

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9850 HOUSE JUDICIARY

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(55) "sexual contact" means

(A) the defendant's

(i) knowingly touching, directly or through clothing, the victim's genitals, anus, or female breast; or

(ii) knowingly causing the victim to touch, directly or through clothing, the defendant's or victim's genitals, anus, or female breast;

(B) but "sexual contact" does not include acts

(i) that may reasonably be construed to be normal caretaker responsibilities for a child, interactions with a child, or affection for a child; [OR]

(ii) performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical or mental health of the person being treated; or

(iii) that are a necessary part of a search of a person committed to the custody of the Department of Corrections or the Department of Health and Social Services;

* Sec. 5. AS 11.81.900(b)(56) is amended to read:

(56) "sexual penetration" means

(A) genital intercourse, cunnilingus, fellatio, anal intercourse, or an intrusion, however slight, of an object or any part of a person's body into the genital or anal opening of another person's body;

(B) but "sexual penetration" does not include acts

(i) performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical health of the person being treated; or

(ii) that are a necessary part of a search of a person committed to the custody of the Department of Corrections or the Department of Health and Social Services;

(C) each party to any of the acts defined as "sexual penetration" is considered to be engaged in sexual penetration;

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 151

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title "....relating to revocation and reinstatement of the driver's license of a person at least 14 but not yet 21 years of age"	BRU	Criminal Division/Civil Division
Sponsor Representative Kott	Component	1st-4th Judicial Districts; OSPA; Human Services
Requester House Judiciary Committee	Component Serial No.	2198-99;2201/03/61/79/08

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

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

HB 151 makes several changes to the statutes relating to revocation of driver's licenses for minors possessing and/or consuming alcohol. Possession of alcohol would no longer be grounds for license revocation. Driver's license revocations imposed under different provisions of law for the same incident would be applied concurrently, rather than consecutively. And the bill would allow license reinstatement under certain circumstances.

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

Prepared by Joan M. Kasson *Joan M. Kasson*
 Division Attorney General's Office
 Approved by Commissioner for *Bruce M. Botelho* Attorney General
 Agency Department of Law

Phone 465-5370
 Date/Time 3/26/99, 4:27 PM
 Date 3/26/99

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

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CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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This bill will have no fiscal impact on the Department of Law.

Prepared by <u>Joan M. Kasson</u> <i>Joan M. Kasson</i>	Phone <u>465-5370</u>
Division <u>Attorney General's Office</u>	Date/Time <u>3/26/99, 4:27 PM</u>
Approved by Commissioner <i>for</i> <u>Bruce W. Bolger</u> <i>Bruce W. Bolger</i>	Date <u>3/26/99</u>
Agency <u>Department of Law</u>	

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Sheet1

Alaska Fatal Motor Vehicle Crashes at least one driver under age 21

year	#crashes where driver under 21	# Fatalities All ages	# crashes alcohol related	# alcohol related deaths
1998	16	19	1	1
1997	17	18	4	5
1996	16	20	5	8
1995	14	16	4	5
1994	13	17	6	9

Source: 1994-1998 Fatality Analysis Reporting System, National Highway Traffic Safety Administration and the Alaska Highway Safety Planning Agency.



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name

committee on HB 151, dated 4-8-99
bill # / subject

I THANK YOU FOR BRINGING THE ISSUE OF AS 28.15.183 TO YOUR COMMITTEE FOR REVIEW VIA HB 151. THERE ARE 2 CRITICAL ISSUES THAT HAVE NOT BEEN ADDRESSED BY 151.

1. THE APPEALS COURT HAS FOUND THAT 28.15.183 IS UNCONSTITUTIONAL BECAUSE THE DRIVERS LICENSE OF OUR YOUTH ARE BEING REVOKED FOR A NOW DRIVING OFFENCE.
2. 28.15.183 IS ALSO UNCONSTITUTIONAL BECAUSE OUR YOUNG PEOPLE ARE BEING TRIED TWICE FOR THE SAME OFFENSE ONCE BY THE COURTS AND OR JUVENILE INTAKE OFFICERS WHEN THESE PEOPLE FIND THE ACCUSED TO BE NOT GUILTY OR WHEN THE CASE HAS BEEN DISMISSED THE DMV ADMIN REHEARAL STILL STANDS THUS REQUIRING ANOTHER HEARING WITH A DMV HEARING OFFICER WITH ALMOST ALWAYS RESULTS IN A GUILTY DECISION. THUS OVERRIDING THE JUDGES DECISION THIS IS WRONG. THIS LAW IS CAUSING OUR YOUNG PEOPLE TO BELIEVE THAT OUR SYSTEM OF JUSTICE IS AGAINST THEM. PLEASE REPEAL OR FURTHER AMEND HB 151 28.15.183

Signed: _____

Testifier

G.L.A.D. Good LEGISLATION ASSURES DEMOCRACY

Representing (Optional)

P.O. Box 105 Seldovia ALASKA 99762

Address

907-262-4889 / Cell 398-6012

Phone number

CS FOR HOUSE BILL NO. 151(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES KOTT, Austerman

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to revocation and reinstatement of the driver's license of a
2 person at least 14 but not yet 21 years of age."

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

4 * Section 1. AS 21.89.027(a) is amended to read:

5 (a) Notwithstanding AS 21.36.210, an insurer offering insurance in this state
6 may not (1) refuse to issue or renew motor vehicle liability insurance coverage; (2)
7 cancel an existing policy of motor vehicle liability insurance; (3) deny a covered claim;
8 or (4) increase the premium on a motor vehicle liability insurance policy if the refusal,
9 cancellation, denial, or increase results only from the fact that the person's driver's
10 license was revoked under AS 28.15.183 [OR 28.15.185] for [POSSESSION OR]
11 consumption of alcohol in a situation where the person was not driving and was in
12 violation of AS 04.16.050 or a municipal ordinance with substantially similar elements.

13 * Sec. 2. AS 28.15.183(a) is amended to read:

14 (a) If a peace officer has probable cause to believe that a person who is at

1 least 14 years of age but not yet 21 years of age has possessed or used a controlled
 2 substance in violation of AS 11.71 [,] or a municipal ordinance with substantially
 3 similar elements, or [POSSESSED OR] consumed alcohol in violation of AS 04.16.050
 4 or a municipal ordinance with substantially similar elements, operated a vehicle after
 5 consuming alcohol in violation of AS 28.35.280, or refused to submit to a chemical
 6 test under AS 28.35.285 and the peace officer has cited the person or arrested the
 7 person for a violation of AS 11.71, AS 04.16.050, AS 28.35.280, or 28.35.285 or the
 8 municipal ordinance with substantially similar elements, the peace officer shall read
 9 a notice and deliver a copy to the person. The notice must advise that

10 (1) the department intends to revoke the person's driver's license or
 11 permit, privilege to drive, or privilege to obtain a license or permit;

12 (2) the person has the right to administrative review of the revocation;

13 (3) if the person has a driver's license or permit, the notice itself is a
 14 temporary driver's license or permit that expires seven days after it is delivered to the
 15 person;

16 (4) revocation of the person's driver's license or permit, privilege to
 17 drive, or privilege to obtain a license or permit, takes effect seven days after delivery
 18 of the notice to the person unless the person, within seven days, requests an
 19 administrative review;

20 (5) if the person has been cited under AS 28.35.280 or under
 21 AS 28.35.285, that person, under AS 28.35.290, may not operate a motor vehicle,
 22 aircraft, or watercraft during the 24 hours following issuance of the citation.

23 * Sec. 3. AS 28.15.183(c) is amended to read:

24 (c) Unless the person has requested an administrative review, the department
 25 shall revoke the person's driver's license or permit, privilege to drive, or privilege to
 26 obtain a license or permit, effective seven days after delivery to the person of the
 27 notice required under (a) of this section, upon receipt of a sworn report of a peace
 28 officer

29 (1) that the officer had probable cause to believe that the person is at
 30 least 14 years of age but not yet 21 years of age and has possessed or used a
 31 controlled substance in violation of AS 11.71 [,] or a municipal ordinance with

1 substantially similar elements, or [POSSESSED OR] consumed alcohol in violation of
2 AS 04.16.050 or a municipal ordinance with substantially similar elements, operated
3 a vehicle after consuming alcohol in violation of AS 28.35.280, or refused to submit
4 to a chemical test of breath under AS 28.35.285;

5 (2) that the peace officer has cited the person or arrested the person for

6 (A) a violation of AS 11.71, AS 04.16.050, AS 28.35.280, or
7 28.35.285; or

8 (B) possession or use of a controlled substance or consumption
9 of alcohol in violation of a municipal ordinance with substantially similar
10 elements;

11 (3) that notice under (a) of this section was provided to the person; and

12 (4) describing the circumstances surrounding the violation of the
13 controlled substances provisions of AS 11.71, the alcoholic beverages provisions of
14 AS 04.16.050, or the municipal ordinance with substantially similar elements, the
15 minor operating a vehicle after consuming alcohol [UNDER] provisions of
16 AS 28.35.280, or the minor refusing to submit to a chemical test of breath [UNDER]
17 provisions of AS 28.35.285.

