

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9642 SENATE LABOR & COMMERCE

Representative Joe Ryan

March 25, 1997

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States that even if community property is transferred to a trust, it still remains community property.

States that property is not community property if it is owned by a spouse at the time of the marriage but before the determination date (see AS 34.75.900 for definition). This occurs even if the spouses' community property agreement provides that all property acquired during marriage is community property. However, the community property agreement may expressly provide differently.

States that certain listed property is individual property if it is owned by a spouse at the time of the marriage but before the determination date (see AS 34.75.900 for definition). This occurs even if the spouses' community property agreement provides that all property acquired during marriage is community property. However, the community property agreement may expressly provide differently.

States that appreciation and income of property transferred to a community property trust are community property if the trust says they are.

States that community property held in a trust remains community property when distributed to the spouses.

States that this chapter doesn't change property classification and ownership rights for property acquired before or during marriage, except as otherwise provided in this chapter.

AS 34.75.040 Identifies what property one spouse may manage and control alone

Requires spouses to act together when managing and controlling community property that is held in both of their names (unless held in the alternative-- "or").

States that the trust terms determine the management and control rights of community property transferred to a trust.

States that management and control rights for community property don't determine the classification of the property and don't rebut the presumption in AS 34.75.030(b).

States that management and control rights to community property do not permit gifts, except as provided in AS 34.75.050.

States that management and control rights are not affected by this chapter if the property is acquired before the determination date (see AS 34.75.900 for definition). Makes an exception to the extent provided otherwise in a community property agreement or trust.

Allows a court to appoint a conservator or guardian to handle the management and control rights of a disabled spouse.

AS 34.75.050. Prohibits one spouse acting alone from giving to a third party community property that the spouse manages and that is over \$1,000 (in one calendar year), or is a larger amount unless the amount is reasonable considering the economic conditions of the spouses.

Subjects a gift not allowed under (a) of this section to a court action allowed under (d) unless both spouses act jointly or the gift is ratified by the other spouse.

Considers that the spouses have acted together when one spouse makes a gift, if either of certain U.S. gift tax activities occur.

Allows one spouse to bring a court action against a spouse making a gift that doesn't satisfy (a), or against the recipient of the gift, or both. Requires the action to be begun within a certain time. Characterizes a recovery during marriage as community property. Limits a recovery after dissolution or death of one spouse to one-half of the value of the gift and makes this recovery individual property.

AS 34.75.060. Allows spouses living in this state to classify all or part of their property as community property by using a community property agreement.

Allows spouses, even if not living in this state, to classify all or part of their property as community property by transferring the property to a community property trust that states that the property is community property.

AS 34.75.070. Establishes a presumption that an obligation incurred by a spouse during marriage is incurred in the interest of the marriage or family.

Restricts the satisfaction of a duty of support owed to the other spouse or child of the marriage to community property and the spouses's non-community property.

Restricts the satisfaction of an obligation incurred by a spouse in the interest of the marriage or family to community property and the non-community property of the spouse.

Restricts the satisfaction of certain obligations attributable to obligations, acts, or omissions before marriage to the non-community property of the spouse and certain community property.

Restricts the satisfaction of certain other obligation incurred by a spouse during marriage to the spouse's non-community property and the spouse's interest in community property.

Representative Joe Ryan

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States that this chapter doesn't change the spouses' relationship with their creditors with regard to property or obligations existing before the determination date (see AS 34.75.900 for definition).

Makes binding on a creditor a writing signed by the creditor that reduces the creditor's rights under this section.

States that creditor rights are not affected by a community property agreement or trust, unless the creditor knows about the effect when the obligation to the creditor is incurred. Prohibits changing the effect of this subsection by a community property agreement or trust.

States that this chapter doesn't affect a property exemption available under another law.

Sec. 34.75.080. Protects persons who are bona fide purchasers (in general, good faith purchasers for value without notice of a problem or adverse condition) in their transactions with spouses. States that notice of a community property agreement or trust, a marriage, or a marriage termination doesn't change the purchaser's status as a bona fide purchaser. Provides that certain community property purchased from one spouse by a bona fide purchaser is purchased free of any claim of the other spouse; prohibits changing this provision in a community property agreement or trust.

Sec. 34.75.090. Establishes certain requirements for and features of community property agreements. An agreement must be in writing, be signed, and make some property community property. Consideration (each spouse receiving something, usually money) is not needed for the agreement to be effective.

States that the agreement may not adversely affect a child's right to support.

Identifies various items that the spouses may agree on in the agreement.

Provides for the amendment or revocation of the agreement.

Allows persons who are not yet married to enter into an agreement, but prevents the agreement from becoming effective until they are married.

Establishes when community property agreements are unenforceable.

Provides that a court is the entity that determines whether an agreement is unconscionable (grossly unfair to one spouse).

Sec. 34.75.100. Establishes certain requirements for and features of community property trusts. To be a trust, it must be signed and state that some of the property transferred to the trust is community property, and one trustee must meet the qualifications given under the

Representative Joe Ryan

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section. Consideration (each spouse receiving something, usually money) is not needed for the trust to be effective.

States that the trust may not adversely affect a child's right to support.

Lists various items that the spouses may agree on in the trust.

Provides for the amendment or revocation of the agreement.

Establishes when community property trusts are unenforceable.

Provides that a court is the entity that determines whether a trust is unconscionable (grossly unfair to one spouse).

Requires the trustee to maintain certain records.

Sec. 34.75.110. Establishes how spouses may hold their property. Includes some new methods, e.g. holding separately or together as community property or holding as "survivorship community property" (where surviving spouse receives the other spouse's community property interest automatically). Provides for holding property as individual property.

Sec. 34.75.120. Prevents the issuer of an insurance policy from being liable because it makes payments or takes other actions on the policy, unless the issuer actually knew that the payments or actions were inconsistent with a community property agreement or trust or certain adverse claims.

Establishes some rules for how to classify the ownership of life insurance policies and proceeds.

States that this section does not affect a creditor's interest in a policy (or its proceeds) that is transferred or made payable to the creditor as security for an obligation.

States that this section does not affect the ownership interest or proceeds of a policy unless a spouse is listed as an owner and community property is used to pay a premium on the policy.

Sec. 34.75.130. Provides that other property becomes community property if it is mixed with community property and if it can't be traced (or except as provided in AS 34.75.110).

Provides that under certain conditions the individual property of one spouse is changed to community property if the other spouse contributes effort, skill, activity, etc. to the separate property.

Representative Joe Ryan

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Sec. 34.75.140. Gives a spouse a claim against the other spouse for failing to act in good faith, if the failure damages the claimant's community property interest.

Allows a court to order an accounting of the spouses' property and obligations. Allows a court to make certain listed determinations about the spouses' property.

Allows a court to order the addition of a spouse's name to the title of community property held in the name of only one spouse, except for certain listed property.

Requires a spouse to bring a court action against the other spouse under (a) within three years.

Sec. 34.75.150. After the death of a spouse living in this state and under certain circumstances, treats as community property the property that can be traced to certain recoveries of the decedent for a loss of earning capacity.

Sec. 34.75.160. Directs that this chapter is to be applied and construed uniformly with the laws on this same subject in other states and to be applied and construed to achieve its general purpose.

Sec. 34.75.900. Defines the terms in the chapter.

Sec. 34.75.995. Gives the chapter the title "Alaska Community Property Act."

Section 12. Describes how a section in the new chapter changes an Alaska Rule of Evidence.

Section 13. States that the provision in this bill that amends court rules only takes effect if the section describing how it amends the rule receives the necessary super-majority vote.

Section 14. Gives the bill an immediate effective date.

If I may be of further assistance, please advise.

TLB:jdr

97-218:jdr

## MEMORANDUM

TO: Representatives and Senators  
FROM: Representative Joe Ryan  
SUBJECT: "Community Property Bill"  
DATE:

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This memorandum provides an Executive Summary and a more detailed Overview of the Community Property bill. The bill is designed, among other things, to allow married Alaskans to obtain an income tax advantage available to residents of nine other states and to produce business in Alaska.

### Executive Summary

Nine states of the United States provide for married persons to hold assets acquired during the marriage as community property. These states are Louisiana, Texas, New Mexico, Arizona, California, Nevada, Washington (state), Idaho and Wisconsin. Under community property rules, most assets acquired during marriage by the husband or by the wife are owned one-half by the husband and one-half by the wife. This rule applies automatically, subject to certain exceptions. However, the husband and wife may execute a written agreement to elect not to have their assets treated as community property. If they elect for their assets not to be treated as community property, each asset will belong to the spouse who acquires it and no part of it will be owned by the other spouse, as a general rule.

When a property owner dies, the inherent profit (e.g., capital gains) in his or her assets is forgiven for income tax purposes. This is referred to as the "income tax-free set-up in basis". This forgiveness of income tax liability applies only to the assets which the decedent owned at death. For example, if a husband and wife own property together, only one-half is treated as own by the spouse who dies first and the inherent profit (e.g., capital gains) is forgiven only with respect to that one-half. The capital gain is not forgiven in the half which was already own by the surviving spouse.

Even though community property is also treated as owned by one-half by the husband and one-half by the wife, the inherent profit (e.g., capital gains) in 100% of the community property asset is forgiven when the first spouse dies. This rule has been contained in the Internal Revenue Code for decades and is unlikely to be changed. It means that a person who owns assets with his or her spouse as community property has a major advantage upon the death of the first spouse to die over a married person who owns assets with his or her spouse but which are not community property.

One of the purposes of the bill is to allow married Alaskans to execute a written agreement to recharacterize their assets as community property. Unlike other states which have a community property form of ownership for married persons, Alaskans would have their assets treated as community property only to the extent they execute a written agreement and elect into a community property system under Alaska law. In the current community property states, the law mandates the married couple's assets to be community property unless the spouses elect out. Because the change of ownership to community

property can have extremely far reaching effects, it is appropriate to allow Alaskans to elect into the system if they wish to arrive the benefits of ownership of community property as well as to obtain the income tax advantage for community property when the first of them dies, but not to mandate the use of a community property system.

The bill not only allows Alaskan couples to enter into an agreement to have some or all of their assets treated as community property, but it also permits married persons who do not reside in Alaska to have their assets treated as community property under Alaska law by executing an Alaskan Community Property Trust. Such a trust must have an Alaskan trustee. It is anticipated that many married persons who reside outside of Alaska will wish to label a portion, or all, of their assets as community property because they believe that is a more appropriate method of owning their assets and they wish to obtain the income tax advantages which are available to community property upon the death of first spouse to die.

It should be emphasized that no asset would be label as community property under the bill. Rather, the bill merely authorizes married persons to execute a written agreement or trust in which they expressly elect to treat some or all of their assets as community property under Alaska law.

### Detailed Overview

Some Background on Ownership of Property Between Married Persons. All jurisdictions provide special rules for the treatment of assets acquired or owned by individuals while they are married. Many countries throughout the World provide

"community property" treatment of assets acquired during marriage. Under a typical community property system, all assets acquired by a husband or wife during the marriage are treated as community property. (Assets brought to the marriage, as well as gifts and inheritance received during the marriage, are generally excluded from being treated as community property.)

Essentially, community property is treated as own one-half by the husband and one-half by the wife. Therefore, if the couple divorces, each receives one-half of the community assets. Under community property rules, the first spouse to die is permitted to dispose of his or her one-half interest in the property and, usually, the surviving spouse is not given any rights to the one-half which is disposed of upon the death of the first spouse to die. Rather, the survivor already owns one-half interest in the community assets.

Nine states in the United States used the community property system. These states were, as a general rule, ones originally colonized by the Spanish or the French. Spain and France had a community property system. Wisconsin, in 1984, adopted community property by enacting the Uniform Marital Property Act, a uniform law providing for community property treatment.

The other states of the United States use, in large measure, a system derived under English law. That law provided for no division of property upon divorce, although virtually all states, including Alaska, now allow the courts to reallocate assets between the spouses in the event of a divorce. Under English law, a type of temporary property interest (known as dower widows and courtesy for husbands) was granted to a surviving spouse.

Almost all states which used the English system, including Alaska, have modified that rule to provide for a minimum or elective share to be taken by a surviving spouse.

