

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9628 SENATE LABOR & COMMERCE

SB

269

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 269

Revision Date (Note if correction): _____
 Title: Plumbing Code

 Sponsor: Senate Labor & Commerce
 Requestor: Senate Labor & Commerce

Department Affected: Labor
 BRU: Labor Standards & Safety
 Component: Mechanical Inspection
COMPONENT SERIAL NO. 346

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
CHANGE IN REVENUE						
FUND SOURCE #						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY98) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

This bill would establish that the most current editions of the Uniform Plumbing, Swimming Pool, Spa and Hot Tub, and the Solar Energy Codes are applicable unless the department establishes a different code by regulation. This legislation will have no fiscal impact on Mechanical Inspection.

Prepared by: Alan W. Dwyer, Director *Alan W. Dwyer* Phone: 465-4855
 Division: Labor Standards & Safety Date: 1/29/98
 Approved by Commissioner: Tom Cashen, Commissioner *Tom Cashen*
 Agency: Department of Labor Date: 1/29/98

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SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/28/98

FURTHER:

Date of 5-Day Notice: 2-25-98
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 3-4-98

Labor and Commerce Committee considered SENATE BILL NO. 269

"An Act relating to the state plumbing code; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 269 (L+C)
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

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

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Tom Kelly</i>	<input checked="" type="checkbox"/>				
<i>Mike Miller</i>	<input checked="" type="checkbox"/>				
<i>Sam Hoff</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>Arew D. Lewis</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<i>Labor</i>	<i>1/29/98</i>	<input checked="" type="checkbox"/>	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSSB 269(L&C)

Revision Date (Note if correction): _____

Title: Plumbing Code

Sponsor: Senate Labor & Commerce

Requestor: Senate Rules

Department Affected: Labor

BRU: Labor Standards & Safety

Component: _____
Mechanical Inspection

COMPONENT SERIAL NO. 346

EXPENDITURES/REVENUES:

(Thousands of Dollars)

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CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
----------------	--	--	--	--	--	--

CHANGE IN REVENUE						
FUND SOURCE #						

FUNDING:

(Thousands of Dollars)

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1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

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PART-TIME						
TEMPORARY						

Estimate of current year (FY98) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

This bill would establish that the most current editions of the Uniform Plumbing, Swimming Pool, Spa and Hot Tub, and the Solar Energy Codes are applicable unless the department establishes a different code by regulation. This legislation will have no fiscal impact on Mechanical Inspection.

Prepared by: Alan W. Dwyer, Director  Phone: 465-4855

Division: Labor Standards & Safety Date: 3/5/98

Approved by Commissioner: Tom Cashen, Commissioner 

Agency: Department of Labor Date: 3/5/98

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

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EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
----------------	--	--	--	--	--	--

CHANGE IN REVENUE FUND SOURCE #						
--	--	--	--	--	--	--

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This bill would establish that the most current editions of the Uniform Plumbing, Swimming Pool, Spa and Hot Tub, and the Solar Energy Codes are applicable unless the department establishes a different code by regulation. This legislation will have no fiscal impact on Mechanical Inspection.

Prepared by: Alan W. Dwyer, Director *[Signature]* Phone: 465-4855
 Division: Labor Standards & Safety Date: 3/5/98
 Approved by Commissioner: Tom Cashen, Commissioner *[Signature]*
 Agency: Department of Labor Date: 3/5/98

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
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03/03/98 13:46:46 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
MESSAGE FROM: LIOCJEN IN ANCHORAGE

LTN1120
JNU

RE TCN: 80373 SCHEDULED FOR:03/03/98 13:30 TO 15:00
SPONSOR: SENATE LABOR & COMMERCE PURPOSE: PUBLIC HEARING

MESSAGE TEXT: DONALD LAUGHLIN IN ON LINE TO T ON
√ SB 269 (OF 1 IN CALIFORNIA)

03/03/98 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
13:31:38 PARTICIPANT LIST (TESTIFIERS ONLY)
TCN:80373 SCHEDULED FOR:03/03/98 13:30 TO 15:00
PUBLIC HEARING SENATE LABOR & COMMERCE

LTN1150
BY:JNU
FOR:ALL

LOCATION:ANCHORAGE
SB 212 CATHIE KEYES TESTIFY
LOCATION:PETERSBURG
√ SB 269 MR. PETER JURCZAK AK. DEP. LABOR TESTIFY

TESTIFY
TESTIFY

GREEN
DOUG
CATHIE
KEYES

LOCATION:ANCHORAGE
√ SB 269
SB 212

LTN1150
BY:ANC
FOR:ANC

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (ALL PARTICIPANTS)
TCN:80373 SCHEDULED FOR:03/03/98 13:30 TO 15:00
PUBLIC HEARING SENATE LABOR & COMMERCE

03/03/98
13:56:18

*Revised
final
6/20/98*

0-LS1441VE
Bannister
3/3/98

CS FOR SENATE BILL NO. 269(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the state plumbing code; and providing for an effective
2 date."

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

4 * Section 1. AS 18.60.705(a) is amended to read:

5 (a) Except as provided otherwise in this section, and unless the department
6 adopts by regulation a later edition of the following publications, the following
7 publications are adopted as the minimum plumbing code for the state:

8 (1) paragraphs 101.3 - 101.5.6, 103.5.1.1 - 103.5.1.4, 103.5.3.5 [103.5.3
9 - 103.5.3.7], 103.5.4.2, 103.5.5.1 - 103.5.5.2, 103.5.6.1 - 103.5.6.3, and 103.8 - 103.8.2
10 of chapter 1, chapters 2 - 14, and the appendices A through K of the 1997 [1994]
11 edition of the Uniform Plumbing Code published by the International Association of
12 Plumbing and Mechanical Officials and adopted at the 67th [64th] annual conference,
13 September 1996, excluding Table 4.1, "Minimum Plumbing Facilities;" and adding
14 Appendix Chapter 29, Table A - 29 - A, "Minimum Plumbing Fixtures," of the

1 1997 edition of the Uniform Building Code published in April 1997 by the
2 International Council of Building Officials [1993];

3 (2) the 1997 [1994] edition of the Uniform Swimming Pool, Spa, and
4 Hot Tub Code published by the International Association of Plumbing and Mechanical
5 Officials and adopted at the 67th [64th] annual conference, September 1996 [1993],
6 excluding pages 1 - 8 of Part I, Administration; and

7 (3) the 1997 [1994] edition of the Uniform Solar Energy Code
8 published by the International Association of Plumbing and Mechanical Officials and
9 adopted at the 67th [64th] annual conference, September 1996 [1993], excluding pages
10 1 - 7 of Part I, Administration.

11 * **Sec. 2. REGULATIONS.** The Department of Labor may adopt regulations to implement
12 the provisions of this Act. The regulations take effect under AS 44.62 (Administrative
13 Procedure Act), but not before the effective date of sec. 1 of this Act.

14 * **Sec. 3.** Section 2 of this Act takes effect immediately under AS 01.10.070(c).

15 * **Sec. 4.** Except as provided in sec. 3 of this Act, this Act takes effect January 1, 1999.



Official Business

Alaska State Legislature

SENATE

State Capitol
Juneau, AK 99801-1182

Senate Labor & Commerce Committee

MEMO

TO: Theresa Bannister, Legal Counsel
Legislative Legal and Research Services
via fax: 2 pages X 2029

FROM: Annette Kreitzer, Aide to
Senate Labor & Commerce Committee
PH: X 3844

DATE: February 10, 1998

RE: LS1441\A - SB 269: Plumbing Code Amendments

Per your January 27, 1998, memo outlining the Northern Lights Motel, Inc. v Sweaney case, I'm sending along a copy of last year's HB 41 dealing with the American Medical Association Guides. Can this approach be used on the plumbing codes - with the Department of Labor establishing the date the new edition will be used and issuing the public notice?

cc: Dwight Perkins, Legislative Liaison
Department of Labor via fax: two pages X 2784

CS FOR HOUSE BILL NO. 41(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 1/24/97

Referred: Rules

Sponsor(s): REPRESENTATIVE ROKEBERG

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to impairment rating guides used in evaluation of certain**
2 **workers' compensation claims."**

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

4 *** Section 1.** AS 23.30.190 is amended by adding a new subsection to read:

5 (d) When a new edition of the American Medical Association Guides
6 described in (b) of this section is published, the board shall, not later than 90 days
7 after the last day of the month in which the new edition is published, hold an open
8 meeting under AS 44.62.310 to select the date on which the new edition will be used
9 to make all determinations required under (b) of this section. The date selected by the
10 board for using the new edition may not be later than 90 days after the last day of the
11 month in which the new edition is published. After the meeting, the board shall issue
12 a public notice announcing the date selected. The requirements of AS 44.62.010 -
13 44.62.300 do not apply to the selection or announcement of the date under this
14 subsection.

LEGAL SERVICES

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

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

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

MEMORANDUM

January 27, 1998

SUBJECT: Plumbing code amendments (Work Order No. 20-LS1441\A)

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

FROM: ^{TB} Theresa Bannister
Legislative Counsel

This memo accompanies the bill that you requested relating to the plumbing code.

You have asked whether the language in the bill is consistent with the outcome in Northern Lights Motel, Inc. v. Sweaney, 561 P.2d 1176 (1977). The language of the revised version of AS 18.60.705(a) in the bill essentially adopts as the state's plumbing code each code edition that the International Association of Plumbing and Mechanical Officials adopts in the future. The adoption of future versions of the plumbing code raises an issue under the non-delegation doctrine. For the purposes of this inquiry, this doctrine basically holds that the legislature may not delegate its lawmaking powers to a private organization. See, Northern Lights Motel, Inc., supra at 1181. private
organization

Although the non-delegation doctrine is virtually dead in the federal courts, state courts adhere to this doctrine, although not uniformly. See, Northern Lights Motel, Inc., supra at 1181. One reason for the prohibition against delegation is that when amendments are adopted by these groups the public does not necessarily receive notice of, or have an opportunity to comment on or criticize the amendments, as it does when they are adopted by the legislature. See, Northern Lights Motel, Inc., supra at 1181. However, due to the particular fact situation in the case, the court expressly did not reach this constitutional issue, that is, the case does not explain whether and to what extent the non-delegation doctrine applies in this state. See, Northern Lights Motel, Inc., supra at 1181. The court separated the language adopting "all future amendments" from the code under consideration, which was a matter of regulation, not statute, and let the unamended code apply.

Since the court did not reach the non-delegation issue in that case, it is unknown what it would have held, so there is no decision on this point in that case to be consistent with. The

Senator Loren Leman
January 27, 1998
Page 2

court did state that the due process problem (lack of notice and opportunity to comment) is a serious one. See, Northern Lights Motel, Inc., supra at 1181. This suggests that the bill may be vulnerable to a challenge under the non-delegation doctrine. Although this case did not include a decision on the non-delegation issue, subsequent cases have addressed the non-delegation issue in other situations, which may be helpful in evaluating the issue for this bill. If you would like further research done, please advise.

If I may be of further assistance, please advise.

TLB:glc:jr
98-035.glc

Enclosure

SENATE BILL NO. 269

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 1/28/98

Referred: Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the state plumbing code; and providing for an effective
2 date."

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

4 * Section 1. AS 18.60.705(a) is repealed and reenacted to read:

5 (a) Unless the Department of Labor establishes by regulation a different
6 edition, the most current edition of the Uniform Plumbing Code; Uniform Swimming
7 Pool, Spa, and Hot Tub Code; and Uniform Solar Energy Code published by the
8 International Association of Plumbing and Mechanical Officials constitutes the
9 minimum plumbing code in the state.

10 * Sec. 2. REGULATIONS. The Department of Labor may adopt regulations to implement
11 the provisions of this Act. The regulations take effect under AS 44.62 (Administrative
12 Procedure Act), but not before the effective date of sec. 1 of this Act.

13 * Sec. 3. Section 2 of this Act takes effect immediately under AS 01.10.070(c).

14 * Sec. 4. Except as provided in sec. 3 of this Act, this Act takes effect January 1, 1999.

Alaska State Legislature

Senate



Official Business

State Capitol
Juneau, AK. 99801-1182

Senate Labor & Commerce Committee

Sponsor Statement SB 269: Plumbing Code

SB 269 simplifies the process for adopting the Uniform Plumbing Code for Commercial, Industrial and Residential plumbing systems and its related codes dealing with swimming pools, spas, hot tubs, and solar energy. The International Association of Plumbing and Mechanical Officials (IAPMO) is responsible for publishing these codes. **They publish an update every three years. Alaska is presently working on the 1994 code. A new 1997 code is forthcoming and legislative action is required before the new codes may be used by contractors in Alaska.**

This legislation adopts the 1997 code and will hereafter, allow the Department of Labor to automatically adopt through the regulatory process the latest published version of the national code as provided by the IAPMO as the minimum state plumbing code. This is efficient government. The Department of Labor currently adopts other codes it is responsible to enforce such as the electrical, elevator, and boiler/pressure vessel codes in this manner.



INTERNATIONAL ASSOCIATION OF PLUMBING AND MECHANICAL OFFICIALS

20001 Walnut Drive South • Walnut, California 91789-2825 • Phone 909-595-8449 • Fax 909-594-3690

From the Desk of:
Donald Laughlin

March 2, 1998

State of Alaska
Senator Loren Leman, Chairman
Senate Labor and Commerce Committee
Juneau, Alaska 99801

Dear Chairman and Committee Members:

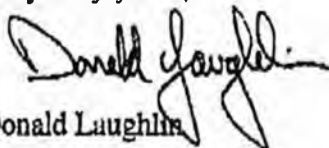
My name is Donald Laughlin and I am the Director of Administration of the International Association of Plumbing and Mechanical Officials (IAPMO). It is my pleasure to submit comments in support of Senate Bill 269 which provides for the adoption of the *1997 Uniform Plumbing Code (UPC)*.

IAPMO has continuously published the UPC since the early 1950's. For many years, the State of Alaska has adopted the UPC. The Code is also adopted in more than thirty (30) States and in thousands of municipalities throughout the United States. The Code is also adopted in foreign countries as the basis for sanitary provisions. The 1997 edition is the most technologically advanced plumbing code ever published.

IAPMO and its co-sponsors, the National Association of Plumbing, Heating, Cooling Contractors (NAPHCC), and the Mechanical Contractors Association of America (MCAA) utilize a industry consensus process to develop and maintain the provisions contained in the UPC. Thus, all effected parties have the opportunity to vote on amendments made to the code. The code is updated annually and published every three (3) years.

I would be pleased to provide additional information should the committee see the need.

Very truly yours,


Donald Laughlin

Working in Concert with Government and Industry for Safe, Sanitary Plumbing



Municipality of Anchorage

Rick Mystrom, Mayor



Building Safety Division

P.O. Box 196080 • 3500 East Tudor Road
Anchorage, Alaska 99519-6080
(907) 343-8301

February 19, 1998

TO: Municipality of Anchorage Board of Building Regulation Examiners and Appeals

FROM: Building and Fire Code Review Committee

This letter is in response to the letter dated February 4, 1998 from the Uniform Plumbing Code Review Committee. Our committee recommends that Chapter 29, Plumbing Systems, and Appendix Chapter 29 Minimum Plumbing Fixtures, be adopted in the 1997 Uniform Building Code. Section 2901 refers to the Plumbing Code as follows: "Plumbing systems shall comply with the Plumbing Code." Table 4-1 Minimum Plumbing Facilities should be deleted from the 1997 Uniform Plumbing Code.

Our recommendation is based on the following (please refer to the attached Plumbing Fixture Count comparison):

1. Prior to the 1981 Uniform Plumbing Code, Appendix C: Minimum Plumbing Facilities did not have a required methodology for determining the number of persons for which fixtures needed to be provided. It was assumed to be actual occupants of the building. The revised 1991 UPC Appendix C tied the occupant load into Table 33A of the UBC, "The number of occupants shall be determined by minimum exiting requirements." Footnote 3 of Table 33A states, "This table shall not be used to determine working space requirements per person."

This revision in the 1991 UPC created large increases in fixture counts in many facilities. The Anchorage School District commissioned a study of their own schools in 1994 which resulted in a Building Board approval for the ASD to determine their own fixture count.

2. The 1994 UBC wrote a new Appendix Chapter 29 for determining fixture counts that has been in use and is providing realistic fixture counts based on occupant counts separate from exiting requirements.
3. There are inconsistencies within the 1997 UPC table. See attached plumbing fixture count comparison. The 1997 UPC Table states that a warehouse is required to have 10 lavs and 6 water closets, while an assembly area is required to have 2 lavs and 6 water closets. A warehouse should not require more lavs than an assembly area.
4. The architects and designers who calculate and plan the fixture layouts are using the UBC. It will simplify the process to keep all design requirements within one manual.

We believe this is the best approach to simplify what has become a complicated problem and will still provide adequate facilities for public health and safety.

Respectfully submitted,

M. David Cole, Architect
Chairman, Uniform Building and Fire Code Review Committee

279-2554

c: Ron Watts, Building Official, Department of Public Works

PLUMBING FIXTURE COUNT COMPARISON

UBC - UNIFORM BUILDING CODE
 UPC - UNIFORM PLUMBING CODE
 ASD - ANCHORAGE SCHOOL DISTRICT

BUILDING TYPE	AREA	UBC OCCUPANT EGRESS		MALE/FEMALE OCC LOAD			FIXTURE REQUIREMENTS									TOTAL FIXTURES UBC UPC					
		FACTOR	LOAD	UBC	UPC	ASD	MALE			FEMALE			LAVS								
							UBC	UPC	ASD	UBC	UPC	ASD	UBC	UPC	ASD			UBC	UPC	ASD	
ASSEMBLY AREAS	2500	15	187	42	83		2	2		0	1	0	2	3		4	2		8	8	
SCHOOL 1-6	8000	20	250	50	125	66	2	5	3	0	2	1	2	7	4	4	8	7		20	22
SCHOOL 7-12	5000	20	250	50	125	66	2	4	2	0	4	2	2	8	4	4	8	7		8	24
OFFICE BUILDING	10000	100	100	25	50		2	1		0	1	0	2	3		2	2			6	7
SCHOOL GYM (ASSEM AREA)	8000	7	714	83	357	0	3	11	0	0	7	0	3	18		8	18			12	54
MULDOON ELEMENTARY	18000	20	900	180	450	475	6	15	7	0	8	4	12	21	11	12	28	14		30	68

FROM HC COOL CARLSON GREEN

03.02.1998 12:08

P. 3

	AREA	UBC FACTOR	UPC LOAD	MALE OCC	FEMALE OCC
RETAIL STORE	14,500	30	466	78	233
WAREHOUSE	50,000	500	100	10	50
WORKSHOPS	28,246	—	—	N.F.	134

MALE
 W.C. UPC UPC
 UP/IN/LAVS UPC UPC
 FEMALE W.C. UPC UPC
 LAVS UPC UPC
 TOTAL FIX. UPC UPC

1	3	0	3	1	11	2	4	4	21
1	3	/	/	1	3	1	10	3	16
2	4	/	/	2	4	2	9	6	17

* MIXED OCCUPANCY

1997 UNIFORM PLUMBING CODE

	AREA	UBC OCC. EGRESS FACTOR	UPC LOAD	MALE/FEMALE OCC LOAD	MALE W.C. TYPE	UP/IN/LAVS TYPE	FEMALE W.C. TYPE	LAVS TYPE	TOTAL FIX. TYPE
RETAIL STORE	14,000 SF.	30	466	233	3	3	11	4	21
WAREHOUSE	50,000 SF.	500	100	50	3		3	10	16
WORKSHOPS (MANUFACTURING) ARIZAS	28,246 SF.	200	141	71	4		4	13	21
ASSEMBLY AREAS (PUBLIC USE)	2500 SF.	15	167	83	1	1	4	2	8
SCHOOL 1-6	5000 SF.	20	250	125	5	2	5	8	20
SCHOOL 7-12	5000 SF.	20	250	125	4	4	5	8	21
OFFICE BUILDING	10000 SF.	100	100	50	3	1	4	4	12
MULDOON ELEMENTARY	18000 SF.	20	900	450	15	6	18	28	65

1997 U.P.C.

PLUMBING FIXTURES AND FIXTURE FITTINGS

Table 4-1

TABLE 4-1
Minimum Plumbing Facilities¹

Each building shall be provided with sanitary facilities, including provisions for the physically handicapped as prescribed by the Department having jurisdiction. For requirements for the handicapped, ANSI A117.1-1992, Accessible and Usable Buildings and Facilities, may be used.
The total occupant load shall be determined by minimum seating requirements. The minimum number of fixtures shall be calculated at fifty (50) percent male and fifty (50) percent female based on the total occupant load.