18 * Sec. 4. AS 28.15.183(f) is amended to read:

19 (f) A revocation imposed under this section shall be [CONSECUTIVE TO A
20 REVOCATION IMPOSED UNDER ANOTHER PROVISION OF LAW, EXCEPT
21 THAT A REVOCATION IMPOSED UNDER THIS SECTION FOR AN OFFENSE
22 FOR WHICH A REVOCATION IS REQUIRED UNDER AS 28.15.185 SHALL BE]
23 concurrent with a revocation imposed under another provision of law [AS 28.15.185]
24 that is based on the same incident. A [DEPARTMENT HEARING OFFICER MAY
25 GRANT LIMITED LICENSE PRIVILEGES IN ACCORDANCE WITH THE
26 STANDARDS SET OUT IN AS 28.15.201 TO A] person whose driver's license,
27 permit, or privilege was revoked under this section may apply for reinstatement as
28 provided under (j) of this section.

29 * Sec. 5. AS 28.15.183(g) is amended to read:

30 (g) Except as provided under (h) of this section, the department may not issue
31 a new license or reissue a license to a person whose driver's license, permit, or

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privilege to drive has been revoked under this section unless the person is enrolled in and is in compliance with, or has successfully completed,

(1) an alcoholism education or rehabilitation treatment program approved under AS 47.37, if the revocation resulted from [POSSESSION OR] consumption of alcohol in violation of AS 04.16.050 or a municipal ordinance with substantially similar elements, from operating a vehicle after consuming alcohol in violation of AS 28.35.280, or from refusal to submit to a chemical test of breath in violation of AS 28.35.285; or

(2) a drug education or rehabilitation treatment program, if the revocation resulted from possession or use of a controlled substance in violation of AS 11.71 or a municipal ordinance with substantially similar elements.

* Sec. 6. AS 28.15.183 is amended by adding a new section to read:

(j) A person whose driver's license, permit, or privilege was revoked under this section and whose remaining period of driver's license revocation is more than one year may apply for reinstatement of the person's driver's license as provided in this subsection. A person may apply to the department for reinstatement by filing a written request for review of the revocation imposed under this section with the department. The department shall issue a new license or reissue the person's driver's license as provided under AS 28.15.211(d) if

(1) the person complies with (g) of this section;

(2) the person has not violated a provision of this title or a regulation of the department since the revocation; and

(3) the license will allow the person to attend school, care for a dependent child, or earn a livelihood without creating a danger to the public.

* Sec. 7. AS 28.15.184(a) is amended to read:

(a) A person who has received a notice under AS 28.15.183(a) may make a written request to a youth court, or, if the person resides in a municipality or area that does not have a youth court, to the department, for administrative review of the department's action. If the person's driver's license or permit has not been previously surrendered to the department, it shall be surrendered to the department at the time the request for review is made.

1 * Sec. 8. AS 28.15.184(b) is amended to read:

2 (b) A request for review of the department's revocation under AS 28.15.183
3 shall be made to a youth court or to the department within seven days after receipt
4 of the notice under AS 28.15.183 or the right to review is waived and the action of the
5 department under AS 28.15.183(c) is final. If a written request for a review is made
6 after expiration of the seven-day period, and, if it is accompanied by the applicant's
7 verified statement explaining the failure to make a timely request for a review, the
8 youth court or the department shall receive and consider the request. If the youth
9 court or the department finds that the person was unable to make a timely request
10 because of lack of actual notice of the revocation or because of factors of physical
11 incapacity such as hospitalization or incarceration, the youth court or the department
12 shall waive the period of limitation, reopen the matter, and grant the review request.

13 * Sec. 9. AS 28.15.184(c) is amended to read:

14 (c) Upon receipt of a request for review by the youth court or the
15 department, if it appears that the person holds a valid driver's license or permit and
16 that the driver's license or permit has been surrendered, the department shall issue a
17 temporary driver's permit that is valid until the scheduled date for the review. A
18 person who has requested a review under this section may request, and the youth
19 court or the department may grant for good cause, a delay in the date of the hearing.
20 If necessary, the youth court or the department may issue additional temporary
21 permits to stay the effective date of the department's [ITS] action under
22 AS 28.15.183(c) until the final order after the review is issued.

23 * Sec. 10. AS 28.15.184(d) is amended to read:

24 (d) A person who has requested a hearing under this section and who fails to
25 appear at the hearing, for reasons other than lack of actual notice of the hearing or
26 physical incapacity such as hospitalization or incarceration, waives the right to a
27 hearing. The determination of the youth court or the department that is based upon
28 the officer's report becomes final.

29 * Sec. 11. AS 28.15.184(e) is amended to read:

30 (e) Notwithstanding AS 28.05.141(b), the hearing under this section may be
31 held telephonically at the discretion of the youth court or the hearing officer.

1 * Sec. 12. AS 28.15.184(f) is amended to read:

2 (f) A review under this section shall be held before a youth court or a hearing
3 officer designated by the commissioner. The youth court or the hearing officer may

4 (1) administer oaths and affirmations;

5 (2) examine witnesses and take testimony;

6 (3) receive relevant evidence;

7 (4) issue subpoenas, take depositions, or cause depositions or
8 interrogatories to be taken;

9 (5) regulate the course and conduct of the hearing;

10 (6) make a final ruling on the issue.

11 * Sec. 13. AS 28.15.184(g) is amended to read:

12 (g) The hearing for review of a revocation by the department under
13 AS 28.15.183 shall be limited to the issues of whether the person was at least 14 years
14 of age but not yet 21 years of age and whether the person possessed or used a
15 controlled substance in violation of AS 11.71 or a municipal ordinance with
16 substantially similar elements, or [POSSESSED OR] consumed alcohol in violation of
17 AS 04.16.050 or a municipal ordinance with substantially similar elements, operated
18 a vehicle after consuming alcohol in violation of AS 28.35.280, or refused to submit
19 to a chemical test of breath in violation of AS 28.35.285.

20 * Sec. 14. AS 28.15.184(h) is amended to read:

21 (h) The determination of the youth court or the hearing officer may be based
22 upon the sworn report of a peace officer [,] if the sworn report is supported by
23 probable cause based on personal observations as required under AS 28.15.183(a). The
24 peace officer need not be present at the hearing unless either the person requesting the
25 hearing, [OR] the youth court, or the hearing officer requests in writing before the
26 hearing that the officer be present. If, in the course of the hearing, it becomes
27 apparent that the testimony of the peace officer is necessary to enable the youth court
28 or the hearing officer to resolve disputed issues of fact, the hearing shall be continued
29 to allow the attendance of the peace officer.

30 * Sec. 15. AS 28.15.184(j) is amended to read:

31 (j) If the issues set out in (g) of this section are determined in the affirmative

1 by a preponderance of the evidence, the youth court or the hearing officer shall
2 sustain the action of the department. If one or more of the issues is determined in the
3 negative, the department's revocation action shall be rescinded.

4 * **Sec. 16.** AS 28.15.184(k) is amended to read:

5 (k) If the action of the department in revoking a nonresident's privilege to
6 drive a motor vehicle is not administratively contested by the nonresident driver or if
7 the departmental action is sustained by the youth court or the hearing officer, the
8 department shall give written notice of action taken to the motor vehicle administrator
9 of the state of the person's residence and to any state in which that person has a
10 driver's license.

11 * **Sec. 17.** AS 28.15.184(l) is amended to read:

12 (l) Within 30 days of the issuance of the final determination of the youth
13 court or the department, a person aggrieved by the determination may file an appeal
14 in superior court for judicial review of the youth court's or the hearing officer's
15 determination. The judicial review shall be on the record without taking additional
16 testimony. The court may reverse the youth court's or the department's determination
17 if the court finds that the youth court or the department misinterpreted the law, acted
18 in an arbitrary and capricious manner, or made a determination unsupported by the
19 evidence in the record.