Spouses May Vary Rights By Contract. Not infrequently, individuals, prior to or after marriage will agree on a division or sharing of their assets different from the rules which would otherwise apply under local law. One of the reasons for that is that the couple may move. For example, a couple may reside in the state of Washington (a community property jurisdiction) at the beginning of their marriage but then move to another state (such as Alaska) which does not provide for community property. A couple may well decide that they want community property to apply whether or not they moved to a non-community property state, for example.

Essentially, a couple which does not live in a community property state can enter into a written contract to have their property owned as though it were community property in all respects. That would give them the sharing benefits of community property but it would not provide them with certain income tax advantages of community property which will be discussed later.

Taxes and Community Property. Community property has been very well favored under the Internal Revenue Code. Based upon a decision of the Supreme Court of the United States in the 1930's, the tax law must respect the fact that community property is own one-half by the husband and one-half for the wife. Prior to 1948, that meant that a married couple in a community property state would pay less income tax than a couple in a non-community property state because the couple in the community property state were able

to treat their income as being equally divided between them. Because income tax rates increase as income increases, the community property couple usually could have their income taxed at the lowest range of income tax rates. Also, before the allowance of the estate tax marital deduction, only one-half of the couple's community property was subject to estate tax when the first spouse died. However, individuals who resided in non-community property states had to pay tax on their entire assets because under local law those assets were treated as own entirely, and not just one-half, by the spouse dying first.

These advantages were regarded as so significant that after World War II several states adopted or had legislation pending to adopt a community property system for married couples in those states. In 1948, the Congress amended the Internal Revenue Code to provide, essentially, the same income tax treatment for income of a married couple in a non-community property state as that provided for a couple in a community property state. In addition, the Congress allowed a marital deduction equal to one-half of the estate of a spouse to die for non-community property assets. That, in effect, put a married decedent in a non-community property state on the same footing, for estate tax purposes as a married person who died with community property. (Today the marital deduction is not limited to one-half of the estate.)

Major Remaining Income Tax Advantage for Community Property. While there continues to be some modest other advantages under the tax law for community property, one major difference remains. That difference relates to the income tax basis of inherited property.

Under Section 1014(a) of the Internal Revenue Code, the income tax basis of an inherited asset is equal to its estate tax value, as a general rule. Because property tends to appreciate over time, the effect of this section is to forgive the inherent profit (such as capital gains) in the asset when the owner of the property dies. For example, an individual buys Microsoft stock when it is worth \$20 per share. She dies when it is worth \$100 per share. If she had sold during her lifetime, she would have had to pay capital gains tax on the \$80 profit on each share sold. However, if she dies when the stock is worth \$100, her heirs will measure their gain from \$100. The \$80 profit is entirely forgiven for income tax purposes.

This automatic change in income tax basis upon death only applies to assets includable in the estate of an individual. Hence, when a married person dies, only the assets includable in the his or her estate are entitled to the change in income tax basis treatment. The Internal Revenue Code provides that only one-half of an asset jointly owned by husband and wife is includable in the estate of the first of them to die. However, if the asset were community property the income tax basis in the entire asset changes to estate tax value when the first of them dies.

Advantages and Disadvantages of Community Property. Some believe that community property represents a more fair and rational system of sharing the ownership of property during marriage because it essentially treats the marriage like a partnership: as assets are earned during the marriage, they are treated as owned 50/50 by the two partners (the husband and wife). Others, believe community property is not a fair or rational system. In any case, whether the couple resides in a community property state or non-community

property state, they may, by executing a written contract, choose to treat their property as though it is not community property or to provide for a treatment which is identical to community property. However, the favorable change in income tax basis under the Internal Revenue Code is permitted only for assets which are treated as community property only if the property "represents ... community property ... under the community property laws of any State...." Internal Revenue Code Section 1014(b)(6). Hence, merely providing by a written contract for assets to be treated in a way similar to community property will not cause them to be treated as community property under the Internal Revenue Code because they are not community property under state law. By allowing Alaskan couples to treat their assets as community property under Alaska law, the assets should be treated as community property for purposes of the Internal Revenue Code. This, in essence, will allow married Alaskans to obtain the same benefits which are available to couples in the current nine community property states. However, no couples' assets would be reclassified as community property under Alaska law except to the extent the couple enters into a written agreement providing for such treatment under Alaska law.

What the Bill Would and Would Not Do. Community property laws of the states which have them apply automatically to the assets of a married couple unless and except to the extent that the couple elects out of community property treatment. Whether one believes that community property represents a better or worst form of ownership, a change to a community property system would be farreaching. Therefore, under the bill, the nature of assets owned by an Alaskan couple would not be changed unless and except to the

extent they enter into a written agreement (or trust) in which they label certain, or all, of their assets as community property. Therefore, a couple must elect into community property in order for the law to have any impact on their assets. Therefore, the bill will have no impact on a couple unless they voluntarily enter into a written agreement in which they expressly label some or all of their assets as community property.

A married couple may enter into a community property agreement if they are both Alaskans. If neither spouse, or only one of the spouses is an Alaskan, the couple may choose to classify certain of their assets as community property by transferring them to an Alaska Community Property Trust.

More Information. The Bill is derived from the Uniform Community Property Act. Wisconsin adopted that act in 1984. However, under the Uniform Community Property Act, all assets of the couple are automatically relabelled as community property (subject to certain exceptions) merely by reason of the enactment of the law. Therefore, couples who do not wish for their assets treated as community property have to elect out by written agreement. Therefore, if one spouse does not wish to change the nature of their property from community property to another form, he or she can prevent the reclassification from occurring. Under the bill, the opposite would occur. The enactment of the bill would have no impact on the treatment of property owned by a husband and/or wife. Only if the husband and wife enter into an agreement (or trust) after the enactment of the bill to treat part of their assets as community property would a change in the nature of their assets occur.

In accordance with the Uniform Community Property Bill, its provision require that the spouses act in good faith toward each other with respect their community asset. The bill also prevents the use of the community property agreement or the community property trust to interfere or to hinder the rights of the creditor or to reduce the obligation of child support of a parent. The bill provides certain rules for the treatment of community property. For example, it provides that one spouse alone cannot make a gift to a third party of community property unless the value of the community property given does not exceed more than \$1000 in a year or larger amount if, when made, the gift is reasonable in the amount considering the economic position of the spouses. (This provision is derived from the Uniform Community Property Act.) Also, community property would automatically be divided 50/50 upon divorce. Courts could not reallocate the assets in another way. However, all of these rules, subject to the safeguards for creditors, child support payments and acting in good faith, may be modified by the couple. Because the couple will be able to label their assets as community property only by a written agreement, they will have an opportunity to vary the rules, which otherwise are provided under the bill, to the extent they desire, in their community property agreement or community property trust. Therefore, even the rules which would be provided under the bill will not apply unless the couple executes the community property agreement or community property trust and they do not provide in their agreement or trust for alternative or different treatment than that provided under the bill.

HARTIG, RHODES, NORMAN MAHONEY & EDWARDS, P.C.  
717 K STREET, ANCHORAGE, ALASKA 99501  
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FEB 23 1998

FROM THE DESK OF:  
PETER B. BRAUTIGAM

Loren - I would appreciate  
your support of HB 199. Please  
call or e-mail me if you have  
any questions.

Peter

**Eagle Strategies Corp 701 West 8<sup>th</sup> Ave Suite 1018 Anchorage, Alaska 99501**

**FAX**

FEB 23 1998

Date: Monday, February 23, 1998

Number of pages including cover sheet: 1

**To: The Senate Labor & Commerce Committee**

The Honorable  
Loren Leman

Jerry Mackie

Tim Kelly

Mike Miller

Phone:

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CC: (907) 465-3517

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**From:**

John S. Lukehart, CLU,  
ChFC, MSFS

Phone: (907) 257-5213

Fax phone: (907) 257-5227

REMARKS:  Urgent  For your review  Reply ASAP  Please comment

Dear Senators:

I am in favor of the House Bill 199, the Alaska Community Property Bill, and I hope that it is enacted promptly.

Thank you very much for your consideration of this matter.

G. RODNEY KLEEDHNN  
ATTORNEY AT LAW  
711 H STREET  
SUITE 610  
ANCHORAGE, ALASKA 99501  
(907) 276-6700

February 25, 1998

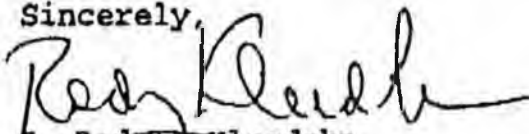
The Hon. Loren Leman  
Chairman, Senate Labor and  
Commerce Committee  
State Capitol  
Juneau, Alaska 99801-1182

sent via fax (907) 465-3810

Dear Senator Leman:

I am in favor of House Bill 199, the Alaska Community Property Bill, and I hope that it is enacted promptly.

Thank you very much for your consideration of this matter.

Sincerely,  
  
G. Rodney Kleedehnn  
Attorney at Law

GRK:ljm

LAW OFFICES OF  
**DAVID G. SHAFTEL**  
A PROFESSIONAL CORPORATION  
BANK OF AMERICA CENTER  
550 WEST SEVENTH AVE., SUITE 705  
ANCHORAGE, ALASKA 99501

-----  
(907) 276-6015  
FAX (907) 278-6015

**FAX TRANSMITTAL**

TO: Senator Loren Leman

FAX NO.: (907) 465-3810

FROM: David G. Shaftel

DATE: February 23, 1998

SENDING FAX: (907) 278-6015

NUMBER OF PAGES (INCLUDING THIS PAGE): 2

RE: H.B. 199

MESSAGE:

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SHOULD YOU FAIL TO RECEIVE THE NUMBER OF PAGES INDICATED ABOVE,  
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LAW OFFICES OF  
DAVID G. SHAFTEL, PC  
BANK OF AMERICA CENTER  
650 WEST SEVENTH AVENUE, SUITE 706  
ANCHORAGE, ALASKA 99501  
(907) 278-8018  
FAX(907) 278-8018  
February 23, 1998

VIA FACSIMILE

The Hon. Loren Leman  
State Capitol  
Juneau, Alaska 99801-1182

Dear Senator Leman:

I am in favor of House Bill 199, the Alaska Community Property Bill, and I hope that it is enacted promptly.

Thank you very much for your consideration of this matter.

Sincerely,



David G. Shaftel

DGS/SAK

To: Rep Joe Ryan (907-465-4588)  
FR: Jonathan Blattmachr

Please see this 1939 Oklahoma Statute  
(especially pp. 356 + 357). The FEDERAL  
COURT held in the McCullum case (58-2  
USTC ¶19957 [CCH]) that because  
Mr. and Mrs. McCullum ELECTED  
to treat the asset <sup>as</sup> ~~a~~ community property  
IT WAS ENTITLED to the double step-up  
in basis when Mr. McCullum died.

Bluebook cite: 1939 Okla. Sess. Laws ch. 62

J.A. Rankin  
970502

OKLAHOMA  
SESSION LAWS  
OF  
1939  
OFFICIAL

Laws Enacted by the Regular Session of the Seventeenth  
Legislature of the State of Oklahoma

The Regular Session convened January 3, 1939,  
and Adjourned April 29, 1939

LEON C. PHILLIPS, Governor

J. A. RINEHART, President Pro Tempore of the Senate  
DON WELCH, Speaker of the House of Representatives

Edited by

HERBERT L. BRANAN  
FRANK GRAYSON

of the House of Representatives

CO-OPERATIVE PUBLISHING COMPANY  
Guthrie, Oklahoma

1939

not be subject to the debts contracted by the wife or liable for her torts, either before or after the effective date of said election, except as may be permitted by law as to his property prior to the enactment of this Act. The husband shall have the sole management, control and disposition of his separate property, both real and personal, to the extent permitted by law as to his property prior to the enactment of this Act.

#### **Separate Property of Wife.**

Section 4. All property, both real and personal, of the wife owned or claimed by her before the effective date of the election to come under the terms of the Act as provided in Section 1 of this Act, and that acquired afterwards by gift, including gifts of the husband's interest in community property, by division of community property, by devise, or by descent, as also the increase of all lands thus owned or acquired, shall be her separate property. The separate property of the wife shall not be subject to the debts contracted by the husband or liable for his torts, either before or after the effective date of said election, except as may be permitted by law as to her property prior to the enactment of this Act. The wife shall have the sole management, control and disposition of her separate property, both real and personal, to the extent permitted by law as to her property prior to the enactment of this Act.