Type of Building or Occupancy ²	Water Closets ¹⁴ (Fixtures per Person)		Urinals ¹⁵ (Fixtures per Person)	Lavatories (Fixtures per Person)		Bathtubs or Showers (Fixtures per Person)	Drinking Fountains ¹³ (Fixtures per Person)
	Male	Female	Male	Male	Female		
Assembly Places - Theatres, Auditoriums, Convention Halls, etc. - for permanent employee use	1: 1-15 2: 16-35 3: 36-55 Over 55, add 1 fixture for each additional 40 persons.	1: 1-15 3: 16-35 4: 36-55	0: 1-9 1: 10-50 Add one fixture for each additional 50 males.	1 per 40	1 per 40		
Assembly Places - Theatres, Auditoriums, Convention Halls, etc. - for public use	1: 1-100 2: 101-200 3: 201-400 Over 400, add one fixture for each additional 500 males and 1 for each additional 125 females.	3: 1-50 4: 51-100 8: 101-200 11: 201-400	1: 1-100 2: 101-200 3: 201-400 4: 401-800 Over 800 add 1 fixture for each additional 300 males.	1: 1-200 2: 201-400 3: 401-750 Over 750, add one fixture for each additional 500 persons.	1: 1-200 2: 201-400 3: 401-750		1: 1-150 2: 151-400 3: 401-750 Over 750, add one fixture for each additional 500 persons.
Dormitories ⁶ School or Labor	Male 1 per 10 Add 1 fixture for each additional 25 males (over 10) and 1 for each additional 20 females (over 5).	Female 1 per 8	Male 1 per 25 Over 150, add 1 fixture for each additional 50 males.	Male 1 per 12 Over 12 add one fixture for each additional 20 males and 1 for each 15 additional females.	Female 1 per 12	1 per 8 For females ¹⁰ , add 1 bathtub per 30. Over 150, add 1 per 20.	1 per 150 ¹²
Dormitories - for staff use	Male 1: 1-15 2: 16-35 3: 36-55 Over 55, add 1 fixture for each additional 40 persons.	Female 1: 1-15 3: 16-35 4: 36-55	Male 1 per 50	Male 1 per 40	Female 1 per 40	1 per 8	
Dwellings ⁴ Single Dwelling Multiple Dwelling or Apartment House	1 per dwelling 1 per dwelling or apartment unit			1 per dwelling 1 per dwelling or apartment unit		1 per dwelling 1 per dwelling or apartment unit	
Hospital Waiting rooms	1 per room			1 per room			1 per 150 ¹²
Hospitals - for employee use	Male 1: 1-15 2: 16-35 3: 36-55 Over 55, add 1 fixture for each additional 40 persons.	Female 1: 1-15 3: 16-35 4: 36-55	Male 0: 1-9 1: 10-50 Add one fixture for each additional 50 males.	Male 1 per 40	Female 1 per 40		
Hospitals Individual Room Ward Room	1 per room 1 per 8 patients			1 per room 1 per 10 patients		1 per room 1 per 20 patients	1 per 150 ¹²
Industrial ⁸ Warehouse Workshops, Foundries and similar establishments - for employee use	Male 1: 1-10 2: 11-25 3: 26-50 4: 51-75 5: 76-100 Over 100, add 1 fixture for each additional 30 persons	Female 1: 1-10 2: 11-25 3: 26-50 4: 51-75 5: 76-100		Up to 100, 1 per 10 persons Over 100, 1 per 15 persons ^{7, 8}		1 shower for each 15 persons exposed to excessive heat or to skin contam- ination with poison- ous, infectious, or irritating material	1 per 150 ¹²
Institutional - Other than Hospitals or Penal Institutions (on each occupied floor)	Male 1 per 25	Female 1 per 20	Male 0: 1-9 1: 10-50 Add one fixture for each additional 50 males.	Male 1 per 10	Female 1 per 10	1 per 8	1 per 150 ¹²

Table 4-1

UNIFORM PLUMBING CODE

Type of Building or Occupancy ²	Water Closets ¹⁴ (Fixtures per Person)		Urinals ¹⁵ (Fixtures per Person)	Lavatories (Fixtures per Person)		Bathrooms or Showers (Fixtures per Person)	Drinking Fountains ¹³ (Fixtures per Person)
	Male	Female	Male	Male	Female		
Institutional - Other than Hospitals or Penal Institutions (on each occupied floor) - for employee use	Male 1: 1-18 2: 18-35 3: 35-55 Over 55, add 1 fixture for each additional 40 persons.	Female 1: 1-15 2: 15-35 3: 35-55 Over 55, add 1 fixture for each additional 40 persons.	Male 0: 1-9 1: 10-50 Add one fixture for each additional 50 males.	Male 1 per 40	Female 1 per 40	1 per 6	1 per 150 ¹²
Office or Public Buildings	Male 1: 1-100 2: 101-200 3: 201-400 Over 400, add one fixture for each additional 500 males and 1 for each additional 150 females.	Female 3: 1-50 4: 51-100 5: 101-200 6: 201-400 Over 400, add one fixture for each additional 500 males and 1 for each additional 150 females.	Male 1: 1-100 2: 101-200 3: 201-400 4: 401-500 Over 500 add 1 fixture for each additional 300 males.	Male 1: 1-200 2: 201-400 3: 401-750 Over 750, add one fixture for each additional 500 persons	Female 1: 1-200 2: 201-400 3: 401-750 Over 750, add one fixture for each additional 500 persons		1 per 150 ¹²
Office or Public Buildings - for employee use	Male 1: 1-15 2: 15-35 3: 35-55 Over 55, add 1 fixture for each additional 40 persons.	Female 1: 1-15 2: 15-35 3: 35-55 Over 55, add 1 fixture for each additional 40 persons.	Male 0: 1-9 1: 10-50 Add one fixture for each additional 50 males.	Male 1 per 40	Female 1 per 40		
Penal Institutions - for employee use	Male 1: 1-15 2: 15-35 3: 35-55 Over 55, add 1 fixture for each additional 40 persons.	Female 1: 1-15 2: 15-35 3: 35-55 Over 55, add 1 fixture for each additional 40 persons.	Male 0: 1-9 1: 10-50 Add one fixture for each additional 50 males.	Male 1 per 40	Female 1 per 40		1 per 150 ¹²
Penal Institutions - for prison use							
Cell	1 per cell		Male 1 per exercise room	1 per cell			1 per cell block floor
Exercise Room	1 per exercise room			1 per exercise room			1 per exercise room
Restaurants, Pubs and Lounges ¹¹	Male 1: 1-50 2: 51-150 3: 151-300 Over 300, add 1 fixture for each additional 200 persons	Female 1: 1-50 2: 51-150 3: 151-300 Over 300, add 1 fixture for each additional 200 persons	Male 1: 1-150 Over 150, add 1 fixture for each additional 150 males	Male 1: 1-150 2: 151-200 3: 201-400 Over 400, add 1 fixture for each additional 400 persons	Female 1: 1-150 2: 151-200 3: 201-400 Over 400, add 1 fixture for each additional 400 persons		
Schools - for staff use All schools	Male 1: 1-15 2: 15-35 3: 35-55 Over 55, add 1 fixture for each additional 40 persons	Female 1: 1-15 2: 15-35 3: 35-55 Over 55, add 1 fixture for each additional 40 persons	Male 1 per 50	Male 1 per 40	Female 1 per 40		
Schools - for student use Nursery	Male 1: 1-20 2: 21-50 Over 50, add 1 fixture for each additional 50 persons	Female 1: 1-20 2: 21-50 Over 50, add 1 fixture for each additional 50 persons		Male 1: 1-25 2: 25-50 Over 50, add 1 fixture for each additional 50 persons	Female 1: 1-25 2: 25-50 Over 50, add 1 fixture for each additional 50 persons		1 per 150 ¹²
Elementary	Male 1 per 30	Female 1 per 25	Male 1 per 75	Male 1 per 35	Female 1 per 35		1 per 150 ¹²
Secondary	Male 1 per 40	Female 1 per 30	Male 1 per 35	Male 1 per 40	Female 1 per 40		1 per 150 ¹²
Others (Colleges, Universities, Adult Centers, etc.)	Male 1 per 40	Female 1 per 30	Male 1 per 35	Male 1 per 40	Female 1 per 40		1 per 150 ¹²
Worship Places Educational and Activities Unit	Male 1 per 150	Female 1 per 75	Male 1 per 150	1 per 2 water closets			1 per 150 ¹²
Worship Places Principal Assembly Place	Male 1 per 150	Female 1 per 75	Male 1 per 150	1 per 2 water closets			1 per 150 ¹²

PLUMBING FIXTURES AND FIXTURE FITTINGS

Table 4-1

1. The figures shown are based upon one (1) fixture being the minimum required for the number of persons indicated or any fraction thereof.
2. Building categories not shown on this table shall be considered separately by the Administrative Authority.
3. Drinking fountains shall not be installed in toilet rooms.
4. Laundry trays. One (1) laundry tray or one (1) automatic washer standpipe for each dwelling unit or one (1) laundry tray or one (1) automatic washer standpipe, or combination thereof, for each twelve (12) apartments. Kitchen sinks, one (1) for each dwelling or apartment unit.
5. For each urinal added in excess of the minimum required, one water closet may be deducted. The number of water closets shall not be reduced to less than two-thirds (2/3) of the minimum requirement.
6. As required by ANSI Z4.1-1966, Sanitation in Places of Employment.
7. Where there is exposure to skin contamination with poisonous, infectious, or irritating materials, provide one (1) lavatory for each five (5) persons.
8. Twenty-four (24) lineal inches (610 mm) of wash sink or eighteen (18) inches (457 mm) of a circular basin, when provided with water outlets for such space, shall be considered equivalent to one (1) lavatory.
9. Laundry trays, one (1) for each fifty (50) persons. Slop sinks, one (1) for each hundred (100) persons.
10. General. In applying this schedule of facilities, consideration must be given to the accessibility of the fixtures. Conformity purely on a numerical basis may not result in an installation suited to the need of the individual establishment. For example, schools should be provided with toilet facilities on each floor having classrooms.
 - a. Surrounding materials, wall and floor space to a point two (2) feet (610 mm) in front of urinal lip and four (4) feet (1219 mm) above the floor, and at least two (2) feet (610 mm) to each side of the urinal shall be lined with non-absorbent materials.
 - b. Trough urinals are prohibited.
11. A restaurant is defined as a business which sells food to be consumed on the premises.
 - a. The number of occupants for a drive-in restaurant shall be considered as equal to the number of parking stalls.
 - b. Employee toilet facilities are not to be included in the above restaurant requirements. Hand washing facilities must be available in the kitchen for employees.
12. Where food is consumed indoors, water stations may be substituted for drinking fountains. Offices, or public buildings for use by more than six (6) persons shall have one (1) drinking fountain for the first one hundred fifty (150) persons and one (1) additional fountain for each three hundred (300) persons thereafter.
13. There shall be a minimum of one (1) drinking fountain per occupied floor in schools, theatres, auditoriums, dormitories, offices or public building.
14. The total number of water closets for females shall be at least equal to the total number of water closets and urinals required for males.

Appendix Chapter 29 MINIMUM PLUMBING FIXTURES

SECTION 2905 — GENERAL

Each building shall be provided with sanitary facilities, including provisions for accessibility in accordance with Chapter 11. Plumbing fixtures shall be provided for the type of building occupancy with the minimum numbers as shown in Table A-29-A. The

number of fixtures are the minimum required as shown in Table A-29-A and are assumed to be based on 50 percent male and 50 percent female. The occupant load factors shall be as shown in Table A-29-A.

EXCEPTION: Where circumstances dictate that a different ratio is needed, the adjustment shall be approved by the building official.

*See
8/1/97
ASB*

TABLE A-29-A—MINIMUM PLUMBING FIXTURES^{1,2,3}

TYPE OF BUILDING OR OCCUPANCY ⁴	WATER CLOSETS ¹ (fixtures per person)		LAVATORIES ² (fixtures per person)		BATHTUB OR SHOWER (fixtures per person)
	MALE	FEMALE	MALE	FEMALE	
For the occupancies listed below, use 30 square feet (2.78 m ²) per occupant for the minimum number of plumbing fixtures.					
Group A Conference rooms, dining rooms, drinking establishments, exhibit rooms, gymnasiums, lounges, stages and similar uses including restaurants classified as Group B Occupancies	1:1-25 2:26-75 3:76-125 4:126-200 5:201-300 6:301-400 Over 400, add one fixture for each additional 200 males or 150 females.	1:1-25 2:26-75 3:76-125 4:126-200 5:201-300 6:301-400	one for each water closet up to four; then one for each two additional water closets		
For the assembly occupancies listed below, use the number of fixed seating or, where no fixed seating is provided, use 15 square feet (1.39 m ²) per occupant for the minimum number of plumbing fixtures.					
Assembly places— Auditoriums, convention halls, dance floors, lodge rooms, stadiums and casinos	1:1-50 2:51-100 3:101-150 4:151-300 Over 300 males, add one fixture for each additional 200, and over 400 females add one for each 125.	3:1-50 4:51-100 6:101-200 8:201-400	1:1-200 2:201-400 3:401-750 Over 750, add one fixture for each additional 300 persons.	1:1-200 2:201-400 3:401-750	
For the assembly occupancies listed below, use the number of fixed seating or, where no fixed seating is provided, use 30 square feet (2.29 m ²) per occupant for the minimum number of plumbing fixtures.					
Worship places Principal assembly area Worship places Educational and activity unit	one per 150 one per 125	one per 75 one per 75	one per two water closets one per two water closets		
For the occupancies listed below, use 200 square feet (18.58 m ²) per occupant for the minimum number of plumbing fixtures.					
Group B Offices or public buildings	1:1-15 2:16-35 3:36-55 Over 55, add one for each 50 persons.	1:1-15 2:16-35 3:36-55	one per two water closets		
For the occupancies listed below, use 50 square feet (4.65 m ²) per occupant for the minimum number of plumbing fixtures.					
Group E Schools—for staff use All schools	1:1-15 2:16-35 3:36-55 Over 55, add one fixture for each additional 40 persons.	1:1-15 2:16-35 3:36-55	one per 40	one per 40	
Schools—for student use Day care	1:1-20 2:21-50 Over 50, add one fixture for each additional 50 persons.	1:1-20 2:21-50	1:1-25 2:26-50 Over 50, add one fixture for each additional 50 persons.	1:1-25 2:26-50	
Elementary	one per 30	one per 25	one per 35	one per 35	
Secondary	one per 40	one per 30	one per 40	one per 40	
For the occupancies listed below, use 50 square feet (4.65 m ²) per occupant for the minimum number of plumbing fixtures.					
Education Facilities other than Group E Others (colleges, universities, adult centers, etc.)	one per 40	one per 30	one per 40	one per 40	

(Continued)

TABLE A-20-A—MINIMUM PLUMBING FIXTURES^{1,2,3,4}—(Continued)

TYPE OF BUILDING OR OCCUPANCY ⁴	WATER CLOSETS ⁵ (fixtures per person)		LAVATORIES ⁶ (fixtures per person)		BATHTUB OR SHOWER (fixtures per person)
	MALE	FEMALE	MALE	FEMALE	
For the occupancies listed below, use 2,000 square feet (183.8 m ²) per occupant for the minimum number of plumbing fixtures.					
Group F Workshop, foundries and similar establishments, and Group E1 Occupancies	1:1-10 2:11-25 3:26-50 4:51-75 5:76-100 Over 100, add one fixture for each additional 300 persons.	1:1-10 2:11-25 3:26-50 4:51-75 5:76-100	one for each two water closets		one shower for each 15 persons exposed to excessive heat or to skin contamination with irritating materials
For the occupancies listed below, use the designated application and 200 square feet (18.58 m ²) per occupant of the general use area for the minimum number of plumbing fixtures:					
Group I Hospital waiting rooms Hospital general use areas	one per room (usable by either sex) 1:1-15 2:16-35 3:36-55 Over 55, add one fixture for each additional 40 persons.	1:1-15 3:16-35 4:36-55	one per room one per each two water closets		
Hospitals Patient room Ward room	one per room one per eight patients		one per room one per 10 patients		one per room one per 20 patients
Jails and reformatories Cell Exercise room	one per cell one per exercise room		one per cell one per exercise room		
Other institutions (on each occupied floor)	one per 25	one per 25	one per 10	one per 10	one per eight
For the occupancies listed below, use 200 square feet (18.58 m ²) per occupant for the minimum number of plumbing fixtures.					
Group M Retail or wholesale stores	1:1-50 2:51-100 3:101-400 Over 400, add one fixture for each additional 500 males and one for each 150 females.	1:1-50 2:51-100 3:101-200 4:201-300 5:301-400	one for each two water closets		
For Group R Occupancies, dwelling units and hotel guest rooms, use the chart. For congregate residences, use 200 square feet (18.58 m ²) for Group R, Division 1 Occupancies and 300 square feet (27.87 m ²) for Group R, Division 3 Occupancies for the minimum plumbing fixtures.					
Group R Dwelling units Hotel guest rooms	one per dwelling unit one per guest room		one per dwelling unit one per guest room		one per dwelling unit one per guest room
Congregate residences	one per 10 Add one fixture for each additional 25 males and one for each 20 females.	one per 8 Add one fixture for each additional 25 males and one for each additional 20 females.	one per 12 Over 12, add one fixture for each additional 20 males and one for each additional 15 females	one per 12	one per eight For females, add one bathtub per 30. Over 150, add one per 20.
For the occupancies listed below, use 5,000 square feet (464.5 m ²) per occupant for the minimum number of plumbing fixtures.					
Group S Warehouses	1:1-10 2:11-25 3:26-50 4:51-75 5:76-100 Over 100, add one for each 300 males and females.	1:1-10 2:11-25 3:26-50 4:51-75 5:76-100	one per 40 occupants of each sex		one shower for each 15 persons exposed to excessive heat or to skin contamination with poisonous, infectious or irritating materials

NOTE: Occupant loads over 30 shall have one drinking fountain for each 150 occupants.