20 * **Sec. 18.** AS 28.15.184(m) is amended to read:

21 (m) The filing of an appeal under (l) of this section or a petition for review
22 does not automatically stay the youth court's or the department's order or revocation.
23 The court may grant a stay of the order or revocation under the applicable rules of
24 court, after a motion and hearing, and upon a finding that there is a reasonable
25 probability that the petitioner will prevail on the merits and that the petitioner will
26 suffer irreparable harm if the order is not stayed.

27 * **Sec. 19.** AS 47.12.400(a) is amended to read:

28 (a) The department may use youth courts to hear, determine, and dispose of
29 cases involving

30 (1) a minor whose alleged act that brings the minor within the
31 jurisdiction of AS 47.12.010 - 47.12.260 constitutes a violation of

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(A) a state law that is a misdemeanor or a violation; or

(B) [THAT CONSTITUTES A VIOLATION OF] a municipal ordinance that prescribes a penalty not exceeding the penalties for a class A misdemeanor under state law; or

(2) administrative review of a license revocation under AS 28.15.184.

* Sec. 20. APPLICABILITY. (a) The amendment to AS 21.89.027(a), made by sec. 1 of this Act, applies to driver's license revocations occurring on or after the effective date of this Act. AS 21.89.027(a) as it read on the day before the effective date of this Act applies to driver's license revocations occurring before the effective date of this Act.

(b) Sections 2 - 19 of this Act apply to a driver's license revocation that occurs on or after the effective date of this Act.

Alaska State Legislature

House of Representatives

COMMITTEES
JUDICIARY COMMITTEE CHAIR
RULES
MILITARY & VETERANS AFFAIRS
JUDICIAL RESTRUCTURING
ETHICS

SESSION
ALASKA STATE CAPITOL
JUNEAU, ALASKA

SPONSOR STATEMENT HB 151

“An Act relating to revocation and reinstatement of the driver’s license of a person at least 14 but not yet 21 years of age.”

The “Use It, Lose It” law incurs results that are inequitable toward teens who, after maturing and amending delinquent behavior, lose the valuable privilege of driving for substantial periods of time. Furthermore, the delinquent behavior by the juvenile need not be attached in any way to a vehicle under the current statute. This bill hopes to keep the intent of the “Use It, Lose It” legislation intact while dampening the harsher aspects associated with the legislation. When the law was ratified it was the legislature’s belief that 2500 revocations per year would occur. That number has jumped to over 4500. The bill hopes to:

- amend current law by requiring consumption of alcohol as a requisite to revoking a teen’s license.
- remove “consecutive” penalties and run them *concurrently*.
- establish youth court jurisdiction over revocation appeal hearing for juveniles, in areas that authorize youth courts.
- authorize administrative hearers to re-issue licenses upon a showing of:
 - compliance with the statute;
 - compliance with the title or department regulation;
 - the license will allow the offender to attend school, care for a dependant child, or earn a livelihood without creating a danger to the public.

The State of Alaska has a genuine interest in promoting driving safety as well as curbing teen alcohol use. Nevertheless, to punish a youth by taking away his or her license for twenty years, for flighty mistakes made while very young is far too severe. When a person at a young age makes several mistakes, which become determinative of his or her future, consideration should be taken for amelioration of that youth’s behavior. The “Use It, Lose It” law should be based on its premise—if alcohol is used, the license is revoked. As a policy measure, if the youth shows corrective behavior upon reaching majority, the privilege of a license ought to be returned. I urge support for HB 151.



Representative Pete Kott

JUNEAU OFFICE (907) 465-3777 TOLL FREE 1-800-861-KOTT(5688) FAX (907) 465-2819
EAGLE RIVER OFFICE (907) 694-8944 FAX (907) 694-8945 E-MAIL representative_pete_kott@legis.state.ak.us

Alaska State Legislature

House of Representatives

COMMITTEES
JUDICIARY COMMITTEE, CHAIR
RULES
MILITARY & VETERANS AFFAIRS
UTILITY RESTRUCTURING
ETHICS



LEGISLATIVE COUNCIL
100,200 EAST RIVER ROAD
EAGLE RIVER, AK 99577

SESSION
ALASKA STATE CAPITOL
JUNEAU, AK 99801

SECTIONAL ANALYSIS HB 151

- Section 1, 2, 3, 5, and 13:** These sections are amended removing *possession* as an offense upon which a license can be administratively revoked. Section 3 places *consumption of alcohol* as a requisite for administrative revocation of a drivers license.
- Section 4:** This section is amended requiring penalties to run *concurrently* rather than consecutively. Further, this section permits a youth with a revoked license to apply for reinstatement .
- Section 6:** This section establishes a review procedure (per section 4) which permits a person with a revoked license to apply for reinstatement of the license. The three factors that must be met are (1) compliance with subsection (g); (2) compliance with the title or department regulations; and (3) the reissuance permits the person to to attend school, care for a dependant child, or earn a livelihood without danger to the public.
- Section 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, and 19:** These sections establish and empower youth courts to hear and determine department revocation actions. The powers of the youth courts are enumerated, and the requirements for findings are listed. Youth Courts are to be used only in areas where they are currently established or are established at a later date. In all other regions, administrative hearers are used.
- Section 20:** This section is the enabling portion of the legislation of the bill.



Representative Pete Kott

JUNEAU OFFICE (907) 465-3777 TOLL FREE 1-800-361-KOTT(5688) FAX (907) 465-2619
EAGLE RIVER OFFICE (907) 694-2944 FAX (907) 694-2945 E-MAIL: representative_pete_kott@legis.state.ak.us

Subject: Re: AS 28.15.183

Date: Fri, 19 Mar 1999 18:44:55 -0600

From: "Kevin Hyde" <dallram@ptialaska.net>

To: "Representative Pete Kott" <Representative_Pete_Kott@legis.state.ak.us>

I have contacted M.A.D.D In Anchorage and they feel that if A person is found Not guilty and the DMV still revokes the license that in is wrong. thank you for your efforts you can count on me to be there when it comes time for a hearing I also can make myself available to assist you in any way you think I can help I live on the Zenai but with some notice I would be willing to travel to Juneau to testify if needed.

Keep up the good work

Kevin B Hyde

> From: Representative Pete Kott
<Representative_Pete_Kott@legis.state.ak.us>
> To: Kevin Hyde <dallram@ptialaska.net>
> Subject: Re: AS 28.15.183
> Date: Friday, March 19, 1999 2:23 PM

>
> Kevin,

>
> Thanks for your comments. My office is currently work on a bill that I
> believe will take care of your concern as well as to take care of other
> concerns that I have. For instance, when the bill was passed it was
> expected that it would affect 200 kids. The number has swelled to 4500
> annually. Many of these kids our in bad environments and thus have been
> the subject of this law several times. In at least one instance a kid
> can't get a drivers licence until the year 2025. That's absurd. We
> have been working very closely with the Department of Public Safety and
> the Department of Law to craft a bill that is more reasonable I believe
> that it will be introduced on Monday with a hearing the following week.
> I would encourage you to participate in the public process when the bill
> comes up for a hearing. I am sure that the Mothers Against Drunk
> Drivers will be on my case. The ironic thing is the law does not have a
> nexis between the offense and the penalty.

>
> Sincerely,

>
>
> Pete

> Kevin Hyde wrote:

> >
> > Dear Representative,

> >
> > Please review AS 28.15.183 Commonly referred to as the Use It Or Lose
It

> > Law. This law requires the Department Of Motor Vehicles to revoke the
> > drivers licenses of our 14 to 21 year olds even if the Judiciary has
found

> > them to be NOT GUILTY of any crime. They can and do also revoke
licenses if

> > the case was dismissed and also even in cases where the person has not
even

> > been charged with a crime. This law is Unconstitutional as was decided
by

HB

154

4/30/99
HB 154

Change Section 3 to Section 4

Add new Section 3:

Section 3. AS 11.61.110 is amended by adding a new subsection to read:

(d) The provisions of (a)(8) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

Modify Section 4 to reflect correct subsection:

Section 4. AS 11.61.110 is amended by adding a new subsection to read:

(e) In the section, "laser..."

4/30/99

ALASKA STATE LEGISLATURE



REPRESENTATIVE ALLEN KEMPLER

MEMORANDUM

TO: Representative Pete Kott, Chair
House Judiciary Committee

FROM: Representative Allen Kempler *AK*

DATE: April 25, 1999

RE: HB 154 --"An act relating to laser sighting devices."

Attached you will find a sponsor statement and a sectional analysis for HB 154. At your earliest convenience could you please schedule HB 154 for a committee hearing. If you are in need of additional information, my staff assistant Chris Knight will be happy to assist you. In advance, I thank you for reviewing this request and HB 154 material.