#### **Compensation for Personal Injuries.**

Section 5. All property or moneys received as compensation for personal injuries sustained either by the husband or the wife shall be the separate property of the person sustaining such injuries.

#### **Property Acquired After Effective Date of Act.**

Section 6. All property acquired by the husband or the wife after the effective date of the election to come under the terms of the Act as provided in Section 1 of this Act, except that which is separate property of either one or the other, shall be deemed the community or common property of the husband and the wife and each, subject to the provisions of this Act, shall be vested with an undivided one-half interest therein. The wife shall have the management and control and may dispose of that portion of the community property consisting of her earnings, all rents, interest, dividends, incomes and other profits for her separate estate and all other community property the title to which stands in her name. The husband shall have the management and control and may dispose of all other community property, provided, however, that the homestead, if community property, shall not be sold, encumbered, or otherwise disposed of, except in the manner as is provided by law prior to the enactment of this Act, and further provided, that any funds on deposit in

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
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ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services  
Department of Education  
State of Alaska

Bluebook cite: 1939 Okla. Sess. Laws ch. 62

J.A. Phillips  
970502

OKLAHOMA  
SESSION LAWS  
OF  
1939  
OFFICIAL

Laws Enacted by the Regular Session of the Seventeenth  
Legislature of the State of Oklahoma

The Regular Session convened January 3, 1939,  
and Adjourned April 29, 1939

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J. A. RINEHART, President Pro Tempore of the Senate  
DON WELCH, Speaker of the House of Representatives

Edited by,

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FRANK GRAYSON  
of the House of Representatives

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1939

ARTICLE 2.

Community Property.

HOUSE BILL NO. 166.

AN ACT making provisions for Community Property Law; providing that the Act shall apply to husbands and wives and their property subsequent to the first day of any month after the filing of an election to come under its terms; providing that the Act shall cease to apply to husbands and wives and their property upon the death of one of them or upon a decree of divorce being rendered; defining the separate property and the community property of the husband and wife; providing for the management, control and disposition thereof and the rights and remedies of creditors in relation thereto; providing that either spouse may give or convey his or her interest in community property to the other; providing for disposition of the community property on dissolution of the marriage; providing for the substitution of one spouse under certain conditions for the other through legal proceedings in the management, control and disposition of community property; providing for the administration and distribution of the interest of a deceased spouse in community property.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

Husband and Wife—Election.

Section 1. This Act shall be available only to and apply only to husbands and wives and to their property for a period of time from the first day of the month in any year subsequent to their filing their written election to come under the terms of this Act until either an absolute decree of divorce is rendered dissolving their marriage, or until the death of one of them.

Written Election—Filing of Instrument.

Section 2. The written election to come under the terms of this Act, referred to in Section 1 of this Act, shall be a written instrument signed and acknowledged in duplicate by both husband and wife, stating in substance that they desire to avail themselves of the Act and have same apply to them and to their property on the first day of the next month in any year subsequent to the filing thereof in both the office of the county clerk and the Secretary of State as hereinafter provided. Acknowledgments shall be in the form, and may be taken before any officer now prescribed by law for acknowledgments to conveyances of real estate. One of the said written instruments shall be filed in the office of the county clerk of the county of the residence of the signers thereof, and one in the office of the Secretary of State. The county clerks and the Secretary of State shall cause all such instruments to be recorded in records kept for that purpose, and to be properly indexed.

Separate Property of Husband.

Section 3. All property, both real and personal, of the husband owned or claimed by him before the effective date of the election to come under the terms of the Act, as provided in Section 1 of this Act, and that acquired afterwards by gift, including gifts of the wife's interest in community property, by division of community property, by devise, or by descent, as also the increase of all lands thus owned or acquired, shall be his separate property. The separate property of the husband shall

not be subject to the debts contracted by the wife or liable for her torts, either before or after the effective date of said election, except as may be permitted by law as to his property prior to the enactment of this Act. The husband shall have the sole management, control and disposition of his separate property, both real and personal, to the extent permitted by law as to his property prior to the enactment of this Act.

#### **Separate Property of Wife.**

Section 4. All property, both real and personal, of the wife owned or claimed by her before the effective date of the election to come under the terms of the Act as provided in Section 1 of this Act, and that acquired afterwards by gift, including gifts of the husband's interest in community property, by division of community property, by devise, or by descent, as also the increase of all lands thus owned or acquired, shall be her separate property. The separate property of the wife shall not be subject to the debts contracted by the husband or liable for his torts, either before or after the effective date of said election, except as may be permitted by law as to her property prior to the enactment of this Act. The wife shall have the sole management, control and disposition of her separate property, both real and personal, to the extent permitted by law as to her property prior to the enactment of this Act.

#### **Compensation for Personal Injuries.**

Section 5. All property or moneys received as compensation for personal injuries sustained either by the husband or the wife shall be the separate property of the person sustaining such injuries.

#### **Property Acquired After Effective Date of Act.**

Section 6. All property acquired by the husband or the wife after the effective date of the election to come under the terms of the Act as provided in Section 1 of this Act, except that which is separate property of either one or the other, shall be deemed the community or common property of the husband and the wife and each, subject to the provisions of this Act, shall be vested with an undivided one-half interest therein. The wife shall have the management and control and may dispose of that portion of the community property consisting of her earnings, all rents, interest, dividends, incomes and other profits for her separate estate and all other community property the title to which stands in her name. The husband shall have the management and control and may dispose of all other community property, provided, however, that the homestead, if community property, shall not be sold, encumbered, or otherwise disposed of, except in the manner as is provided by law prior to the enactment of this Act, and further provided, that any funds on deposit in

any bank or banking institution, whether in the name of the husband or the wife, shall be presumed to be the separate property of the party in whose name they stand, regardless of who made the deposit, and unless said bank or banking institution is notified to the contrary, it shall be governed accordingly in honoring checks and orders against such account.

**Wife—Property of Subject to Her Debts.**

Section 7. The separate property of the wife and that portion of community property, record title to which is in her name or which is under the management, control and disposition of the wife, shall be subject to debts contracted by the wife arising out of tort, or otherwise, but not to debts or liabilities of the husband. The separate property of the husband and that portion of the community property, record title to which is in his name or which is under the management, control and disposition of the husband shall be subject to debts contracted by the husband or liabilities of the husband arising out of tort or otherwise, but not the debts or liabilities of the wife. The husband and the wife, and each of them, shall be entitled to the exemptions to which they, or either of them, are now entitled under the laws existing prior to the enactment of this Act.

**Creditors—Husband and Wife—Rights.**

Section 8. No creditor shall have recourse to the community property for the payment of debts or liabilities created by either the husband or the wife, except as provided in Section 7 of this Act; provided, however, that any creditor may satisfy his claim or demand out of the community property which was under the management, control and disposition of the spouse incurring the indebtedness or liability at the time the debt or liability was contracted or created, and which has been subsequently conveyed or transferred to the other spouse and is under the management, control and disposition of said other spouse, without proof that said creditor relied upon said community property in advancing said credit, but without prejudice to the rights of the third party purchasers, incumbrancers, or other creditors or grantees; and provided further, that the husband or wife on paying community debts shall, as between themselves, charge the same against community property.

**Deeds—Husband to Wife and Wife to Husband.**

Section 9. The husband may give, grant, bargain, sell or convey directly to his wife, and a wife may give, grant, bargain, sell or convey directly to her husband, his or her community right, title, interest or estate in all or any property of their community real or personal property. Every deed and conveyance made from the husband to the wife or from the wife to the husband shall operate to divest the property therein described of every claim or

demand as community property, and shall vest the same in the grantee as the separate property of the grantee; provided, however, that the deeds, conveyances or transfers hereby authorized shall not affect any existing equity in favor of creditors of the grantor at the time of such transfer, gift or encumbrance.

#### Divorce—Division of Property.

Section 10. In the event of the dissolution of marriage by decree of any court of competent jurisdiction, community property shall be divided between the parties by the court granting the decree, in such proportions as such court, from the facts in the case, shall deem just and equitable, and such division shall be subject to revision on appeal in all respects including the exercise of discretion by the court below.

#### Insanity or Conviction of Felony—Rights of Spouse.

Section 11. Whenever the husband or the wife is non compos mentis, or has been convicted of a felony or sentenced to imprisonment for a period of more than one year, or whenever the husband has abandoned his wife and family and left her and his family, if they have children, without support, or whenever the husband or the wife is an habitual drunkard, or for any other reason is incapacitated to manage, control, or dispose of the community property, the other spouse may present a petition, duly verified, to the district court of the county wherein they reside, or if they are nonresidents wherein any of the community property is located or situated, stating the name of the incapacitated spouse, a description of all community property, both real and personal, and the facts which render the other spouse incapacitated to manage, control or dispose of the community property, and praying that the spouse filing the petition be substituted for the incapacitated spouse as to the management, control or disposition of the community property then under the management, control and disposition of said spouse with the same power of managing, controlling and disposing of the community property as was vested in the incapacitated spouse.

#### Service of Process.

Section 12. In all such cases service of process shall be had as in other civil actions, provided, however, that where it is alleged that the other spouse is non compos mentis, a guardian ad litem shall be appointed having such powers as in other civil actions.

#### Hearing on Petition.

Section 13. Upon the hearing of the petition so filed, the court shall render judgment therein either dismissing said petition or adjudging the spouse filing same to have such power of managing, controlling and disposing of the community property,

either real or personal, formerly under the management, control and disposition of the other spouse as to the court may appear to be just, proper, equitable, and to the best interests of said estate.

#### Judgments.

Section 14. All judgments rendered as in the preceding Section provided shall be recorded in the office of the county clerk of the county where any property affected thereby is situated and such judgment when so rendered shall be notice of the facts therein set out.

#### Death of Husband or Wife.

Section 15. Upon the death of the husband or the wife, the surviving spouse shall administer all community property in the same manner and with the same duties, privileges and authority as are vested in a surviving partner to administer and settle the affairs of a partnership upon the death of the other partner, as provided by Section 1197, Oklahoma Statutes, 1931; provided that the surviving husband or wife shall not be disqualified from acting as executor or administrator of the estate of the deceased husband or wife; and provided further, that the survivor of the husband or wife shall pay out of the community property, except the homestead and exempt property, all debts of the community, whether created by the husband or the wife; and provided further, that when all debts of the community shall have been fully satisfied the survivor shall transfer and convey to the administrator or executor of the deceased one-half of the community property remaining to be administered and distributed as other property of the estate either subject to the terms of the will of the deceased or under the laws of descent and distribution as the case may be, and thereafter all the interest of the surviving partner in said community property shall be that of a tenant in common; and provided further, that any interest in a homestead so conveyed shall not be subject to administration under the laws of this State, except in the manner provided by law at the time of the enactment of this Act.

Approved May 10, 1939.

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**McCOLLUM v. U.S., 2 AFTR2d 6170**

Irma McCOLLUM, and Irma McCollum, Executrix of the Estate of J. W. McCollum, Deceased,  
Plaintiffs, v. U.S., Defendant, 2 AFTR2d 6170, 58-2 USTC P 9957

**Case Information**

TopOfCase Cimator

IRC SEC(S):

Docket/Court: Civ. No. 4517, U.S. District Court, Northern Dist. of Oklahoma.

Date Issued: November 12, 1958

Tax Year(s): Year 1948.

Disposition: Decision for taxpayer.

**Headnote**

TopOfCase

**Headnote** 1 Gain or loss -- basis -- property acquired from decedent -- community property Widow's basis, for purpose of computing gain on real property purchased by husband and herself, as "joint tenants", for \$25,000, and sold by her, after (pg 6:11) his death, for \$75,000, held to be \$75,000, the fair market value as of the time of his death where Court held realty was community property Rejecting Government's contention that the widow took the property as a surviving joint tenant under the 1939 basis and thus her basis was original cost (as adjusted), Court stated that (1) the parties were Oklahoma residents, and had, prior to the purchase of the property, made an election to come under the provisions of the Oklahoma Community Property Law (2) under 1939 Code Sec. 113(a)(5), the determination, under local law, of a taxpayer's property rights is binding for Federal tax purposes, and it was the clear intent of the Oklahoma law that all married persons, who filed elections to come under it, hold their property from the date of their election as community property, (3) thus being so, the property sold by the widow was acquired by her by bequest, devise or inheritance within the meaning of Sec. 113(a)(5)

**References** 1958 P-H Fed. 910,449, 10,450

**Counsel**

TopOfCase

Carl D. Hall, Jr., 2700 First Nat. Bldg., Oklahoma City 2, Okla. Atty. for Plaintiff

Robert S. Rizley, U.S. Atty., 335 Federal Bldg., Tulsa, Deane E. McCormack, Jr., Asst.

