closing of business and accept the offer," one former agent testified.
- Agent tells older, injured claimants they must turn to Medicare to pay their medical bills first, so State Farm pays only for what is not covered by tax dollars.
- Agent suggests use of "equivalent parts" to repair cars without revealing that the parts are used or manufactured overseas. Foreign parts fit poorly, rust more quickly, are made of thinner metal and are of "reduced quality." But, a Colorado agent testified, they can save the company up to 65 percent.
- Agent includes documents in the file that attack the credibility or character of a State Farm-insured claimant, in case the file ends up in front of a jury.
- Despite facts showing that the insured was not at fault in the accident, agent insists he or she was partially negligent to negotiate a better settlement.
- Agent is careful not to use these tactics on wealthy policyholders, or anyone with multiple State Farm policies. "I was told to prey on the weakest of the herd," one former agent testified.

Steve Baker / The Salt Lake Tri

Boy struck by a car finally gets insurance cash

By SVEND HOLST
THE JUNEAU EMPIRE

An arbitrator has awarded $54,000 plus legal expenses to a Juneau boy and his family stemming from an unusual legal fight between an insurer and a policy holder.

The boy, then 4, was run over by a car driven by an uninsured driver in front of his Glacier View Mobile Home Park home in June of 1993. He suffered a broken leg, a broken arm and numerous abrasions after the car rolled over him.

The driver of the car, a 38-year-old woman, didn't have insurance. But the boy's family made a claim using their auto insurance policy, which, as with most auto insurance policies in Alaska, provides insurance for damage caused by uninsured drivers.

> "State Farm fought us every step of the way."
> **Mark Choate, attorney**

As is the usual procedure for insurance claims, the matter went into arbitration. Ron Lorensen, the Juneau attorney who arbitrated the settlement, settled the case in March.

The money was a long time in coming, said Mark Choate, the attorney representing the child and his family, because the company holding the family's policy, State Farm Insurance, tried to keep

Please see Insurance, Page 8

Insurance...

Continued from Page 1

from paying.

"State Farm fought us every step of the way," he said. "You can't outspend them."

Sheldon Winters, the attorney who represented State Farm in the case, said Choate demanded an award that was way too high from his client's perspective. In the end, he said, the arbitrator's award was very close to what the company once offered the boy's family.

Choate said the case is important beyond what the family was awarded financially because it highlights the importance of uninsured driver's insurance. Under Alaska law, uninsured driver's insurance comes with auto insurance policies unless the policy holder waives the provision. It's a good idea to keep it, he said.

"Most people aren't aware that they have this coverage," Choate said. "If they don't, they should get it."

SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

Sponsor Statement
for Sponsor Substitute
for Senate Bill 202
"The Alaska Insurance Consumers Protection Act"

Senate Bill 202, the Alaska Insurance Consumers Protection Act, incorporates many consumer friendly reforms designed to give injured Alaskans a more even playing field when dealing with insurers.

Currently many Alaskans are not being fairly compensated by insurance companies who have skewed the current system to improperly and unfairly reduce claim payments.

Senate Bill 202 requires an insurer, within 15 days after a filed claim (either property or medical), to make an estimate of covered claims under the policy. The insurer has 30 days to pay this undisputed amount of the covered claim. In the event the claimant obtains a court judgment which is 10% greater than what the insurance company paid, the insurer would also be required to pay certain attorney fees and actual costs incurred by the claimant. In addition to the attorney fees, the insurer would be required to pay a penalty equal to at least 20 percent of the damages awarded. This will act as a deterrent to the current bad faith claims practice by which some insurance companies intentionally under value legitimate claims.

If a claim involving a covered loss cannot be reasonably determined within 15 days, the insurer shall make a determination within 15 days after the loss becomes determinable.

Senate Bill 202 prohibits the current practice of many insurance companies of denying payment for obviously legitimate damages and/or necessary medical expenses until the injured party agrees to the insurance company's terms of settlement.

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

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

Senate Bill 202 prohibits insurers from placing restrictions or limitations on communications between claimants and service providers. These provisions are added to list of unfair claim settlement practices in existing law and would not allow an insurance carrier or repair shop to withhold information pertinent to a claim settlement. Currently many repair service providers consider themselves to be working for the insurance company and not the customer. This can prevent full and fair repairs.

In many arbitration and mediation cases, the insurance company requires the insured to pay a portion of the costs of arbitration or mediation before the arbitrator's or mediator's decision regarding assessment of costs. This type of activity unfairly discourages claimants from pursuing arbitration. Insurance companies can intentionally make unfairly low offers knowing the cost of arbitration will make refusal by the injured person uneconomical. Senate Bill 202 ends this unfair practice and affords insured motorists the opportunity to pursue fair and equitable claims through arbitration.

Senate Bill 202 establishes that short term insurance policies shall be at least 7 days but no more than 30 days with premiums not exceeding 200% of the pro rata premium charged for longer term policies. In instances where consumers need short term insurance, they are often charged very expensive premiums for such coverage. SB 202 sets a fair and equitable limit on how much insurers can charge for such policies.

The legislation also requires insurers to provide a local or toll-free telephone number if the insurer sells automobile insurance.

Senate Bill 202 addresses and cures many of the inadequacies in our insurance laws and gives Alaskan consumers more equitable policy benefits.

DD/jja

SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

Sectional Analysis for
Sponsor Substitute for
Senate Bill 202
"The Alaska Insurance Consumers Protection Act"

Section #1 - refers to Section #1 of this act as "The Alaska Insurance Consumers Protection Act".

Section #2 - purpose statement of the legislation.

Section #3 - prohibits insurers from terminating contracts with an insurance producer, agent, broker, or independent adjuster without good cause. It also requires the Director of Insurance to adopt regulations to implement and enforce this section.

Rationale: in reported instances, large insurance companies have illegally coerced their contracted agents to perform illegal business practices. If these agents refuse to adhere to these often unfair and illegal directives, the parent company often threatens to terminate the contract with them. Under this threat, these smaller agents often have no recourse but to abide with these illegal practices, thereby breaking the law themselves.

Senate Bill 202 would help prevent this type of industry "strong-arming" by allowing these entities to report such illegal practices to the Director of Insurance.

Section #4 - prohibits restrictions or limitations on oral or written communications between an insured and an insurance agent, representative, or a person making repairs and adds these prohibitions to the list of unfair claim settlement practices contained in AS 21.36.125.

Rationale: under existing law, many repair shops consider themselves to be working for the insurer and not the claimant property owner. It may be in

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

Produced in House

the insurance company's best interest to withhold pertinent information to the claimant concerning the damage to a vehicle. This language would remove any potential "gag rule" practices by requiring these entities to provide all information to the insured in a claims settlement.

Section #5 - this section was requested by the Division of Insurance and the Division of Motor Vehicles. It prohibits an insurance company from canceling a policy if an individual in the household has a driver's license suspended or revoked for minor consuming or minor in possession of drugs or alcohol. This section also relates to section #10 of this bill.

Rationale: it was the intent of the legislature when the "Use It, Lose It" bill passed the legislature not to require high-risk (SR22) insurance when a driver's license is administratively revoked for a non-driving violation. The insurance industry has been refusing to insure, or in some cases, cancel policies for families unless they purchase the high-risk insurance.

Section #6 - prohibits limitations or reductions of prejudgment interest, legally due to an insured party, as a result of a claim covered under an insurance policy. This provision would apply even if the amount of prejudgment interest exceeded applicable policy limits.

Rationale: in Phillips v State, the Alaska Supreme Court held that as a matter of general state policy, prejudgment interest is appropriate to fairly compensate injured parties. The addition of this section into state statute makes it clear that this state policy applies to all insurance policies.

Section #7 - requires an insurer, within 15 days after a filed claim, to make an estimate of covered claims under the policy. The insurer has within 30 days to pay the undisputed amount of the covered claim.

If a claim involving a covered loss cannot be reasonably determined within a 15 day time period, the insurer shall make a determination within 15 days after the loss becomes determinable.

This section also requires the insurer to pay certain attorney fees and costs if the insured obtains judgment for damages resulting from the disputed claims

and the judgment is at least 10% greater than the insurer's covered loss payment. In addition to the attorney fees, the insurer shall pay a penalty equal to at least 20 percent of the damages awarded.

Rationale: establishes a clear timeline for when insurers are required to make a payment after a determination has been made that the loss was covered under the policy. This section prevents insurers from unfairly denying or delaying payment of claims legitimately owed. This section imposes tough new penalties on those insurance carriers who improperly and unfairly withhold payments of legitimate claims.

Section #8 - requires the insurer to pay the costs of arbitration or mediation. However, the arbitrator may require the insured to reimburse the insurer for these costs.

Rationale: in some instances, an insurer may require a policy holder to pay the costs of arbitration or mediation before the process even begins. This type of activity discourages claimants from pursuing a fair settlement, especially when the amount at issue is less than the cost of arbitration. This section prohibits this practice and affords insured motorists a fair opportunity to pursue equitable claims.

Section #9 - establishes that short term policies shall be at least 7 days but no more than 30 days with premiums not exceeding 200% of the pro rata premium charged for longer term policies.

Rationale: when consumers need short term insurance, as required by existing law to be offered, they currently may be charged very high premiums for such coverage. This section sets a fair and equitable limit on how much insurers can charge for such policies.

Section #10 - this section was requested by the Division of Insurance and the Division of Motor Vehicles. It prohibits an insurance company from charging a surcharge of high-risk insurance or increasing the premium to a person or a family when a minor in the household has had their license revoked for a non-driving offense.

Rationale: when the "Use it, Lose it" law was passed, the intent of the legislature was not to penalize the person or family by requiring high-risk (SR-22) insurance be filed when a driver license was revoked under this statute. The reason was because in almost all cases the violation did not involve driving a motor vehicle. Language was placed in AS 28.15 that prohibited DMV from requiring SR-22 insurance but the language was not placed in AS 21. The insurance companies are claiming that since the language is not in AS 21, they can add a surcharge and place the person in a high-risk category.

Section #11 - requires insurers to provide a local or toll-free telephone number if the insurer sells automobile insurance in this state.

Section #12 & 13 - requires insurers to offer coverage for medical payments as part its automobile liability insurance policy. Should a claim arise under a medical payment policy provision, an insurer is required, within 15 days after a filed claim, to make an estimate of covered claims under the policy. The insurer has within 30 days to pay the undisputed amount of the covered claim.

These sections also require the insured to pay reasonable attorney fees, actual costs plus interest, any related arbitration fees if a medical payment claim is denied, and the claim is later determined to be covered under the policy. In addition, the insurer shall pay a penalty equal to at least 20 percent of the value of claim.

These sections also prohibit insurance carriers from offsetting medical payment premiums from uninsured and underinsured policy limits.

Rationale: frequently, insurers "blackmail" injured claimants by refusing to pay for needed medical care until the injured party agrees to the insurer's settlement terms.