SESSION
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ALASKA STATE LEGISLATURE



REPRESENTATIVE ALLEN KEMPLER

Sectional Analysis

HB 154

"An act relating to the use of laser sighting devices."

Section 1. Amends Alaska Statute 11.61.110(a) of disorderly conduct by adding a new number (8) after the number (7) and creating a new definition for the act of disorderly conduct under number (8).

Section 2. Restates the maximum penalty under AS 12.55 for disorderly conduct that if a sentence of imprisonment is imposed for offenses (1-7) of disorderly conduct then the penalty will not be for more than 10 days. If offence number (8) for disorderly conduct is purposely directed at a uniformed or a clearly identified peace officer then the limitation of sentencing for offenses 1-7 will not be imposed. Penalties for violation of number (8) with regards to uniformed officers are at a court's discretion as to the limitations of class B misdemeanors. Class B misdemeanors carry a maximum sentence of imprisonment of not more than 90 days unless otherwise specified by law.

Section 3. Defines a "laser sighting device."

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ALASKA STATE LEGISLATURE



REPRESENTATIVE ALLEN KEMPLEN

Sponsor Statement

HB 154

"An Act relating to the use of laser-sighting devices."

As technology advances creating new gizmos and gadgets to better our everyday lives, concern has risen about the misuse of new technology. The information highway, the internet, email, telecommunications, bio-engineering—all of which provide advancements for society, can be used negligently. The simple laser pointer, a tool often used by managers while indexing maps or graphs, replicates the same beam of light used on laser sighting devices for handguns, rifles and military weaponry.

HB 154 was introduced in response to increased reports of misconduct involving laser-sighting devices. Under the aim of laser-sighting devices, peace officers in Anchorage have encountered situations in which they felt threatened by laser-sighted weaponry. Replicating a weapon's sighting device, peace officers react instinctively, unable to differentiate between a laser-sighted weapon and a laser pointer.

In 1999, Legislatures around the US have responded to many of the problems associated with laser sighting devices by introducing sixteen pieces of legislation. People with laser pointers have disrupted basketball games, concerts, plays, and even blinded individuals with the intense beam of light from a laser. HB 154 responds to those individuals that choose to annoy or harass others with a laser-sighting device.

HB 154 addresses the inappropriate use of laser sighting devices. Those individuals that choose to disrupt playhouses, basketball games, or other spectator activities with a laser-sighting device could be charged with disorderly conduct. IF a person negligently and purposely places the beam of light from a laser-sighting device upon a peace officer, the consequence for the action could be substantially greater than a simple disorderly conduct charge.

In an effort to protect police officers from the threat of imminent danger and to encourage appropriate use of laser sighting devices in public forums, HB 154 penalizes the inappropriate use of a laser-sighting device.

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HOUSE BILL NO. 154

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE KEMPLER

Introduced: 3/24/99

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the use of laser sighting devices."**

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

3 *** Section 1.** AS 11.61.110(a) is amended to read:

4 (a) A person commits the crime of disorderly conduct if [.]

5 (1) with intent to disturb the peace and privacy of another not
6 physically on the same premises or with reckless disregard that the conduct is having
7 that effect after being informed that it is having that effect, the person makes
8 unreasonably loud noise;

9 (2) in a public place or in a private place of another without consent,
10 and with intent to disturb the peace and privacy of another or with reckless disregard
11 that the conduct is having that effect after being informed that it is having that effect,
12 the person makes unreasonably loud noise;

13 (3) in a public place, when a crime has occurred, the person refuses to
14 comply with a lawful order of a peace officer to disperse;

15 (4) in a private place, the person refuses to comply with an order of a

1 peace officer to leave premises in which the person has neither a right of possession
2 nor the express invitation to remain of a person having a right of possession;

3 (5) in a public or private place, the person challenges another to fight
4 or engages in fighting other than in self-defense;

5 (6) the person recklessly creates a hazardous condition for others by an
6 act that [WHICH] has no legal justification or excuse; [OR]

7 (7) the offender intentionally exposes the offender's buttock or anus to
8 another with reckless disregard for the offensive or insulting effect the act may have
9 on that person; or

10 (8) the person knowingly aims, shines, focuses, or points a laser
11 sighting device at or upon another with reckless disregard for the offensive,
12 threatening, harassing, annoying, or distracting effect the act may have on the
13 other person.

14 * Sec. 2. AS 11.61.110(c) is amended to read:

15 (c) Disorderly conduct is a class B misdemeanor and is punishable as
16 authorized in AS 12.55 except that, if a sentence of imprisonment is [, IF] imposed for
17 a violation of

18 (1) (a)(1) - (7) of this section, the sentence of imprisonment [,] shall
19 be for a definite term of not more than 10 days;

20 (2) (a)(8) of this section, and the person the laser sighting device
21 was aimed, shined, focused, or pointed at or upon was not a uniformed or
22 otherwise clearly identified peace officer who was engaged in the performance of
23 official duties, the sentence of imprisonment shall be for a definite term of not
24 more than 10 days.

25 * Sec. 3. AS 11.61.110 is amended by adding a new subsection to read:

26 (d) In this section, "laser sighting device" means a hand-held device that emits
27 a laser light or beam that is designed to be used by its operator to indicate, mark, or
28 identify a specific position, place, item, or object.

The Washington Times

4/30/99

September 11, 1998,
Student in trouble over use of laser

A Maryland college student will stand trial in Pennsylvania on an assault charge for shining a red laser beam into the eyes of a teen-ager who was helping operate a roller coaster at Hershey Park.

Michael Woods, 21, of Towson, Md., is charged with simple assault, a misdemeanor. Justice Dominic Pelino dismissed a charge of reckless endangerment.

At Wednesday's hearing, Kevin Stage, 17, testified that he was one of five attendants operating the Great Bear roller coaster at the Hershey, Pa., park on Independence Day when "the red dot of a laser-beam pointer" was trained on his right eye by someone standing in line to get on the ride.

The teen-ager said he experienced blurred vision and a tingling in his right eye that interfered with his ability to operate the ride.

Chicago Sun-Times September 2, 1998,

Suburb curbs kids' use of laser pens

There are laws in place to keep kids from tagging buildings with paint. Now Chicago Ridge has become the first municipality in Illinois to keep kids from tagging things with a beam of light.

The village board of the southwest suburb voted unanimously Tuesday to outlaw the sale of laser pointers to anyone younger than 18 without an adult present, and to limit their possession of them. Parents face fines of up to \$ 750 if their kids violate the ordinance.

The pen-size devices emit a concentrated beam that shines a red dot where it is pointed.

"What we want is to keep these out of the hands of kids who are using them," Village President Eugene Siegel said. "They're dangerous."

Officials were acting on a recommendation from the police department and a warning issued late last year by the federal Food and Drug Administration that said looking at a laser pointer's beam can be more intense than looking at the sun.

Children may think they are nothing more than high-tech flashlights, but the devices are not toys, the FDA warned.

That news would surprise some kids, who say the beams have become common in school.

At the Chicago Ridge Mall on Tuesday, Tom McGreal, 15, of Oak Lawn, said he has a laser pen. "In class, at football games, I usually do it to people I

know," he said. "It's kind of fun to watch them turn around and look to see where it's coming from.

"It's kind of stupid to pass a law; it's not like these pens have ever hurt anybody."

Despite the fun students have with them, the devices can be dangerous, said Dr. James McDonnell, director of pediatric ophthalmology at Loyola University Medical Center.

"If you hunker down and look at the beam, it can blind you," McDonnell said. "Every one of those things has a warning: Do not point at someone's eyes."

The American Academy of Ophthalmology issued a warning about the devices this year.

The time it takes to do damage depends on the beam's intensity, but even a second or two can be too much, McDonnell said.

Chicago Ridge joins a handful of communities, including Westchester County, N.Y., and Ocean City, Md., that have passed similar laws. A laser pointer's beam can be more intense than the sun.

The Washington Post
August 28, 1998, Friday, Final Edition

Virginia Beach Aims Law at Laser Pointers; Shining the Devices Into Eyes Is Banned

Seema Mehta, Washington Post Staff Writer

A proliferation of laser pointers that annoyed and alarmed performers along the Virginia Beach boardwalk this season has led the City Council to restrict the use of the devices, making it a crime to shine the red beams into anyone's eyes.

Virginia Beach joined a few municipalities -- including Westchester County, N.Y., and Ocean City, Md. -- that are regulating the increasingly popular laser pointers. The city's ordinance, adopted Tuesday, provides for a maximum \$ 1,000 fine and 60 days in jail for a violation.