## Opinion

TopOfCase

SAVAGE, District Judge

### Findings of Fact and Conclusions of Law

This cause having been carefully considered by the Court upon the pleadings, evidence presented by both Plaintiffs and Defendant, stipulations, answers to Requests for Admissions, and briefs of counsel, the Plaintiffs herein being represented by their attorneys, Mosteller, Fellers, Andrews & Loving, and Defendant being represented by its attorney, Deane E. McCormack, Jr., Attorney for the Tax Division, Department of Justice, the Court herewith enters its Findings of Fact and Conclusions of Law

### Findings of Fact

1. This is an income tax case arising under the 1939 Internal Revenue Code, as amended
2. Plaintiff, Irma McCollum, Executrix of the Estate of J. W. McCollum, Deceased, is the duly appointed Executrix of said estate, having been so appointed by the County Judge of Tulsa County, Oklahoma
3. Irma McCollum is the surviving spouse of J. W. McCollum, Deceased
4. Irma McCollum and J. W. McCollum were married in 1922
5. In March of 1943 Irma McCollum and J. W. McCollum filed their election to come under the provisions of the Oklahoma Community Property Law as set forth in Title 32, Sections 51, 52 and 53, Oklahoma Statutes 1941
6. On October 11, 1943, the following described real property was purchased by Irma McCollum and J. W. McCollum for consideration in excess of \$25,000.00, and was conveyed to them as joint tenants by H. P. Warfield and Ella Warfield

The Northwest Quarter (NW 4) of the Northwest Quarter (NW/4) of Section Thirty-One (31), Township Nineteen (19) North, Range Thirteen (13) East in Tulsa County, State of Oklahoma

7. On July 23, 1948, J. W. McCollum died
8. On October 25, 1948, his surviving spouse, Irma McCollum, sold the above described

real estate for \$75,000 00

9 The fair market value of said above described property on the date of J W McCollum's death was \$75,000 00

10 One-half (1/2) of the above figure, \$37,500 00, was included in J W McCollum's gross estate for Federal Estate Tax purposes

11 On March 15, 1949, Plaintiffs filed in the office of the Collector of Internal Revenue for the District of Oklahoma, their Federal Income Tax Return for the calendar year 1948 and paid the taxes shown to be due thereon in the amount of \$2,462 98 In said Return, filed on March 15, 1949, Plaintiffs reported gain on the sale of the aforementioned described real property in the amount of \$20,777 20

12 In computing said gain Plaintiffs deducted from the sales price the sum of \$37,500 00 as representing the alleged basis of the one-half (1/2) interest received by the Estate from J W McCollum, plus the sum of \$15,817 78, representing Irma McCollum's alleged basis in her one-half (1/2) interest in the property

13 On March 28, 1949, Plaintiffs filed ~~pp~~ 6172 an Amended Tax Return for the year 1948, alleging that Plaintiffs had overpaid their income tax for 1948 and claiming a refund of \$2,070 00. In the Amended Return Plaintiffs reported no gain on the sale of the above described real property, claiming as a basis for gain or loss of said property its entire fair market value on the date of J W McCollum's death

14 On May 17, 1951, the Collector of Internal Revenue assessed additional income tax to Plaintiffs in the amount of \$3,274 66 for the calendar year 1948. Among the adjustments made was one relating to the increase of the capital gain on the sale of the property described in paragraph six (6) above.

15 Plaintiffs paid said deficiency on June 8, 1951

16 On March 15, 1952, Plaintiffs filed a claim for refund in the office of the Collector of Internal Revenue for the District of Oklahoma for that part of the tax and tax deficiency paid for the year 1948 attributable to the increase in or any alleged capital gain from the sale of the property described in paragraph six (6) above

17 Statutory notice of the disallowance of said claim, filed on March 15, 1952, was never given by the Commissioner of Internal Revenue. Plaintiffs' suit was brought solely on this claim

18 The amount of tax alleged by Plaintiffs to have been illegally assessed and collected for the year 1948 results from the action of the Commissioner in adding on to the taxable income of Plaintiffs, an item of \$21,229 72, representing fifty (50%) per cent of the alleged capital gain of \$42,459 43, alleged by the Commissioner to have been realized by Plaintiffs on the sale of the real property described in paragraph six (6) above, in 1948

19 For the calendar years 1943 through 1947, inclusive, Irma McCollum and J W McCollum filed Federal and Oklahoma Income Tax Returns reflecting a division of

income between them on the theory that taxpayers held their property as community property

20 Plaintiffs intended to hold title to the real property sold in 1948 as community property under Oklahoma law

21 The amount in controversy is \$5 326 30, plus interest as allowed by law

## Conclusions of Law

- 1 The Court has jurisdiction of the parties and of the subject matter of the case
- 2 Where a Federal Tax Statute expressly or impliedly describes the taxpayer's property rights as a test of taxability, the existence of that right must be discovered under the controlling local law (Blair v Comm., 300 U S 5 [18 AFTR 1132], Poe v Seaborn, 282 U S 101 [9 AFTR 576])
- 3 Under Section 113(a)(5) of the Internal Revenue Code of 1939, the determination under local law of Plaintiffs' property rights is determinative for tax purposes [1]
- 4 The real property sold by Irma McCollum in 1948, after the death of J. W. McCollum, was community property under Oklahoma law on the date of J. W. McCollum's death. (Okla. Laws 1945, pp. 118-121, Sections 1-18)
- 5 It was the clear intent of Section 18 of Oklahoma Laws 1945, pp. 118-121, that all married couples who filed their election under the provisions of Section 2, Okla. Laws 1939, pp. 356-360, held their property as community property from the effective date of said election. Since J. W. McCollum died in 1948, no problem of retroactive application of the statute is involved.
- 6 The real property sold by Irma McCollum in 1948, after J. W. McCollum's death, was acquired by bequest, devise, or inheritance within the meaning of Section 113(a)(5) of the Internal Revenue Code of 1939
- 7 Plaintiff's basis for computing gain or loss in the real property sold in 1948 was \$75,000 00. Therefore, no capital gain was realized by Plaintiff's Plaintiff's when they sold said real property in 1948 for \$75,000 00. (Section 113(a)(5), Internal Revenue Code of 1939)
- 8 The conveyance of the real property to Irma McCollum and J. W. McCollum as joint tenants did not prevent same from being community property under Oklahoma law. (In Re Trimble's Estate, 253 P 2d 805 (N. Mex. 1953), In Re Baldwin's Estate, 71 P 2d 791 (Ariz. 1937))
- 9 Comm. v Harmon, 323 U S 44 [32 AFTR 1411], is inapplicable to the present controversy since that case involved a statute enacted by the Oklahoma Legislature in 1939 and repealed in 1945

10 The fact that the real property sold by Plaintiffs was handled by the County Judge in the probate proceeding as jointly held property is not sufficient to rebut the presumption that the property sold by the Plaintiffs was community property at the time of J W McCollum's death since such event took place subsequent to J W McCollum's death

11 Both the Internal Revenue Service and the United States Tax Court recognized that the Community Property Law enacted by the Oklahoma Legislature in 1945 (Okla Laws 1945, pp 118-121, Sections 1-18) established a valid community property system in Oklahoma (1 T 3782, C B 1946-1, 84, John M Kane, 11 T C 74)

12 The Plaintiffs are entitled to judgment for a refund of \$5,326.30, plus interest as allowed by law

# Alaska State Legislature

## House of Representatives

### COMMITTEE ASSIGNMENTS

LABOR & COMMERCE  
MILITARY & VETERANS AFFAIRS  
COMMUNITY & REGIONAL AFFAIRS  
CUBS 543



**Representative Joe Ryan**

1 800-322-3875 <http://www.akrepublicans.org>

### INTERIM:


716 W 4TH AVE  
ANCHORAGE AK 99501  
PHONE 907 258-2121

### SESSION:

STATE CAPITOL  
ROOM 420  
JUNEAU AK 99801-1121  
PHONE 907 465-0878

## MEMORANDUM

**TO:** Representative Pete Kott, Chairman  
Rules Committee

**FROM:** Representative Joe Ryan 

**RE:** HOUSE BILL NO. 199

**DATE:** 14 January 1998

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Please schedule a hearing for House Bill No. 199 at your earliest convenience. Thank you for your consideration.

**HB**

**203**

# FISCAL NOTE

Bill Version: CSHB 203(L&C)  
(H) Publish Date: 4/5/97

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "An Act relating to unlawful trade practices." BRU: Civil Division  
 Sponsor: Representative Oyson Component: General Legal Services  
 Requester: House Labor and Commerce Committee COMPONENT SERIAL NO. 2087

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	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						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

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

**POSITIONS**

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

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

HB 203 amends Alaska's Unfair Trade Practices and Consumer Protection Act to enhance a private litigant's right, under AS 45.50.531, to bring an action in Alaska Superior Court.

Passage of this legislation would cause no new costs for the Department of Law. Section 5 may have the effect of increasing revenues, however, as it would require a court to award full attorney's fees and all allowable costs to a prevailing plaintiff (whether the state or a private plaintiff). Under current law, the prevailing plaintiff can only receive Rule 82 attorney's fees, set at approximately 20 percent. The amount of revenue that might accrue to the state is very speculative, depending on the level of effort expended by the state in pursuing actions brought under the Unfair Trade Practices and Consumer Protection Act.

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone: 465-5370  
 Division: Administrative Services Division Date: 4/1/97  
 Approved by Commissioner: Bruce M. Botelho, Attorney General *Bruce M. Botelho* Date: 4/1/97  
 Agency: Department of Law

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# FISCAL NOTE

Version: CSHB 203 (JUD)

(H) Publish Date: 4/20/98

## STATE OF ALASKA 1998 LEGISLATIVE SESSION

Revision Date (Note if correction) \_\_\_\_\_ Dept. Affected Law  
 Title "An Act relating to unlawful trade practices." BRU Civil Division  
 Component Commercial  
 Sponsor Representative Dyson  
 Requester House Judiciary Committee Component Serial No. 2211

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY98) cost: 0.0

**POSITIONS**

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

**ANALYSIS:** (Attach a separate page if necessary)  
 HB 203 amends Alaska's Unfair Trade Practices and Consumer Protection Act to enhance a private litigant's right, under AS 45.50.531, to bring an action in Alaska Superior Court.  
  
 Passage of this legislation would cause no new costs for the Department of Law. Section 5 may have the effect of increasing revenues, however, as it would require a court to award full attorney's fees and all allowable costs to a prevailing plaintiff (whether the state or a private plaintiff). Under current law, the prevailing plaintiff can only receive Rule 82 attorney's fees, set at approximately 20 percent. The amount of revenue that might accrue to the state is very speculative, depending on the level of effort expended by the state in pursuing actions brought under the Unfair Trade Practices and Consumer Protection Act.

Prepared by Joan M. Kasson *Joan M. Kasson* Phone 465-5370  
 Division Attorney General's Office Date 1/28/98  
 Approved by Commissioner Bruce M. Botelho, Attorney General Date 1/28/98  
 Agency Department of Law

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**COMMITTEE COPY**

# SENATE COMMITTEE REPORT

DATE: 4/28/98

FURTHER: Judiciary

DATE TURNED  
IN TO OFFICE: 5-5-98

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 203(JUD)

"An Act relating to actions for unlawful trade practices."