Senate Bill 202 establishes a clear timeline for when insurers are required to make a medical payment after a determination has been made that the claim was covered under the policy. These sections impose tough new penalties on those insurance carriers who improperly and unfairly withhold payments of legitimate claims.

Section #14 - amends Rule 79 of the Alaska Rules of Civil Procedure.

Rationale: language implemented in sections 7, 12 and 13 of this legislation necessitate amending Rule 79 of the Alaska Rules of Civil Procedure.

Section #15 - amends Rule 82 of the Alaska Rules of Civil Procedure.

Rationale: language implemented in sections 7, 12 and 13 of this legislation necessitate amending Rule 82 of the Alaska Rules of Civil Procedure.

Section #16 - defines the applicability of policies of insurance this act effects.

Rationale: clearly defines which insurance policies will be affected by this act and whether the terms of those polices may be subject to civil action.

Section #17 - sets the effective date of this act on January 1, 1999.

Rationale: gives insurance companies the necessary time to implement the provisions enacted in this legislation.

DD/jja

FEB 11 1998

USAA

February 4, 1998

The Honorable Mike Miller
President of the Senate
State of Alaska
State Capitol, Room 111
Juneau, AK 99801-1182

Dear Senator Miller:

It was good to be back in Alaska and have the opportunity to visit with you last week during my brief trip to Juneau. I appreciate the time you took to visit with our group and hear our concerns with Senator Donley's Senate Bill 202.

You will recall that we made a verbal request that the bill be referred to the Senate Labor and Commerce for consideration and deliberation. That request was not made lightly. Had Senate Bill 202 been such that it only affected minor judicial concerns with the conduct of the insurance business in Alaska, assignment only to the Judiciary Committee may have been appropriate.

Unfortunately, such is not the case. If Senate Bill 202 becomes law in its current form, it will drastically alter the way insurers do business in Alaska, substantially increase the cost of insurance products and possibly serve to constrain the availability of insurance products in the state. In 1997, you helped pass meaningful tort reform to benefit all Alaskans. Those reforms were, in part, responsible for insurance cost reductions which USAA recently passed along its owner-members in the form of a substantial dividend. Senate Bill 202 would now negate much of the savings envisioned in the 1997 Tort Reform Act.

While in Juneau, we met with Senator Donley in an attempt to ascertain what problems he wants to address with his bill. Unfortunately, other than sharing some personal experiences and observations, he did not provide a great deal of insight as to his motivations or specific complaints received from constituents.

Trisha Connors of NAII has copied me on her letter to you urging an assignment of Senate Bill 202 to the Senate Labor and Commerce Committee. While I will not restate the points she raises in her letter, I am in complete agreement with her analysis. This is a **major** insurance bill with serious wide-ranging proposed changes to existing public policy. The decisions that are to be made regarding such changes should include the views of the policy committee charged with legislative oversight of those issues. In view of the wholesale public policy changes proposed in Senate Bill 202, the Senate Labor and Commerce Committee must be allowed to deliberate the bill.

USAA State Legislative Affairs 915 L Street, Suite 1100 Sacramento, CA 95814
TELEPHONE (916) 552-6715 FACSIMILE (916) 442-1328

On behalf of USAA, more than 12,000 Alaskan USAA members and more than 700 USAA members living in District Q, this is to strongly urge you to exercise your prerogatives as Senate President and assign Senate Bill 202 to the Senate Labor and Commerce Committee for hearings and comments by Alaska consumers and insurers.

Thank you for you consideration in this matter. If I can be of assistance on this or any other matter, please feel free to call upon me.

Sincerely,

James R. Jinks, AVP
USAA Senior Legislative Counsel

JRJ:djn

cc Members, Senate Labor & Commerce Committee
Members, House Labor & Commerce Commmittee
Joe Green, Chairman, House Judiciary Committee
Trisha Connors, NAII

USAA

April 1, 1998

The Honorable Loren Leman
Chairman, Senate Labor and Commerce Committee
State Capitol, Room 113
Juneau AK 99801-1182

Dear Senator ~~Leman~~ Loren:

I am writing on behalf of the United Services Automobile Association (USAA) to stress our continued opposition to Senate Bill 202 (Donley). USAA is a member owned company providing insurance and financial services to military families worldwide. More than 12,000 USAA owner-members live and work in Alaska and more than 700 reside in District G.

You may recall my February 4, 1998 letter in opposition to Senate Bill 202 when your committee first heard the measure. I have reviewed a working draft of the amended version of Senate Bill 202 that I am told the committee will hear this week. Notwithstanding the amendments, I believe that passage of Senate Bill 202 would completely reverse last year's meaningful tort reforms and drastically increase auto insurance rates for all Alaskans.

One of the most objectionable sections of Senate Bill 202 remains unchanged from the original version of the bill. Senate Bill 202 still requires insurers to pay loss claims within 30 days of receiving notice of the loss or face yet another possible payoff in excess of policy limits. If the insurer disputes the existence of the claim or the amount of the claim and the claimant prevails at trial or arbitration, the insurer must pay all damages up the policy limits and at least a 20 percent penalty. In addition, the insurer is subject to a second law suit (with more damages and attorneys' fees) for bad claims practices. You may recall that in the closing days of the passage of House Bill 58, Senator Donley proposed an amendment which would have created a similar bad faith cause of action. The Senate rejected that proposal because it would have negated the desired effect of the tort reform bill.

Referring again to the agreements made during the passage of House Bill 58, I believe there was an agreement not to alter the application of Civil Rule 82 as a part of the tort reform package. It would seem, then, that an effort to expand the application of Rule 82 violates the agreements that produced the 1997 reforms. The amended version of Senate Bill 202 would greatly expand Civil Rule 82's application and require payment of prejudgment interest without regard to policy limits. Thus, claimants would actually be forced to take cases to judgment rather than settle for policy limits in order to collect prejudgment interest as an additional benefit. Current law in Alaska does not permit a statutory increase in policy limits for prejudgment interest. This obvious attempt to provide litigants a windfall for taking a case to trial rather than settling at or below the policy limits seems to be a blatant attempt to eliminate

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policy limits. Thus, all Alaska policyholders will pay premiums based on the increased policy limits created by this provision in Senate Bill 202.

Finally, I am perplexed at the motives behind Senate Bill 202. While in Juneau, we met with Senator Donley in an attempt to ascertain what problems he wants to address with his bill. Unfortunately, other than sharing some personal experiences and observations, he did not provide a great deal of insight as to his motivations nor did he relate any specific complaints received from constituents. USAA has not experienced complaints from policyholders but we believe the passage of Senate Bill 202 would result in complaints as premiums were forced to increase. In recent months, USAA has experienced reduced claims costs in Alaska and has been able to pass those savings along to our insureds. While it would be impossible to attribute all of the cost reductions to the influence of House Bill 58's tort reform provisions, I believe it is safe to say that those reforms have made a strong contribution to reducing insurance claims costs.

Last year the Alaska Legislature enacted one of the best tort reform bills in the country (House Bill 58). Senate Bill 202 is a poorly guarded attempt to reverse those reforms and increase the cost of auto insurance for all Alaskans. Thus, I respectfully request your NO vote on Senate Bill 202.

Sincerely,

James R. Jinks, AVP
USAA Senior Legislative Counsel

JRJ:djn

SB

205

DEPARTMENT OF LABOR
OFFICE OF THE COMMISSIONER -- MAIL STOP 0700
LEGISLATIVE ROUTE SLIP
BILL NO. SB-205

SENATE	LOCATION	TITLE	OFC/COM
☐ ADAMS, AL	Room 417		3707
☐ DONLEY, DAVE	Room 508		3892
☐ DUNCAN, JIM	Room 119	Minority Leader	4766/4767
☐ ELLIS, JOHNNY	Room 9		3704
☐ GREEN LYDA	Room 125	St. Aff. (4522)	6600
☐ HALFORD, RICK	Room 121	Res. (4907/3711)	4958
☐ HOFFMAN, LYMAN	Room 7		4453
☐ KELLY, TIM	Room 101	Rules (3770)	3822
☒ LEMAN, LOREN	Room 113	L&C (3844)	2095
☐ LINCOLN, GEORGIANNA	Room 11		3732
☐ MACKIE, JERRY	Room 427	C&RA (4989)	4925
☐ MILLER, MIKE	Room 107	President (3755)	4976
☐ PARNELL, SEAN	Room 504		2995
☐ PEARCE, DRUE	Room 518	Co-Finance	4993
☐ PHILLIPS, RANDY	Room 103	LB&A (6591)	4949
☐ SHARP, BERT	Room 516	Co-Finance	3004
☐ TAYLOR, ROBIN	Room 30	Jud(3717)/Maj Leader	3873
☐ TORGERSON, JOHN	Room 514		2828
☐ WARD, JERRY	Room 423	Trans. (4921)	4940
☐ WILKEN, GARY	Room 510	HESS (3762)	4709

☒ SPONSOR

☐ REQUESTOR

☐ LEGISLATIVE FINANCE 6th Fl, SOB
☐ LEGISLATIVE OFFICE 3rd Fl, Capitol
☐ OMB/BUDGET REVIEW 5th Fl, Ct Attn: Royce Weller
☐ DOL BUDGET ANALYST
☐ DOL DIVISION COPY Attn:_____
☐ DOL CO BILL FILE
☐ DOL CO CENTRAL FILE

FROM: Dwight DATE: 1-15-98

legroute.sen Rev (1/97)

FISCAL NOTE

STATE OF ALASKA **BILL NO.** SB 205
1998 LEGISLATIVE SESSION

Revision Date (Note if correction):
Title: Occupational Health and Safety Audits
Sponsor: Senator Leman
Requestor: Senate Labor & Commerce

Department Affected: Labor
BRU: Labor Standards & Safety
Component: Occupational Safety & Health
COMPONENT SERIAL NO. 970

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	27.7	27.7	27.7	27.7	27.7	27.7
TRAVEL	2.0	2.0	2.0	2.0	2.0	2.0
CONTRACTUAL	117.8	117.8	117.8	117.8	117.8	117.8
SUPPLIES	0.5	0.5	0.5	0.5	0.5	0.5
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	148.0	148.0	148.0	148.0	148.0	148.0
CAPITAL						
CHANGE IN REVENUE	(19.8)	(19.8)	(19.8)	(19.8)	(19.8)	(19.8)
FUND SOURCE #	1004	1004	1004	1004	1004	1004

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	148.0	148.0	148.0	148.0	148.0	148.0
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
TOTAL	148.0	148.0	148.0	148.0	148.0	148.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY98) impact: $ 0.0

ANALYSIS: (Attach a separate page if necessary)

As written, SB 205 will place our 18(e) certification in jeopardy with federal OSHA resulting in increased general fund expenditures and a reduction in unrestricted revenues. While we have no way of knowing the actual number of cases AKOSH would be forced to investigate, significant expense would be incurred. We could anticipate general fund expenditures (no federal funds can be spent on these activities) as described on page 2.