¹The figures shown are based on one fixture being the minimum required for the number of persons indicated or any fraction thereof.

²Drinking fountains shall not be installed in toilet rooms.

³When the design occupant load is less than 10 persons, a facility usable by either sex may be approved by the building official.

⁴Any category not mentioned specifically or about which there are any questions shall be classified by the building official and included in the category which it most nearly resembles, based on the expected use of the plumbing facilities.

⁵Where urinals are provided, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases shall not be reduced to less than one half of the minimum specified.

⁶Twenty-four inches (610 mm) of wash sink or 18 inches (457 mm) of a circular basin, when provided with water outlets for such space, shall be considered equivalent to one lavatory.



CITY OF

FAIRBANKS

March 12, 1998

Senator Mike Miller
Alaska State Senate, State Capital
Juneau, Alaska 99801-1182
Fax # 465-3883

Dom cord
SMA
3/12/98

Re: Senate Bill 269

Dear Senator Miller:

It has come to our attention that Senate Bill 269 has been forwarded to the State House and referred to the House Labor and Commerce Committee.

We wish to advise the entire interior delegation that the City of Fairbanks objects to the current wording of the bill. Specifically we object to Section 1, line 5 and line 6. This bill if passed will lock all home rule cities into the adoption of only the Uniform Plumbing Code. We believe that the State of Alaska should be able to have an option to adopt any nationally recognized model code.

By the year 2000 most codes will be under a national or international format. These codes are internally coordinated and are referred to as a family of codes. Senate Bill 269 would create fragmentation contrary to the goal of a national or international code structure. Regardless, the State of Alaska should have an option to adopt the most appropriate code.

We recommend that Section 1 Paragraph (a) be revised as follows:

(A) Except as provided otherwise in this section, and unless the department adopts by regulation other nationally recognized codes, [a later edition of the following publications], the following publications are adopted as the minimum plumbing code for the state:

We also recommend that Appendix L be adopted. For some reason, the sponsor of the bill has chosen to delete this appendix. Appendix L is entitled Alternate Plumbing Systems. This appendix would recognize professionally engineered systems. There is no compelling reason not to adopt this appendix.

The city of Anchorage also is in support of revised language. Please give me a call if you need further information or require clarification.

Sincerely,

Steve Shuttleworth, Building Official
City of Fairbanks Building Department

cc: Interior Delegation
Mayor Hayes
Ron Watts, Building Official, Municipality of Anchorage

the GOLDEN HEART CITY... "extremely Alaska"

410 Cushman Street Fairbanks, Alaska 99701
801

S B

283

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 283 | _____

Revision Date (Note if correction) _____ Dept. Affected Law
 Title An Act relating to noneconomic damages BRU Civil Division
 resulting from an automobile accident. Component Special Litigation
 Sponsor Senate Labor & Commerce by Request
 Requester Senate Labor & Commerce Component Serial No. 2213

Expenditures/Revenues (Thousands of Dollars)

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

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

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

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 283 would not permit a person injured in an accident to collect noneconomic damages, for example damages for pain and suffering, if the person was injured while driving while intoxicated, or driving without motor vehicle liability insurance.

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

Prepared by Jean M. Kasson Phone 465-5370
 Division Attorney General's Office Date 2/13/98
 Approved by Commissioner Bruce M. Botelho, Attorney General Date 2/13/98
 Agency Department of Law

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SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 2/6/98

FURTHER: Judiciary

Date of 5-Day Notice: 2-12-98
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4-3-98

Labor and Commerce Committee considered

SENATE BILL NO. 283

"An Act relating to noneconomic damages resulting from an automobile accident."

and recommends:

- be replaced with _____ CS SB 283 (1-DC)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

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

SIGNING <u>DO PASS</u>	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>Tim Kelly</i>	✓		
		<i>Mike Miller</i>	✓		
		<i>Sydney Hoff</i>	+		
CHAIR: <i>Llew D. Lewis</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

LAW (enforcement)		✓	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSSB 283 (L&C)

Revision Date (Note if correction) _____	Dept. Affected <u>Law</u>	_____
Title <u>An Act relating to noneconomic damages</u>	BRU <u>Civil Division</u>	_____
<u>resulting from an automobile accident.</u>	Component <u>Special Litigation</u>	_____
Sponsor <u>Senate Labor & Commerce by Request</u>	_____	_____
Requester <u>Senate Labor & Commerce</u>	Component Serial No. <u>2213</u>	_____

Expenditures/Revenues

(Thousands of Dollars)

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

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

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

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

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

CSSB 283 (L&C) would not permit a vehicle owner or operator injured in an automobile accident to collect noneconomic damages, for example damages for pain and suffering, if the vehicle or its operator did not have the liability insurance required by state law. The Senate Labor and Commerce committee substitute specifically exempts a passenger from this prohibition if the passenger is not also the owner of the automobile.

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

Prepared by	Joan M. Kasson	Phone <u>465-5370</u>
Division	Attorney General's Office	Date <u>4/3/98</u>
Approved by Commissioner	Bruca M. Botelho, Attorney General	Date <u>4/3/98</u>
Agency	Department of Law	

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0-LS1467E
Ford
4/2/98

CS FOR SENATE BILL NO. 283(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to noneconomic damages resulting from an automobile accident."**

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

3 *** Section 1.** AS 09.17.010(a) is amended to read:

4 (a) Except as provided under AS 09.65.215, in [IN] an action to recover
5 damages for personal injury or wrongful death, all damage claims for noneconomic
6 losses shall be limited to compensation for pain, suffering, inconvenience, physical
7 impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other
8 nonpecuniary damage.

9 *** Sec. 2.** AS 09.65 is amended by adding a new section to read:

10 **Sec. 09.65.215. Noneconomic damages resulting from an automobile**
11 **accident.** (a) In an action to recover civil damages resulting from an accident
12 involving the operation or use of an automobile, a person may not recover damages
13 for noneconomic losses if the person was the owner or operator of a vehicle involved
14 in the accident and the vehicle or operator was not insured as required by
15 AS 28.22.011.

1 (b) An insurer is not liable, directly or indirectly, to indemnify an owner or
2 operator of a vehicle described in (a) of this section for noneconomic losses covered
3 under an automobile liability insurance policy.

4 (c) This section does not apply to a person who is a passenger in an
5 automobile involved in an accident and who is not the owner of the automobile.

6 * Sec. 3. APPLICABILITY. This Act applies to a cause of action that accrues on or after
7 the effective date of this Act.

Alaska State Legislature

Senate



Official Business

Senate Labor & Commerce Committee

State Capitol
Juneau, AK. 99801-1182

Memo

TO: Mike Ford, Legal Counsel
Legislative Legal and Research Services
via fax: X 2029 this page only

FROM: Annette Kreitzer, Aide to
Senate Labor & Commerce Committee
14 X 3844

DATE: March 31, 1998

RE: Work Draft CS for SB 283: Automobile Civil Liability

Please prepare a work draft L&C Committee Substitute for SB 283 incorporating the following points:

- 1) Sec. 09.65.215(a) does not apply to a person unless the person is an owner or operator of a vehicle involved in the accident. The Committee wants it plain that the bill does not include any passengers involved in an accident through no knowledge of their own in an uninsured car. In other words, only the driver or owner of the vehicle without insurance would be affected.
- 2) Delete the portion of the bill dealing with drunken drivers. This portion is inconsistent with tort reform legislation passed last year.



Official Business

Alaska State Legislature

SENATE

State Capitol
Juneau, AK 99801-1182

Senate Labor & Commerce Committee

Sponsor Statement

SB 283: Automobile Civil Liability

Senate Bill 283 allows an uninsured driver involved in an accident to recover damages from the other driver only for economic losses, such as medical care and lost wages, but not for non-economic losses, such as pain and suffering and loss of consortium. An uninsured driver would also not be able to collect non-economic damages if guilty of drunk driving or if the driver caused the accident while committing a crime. However, an uninsured motorist who is injured by a subsequently convicted drunk driver may seek recovery for non-economic damages.

Most Alaskans are required to carry automobile insurance, and should not be put in the position of underwriting uninsured motorists who want to recover non-economic damages.

2. Statutes ⇨325

David YOSHIOKA, Petitioner,

v.

SUPERIOR COURT of the State of California for the County of Los Angeles, Respondent.

Glenn Alan TODD et al., Real Parties in Interest.

No. B110759.

Court of Appeal, Second District, Division 7.

Oct. 27, 1997.

To determine electorate's intent in passing initiative, it is best to look at language of initiative itself.

3. Statutes ⇨263

Generally, there is strong presumption against statute's retrospective action, wherein it ought not receive such construction unless words used are so clear, strong and imperative that no other meaning can be annexed to them, or unless intention of legislature cannot be otherwise satisfied.

4. Automobiles ⇨229

Constitutional Law ⇨253(4)

Retroactive application of proposition that prohibited uninsured drivers from collecting noneconomic damages in action arising out of use of motor vehicle did not violate uninsured driver's right to due process; driver was still able to obtain complete recovery for economic damages, interest in restoring balance to justice system and in reducing costs of mandatory automobile insurance were significant, retroactive application was important in effectuating interests, and driver had notice that driving without insurance had consequences. U.S.C.A. Const.Amend. 14; West's Ann.Cal. Const. Art. 1, § 7; West's Ann.Cal.Civ.Code § 3333.4; West's Ann.Cal.Vehicle Code § 16021.

5. Constitutional Law ⇨253(4)

Retrospective application of statute is constitutional as long as it does not deprive person of substantive right without due process of law. U.S.C.A. Const.Amend. 14; West's Ann.Cal. Const. Art. 1, § 7.

6. Constitutional Law ⇨252.5

Procedural due process applies only to vested rights. U.S.C.A. Const.Amend. 14; West's Ann.Cal. Const. Art. 1, § 7.

7. Constitutional Law ⇨106

Damages ⇨7

Right to recover specific types of damages is not vested right because such rights are created by state and common law independent from constitution, and thus, state and its people may alter such rights; such alteration is only forbidden when at the very

After the Superior Court, Los Angeles County, No. KC020037, Theodore D. Piatt, J., granted defendants' motion in limine in action arising out of rear-end automobile accident to exclude rear-ended driver's evidence of general damages, driver petitioned for writ of mandate, challenging constitutionality of proposition that prohibited uninsured drivers from collecting non-economic damages. The Court of Appeal, Woods, J., held that: (1) retroactive application of proposition did not violate due process or equal protection; (2) due process did not require that driver be given hearing before being denied recovery for non-economic damages; (3) prospective application of proposition did not violate equal protection; and (4) proposition did not violate single-subject requirement of state constitution.

Petition denied.

Johnson, Acting P.J., filed a dissenting opinion.

1. Constitutional Law ⇨188

Statutes ⇨325

Courts addressing retroactive application of initiatives generally follow two step analysis: first, court must determine whether initiative has been retroactively applied; if so, court must then decide if the people intended that statute be so applied, and upon finding of intent, initiative may be enacted unless it is prohibited by state or federal constitutional provisions.

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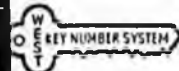
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7. DISPOSITION

nt is reversed.

., and RUVOLO, J., concur.



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least the party is deprived of every reasonable method of securing just compensation, but not where plaintiff would not recover as much as he would have had former rule continued.

8. Constitutional Law ⇨253(4)

In determining if retroactive initiative violates due process, following factors are considered by court: significance of state interest served by law, importance of retroactive application of law to effectuation of that interest, extent of reliance on former law, legitimacy of that reliance, extent of actions taken on basis of that reliance, and extent to which retroactive application of new law would disrupt those actions. U.S.C.A. Const. Amend. 14; West's Ann.Cal. Const. Art. 1, § 7.

9. Constitutional Law ⇨48(1)

Burden of demonstrating constitutional infirmity of statutory scheme is squarely on challenger.

10. Automobiles ⇨229

Constitutional Law ⇨245(2)

Retroactive application of proposition that prohibited uninsured drivers from collecting non-economic damages in action arising out of use of motor vehicle did not violate uninsured driver's right to equal protection; interest in restoring balance to judicial system and in reducing costs of mandatory automobile insurance were legitimate, and it was not arbitrary for electorate to draw distinction between uninsured drivers who were affected by different dates set for trial as all of them were violating law and susceptible to penalty. U.S.C.A. Const. Amend. 14; West's Ann.Cal.Civ.Code § 3333.4; West's Ann.Cal.Vehicle Code § 16021.

11. Constitutional Law ⇨48(1)

Initiative measures must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears.

12. Constitutional Law ⇨211(1)

Equal protection requires that persons similarly situated receive like treatment. U.S.C.A. Const. Amend. 14.

13. Constitutional Law ⇨213.1(2)

When statute or initiative which classifies individuals involves economic rights, rational basis test applies in deciding equal protection challenge, and test is met if statute has legitimate purpose and law makers reasonably believed classification would promote that purpose. U.S.C.A. Const. Amend. 14.

14. Constitutional Law ⇨213.1(2)

On equal protection challenge to statute, court must conduct serious and genuine judicial inquiry into correspondence between classification and legislative goals even if court is invoking only rational relations test. U.S.C.A. Const. Amend. 14.

15. Constitutional Law ⇨213.1(2)

On equal protection challenge under rational relationship test, question is not whether in fact act will promote legislative objectives but whether legislature could rationally have decided that it might do so. U.S.C.A. Const. Amend. 14.

16. Constitutional Law ⇨44.1

Initiatives are subject to same constitutional analysis as statutes.

17. Automobiles ⇨229

Constitutional Law ⇨305(2)

Due process did not require that uninsured driver be given hearing before being denied recovery for non-economic damages in action arising out of use of motor vehicle; potential culpability was not at issue, driver could have avoided such a penalty by simply choosing alternative forms of transportation, and if driver had made any attempt to buy insurance he would not have been subject to penalty. U.S.C.A. Const. Amend. 14; West's Ann.Cal. Const. Art. 1, § 7; West's Ann.Cal. Civ. Code § 3333.4.

18. Automobiles ⇨229

Constitutional Law ⇨245(2)

Prospective application of proposition that prohibited uninsured drivers from collecting noneconomic damages in action arising out of use of motor vehicle did not violate equal protection; electorate rationally concluded that eliminating such damages to uninsured drivers was related to goal of re-

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Constitutional Law ⇨213.1(2)
 A statute or initiative which classifies individuals involves economic rights, rational basis test applies in deciding equal protection challenge, and test is met if statute serves legitimate purpose and law makers reasonably believed classification would promote public purpose. U.S.C.A. Const.Amend.

Constitutional Law ⇨213.1(2)
 Equal protection challenge to statute, strict scrutiny conduct serious and genuine judicial inquiry into correspondence between statute and legislative goals even if statute invoking only rational relations test. Const.Amend. 14.

Constitutional Law ⇨213.1(2)
 Equal protection challenge under rational relationship test, question is not whether fact act will promote legislative purpose but whether legislature could rationally have decided that it might do so. Const.Amend. 14.

Constitutional Law ⇨44.1
 Felonies are subject to same constitutional analysis as statutes.

Automobiles ⇨229

Constitutional Law ⇨305(2)
 Process did not require that uninsured driver be given hearing before being denied recovery for non-economic damages in action arising out of use of motor vehicle; driver's culpability was not at issue, driver avoided such a penalty by simply using alternative forms of transportation, even though driver had made any attempt to buy insurance would not have been subject to penalty. U.S.C.A. Const.Amend. 14; West's Ann.Cal. Const. Art. 1, § 7; West's Ann.Cal. Const. 3333.4.

Automobiles ⇨229

Constitutional Law ⇨213.1(2)
 Rationale application of proposition prohibiting uninsured drivers from collecting non-economic damages in action arising out of use of motor vehicle did not violate equal protection; electorate rationally concluded eliminating such damages to benefit drivers was related to goal of re-

Cite as 68 Cal.Rptr.2d 553 (Cal.App. 2 Dist. 1997)

ducing insurance costs and to goal of restoring balance to justice system, because it would result in decrease in amount of litigation filed and because it would encourage more uninsured drivers to buy auto insurance, and proposition treated similarly situated members of uninsured class equally. U.S.C.A. Const.Amend. 14; West's Ann.Cal. Civ.Code § 3333.4.

19. Statutes ⇨325

Initiative will generally be upheld under single-subject requirement of state constitution as long as its parts are reasonably germane to each other and to its general purpose; rule's primary purpose is to minimize voter confusion and deception. West's Ann.Cal. Const. Art. 2, § 8(d).

20. Automobiles ⇨229

Statutes ⇨325

Proposition that prohibited uninsured drivers from collecting noneconomic damages in action arising out of use of motor vehicle did not violate single-subject requirement of state constitution, as its primary subject was to limit recovery of noneconomic damages for those drivers that break law, and the three subparts of topic, regarding drunk drivers, uninsured drivers, and drivers in commission of or fleeing from felony, were generally germane to electorate's interests of restoring balance to justice system and lowering insurance premiums. West's Ann.Cal. Const. Art. 2, § 8(d).

Holstein, Taylor & Unitt and Brian C. Unitt, Davis, for Petitioner.

Remcho, Johansen & Purcell, Robin B. Johansen, Joseph Remcho, Kathleen J. Purcell, Sacramento, and Gina M. Calabrese, as Amici Curiae on behalf of Petitioner.

No appearance for Respondent.

Ford, Walker, Haggerty & Behar, Maxine J. Lebowitz, Long Beach, Murchison & Cumming and Richard D. Newman, Santa Ana, for Real Parties in Interest.

Daniel E. Lungren, Attorney General, Linda A. Cabatic, Supervising Deputy Attorney General, Leslie R. Lopez, Shelleyanne W.L. Chang, Deputy Attorneys General, Horvitz &

Levy, Christina J. Imre and Jon B. Eisenberg, Encino, as Amici Curiae on behalf of Real Parties in Interest.

WOODS, Associate Justice.

Petitioner David Yoshioka wishes to collect non-economic damages from Real Parties in Interest Glenn and Judith Todd. He challenges Proposition 213 (passed by voters last November which prohibits uninsured drivers from collecting such damages) as unconstitutional on due process and equal protection grounds. Amici in support of petitioner further challenge under California's single subject rule. We find that the initiative withstands constitutional muster on all three grounds and therefore must deny his petition for a writ of mandate.

FACTUAL AND PROCEDURAL SYNOPSIS

On July 26, 1994, Petitioner David Yoshioka and Real Parties in Interest Glen Alan and Judith Todd were involved in an automobile accident. Petitioner had no auto insurance at the time of the accident. Petitioner filed his complaint in the Superior Court for the County of Los Angeles on June, 14, 1995, alleging that he was rear-ended by real parties and subsequently sustained serious injuries.

On November 5, 1996, Proposition 213 was passed by 76.83 percent of the voters of the State of California, creating California Civil Code section 3333.4. This initiative prohibits uninsured motorists and drunk drivers from collecting non-economic damages in any action arising out of the operation or use of a motor vehicle. Further, it prohibits recovery of any damages by felons for injuries caused in the commission of or flight from a felony. (Civ.Code, § 3333.3.) The voter's pamphlet reveals numerous interests the electorate considered in enacting this initiative. Essentially such interests can be narrowed down to two broad concerns the voters took into account; (1) the interest in restoring balance to our justice system and (2) the interest in reducing costs of mandatory automobile insurance.