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>[Signature]</i>	✓		
<b>CHAIR:</b>		<b>CHAIR:</b> <i>[Signature]</i>	✓		

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal
Law - Civil Div.	4/20/98	✓	

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. CSHB203 (JUD)

Revision Date: \_\_\_\_\_  
Title: Actions for Unlawful Trade Practices

Department: Commerce and Economic Development  
BRU: Banking, Securities and Corporations  
Component: Banking, Securities and Corporations

Sponsor: Rep. Dyson  
Requestor: Senate Labor & Commerce

COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
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<b>CHANGE IN REVENUES</b>	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 General Fund						
1005 GF/Program Receipts						
1006 GF/Mental Health						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

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

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Willis F. Kirkpatrick, Director  
Division: Banking, Securities and Corporations  
Approved by Commissioner: Deborah B. Sedwick  
Agency: Commerce and Economic Development

Phone: 465-2521  
Date: \_\_\_\_\_  
Date: 5/5/98

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# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. CSHB203 (JUD)

Revision Date: \_\_\_\_\_  
Title: Actions for Unlawful Trade Practices

Department: Commerce and Economic Development  
BRU: Banking, Securities and Corporations  
Component: Banking, Securities and Corporations

Sponsor: Rep. Dyson  
Requestor: Senate Labor & Commerce

COMPONENT SERIAL NO. \_\_\_\_\_

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
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<b>CHANGE IN REVENUES</b>	0.0	0.0	0.0	0.0	0.0	0.0
---------------------------	-----	-----	-----	-----	-----	-----

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/Mental Health						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

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

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Prepared by: For Willis F. Kirkpatrick, Director  
Division: Banking, Securities and Corporations  
Approved by Commissioner: Deborah B. Sedwick  
Agency: Commerce and Economic Development

Phone: 465-2521  
Date: \_\_\_\_\_  
Date: 5/5/98

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## REPRESENTATIVE FRED DYSON

### CSHB 203

#### Sponsor Statement

#### Consumer Protection from Unlawful Trade Practices

**"An Act relating to actions for unlawful trade practices."**

Alaskan consumers have grown increasingly vulnerable to fraud since the Dept. of Law's Consumer Protection Section was eliminated in the late 1980s.

Knowing that our state's fraud enforcement efforts are weak, swindlers prey heavily on our citizens, giving us a dubious reputation as easy targets, and costing us an estimated \$10 million a year in telemarketing fraud alone. We continue to lag far behind other states in providing protection to our consumers--especially elderly Alaskans, who are particularly vulnerable.

Though Alaska's state government consumer protection apparatus is inadequate to protect our citizens, we can empower ordinary Alaskans to fight back against consumer fraud. CSHB203 gives Alaskan's their own "teeth."

CSHB203 provides for a dispute resolution procedure for consumer disputes. First a consumer may not bring court action unless they first provide written notice. A mediation option is also provided for in this bill as a dispute resolution option.

The bill provides for full and reasonable attorney and costs for a consumer, plus the ability of the court to grant injunctive relief. An individual does not have to have suffered actual damages to be granted injunctive relief. The injunctive relief provision of this bill is intended to be a deterrent to the scam artist who prey on our elderly citizens.

To protect the honest business this bill defines frivolous and provides for the defendant to receive full reasonable attorneys fees and costs if the action is found to be frivolous. If the actions is not frivolous and the defendant prevails then Attorney fees and costs are provided for by court rules. This bill seeks to protect the consumer and provides for a fair process to resolve disputes.

E-mail -  
Representative\_Fred\_Dyson  
@Legis.state.ak.us

- Internet -  
<http://www.akrepublicans.org>

# 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

May 7, 1997

**SUBJECT:** Sectional Summary of CSHB 203(L&C) (Work Order No. 20-LS0553\P)

**TO:** Representative Fred Dyson  
Attn: Pat Harman  
*DB*

**FROM:** Theresa Bannister  
Legislative Counsel

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

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill. The descriptions of the sections necessarily contain some generalizations and simplifications. As a result, please keep in mind that the bill itself is the best statement of its contents.

**Section 1.** Amends AS 45.50.473(c). This subsection provides a remedy for violating AS 45.50.473, which requires that certain disclosures be made for the costs of certain telephone services. The amendment shows how the subsection relates to AS 45.50.531(a) and its changes.

**Section 2.** Amends AS 45.50.531(a). AS 45.50.531 relates to private and class actions for unlawful acts and practices identified under AS 45.50.471. Allows a person who has lost money or property because of an unlawful act or practice to bring an action to recover damages. Allows the person to recover for each unlawful act or practice the greater of three times the actual damages or \$500. Removes the requirement that the violation be willful in order to receive triple damages. Allows a court to award other necessary and proper relief. States that the section does not prevent a person from pursuing other available remedies as well as bringing an action under this section.

**Section 3.** Adds two new sections to the article on unfair trade practices and consumer protection.

AS 45.50.535. Allows any person to bring an action in court to stop a seller or lessor from continuing to engage in an act or practice unlawful under AS 45.50.471. States that an

Representative Fred Dyson

May 7, 1997

Page 2

action under this section is in addition to any other right to bring an action under other law.

Establishes conditions for bringing the action. First, the person must give the seller or lessor written notice that the person will bring the action unless the seller or lessor promptly stops the unlawful act or practice. Second, the seller or lessor must fail to promptly stop the unlawful act or practice after the notice.

States that a person does not have to suffer damages or otherwise be injured in order to bring the action under this section.

AS 45.50.537. Establishes the rules for awarding attorney fees and costs in an action brought under AS 45.50.471 - 45.50.561. Unless another part of the section provides differently, directs a court to award a prevailing plaintiff (the person who brings the action and wins) costs as allowed by court rule and full reasonable attorney fees at the prevailing reasonable rate. Unless another part of the section provides differently, prohibits a court from requiring a private plaintiff who loses to pay attorney fees or costs to the defendant unless the action was frivolous.

If the action is frivolous, directs the court to award the defendant costs as allowed by court rule and full reasonable attorney fees at the prevailing reasonable rate.

If the plaintiff loses a case that was brought to obtain a competitive business advantage, directs the court to award the defendant costs as allowed by court rule, full reasonable attorney fees at the prevailing reasonable rate, and damages.

**Section 4.** Repeals AS 45.50.531(g). This is the current subsection on attorney fees and costs for private actions under AS 45.50.531.

If I may be of further assistance, please advise.

TLB:jdr:glc

97-306.glc



ALASKA STATE LEGISLATIVE COMMITTEE

TELEMARKETING FRAUD  
POSITION PAPER  
1998

**AARP POSITION:**

Promote adequate funding for the enforcement of consumer protection laws against telemarketing fraud.

**DISCUSSION:**

Although Alaska law does impose criminal penalties for telemarketing fraud, it is not adequately enforced for lack of funding. Alaska has a responsibility to protect its citizens from fraudulent activity. Additional staffing in the Attorney General's office is needed to receive and act on complaints from the public. Also, Alaskans need to be regularly warned of fraudulent activity taking place in the state.

Current statistics indicate that telemarketing fraud costs the people of Alaska approximately ten million dollars a year, and appears to be increasing.

The law should be amended to:

1. Require that telemarketers file a bond to compensate consumers who may be defrauded by the seller's acts;
2. Ban all courier pick-ups associated with telemarketing sales, unless the consumer has the opportunity to inspect the goods before any payment is collected;
3. Prohibit telemarketers from directly accessing any consumer's bank, savings, trust, stock, or bond account as a method of collecting payment for goods and services; and
4. Include a more substantial list of deceptive practices.

(Over, please)

INTERNET ADDRESS:  
acoa@admin.state.ak.us



P.O. BOX 110209  
JUNEAU, AK 99811-0209  
(907) 465-3250  
FAX: 465-4716

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## Alaska Commission on Aging

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April 4, 1997

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

APR 04 1997

Dear Mr. Chair:

On March 10, 1996 the Alaska Commission on Aging transmitted Resolution 97-5 (copy attached) to the House Labor and Commerce committee. The resolution requested a committee hearing in support of the need to establish a Consumer Protection Division as stated in SB 6 and HB 49. Since then, HB 203 has been introduced by Representatives Croft and Dyson. The Commission again recently stated its interest in a committee hearing. Consumer protection is of increasing interest to seniors of the State of Alaska in that citizens of this state lose an average of \$10 million per year to telemarketing fraud alone and a great proportion of these victims are Alaska's elderly. The Commission feels that creation of a Consumer Protection Division would save the State money by making it more difficult for fraudulent solicitors to do business in the State of Alaska.

Please consider again the urgency in holding a hearing concerning SB 6. Thank you for your attention to this.

Sincerely,

A handwritten signature in black ink that reads "Donald M. Hoover". The signature is written in a cursive style.

Don Hoover  
Chair

DH/nl  
Attachment

# CORRECTION

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



Rev. 6/98

Central Microfilm Services  
Department of Education  
State of Alaska



ALASKA STATE LEGISLATIVE COMMITTEE

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1998

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4. Include a more substantial list of deceptive practices.

(Over, please)

**For further information, please contact:**

**Dan Keck, Chair**  
State Legislative Committee  
PO Box 938  
Sitka, AK 99835-0938  
(907) 747-3908  
(907) 747-3908 Fax

**Ed Shellinger, Chair**  
Telemarketing Fraud Subcommittee  
904 Galena Street  
Fairbanks, AK 99709-4826  
(907) 474-0674

**Peggy Mulligan**  
CCTF Coordinator  
PO Box 240335  
Douglas, AK 99824-0335  
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Adopted: 10.31/97

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## Alaska Commission on Aging

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Please consider again the urgency in holding a hearing concerning SB 6. Thank you for your attention to this.

Sincerely,

A handwritten signature in black ink that reads "Donald M. Hoover". The signature is written in a cursive, slightly slanted style.

Don Hoover  
Chair

DH/nl  
Attachment



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## Alaska Commission on Aging

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### RESOLUTION 97-5

*In support of holding a hearing concerning the need for a consumer protection division  
within the Department of Law*

**WHEREAS**, consumer protection is of particular importance to seniors; and

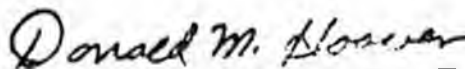
**WHEREAS**, fraudulent acts victimizing seniors and people of all ages in Alaska is occurring with increasing frequency; and

**WHEREAS**, there is a need to hear from the public on issues concerning fraudulent solicitations; and

**WHEREAS**, citizens of the State of Alaska would benefit from a consumer protection division;

**THEREFORE, BE IT RESOLVED** that the Alaska Commission on Aging request the Labor and Commerce Committee hold hearings on this subject.

Adopted this 4th day of March, 1997.



Donald Hoover, Chair

# STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION  
DIVISION OF SENIOR SERVICES

Adult Protective Services  
Information & Referral  
Assisted Living Licensing  
CHOICE for the Elderly Home Care

Alaska Commission on Aging  
Long Term Care Ombudsman

*Tony Knowles, Governor*

Alaska Commission on Aging  
PO Box 110209  
Juneau, AK 99811-0209  
Phone (907) 465-3250  
FAX (907) 465-4716

March 10, 1997

The Honorable Loren Leman  
Alaska State Senator  
Alaska State Legislature  
State Capitol, Room 113  
Juneau, AK 99801-1182

Dear Senator Leman:

Attached please find Resolution 97-5 which was approved by the Alaska Commission on Aging March 4, 1997. This resolution is in support of holding a hearing concerning the need for a consumer protection division as set forth in SB 6.

Sincerely,



Jane Pollard Demmert  
Executive Director

JD/ni  
Attachment



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## Alaska Commission on Aging

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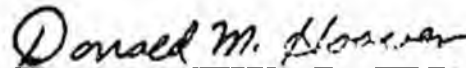
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Adopted this 4th day of March, 1997.



Donald Hoover, Chair

**HB**

**2017**

# SENATE COMMITTEE REPORT

DATE: 5/6/97

FURTHER:

DATE TURNED IN TO OFFICE: 5-8-97

Labor and Commerce Committee considered

CS FOR HOUSE BILL NO. 207(JUD)

"An Act relating to employer drug and alcohol testing programs."

and recommends:

- be replaced with Sen CS HB 207 ( )
- adopt previous      CS      ( )
- attached amendment(s)
- adopt Letter of Intent by      Committee
- further referral to the      Committee

**Senate Bill:**

same title

new title

**House Bill:**

same title

technical change

new: SCR#     

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				

**NEW FISCAL NOTE(S):**

Department                      Date    Zero    Fiscal


**PREVIOUS FISCAL NOTE(S):\***

Department                      Date    Zero    Fiscal

Labor	4/9/97	✓	

FNU  
to C.S.  
S. Miller

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

*Ordered 1:30 pm*

0-LS0760\L  
Cramer  
5/8/97

SENATE CS FOR CS FOR HOUSE BILL NO. 207( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES GREEN, Rokeberg, Porter

A BILL  
FOR AN ACT ENTITLED

1 "An Act relating to employer drug and alcohol testing programs."