Prepared by: Alan W. Dwyer, Director Phone : 465-4855
Division: Labor Standards & Safety Date : 1/14/98

Approved by Commissioner: Tom Cashen, Commissioner
Agency: Department of Labor Date: 1/14/98

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We will assume 4 cases per month, or 48 per year would require AKOSH investigation, that Occupational Safety Compliance Officers (OSCO) and the Assistant Attorney General will each spend 15 hours per case, and that the Hearing Officer will spend 10 hours per case.

Travel will be required by the OSCOs, the AG and the Hearing Officer to investigate employers located outside of the Anchorage area.

Indirect charges are based on the department's rate of 8% of personal services.

Line 71000 - Personal Services	**27.7**
Occupational Safety Compliance Officers (48 x 15 hrs x $35/hr)	25.2
Administrative review, Clerical Support	2.5
Line 72000 - Travel	**2.0**
Occupational Safety Compliance Officers	2.0
Line 73000 - Contractual	**117.8**
Professional Services	
Assistant Attorney General (48 x 15 hrs x $93/hr)	67.0
Hearing Officer (48 x 10 hrs x $100/hr)	48.0
Travel for AG & Hearing Officer	2.0
Base phone & long distance charges	0.6
Data Processing Chargeback	0.2
Line 74000 - Commodities	**0.5**
Office Supplies	0.5
TOTAL	**148.0**

In FY97 AKOSH collected $197.8 in unrestricted revenue generated by fines imposed on employers for violations of safety and health issues. If this bill is passed, it is estimated these revenues would be reduced by at least 10% due to the reduction of fines that AKOSH would be able to collect.

SENATOR LOREN LEMAN

Northwest Anchorage

716 W 4th Ave, Suite 520, Anchorage, AK 99501 (907) 258-8189 Session: State Capitol, Juneau, AK 99801 (907) 465-2095

Sponsor Statement -- SB 205

"An Act relating to health and safety audits to determine compliance with certain laws, permits, and regulations."

Although workplaces have become progressively safer in recent years, there is still room for improvement. Senate Bill 205 establishes two incentives to encourage regulated entities to conduct voluntary assessments of their internal operations, in an effort to secure full compliance with occupational health and safety regulations.

The first incentive is limited immunity. Entities that conduct voluntary self-audits will be immune from civil and administrative penalties for violations discovered, provided several conditions are met. The instances of noncompliance must be discovered through a self-audit, and reported promptly to the appropriate regulatory agency. The regulated entity must take action to correct the identified problem and prevent its future recurrence. Immunity is not available for violations causing substantial off-site damage or serious on-site injury. In addition, no immunity is available for violations that are knowingly committed or that result from recklessness. Immunity can be denied to regulated entities with a history of similar violations, or a pattern of disregard for workplace safety laws.

The second incentive is qualified privilege. Certain portions of the reports generated from voluntary self-audits will be considered privileged and therefore not admissible as evidence or subject to discovery in civil or administrative proceedings. This provision recognizes that the evaluative portion of an audit report is, by its very nature, self-incriminating: it discovers problems, identifies what personnel or management deficiencies may be responsible, and recommends corrective action. Studies show that many businesses opt not to perform audits out of fear that the resulting reports will be used by agencies or hostile third parties as a "road map to prosecution." As with the immunity benefit, the privilege has limitations. Privilege can be overcome if asserted for a fraudulent purpose, or if the regulated entity has failed to take required actions to correct areas of noncompliance.

As the budgets of regulatory agencies are reduced at both the federal and state level, the importance of encouraging self-policing becomes ever more important. Senate Bill 205 creates incentives for companies and individuals acting in good faith to police themselves and maintain full compliance with highly complex regulations. This in turn allows government regulators to focus increasingly scarce resources toward investigating and prosecuting the small minority of genuine "bad actors."

Senate Bill 205 is structurally similar to Senate Bill 41, a bill the Legislature enacted into law in 1997 to encourage Alaska individuals, businesses and local governments to conduct environmental compliance audits. Senate Bill 205 applies the self-audit concept to workplace safety issues, which are sometimes interrelated with environmental protection issues and often of more immediate importance.

Sectional Analysis -- Senate Bill 205

"An Act relating to occupational health and safety audits to determine compliance with certain laws, permits, and regulations."

Prepared by: Mike Pauley, Staff to Sponsor SENATOR LOREN LEMAN
Last updated: January 14, 1998

Section 1: Statement of legislative findings and intent.

- Performance-based standards are increasingly replacing the traditional command-and-control approach of enforcing occupational health and safety regulations; this shift will lead to the integration of health and safety protections with normal operating procedures.
- The legislature intends to foster this integration by creating a responsible incentive program that will encourage voluntary, critical self-evaluations by regulated entities.
- The public has a strong interest in promoting routine self-audits by regulated entities. This can best be achieved by recognizing a qualified privilege that will help preserve the free flow of information generated by self-audits. Additionally, self-auditing can be encouraged by extending limited immunity to those entities which voluntarily report and correct regulatory noncompliance.

Section 2: Establishes privileges and immunities for certain self-audits.

Sec. 09.25.450 Establishes a qualified audit report privilege.

- The parts of an audit report consisting of confidential self-evaluation and analysis of compliance with occupational health and safety laws are privileged. These privileged materials are generally not admissible as evidence or subject to discovery in civil or administrative proceedings.
- To qualify for the privilege under this section, as well as the limited immunity under Section 09.25.475, regulated entities must provide 15 days advance notice to the department before commencing a self-audit. The audit must be completed within a reasonable time, but no longer than 90 days unless a longer period of time is negotiated with the department.
- The person claiming the audit privilege has the burden of proving its applicability.
- All audit report documents containing confidential self-evaluation and analysis must be labeled "AUDIT REPORT: PRIVILEGED DOCUMENT".
- Regulatory agencies and their employees cannot require an owner or operator to waive privilege as a condition of a permit, license, or approval.
- Regulatory agencies and their employees generally may not review or use the parts of an audit report consisting of confidential self-evaluation and analysis during an inspection of a regulated facility, operation, or property.

- This section does not prevent a regulatory agency from conducting necessary inspections, taking appropriate enforcement actions, etc., except as provided in AS 09.25.475.
- No privilege is authorized for uninterrupted or continuous audits.
- There is no privilege for documents or communications in a criminal proceeding.

Sec. 09.25.455 Establishes an exception to the privilege through the use of waivers.

- The audit privilege can be waived in writing by the owner or operator who prepared the audit report or caused it to be prepared.
- Disclosure of the part of an audit report consisting of confidential self-evaluation and analysis does not cause the privilege to be waived if the disclosure is made to an employee, contractor, lawyer, or other person involved in addressing or correcting any matter raised in the audit.
- Disclosure does not cause the privilege to be waived if it is made under terms of a confidentiality agreement with an insurer or underwriter, a partner or potential partner, a lender or potential lender, etc.
- Disclosure does not cause the privilege to be waived if it is made under terms of a written claim of confidentiality with a government agency or official.

Sec. 09.25.460 Describes materials not protected by privilege.

- Privilege does not apply to documents or other information required by an agency to be reported or maintained as part of an existing occupational health and safety law.
- Privilege does not apply to information a regulatory agency obtains from its own observation or monitoring, or from a party not involved in preparing the audit report.
- Privilege does not apply to documents or information that are independent of the audit; nor does privilege apply to documents or information developed or maintained in the course of a regularly conducted business activity.

Sec. 09.25.465 Establishes an exception to the privilege through disclosure required by a court or an administrative hearing officer.

- A court or administrative hearing officer may conduct an *in camera* review of audit report documents for which privilege is claimed. Disclosure can be required if it is determined that the privilege is asserted for a criminal or fraudulent purpose, or if the audit report reveals evidence of noncompliance which was not corrected promptly.
- Disclosure may also be required if the information for which privilege is claimed constitutes evidence of a substantial injury to one of more persons at the site audited, or to persons, property, or the environment offsite.

- Disclosure may be required if the privilege would result in a miscarriage of justice or the denial of a fair trial to the party challenging the privilege.
- The party seeking an *in camera* review must provide a factual basis adequate to support a good faith belief by a reasonable person that the documents are likely to reveal evidence to establish that an exception to the privilege applies.
- After an *in camera* review is granted, the party seeking disclosure has the burden of proving that an exception to the privilege applies.

Sec. 09.25.475 Establishes limited immunity for voluntarily reported violations.

- An entity voluntarily disclosing violations identified through a self-audit will be immune from civil and administrative penalties, provided that action is promptly taken to correct the noncompliance and prevent its future recurrence. Noncompliance must be corrected within 90 days unless a longer period of time is provided for in a compliance agreement.
- Disclosure of noncompliance must be reported in writing by certified mail to the appropriate regulatory agency. Disclosure must occur promptly after discovery of the noncompliance.
- Immunity is not available for violations independently detected by an agency prior to disclosure.
- Immunity is not available for violations resulting in substantial injury at the site audited or to persons, property, or the environment offsite.
- Agencies may not initiate an inspection or other investigative activity based solely on the receipt of an audit notice.

Sec. 09.25.480 Exceptions to Immunity & Mitigation of Penalties

- Immunity under 09.25.475 is not available if a court finds that the owner or operator claiming immunity has intentionally, knowingly, or recklessly committed or authorized the violation.
- Immunity is not available if the owner or operator has in the previous 36 months committed a pattern of violations which are the same or closely related to those for which immunity is sought, nor is immunity available for an owner or operator who has failed to achieve compliance and that failure constitutes a pattern of disregard for occupational health and safety laws.
- Penalties for violations that are voluntarily reported but which are not eligible for immunity may nevertheless be mitigated by attempts at remediation, cooperation with government officials investigating the disclosed violation, the nature of the violation, and other relevant considerations.
- There is no immunity for violating the terms or conditions of an administrative or court order.

Sec. 09.25.485 Relationship to other recognized privileges.

- This section clarifies that the act has no effect in limiting or abrogating any other existing privilege in statute or common law, such as the work product doctrine or attorney-client privilege.

Sec. 09.25.490 Definition of terms.

- "audit report" is a report that includes documents and communications produced from an occupational health and safety audit, including an implementation plan or tracking system to correct past noncompliance and prevent future noncompliance.
- "occupational health and safety audit" means a voluntary audit an owner or operator conducts or causes to be conducted that is designed to assess compliance with occupational health and safety laws; the audit is a systematic and objective review that reflects the owner's or operator's due diligence in preventing, detecting, and correcting violations.
- "confidential self-evaluation and analysis" means the part of an audit report that consists of memoranda and documents that evaluate or analyze all or part of the material described in the audit report, including implementation issues or an audit implementation plan or tracking system to correct past noncompliance, improve current compliance, or prevent future noncompliance with occupational health and safety laws.

Section 3: Applicability.