On November 8, 1996, the subject litigation proceeded to arbitration where an award was made. Both parties filed a request for trial de novo. The matter was set for trial on March 17, 1997. Based on Proposition 213, real party brought a motion in limine to exclude all evidence of general damages and bar all jury instructions on that issue. Judge Piatt granted the motion in limine because he refused to rule that Proposition 213 was unconstitutional in its retroactive application and looked for appellate review on that issue. Further, he granted the real parties' request to amend their answer to add Proposition 213 as an affirmative defense. The trial was continued until May 27, 1997, to afford petitioner the opportunity to file his writ petition.

Petitioner filed a petition for writ of mandate on April 2, 1997. Subsequently, on May 5, 1997, real parties filed an opposition to the writ. Petitioner replied on May 16, 1997. Amici in support of the petitioner filed a brief on May 14, 1997. Real parties answered on May 27, 1997. Amici in support of real parties (the Attorney General and the Association of California Insurance Companies) filed briefs on June 12, 1997. The constitutionality of this initiative is now before this court for review.

DISCUSSION

Petitioner contends that both the retroactive and prospective applications of Proposition 213 are unconstitutional because the initiative violates his rights of (1) due process and (2) equal protection under federal and state constitutions. Further, amici in support of petitioner contend this initiative is invalid because it violates California's Single Subject Rule. Accordingly, petitioner wishes to collect both economic and non-economic damages for injuries suffered from real parties in interest. We disagree with petitioner's contentions that this state initiative is unconstitutional in either its retroactive or prospective form and application.

1. Petitioner contends that real parties misuse this phrase because our Supreme Court's use of it was merely dicta. However, whether we classify this type of application as "secondary retroactive

I. RETROACTIVE APPLICATION OF PROPOSITION 213

[1] Courts addressing retroactive application of initiatives generally follow a two step analysis. (*Gutierrez v. De Lara* (1987) 188 Cal.App.3d 1575, 1578, 234 Cal.Rptr. 158.) First, the court must determine whether the initiative has been retroactively applied. If so, the court must then decide if the people intended that the statute be so applied. Upon a finding of intent, the initiative may be enacted unless it is prohibited by state or federal constitutional provisions. (*Ibid.*) Therefore, we first look at the retroactive application itself and then determine if its application is constitutional.

Proposition 213 provides: "This act shall be effective immediately upon its adoption by the voters. Its provisions shall apply to all actions in which the initial trial has not commenced prior to January 1, 1997." (Italics added.)

This initiative was applied to petitioner by the concept of secondary retroactivity. Secondary retroactivity is best defined by our Supreme Court as "retroactivity which affects the future legal consequences of past transactions." (*20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 878 P.2d 566.) The court noted that this type of retroactivity "does not offend any laws, including the United States and California Constitutions." (*Id.* at p. 282, 32 Cal.Rptr.2d 807, 878 P.2d 566.) Petitioner's case involves an accident occurring prior to Proposition 213's passage, yet encompasses a trial set following its effective date. He filed a complaint with the court against real parties for an accident which occurred on July 26, 1994. Proposition 213, passed in November of 1996, has prevented him from seeking non-economic relief because this matter was set for trial on March 17, 1997. It is clear that the initiative applies to petitioner in a retroactive manner.

[2] Since the initiative does not expressly state that it will apply retroactively, we must

ty" or simply "retroactivity", our analysis results in the same conclusion. We choose to use the phrase to simplify our analysis.

determine the *elatos v. Superior C* 1212, 246 Cal.Rpt. *sell v. Superior C* 810, 814, 230 Cal. determine such int language of the *enscher v. Gamble* 85 P.2d 885; wher that the measure at the time of the action was inapplic amendment of Civ that measure of da

[3] Generally, sumption against a tion, [wherein] it construction unless clear, strong and meaning can be an the intention of ti otherwise satisfied. & Guaranty Co. v. 314, 28 S.Ct. 537, 53

Petitioner argues sions shall apply to initial trial has r January 1, 1997" a nate interpretation give uninsured mor bring their case to already pending. did not express a c statute retroactively informed voters wh system is incredibly adopt an exception t tion for only those luck or coincidence. trial date before Jan it would be illogica voters intended to ac tively. Further, the are unaware of the may have thought th all be set for trial w

However, assumi terpretation is possi this particular phrase sider other sections o port a clear finding

Cite as 68 Cal.Rptr.2d 553 (Cal.App. 2 Dist. 1997)

RETROACTIVE APPLICATION OF PROPOSITION 213

Courts addressing retroactive application of initiatives generally follow a two-step analysis. (Gutierrez v. De Lara (1987) 1 Cal.App.3d 1575, 1578, 234 Cal.Rptr. 102.) First, the court must determine whether the initiative has been retroactively applied. If so, the court must then decide if the measure intended that the statute be so applied. Upon a finding of intent, the initiative is applied unless it is prohibited by state or federal constitutional provisions. Therefore, we first look at the retroactive application itself and then determine if the application is constitutional.

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If the initiative does not expressly state that it will apply retroactively, we must

apply "retroactivity", our analysis results in the same conclusion. We choose to use the term to simplify our analysis.

determine the electorate's intent. (Evangelatos v. Superior Court (1988) 44 Cal.3d 1188, 1212, 246 Cal.Rptr. 629, 753 P.2d 585; Russell v. Superior Court (1986) 185 Cal.App.3d 810, 814, 230 Cal.Rptr. 102.) In order to determine such intent it is best to look at the language of the initiative itself. (See Feckenschlager v. Gamble (1938) 12 Cal.2d 482, 500, 85 P.2d 885; where our Supreme Court held that the measure of damages which applied at the time of the accrual of the cause of action was inapplicable due to the legislative amendment of Civil Code section governing that measure of damages.)

[3] Generally, "[t]here is a strong presumption against a statute's retrospective application, [wherein] it ought not receive such a construction unless the words used are so clear, strong and imperative that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied." (United States Fidelity & Guaranty Co. v. U.S. (1908) 209 U.S. 306, 314, 28 S.Ct. 537, 539, 52 L.Ed. 804.)

Petitioner argues that the words, "provisions shall apply to all actions in which the initial trial has not commenced prior to January 1, 1997" are susceptible to an alternate interpretation that the voters wanted to give uninsured motorists sufficient time to bring their case to trial if the case was already pending. Therefore, the electorate did not express a clear intent to apply the statute retroactively. He contends that the informed voters who understand the court system is incredibly backed up, would not adopt an exception to the retroactive application for only those cases which, out of mere luck or coincidence, happen to already have a trial date before January 1, 1997. Therefore, it would be illogical to conclude that such voters intended to apply the statute retroactively. Further, the uninformed voters, who are unaware of the civil litigation process, may have thought those pending cases could all be set for trial within two months time.

However, assuming such an alternative interpretation is possible upon examination of this particular phrase, petitioner fails to consider other sections of the initiative that support a clear finding of retroactive intent.

Real parties point out that the initiative specifically states,

" A YES vote on this measure means: Uninsured drivers or drivers convicted of driving under the influence of alcohol or drugs at the time of an accident could no longer sue someone who was at fault for the accident for non-economic losses (such as pain and suffering)."

On its face, the words "no longer" in this context can only be interpreted as the initiative no longer allowing the uninsured to sue for non-economic losses. As real parties contend, "no longer sue" does not logically suggest that one and a half or two years from now, when all cases filed before the initiative are finally resolved, uninsured drivers could no longer sue for such relief. Nor does it imply that this initiative should only apply to accidents that occur post the effective date are finally resolved. It merely states that uninsured motorists can no longer sue following the effective January 1, 1997, date. No express exception exists indicating the voters intended to only apply the initiative to accidents occurring post the effective date.

Moreover, it is important to note that this section is placed at the forefront of the voter pamphlet, where each proposition is given a brief synopsis. The effective date portion is hidden in small print many pages back in the "text of the proposed law" section. Petitioner points out that "assuming the voters even read the statement [of the effective date], it is highly possible that confusion would result." But, this excerpt informing the voter of what a "yes" vote entails, which is clear in its intent and visible in its location, would be apart of even a casual reading by a voter. Therefore, upon examination of this section of Proposition 213, coupled with those referring to the effective date, it is clear that the electorate intended to adopt this initiative retroactively. Subsequently, we must still determine its constitutionality.

A. Due Process

[4] Petitioner contends that the retroactive application of Proposition 213 has violated his constitutional right to due process. We disagree.

[5-7] Article I, section 7 of the California Constitution and the 14th Amendment of the United States Constitution guarantee the right of due process. Retrospective application of a statute is constitutional as long as it does not deprive a person of a substantive right without due process of law. (*In re Marriage of Buol* (1986) 39 Cal.3d 751, 756, 218 Cal.Rptr. 31, 705 P.2d 354.) Procedural due process applies only to vested rights. (*Davis v. Superior Court of Los Angeles* (1977) 73 Cal.App.3d 818, 821, 141 Cal.Rptr. 75.) Petitioner concedes that numerous courts have held that the right to recover specific types of damages is not a vested right because such rights are created by state and common law independent from the Constitution. (*Id.* at p. 824, 141 Cal.Rptr. 75.) (See as examples, *Fein v. Permanente Medical Group* (1985) 38 Cal.3d 137, 159, 211 Cal.Rptr. 368, 695 P.2d 665; *American Bank & Trust Co. v. Community Hospital* (1984) 36 Cal.3d 359, 204 Cal.Rptr. 671, 683 P.2d 670; *Werner v. Southern California Associated Newspapers* (1950) 35 Cal.2d 121, 129, 216 P.2d 825; *Feckenscher v. Gamble, supra*, 12 Cal.2d 482, 499-500, 85 P.2d 885; *Tulley v. Tranor* (1873) 53 Cal. 274, 280.) Therefore, a state and its people may alter such rights. Such alteration is only forbidden when at the very least the party is deprived of every reasonable method of securing just compensation. This does not encompass instances where the plaintiff would not recover as much as he would have had the former rule continued. (*Feckenscher v. Gamble, supra*, 12 Cal.2d 482, 499, 85 P.2d 885.)

The New York Workmens' Compensation Act, which limits an injured worker's right to sue for general negligence damages was upheld in order to encourage responsibilities between employers and employees. (*New York Central R.R. Co. v. White* (1917) 243 U.S. 188, 197-198, 37 S.Ct. 247, 250-251, 61 L.Ed. 667.) Subsequently, despite a lesser recovery available to injured employees, the Act was still deemed consistent with due process principles.

Analogous to the Act in *New York Central*, under Proposition 213, although petitioner may not be able to recover as high a damage award as he would have prior to the initiative's passage, he still is legally entitled to some form of relief. Proposition 213 deprives petitioner of a certain type of damages (non-economic, i.e.: pain and suffering), but petitioner cannot claim that he is deprived of every reasonable method of securing just compensation. He is still able to obtain complete recovery for his economic damages.

Notably, assuming petitioner was eligible to recover damages for pain and suffering, it is still questionable whether such a monetary award will ever fully compensate an injured plaintiff. Our Supreme Court has stated, "money damages are at best only imperfect compensation" for pain and suffering. (*Fein v. Permanente Medical Group, supra*, 38 Cal.3d 137, 159, 211 Cal.Rptr. 368, 695 P.2d 665.) Suspicion will often arise as to whether injured plaintiffs are ever fully compensated for non-economic relief. However, we are certain that the injured will receive complete compensation for those injuries which can be measured monetarily. Prop. 213 ensures this relief is continually available.

An alternative analysis in determining if a retroactive initiative violates due process entails a weighing of a variety of factors. (*In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 592, 128 Cal.Rptr. 427, 546 P.2d 1371.) Real parties contend that *In re Bouquet* is distinct from the case at bar. However, assuming such an analysis is proper, Proposition 213 can still be upheld in its retroactive form.

[8,9] The following factors are considered by the court: "[1] the significance of the state interest served by the law; [2] the importance of the retroactive application of the law to the effectuation of that interest; [3] the extent of reliance upon the former law; [4] the legitimacy of that reliance; [5] the extent of actions taken on the basis of that reliance; and [6] the extent to which the retroactive application of the new law would disrupt those actions."² (*Id.* at p. 592, 128 Cal.Rptr. 427, 546 P.2d 1371.)

1. The significance

Amici in support voters interests be storing balance to the interest in re automobile insur. however, the inter our justice system decreasing the nu annual court-relat governments, incr driving and disob. Responsibility La felonies and avoi being awarded to est in reducing c bile insurance ad skyrocketing insu aging motorists

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York (1905) 19- 937.) This test legislation has the initiative i mate state int (9th Cir.1985) v. Permanente 137, 157, 158. The burden o infirmity of a the challenge

ous to the Act in *New York Central*, Proposition 213, although petitioner be able to recover as high a damage he would have prior to the initiative, he still is legally entitled to relief. Proposition 213 de- tioner of a certain type of damages (i.e.: pain and suffering), but cannot claim that he is deprived of reasonable method of securing justice. He is still able to obtain com- pensation for his economic damages.

Assuming petitioner was eligible for damages for pain and suffering, it is questionable whether such a monetary award ever fully compensate an injured person. Our Supreme Court has stated, "damages are at best only imperfect compensation" for pain and suffering. (*Feminine Medical Group, supra*, 38 Cal.3d 159, 211 Cal.Rptr. 368, 695 P.2d 137.) A question will often arise as to whether damages are ever fully compensated. However, we are not concerned for those injuries which can be compensated monetarily. Prop. 213 ensures compensation continually available.

A comparative analysis in determining if an initiative violates due process requires an analysis of a variety of factors. (*In re Bouquet* (1976) 16 Cal.3d 583, 137 Cal.Rptr. 427, 546 P.2d 1371.) Realizing that *In re Bouquet* is distinct from the case at bar. However, assuming a comparative analysis is proper, Proposition 213 is upheld in its retroactive form.

The following factors are considered in the analysis: "[1] the significance of the interest served by the law; [2] the effect of the retroactive application of the law; [3] the effect of reliance upon the former law; [4] the actions taken on the basis of the former law; and [6] the extent to which the actions of the new law would be affected." (*Id.* at p. 592, 128 Cal.3d 546 P.2d 1371.)

1. The significance of the state interest

Amici in support of real parties stated the voters interests best; 1) the interest in restoring balance to our justice system and 2) the interest in reducing costs of mandatory automobile insurance. More specifically however, the interest in restoring balance to our justice system includes such interests in decreasing the number of law suits, reducing annual court-related costs to state and local governments, increasing the costs of drunk driving and disobeying California's Financial Responsibility Law, curtailing commission of felonies and avoiding unreasonable damages being awarded to the uninsured. The interest in reducing costs of mandatory automobile insurance addresses the need to reduce skyrocketing insurance premiums by encouraging motorists to buy liability insurance.

In the wake of an insurance premium crisis, the electorate's interests in controlling the high costs of insurance are significant. (See *American Bank & Trust Co. v. Community Hospital, supra*, 36 Cal.3d 359, 204 Cal.Rptr. 671, 683 P.2d 670; *Hoffman v. United States, supra*, 767 F.2d 1431; *Western Steamship Lines, Inc. v. San Pedro Peninsula Hospital* (1994) 8 Cal.4th 100, 32 Cal.Rptr.2d 263, 876 P.2d 1062, where the Medical Injury Compensation Reform Act of 1975 (hereinafter, "MICRA") legislation limiting the recovery of economic damages in order to contain the costs of malpractice insurance was upheld.) Similar to the MICRA legislation, Proposition 213's supporters had a legitimate interest in controlling the high cost of automobile insurance.

The interest in restoring balance to our justice system is also significant. Proposition 213 makes it more difficult for citizens to

York (1905) 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937.) This test entails we find (1) the challenged legislation has a legitimate state interest and (2) the initiative is rationally related to that legitimate state interest. (*Hoffman v. United States* (9th Cir.1985) 767 F.2d 1431, 1436-1437; *Feminine v. Permanente Medical Group, supra*, 38 Cal.3d 137, 157, 158, 211 Cal.Rptr. 368, 695 P.2d 665.) The burden of demonstrating the Constitutional infirmity of a statutory scheme is squarely upon the challenger. (*Anacker v. Sillas* (1976) 65 Cal.App.3d 416, 423, 135 Cal.Rptr. 537.) Purposes of the initiative are rationally related to the statutory scheme of

ignore the Financial Responsibility Act, where motorists are required to obtain insurance if they wish to drive. Once in effect, law abiding citizens are not forced to pay for the injuries of those who choose to disobey the law. Therefore, it was proper for the electorate to consider such an interest in enacting a new initiative.³

2. The importance of the retroactive application of the law to the effectuation of that interest

Further, retroactive application is important in effectuating both these interests. Petitioner points out that "the retroactive aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former." (*Usery v. Turner Elkhorn Mining Co.* (1976) 428 U.S. 1, 17, 96 S.Ct. 2882, 2893, 49 L.Ed.2d 752.)

First, the interest in decreasing insurance rates can be justified through both prospective and retroactive application.⁴ Petitioner disagrees by contending that insurance premiums will not decrease for voters who already have liability coverage. The formula for setting premiums is computed based on factors relative to the insured driver such as driving record, number of miles traveled and number of years of experience. These factors remain the same regardless of whether all drivers buy insurance or not. Therefore, the rates will not change. Further the rates may even increase if companies covered a lot of high risk drivers who were formerly uninsured.

However, as an experienced insurance agent asserts, there will be a beneficial im-

Cal.Rptr. 283, 816 P.2d 1309.) Ultimately if we find under *In re Bouquet*, that the initiative is significant, the retroactive application to that interest is important, and action taken on the basis of the former law is near identical to that of the later, we simultaneously meet the rational basis test under the due process clause.

3. These interests are equally as significant when viewing the initiative in its prospective form.

4. Petitioner does not contend that such an im-

pact on insurance premiums once the insured are no longer forced to pay for the uninsured's bill. This effect however cannot be achieved unless the initiative is applied retroactively. For example, an automobile insurance underwriter, following the passage of Proposition 213, who is setting rates for 1997, could take into account the reduction in potential exposure for his/her company's insured in those cases in which Proposition 213 applies. This will ensure the initiative's immediate effect. However, if not applied retroactively, the insured will continue to face exposure for general damages in claims brought by uninsured plaintiffs, ultimately delaying the beneficial effect on liability insurance rates. Therefore, retroactive application is important in effectuating this interest in reducing premium rates.

Second, the interest in restoring balance to our justice system is clearly effectuated through this initiative's prospective and retroactive application.⁵ In fact, the interest cannot be effectuated unless the initiative is applied retroactively. The court system will not change until we consider *all* cases scheduled post-January 1, which must include certain accidents that occurred prior to this date. As a result, petitioner concedes that a decrease in judgments would result in response to Proposition 213's passage. Litigation in general will decrease as cases will more likely result in settlement. Tax paying, law abiding citizens will no longer need to support those who choose to break the law. Subsequently, the costs of supporting the court system will decrease. Further, applying the initiative retroactively ensures an even greater incentive to comply with California's Financial Responsibility Law, a law that even absent Proposition 213, should be followed by all drivers.