Ocean City's law punishes harassment or annoyance caused by pointing a laser beam on any body part. In Westchester, sales of the device to minors are prohibited.

The lipstick-size pointers -- which sell for less than \$ 10 on the Virginia Beach waterfront -- emit a red laser beam that resembles that emitted by a laser-equipped rifle sight. Brief exposure can cause distraction and temporary vision loss; prolonged exposure can cause severe eye injuries and retinal burning, according to the Food and Drug Administration.

The pointers, originally developed for corporate presentations and at first selling for hundreds of dollars, have raised concerns across the country. Police

officers fear they will mistake the toy beams for real weapons, or vice versa.

At Hersheypark in Pennsylvania on July 4, officials said, a roller coaster operator suffered temporary blindness when a laser was pointed at his eyes; a 20-year-old man was charged with disorderly conduct. A fan was ejected from a New Jersey Nets game last winter after trying to distract a player making a free throw.

"The reason we limited [the law] to the eyes was that we felt that was the greatest safety concern," said Randall Blow, Virginia Beach's deputy city attorney. He said the pointers have also been used to spotlight unsuspecting bodies on the boardwalk, but "we have other ordinances to address situations like that, such as disturbing the peace."

Boardwalk performers were among the most vocal supporters of the law. Bobby Melatti, director of beach events, said a juggler who balanced on a nine-foot unicycle cut his show short several times because the pointers distracted him.

"We felt, like most novelty items, this would run its course and hopefully fade into oblivion next season," Melatti said.

Westchester County's law, adopted in June, was prompted by incidents such as one last January, when a Peekskill police officer noticed a red laser beam dancing across his chest. Officers discovered the beam was coming from a pointer held by a 21-year-old man, whom they arrested on charges of menacing.

"Laser pointer devices were being directed at police officers, and police officers were having to make a split-second decision to determine if it was a laser pointer or a laser sight on a weapon," said Westchester County legislator Bill Ryan, who is drafting a similar New York State law.

Ryan said the beams also could cause drivers to lose control of their cars.

Besides making it illegal to sell the pointers to minors, Westchester requires that stores keep the devices in locked cases or behind the counter.

Schools also have been wrestling with the problem. The Prince William County School Board has adopted a rule forbidding students to bring pointers to school without staff approval.

The New York City Board of Education adopted a similar resolution last week.

"It's a nuisance problem having to do with little lights shining on a chalkboard during class or a student walking down the hall and finding certain parts of [his] body are being highlighted," said Douglas Eadie, Prince William's director of student services.

May 07, 1998, Thursday, Final Edition
High-Tech Troublemakers; Students Playing With Laser Pointers Worry
School Officials

Ann O'Hanlon, Washington Post Staff Writer

The latest dispatch from the principal's office: Classroom high jinks have gone high-tech.

Laser pointers, the tools that adults use to highlight items in slide presentations, have fallen into the hands of adolescents who are taking the instruments to school and shining them at classmates, teachers and bus drivers, according to Washington area school officials.

The Prince William School Board last night discussed a proposal to add laser pointers to the list of items banned at school, and officials in several other districts say the devices have increasingly become a source of student mischief.

Administrators in Prince William say they proposed the ban in part because of a recent warning by the U.S. Food and Drug Administration about possible eye damage from misuse of the pointers, although an FDA spokeswoman said yesterday that the risk of injury is "very small."

A student typically gets hold of a laser pointer by taking it from the briefcase of an unsuspecting parent, school administrators say. Then children flash the intense, focused beam at school friends and sometimes at employees.

A teacher at Parkland Middle School in Montgomery County recently had a laser beamed on her in class while her back was turned, said the school's principal, Jay Breakiron.

Breakiron blames the phenomenon on TV shows that glamorize laser guns and other high-tech weapons. "It's a Terminator-type thing," he said.

Principals also say that more laser pointers are turning up at school because they have become more affordable. The tiny instruments, which once cost at least \$ 100, now are selling for as little as half that at stores such as Radio Shack and Staples.

"They're pretty cheap right now. It's the latest craze," said Kris Pedersen, associate superintendent in Prince William, who calls the lights "an incredible disruption in the classroom." Douglas Eadie, the district's director of student services, said, "Sometimes it is directed at members of the opposite sex, certain body parts."

One student made his own light show at a wrestling match a couple of months ago, said Geoffrey Dodge, principal of Godwin Middle School in Prince William.

"A kid in the stands from another school was shooting in onto the mat," Dodge said. "I just had one of my security guys go up there and tell him he had to cut it out."

The FDA issued its advisory to parents and school officials in December, saying that it was concerned about the "use of these products as children's toys" and that "recent price reductions have led to wider marketing." The agency said it had received two reports of eye injuries from laser pointers -- one from a parent and one from an ophthalmologist.

FDA spokeswoman Sharon Snider said yesterday that it probably would take

prolonged staring at the light from a laser pointer to cause eye damage.

The Prince William School Board will vote on the proposed ban at the end of the month. Under the measure, a student would need permission from a teacher or an administrator to bring a laser pointer to school.

Board member Steven Keen (Woodbridge) said he wonders if the proposal is nit-picking. "We're not here to regulate every single thing that a student can do," he said.

At Montgomery Village Middle School in Gaithersburg, Principal Don Barron decided yesterday to get some educational benefit from a confiscated laser pointer.

"The teacher had it and was showing it to me," he said. "I'm a former physics teacher. So what we did was we turned it into a physics lesson and clapped erasers together," shining the light through the chalk dust so students could see the beam.

Barron said he understands the craze. "It's neat to look at them," he said.

HB

155

Alaska State Legislature



Committees
State Affairs Committee
Special Committee
on Fisheries
Special Committee
on Oil and Gas

Representative Hal Smalley
District 9

During Session:
Alaska State Capitol
Juneau, Alaska 99801-1182

During Interim:
145 Main St Lp. Ste. 221
Kenai, Alaska 99611

Memorandum

To: Representative Pete Kott, Chairman
House Judiciary Committee
From: Representative Hal Smalley *HAS*
Date: April 8, 1999
Re: HB 155

I would respectfully request that you hold a hearing on HB 155, "An act relating to municipal assembly forms of representation and apportionment", at your earliest convenience.

Thank you for your consideration of this request.

Alaska State Legislature

Committees

State Affairs Committee

Special Committee
on Fisheries

Special Committee
on Oil and Gas



Representative Hal Smalley
District 9

During Session:
Alaska State Capitol
Juneau, Alaska 99801-1182

During Interim:
145 Main St Lp. Ste. 221
Kenai, Alaska 99611

SPONSOR STATEMENT – HB 155

HB 155, "An act relating to municipal assembly forms of representation and apportionment," allows the municipal assemblies to adopt their reapportionment plan and take it to the voters after the state's plan has been approved and put in place. In other words, no later than the 1st general election that occurs after adoption of a final state redistricting plan.

Currently, AS.29.20.060 requires the assembly to determine whether its existing apportionment meets state standards no later than two months after the official report of the federal decennial census. If it is determined that the existing apportionment fails to meet the standards set forth in AS 29.20.060, the assembly must adopt an ordinance providing for reapportionment and present it to the voters within 6 months of its determination under AS 29.20.080. Because of this requirement, it is virtually impossible for the assembly to develop and adopt a plan with districts that follow state precinct lines since the new lines are unknown to them at the time that they must put their plan in place.

This bill will also allow the assembly to go back to the voters whenever a final state redistricting plan is changed as a result of federal or court action.

With the passage of this bill, municipalities will now have the tools necessary to adopt a plan with districts that follow state precinct lines. This will ultimately eliminate the confusion at the polling places and make life easier for the voters and the election workers.

FISCAL NOTE

Revision Date: _____ Dept. Affected: Community & Regional Affairs
 Title: An Act relating to municipal assembly BRU: _____
forms of representation and apportionment. Component: _____
 Sponsor: REPRESENTATIVES Smalley, Davis,...
 Requestor: House CRA Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current (FY99) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

This legislation would have no fiscal impact on the department.