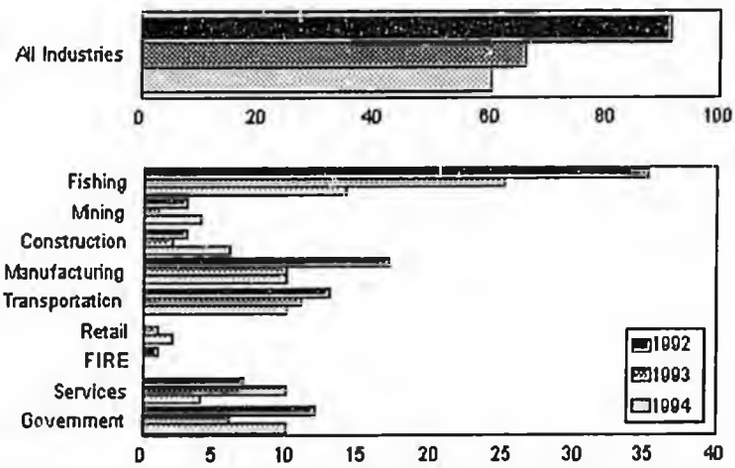
- Clarifies that the privilege and immunity created in Section 2 of the act apply only to audits conducted on or after the effective date.

Census of Fatal Occupational Injuries, 1994

by Talitha Lukshin

Sixty workers died in workplace fatalities in 1994, according to the results of the Census of Fatal Occupational Injuries (CFOI). The fatality count has declined steadily since 1992, the first year the census was compiled. (See Figure 1.) The census records the workplace fatalities of the self-employed, civilian and military government employees as well as all private sector wage and hour employees.

Figure 1. Workplace Fatalities Decline in 1994

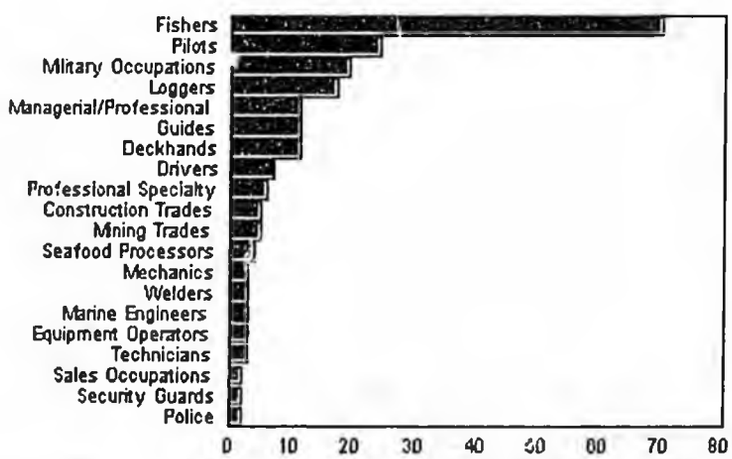


Source: Alaska Department of Labor, Research and Analysis Section, CFOI Unit

Fishers, pilots, military, loggers account for most of the deaths from 1992-94

Only four occupations have accounted for 59% of the total number of deaths since 1992.(See Figure 2.) Fishers alone represented over a third of the total deaths. Vessels sinking and falls overboard were the most likely event within this occupational group. With the exception of one case, pilots died in aircraft accidents. Military and managerial/professional occupational groupings both had 11 fatalities in the transportation event category.

Figure 2. Four occupations account for 59% of the fatalities over three years, 1992-1994.



Source: Alaska Department of Labor, Research and Analysis Section, CFOI Unit

Alaskas fatalities differ greatly from the nations

Over the past three years, water vehicle and aircraft accidents have been the leading cause of occupational related death in Alaska. For the nation as a whole, other modes of transportation and violent acts were the major causes of workplace fatalities. (See Table 1.) Compared to the nation, Alaska was much lower in all other event categories. Over twenty percent of the national cases coded as water vehicle accidents occurred in Alaska.

Violent acts drop, exposure cases increase

Cases from violent acts did not continue to increase in 1994. Rather, the number dropped by half. More importantly, homicides dropped to four, down from 12 in the prior year. Two of the four homicides in 1994 involved a robbery motive.

Deaths due to exposure to gases such as carbon monoxide, argon and freon rose to six in 1994. Of these six deaths, only one was in the jurisdiction of the Alaska Department of Labor. The other deaths occurred off-shore or to self-employed workers.

Fishing industry fatalities continue decline

While deaths in the commercial fishing industry declined to 14, this activity retained the highest fatality count of all state industries. However, the types of events in 1994 associated with these fatalities were varied; inhalation of carbon monoxide, struck by vessel trawl door, and an on-board fire were some of the events. The most dramatic change was the drop in deaths as a result of sinking. In 1992, the first year of the census, 26 fishermen were lost when their vessels sank. But, in 1994, only three died. (See Table 2.)

Much of this decline in commercial fishing fatalities has been attributed to new safety regulations implemented by the U.S. Coast Guard (USCG). The Alaskan fleet is now required to carry on-board safety devices such as survival suits, inflatable life rafts and Emergency Position Indicating Radio Beacons (EPIRB). In addition, one safety certified crewmember is to be on each vessel to instruct others and conduct drills.

According to USCG data, 36 commercial fishing vessels were lost in 1994, down only slightly from the prior seven-year average of 40. Lives saved, however, soared to 259, due mostly to 132 saved in one incident during 1994. The additional 127 lives that were saved still comprise a remarkable statistic, since the average number of lives saved was 75 for the prior three years. It should be noted that shorter crab seasons during 1994 may also have influenced the fatality decline.

Mining and construction fatalities increase in 1994

Four deaths occurred in the mining industry and six in construction during the census year. Three of the four mining fatalities were in the oil and gas sector, with one in hard rock mining. These 1994 fatalities in the oil and gas sector were the first recorded as part of the CFOI program. All other mining fatalities have been related to metal mining or mineral services. However, in 1994, two workers were struck by falling objects from above, and the other was killed in an explosion. (See Table 3, Below)

Three of the construction workers died in three separate accidents when the structures they were working on collapsed. A confined space asphyxiation occurred on the North Slope when a welder entered a pipe being purged with argon gas. A mechanic was backed over when he climbed under a truck. One of the six deaths in construction was related to a shooting at a company bunkhouse.

Logging fatalities similar from 1993-94, except in aerologging

No accidents were reported by the aerologging operations in Alaska during 1994. This is encouraging news, since the most frequent cause of fatalities in this industry was aircraft accidents, 38% over three years. Lead by the National Institute of Occupational Safety and Health, a joint government and industry task force has been working to improve safety conditions since 1993. Recommendations drafted regarding the training, maintenance and operating methods for aerologging are now in practice.

However, as in the past, logging fatalities again occurred due to workers being struck by a falling tree or a rolling log. Also, workers working around vehicles continue to be at risk in this industry. In one case, a manager was struck in the head with the rotor blade of a helicopter. In another, the worker was struck from behind by a front-end loader backing up. Similar events occurred in 1993 when a logger was hit by a tree and two workers were hit by the vehicles they were working around.

Seafood industry deaths rise in 1994

Work related deaths increased for seafood processing in 1994. Of the four deaths, three occurred to the off-shore fleet. A fire aboard the *M/V All Alaskan* took one life, but 132 crew were safely evacuated. Another vessel incident involved an asphyxiation due to exposure to freon. A deckhand on a processor fell overboard while reaching to retrieve a hat. Incapacitated by the cold, he was unable to reach a life ring thrown within minutes of his fall. The death at a shore-based facility occurred when a workers clothing caught in the equipment he was cleaning, causing a mechanical asphyxiation.

Transportation sector deaths similar from 1993 to 1994

Fatalities in air transportation remained unchanged at six during 1994. Although one of these crashes involved a Canadian plane, it crashed in Southeast Alaska. Deaths due to violent acts dropped from three to one. That case involved the murder of a cab driver in the Anchorage area. Water transportation lost three workers, two due to water vehicle falls and another when a barge line snapped hitting the individual releasing it.

Deaths among volunteers in the government sector recorded

One local, two state and seven federal employees or volunteers died on the job in 1994. Volunteers exposed to the same work hazards and performing the same duties or functions as paid employees may be included as part of the census. Of the federal workers, four were military, one was a volunteer guide, and two were conservation biologists, one of which was a Canadian official. A local school district principal was killed in a vehicle accident and a state employees death occurred in a railroad and highway vehicle accident. A Department of Fish and Game volunteer fell from a cliff to her death while assisting on a falcon project. The other volunteer died on Mount McKinley while assisting a climber as part of a National Park Service program.

Table 3:

1994 OSHA Investigated Fatality

Source: Alaska Department of Labor, Labor Standards & Safety, Occupational Safety and Health.

Oil & Gas Industry	The worker was cleaning snow from an arctic entry while it was suspended with a forklift. The structure slid off the forklift, onto the worker, crushing him between the load and a parked crew van.
	The worker was loading explosives into a perforating tool. The explosives detonated, killing the worker and injuring four other workers.
	The worker suffered critical head injuries when he was struck by a pump that fell from above him. The worker was making repairs to shelves below when the pump fell.
Construction	The worker was fatally asphyxiated when he entered a thirty-inch diameter pipe that was being purged with argon gas.
	The victim was under a two ton truck and was backed over.
Logging	The worker was coiling a choker in a roadway at a landing-site. A front-end loader backed over the victim.
	While bucking a log, several logs above the worker were dislodged, rolled downhill, hitting the employee and killing him.
	A helicopter was being refueled with the engine running. The worker walked up to the helicopter to talk to the pilot. When walking away, walked directly into the rotor blades.
	The worker was operating a crane, picking up a bundle of logs. The crane was rotated 90 degrees and tipped over into the water.
Seafood	Worker was cleaning the floor around a large spiral freezer next to slow moving gear shaft. His clothing caught in a gear shaft causing a traumatic mechanical asphyxiation.