3. Reliance

Reliance upon the state of the former law is not a viable argument. Actions taken on the basis of the state of the former law should be identical to those taken in response

to the new law. Petitioner alleges that retroactive applications of initiatives are generally disfavored and inherently unfair because they give no notice to those they later effect. (See *Borden v. Division of Medical Quality* (1994) 30 Cal.App.4th 874, 880, 35 Cal. Rptr.2d 905; *Russell v. Superior Court, supra*, 185 Cal.App.3d 810, 814, 230 Cal.Rptr. 102; *Evangelatos v. Superior Court, supra*, 44 Cal.3d 1188, 246 Cal.Rptr. 629, 753 P.2d 585.)

However, long before Proposition 213 was even drafted, the State of California law has always required drivers to purchase insurance.⁶ The Minimum Financial Responsibility law was held constitutional as early as 1976. (*Anacker v. Sillas, supra*, 65 Cal. App.3d 416, 135 Cal.Rptr. 537.) Real parties point out that in *Anacker* the court noted, "[i]nvolvement in the accident does not create the obligation to be financially responsible, it merely provides the occasion for demonstrating that a pre-existing obligation has been satisfied." (*Id.* at p. 422, 135 Cal.Rptr. 537.) Therefore, at the time of petitioner's accident, he cannot contend that he had no notice that driving without insurance did not have any negative consequences. Subsequently, applying Proposition 213 retroactively cannot be deemed inherently unfair.

B. Equal Protection

[10] Petitioner contends that applying Proposition 213 retroactively is unconstitutional because it violates his right to equal protection under the California and United States Constitutions. We disagree.

[11] "[I]t is our solemn duty to jealously guard the precious initiative power, and to resolve any reasonable doubts in favor of its exercise. . . . [S]uch measures must be upheld unless their *unconstitutionality clearly, positively and unmistakably appears.*" (*Legislature v. Eu, supra*, 54 Cal.3d at p. 501, 286 Cal.Rptr. 283, 816 P.2d 1309; italics added.)

[12-14] Equal protection persons similarly situated. (*Georgie Boy M Superior Court* (1981) 224, 171 Cal.Rptr. 382. initiative classifies individual economic rights, the rights. The test is legitimate purpose and reasonably believed to promote that purpose. *States, supra*, 767 F.2. tioner points out and we must conduct a serious inquiry into the correct classification and the law we are invoking only test. (*Fein v. Perma, supra*, 38 Cal.3d 137, 1695 P.2d 665; *Ward v. California* (1997) 53 Cal. Cal.Rptr.2d 32, review

[15, 16] However, relations are generally not a constitutional relationship test. The question rests on grounds of achievement of the State. (*St. man v. United States*, 1435.) The question is whether in fact the Act will achieve its objectives] . . . [but whether it could rationally might do so." (*Amer v. Community Hosp*, 359, 374, 204 Cal.Rptr. citing *Minnesota v. Co.* (1981) 449 U.S. 725, 66 L.Ed.2d 659. such rests upon the case *United States, supra*.

7. Real parties go through why strict scrutiny is classification. However, established that challenge afforded the rational *York, supra*, 193 U.S. 937.) Such economic strictening the recovery. *First*

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[12-14] Equal protection requires that persons similarly situated receive like treatment. (*Georgie Boy Manufacturing, Inc. v. Superior Court* (1981) 115 Cal.App.3d 217, 224, 171 Cal.Rptr. 382.) When a statute or initiative classifies individuals which involves economic rights, the rational basis test applies.⁷ The test is met if (1) the statute has a legitimate purpose and (2) the law makers reasonably believed the classification would promote that purpose. (*Hoffman v. United States, supra*, 767 F.2d 1431, 1436.) Petitioner points out and we agree that the court must conduct a serious and genuine judicial inquiry into the correspondence between the classification and the legislative goals even if we are invoking only the rational relations test. (*Fein v. Permanente Medical Group, supra*, 38 Cal.3d 137, 163, 211 Cal.Rptr. 368, 695 P.2d 665; *Warden v. State Bar of California* (1997) 53 Cal.App.4th 510, 519, 62 Cal.Rptr.2d 32, review granted June 5, 1997.)

[15, 16] However, equal protection violations are generally not found under the rational relationship test unless the "classification rests on grounds wholly irrelevant to the achievement of the State's objective." (*Hoffman v. United States, supra*, 767 F.2d 1431 1435.) The question therefore is not "whether in fact the Act will promote [the legislative objectives] . . . [but whether] . . . the legislature could rationally have decided that it might do so." (*American Bank & Trust Co. v. Community Hospital, supra*, 36 Cal.3d 359, 374, 204 Cal.Rptr. 671, 683 P.2d 670 citing *Minnesota v. Clover Leaf Creamery Co.* (1981) 449 U.S. 456, 466, 101 S.Ct. 715, 725, 66 L.Ed.2d 659.) The burden to prove such rests upon the challenger. (*Hoffman v. United States, supra*, 767 F.2d 1431, 1437.)⁸

7. Real parties go through a lengthy analysis as to why strict scrutiny is inapplicable to this type of classification. However, it has long been established that challenges to economic rights are afforded the rational basis test. (*Lochner v. New York, supra*, 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937.) Such economic rights include statutes restricting the recovery of damages. (*American Bank & Trust Co. v. Community Hospital, supra*, 36 Cal.3d 359, 368-369, 204 Cal.Rptr. 671, 683 P.2d 670.) Further petitioner concedes that ra-

1. State interests

As discussed in the due process analysis above the voter's interest in restoring balance to our justice system is legitimate. This includes narrower interests in encouraging compliance with California's Financial Responsibility Law, avoiding the frustration of empty judgments and preventing individuals who fail to take responsibility from seeking unreasonable damages. (See *Anacker v. Sillas, supra*, 65 Cal.App.3d 416, 135 Cal.Rptr. 537, where the suspension of one's driving privilege was rationally related to the goal of assuring financial responsibility; *Georgie Boy Manufacturing, Inc. v. Superior Court, supra*, 115 Cal.App.3d 217, 225, fn. 4, 171 Cal.Rptr. 382, where eliminating punitive damages only for those plaintiffs suing under survivorship statutes is a legitimate manner of addressing the "apparent concern for the danger of excessive recoveries.")

Further, the interest in reducing costs of mandatory automobile insurance is well established as legitimate. (*Fein v. Permanente Medical Group, supra*, 38 Cal.3d 137, 159, 211 Cal.Rptr. 368, 695 P.2d 665 (where the court held that reducing the costs of insured motor vehicle accident defendants and their insurers is a legitimate objective).)

2. Classification

Petitioner contends that within the general classification of the uninsured, Proposition 213's retroactive application further creates subclasses that are irrational and arbitrary.⁹ Petitioner labels these subclasses as: (1) the Retroactive Plaintiffs; uninsured motorists who didn't have the opportunity to avoid penalties; (2) The Fortunate Few; persons with trials between the passage of the initiative and January 1, 1997, who suffer no ill

8. Initiatives are subject to the same constitutional analysis as statutes (See *Leshner Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540, 277 Cal.Rptr. 1, 802 P.2d 317.)

9. Petitioner cites to *In re Fassett* (1937) 21 Cal. App.2d 557, 69 P.2d 865; an older case where a city's ordinance limiting the number of hogs that could be raised on a hog ranch, applying only to those persons who were in business less than one year, was deemed an irrational classification

affect and (3) Prospective Plaintiffs; uninsured motorists with accidents occurring after January 1, 1997.

A similar contention was made by plaintiffs challenging section 3333.2 of MICRA, which limits non-economic damages in medical malpractice cases to \$250,000. Plaintiffs argued that the statute violated equal protection because it impermissibly discriminates *within the class* of medical malpractice victims, denying a "complete" recovery of damages only to those malpractice plaintiffs with non-economic damages exceeding \$250,000. (*Fein v. Permanente Medical Group, supra*, 38 Cal.3d at pp. 161-162, 211 Cal.Rptr. 368, 695 P.2d 665.) However, our Supreme Court found this argument unavailing because "[t]he equal protection clause certainly does not require the Legislature to limit a victim's recovery for out-of-pocket medical expenses or lost earnings simply because it has found it appropriate to place *some limit* on damages for pain and suffering and similar non-economic losses." (*Id.* at p. 162, 211 Cal. Rptr. 368, 695 P.2d 665; italics added.)

Further, the MICRA legislation was upheld by the Ninth Circuit where a plaintiff complained of unequal treatment between malpractice victims and other tort victims. (*Hoffman v. United States, supra*, 767 F.2d 1431, 1433.) In that case, the plaintiff went into the hospital seeking medical attention for an injured finger, but left the hospital a vegetable. If Mr. Hoffman had happened to slip on the hospital floor and subsequently suffered brain damage, the non-economic damages cap of MICRA would not have applied.

Analogous to the MICRA legislation's classifications, it is not arbitrary for the electorate to draw a distinction between the uninsured who are affected by different dates set for trial. Those malpractice plaintiffs who happened to suffer injuries of greater than \$250,000 were not afforded non-economic damages because of the importance of addressing the malpractice insurance crisis. Subsequently, these uninsured plaintiffs who happened to have trial dates set post-Janu-

ary 1, 1997, should not be afforded non-economic damages in furtherance of the interest in lowering outrageous auto insurance premiums.

Further, it is important to note that the uninsured motorists provisions apply only to those who are not in compliance with the financial responsibility laws *as required* by statute. This is distinct from malpractice victims, who through no fault of their own are subject to a cap on the non-economic damages they wish to collect. Despite petitioner's contentions that these three subclasses of the uninsured are arbitrary, it is indisputable that *all* members of the subclasses are violating the law and therefore are all susceptible to some form of penalty.

II. PROSPECTIVE APPLICATION OF PROPOSITION 213

A. Procedural Due Process¹⁰

[17] Amici in support of petitioner contend that when applied prospectively, Proposition 213 violates due process because the initiative implements an automatic penalty scheme, allowing for no explanations or excuses. (*Bearden v. Georgia* (1983) 461 U.S. 660, 668-669, 103 S.Ct. 2064, 2070-2071, 76 L.Ed.2d 221; *Rios v. Cozens* (1972) 7 Cal.3d 792, 103 Cal.Rptr. 299, 499 P.2d 979.)

However, both these cases cited by amici are distinct from the situation at hand. In *Rios*, the Supreme Court of California struck down a Vehicle Code provision which provided for an uninsured's automatic license suspension when involved in an automobile accident. The court found due process required the uninsured motorist be given a hearing to determine his *potential culpability* prior to the suspension of his license.

Due process does not require that the uninsured be given a hearing before being denied recovery for non-economic damages because potential culpability is not at issue. Along such lines, the First District Court of Appeal held that Vehicle Code section 12520.5, which provides for the automatic revocation of farm labor vehicle driver certifi-

(see Part IA, *supra*). This analysis will address only those issues specific to the prospective aspect of the initiative.

icates upon a drunk driving violation Code, § 23102, subd. (a)), did not require a hearing to determine potential culpability because it had already been done in the pending criminal prosecution for drunk driving. (*Alderette v. Department of Motor Vehicles* (1982) 135 Cal.App.3d 174, 180, 185 (1982).)

Similarly, Proposition 213 doesn't require a hearing for dispute. Drivers either have insurance or they don't. If they do and they choose to drive (instead of using other alternative modes of transportation such as public transit), we can think of no defense that would require a hearing.

Petitioners also cite to *Bearden*, where the Supreme Court held that "a sentencing court may properly revoke a defendant's probation for failure to pay a fine absent evidence of a failure . . . or that alternative forms of punishment were inadequate to meet the state's interests in . . . deterrence." (*Bearden v. Georgia, supra*, 461 U.S. 660, 668-669, 103 S.Ct. 2064, 2066.) There, the petitioner was sentenced to probation on the condition that he pay various fines. However, he failed to pay the fines. As a result of his sentence, he lost his job and was unable to make the payments on time.

This case is easily distinguishable from *Bearden*. In *Bearden*, the petitioner's probation revocation penalty was automatically imposed if his fines were not paid. Here, the petitioner was not automatically penalized if he failed to pay his fines. He was entitled to be heard before any attempt at earning money was considered. Here, uninsured motorists who choose to drive can easily avoid the penalty of not being entitled to non-economic damages, by simply choosing alternative modes of transportation. Further, if a driver made any attempt at all (good or bad) to buy insurance, they would no longer be subject to such a penalty. Therefore, we see no reason to entitle an uninsured driver to a hearing. A hearing is not a process violation.

B. Equal Protection

[18] As discussed *supra*, the classification violation for classification of motorists into economic rights invokes the rational basis test. The test is met if: (1) the

10. Much of the due process analysis for Proposition 213 in its prospective form is analogous to that of Proposition 213 in its retroactive form.

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Similarly, Proposition 213 doesn't put culpability up for dispute. Drivers either possess insurance or they don't. If they don't and they choose to drive (instead of using other alternative modes of transportation like public transit), we can think of no justifiable defense that would require a hearing.

Petitioners also cite to *Bearden*, where the Court held that "a sentencing court cannot properly revoke a defendant's probation for failure to pay a fine absent evidence of findings that he was somehow responsible for the failure ... or that alternative forms of punishment were inadequate to meet the State's interests in ... deterrence." (*Bearden v. Georgia, supra*, 461 U.S. 660, 660, 103 S.Ct. 2064, 2066.) There, the petitioner was sentenced to probation on the condition that he pay various fines. However, following his sentence, he lost his job and was unable to make the payments on time.

This case is easily distinguishable from the case at bar. In *Bearden*, petitioner's probation revocation penalty was automatically implemented if his fines were not paid. Therefore, he was entitled to be heard so as good faith attempts at earning money could be considered. Here, uninsured motorists that choose to drive can easily avoid the penalty of not being entitled to non-economic damages, by simply choosing alternative forms of transportation. Further, if the uninsured made any attempt at all (good faith or otherwise) to buy insurance, they would in fact no longer be subject to such a penalty. Therefore, we see no reason to entitle each uninsured driver to a hearing. We find no due process violation.

B. Equal Protection

[18] As discussed *supra*, an equal protection violation for classifications involving economic rights invokes the rational basis test. The test is met if: (1) the statute has a

legitimate purpose and (2) the law makers reasonably believed the classification would promote that purpose. (*Hoffman v. United States, supra*, 767 F.2d 1431.) Interests in (1) restoring balance to our justice system and (2) reducing costs of mandatory automobile insurance are legitimate. (See Part IA, Due Process, and Part IB, Equal Protection.) Therefore, we address only the rational relationship between classification of the uninsured and these legitimate interests.

As previously noted, the uninsured motorist classification is rationally related to the electorate's interests in (1) restoring balance to our justice system and (2) reducing costs of auto insurance.

Classifying by eliminating the uninsured has been well established as rationally related to reducing the high costs of insurance premiums. (See *American Bank & Trust Co. v. Community Hospital, supra*, 36 Cal.3d 359, 372-373, 204 Cal.Rptr. 671, 683 P.2d 670; *Fein v. Permanente Medical Group, supra*, 38 Cal.3d 137, 158-159, 211 Cal.Rptr. 368, 695 P.2d 665; *Hoffman v. United States, supra*, 767 F.2d 1431, 1437.) The electorate rationally concluded that eliminating non-economic damages to uninsured drivers is related to the goal of reducing insurance costs. As a result of classifying by eliminating the uninsured, insurance costs were predicted to decrease due to the increased amount of settlement and verdict payments that directly affect insurance premiums. The ballot pamphlet specified the Legislative Analyst's prediction that Proposition 213 will result in a tax revenue reduction of nearly \$5 million annually, based on the 2.35 percent tax on insurers' gross premiums. Amici for real parties further report that these figures indicate reduced annual income to insurers—that is, reduced premiums to insureds—of some \$200 million. Further, the Department of Insurance has ordered all insurers to reduce their automobile liability insurance rates in response to Proposition 213. In considering these results, it can hardly be irrational for voters to have assumed that by classifying the uninsured would help to reduce premium prices.

Further, this classification is rationally related to restoring balance to our justice system. The Supreme Court upheld filing fee requirements as constitutional under equal protection principles. (*Ortwein v. Schwab* (1973) 410 U.S. 656, 93 S.Ct. 1172, 35 L.Ed.2d 572.) Despite such fees directly affecting one's right to participate in civil litigation, because fees assisted in offsetting the court system's expenses, they were deemed rationally related to restoring justice. (*Id.* at p. 660, 93 S.Ct. at p. 1174.)

Similarly, eliminating the amount of recovery for non-economic damages is rationally related to restoring balance to our justice system because it results in a decrease in the amount of litigation filed. Since recovery would be limited to special damages (an easily verifiable amount that encompasses little dispute), pending matters will likely result in settlement. This will ultimately reduce the cost of supporting the court system.

Further, as Proposition 213 encourages more uninsured drivers to buy auto insurance, tax-paying and law abiding citizens will no longer be required to carry the burden of paying for those citizens that choose to directly defy the current state of the law. It was rational for the electorate to believe that a classification that eliminates the uninsured would achieve a legitimate interest in restoring balance to our justice system.

Petitioners cite particular cases where a legislature's classifications were held irrational and therefore violated the equal protection clause. However, such cases are distinct from the case at bar.

Petitioner cites to *Merlo*, one of a series of cases (including *Cooper v. Bray* (1978) 21 Cal.3d 841, 148 Cal.Rptr. 148, 582 P.2d 604) that strikes down California's guest statute¹¹ as unconstitutional. (*Brown v. Merlo* (1973) 8 Cal.3d 855, 106 Cal.Rptr. 388, 506 P.2d 212.) He contends that since the statute "eliminated causes of action of an entire class of persons simply because some undefined portion of the designated class may file fraudulent lawsuits" it was deemed irrational and unfair.

However, petitioner's interpretation of that case is incorrect. In both *Merlo* and *Cooper*,

the statute at issue provided that injured passengers who owned the car in which they were injured were barred from any recovery against drivers who negligently caused their injuries. The statute however contained an exception permitting recovery for owner-passenger's injuries that were caused by permitting drunk drivers to take the wheel. This exception ultimately forced the court to strike down the statute as unconstitutional, finding that the owner-guest classification was not rationally related to the legitimate interest in promoting automobile safety.

Petitioner also cites to *Warden v. State Bar of California*, *supra*, 53 Cal.App.4th 510, 62 Cal.Rptr.2d 32. The appellate court struck down the MCLE (continuing legal education programs) requirements for practicing attorneys because the legislation created irrational exemptions for state officers, elected officials, retired judges and full time professors who do not actively represent individual clients. However, as previously noted, review was granted by the California Supreme Court on June 5, 1997, thereby making it inappropriate to make further comment or rely on the case.

Distinct from the exception to the Vehicle Code in *Brown and Cooper*, the prospective application of Proposition 213 treats similarly situated members equally. All members of "the uninsured" class are only permitted economic damages as a form of relief. All members are prohibited from seeking pain and suffering. Thus, we must conclude that a classification eliminating "the uninsured" is rationally related to the electorate's legitimate interests.

III. THE SINGLE SUBJECT RULE

[19] Amici in support of petitioners contend that Proposition 213 is unconstitutional because it violates the single subject rule. Article II, section 8, of the California Constitution provides, "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect." (Cal. Const., art. II, § 8 subd. (d).) An initiative will generally be upheld as long as its parts are "reasonably germane" to each other and to its general purpose. (See *Amandor Valley Joint Union High School Dist. v.*

11. Former Vehicle Code section 17158.

State Bd. of Equalization (1978) 22 Cal.3d 208, 229, 149 Cal.Rptr. 239, 583 P.2d 1281; *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 240 Cal.Rptr. 569, 742 P.2d 1290.) The rule's primary purpose is to minimize voter confusion and deception. (*Amador Valley Joint Union High School Dist. v. State Bd. of Equalization*, *supra*, 22 Cal.3d 208, 231, 149 Cal.Rptr. 239, 583 P.2d 1281.)