Prepared by: Yvonne Chase, Acting Director Phone: 465-4709
 Division: Division of Administrative Services Date: 4/7/99
 Approved by Commissioner: *M. J. ...* Date: 4/7/99
 Agency: Community & Regional Affairs

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Juneau, Alaska 99801-2105

MEMORANDUM

March 25, 1999

SUBJECT: Sectional Summary (HB 155)

TO: Representative Harold Smalley
Attn: Katrina Matheny

FROM: Tamara Brandt Cook
Director *TBC*

Please note at the outset that this bill amends sections of law that are home rule limitations, that is, the changes made in this bill would apply to home rule as well as general law boroughs. (AS 29.10.200(11))

Sec. 1. Requires a borough assembly to propose and submit to voters one or more forms of assembly representation not later than the first regular election that occurs after adoption of a final state redistricting plan. Under Art. VI, sec. 10(a) of the state constitution the final state redistricting plan must be adopted no later than 90 days after the board has been appointed and the official reporting of the decennial census of the United States. Existing law requires the assembly to act not later than the first regular election held after the report of a federal decennial census.

Sec. 2. Like the change in sec. 1, this ties the date the assembly must determine whether the existing apportionment of the assembly meets legal standards to the date a final state redistricting plan is adopted rather than the date of the federal decennial census report itself.

Sec. 3. This permits the assembly to provide for a change in an existing apportionment of the assembly whenever a final state redistricting plan is changed as a result of federal or court action.

Sec. 4. This is primarily a technical amendment to accommodate the change made in sec. 3. If an ordinance providing for reapportionment has not been approved by the voters by the time limit, and if the current apportionment does not meet the standards established by law, the commissioner of community and regional affairs reapportions the assembly.

TBC;jdr:glc
99-158.jdr



KENAI PENINSULA BOROUGH

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BUSINESS (907) 262-8608 FAX (907) 262-8615
EMAIL: assemblyclerk@borough.kenai.ak.us

LINDA MURPHY, CMC
BOROUGH CLERK

March 5, 1999

The Honorable Hal Smalley
Alaska House of Representatives
State Capitol, Room 428
Juneau, AK 99801-1182

Dear Representative Smalley:

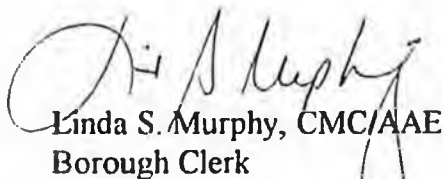
As we discussed in Juneau last month, I am requesting that you sponsor a bill to change the date when the borough assembly is required to present its reapportionment plan to the voters. Currently, AS 29.20.080 requires the assembly to determine whether its existing apportionment meets state standards **not later than two months after the official report of the federal decennial census**. If it is determined that the exiting apportionment fails to meet the standards set forth in AS 29.20.060, the assembly must adopt an ordinance providing for reapportionment and **present it to the voters within 6 months of its determination under AS 29.20.080**.

As you know, this is some time prior to the date the state's reapportionment plan is completed and approved by the U. S. Department of Justice. It is, therefore, virtually impossible for the Kenai Peninsula Borough to develop and adopt a plan with districts that will follow state precinct lines since the new lines are unknown to us at the time we, by law, must put our plan in place. It would seem more appropriate to require the assembly to adopt its reapportionment plan and take it to the voters **after** the state's plan has been approved and put in place.

Any assistance you can provide to see that this issue is addressed this year will be very much appreciated. If you have any questions, please give me a call at your convenience.

Sincerely,

Kenai Peninsula Borough


Linda S. Murphy, CMC/AEE
Borough Clerk

cc: Sandy Stout, Director, Division of Elections
Kevin Richie, Executive Director, Alaska Municipal League



217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907)586-1325, Fax (907)-463-5480

April 2, 1999

Representative Hal Smalley
State Capitol, Room 428
Juneau, AK 99801

Dear Representative Smalley:

On behalf of the members of the Alaska Municipal League, we are writing in support of HB 155, relating to municipal assembly forms or representation and apportionment. We appreciate your interest in trying to solve a problem for municipal governments. They will benefit greatly if they are able to adopt their reapportionment plan after the state has put theirs in place.

According to the 1999 AML Policy Statement adopted at the annual meeting in Fairbanks:

B. Elections and Reapportionment. The League supports legislation that would allow for reapportionment after state districts have been reapportioned.

Whatever we can do to eliminate the confusion of voters and encourage them to participate in elections will be better for the state.

Thank you for your continued support of Alaska's municipalities.

Sincerely,

Kevin C. Ritchie
Executive Director

cc: AML Education and Local Government Subcommittee

HB

158

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN
JUDICIARY COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON UTILITY RESTRUCTURING, MEMBER
SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT &
TOURISM, MEMBER

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us



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SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

SPONSOR STATEMENT

HOUSE BILL 158

NOTICE OF INSURANCE CANCELLATION TO ELDERLY

House Bill 158 would accomplish two things: permit the Division of Insurance to gather more in-depth statistical information regarding health insurance policies and mandate a different notice system for personal insurance policyholders over age 67.

One section of the bill deals with notices of cancellation on personal insurance policies. An 83-year old constituent thought he was insured and had paid his premium. He was in an accident, went to file a claim and was told that he didn't have coverage. He is out \$80,000. This constituent was carrying for an invalid spouse, dealing with finding a new live-in caregiver, and does not remember receiving any premium notices from his insurance company. Currently, written notices are sent by first class mail and thus there is no proof that the intended recipient received the mail.

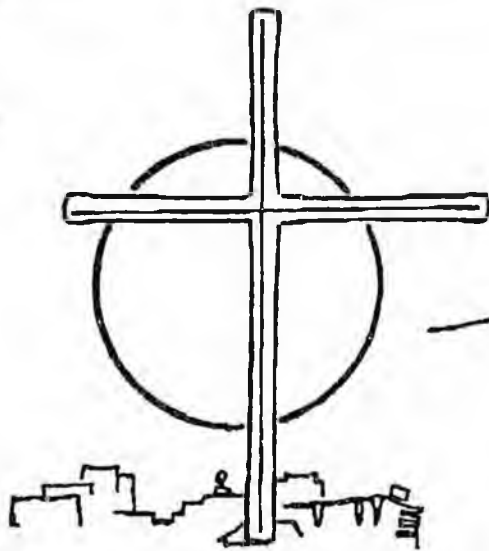
This legislation would leave the current system in place for Alaskans under age 67. If an Alaskan is 67 or over, the legislation offers additional time for notices thus giving our older Alaskans more time to respond to a notice of cancellation. Under the legislation, three notices are required, similar to the current system; however, the last notice must be sent by certified mail instead of first-class mail. This extra step will let a recipient know that there is something extra important in this mailing regarding insurance coverage. The legislation covers "personal insurance" which does not include annuity contracts, life insurance, and health insurance or title insurance.

Another section of the legislation addresses a question that many in the Legislature have been struggling with for years: How many Alaskans are covered by individual and group health insurance policies? This bill permits the Division to gather such information in connection with the preparation of the Director's annual report. As the Legislature deals with many health insurance related issues, it is important to know how many Alaskans will be impacted by our decisions. We are particularly concerned about the impact on non-ERISA plans which are covered by legislative mandates and ERISA plans which are exempt from legislative mandates. There are many guesstimates floating around but nothing concrete. This provision should not put an undue burden on the health insurance industry as each company should already know how many individual or group health policies they write in Alaska and how many people are covered by those policies.

Your support of this legislation would be appreciated.

ED1:03/24/99

APR 07 1999



CENTRAL LUTHERAN CHURCH

1420 CORDOVA STREET, ANCHORAGE, ALASKA 99501-5231
TELEPHONE (907) 277-1622 FAX (907) 272-6235

April 7, 1999

Representative Norman Rokeberg
Alaska State Legislature Fax # 1-907-465-2040

Dear Norm:

I am pleased to write a letter of support for House Bill #158. As you know, I have worked with an elderly couple from Central Lutheran, who did not renew their car insurance. He had money to pay for the insurance. He remembers getting the first notice but thought he had paid it since he could not find the billing later. He does not remember getting any other notices. He had an accident and paid \$25,000.00 to settle the claim.

We do not know how they missed the mail. They had a care giver who has confessed to taking advantage of their finances for over \$40,000.00. It is possible that she threw the mail away. It is one thing for an insurance company to have proof that a letter was mailed, it is another for the party to get the mail. Having a certified letter would force someone at the address to sign for the letter.

I believe that a change in the Alaska State law is in order, especially for the elderly. Lines 26-30 in House Bill #158 cover that subject very well. Many states require that a registered letter or in some states a certified letter be sent prior to cancellation. Alaska's law requires only that the company show proof that the letter was put in the mail. A letter can be mailed but that does not mean that it arrived at the address.

If I can be of any further help, please contact me.