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

3 \* Section 1. AS 23.10 is amended by adding new sections to read:

4 Article 9. Drug and Alcohol Testing by Employers.

5 Sec. 23.10.600. Employer protection from litigation. (a) If an employer has  
6 established a drug and alcohol testing policy and initiated a testing program under  
7 AS 23.10.600 - 23.10.699, a person may not bring an action for damages against the  
8 employer for

9 (1) actions in good faith based on the results of a positive drug test or  
10 alcohol impairment test;

11 (2) failure to test for drugs or alcohol impairment or failure to test for  
12 a specific drug or another controlled substance;

13 (3) failure to test or, if tested, failure to detect a specific drug or other  
14 substance, a medical condition, or a mental, emotional, or psychological disorder or  
15 condition; or

1 (4) termination or suspension of a drug or alcohol prevention or testing  
2 program or policy.

3 (b) A person may not bring an action for damages based on test results against  
4 an employer who has established and implemented a drug and alcohol testing program  
5 under AS 23.10.600 - 23.10.699 unless the employer's action was based on a false  
6 positive test result and the employer knew or clearly should have known that the result  
7 was in error and ignored the true test result because of reckless or malicious disregard  
8 for the truth or the wilful intent to deceive or be deceived.

9 (c) In a claim, including a claim under AS 23.10.600 - 23.10.699, if it is  
10 alleged that an employer's action was based on a false positive test result,

11 (1) there is a rebuttable presumption that the test result was valid if the  
12 employer complied with the provisions of AS 23.10.600 - 23.10.699; and

13 (2) the employer is not liable for monetary damages if the employer's  
14 reliance on a false positive test result was reasonable and in good faith.

15 (d) A person may not bring an action for damages against an employer for an  
16 action taken related to a false negative drug test or alcohol impairment test.

17 (e) A person may not bring an action against an employer based on failure  
18 of the employer to establish a program or policy on substance abuse prevention or to  
19 implement drug testing or alcohol impairment testing.

20 **Sec. 23.10.610. Limits on causes of action for disclosures.** A person may  
21 not bring an action for defamation of character, libel, slander, or damage to reputation  
22 against an employer who has established a program of drug testing or alcohol  
23 impairment testing under AS 23.10.600 - 23.10.699 if the action is based on drug or  
24 alcohol testing unless

25 (1) the results of the test were disclosed to a person other than the  
26 employer, an authorized employee, agent or representative of the employer, the tested  
27 employee, the tested prospective employee, or another person authorized or privileged  
28 by law to receive the information;

29 (2) the information disclosed was a false positive test result;

30 (3) the false positive test result was disclosed negligently; and

31 (4) all elements of an action for defamation of character, libel, slander,

1 or damage to reputation as established by law are satisfied.

2 **Sec. 23.10.615. Employer's compliance voluntary.** Compliance with  
3 AS 23.10.600 - 23.10.699 by employers is voluntary.

4 **Sec. 23.10.620. Employer policy.** (a) Under AS 23.10.600 - 23.10.699, an  
5 employer may only carry out the testing or retesting for the presence or evidence of  
6 use of drugs or alcohol after adopting a written policy for the testing and retesting and  
7 informing employees of the policy. The employer may inform employees by  
8 distributing a copy of the policy to each employee subject to testing or making the  
9 policy available to employees in the same manner as the employer informs its  
10 employees of other personnel practices, including inclusion in a personnel handbook  
11 or manual or posting in a place accessible to employees. The employer shall inform  
12 prospective employees that they must undergo drug testing.

13 (b) The written policy on drug and alcohol testing must include, at a minimum,

- 14 (1) a statement of the employer's policy respecting drug and alcohol  
15 use by employees;
- 16 (2) a description of those employees or prospective employees who are  
17 subject to testing;
- 18 (3) the circumstances under which testing may be required;
- 19 (4) the substances as to which testing may be required;
- 20 (5) a description of the testing methods and collection procedures to be  
21 used, including an employee's right to a confirmatory drug test to be reviewed by a  
22 licensed physician or doctor of osteopathy after an initial positive drug test result in  
23 accordance with AS 23.10.640(d);
- 24 (6) the consequences of a refusal to participate in the testing;
- 25 (7) any adverse personnel action that may be taken based on the testing  
26 procedure or results;
- 27 (8) the right of an employee, on the employee's request, to obtain the  
28 written test results and the obligation of the employer to provide written test results  
29 to the employee within five working days after a written request to do so, so long as  
30 the written request is made within six months after the date of the test;
- 31 (9) the right of an employee, on the employee's request, to explain in

1 a confidential setting, a positive test result; if the employee requests in writing an  
2 opportunity to explain the positive test result within 10 working days after the  
3 employee is notified of the test result, the employer must provide an opportunity, in  
4 a confidential setting, within 72 hours after receiving the employee's written notice,  
5 or before taking adverse employment action:

6 (10) a statement of the employer's policy regarding the confidentiality  
7 of the test results.

8 (c) An employer may require the collection and testing of a sample of an  
9 employee's or prospective employee's urine or breath for any job-related purpose  
10 consistent with business necessity and the terms of the employer's policy, including

11 (1) investigation of possible individual employee impairment;

12 (2) investigation of accidents in the workplace; an employee may be  
13 required to undergo drug testing or alcohol impairment testing for an accident if the  
14 test is taken as soon as practicable after an accident and the test is administered to  
15 employees who the employer reasonably believes may have contributed to the accident;

16 (3) maintenance of safety for employees, customers, clients, or the  
17 public at large;

18 (4) maintenance of productivity, the quality of products or services, or  
19 security of property or information;

20 (5) reasonable suspicion that an employee may be affected by the use  
21 of drugs or alcohol and that the use may adversely affect the job performance or the  
22 work environment.

23 (d) In addition to tests required under (c) of this section, an employer may  
24 require employees or groups of employees to undergo drug testing on a random or  
25 chance basis.

26 (e) If an employer institutes a policy of drug testing or alcohol impairment  
27 testing under AS 23.10.600 - 23.10.699, the policy must identify which employees or  
28 positions are subject to testing. An employer must test all or part of the work force  
29 based on consideration of safety for employees, customers, clients, or the public at  
30 large. An employer may not initiate a testing program under AS 23.10.600 - 23.10.699  
31 until at least 30 days after the employer notifies employees of the employer's intent

1 to implement the program and makes written copies of the policy available as required  
2 by (a) of this section.

3 (f) The provisions of AS 23.10.600 - 23.10.699 may not be construed to  
4 ~~encourage~~, discourage, restrict, limit, prohibit, or require on-site drug testing or alcohol  
5 impairment testing.

6 **Sec. 23.10.630. Collection of samples.** (a) An employer may test an  
7 employee for the presence of drugs or for alcohol impairment. An employer may test  
8 a prospective employee for the presence of drugs.

9 (b) In order to test reliably, an employer may require an employee or  
10 prospective employee to provide a sample of the individual's urine or breath and to  
11 present reliable individual identification to the person collecting the sample. Collection  
12 of the sample must conform to the requirements of AS 23.10.600 - 23.10.699. The  
13 employer may designate the type of sample to be used for testing.

14 (c) An employer shall normally schedule a drug test or an alcohol impairment  
15 test of employees during, or immediately before or after, a regular work period.  
16 Alcohol impairment or drug testing required by an employer is considered to be work  
17 time for the purposes of compensation and benefits for current employees. Sample  
18 collection shall be performed in a manner that guarantees the individual's privacy to  
19 the maximum extent consistent with ensuring that the sample is not contaminated,  
20 adulterated, or misidentified.

21 (d) An employer shall pay the entire actual costs for drug testing and alcohol  
22 impairment testing required of employees and prospective employees. An employer  
23 shall also pay reasonable transportation costs to an employee if the required test is  
24 conducted at a location other than the employee's normal work site.

25 **Sec. 23.10.640. Testing procedures.** (a) Sample collection and testing for  
26 alcohol impairment and drugs under AS 23.10.600 - 23.10.699 shall be performed  
27 under reasonable and sanitary conditions. The person collecting samples shall  
28 document the sample, including labeling the sample to preclude to the extent  
29 reasonable the possibility of misidentification of the person tested in relation to the test  
30 result provided, and shall provide the person to be tested with an opportunity to  
31 provide medical information that may be relevant to the test, including identifying

1 current or recently used prescription and nonprescription drugs.

2 (b) Sample collection, storage, and transportation to the place of testing shall  
3 be performed in a manner reasonably designed to preclude the possibility of sample  
4 contamination, adulteration, or misidentification.

5 (c) Sample testing must comply with scientifically accepted analytical methods  
6 and procedures. Except for on-site testing under AS 23.10.645, drug testing shall be  
7 conducted at a laboratory approved or certified by the Substance Abuse and Mental  
8 Health Services Administration or the College of American Pathologists, American  
9 Association of Clinical Chemists.

10 (d) Drug testing, including on-site drug testing, must include confirmation of  
11 a positive drug test result. The confirmation must be by use of a different analytical  
12 process than was used in the initial drug screen. The second or confirmatory drug test  
13 shall be a gas chromatography mass spectrometry. ~~XXXXXXXXXXXXXXXXXXXX~~

14 ~~XXXXXXXXXXXXXXXXXXXX~~ An employer may not rely on a positive drug test  
15 unless the confirmatory drug test results have been reviewed by a licensed physician  
16 or doctor of osteopathy. The physician or osteopath shall

17 (1) contact the employee within 48 hours and offer an opportunity to  
18 discuss the confirming test result;

19 (2) interpret and evaluate the positive drug test results for legal use; and

20 (3) report test results that have been caused by prescription medication  
21 as negative.

22 (e) A drug test conducted under this section or in an on-site test under  
23 AS 23.10.645 for a drug for which the United States Department of Health and Human  
24 Services has established a cutoff level shall be considered to have yielded a positive  
25 result if the test establishes the presence of the drug at levels equal to or greater than  
26 that cutoff level. For a drug for which the United States Department of Health and  
27 Human Services has not established a cutoff level, the employer shall, in the written  
28 policy under AS 23.10.620, inform employees of the cutoff level that the employer  
29 will use to establish the presence of the drug.

30 **Sec. 23.10.645. On-site testing.** (a) An employer may include on-site drug  
31 and alcohol tests of employees and prospective employees as part of the employer's

1 drug and alcohol testing policy under AS 23.10.600 - 23.10.699. In on-site testing  
2 under this section, an employer may only use products approved by the Food and Drug  
3 Administration for employee testing and shall use the products in accordance with the  
4 manufacturer's instructions. On-site testing under this section may only be conducted  
5 by a test administrator who is certified under AS 23.10.650(b).

6 (b) In on-site testing under this section, the specimen to be tested must be kept  
7 in sight of the employee or applicant who is the subject of the test. The test  
8 administrator shall

9 (1) conduct the test in a manner that allows the subject of the test to  
10 observe the testing procedure and the results; in the case of a sight-impaired employee,  
11 the employee may request the presence of an observer; however, the test administrator  
12 is not required to delay collection of the sample or administration of the test because  
13 of the sight-impaired employee's request;

14 (2) complete the sample documentation required under  
15 AS 23.10.640(a);

16 (3) prepare a written record of the results of the on-site test.

17 (c) An employer may not take permanent employment action against an  
18 employee based on an unconfirmed, screen, positive on-site test result. If an employer  
19 takes temporary adverse employment action based on an on-site test result, the  
20 employer shall restore the employee's wages and benefits if the confirmatory test result  
21 is negative or if the employee demonstrates that the positive test result was caused by  
22 drugs taken in accordance with a valid prescription of the employee or by lawful  
23 nonprescription drugs.

24 **Sec. 23.10.650. Training of test administrators.** (a) Each employer shall  
25 ensure that at least one designated employee receives at least 60 minutes of training  
26 on alcohol misuse and at least an additional 60 minutes of training on the use of  
27 controlled substances. The training will be used by the designee to determine whether  
28 reasonable suspicion exists to require an employee to undergo testing under  
29 AS 23.10.630.