Confusion has often been held to result when an initiative presents a topic of excessive generality such as "public welfare" or "government." (See *Brosnahan v. Brown* (1982) 32 Cal.3d 236, 253, 186 Cal.Rptr. 30, 651 P.2d 274; *Harbor v. Deukmejian*, *supra*, 43 Cal.3d 1078, 1098-1101, 240 Cal.Rptr. 569, 742 P.2d 1290.) Amici to petitioner contend that Proposition 213's subject is "Personal Responsibility," which is too general and broad a topic to survive this rule's constraints. Further they assert that particular provisions of the measure could have confused voters on even a narrower subject of sanctioning irresponsible people who caused injuries.

[20] However, Proposition 213 makes it clear that its primary subject is to limit recovery of non-economic damages for those drivers that break the law. As real parties point out, this topic can be best described as one unified subject having three integrated parts: drunk drivers, uninsured drivers and drivers in commission of or fleeing from a felony. The three subparts of this topic are generally germane to the electorate's interests of restoring balance to our justice system and lowering insurance premiums.

This rationale follows our Supreme Court's decision on Proposition 103 which held that its provisions "relate generally to the cost of insurance or the regulation thereof, and all . . . at least arguably will help to achieve the goal of making insurance more affordable and available." (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 842, 258 Cal.Rptr. 161, 771 P.2d 1247.) Further, Article XIII A withstood a single subject rule challenge since its four separate elements still constituted provisions which were reasonably necessary to the integrated function of the statute as a whole. (*Amador Valley Joint Union High School Dist. v. State Bd. of Equalization*, *supra*, 22 Cal.3d 208, 149 Cal.Rptr. 239, 583 P.2d 1281.)

Ultimately, prohibiting recovery of non-economic damages for uninsured drivers, drunk drivers and drivers in the commission of or fleeing from a felony is reasonably necessary to achieve the statute's functions. We cannot find any violation of the single subject rule and uphold the initiative as constitutional.

DISPOSITION

The petition for a writ of mandate/prohibition is denied. Real parties in interest are awarded costs on appeal.

NEAL, J., concurs.

JOHNSON, Acting Presiding Justice, dissenting.

I respectfully dissent. Because I conclude Civil Code section 5333.4 cannot be applied retroactively to bar appellant's right to non-pecuniary damages, I find it unnecessary to consider the other issues addressed in the majority opinion.

As discussed in the majority opinion, Proposition 213 contains a clause which purports to terminate on-going claims for non-economic damages filed before the Proposition's passage unless they actually came to trial within the two months between that date and January 1, 1997. The case before this court falls in this category. It was filed in 1995 but, as is typical in Los Angeles, trial had not yet commenced as of the first day of 1997. In my view this attempted retroactivity provision in Proposition 213 is both ambiguous and unconstitutional, whatever the constitutionality of this Proposition for lawsuits filed after January 1, 1997.

I. THE PROPOSITION IS SO AMBIGUOUS AS TO WHETHER IT BARS NON-PECUNIARY DAMAGE AWARDS FOR CASES FIRST FILED AFTER ITS PASSAGE OR FOR THOSE ALREADY FILED WHICH HAD NOT REACHED TRIAL BY JANUARY 1, 1997, THAT IT CANNOT BE PRESUMED THE VOTING MAJORITY OF THE ELECTORATE CHOSE TO MAKE THE NEW LAW RETROACTIVE.

In the second sentence of a paragraph labeled "Section 4. Effective date" Proposi-

SUBJECT RULE

Support of petitioners contention 213 is unconstitutional the single subject rule. of the California Constitution initiative measure one subject may not be voters or have any effect." I, § 8 subd. (d.) An ally be upheld as long as nably germane" to each ral purpose. (See *Amador Valley Joint Union High School Dist. v.*

tion 213 states "[i]ts provisions shall apply to all actions in which the initial trial has not commenced prior to January 1, 1997." In an effort to argue away any ambiguity in this particular sentence, the majority opinion points to the earlier and more prominent sentence contained in the language of the ballot statement. My colleagues contend this section clarifies the retroactive nature of this enactment. In my view, however, the earlier and more prominent sentence creates ambiguity and not clarity. That clause reads: "A YES vote on this measure means: Uninsured drivers . . . could *no longer sue* someone who was at fault for the accident for non-economic losses (such as pain and suffering)." The common meaning of "no longer sue" is "can no longer *file* a claim for non-economic losses" *not* that you no longer can complete a lawsuit for non-economic losses which already has been filed. The phrase "can no longer," in turn, means "cannot after the Proposition becomes law." Accordingly, in the ballot statement the voter was being told that after the Proposition becomes law no one will be able to file a claim for non-economic losses.

There is no escaping the conclusion the two sentences—one in the ballot statement far more voters read and telling them what the proposition *really* means and the other sentence at the end of the Proposition itself which few voters read—are inconsistent. One says the Proposition only bars *new* claims for non-pecuniary damages and the other says it bars such claims even in ongoing lawsuits unless they are brought to trial by January 1, 1997. The conflicting sentences, in turn, create an ambiguity as to what the Proposition means. As a result, it is difficult to say the words of this initiative package are "so clear, strong and imperative that no other meaning can be annexed to them" as is required to impute an intent on the part of the voters to apply such legislation retroactively. (*U.S. Fidelity & Guaranty Co. v. United States* (1908) 209 U.S. 306, 314, 28 S.Ct. 537, 539, 52 L.Ed. 804.)

1. The current statutory expression of this common law right is found in Civil Code section 3333, originally enacted in 1872. "For the breach of an obligation not arising from con-

This is not a case where the ballot statement simply failed to alert the voter the initiative itself, contrary to most, contained an unusual provision making it retroactive as to already-file¹ litigation. Here the ballot statement conveys misinformation or at a minimum creates a false impression on that very question. The proponent's ballot statement only says the initiative prevents the filing of future claims for non-pecuniary damages. Meanwhile hidden in the initiative is a single sentence purporting to apply it retroactively and thus also eliminate past claims of this nature. It is entirely possible the proponents of this proposition were merely careless in drafting the ballot statement language creating this erroneous impression about what the proposition would do. But if the electorate is told they are voting for one kind of provision in a ballot statement and the proposition contains contrary language, especially as to issues as vital and constitutionally sensitive as retroactivity, the initiative process no longer can fulfill its important role as the ultimate expression of popular will. Instead it will be open to misuse as an instrument for confusing the electorate and producing counterfeit expressions of the voting public's choices. Thus, in order to protect and preserve the integrity of the initiative process the courts must be ever vigilant against the kind of inconsistency between ballot statement and proposition language found in this case.

II. ASSUMING THE PROPOSITION IS CLEARLY INTENDED TO BE RETROACTIVE, IT WOULD BE UNCONSTITUTIONAL TO TERMINATE RETROACTIVELY APPELLANT'S VESTED RIGHT.

In the nearly one hundred fifty years of California's history, and under the common law for centuries before that, all people injured as appellant was have been entitled to damages in "the amount which will compensate for *all* the detriment proximately caused" them by another's negligent (or reckless or intentional) act.¹ Proposition 213

tract, the measure of damages, . . . is the amount which will compensate for all the detriment proximately caused thereby, whether it could

a case where the ballot state- failed to alert the voter the , contrary to most, contained vision making it retroactive as d litigation. Here the ballot veys misinformation or at a es a false impression on that

The proponent's ballot state- s the initiative prevents the claims for non-pecuniary dam- le hidden in the initiative is a purporting to apply it retros- s also eliminate past claims of is entirely possible the propo- proposition were merely care- the ballot statement language erroneous impression about sition would do. But if the they are voting for one kind a ballot statement and the ins contrary language, espe- s as vital and constitutionally oactivity, the initiative pro- n fulfill its important role as rression of popular will. In- pen to misuse as an instru- ng the electorate and prot- expressions of the voting Thus, in order to protect integrity of the initiative ts must be ever vigilant of inconsistency between and proposition language

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YOSHIOKA v. SUPERIOR COURT (TODD)

Cite as 68 Cal.Rptr.2d 553 (Cal.App. 2 Dist. 1997)

changed all that for those unable or unwilling to buy auto liability insurance (as well as drunk drivers and fleeing felons), denying them any compensation for "non-pecuniary" detriment they might suffer as victims of another's wrongful (including criminal) acts arising out of the operation or use of a vehicle. (Civ.Code, § 3333.4, subd. (a)(2)(3).)

This change in the law took away the long-standing right to recover non-pecuniary damages for over one-quarter of California's motorists² and over one-third of those in Los Angeles County³—literally millions of people. Accepting the majority's interpretation of the voter's intent, Proposition 213's changes "shall apply to all actions in which the initial trial has not commenced prior to January 1, 1997." Thus, included in the millions Proposition 213 embraces is a small subset of uninsured motorists who had not only suffered their injuries in vehicle accidents occurring in the period before the voters passed Proposition 213 but who had filed lawsuits before that date and included claims for non-pecuniary damages. For these people, the change applies retroactively. Appellant is one of this unfortunate few.

Due process does not permit retroactive application of a law which deprives a person of a "substantive (or vested) right" as opposed to a mere "procedural right" in violation of due process. (*Roberts v. Wehmeyer* (1923) 191 Cal. 601, 612, 218 P. 22; *In re Marriage of Buol* (1985) 39 Cal.3d 751, 756, 218 Cal.Rptr. 31, 705 P.2d 354; *Wexler v. City of Los Angeles* (1952) 110 Cal.App.2d 740, 747, 243 P.2d 868, distinguished on another point in *Leupe v. Leupe* (1942) 21 Cal.2d 145, 148, 130 P.2d 697; *Coombes v. Getz* (1932) 285 U.S. 434, 52 S.Ct. 435, 76 L.Ed. 866.) As Witkin explains: "A retrospective or retroactive law is not invalid as such . . . Such a law is invalid, however, . . . if it deprives a person of a vested right or substantially impairs such right, thereby denying due process." (7 Witkin, Summary of

have been anticipated or not." (Civ.Code, § 3333.)

2. California Department of Insurance Statistical Analysis Bureau, "Commissioner's Report on Underserved Communities" (February 1995) at page CA-1. The Bureau reported 27.75 percent

Cal. Law (9th ed. 1985) Constitutional Law, § 486, p. 675.) But deciding whether retroactivity offends due process also requires the balancing of several factors. "In determining whether a retroactive law contravenes the due process clause, we consider such factors as the significance of the state interest served by the law, the importance of the retroactive application of the law to the effectuation of that interest, the extent of reliance upon the former law, the legitimacy of that reliance, the extent of actions taken on the basis of that reliance, and the extent to which the retroactive application of the new law would disrupt those actions." (*In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 592, 128 Cal.Rptr. 427, 546 P.2d 1371, holding clarified in *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1208-1209, 246 Cal. Rptr. 629, 753 P.2d 585 [courts should presume legislative enactments should only be applied prospectively]).

I begin with an inquiry about just what sort of right new section 3333.4 eliminates.

III. THE RIGHT TO "NON-PECUNIARY" DAMAGES IS A VESTED RIGHT ENTITLED TO PROTECTION FROM RETROSPECTIVE DEPRIVATION.

What Proposition 213 characterizes as "non-pecuniary" damages represents the entirety of what society has decided is the best it can do when someone suffers injury to his or her personhood, his or her very being. The rest, the so-called "pecuniary" damages just replace the money the injured party lost because of what the guilty party did to him or her—chiefly the hospital bills to be paid and the wages the injured party is unable to earn while recuperating. But if the injured person writhes in pain for months or years in a burn ward, or is blinded or loses a limb or turned into a quadriplegic, or loses most of his intellect or even becomes a human vegetable because of brain damage, or suffers any

of vehicles registered in California were uninsured in 1995.

3. California Department of Insurance Statistical Analysis Bureau, *supra*, at p. LA-7. The Bureau reported 37.11 of vehicles registered in Los Angeles County were uninsured in 1995.

of a thousand other personal horrors, because of another's negligence or worse—"non-pecuniary" damages provide the *only* recourse available for any of this harm.

Unlike the statutory "benefits" which some courts have held the Legislature can take away retroactively without offending due process (*Graczyk v. Workers' Comp. App. Bd.* (1986) 184 Cal.App.3d 997, 229 Cal.Rptr. 494), an injured party's chance to obtain compensation for non-pecuniary injuries from the party that caused the injury is neither a "benefit" nor statutory in origin. It is a "right" not a "benefit" and one that is a fundamental tenet of the common law. As one leading treatise explains: "The cardinal principle of damages in Anglo-American law is that of *compensation* for the injury caused to plaintiff by defendant's breach of duty."

"What then is compensation? The primary notion is that of repairing plaintiff's injury or of making him whole as nearly as that may be done by an award of money. The 'remedy [should] be commensurate to the injury sustained.' '[W]hoever does an injury to another is liable in damages to the extent of that injury.'" (4 Harper, James and Gray, *THE LAW OF TORTS* (1986) § 25.1, p. 490, 493.)

It is often said money cannot truly compensate this kind of pain or these kinds of losses. But this is not justification for doing away with "non-pecuniary" damages. Rather the observation simply states an undeniable truth. Money is not an adequate substitute for the loss of a limb or its equivalent; it is just the only—or at least the best—we can do. "[I]t is the aim of the law to attain at least a 'rough correspondence between the amount awarded as damages and the extent of the suffering,' or other intangible loss." (4 Harper, James and Gray, *supra*, § 25.1, p. 493.)

There also is an economic dimension to so-called "non-economic" damages. As noted law and economics expert Judge Richard Posner has observed, "We disagree with

4. In the barbarous era of "an eye for an eye," the victim may have gained some psychic compensation when his family revenged his lost limb or other injury by separating the assailant from his own limb or by inflicting the same pain on that

those students of tort law who believe that pain and suffering are not real costs and should not be allowable items of damages in a tort suit. No one likes pain and suffering and most people would pay a good deal of money to be free of them. If they were not recoverable in damages, the cost of negligence would be less to the tortfeasors and there would be more negligence, more accidents, more pain and suffering, and hence higher social costs." (*Kwasny v. U.S.* (7th Cir.1987) 823 F.2d 194, 197.)

The majority opinion relies on a line of cases which states the Legislature may retroactively *reduce* damages or place a "cap" on damages without running afoul of the constitution. (Maj. opn. at pp. 561-562.) But Proposition 213 does far more than that. It eliminates recovery of *any* compensation for a major class of injuries people typically suffer in vehicle accidents, that is, injuries to the person—the pain and suffering they endure for moments or years, the emotional distress accompanying disfigurement, the lost enjoyment and increased aggravation of having to live life as a paraplegic, and like injuries. No, this Proposition does not merely establish a cap on compensation for these very real injuries; it eliminates such compensation entirely. In effect, it says we will continue to pay you for the damage to your property interests—your medical bills and lost income—but not for the damage to your person. In my view, the right to compensation for damage to the person—and not merely the property losses which may accompany a so-called "personal injury"—is a "substantive right" and a "vested right." The loss of such a right is not merely an adjustment or a cap or a reduction in the amount of damages, but the total elimination of the species of damages most closely related to our status as human beings and not mere bill-payers and work horses.

That the voting majority which enacted Proposition 213 retains their own right to compensation for these losses, while taking it away from the unfortunate quarter or third

person. But one of the primary functions of the system of monetary compensation and the legal system itself is to substitute an orderly transfer of money from perpetrator to victim for the violence of personal physical revenge.

of the population, only serves to underscore the value most people place on this right. Assuming it can be denied prospectively, this is the sort of substantive indeed fundamental right which cannot be taken away retroactively.

Appellant's right to recover non-pecuniary damages for his past injuries is also "vested" in another sense. He had filed his action for such damages with the court long before Proposition 213 was proposed or passed. So it was not a mere inchoate right or an expectancy of compensation, but a full-blown chose-in-action appellant possessed. The law looks with special disfavor on statutes which purport to retroactively change substantive rights for on-going litigation. (*Wexler v. City of Los Angeles*, *supra*, 110 Cal.App.2d 740, 747, 243 P.2d 868 [statutory change making father necessary party in action for child's death does not apply retroactively to mother's lawsuit]; *Morris v. Pacific Electric Ry. Co.* (1935) 2 Cal.2d 764, 43 P.2d 276 [defendant entitled to rely on old statute making plaintiff's speed limit violation per se contributory negligence since new statute enacted after lawsuit commenced could not be applied retroactively to deprive defendant of this defense].) If defendants are entitled to retain defenses existing when lawsuits were filed against them, certainly plaintiffs should be entitled to retain the right to damages existing when they filed their lawsuits.

IV. ON BALANCE, RETROACTIVE APPLICATION OF SECTION 3333.4 HARMS UNINSURED PLAINTIFFS WHO ALREADY HAVE FILED CASES MORE THAN IT FURTHERS THE LEGITIMATE GOALS OF THE LEGISLATION.

Not only is this right "vested" and of great importance to those who sought non-pecuniary

ary damages before enactment of Proposition 213, but on balance retroactive deprivation of this right harms petitioner and like persons more than it furthers the goals of the Proposition. First, assuming only prospective application of section 3333.4 insurance rates will go down by nearly as much and nearly as quickly as they would if already filed claims for non-pecuniary damages were not allowed to proceed to trial. Insurance rates were set and already collected on the assumption uninsured motorists would still be receiving non-pecuniary damages. So there would not be any immediate reduction in insurance premiums anyway. The relatively small tail of already filed cases involving uninsured motorists will not affect future premiums substantially compared to the many thousands of such claims which will not be filed at all after the effective date of the act.

And, again assuming only prospective application, there will be just as great a decrease in uninsured motorists on our highways as there would if the law were enforced retroactively. A retroactive deprivation of the right to recover non-pecuniary damages comes too late to affect past decisions not to obtain automobile insurance. If section 3333.4 is to encourage more drivers to obtain auto insurance or to discourage those that do not from using their cars, it can do so only after its enactment.

On the other side of the balance, consider how fundamentally unfair it is to deprive appellant retroactively of this substantive right to be compensated for injury to his person not just his property interests. It is unfair in the sense he lacked the opportunity to know and adjust his behavior in such a way as to avoid this loss. Had he known this was the risk of driving without insurance, he may have been able to adjust his budget enough to pay those premiums.⁵ Or, alter-

5. For many if not most uninsured drivers this may not be a viable option. The California Department of Insurance reports a direct and dramatic correlation between poverty and the absence of auto insurance coverage. This is especially acute in Los Angeles County where the average auto insurance premium is double that in Northern California. (Cal. Dept. of Insurance Statistical Analysis Bureau, Automobile Premium Survey (1996) Executive Summary p.