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R#4

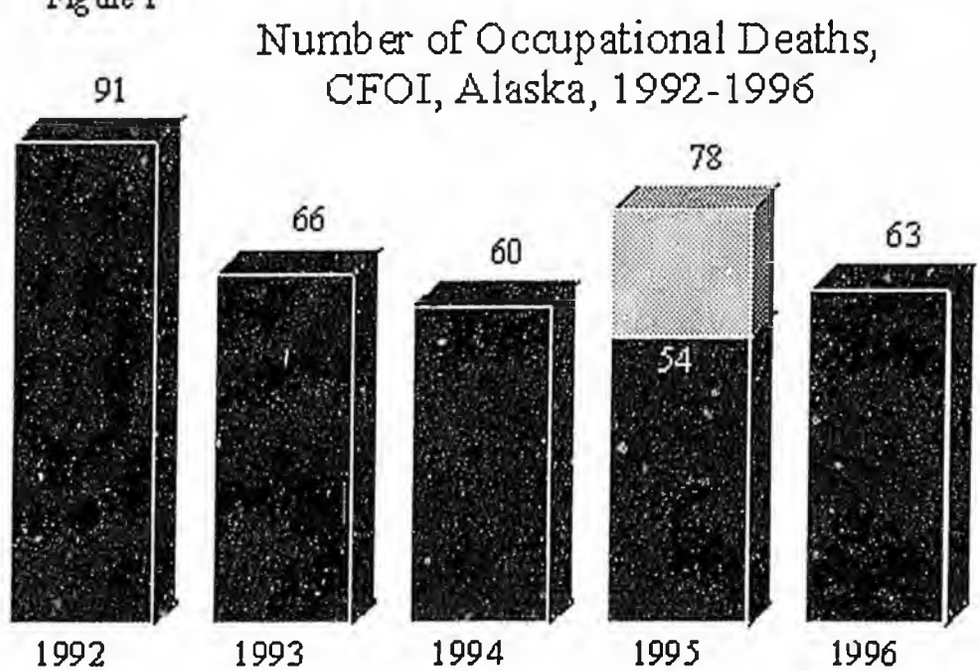
Reprint from *Alaska Economic Trends*- September 1997

Occupational Fatality Count Declines from 1995 to 1996

by Talitha Lukshin

Occupational fatalities in Alaska increased from 1994 to 1995, but dropped again in 1996, according to the latest results of the Census of Fatal Occupational Injuries (CFOI). (See Figure 1.) Collected in all fifty states, this Bureau of Labor Statistics program is conducted cooperatively with the Alaska Department of Labor. The census records the workplace fatalities of the self-employed, civilian and military government employees as well as all private sector wage and hour employees.

Figure 1



Note: 24 deaths in 1995 were related to a single military air crash.
Source: Alaska Department of Labor, Research and Analysis Section.

Of 78 occupational deaths in 1995, 24 occurred in the crash of a military AWACS jet. Without this incident, occupational deaths would have declined in 1995. In 1996, there were 63 occupational fatalities, almost half of which were related to water vehicle accidents.

Alaska CFOI fatalities differ greatly from national CFOI trends

As shown in Table 1, Alaska CFOI water vehicle and aircraft accidents accounted for nearly 65 percent of the 358 Alaska fatality cases from 1992 to 1996. Nationally, however, the majority of the cases are classified in "other transportation" and "violent acts" categories. An incident rate calculated using a five-year average indicates that Alaska's rate of occupational fatality is four times the national rate. (See Table 2.)

From a high of 31 to a low of 19, the fatality incidence rate for five years averaged 22 per 100,000 workers. Air and water transportation accidents contribute greatly to the difference. Overall low state employment relative to the high number of occupational fatalities in a few industries, such as commercial fishing and air transportation, results in a much higher rate for Alaska.

Water vehicle accidents account for 46% of deaths in 1996

In 1992, the first year of the census, fatalities related to water vehicle accidents peaked at 38, dropping to a low

of 14 in 1994. However, this accident group increased to 22 in 1995 and again in 1996 to 29. In all, 11 workers died in vessels that sank or capsized in 1995. (See Table 3.) That figure rose to 13 in 1996. (See Table 4.)

These counts were greatly influenced by the loss of a crabbing vessel's entire crew in each of the past two years. In 1995, the F/V Northwest Mariner capsized resulting in six fatalities. Two of the six crew were found without survival suits in a life raft, dead of hypothermia. The U.S. Coast Guard (USCG) investigation indicated that the capsize was most likely related to environmental factors including high winds, heavy seas, and icing. In 1996, the crabbing vessel F/V Pacesetter went down with seven crew members aboard. The USCG investigators suspect "free surface effect," or the effect of water in the hold moving freely from side to side. Traveling to the fishing grounds, the vessel had its deck fully loaded with crab pots which added to its roll, compromising stability.

Other factors in the 1996 increase were six cases reported in the cruise ship industry and three diving accidents aboard fishing vessels. Five crew members were lost in a fire aboard the M/V Universe Explorer. In another cruise ship incident, a deckhand was struck by a snapped line during a wind storm. Two fishermen died while scuba diving to clear line or net material from the vessel's propeller. Another fisherman died while diving to gather sea cucumbers. Faulty diving gear or entanglement caused these diving accidents.

Importance of survival suits/smoke alarms evident in 1995 and 1996

The importance of properly fitted survival suits was evident again in 1995 and 1996. Workers died after abandoning ship without having the hoods of their suits on and/or the zippers secure. In some cases, there was not enough time to get the suit on at all. In prior hypothermic drowning cases, the person entering the water without the hood secure became hypothermic within 20 minutes.

Six lives were lost in two vessel fires during 1995 and 1996. Surprisingly, no smoke alarms were installed in the area of the fire for either the fishing vessel or the cruise ship. Instead, heat-activated alarms were in place, delaying the response time.

Man-overboard hazards during crabbing or long-lining remain unchanged

Fishermen crabbing or long-lining were also at risk of being pulled overboard by lines attaching strings of crab pots or long lines of baited hooks. Since 1992, seven such cases have occurred with three recorded in 1996. The details are tragically similar. While the lines are going out, the crew member becomes entangled, for example, while throwing out the anchor or freeing tangled pots, and is immediately pulled overboard with the gear.

In all, pulled over accounted for 21% of the man-overboard (MOB) cases from 1992 to 1996. Loss of footing or hold on a vessel, other than a skiff, accounted for nearly half of the MOB cases but the circumstances were varied and in some cases unknown. Alcohol was a factor in at least seven cases. There were five falls from skiffs and four workers were swept over by large waves in the five-year period from 1992-1996. Together, these two groupings accounted for 27% of the MOB cases. Except for one case, personal flotation devices were not used in any of the MOB cases documented.

NIOSH forwards primary prevention proposals for fishing industry

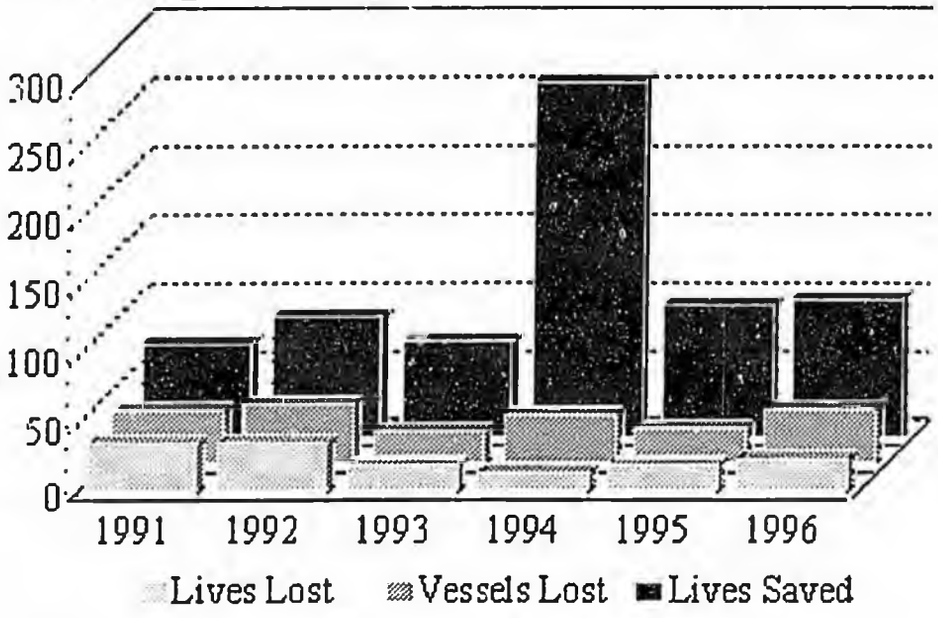
Primary prevention efforts are needed to address compromised vessel stability and falls overboard according to the National Institute of Occupational Safety and Health (NIOSH), Alaska Field Station. The field station identified vessel design enhancements and careful attention to both loading and environmental factors as solutions to stability./1

Personal flotation device use by fishermen was identified as an appropriate intervention for MOB drownings, other than line entanglements. Since the enactment of the Commercial Fishing Industry Vessel Safety Act in 1988, the USCG is now requiring survival suits, Emergency Position Indicating Radio Beacons (EPIRB), and life rafts to be carried onboard. Also, there must be one safety certified crew member on each vessel to instruct

others and conduct drills.

With these changes have come dramatic increases in the number of lives saved. (See Figure 2.) Fishing fatalities related to vessel sinkings are trending down. Fishermen are now able to stay alive longer and are located sooner after a vessel loss. However, the number of fishing fatalities is still high. Emphasis must now switch to prevention by addressing vessel stability and work hazards before the accident.

Figure 2



Note: In 1994, 132 crew were saved in a single rescue.
Source: United States Coast Guard

The number of air transportation deaths increases in 1996

Less the 24 deaths from a single military crash, 10 workers died in aircraft accidents in 1995. Of these, nine were pilots, with six specifically employed in the air transportation industry. In 1996, the number of pilots killed in air transportation accidents rose to 10, excluding self-employed. An average of six pilots have been lost each year since 1992. Using employment data from the Alaska Department of Labor (AKDOL), Occupational Database, the fatality risk of pilots operating in unscheduled air transportation was 563 per 100,000 pilots from 1992 to 1996. (See Table 5.) In comparison, the 1995 national occupation-specific incidence rate for pilots was 97. The high number of Alaska fatalities is not a new trend. Data gathered from the AKDOL Workers' Compensation Division show an average of seven pilots died each year in air transportation crashes from 1985 to 1991.

Government and industry working to improve aviation safety

The NIOSH field station has recently released a study of Alaska work-related aviation fatalities from 1990 to 1994. Based on reports provided by the National Transportation Safety Board (NTSB), the primary cause of fatal occupational crashes was most often related to controlled flight into terrain during limited visibility. Visibility transitioned from visual meteorological conditions (VMC) with visibility of more than a mile to instrument meteorological conditions (IMC) with visibility of less than a mile during the flight. For all crashes examined in the NIOSH study, crashes in IMC weather were five times more likely than in VMC./2

The study reaffirms earlier recommendations of the Federal Aviation Administration (FAA) for Aeronautical Decision Making (ADM) training certification for pilots in the United States, but calls for Alaska-specific ADM rules to reduce the number of aircraft-related occupational fatalities. Also forwarded were earlier NTSB recommendations for increased protective equipment use by pilots. As part of the Alaska Interagency Working Group,/3 an aviation working group has formed with representatives of the industry and the NTSB, FAA, and other government agencies to coordinate outreach for safety improvement in the industry.

State OSH jurisdiction covers five percent of the 1995 and 1996 CFOI fatalities

Of the occupational fatalities counted by CFOI, three in 1995 and four in 1996 were investigated by the

AKDOL, Occupational Safety and Health (OSH) Unit. This is a significant drop from 1994 when OSH-investigated cases comprised 15% of the census. The drop was due to a decline in logging fatalities and the absence of oil field industry deaths.