30 (b) If an employer administers on-site drug or alcohol tests to test employees  
31 or prospective employees under AS 23.10.645, the employer shall ensure that each

1 person who will be administering the on-site test receives training and meets the  
2 qualifications of this subsection. An on-site test administrator must

3 (1) have been trained by the manufacturer of the test or the  
4 manufacturer's representative on the proper procedure for administering the test and  
5 accurate evaluation of on-site test results; training must be conducted in person by a  
6 trainer from the manufacturer or the manufacturer's representative;

7 (2) be certified in writing by the manufacturer or the manufacturer's  
8 representative as competent to administer and evaluate the on-site test;

9 (3) have been trained to recognize adulteration of a sample to be used  
10 in on-site testing; and

11 (4) sign a statement that clearly states that the on-site test administrator  
12 will hold all information related to any phase of a drug test confidential.

13 **Sec. 23 10.655. Disciplinary procedures.** (a) An employer may take adverse  
14 employment action based on

15 (1) a positive drug test or alcohol impairment test result that indicates  
16 a violation of the employer's written policy;

17 (2) the refusal of an employee or prospective employee to provide a  
18 drug testing sample; or

19 (3) the refusal of an employee to provide an alcohol impairment testing  
20 sample.

21 (b) Adverse employment action under (a) of this section may include

22 (1) a requirement that the employee enroll in an employer provided or  
23 employer approved rehabilitation, treatment, or counseling program; the program may  
24 include additional drug testing and alcohol impairment testing; the employer may  
25 require participation in the program as a condition of employment; costs of  
26 participating in the program may or may not be covered by the employer's health plan  
27 or policies;

28 (2) suspension of the employee, with or without pay, for a designated  
29 period of time;

30 (3) termination of employment;

31 (4) in case of drug testing, refusal to hire a prospective employee; and

1 (5) other adverse employment action.

2 **Sec. 23.10.660. Confidentiality of results; access to records.** A  
3 communication received by an employer relevant to drug test or alcohol impairment  
4 test results and received through the employer's testing program is a confidential and  
5 privileged communication and may not be disclosed except

6 (1) to the tested employee or prospective employee or another person  
7 designated in writing by the employee or prospective employee;

8 (2) to individuals designated by an employer to receive and evaluate  
9 test results or hear the explanation of the employee or prospective employee; or

10 (3) as ordered by a court or governmental agency.

11 **Sec. 23.10.670. Effect of mandatory testing obligations.** An employer who  
12 is obligated by state or federal requirements to have a drug testing or alcohol  
13 impairment testing policy or program shall receive the full benefits of AS 23.10.600 -  
14 23.10.699 even if the required policy or program is not consistent with AS 23.10.600 -  
15 23.10.699, so long as the employer complies with the state or federal requirements  
16 applicable to the employer's operations.

17 **Sec. 23.10.699. Definitions.** In AS 23.10.600 - 23.10.699,

18 (1) "alcohol" means ethanol, isopropanol, or methanol;

19 (2) "drugs" means a substance considered unlawful under AS 11.71 or  
20 the metabolite of the substance;

21 (3) "drug testing" means testing for evidence of the use of a drug;

22 (4) "employee" means a person in the service of an employer;

23 (5) "employer" means a person who employs one or more full-time  
24 employees under a contract of hire, express or implied, oral or written;

25 (6) "good faith" means reasonable reliance on fact, or that which is held  
26 out to be factual, without the intent to deceive or be deceived and without reckless or  
27 malicious disregard for the truth;

28 (7) "prospective employee" means a person who has made application  
29 to an employer, whether written or oral, to become an employee;

30 (8) "random" means a scientifically valid method that ensures that all  
31 covered employees have an equal chance of being selected;

1

(9) "sample" means urine or breath from the person being tested.

# Alaska State Legislature

## Senate



Official Business

State Capitol  
Juneau, AK. 99801-1182

### SENATE LABOR AND COMMERCE COMMITTEE

\*expected to be present

\*Chairman: Senator Loren Leman  
Vice Chairman: Senator Mackie  
\*Senator Kelly  
\*Senator Miller  
\*Senator Hoffman

Committee Agenda  
1:00 p.m.  
Fahrenkamp Room  
Wednesday, May 7, 1997

Teleconference Sites: ANC, FBX

**HB 207: Employer Drug Testing Program**  
**By Representative Joe Green, Sponsor**

Expected Witnesses:

*Simon Lindford, Oklahoma Court*  
*Frank D. Davis, ADA*  
Jeff Logan, Aide to Representative Green to present bill  
Matt Fagnani, Allvest  
Dwight Perkins, Department of Labor

---

**HB 266: Limited Liability Companies**  
**By Representative Joe Ryan, Sponsor**

Expected Witnesses:

Representative Joe Ryan to present bill  
Richard Thwaites, Attorney, private practice (ANC LIO)  
Richard Hompish, Attorney, private practice (FBX LIO)  
Willis Kirkpatrick, Department of Commerce & Economic Development  
(possibly Larry Carroll)



05/07/97

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

13:27:46

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:ANC

TCN:70793

SCHEDULED FOR:05/07/97 13:00 TO 15:00

FOR:ANC

PUBLIC HEARING

SENATE LABOR & COMMERCE

LOCATION: ANCHORAGE

✓ HB 207

SHARON

LINFORD

TESTIFY

~~HB 207~~

FRANK

DILLON

ATA

TESTIFY

HB 207

KEN

JACOBUS

TESTIFY

# Alaska State Legislature

## Senate



State Capitol  
Juneau, AK. 99801-1182

Official Business

TO: Terry Cramer, Legislative Counsel  
Legislative Legal Services  
*Via Cap 2074 Jus Rep*

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

DATE: May 7, 1997

RE: Amendments to HB 207: Employer Drug Testing

-----

Please draft the following amendments for HB 207. It is to be brought back up in Senate Labor & Commerce at 1:00 p.m., May 8.

1) Page 6, Lines 11-13:

**DELETE [DRUG TESTING SHALL BE CONDUCTED AT A LABORATORY APPROVED OR CERTIFIED BY THE SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION OR THE COLLEGE OF AMERICAN PATHOLOGISTS, AMERICAN ASSOCIATION OF CLINICAL CHEMISTS.]**

2) Page 6, Line 15:

following "test result." insert

Confirmatory testing must be conducted at a laboratory approved or certified by the Substance Abuse and Mental Health Services Administration or the College of American Pathologists, American Association of Clinical Chemists.

Cominco Alaska Incorporated/Red Dog Mine/P.O. Box 1230/Kotzebue, Alaska 99752/Tel. (907) 426-2170



A Subsidiary of Cominco American Incorporated

4/26/97

Joe Green  
Representative  
Alaska State Legislature  
Juneau, AK

Dear Representative Green:

After having received information on your bill HB 207, I agree with other Safety Professionals, that Sec. 23.10.640 will put an added burden on companies that conduct drug testing.

Being able to do on site (field tests) is less expensive, results are immediate, and if a positive result is obtained, a sample can still be sent off site to an independent lab for confirmation of the result.

By only having to send positive samples off site for confirmation, a company can eliminate a large portion of their cost of conducting drug testing. When testing for cause (in the case of all negative results), utilizing an on site test eliminates the need of having an employee on suspension pending the return of the results from a lab. This benefits the employee as well as the company.

The idea of your bill "to offer protection from liability for employers who conduct drug testing", is an excellent idea, but it should also provide the same protection to employers that utilize on site field tests.

Thank you for your time and consideration to this matter.

Sincerely,

*William C. Wohlers*  
William C. Wohlers  
Loss Control Coordinator  
Cominco Alaska Inc.

TOTAL P.02

# Alaska State Legislature

WHILE IN SESSION  
CAPITOL BUILDING  
JUNEAU, ALASKA 99801-1122  
(907) 465-4931  
1-800-870-4931  
(907) 465-4316 FAX

INTERIM ADDRESS  
716 WEST 11TH AVENUE  
ANCHORAGE, ALASKA 99501  
(907) 258-8194  
(907) 258-6171 FAX



CHAIRMAN, JUDICIARY COMMITTEE  
VICE CHAIRMAN, HEALTH, EDUCATION  
& SOCIAL SERVICES COMMITTEE  
MEMBER, RESOURCES COMMITTEE  
FINANCE SUBCOMMITTEES  
DEPT. OF COMMERCE & ECONOMIC  
DEVELOPMENT  
ALASKA CODING SYSTEM

Representative Joe Green  
District 10

## Sponsor Statement

### HB 207 - Drug and Alcohol Testing Programs

**Problem:** The use of psychoactive drugs--including alcohol, prescription and over-the-counter drugs--may affect safety and productivity in the workplace. To address these concerns, many employers have instituted alcohol and drug use testing programs. Though more than 53,000 Alaskans are being tested, there is no state policy establishing test guidelines for employers or employees.

**Solution:** HB 207 establishes guidelines for employers to voluntarily test employees and prospective employees for drug or alcohol use. HB 207 does not mandate drug or alcohol testing. Instead it provides employers who comply with the provisions of the bill limited immunity from litigation. Specifically, a civil action could not be filed against an employer who complies with the new law for: a) actions taken in good faith as a result of a positive drug or alcohol test; b) failure to test for drugs or alcohol, or failure to test for a specific drug; c) failure to detect a specific drug; or, d) terminating or suspending a drug or alcohol prevention program or policy.

HB 207 establishes a policy stating that prevention programs should be implemented in a fair, consistent, and equitable manner with due consideration of the rights, responsibilities, and privacy interest of all concerned parties.

The benefits that could accrue from this legislation are: a) early identification of drug or alcohol abuse, which could reduce the tragic consequences of injury to the user, co-workers, and/or family of the user; b) a more profitable and safer business environment by reducing the mistakes, poor performance, and accidents associated with drug and alcohol abuse; and c) fewer legal actions filed against employers who may terminate drug and alcohol abusers.

I would appreciate your support of HB 207.

# 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

April 14, 1997

**SUBJECT:** Sectional Summary of CSHB 207(JUD). (Employer drug and alcohol testing program)

**TO:** Representative Joe Green  
Attn: Jeff Logan

**FROM:** Teresa B. Cramer *TBC*  
Legislative Counsel

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

Section 1 enacts new sections related to drug and alcohol testing by employers.

Sec. 23.10.600 provides that an employer who has a drug and alcohol testing program that complies with this bill is protected against suits for damages for actions in good faith based on the results of a positive drug or alcohol test; for failure to test; and for failure to test for a specific drug, substance, or condition. Subsection (b) prohibits bringing an action for damages based on test results against an employer who has a drug and alcohol testing program that complies with this bill unless the employer acted based on a false positive test and the employer knew or clearly should have known that the result was in error and ignored the true test result recklessly or maliciously, or with wilful intent to deceive. Subsection (c) establishes a rebuttable presumption in a claim alleging that an employer's action was based on a false positive test result that the test result was valid if the employer has a drug and alcohol testing program that complies with this bill. The employer is not liable for monetary damages if the employer's reliance on a false positive test result was reasonable and in good faith. Subsection (d) prohibits actions based on false negative results. Subsection (e) prohibits actions based on failure of an employer to establish a drug testing or alcohol impairment testing program or policy.

Sec. 23.10.610 prohibits actions for defamation of character, libel, slander, and damage to reputation against an employer who has a drug and alcohol testing program that complies with this bill if the action was based on the testing. There are exceptions if the results were negligently disclosed to an unauthorized person, the information disclosed was

a false positive, and the elements of the underlying action (for libel, slander, defamation, or damage to character) are met.

Sec. 23.10.615 states that compliance with the testing program under this bill by employers is voluntary.

Sec. 23.10.620 sets out the requirements for an employer's policy. The written policy must give notice to employees and job applicants, and it must contain the 10 elements set out in subsection (b). Subsection (c) states that employers who have a drug and alcohol testing program that complies with this bill may require collection and testing of an employee's breath or urine for any job-related purpose consistent with business necessity and the employer's policy, including the five reasons set out in that subsection. Subsection (d) permits random or chance testing. Subsection (e) requires that the written policy identify the employees or positions subject to testing and requires employers to give 30 days' notice of the implementation of a drug or alcohol testing program. It also requires training for at least one designated person.

Sec. 23.10.630 sets out requirements for sample collection. Under subsection (c), for employees, drug or alcohol testing is work time for purposes of compensation and benefits. Collection must be performed in a manner that guarantees the individual's privacy consistent with ensuring the integrity of the test. Under subsection (d), employers must pay the entire actual costs of testing for both employees and prospective employees and must pay transportation costs for employees.

23.10.640 sets out testing procedures. Under subsection (d), drug testing for employees must include confirmation of a positive drug test result. The subsection sets out requirements for the confirmation test. Subsection (e) addresses the cutoff levels to be used for a finding of a positive test result.