Sincerely, *Ronald D. Martinson*

Ronald D. Martinson
RONALD D. MARTINSON
(907) 338-2481

FREDERICK (FRITZ) P. LAMPE
(907) 333-5597



April 7, 1999

The Honorable Norman Rokeberg
Chair, House Labor and Commerce Committee
State Capitol, Room 17
Juneau, Alaska 98011-1182
Facsimile: (907) 465-2040

House Bill 158
Alliance Position: OPPOSE

Dear Chairman Rokeberg:

I am writing to express the opposition of the members of the Alliance of American Insurers to H.B. 158, which is scheduled to be heard before the House Labor and Commerce Committee on April 7, 1999. The Alliance is a national property and casualty trade association of almost 300 members across the country.

House Bill 158, Sec. 2(2), adds a new mandate on insurers to give three written notices of policy cancellation to policyholders over 67 years old. Current law does not distinguish between age groups and cancellation only requires one notice. This bill would require insurers to track all personal lines insureds by age. Homeowner policies, for example, make no reference to the age of the insured, as that is irrelevant.

House Bill 158 would not only add new costs, it would require carriers to contact all insureds to obtain policyholder age. Many will refuse from past experience in other states.

We therefore urge your "NO" vote on H.B. 158.

Sincerely,

A handwritten signature in cursive script, appearing to read "Peter Gorman".

Peter Gorman
Associate Vice President and Regional Manager

Copies to Members of the House Labor and Commerce Committee

APR 01 1999

**WASILLA AREA SENIORS, INC.
BOARD OF DIRECTORS**

RESOLUTION 99-01

A resolution of the Board of Directors of Wasilla Area Seniors, Inc. supporting the passage of HB 158 concerning notice of cancellation of insurance to seniors, and allowing the State to gather more information about health insurance policies issued in the State;

WHEREAS, Wasilla Area Seniors, Inc., an Alaska non-profit corporation, own and operate the Floyd D. Smith Senior Center, also known as Wasilla Senior Center, is a senior service provider and is aware of problems seniors encounter, and;

WHEREAS, Wasilla Area Seniors, Inc. is located in an area that is experiencing the most rapid growth of seniors in the State, and;

WHEREAS, Wasilla Area Seniors, Inc. recognizes the need for adequate personal insurance for the elderly, and;

WHEREAS, Wasilla Area Seniors, Inc. also recognizes the need for ample notice to seniors on issues concerning this insurance, and clear concise communication on these matters;

NOW THEREFORE: LET IT BE RESOLVED, that the Board of Directors of Wasilla Area Seniors, Inc. hereby supports the passage of HB 158 .

PASSED this 1st day of April 1999 at a regular meeting of the Board of Directors.

Elmer Feltz Date: April 1, 1999
Elmer Feltz, President, Board of Directors

ATTEST:
June A. Robinette Date: 4/1/99
June Robinette, Secretary, Board of Directors

AGENET

Resolution in Support of HB158

An act relating to the annual report of the Director of the Division of Insurance and to Notice of Cancellation of Personal Insurance

Whereas the senior citizen population of Alaska is rapidly growing, as part of a national trend of increased longevity due to better nutrition, health care, and increased standards of living; and

Whereas the number of older Alaskans age 65+ is projected to grow from 22,095 in 1990 to 80,927 by 2015; and

Whereas the availability of and maintenance of adequate personal insurance is crucial to protect the elderly and their possessions; and

Whereas the elderly are often not alert to notices which they receive in the mail, unless the importance of the items is clearly identified; and

Whereas HB158 will mandate a different system for notifying policyholders over age 67 of cancellation of personal insurance policies; and

Whereas HB158 will provide the means for the Division of Insurance to gather more in-depth statistical information regarding health insurance policies issued in the State of Alaska in order to provide important information for the State Legislature as it addresses health insurance issues;

Now therefore the Alaska Geriatric Exchange NETWORK (AGENET) strongly encourages the Twenty-First Alaska Legislature to pass HB158.

Adopted this 29th day of March, 1999.

Douglas McCoy
President, AGENET
Executive Director
Nome Community Center, Inc.
XYZ Senior Center/Munaqsri Senior Services
P.O. Box 98, Nome, AK 99762
907-443-5259

AGENET is a thirty member organization of providers of senior services throughout the State of Alaska linking more than 70 agencies that provide community-based elderly services in order to support one another and promote efforts to meet the needs of the growing senior population.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 158

Revision Date/Time (Note if correction) _____ Dept. Affected Commerce & Economic Development
 Title An Act relating to the annual report of the director BRU Insurance
of Insurance and to the notice of cancellation of personal insurance Component Insurance'
 Sponsor Rokeburg
 Requester _____ Component Serial No. 354

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on this component.

Prepared by Marianna K. Burke, Director Phone 465-2215
 Division Insurance Date/Time 4/6/99 2:32 PM
 Approved by Commissioner Deborah B. Sedwick Date 4.6.99
 Agency Commerce & Economic Development

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ALASKA STATE LEGISLATURE

House of Representatives

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JUDICIARY COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON UTILITY RESTRUCTURING, MEMBER
SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT &
TOURISM, MEMBER

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us



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Representative Norman Rokeberg

SECTIONAL ANALYSIS HOUSE BILL 158

AN ACT RELATING TO THE ANNUAL REPORT OF THE DIRECTOR OF THE DIVISION OF INSURANCE AND TO NOTICE OF CANCELLATION OF PERSONAL INSURANCE

Prepared by Rep. Norman Rokeberg

- Section 1:** Adds to AS 21.06.100 concerning the Director [of Insurance] annual report. Permits gathering of statistical information regarding health insurance, including the number of individual and group policies sold in Alaska.
- Section 2:** Adds a new subsection (2) to AS 1.36.220(a) concerning cancellation of a personal insurance policy (e.g., automobile, homeowners) if that notice is to an Alaska 67 years or older.

ED1:03/24/99

Sec. 21.36.220. Notice of cancellation.

(a) An insurer may not exercise its right to cancel a personal insurance policy unless a written notice of cancellation is mailed to the named insured as required by AS 21.36.260 at least 30 days before the effective date of cancellation. However, if cancellation is for nonpayment of premium, the notice shall be mailed to the named insured as required by AS 21.36.260 at least 20 days before the effective date of cancellation. If cancellation is for a reason described in AS 21.36.210(a)(2) or (f)(2) or (3), the notice shall be mailed to the named insured as required by AS 21.36.260 at least 10 days before the effective date of cancellation.

(b) An insurer may not exercise its right to cancel a policy of business or commercial insurance unless a written notice of cancellation is mailed to the named insured as required by AS 21.36.260 and to the agent or broker of record at least 60 days before the effective date of cancellation. However, if cancellation is for nonpayment of premium, or for failure or refusal of the insured to provide the information necessary to confirm exposure or necessary to determine the policy premium, the notice shall be mailed to the named insured as required by AS 21.36.260 and to the agent or broker of record at least 20 days before the effective date of cancellation. If cancellation is (1) for conviction of the insured of a crime having as one of its necessary elements an act increasing a hazard insured against, or (2) for discovery of fraud or material misrepresentation made by the insured or a representative of the insured in obtaining the insurance or by the insured in pursuing a claim under the policy, the notice shall be mailed to the named insured as required by AS 21.36.260 and to the agent or broker of record at least 10 days before the effective date of cancellation.

(c) If an insurer cancels a policy under this section, it shall return or credit any unearned premium to the agent or broker of record or directly to the insured or premium finance company, if applicable, before the effective date of cancellation, except that

(1) an unearned premium shall be returned or credited within 45 days after notice of cancellation is given, if cancellation is for

(A) nonpayment of premium, including nonpayment of additional premiums, calculated in accordance with the current rating manual of the insurer, justified by a physical change in the insured property, a change in its occupancy or use, or a change in payroll, receipts, values, or other exposure units;

(B) conviction of the insured of a crime having as one of its necessary elements an act increasing a hazard insured against;

(C) discovery of fraud or material misrepresentation made by the insured or a representative of the insured in obtaining the insurance or by the insured in pursuing a claim under the policy;

(D) failure or refusal of the insured to provide the information necessary to confirm exposure or necessary to determine the policy premium;

(E) a reason described in AS 21.36.210(a)(2);

(2) the insurer shall perform or waive the audit before the effective date of the cancellation and return or credit any estimated unearned premium before the effective date of cancellation if the policy is subject to audit and is cancelled for a reason other than those described in (1)(A) - (D) of this subsection.

(d) The division may require an insurer to perform an audit that the insurer has elected to waive under (c) of this section.

(e) A notice of cancellation of insurance required to be given under this section must include or be accompanied by a statement of the reason for the cancellation.