Over the past two years, deaths investigated by Alaska's OSH unit crossed five different industry groups. (See Table 6.) However, there is some commonality among the cases. Six of the seven deaths were vehicle related. Workers operating or working around heavy equipment or moving vehicles are at risk, regardless of industry. Vehicle-related deaths among OSH-investigated fatalities were also high in 1994 when five of nine deaths were in this group. In that year, three workers were struck by the vehicle they were working around, one was killed in the vehicle under operation, and another was struck by a vehicle's falling load. The inexperience of the operator or worker moving around the equipment, or both, was a factor in some of these cases. Another was the lack of communication between the decedent and the operator of the vehicle.

In 1995, vehicle accidents on the highway contributed to a sharp increase in transportation deaths

Previously ranging between four and six, other transportation cases rose sharply to 11 in 1995. This rather broad category includes all highway and nonhighway motor-vehicle-related accidents. Six of the 11 cases were roadway vehicle accidents. For the first time since the start of the census, three deaths among independent trucking contractors occurred in various industries. Tragically, defective brakes, mechanical failure was cited as the cause of the crash in two of the three cases.

Footnotes:

1/ Public Health Reports, Volume 110, November/December, 1995.

2/ Morbidity and Mortality Weekly Report (MMWR) Centers for Disease Control and Prevention, Vol. 43/ No. 22, June 6, 1997.

3/ The Alaska Interagency Working Group for the Prevention of Occupational Injuries is comprised of representatives from NTSB, FAA, NIOSH, OSHA, USCG and the Alaska Department of Health and Social Services and Labor.

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SB

212

Northrim Bank
Customer First Service

VIA FACSIMILE

March 19, 1998

Senator Loren Leman, Chairman
Senate Labor & Commerce Committee
State Capital, Mail Stop 3100
Juneau, AK 99801-1182

RE: SSB-212 AN ACT BANNING AUTOMATED TELLER MACHINE SURCHARGING

Dear Senator Leman:

I am writing this letter to you to register Northrim Bank's opposition to SSB-212. One of the fundamental principals of Northrim is its Customer First Service. The bank has grown and thrived because of its adherence to this principal and its ability to offer new and innovative services to its customers. The bank has also benefited from a state regulatory structure that has allowed it to innovate and aggressively pursue its market strategy.

Northrim Bank firmly believes that market competition and consumer choice should act as the check and balance system on such items as ATM fees and similar matters. This is not an area that should be governed by state regulation. If Alaska was to pass such legislation, it would be the first of the 50 states to legislate these types of price controls. Only the Banking Departments of Iowa and Connecticut have implemented such laws and both are being challenged in the court.

Northrim Bank hereby respectfully requests that you do not pass this bill out of your committee and that you reconsider this proposed legislation.

Yours truly,

Chris N. Knudson
Executive Vice President,
Chief Operating Officer

cc: Members of Senate Labor & Commerce Committee
Willis Kirkpatrick, Director of Banking

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CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 212( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR ELLIS

A BILL

FOR AN ACT ENTITLED

"An Act relating to automated teller machines and to night deposit facilities; and providing for an effective date."

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

* Section 1. LEGISLATIVE FINDINGS AND INTENT. The legislature finds that the fees charged for using automated teller machines could have a negative effect on the financial institutions industry and consumers. The legislature intends to ensure that there is an efficient and competitive automated teller machine market.

* Sec. 2. AS 45.45 is amended by adding new sections to read:

Article 8A. Automated Teller Machines and Night Deposit Facilities.

Sec. 45.45.600. Surcharges for use of automated teller machines. A bank or other person who owns or operates an automated teller machine in this state may not impose a surcharge on a customer for the use of the automated teller machine. In this section, "surcharge" means a fee directly imposed on a customer by the owner or operator of an automated teller machine as a result of the use of that machine if the

fee is not imposed for a similar in-person transaction.

Sec. 45.45.610. Safety evaluation. An operator of an automated teller machine or a night deposit facility shall, at least once every year, evaluate the safety of the installation. The evaluation must include a determination of

(1) the extent of violent criminal activity that has taken place in the immediate neighborhood of the installation and whether the installation should be moved to a safer location;

(2) whether the lighting for the installation complies with AS 45.45.620 and, if not, what changes will bring the lighting into compliance;

(3) whether landscaping, vegetation, or other obstructions within 50 feet of the installation or within the parking area, if any, provided for customers pose a hazard to the customers and the extent to which those hazards may be minimized by the owner or operator of the automated teller machine or night deposit facility.

Sec. 45.45.620. Lighting requirements. (a) The operator of an automated teller machine or night deposit facility shall provide lighting during the period that begins 30 minutes after sunset and ends 30 minutes before sunrise for the area within 50 feet of the installation. Lighting at the face of the installation and extending in an unobstructed direction outward five feet must equal at least 10 candle-foot power. Lighting beyond that point but within 50 feet of the installation must equal at least two candle-foot power. In addition, if the installation is located within 10 feet of the corner of a building and is accessible by traveling along the adjacent side and around that corner, lighting equal to at least two-candle foot power shall be provided along the 40 feet of the adjacent side nearest to the corner.

(b) This section does not apply to an automated teller machine or night deposit facility that is located

(1) inside a building, other than a freestanding structure that exists for the sole purpose of providing an enclosure for the automated teller machine or night deposit facility, except to the extent that a transaction can be conducted from outside the building; or

(2) in an area that is not controlled by the operator.

Sec. 45.45.630. Notice to customers. A bank or other person who issues a

card, key, or other access device to enable customers to use an automated teller machine or night deposit facility shall furnish the customer with a notice of basic safety precautions that the customer should observe while using the installation. The notice may be included with other information related to the access device furnished to the customer. If an access device is provided to more than one customer for a single account or set of accounts or on the basis of a single application or request for the access device, only a single notice to one of the customers must be provided under this section.

Sec. 45.45.690. Definitions. In AS 45.45.600 - 45.45.690,

(1) "automated teller machine" means an electronic information processing device that accepts or dispenses cash in connection with a credit, deposit, or convenience account, but does not include a device used primarily to facilitate check guarantees or check authorizations, if the check guarantees or check authorizations are used in connection with the acceptance or dispensing of cash on a person-to-person basis such as by store cashier, or used for payment of goods and services;

(2) "bank" has the meaning given in AS 06.05.540;

(3) "night deposit facility" means a receptacle that is provided by a bank for the use of its customers in delivering cash, checks, or other items to the bank;

(4) "operator" means a bank or other person who operates an automated teller machine or night deposit facility.

* Sec. 3. TRANSITION. AS 45.45.610 - 45.45.630, enacted in sec. 2 of this Act, do not apply until July 1, 2000 with respect to an automated teller machine or night deposit facility that is in operation on the effective date of this Act.

* Sec. 4. This Act takes effect July 1, 1998.

ALASKA STATE LEGISLATURE

Senate Health, Education and Social Services Committee
•
Senate Judiciary Committee
•
Department of Health and Social Services Budget Subcommittee
•
Department of Law Budget Subcommittee

While in Session
State Capitol, Rm. 9
Juneau, Alaska 99801
(907) 465-3704
fax: (907) 465-2529
•
While in Anchorage
716 West 4th Ave., Ste. 440
Anchorage, Alaska 99501
(907) 258-8182
fax: (907) 258-5571

SENATOR JOHNNY ELLIS

Sponsor Statement
For
Senate Bill 212

"An Act relating to automated teller machines."

Most people have been there. You are in a rush and need quick cash but you are nowhere near your bank's Automated Teller Machine. The machine around the corner is owned by another bank and if it accepts your card, you may get soaked with surcharge fees.

Those other bank's ATMs will likely charge you from $1 to $1.50 to use their machine. Then, your own bank may tack on an additional $1.25 fee. That adds up to $2.75 in fees just to put some cash in your wallet.

Senate Bill 212 curbs banks from soaking ATM users with excessive surcharges. In addition, the bill enhances public safety at automated teller machines. Senate Bill 212 sets safety standards for lighting around ATMs.

As Alaska Public Interest Research Group reported last year, the percentage of ATMs assessing surcharges has doubled to 45% in only six months. Over 80% of banks charge their account holders for using another bank's ATM. Last year, the two largest ATM networks, Plus and Cirrus, ended their ban on ATM-owners surcharging non-account holders a second fee. Consumer watchdogs agree that there is a disturbing trend in banking to dramatically increase costs to consumers.

Many banks argue that the surcharges offset the operating costs of their ATM network. That may be true to a point, however the financial industry knows that if you have got a large enough system, ATMs are a huge profit center. Why else would you see an ATM on every street corner? The truth is ATM convenience comes with an increasingly high price for consumers, translating into unjustified profit for banks.

Banks are pushing the envelope on what consumer's are willing and able to pay for the convenience of ATMs. As a longtime advocate for consumer protection, I believe banks should be encouraged to adopt consumer-friendly banking policies, including a "No Dual Surcharge" policy.

I urge your support of this legislation and Alaskan consumers.

The following document contains material that was unreadable on the original.

The Seattle Times

BUSINESS

THE SEATTLE TIMES • SEATTLE POST-INTELLIGENCER SECTION F

Tomorrow in Business Monday

Middle-class tax relief begins to filter down to the average taxpayer. Find out how.

Internet's tax shield in danger

Governments fight moratorium meant to spur commerce

By Charles Bowen
Newhouse News Service

Ohhh. You've let your brother's birthday sneak up on you again. No problem, you tell yourself. You'll use the Internet to buy him a nice gift. You sit down in front of your computer in, say, Edison, N.J., and work your way through a routine something like this:

- Log on to an 800 number with an Internet service provider based in New York City.
- Surf into the World Wide Web site of an electronic bookstore based in Seattle and pick out a provocative best seller.
- Pay for the book with money from your online bank account, which is managed by a service headquartered in Columbus, Ohio.
- Have the book shipped to your brother's office in Torrance, Calif.

So far, this simple purchase has involved five cities in five

Internet taxes

Sales taxes already in place in [illegible]

- *Internet access fees in Arizona, North Dakota, Texas, Missouri, Iowa, Illinois, Wisconsin, Ohio, Tennessee, North and South Carolina, Connecticut and Washington, D.C.*
- *Data downloaded is taxed in the states of Washington, Nevada, Arizona, Texas, Louisiana, Mississippi, Iowa, Indiana, Virginia, Connecticut and Maine.*
- *Goods bought over the Internet are taxed in Michigan when shipped to that*

different states, for a total of 10 government entities that might want to add tax charges to your bill. That's assuming there are no county taxes involved.

If that sounds just a bit frightening, consider that there are no fewer than 30,000 local taxing agencies in the U.S. authorized to levy taxes, and millions of simple transactions like this one take place on the Internet every day.

Congress is already moving to shield states from imposing new taxes for Internet-based goods and services until the turn of the new century. The goal of the moratorium is to give nascent electronic commerce a chance to establish itself before governmental profit-taking sets in.