Sec. 23.10.650 permits employers to take adverse employment action based on positive test results that indicate a violation of the employer's written policy, the refusal of an employee or prospective employee to provide a drug testing sample, or the refusal of an employee to provide an alcohol impairment testing sample. Subsection (b) lists five types of adverse employment action.

Sec. 23.10.660 provides that the communications an employer receives relevant to drug or alcohol impairment test results as part of an employer's testing program are confidential and privileged and may not be disclosed except to the individual tested, individuals who are designated by the employer to evaluate the test or hear explanations from employees and prospective employees concerning test results, or as ordered by a court or governmental agency.

Representative Joe Green

April 14, 1997

Page 3

Sec. 23.10.670 provides that an employer who is required to meet other state or federal drug or alcohol testing requirements is entitled to the protections from actions for damages provided by this bill so long as the employer is complying with those other state or federal requirements.

Sec. 23.10.699 sets out definitions of "alcohol," "drugs," "drug testing," "employee," "employer," "good faith," "prospective employee," "random," and "sample."

TC:pl:glc  
97-098.plm

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Trading Bay Energy Corporation

**STAFF**

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General Manager



# THE ALLIANCE

4220 'B' Street, Suite 200 • Anchorage, Alaska 99503-5911  
Phone (907) 563-2226 • Fax (907) 561-8870

April 4, 1997

**Representative Norm Rokeberg**  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, AK 99801-1182

RE: Alliance Supports House Bill 207

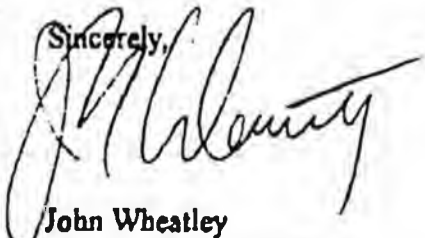
Dear Representative Rokeberg,

The Alaska Support Industry Alliance (The Alliance) is a non-profit trade association whose 300+ member companies provide the majority of support services for oil and gas exploration, production, transportation, refining and marketing. Our mission is to foster and promote the safe and environmentally sound development of natural resources and to enhance and stimulate the business climate for our membership.

The Alaska Support Industry Alliance Board of Directors *strongly supports* House Bill 207, "An Act relating to employer drug and alcohol testing programs".

This legislation will greatly reduce an employer's liabilities from drug and alcohol testing, resulting from a positive test. Further, this legislation protects employees by establishing company policy and standardized procedures for testing. This bill, while not mandatory, allows an employer the protection of the statute when specific steps outlined are followed.

We encourage support and passage of this important legislation.

Sincerely,  


**John Wheatley**  
Vice President - Policy

cc: Members, House Labor and Commerce  
Representatives Cowdery, Hudson, Sanders, Ryan, Brice, Kubina

# SeaLand

Sea-Land Service, Inc.  
1717 Tidewater Road, P.O. Box 101939  
Anchorage, Alaska 99510  
(907) 274-2671

April 7, 1997

Representative Norm Rokeberg, Chairman  
Labor & Commerce Committee  
State Capital  
Juneau, Alaska 99801

Subject: House Bill 207

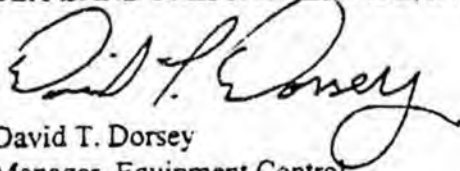
Please consider this as a letter of support for House Bill 207.

Our experience has been that employers need the protection afforded by this legislation. The bill as currently drafted also gives employees access to an established company policy.

Thank you for considering this innovative approach to drug and alcohol testing.

Sincerely,

SEA-LAND FREIGHT SERVICE, INC.



David T. Dorsey  
Manager, Equipment Control

DTD\jpy

cc: Representative Joan Cowdery, VC  
Representative Bill Hudson  
Representative Jerry Sanders  
Representative Joe Ryan  
Representative Tom Brice  
Representative Gene Kubina  
Representative Joe Green



ALASKA COUNCIL ON  
PREVENTION OF  
ALCOHOL AND DRUG  
ABUSE, INC.

3333 DENALI STREET  
SUITE 201

ANCHORAGE, ALASKA  
99503

PHONE  
907-258-6021

STATEWIDE  
800-478-7738

FAX  
907-258-6052

E-MAIL  
prevent@alaska.net

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April 2, 1997

Representative Joe Green  
State Capitol Building  
Room 118  
Juneau, AK 99801

Dear Rep. Green:

Greetings! This letter concerns HB 207—an Act relating to employer drug and alcohol testing programs. On behalf of the Alaska Council on PREVENTION of Alcohol and Drug Abuse, I would like to provide some information which hopefully will assist in the decision-making process.

- Alcohol and other drug use costs American businesses an estimated \$102 billion every year in lost productivity, accidents, employee turnover, and related problems.
- Drug users at a minimum consume almost twice the medical benefits as non users, are absent 1.5 times as often, and make more than twice as many workers' compensation claims.

A drug-free workplace reduces employee absenteeism, tardiness, discipline problems, and workers' compensation costs. Improvements include customer satisfaction, productivity, employee morale and motivation.

This bill's passage would greatly reduce the employer's liability from positive drug and alcohol tests. Therefore, more companies may chose to drug test their employees. Through the procedures outlined in HB 207, an employer can establish a clear drug testing standard while promoting a safe and drug-free working environment .

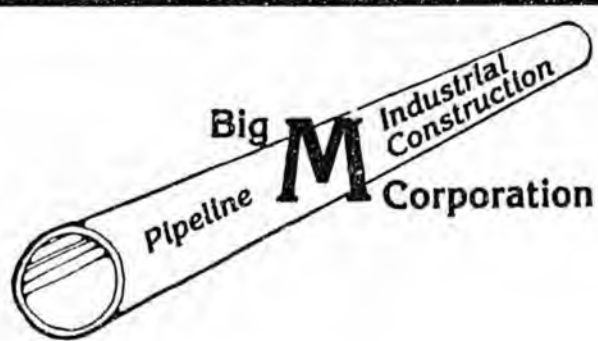
I am enclosing "Making Your Workplace Drug-Free: A Kit for Employers" for your review. Please don't hesitate to call me with your feedback or comments. I can be reached at (800) 478-7738.

Thank you for your time and attention to this important matter.

Respectfully,

Joseph DiMatteo  
Executive Director

enc: Making Your Workplace Drug-Free: A Kit for Employers, SAMHSA



---

April 7, 1997

Representative Joe Green  
State Capital Building, Room 118  
Juneau AK 99801

RE: House Bill 207

Dear Joe Green:

I would like to pass on our support of your proposed House Bill 207 relating to drug and alcohol testing.

Big M Corporation is a Pipeline Contractor and we have had a Drug and Alcohol Testing Policy in force for several years. We have been testing employees in both new pipeline construction and pipeline repair work. I am sure having this Drug Testing Policy in force has saved us from litigation. I feel very strongly that your proposed House Bill 207 needs to pass.

Whatever you can do to move this Bill through the House and Senate to make it a law would be greatly appreciated.

If I can be of any help, feel free to call.

Yours truly

A handwritten signature in black ink, appearing to read 'Lloyd K. McIntyre', is written over the typed name.

LLOYD K. MCINTYRE  
President



April 17, 1997

Representative Joe Greene  
State Capitol  
Juneau, Alaska 99801  
via facsimile (907)-465-4316

subj.: House Bill No. 207 "Drug and Alcohol Testing"

Dear sir,

I would like to take this opportunity to voice support for House Bill No. 207.

As Vice President and Manager, Personnel Services for Veco Corporation, I oversee drug and alcohol testing for six different companies with over 2,000 employees operating in the state of Alaska.

Veco Corporation and its subsidiary companies strive to provide a safe and drug-free workplace for our employees and feel strongly that House Bill No. 207 would be of enormous assistance in this worthwhile endeavor.

Sincerely,

Jamie Slack  
Vice President and Manager, Personnel Services

# Maniilaq Association

P.O. Box 256  
Kotzebue, Alaska 99752  
(907) 442-3311

April 15, 1997

RECEIVED

APR 21 1997

Representative J. Green  
House HES  
State Capitol  
Mail stop 3101  
Juneau, Alaska 99801-1182

Dear Representative Green,

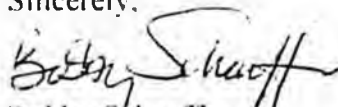
Last year we supported HB 522 because we feel that it provided standardized guidelines for the implementation of quality drug testing in the Alaskan workplace. We felt very strongly that such policies should be available to all employers and as such have instituted a drug and alcohol free workplace policy for Maniilaq Association and its 400 employees. NANA Regional Corporation and the Northwest Arctic Borough have followed suit. It is unfortunate that the School Districts could not be **mandated** to institute such a policy as the recipients of their services are our kids. But the NEA Union discourages all their subunion affiliates from even considering drug testing in their employee negotiations with School Districts. I know our School District has included mandatory and random drug testing in their negotiating package but have experienced very stiff resistance from the Union. Not only the local Union but the State and National unions as well.

We were very surprised and disappointed that HB 522 died in Committee the last Legislative session. It amazes me that simple politics and personal agendas can get in the way of passing a Bill that would be **good** public policy. The opposition responsible for its demise just simply sent a message that it is OK to use or be under the influence of drugs in the workplace.

Maniilaq Association supports HB 207 and urges its passage. Alaska needs standards by which employers can conduct drug testing that would limit their liability and allow employers the latitude to establish clear drug policies while guaranteeing the rights of employees.

We certainly hope HB 207 fares well this session. If we can be of further assistance in supporting your efforts, please let us know. Taikuu (thank you)!

Sincerely,



Bobby Schaeffer,  
Special Assistant to the President

#### MEMBER VILLAGES

Ivsaappaat, Nunatchiaq, Ipnatchiaq, Katyaak, Kivaliniq, Laugviik, Qikiqtagrak, Nautaaq, Nuurvik, Akulgaq, Isinnaq, Ambler, Buckland, Deering, Kiana, Kivalina, Kobuk, Kotzebue, Noatak, Noorvik, Selawik, Shungnak.



Holland America Line  
Westours Inc.

Family of Companies:  
Westmark Hotels, Inc.  
Gray Line of Alaska

Al Parrish  
Vice President  
Government and Community Relations

April 18, 1997

The Honorable Joe Green  
House of Representatives  
State Capitol  
Juneau, AK 99801-1182

HB 207

Dear Representative Joe:

SUBJECT: House Bill No. 207

I'm writing in support of House Bill No. 207  
against employers who conduct drug testing,  
employees and also limit the potential liability

en  
hts of

Holland America Line-Westours Inc. and its Family of Companies; Gray Line of Alaska and Westmark Hotels, Inc. are committed to providing a safe and productive work environment for our employees as well as our passengers and guests. We initiated drug testing in our Alaska operations some time ago. Many of our employees are subject to random and post-accident testing. This program has been effective in reducing accidents and enhancing the safety of our employees and customers.

Again, we strongly support the Bill you're proposing.

Sincerely,

HOLLAND AMERICA LINE

  
Al Parrish

VS

510 I. Street, Suite #400  
Anchorage, Alaska 99501-1956  
907-272-9418  
FAX 907-258-7334

April 10, 1997

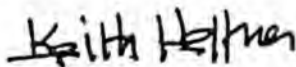
Honorable Representative Joe Green  
House of Representatives State of Alaska  
State Capital  
Juneau, AK. 99811

This letter is written to voice Alyeska Pipeline Service Company's support of House Bill No: 207 currently being considered by the Twentieth Legislature of the State of Alaska.

Passage of House Bill No: 207 encourages Alaska employers to establish drug and alcohol policies and testing programs. Additionally, passage of this bill will be in direct support of society's efforts to ensure that employees are provided with a safe work environment free of the deadly influence of drugs and alcohol.

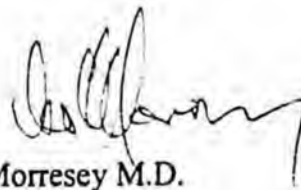
I would like to thank you for introducing House Bill No: 207 and for the efforts made by the Twentieth Legislature to ensure worker health and safety.

Sincerely,



Keith Heffner

Safety Director



Leo K. Morresey M.D.

Medical Director