2.) Sadly, the low income areas often also are the high premium areas. For instance, in one zip code in South Central Los Angeles (90044) analysts found the premium for a minimum liability policy was \$2321 a year for a safe driver who had no points on his or her record. (*Ibid.*) Yet the average per capita income in that same zip code was \$7299. Thus, even typical safe drivers living in that area who wished to drive an insured vehicle would have

natively, he may have elected not to drive and instead worked out some alternative means of transportation. But at the time appellant was deciding whether to buy auto insurance instead of other necessities he had no reason to fear he would lose his long-standing right to compensation for injuries to his person as well as his property. He made that choice years before section 3333.4 took away this long-standing right. The same is true when he decided to drive his own car without insurance instead of seeking alternative transportation. He made these irrevocable decisions before they carried consequences nearly as serious as the loss of the right to seek compensation for injuries to appellant's person if someone injured him while he was driving his vehicle.

Retroactive application also is fundamentally unfair because appellant filed and litigated this case for over a year—and made settlement calculations and other litigation decisions—in reliance on his entitlement to damages for injury to his person. For all we know, he may have insisted on demands he would not have made or rejected offers he would have accepted during the course of the litigation had he known this crucial form of damages would not be available to him. Thus, appellant's "legitimate expectations . . . are substantially disregarded in favor of needless retroactivity." (*In re Marriage of Buol, supra*, 39 Cal.3d 751, 763, 218 Cal.Rptr. 31, 705 P.2d 354.)

And, finally, it is unfair because the time frame was so short it was not feasible to bring his case to trial. Yet others similarly situated may through pure chance or good fortune or different geography or a kind judge have been able to commence their trials by December 31, 1996, and thus saved their substantive right to damages for injuries to the person. "If the statute operates immediately to cut off the existing remedy, or within so short a time as to give the party no reasonable opportunity to exercise his remedy, then the retroactive application of it is unconstitutional as to such party." (*Rosefield Packing Co. v. Superior Court* (1935) 4

to pay a third of their annual income to obtain a minimal policy. Is it any wonder 67.89 percent of vehicles in that zip code are uninsured.

Cal.2d 120, 122-123, 47 P.2d 716; *Aronson v. Superior Court* (1987) 191 Cal.App.3d 294, 297, 236 Cal.Rptr. 347.)

So-called "procedural changes" ordinarily can be imposed retroactively without offending due process. (Witkin, *supra*, § 492, p. 682.) But even such changes must allow those affected a reasonable time to protect their substantive rights. "[T]he Legislature cannot, by a purported change in procedure, cut off all remedy." (*Id.* at § 493, p. 683, citing inter alia *Lane v. Wilson* (1939) 307 U.S. 268, 59 S.Ct. 872, 83 L.Ed. 1281, holding it was unconstitutional to enact a statute only giving African-Americans a 12-day period to register or lose their right to vote.) If retroactive procedural changes are unconstitutional when they fail to allow sufficient time to protect substantive rights, a fortiori, retroactive changes in substantive law are unconstitutional if they provide those affected an inadequate time to save their existing rights.

For these reasons, I would issue the writ and require the trial court to admit evidence and instruct on non-pecuniary damages. In my view, the two problems of constitutional infirmity and conflict between ballot statement and initiative language reinforce each other. The obvious unfairness underlying that infirmity makes it still more doubtful a majority of voters knowingly chose to change the rules for ongoing litigation. So it is even more reasonable to strip Proposition 213 of its retroactivity on that ground alone. Simultaneously, the initiative package's ambiguous message renders it less likely a decision to rule the attempted retroactivity provision unconstitutional would contravene the electorate's true intent.



(Cal. Dept. of Insurance Statistical Analysis Bureau, "Commissioner's Report on Underserved Communities" (February, 1995) at p. LA-2.)

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THERESA BIDDY
Government Relations Manager

February 19, 1990

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

Via Facsimile

**RE: SB 283 (Sen. Loren Leman) An Act Relating to Noneconomic Damages
Resulting From An Automobile Accident - SUPPORT**

Dear Senators:

I am writing on behalf of the Allstate Insurance Company which is the number 2 insurer in the state of Alaska. Allstate supports SB 283 in its efforts to put a practical, common sense approach in place to deal with individuals who do not comply with the state law requiring drivers to insure their vehicles. SB 283 is fair and balanced because it allows uninsured drivers involved in an accident to still recover damages from the other driver for economic losses, such as medical care and lost wages even though they are breaking the law, yet work to restore balance to our justice system. Currently uninsured motorists enjoy the fruits of the insurance system without contributing to it; fairness dictates that individuals who do not contribute directly to the costs of the insurance system should do so indirectly, by foregoing some (but not all) of their damages.

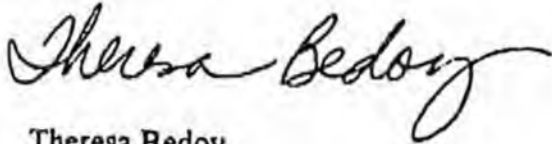
Opponents contend that laws like SB 283 arbitrarily singles out uninsured motorists to ease the financial burden on others. They also argue that similar laws violate equal protection because it has a disparate impact on the poor and on ethnic minorities. In California where Proposition 213, "The Personal Responsibility Act of 1996," was passed by an overwhelming majority (76.8%) and has been upheld by the state's Supreme Court, those who defend Prop. 213 state that the distinction between insured and uninsured drivers is not arbitrary because uninsured motorists drive in violation of the law.

The law's requirement that access to pain and suffering damages is directly related to relieving the inequitable financial burden placed on those drivers who do comply with the financial responsibility laws. Defenders of Prop. 213 also state that the law affects rich and poor alike; observing that many drivers from poor neighborhoods carry auto insurance while many from wealthy neighborhoods do not.

SB 283 fixes a justice system that is out of balance and is about fairness. It is aimed at those who break the law. It stops uninsured drivers from cashing in on those insured drivers who shell out their hard-earned money to carry auto insurance. It puts back in balance the question of fairness in a system that allows an insured driver to be sued for all he has yet protects an asset proof uninsured motorist who hits them.

Allstate would appreciate your "AYE" vote on this legislation.

Respectfully Submitted,



Theresa Bedoy
Government Relations Manager

cc: Trisha Connors, NAI
John George

02/24/98
13:36:15

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (ALL PARTICIPANTS)
TCN:80343 SCHEDULED FOR:02/24/98 13:30 TO 15:00
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LTN1150
BY:ANC
FOR:ANC

LOCATION:ANCHORAGE

SB 283

RAY

BROWN

TESTIFY



**National Association
of Independent Insurers**

2600 River Road, Des Plaines, IL 60018-3286

TRISHA M. CONNORS
COUNSEL

February 24, 1998

MAR 02 1998

Honorable Loren Leman
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

RE: SB 283
NAII POSITION: SUPPORT

Dear Senator Leman,


I am writing on behalf of the National Association of Independent Insurers (NAII) and its 570 property and casualty company members to support your Personal Responsibility Act, SB 283. As you know, this bill would preclude uninsured motorists from "winning the lottery" in an accident caused by an insured driver.

Specifically, SB 283 would provide that drivers who choose to violate your state's mandatory auto insurance law cannot collect pain and suffering damages following an accident in which an insured driver was at fault. The uninsured driver will recover for his or her actual medical costs, wage loss and car repair, but he or she would not collect from the insurance pool for the non-economic losses he or she may have suffered.

The NAII supports SB 283 because it is fair. Drivers who obey the law and buy insurance pay premiums to protect themselves from injury and from lawsuits by other people they may accidentally injure in an accident. Drivers who violate the law and do not pay these premiums should not benefit from their illegal activity.

Thank you again for introducing this important bill. I hope to see it enacted during the 1998 session.

Sincerely,


Trisha M. Connors
Counsel

cc: Senate Labor and Commerce Committee



Alaska State Legislature

Please enter into the record my testimony to the Senate Labor & Com
 committee name
 committee on 3/10/98, dated SB 245.
 bill/subject

TO: SENATE LABOR & COMMERCE Standing Committee
 FROM: Sami Oeser, Anchorage/ Mat-Su PIC Chair
 RE: STEP Program

March 10, 1998

As a member of private industry and chair for the Anchorage/Mat-su Private Industry Council, I wish to declare my enthusiastic support for the STEP program and urge the adoption of the program on a permanent basis.

My experience with the STEP program, both as a PIC member and as an employer, has been an extremely positive one. Training, placement and retention goals have been consistently met and, of most importance, employers are pleased with the STEP placements they have received.

After nearly a decade as one of the quickest and most cost-effective ways of getting people back into the workforce, the STEP program has more than proven itself. I do not feel that further treatment of it as a "pilot program" is either necessary or prudent.

Signed: _____

Testifier

Anchorage/Mat-Su Private Industry Council

Representing (Optional)

1740 South Chugach Palmer 99645

Address

745-3211

Phone No.

FEB 24 1998



February 24, 1998

The Honorable Loren Leman
Alaska State Senator
State Capitol
Juneau, AK 99801-1182

Dear Senator *Loren* Leman:

I wish to express USAA's strong support for Senate Bill 283, which your Committee has introduced. I am also expressing similar support for House Bill 430.

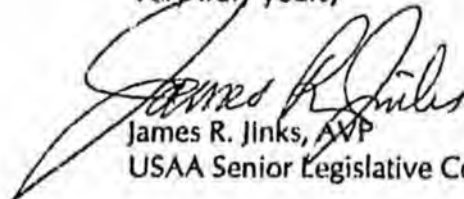
As evidenced by a similar measure enacted by ballot initiative in California, Senate Bill 283 will be a self-enforcing measure to effectively deal with Alaska's uninsured motorist problem. At the same time, the act will save millions of dollars for the large majority of Alaska drivers who buy insurance and operate within the law. It will also provide those same savings to businesses and self-insured entities such as state and local government agencies.

As you probably know, California voters (who are generally regarded as more liberal than the voters of other western states) approved Proposition 213, California's Personal Responsibility Act, in 1996 with a 78% majority of those voting. The measure has withstood all legal and constitutional challenges and has been upheld by two California appellate courts. A year later insured motorists still give the measure a 78% approval rating and, astonishingly, uninsured motorists also give the measure a 78% approval rating.

You may be aware that USAA has continued to question the effectiveness of uninsured motorist data base programs which are expensive to our policyholders and provided them with no benefits for extra expenses they incur. Additionally, data base programs are only effective in keeping track of the vehicles that are registered. It does nothing to impact the vehicles registered in other states or which are simply not registered. In contrast, the measures proposed in Senate Bill 283 would reduce consumer costs, be self-enforcing and, most importantly, restore some fairness for those who do obey the financial responsibility laws.

I am hopeful that you will aggressively pursue enactment of Senate Bill 283 this session. If I can provide any assistance in that effort, please call on me.

Very truly yours,


James R. Jinks, AVP
USAA Senior Legislative Counsel

JRJ:djn

USAA STATE LEGISLATIVE AFFAIRS
915 "L" Street, Suite 1100
Sacramento CA 95814
Phone: (916)552-6715
Fax: (916)442-1328

Recipient:	The Honorable 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: 2/24/98

Time: 2:45:44 PM

Total No. Pages: 1

Subject: AK SB 283

Message:

Please see attached letter of support.

SB

305

FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 305

1998 LEGISLATIVE SESSION

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

Department Affected: Administration
 BRU: Risk Management

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

Component: Risk Management
 COMPONENT SERIAL NO. 71

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	------------	------------	------------	------------	------------	------------

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

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

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

POSITIONS:

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

Analysis: (Attach a separate page if necessary.)

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

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

Phone: 465-5723
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 3/9/98

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 305

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

Expenditures/Revenues (Thousands of Dollars)

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

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

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 0.0

POSITIONS

POSITIONS	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Full-time						
Part-time						
Temporary						

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

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

Prepared by: Paul Grossi, Director *(Signature)*
 Division: Workers' Compensation
 Approved by Commissioner: Tom Cashen *(Signature)*
 Agency: Department of Labor

Phone 465-2790
 Date 3/9/98
 Date 3/9/98

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SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 2/16/98

FURTHER: Judiciary

Date of 5-Day Notice: 3-5-98
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 3-12-98

Labor and Commerce Committee considered

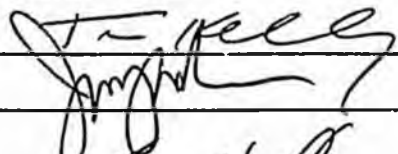
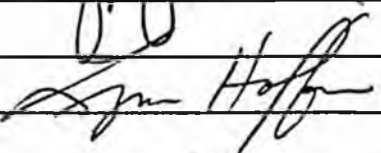
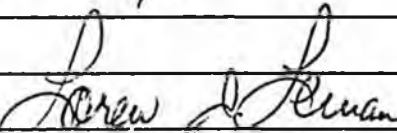
SENATE BILL NO. 305

"An Act relating to rehabilitation of injured workers."

and recommends:

- be replaced with CS SB 305 (LHC)
- adopt previous CS ()
- attached amendment(s)
- adopt Letter of Intent by Committee
- further referral to the Committee

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

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
					
					
	✓				
CHAIR: <u>Steve J. Seaman</u>		CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
Labor	3/9/98	✓	
Administration	3/9/98	✓	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Alaska State Legislature

Senate




Official Business

State Capitol
Juneau, AK. 99801-1182

Senate Labor & Commerce Committee

Memo

TO: Mike Ford, Legal Counsel
Legislative Research and Legal Services
via fax: X 2029 this page only

FROM: Annette Kreitzer, Aide to 
Senate Labor & Commerce Committee
PH: X 3844

DATE: March 10, 1998

RE: CS SB 305 (L&C): Implementation of Work Comp Edition

The Labor & Commerce Committee moved SB 305 from committee after adopting amendment 0-LS1564A.1 by Ford dated March 10, 1998. The committee also commented that the short title to the bill does not accurately reflect the bill's content. They want a more stringent title, even if it is almost the length of the bill itself.

Please prepare a final committee substitute incorporating these changes and deliver it to Room 115.

Please call me if you have questions.

Author: Paul_Grossi@labor.state.ak.us at CC2MHS1
Date: 3/11/98 11:54 AM
Priority: Normal
TO: Sandy Burd at LAA_SDUN
Subject: <No subject>
Here it is:

"An Act relating to the adoption by reference of the United States Department of Labor "Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles" and future editions, revisions and replacement for use with reemployment determinations."

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR DUNCAN

TO: SB 305

1 Page 1, following line 2:

2 Insert a new bill section to read:

3 **** Section. 1.** AS 23.30.041(e) is amended to read:

4 (e) An employee shall be eligible for benefits under this section upon the
5 employee's written request and by having a physician predict that the employee will
6 have permanent physical capacities that are less than the physical demands of the
7 employee's job as described in the 1993 edition of the United States Department of
8 Labor's "Selected Characteristics of Occupations Defined in the Revised Dictionary
9 of Occupational Titles" for

10 (1) the employee's job at the time of injury; or

11 (2) other jobs that exist in the labor market that the employee has held
12 or received training for within 10 years before the injury or that the employee has
13 held following the injury for a period long enough to obtain the skills to compete in
14 the labor market, according to specific vocational preparation codes as described in
15 the 1993 edition of the United States Department of Labor's "Selected Characteristics
16 of Occupations Defined in the Revised Dictionary of Occupational Titles."

17 Page 1, line 3:

18 Delete **** Section 1.**

19 Insert **** Sec. 2.**

20 Page 1, line 4:

21 Delete "When a new edition of the United States Department of Labor's"

1 Insert "When the United States Department of Labor publishes a new edition, revision,
2 or replaces the"

3 Page 1, line 5, following "the":

4 Insert "Revised"

5 Page 1, line 6:

6 Delete "is published"

7 Page 1, line 7, following "edition":

8 Insert ", revision, or replacement standard"

9 Page 1, line 8, following "edition":

10 Insert ", revision, or replacement standard"

11 Page 1, line 10, following "edition":

12 Insert ", revision, or replacement standard"

13 Page 1, line 11, following "edition":

14 Insert ", revision, or replacement standard"



SENATOR JIM DUNCAN
ALASKA STATE LEGISLATURE

Alaska State Senate

State Capitol • Room 119 • Juneau, Alaska 99801-1182 • (907) 465-4766 • Fax 465-4748

March 9, 1998

SPONSOR STATEMENT - SB 305

When an injured worker suffers diminished physical capacities, vocational rehabilitation services step in. They identify occupations and retrain the worker for a job that will fit within the worker's physical abilities. There is a medical evaluation of whether the worker can perform the job at the level described. The Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles (SCODDOT) gives the physical demands and environmental conditions for the occupations. The 1993 edition gives frequency standards for physical demands - like the number of times a worker will lift or bend. This information is necessary for proper evaluation.

The Workers' Compensation Division in the Department of Labor was recently informed that it has based decisions on a 1993 edition of SCODDOT which is not in accordance with the law. Under current law, they are required to use a 1981 edition which lacks frequency standards. SB 305 will allow the Department of Labor to adopt revised editions of SCODDOT through regulation. The bill provides for a public meeting to set a date for the adoption of the new standards.

STATE OF ALASKA

DEPARTMENT OF LABOR

WORKERS' COMPENSATION DIVISION

TONY KNOWLES, GOVERNOR

3301 EAGLE STREET, SUITE 304
P.O. BOX 107019
ANCHORAGE, ALASKA 99510-7019
PHONE: (907) 269-4980
FAX: (907) 269-4975

February 3, 1998

1981 SCODDOT ALERT

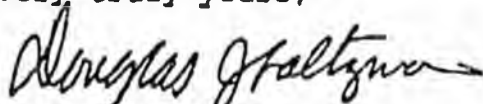
Dear Alaska Rehabilitation Specialist,

In several recent Decision and Orders, the Board found that we have used the 1993 SCODDOT with frequency standards for physical demands in deciding eligibility for Alaska injured workers. The physical demands in 1981 SCODDOT do not have frequency standards.

You are noticed that you must use the 1981 SCODDOT that describes physical demands, (*no frequency standards*) environmental conditions and specific vocational preparation level of jobs. The job description must come from the 1977 4th edition of the Dictionary of Occupational Titles.

If you have an older version of the Classification of Jobs, Elliott and Fields, (before 1986) this has the same information as the 1981 SCODDOT. Using these books makes your recommendations and our decision in accordance with law. All eligibility evaluations must follow these standards. The law does not specify SCODDOT for reemployment plans.

Very truly yours,



Douglas J. Saltzman
Reemployment Benefits Administrator

S B

3 1 2

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/16/98

FURTHER: Judiciary

Date of 5-Day Notice: 3-5-98
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4-8-98

Labor and Commerce Committee considered

SENATE BILL NO. 312

"An Act relating to animals, to food, to pest control, and to the Alaska Food, Drug and Cosmetic Act; and providing for an effective date."

and recommends:

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

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

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Tom Kelly</i>	✓				
<i>Tom Kelly</i>	✓	<i>Lynn Hoffman</i>	x		
<i>Mike Miller</i>	✓				
CHAIR: <i>Andrew J. Levin</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
DEC - Env. Health	3/9/98	✓	
DNE - AG Development	3/10/98	✓	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 312

Revision Date (Note if correction) 09-Mar-98 Dept. Affected Environmental Conservation
 Title Food, Drug and Cosmetic Act BRU Environmental Health
 Component Seafood and Sanitation
 Sponsor Senator Wilken
 Requester Senate Labor & Commerce Component Serial No. 1936

Expenditures/Revenues (Thousands of Dollars)

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

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	------------	------------	------------	------------	------------	------------

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This legislation consolidates all food-related statutes into the Food, Drug and Cosmetic Act (AS 17.20). There is no fiscal impact.