But local governments leaders say they need the revenue right now and oppose tax immunity for a fast-growing mode of commerce.

They argue that, in seeking a tax moratorium, Internet pioneers are trying to set up an

Mark Harrison / The Seattle Times

A privately owned ATM *at Imperial Lanes in Seattle offers cash to bowlers and pull-tab buyers, cutting the business's exposure to bad checks. Imperial Lanes also is paid fees for the number of transactions through the ATM.*

By Tyrone Beason
Seattle Times business reporter

Convenience-store owners bolt them to the door next to refrigerated beer cases, cigarette racks and lottery-ticket terminals. They lure customers with banners and neon signs that advertise "ATM — Cash."

For a fee, of course.

Casino and bowling-alley operators station them conveniently close to the pull-tab dispensers and rental counters, allowing customers to take out $500 or more in a day, but charging a dollar or two for each withdrawal.

Dispensing quick cash and charging customers for the service has become big business.

Banks aren't the only ones seizing the opportunity.

Many automated teller machines found at gas stations, corner supermarkets and other businesses are distributed and operated by private companies and entrepreneurs who have discovered that dispensing quick cash is a lucrative opportunity.

Companies that sell or lease cash machines to merchants allow people to withdraw money from their bank accounts and receive cash advances with their credit cards without having to seek out the nearest bank-owned ATM.

The 200 or so companies that make up the independent ATM industry took in an estimated $600 million in fees in 1997, up from about $50 million in 1996, according to the Atlanta-based firm Speer and Associates, which monitors ATM use.

For merchants, there are several incentives. They get a cut of each transaction fee. Studies show that half the people who use an ATM at a

Please see ATMs, page F-6

ATM fees

Many banks don't charge customers to use their own ATMs. They do levy fees when account holders use other machines or when non-account holders use their ATMs. All independent ATMs charge fees.

	Account-holders who use other ATMs	Non-Account-holders
U.S. Bank	1.50	1.50
Seafirst	1.25	1.50
Key Bank	1.25	1.50
Wells Fargo	1.50	1.50
Washington Mutual	1.25	Free
Card Capture Services	1.00 to 1.50	
EDS	.50 to 1.00	
Any Card	1.00	

The Seattle Times

A dollar here, a dollar there . . . it adds up

ATMs

CONTINUED FROM F 1

store location will spend money there. And encouraging patrons to use the ATM helps cut down on bad checks.

"Every place where there's traffic, suddenly an ATM has been deployed," said Frank Accettulli, a spokesman for EDS, a Dallas-based firm that operates 6,000 cash machines nationwide, including those at 117 7-Eleven stores in the Seattle area.

ATMs not owned by banks account for about a quarter of the cash machines in the United States.

While ATM companies can levy fees of $1 or more for each transaction, many don't offer the same services as banks. Customers can't use them to deposit money into their accounts, check activity on those accounts or make loan and credit-card payments.

As a result, nonbank ATM providers are able to use less expensive machines that don't cost much to maintain and that can be restocked with cash by the merchant when necessary. Banks usually send armored vehicles to replenish their ATMs.

Some independent firms often charge lower transaction fees than banks, although fees in some remote locations or at some certain types of businesses can far exceed bank surcharges.

"I've seen them as high as $10 a transaction, specifically at casinos," Speer and Associates Chairman George Albright said. "Two or three dollars is where they usually top out. (Merchants) see too many people walk away when it's higher than that."

A 1997 survey by the U.S. Public Interest Research Group showed that the nonbank ATMs included in the research charged an average fee of 93 cents, compared with $1.15 for banks and 97 cents for credit unions.

But the fee charged by the owner of the ATM — be it a bank or independent operation — is not the only fee many pay for using a cash machine.

Banks keep track of deductions from customers' accounts, and charge customers an additional fee of up to $1.50 for withdrawing funds from a bank machine owned by a competitor.

Opponents of bank ATM fees are no less disturbed by growth among independent operators.

"Regardless of who owns the ATMs, when consumers are surcharged for the use of an ATM, they are being gouged, and there is no reason for it," said Jon Stier, a consumer advocate with the Public Interest Research Group.

Still, convenience often wins out with consumers.

Accettulli recalls running short on cash while vacationing in a remote part of the Florida Keys recently and coming across a nonbank owned ATM, the only machine for miles.

"It cost $4.50 for a cash advance, and guess what? I paid it because I needed the cash," he said. "People will pay for the convenience."

Birth of an industry

Portland entrepreneur Jeff Jetton recognized this basic truth in 1993 when he co-founded Card Capture Services, which operates 1,500 ATMs in the Northwest and 3,400 nationwide.

Formerly a credit-card-terminal salesman, Jetton saw a chance to put ATMs in places banks had avoided, such as mom-and-pop grocers and convenience-store chains.

"There was a market out there that really was untapped," Jetton, 31, said. "Banks had their ATMs in bigger markets."

The problem for banks at that time was finding a way to make costly machines pay for themselves in places that didn't generate much traffic.

So Jetton and co-founder Steve Wright teamed up with an ATM manufacturer to design a less expensive machine they could market to their clients. The idea took off, laying the groundwork for an entire ATM industry.

Since 1994, Card Capture Services revenue has soared from $3 million that year to an estimated $32 million in 1997.

The bulk of the company's earnings go toward overhead and expansion of the network, Jetton said, but the company is profitable.

Despite the growing presence of independent ATMs and the mounting discontent among consumer advocates over escalating fees, the state does not regulate the practices of cash machine operators.

"It's no different than if you put in a machine that dispenses milk or coffee, from a regulatory standpoint," said Scott Jarvis, special assistant to the state director of the Department of Financial Institutions.

Early last year the state killed a proposed moratorium on ATM surcharges at large banks. The temporary ban would have given regulators time to study the effect of fees on consumers and draft new rules for ATM networks.

The future

Sensing more intense competition and a possible decline in revenue from basic ATM service, cash machine operators in the past year have started programming their ATM monitors to show full-motion advertisements and movie trailers while users wait for the machines to process transactions.

EDS is running video spots promoting the movies "The Full Monty" and "The Ice Storm." Commercials paid for by Fox Pictures and Nissan soon will vie for users' attention on EDS machines, Accettulli said.

Nonbank ATMs of the future also will be able to spit out books of stamps, coupons and phone cards, operators said.

Although the industry is just a few years old, observers have already started talking about its possible decline because of too many ATMs.

"Pretty soon, it'll be non-cost-effective to have them on every street corner," Jarvis said.

Albright of Speer and Associates said industry revenues will grow by a robust 15 percent a year through the rest of the decade, while the number of nonbank ATMs will grow by twice that rate, spreading profits thinner and thinner.

"It looks like a lucrative business right now," Albright said, "but that's very short term."

Those forecasts aside, large banks, which still run most ATMs in Washington state, have taken notice of the competition.

Bank-owned ATMs are cropping up in more places. Seafirst, for example operates the cash machines at Muckleshoot Indian Casino in Auburn and at GameWorks, a high-tech arcade in downtown Seattle.

Key Bank entered an agreement last fall with Arco Products to install cash machines inside 850 am/pm convenience stores along the Interstate 5 corridor from Washington to California and in Nevada and Arizona.

The fee to use the new ATMs will be $1.50. But Key Bank customers can use them free, not only to withdraw cash and get cash advances but to check on their accounts and transfer money.

The venture gives the Key Bank name its first presence in California, Nevada and Arizona, spokesman Rob Gill said.

Because ATMs cost less to install and run than bank branches, the project makes good economic sense, he said.

Banks, ATM operators and merchants also point to the relative safety of indoor ATMs — compared with those outside bank branches and at drive-up terminals — as a reason for the interest in locations such as convenience stores.

"It's a safe place; it's well lit; and other people are in the area," said Margaret Chabris, a corporate spokeswoman for 7-Eleven.

But while most of the ATMs are inside buildings, they are not immune to crime. Thieves have made off with entire machines that had been placed near store entrances, Jarvis said.

"People have put chains around them and dragged them off in trucks," he said.

Tyrone Beason's phone message number is 206-464-2251. His e-mail address is: tbea-new@seatimes.com

A cash cow on every corner

BY TYRONE BEASON
Seattle Times business reporter

The ATM business can be a boon for merchants and network operators but an unavoidable bust on your bank account.

But while ATM owners can charge whatever they like for the service of dispensing cash, many give their customers a break, charging from 25 cents to just over a $1 in the Seattle area for each transaction.

ATMs at three convenience stores within a few blocks of each other on the west side of Capitol Hill, for example, charge $1 for transac-

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BY PAUL FARHI
The Washington

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The AKPIRG Advocate

The newsletter of the Alaska Public Interest Research Group (AKPIRG)

Fall 1997

P.O. Box 101093, Anchorage, AK 99510 Ph: 907-278-3661 FAX: 907-278-9308 E-mail: akpirg@micronet.net

The high cost of convenience

By Senator Johnny Ellis

Most people have been there. You are in a rush and need quick cash but you are nowhere near your bank's Automated Teller Machine. The machine around the corner is owned by another bank and if it accepts your card, you may get soaked with surcharge fees. The other bank's ATM will likely charge you from $1.00 to $1.50 to use their machine. Then, your own bank may tack on an additional $1.25 service fee. That adds up to a whopping $2.75 in fees just to put some cash in your wallet.

Sen. Johnny Ellis

In a move to curb big banks from soaking ATM users, I will introduce legislation during the next legislative session that will protect consumers from excessive ATM surcharges. As AKPIRG reported earlier this summer, the percentage of ATMs assessing surcharges has doubled to 45% in only six months. Over 80% of banks charge their account holders for using another bank's ATM.

Last year, the two largest ATM networks, Plus and Cirrus, ended their ban on ATM-owners surcharging non-account holders a second fee. Consumer watchdogs agree that there is a dangerous trend in big banking to dramatically increase the cost of convenience. Many banks argue that the surcharges offset the operating costs of their ATM network. That may be true to a point, however the financial industry knows that if you've got a large enough system, ATMs are a huge profit center. Why else would you see an ATM on every street corner? The truth is, ATM convenience comes with an increasingly high price for consumers, translating into unjustified profit for banks. Banks are blatantly pushing the envelope on what consumers are willing and able to pay for the convenience of ATMs.

As a longtime advocate for consumer protection, I believe banks should be encouraged to adopt consumer-friendly banking policies, including a "No Dual Surcharge" policy. Please contact me at 907-258-8182 or via e-mail at Senator_Johnny_Ellis@legis.state.ak.us if you have an ATM surcharge story to share or would like more information regarding my legislation.

Sen. Johnny Ellis, a strong advocate of consumer protection, represents Downtown Anchorage, Fairview, Mountain View, and Spenard in the Alaska State Senate.

FISCAL NOTE

STATE OF ALASKA **BILL NO. SSSB 212**

1998 LEGISLATIVE SESSION

Revision Date:

Title: Fees for Use of Automated Teller Machines

Department: Commerce and Economic Development

BRU: Banking, Securities and Corporations

Component: Banking, Securities and Corporations

Sponsor: Sen. Ellis

Requestor: Senate Labor & Commerce

COMPONENT SERIAL NO.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
100[illegible] GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: $ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

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

Division: Banking, Securities and Corporations Date: 3-4-98

Approved by Commissioner: Deborah B. Sedwick Date: 3-4-98

Agency: Commerce and Economic Development

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March 10, 1998

Senator Loren Leman
Alaska State Senate
Labor & Commerce
Room 113, Capitol
Juneau, Alaska 99801-1182

Ref: Senate Bill No. 212/An Act relating to automated teller machines

Dear Senator Leman,

I was particularly interested in testifying on Senate Bill 212, An Act relating to automated teller machines because of its obvious restraint of trade implications. Unfortunately the hearing was postponed and I am leaving on vacation tomorrow. In 1970 I was in charge of setting up the statewide Master Card program. The parent company considered us a international user of the program, not even a US member, and we had to develop our programs from scratch with no help from the national organization at a big cost to the bank. Today we have a more complex system that operates through satellites and complex computers. Our ATM's are part of that electronic transfer system, and they are now located in most communities in the state. These machines not only provide basic services for our bank customers, but provide an invaluable service to other sectors of commerce, most significant, the tourism industry. A tremendous number of our transactions in such places as Ketchikan, Valdez, and Barrow come from nonresidents to the State. This service is being subsidized by our bank customers. We are not being reimbursed sufficiently to cover the free access to cash these individuals receive. Then they head for local shops and restaurants to spend their money with tremendous benefits to our various small businesses.

Cash is not free. We have to buy cash from the government, then we have to pay for the transfer of the cash to the site, then we have to pay a security firm to carry it to the machine, then it is installed, then we audit the machine, pay bills for the telephonic communication, switching costs, computer services, internal costs, machine maintenance and servicing, etc. The machines themselves can cost over $100,000 to install. It actually took us a year and a half to get our first machine to work. Imagine the complexity of putting machines in remote communities, some of which are off site from branches. We are not talking about a cost free service that we are required to provide to the public. More and more the consumer has access to a variety of machines provided by competitive institutions, some of which are not banks.

Now these travelers be them out of state fisherman, tourists, business travelers, or consumers at large are not unfamiliar with charges for receiving cash out of machines at locations away from their bank. I first learned about this at Disneyland, and I was grateful to use an ATM in Dornock Scotland last spring. Virtually every major credit card company in the world charges them and 57% of small community banks in the US charge, many of them charge their own customers. This percentage of community banks charging these fees is increasing and will approach 100% in a few years. I personally am grateful when I go to a distant community and can get cash without hassle. Do you remember going into an out of state bank and trying to get cash? It was a PAIN.

To pick a specific bank charge seems ridiculous. We have expanded the system to remote communities that are loss leaders, and I assure you that their will be limited expansion into these communities in the future if this bill passes, and I actually believe their could be a reduction of ATM locations. This kind of anti-business legislation can have serious consequences. I can remember when the legislature passed an 8% usury law and all capital investment into the state ceased. As I remember a special session of the legislature was called.

And remember, we are taxpayers, and employ some 1200 people in this state. What other industries are you going to and saying that they can't recover their costs of operations of a service or make a profit on that service. Is this a punitive bill against an industry, and is this just the

beginning of your approach to the business community as a whole? Of course we all want things for free, but the congress of the US deregulated a large part of the banking industry a number of years ago and even consumer groups said that users of different banking services shouldn't have to subsidize other services. Now, you apparently want our customers to have to subsidize the convenience of non bank customers, many of whom are non residents of the state of Alaska.

We have paid the price for pioneering a new service to Alaska which has profited most individuals and businesses. You have to ask yourselves, does the state want to put punitive restrictions on an industry that is changing rapidly, provides economic benefit to the people, adds convenience and additional revenue to our major industries, and has expanded into the most remote areas of our state at no cost to the State government. Please do not pass this bill.

Sincerely yours,

Jan Sieberts
Senior Vice President

Department of Commerce and Economic Development
Division of Banking, Securities & Corporations
Position on SSSB 212,
An Act relating to automated teller machines

The Act proposes two provisions:

- Control or prohibit the imposition of user fees by "banks" on ATMs , and
- Provide safety standards at ATM facilities.

The division opposes the legislation on user fees (surcharges) by "banks" for several reasons:

- The first concern is the implication that "banks" are a controlled utility whose rates must be regulated. Regardless whether these limitations are placed on just "banks" or also on all who offer these services, including non-financial institutions, surcharge prohibitions would, in fact, diminish competition and convenience. There would be little or no business reason to establish an ATM that was only an expense.
- It is difficult to determine the compelling Alaska public need to enact a law that prohibits a surcharge for convenience when the public, consumer or customer has a free choice to:
  - ✓ choose a less expensive ATM,[1]
  - ✓ use their bank's customer service representative,
  - ✓ avoid the ATM and opt to use checks, credit card, debit card, cash back at a retail counter, traveler checks or, on the horizon, smartcards,
  - ✓ change their financial relationship to a provider who offers services with fees at an acceptable level.
- There was a time that locations of ATMs were regulated, requiring approval by the regulatory agency. Now there is no regulatory oversight for ATMs. Each ATM is now a management decision requiring a capital expenditure, continuing maintenance and liability expenses, and the expectation for a reasonable return.
- It is reasonable to conclude that surcharges themselves have subsidized the spread of convenient ATMs. Free market forces from the proliferation of machines may, in time, produce an acceptable level of user fees as a direct result of growing competition. Fee prohibition would, therefore, be in conflict with the intent of the legislation. ("The legislature intends to ensure that there is an efficient and competitive automated teller machine market." [Section 1.])

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[1] "Certainly, convenience seems to motivate customers to use the nonbank ATM at the Great Alaskan Strip Club in Anchorage. Manager LaWayne Meader notes that patrons using the ATM at the club get socked with a $3 surcharge for each cash withdrawal, plus another $1 charged by their bank -- but don't complain. 'There's a regular [bank-owned] machine a half-block away, but nobody uses it.... I guess they don't want to leave.'" (Source: Wall Street Journal)

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Honorable Loren Leman
State Capitol, Room 113
Juneau, AK 99801-1182
Mailstop 3100

MAR 09 1998

Via Fax: (907) 465-3810

Dear Senator Leman,

I am very concerned about the pending legislation known as Senate Bill 212 regarding automated teller machines. As a small business owner on the Kenai Peninsula and a owner/operator of a proprietary ATM, my family and I are opposed to any legislation that would affect the ability to collect a fee for the transactions done at the ATM.

Several years ago several members of our community approached both of the banks located in Homer, which is about 15 miles away, about the possibility of their installing an ATM in our community for the benefit of our residents. Due to a number of reasons that were beyond the control of the bank or the community this proved to be an impossibility. Then in August 1996, our business had the opportunity to purchase an ATM machine through a lease purchase agreement for a total of $11,888. We charge a fee for each transaction that allows us to pay for a dedicated phone line, access charges to the network, operating supplies, and lease payments. This is a service to our community and I hope that some day we might be able to make a small profit from providing it.

I am a strong believer in the free enterprise system and have faith that the consumer will ultimately make the choice to pay or not to pay a surcharge based on their best interest. The residents of Anchor Point are glad to have this service available and willingly pay the fee for service and then thank us for making it available. Government price controls have never proven affective and I have no reason to believe that it will be effective in this instance unless your objective is to financially burden a small business that is attempting to provide goods and services through a free market economy.

Quite frankly, I am discouraged by a Republican lead legislature that would even consider a bill that so obviously flies in the face of a free enterprise system that I hold in the highest regard.

Thank you for taking the time to hear my concerns.

Sincerely,

Jesse R. Clutts

First National Bank
of Anchorage

March 9, 1998

Senator Loren Leman
Chairman
Labor and Commerce Committee

Dear Senator:

The First National Bank of Anchorage has reviewed SSSB212 relating to automated teller machines (ATM's) and night deposit facilities. We strongly oppose passage of this proposed legislation. All banks and operators of ATM's should be allowed to impose a surcharge on a customer, if it is their decision, and regardless of where the ATM is located or what other facilities may, or may not, be present at the ATM location. Consumers, not government, should be allowed to decide what banking services they are willing to pay for, including the use and convenience of ATM's.

Our bank has a total of forty-six ATM's installed throughout the State. Seventeen of these ATM's are located in the following communities: Dillingham, Barrow, Kotzebue, Ft. Yukon, McGrath, Unalakleet, St. Michael, Emmonak, Kotlik, Bethel, Cordova, Kodiak, Naknek, St. Mary's and Toglak. Machine costs alone for these locations were in excess of $490,000, not to mention the attendant installation, communications and promotional costs. While hopeful, we have yet to make a return on our investment. Certainly, passage of this legislation would cause us to reconsider any expansion plans for other remote areas of our State. As well as continuing to maintain our present remote ATM installations.

Today, our bank does not impose a surcharge for the use of our ATM's. That is not to say however, that surcharges are bad; it simply means competition is at work and that consumers have a choice, a choice to pay for convenience; the same as they would by paying extra for one hour photo processing or express mail.

In conclusion, price controls have no place in a free market economy. Passage of this legislation would do a disservice to all customers. Please do not pass this legislation.

Sincerely yours,

Richard C Enberg
Executive Vice President

FIRST BANK

March 6, 1998

Senator Loren Leman, Chairman
Senate Labor and Commerce Committee
State Capitol
Juneau, Alaska 99801-1182

Re: Senate Bill No. 212

Dear Senator Leman:

I am writing to express opposition to SB212, "An Act Relating to automated teller machines and to night deposit facilities; and providing for an effective date." At the risk of coming across as something less than tactful, if the legislature honestly intends to ensure that there is an efficient and competitive automated teller machine market, then it ought to avoid the type of legislative micro management that this bill represents. As it currently stands, this bill will slow the ongoing, statewide growth of ATM networks to a snail's pace and basically ensure that only people who live in highly populated urban areas will have access to the most up to date electronic banking technology.

By way of background, First Bank is the only commercial bank with headquarters in southeast Alaska. We have been in business since 1924, and at the present time, we have eight full service branches and seven automated teller machines located around the Alaskan panhandle. We have also maintained an "Outstanding" rating under the Community Reinvestment Act for as long as ratings have been assigned.

As operators of automated teller machines, First Bank is a relatively new entrant in the market place. All of our machines have been installed in the last three years. While we do not currently impose surcharges at our machines, we certainly do not want the government telling us what we can or can't charge for our services or second-guessing how we rationalize the investment of our capital to best meet the needs of our market place. Although we currently have plans to add several machines per year to our existing network, restrictions on how we