Prepared by Janice Adair, Director
 Division Environmental Health
 Approved by Commissioner [Signature]
 Agency Department of Environmental Conservation

Phone 269-7644
 Date 3/9/98
 Date 3/9/98

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 312

Revision Date: _____ Dept Affected: Natural Resources
 Title: FOOD/SEAFOOD/ORGANIC FOOD BRU: Agricultural Development
 Component: Agricultural Development
 Sponsor: Senator Wilken by Request
 Requestor: (S)L&C Component Serial No. #455

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY99	FY00	FY01	FY02	FY03	FY04
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 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

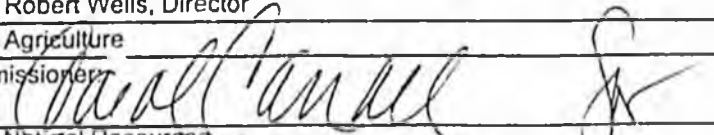
Estimate of any current year (FY98) cost: \$ none

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Removes those portions of Title 3 that have recently been enforced by DEC.
 Cuts the reindeer field kill inspection program and funding authorization.
 Removes from Title 3 those portions of the organic food statutes that have been dealt with by DEC. Takes DEC out of Title 3, organic.
 Rewords Title 3 Agriculture organic food responsibilities (need to define processed.)
 Adds Title 3 organic foods to Title 17.

Prepared by: Robert Wells, Director Phone: 745-7200
 Division: Agriculture Date: 10-Mar-98
 Approved by Commissioner:  Date: 3/10/98
 Agency: Natural Resources

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GARY WILKEN

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Districts 29 & 30
West Fairbanks

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and Social Services (HESS)

Vice Chairman: Transportation

Vice Chairman: Community and
Regional Affairs

Special Committee

Member: Administrative Regulation Review



Senate

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Juneau, Alaska 99801-1182
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(907) 465-4714 (f)

www: akrepublicans.org/wilken.htm
E-mail: Senator_Gary_Wilken@legis.state.ak.us

Interior:
119 N. Cushman St., Room 213
Fairbanks, Alaska 99701
(907) 452-3421
Fax (907) 452-3426

SB 312

An Act relating to domestic animals, to food, to pest control, and to the Alaska Food, Drug and Cosmetic Act, and providing for an effective date.

Sectional Analysis

SB 312 consolidates statutory provisions related to processed food in AS 17.20, the Alaska Food, Drug and Cosmetic Act. Currently, statutory provisions relating to food processing and food service are in Title 3, Animals and Agriculture, and in Title 17, Food and Drugs.

In addition, this legislation repeals some obsolete statutes relating to rabies, standards for bread and flour, and a pest control fund. Other minor changes are made to ensure Alaska's food laws comply with federal food laws or to resolve conflicts between different aspects of Alaska's food statutes. Finally, the legislation proposes to repeal language requiring the establishment of a state-funded field kill inspection program for reindeer.

The end result will find all food processing and service statutes in the Alaska Food, Drug and Cosmetic Act, making it easier for businesses that must follow these laws. It does not increase DEC's food processing authority at all.

Section 1. This amendment clarifies the Department of Environmental Conservation's authority to establish quarantines to eradicate diseases in livestock and brings this provision in statute in line with AS 03.45, Diseased Livestock.

Section 2. This section removes food-related duties of the commissioner of Environmental Conservation from Title 03, Animals and Agriculture. Some of these duties are moved to Title 17 while others are deleted.

- Page 1, lines 9 - 14 and page 2, lines 1 - 8 will be moved to Title 17 in Section 10 (page 6, lines 4 - 10) of this bill, except for authority to establish standards of identity and composition of food (page 1, lines 12 - 13). This provision is in current law at AS 17.20.010. Page 2, lines 17 - 28 will be consolidated and moved to Title 17 in Section 10

(page 6, lines 18 - 21).

- The language dealing with a field kill inspection program for reindeer at state expense on page 2, lines 29 - 31 and page 2, lines 1 - 2, is proposed for deletion.

Section 3. This amends the inspection requirements in Title 3 by removing all references to fish, aquatic farm products, and aquatic farm sites. These requirements are moved to Title 17 in Sections 14 and 17 of this bill.

Section 4. This amends the enforcement provisions of Title 3 by deleting all references to fisheries products. Title 17 already has a similar provision in existing law at AS 17.20.230.

Sections 5 and 6. Under current law, both DEC and DNR have responsibility for ensuring organic food is properly labeled. These sections of the bill delete the organic food statutes that are within the purview of DEC. They are reestablished in Title 17 by Section 9 of this bill. The statutory authorities for DNR remain in Title 3.

Section 7. This is a conforming amendment changing cross-references to the new cross-references in Title 17.

Section 8. This is also a conforming amendment changing the cross-references to Title 17.

Section 9. This section reinstates DEC's organic food authorities, which are deleted in Sections 5 and 6. This language is identical to existing law that can be found at AS 03.58.

Section 10. This is a new section in Title 17. It consists of language currently in Title 3, slightly reworded for context.

- The introductory paragraph (page 6, lines 4 - 6) is the same language currently found at AS 03.05.011.
- Page 6, lines 7 - 10 corresponds with the language deleted in Section 2 of the bill and provides the authority to inspect food products offered to the public as well as authority to set standards of sanitation and handling methods for all phases of food production and sale.
- Page 6, line 11 is currently found at AS 03.05.011(a)(3), proposed for repeal in Section 26 of this bill. It provides the authority to establish food labeling requirements.
- Page 6, line 12 repeats the current AS 03.05.011(a)(2). The control and eradication of pests is critical for proper management of animals and agriculture as well as food products, therefore this language appears in both statutes.
- Page 6, lines 13 - 17 can be found in current law at AS 03.05.011(a)(8). (AS 03.05.011(a)(8) is repealed in Section 26.)

- Page 6, lines 18 - 21 is a restatement of language proposed for deletion in Section 2. It establishes the authority for standards for milk and milk products by following the Pasteurized Milk Ordinance (PMO). Milk may not be sold in interstate commerce which includes sales to the military and other institutions that receive federal funding such as schools unless it meets the standards of the PMO.
- Page 6, lines 22 - 31 can be found in current law at AS 03.05.011(a)(9) and (10). (Both of these statutes are proposed for deletion in Section 26.) This language provides the authority to establish requirements for aquatic farms and aquatic farm products by following the National Shellfish Sanitation Program (NSSP) published by the Food and Drug Administration. Compliance with the NSSP is required before shellfish may be sold on the interstate market.
- Page 7, lines 1 - 2 can be found in current law at AS 03.05.011(a)(4), and provides the department with the ability to conduct tests or analyses or hold hearings to determine whether a stop order or quarantine needs to be issued. Because this is critical for proper management of animals and agriculture as well as food products, this language will appear in both statutes.
- Page 7, lines 3 - 4 is a restatement of language proposed for deletion in Section 2 of this bill. It provides the department with authority regarding quarantined or embargoed food products. The language has been updated to reflect the department's current practice of issuing notices of recalls and or warnings regarding quarantined or embargoed food products.
- Page 7, line 5 is taken from AS 03.05.011(5). It will continue to appear in Title 3, and is simply a statement of cooperation with the federal government and other state agencies.

Section 11. This is currently AS 03.05.035 (which will be deleted in Section 26 of this bill.) No changes are proposed to the existing language.

Section 12. Page 7, lines 18 - 31, and page 8, line 1 are in current law at AS 03.05.025 (which will be repealed in Section 26 of this bill). There is one minor change to the current language that will amend the state's current definition of "critical control point" so it is the same as the federal definition. A comparison is attached.

Section 13. This is the same as current law that can be found at AS 03.05.026 and AS 03.05.085 (both are repealed in Section 26). This language is the same as existing law with only conforming amendments changing cross references to the new sections in Title 17.

Section 14. This reestablishes the inspection authority for "aquatic farms" in Title 17. In current law, this authority is in Title 3. (It is proposed for deletion from that title in Section 3 of this bill.)

Section 15. This is a conforming amendment to reflect the new sections in Title 17.

Section 16. This is a conforming amendment to reflect the new sections in Title 17.

Section 17. Page 9, lines 16 – 23 is a companion amendment to that made in Section 14 adding "aquatic farms" to the inspection authority in Title 17. The current authority is in Title 3. (It is proposed for deletion in Section 3 of this bill.)

- Page 9, line 25 would delete the current requirement that DEC pay for food samples obtained for testing purposes to ensure the food is safe for consumption. The department does not pay for samples. Food processors and other food establishments are equally interested in their products' safety and provide samples to the department for testing when necessary.
- This deletion also impacts the Department of Health and Social Services by deleting the same requirement for that agency as it relates to testing drugs for safety.

Section 18. This is a conforming amendment.

Section 19. This is currently AS 03.05.090, and is being repeated in Title 17 to conform to the transfer of other food statutes from Title 3. It has been modernized to include "recalls" and adding "criminal negligence" as the state of mind necessary to find a violation of the statutes. ("Criminal negligence" is defined at AS 11.81.900(a)(4) as "when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.")

Section 20. This is a conforming amendment.

Section 21. This is a conforming amendment.

Section 22. This is a conforming amendment.

Section 23. This is a conforming amendment.

Section 24. Currently, AS 03.04.100 has a different definition of "aquatic farm" than that found in AS 17.20.370. Section 25 of this bill moves the definition in Title 3 to Title 17. Therefore this section amends AS 17.20.370 to avoid conflicting definitions. The substance of the law is not changed.

Section 25. These definitions are moved from AS 03.05.100(2). (AS 03.05.100(2) is repealed in Section 26.)

Section 26. This is the repealer section. Some statutes are being repealed in Title 3 and readopted in Title 17, some are repealed because they already exist in Title 17, and others

are being repealed completely. Following is the breakdown:

Repealed and moved, or already in Title 17:

AS 03.05.011(a)(3), Powers of the Commissioner
AS 03.05.011(a)(7), Powers of the Commissioner
AS 03.05.011(a)(8), Powers of the Commissioner
AS 03.05.011(a)(9), Powers of the Commissioner
AS 03.05.011(a)(10), Powers of the Commissioner
AS 03.05.025, Seafood Permits
AS 03.05.026, Seafood Quality Standards
AS 03.05.035, Sale and Labeling of Frozen Food
AS 03.05.085, Seafood Processing Research
AS 03.05.100(2), Definition of Aquatic Farm and Aquatic Farm Products
AS 17.05.010, Sale of Unwholesome Provisions Prohibited
AS 17.05.020, Adulteration Prohibited

Repealed completely:

AS 03.05.070, Rabies (rabies control powers of the Department of Health and Social Services, coupled with the animal control powers of local governments, will continue)
AS 03.15.020, Purpose of appropriations (obsolete: this relates to appropriations from the Agriculture Pest and Disease Control Fund, which was repealed in 1968)
AS 17.05.050, Re-serving Prohibited (obsolete: safe re-service should be allowed.)
AS 17.07, Flour and Bread Standards (obsolete: currently regulated by the FDA; the State has authority to implement similar regulations, if necessary, under AS 17.20.010)
AS 17.20.210, Reimbursement for Expenses (obsolete: conflicts with procurement procedures promulgated by the Department of Administration)
AS 17.20.310, Penalties (obsolete: currently used language is in AS 03.05.090, which will be moved to Title 17 by Section 19 of the bill)

Section 29. This is standard language that allows any permits, regulations, embargoes, etc. done under current law to remain in effect despite the changes contained in this legislation.

Section 30. This is the effective date clause: July 1, 1998.

GARY WILKEN

SENATOR

Districts 29 & 30
West Fairbanks

Senate Standing Committees

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and Social Services (HESS)
Vice Chairman: Transportation
Vice Chairman: Community and
Regional Affairs

Special Committee

Member: Administrative Regulation Review



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Interior:
119 N. Cushman St., Room 213
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SB 312

An Act relating to domestic animals, to food, to pest control, and to the Alaska Food, Drug and Cosmetic Act, and providing for an effective date

Sponsor Statement

SB 312 is a good government bill designed to help those in the business of food production and service better access the laws that apply to them. It cleans up various statutes relating to food and animals under the purview of the Department of Environmental Conservation by either deleting them or consolidating them into AS 17.20, the Food, Drug and Cosmetic Act. This legislation makes no significant changes to DEC's current authorities relative to food and animals.

Currently, statutory requirements for food production and service are scattered throughout Title 3, which covers agriculture and animals, and Title 17, which covers food and drugs. Some of the provisions between these two titles conflict with one another, while others are obsolete. In present form, statutes relating to food production and service are often confusing and difficult to find for those who need them most – Alaska's food servers and producers. By consolidating the statutes under one act, and eliminating conflicting or obsolete statutes, the Legislature provides greater access to the Laws of Alaska for those most directly effected. This housekeeping measure is also a customer service issue that makes the system more user-friendly to all Alaskans, saves time and provides for more efficient administration of food laws in Alaska.

A full sectional analysis is available from my office.



P O BOX 190968 • ANCHORAGE, ALASKA 99519-0968 • (907) 278-1525 • FAX (907) 276-6626

March 5, 1998

The Honorable Gary Wilken
Alaska State Senate
Room 510, capitol building
Juneau, AK 99801

RE: SB 312

Dear Senator Wilken:

I have reviewed the above referenced bill, which would consolidate all of Alaska's food related statutes into AS 17.20, Alaska's Food, Drug and Cosmetics Act and would like to voice my support for its passage.

It makes good sense to have all statutes dealing with food processing in one statute. I also appreciate the bill amending the state's definition of "critical control point" to be the same as the Food and Drug Administration's.

Sincerely,

FAVCO, INC.


Gregory J. Favretto
President



February 27, 1998

The Honorable Gary Wilken
Alaska State Senate
Room 510, Capitol Building
Juneau, AK 99801

RE SB 312

Dear Senator Wilken,

UniSea, Inc. owns and operates several shore-based and floating seafood processing facilities in the State of Alaska. I have reviewed the above-referenced bill which would consolidate all of Alaska's food-related laws into AS 17.20, Alaska's Food, Drug, and Cosmetics Act. The purpose of this letter is to lend our support for passage of this important bill.

As a regulated food processing entity, it is extremely helpful to have all laws governing our industry contained in one single statute. I also appreciate the bill amending the state's definition of "critical control point" (at proposed Sec. 17.20.065) to be the same as the U.S. Food and Drug Administration's.

If you have any questions regarding this matter, please do not hesitate to contact me at (425)-861-5310 (or by fax at (425)-882-1660

Sincerely,
UNISEA, INC.

A handwritten signature in cursive script, appearing to read "Joe Frazier".

Joe Frazier
Director of Quality Assurance

cc: T. Shaff, J. Iani, file:jfhealth\aspac\s312.doc

P

Scott Walther
Colony Gourmet Kitchen
Wasilla, Ak 99654
907-373-1144

HC 32 Box 6685W

The Honorable Gary Wilken
Alaska State Senate
Room 510, Capitol Building
Juneau, AK 99801

2-27-98

RE: SB 312

Dear Senator Wilken,

I am a small seafood processor here in Alaska and I had the opportunity to review SB 312. I would assume that there would be little or no opposition to this housecleaning legislation. It will obviously make comprehension of the statutes dealing with food processing much easier to understand and thus easier to comply with.

HACCP regulations need to be uniform between state and federal regulators. The paperwork and record keeping that food processors need to maintain can only be helped with this legislation. I applaud your attention to the frustration that processors and regulators have had to go through because of the confusion that the current state of our statutory provisions cause. As processors, we live with these regulations on a daily basis and have worked closely with the DEC during regulation review and comment periods. I want to add that the Alaska Seafood Inspection Program under the direction of Janice Adair has helped me immeasurably. I cannot see how Alaskan seafood processors could maintain their highly recognized standards of safety and quality without the involvement and oversight of the DEC Seafood Inspection Program.

Please feel free to call me if you need any additional information.

Sincerely

Scott Walther
Colony Gourmet Kitchen



3-4-98

Eyak Packing Company

Cannery Direct Mail Order
Smoked & Canned Alaska Salmon of Finest Quality

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MAR 13 1998

To/ The Honorable GARY WILKEN
ALASKA State Senate
Room 510, CAPITOL Building
Juneau, Alaska 99801

RE : SB 312

Dear Senator Wilken :

I support the above referenced bill. I have owned & operated a small salmon cannery since 1983 and am always dealing with food related rules & regulations; the more concise & clearly the rules are spelled out, the easier they are to understand & follow.

The "one-definition-for-all" of "critical control point" is also a good idea.

Who knows; simpler rules might encourage more people to start food processing businesses & we'll see more jobs generated.



Sincerely,
Gerald
Maroline

PACIFIC ALASKA SHELLFISH, INC

**P. O. Box 7498
Nikiski, Alaska 99635**

March 5, 1998

**The Honorable Gary Wilken
Alaska State Senate
Room 510, Capitol Building
Juneau, AK 99801**

Re: SB 312

Dear Senator Wilken:

As Vice President and General Manager of Pacific Alaska Shellfish, Inc., I have reviewed the above-referenced bill which would consolidate all of Alaska's food related statutes into AS 17.20, Alaska's Food, Drug and Cosmetics Act and would like to voice my support for its passage.

It makes a lot of good sense to have all statutes dealing with food processing rolled into one statute. I also appreciate the bill amending the state's definition of "critical control point" to be the same as the Food and Drug Administration's.

Sincerely,


**Jerry B. Cartee
V.P. & GM**

GARY WILKEN

SENATOR

Districts 29 & 30
West Fairbanks

Senate Standing Committees

Chairman: Health, Education,
and Social Services (HESS)
Vice Chairman: Transportation
Vice Chairman: Community and
Regional Affairs

Special Committee

Member: Administrative Regulation Review



Senate

During Session:

State Capitol, Room 510
Juneau, Alaska 99801-1182
(907) 465-3709 (v)
(907) 465-4714 (f)

www: akrepublicans.org/wilken.htm
E-mail: Senator_Gary_Wilken@legis.state.ak.us

Interior:

119 N. Cushman St., Room 213
Fairbanks, Alaska 99701
(907) 452-3421
Fax (907) 452-3426

MEMORANDUM

TO: Sen. Loren Leman
Chair, Labor and Commerce Committee

FROM: Gary Wilken
Senator, West Fairbanks

DATE: February 24, 1998

RE: Request for hearing for SB 312

I respectfully request that a hearing be scheduled in the Senate Labor and Commerce Committee to discuss SB 312, "An Act relating to domestic animals, to food, to pest control, and to the Alaska Food, Drug and Cosmetic Act, and providing for an effective date."

SB 312 is a good government bill designed to accomplish several goals, including:

- Organizing existing statutes relating to food production and service by consolidating statutes located in Title 3 and Title 17 under the Food, Drug and Cosmetic Act; by eliminating obsolete statutes; and by resolving currently conflicting statutes;
- Providing better access to those most directly affected by these statutes, food producers and servers, and to all Alaskans by ensuring that all laws relating to food production and service can be located in one area; and
- Improving the State's customer service to Alaskans by making the system more user-friendly, by saving time and providing for more efficient administration of food laws in Alaska.

I have attached a sponsor statement and a sectional analysis for SB 312. Please contact Ms. Beth Hagevig, at extension 2705, in my office if you have any questions or comments relating to this request.

A handwritten signature in cursive script that reads "Gary Wilken".