History -

(Sec. 1 ch 28 SLA 1970; am Sec. 35, 36 ch 29 SLA 1987; am Sec. 143 ch 67 SLA 1992)

Amendment Notes -

The 1992 amendment, effective July 1, 1992, substituted "45 days" for "30 days" in the introductory language in paragraph (c)(1).

Editors Notes -

Section 49, ch. 29, SLA 1987 provides that the 1987 amendments to this section apply to insurance policies entered into or renewed on or after August 28, 1987.

Collateral Refs -

What constitutes waiver by insured or insured's agent of required notice of cancellation of insurance policy. 86 ALR4th 886.

Sec. 21.36.210. Limits on cancellation.

(a) An insurer may not exercise its right to cancel a policy of personal automobile insurance except for the following reasons:

(1) nonpayment of premium; or

(2) the driver's license or motor vehicle registration of either the named insured or of an operator who resides in the same household as the named insured or who customarily operates a motor vehicle insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date; this paragraph does not apply to revocation as described under AS 21.89.027.

(b) During the policy period, a modification of automobile physical damage coverage, except coverage for loss caused by collision, whereby provision is made for the application of a deductible amount not exceeding \$100 is not a cancellation of the coverage or of the policy.

(c) [Repealed, Sec. 47 ch 29 SLA 1987].

(d) This section does not apply to

(1) the failure to renew a policy, except as to coverage in force for less than 12 months;

(2) a policy that has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer, unless it is a renewal policy.

(e) [Repealed, Sec. 47 ch 29 SLA 1987].

(f) An insurer may not exercise its right to cancel a policy of personal insurance other than personal automobile insurance, except for the following reasons:

(1) nonpayment of premiums, including nonpayment of additional premiums, calculated in accordance with the current rating manual of the insurer, justified by a physical change in the insured property or a change in its occupancy or use;

(2) conviction of the insured of a crime having as one of its necessary elements an act increasing a hazard insured against;

(3) discovery of fraud or material misrepresentation made by the insured or a representative of the insured in obtaining the insurance or by the insured in pursuing a claim under the policy;

(4) discovery of a grossly negligent act or omission by the insured that substantially increases the hazards insured against; or

(5) physical changes in the insured property that result in the property becoming uninsurable.

History -

(Sec. 1 ch 28 SLA 1970; am Sec. 1 ch 13 SLA 1972; am Sec. 32 - 34, 47 ch 29 SLA 1987; am Sec. 1 ch 67 SLA 1998)

Amendment Notes -

The 1998 amendment, effective September 1, 1998, added "; this paragraph does not apply to revocation as described under AS 21.89.027" at the end of paragraph (a)(2).

Editors Notes -

Section 49, ch. 29, SLA 1987 provides that the 1987 amendments to this section apply to insurance policies entered into or renewed on or after August 28, 1987.

History Reports -

For report on ch. 28, SLA 1970 (HCSSB 311), see 1970 House Journal, p. 428.

Sec. 21.36.260. Proof and method of mailing notice.

If a notice is required from an insurer under this chapter, the insurer shall

- (1) mail the notice by first class mail to the last known address of the insured; and
- (2) obtain a certificate of mailing from the U.S. Postal Service.

History -

(Sec. 1 ch 28 SLA 1970; am Sec. 41 ch 29 SLA 1987)

Editors Notes -

Section 49, ch. 29, SLA 1987 provides that the 1987 amendment to this section applies to insurance policies entered into or renewed on or after August 28, 1987.

Sec. 21.36.310. Definitions.

In AS 21.36.210 - 21.36.310,

(1) "business or commercial insurance" means insurance other than personal insurance, reinsurance, life insurance, health insurance, fidelity and surety insurance, title insurance, or an annuity contract;

(2) "nonpayment of premium" means failure of the named insured to discharge when due any obligations of the named insured in connection with the payment of premium on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit;

(3) "personal automobile insurance" means insurance not related to business or commercial activities, covering automobile liability, uninsured or underinsured motorists, automobile medical payments, or automobile physical damage, that is delivered or issued for delivery in this state, and under which the insured vehicles are of the following types only:

(A) a motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance, nor rented to others; or

(B) any other four-wheel motor vehicle with a load capacity of 1,500 pounds or less that is not used in the occupation, profession, or business of the insured, nor used as a public or livery conveyance, nor rented to others;

(4) "personal insurance"

(A) means personal automobile insurance, or insurance covering

(i) loss of or damage to real property that is used predominantly for residential purposes and that does not consist of more than four dwelling units;

(ii) loss of or damage to personal property, including personal effects, household furniture, fixtures, and equipment located in not more than four dwelling units; or

(iii) legal liability of natural persons for loss of, damage to, or injury to persons or property if the insurance does not cover liability arising from or in connection with business or commercial activities;

(B) does not include an annuity contract or a policy of life insurance, health insurance, or title insurance;

(5) "renewal" or "renew" means

(A) the issuance and delivery of an insurance policy at the end of the policy period, that replaces a policy previously issued and delivered by the same insurer;

(B) the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term; or

(C) the extension of the term of a policy beyond its policy period or term under a provision for extending the policy by payment of a continuation premium.

History -

(Sec. 1 ch 28 SLA 1970; am Sec. 3 ch 13 SLA 1972; am Sec. 42 ch 29 SLA 1987; am Sec. 145 ch 67 SLA 1992; am Sec. 34 ch 56 SLA 1996)

Amendment Notes -

The 1992 amendment, effective July 1, 1992, deleted "wet marine and transportation insurance as defined in AS 21.34.900" from the list of exclusions in paragraph (1).

The 1996 amendment, effective September 9, 1996, substituted "health" for "disability" in paragraph (1) and in subparagraph (4)(B).

Editors Notes -

Section 49, ch. 29, SLA 1987 provides that the 1987 amendment to this section applies to

insurance policies entered into or renewed on or after August 28, 1987.

Sec. 21.89.027. Motor vehicle insurance following driver's license revocation.

(a) Notwithstanding AS 21.36.210, an insurer offering insurance in this state may not (1) refuse to issue or renew motor vehicle liability insurance coverage; (2) cancel an existing policy of motor vehicle liability insurance; (3) deny a covered claim; or (4) increase the premium on a motor vehicle liability insurance policy if the refusal, cancellation, denial, or increase results only from the fact that the person's driver's license was revoked under AS 28.15.183 or 28.15.185 for possession or consumption of alcohol in a situation where the person was not driving and was in violation of AS 04.16.050 or a municipal ordinance with substantially similar elements.

(b) The provisions of (a) of this section may not prevent an insurer from underwriting or rating based upon loss experience in the same manner as it would for a person who has not had the person's driver's license revoked under AS 28.15.183 or 28.15.185.

History -

(Sec. 2 ch 67 SLA 1998)

Effective Date Notes -

Section 2, ch. 67, SLA 1998, which enacted this section, took effect on September 1, 1998.

Editors Notes -

Section 3, ch. 67, SLA 1998 provides that this section applies to a policy of insurance that is entered into or renewed on or after September 1, 1998.

Fax Cover Sheet FOR REP. N. Rokeberg

MAR 31 1999

To:	
Name:	Douglas McCoy
Organization:	Agnet, Inc.
Voice:	
Fax:	907-486-4503

X COVER TO: REP: NORMAN Rokeberg - *see questions below & reply from Doug*

From:	
Name:	Brenda Stamblock Admin Assist
Organization:	Homes Senior Citizens Inc.
Voice:	
Fax:	907-235-3739
E-Mail:	

Date:	3-31-99
Pages:	2 - includes cover sheet

Note: Hi Doug, I spoke to Fred Lau, Administrator for HSC, Inc about questions I had pertaining to this bill. Fred has asked me to ask you the questions and perhaps you could answer them for me.

- 1) What is the definition of "personal insurance"???
- 2) Why would "personal insurance" be the only thing we would look at, it specifically does NOT include, annuity contracts, life insurance and Health Insurance? I feel that the Life Insurance and Health Insurance is also vital to this bill and should be included. My reason for this suggestions is that we have many seniors who have early dementia, have mini-strokes, or who totally ignore their mail and end up throwing it in the trash.
- 3) I feel that this bill should also include that it be "mandatory" that all insurance companies must also notify an alternate person who has been listed on the policies to be notified that the insurance premiums are due. This way the alternate person listed can do the follow up to make sure the premiums are paid on ANY insurance policy that the elderly may have coverage under. All insurance companies should request an updated alternate once a year at time of renewal.

Let me or Fred know what you think. Thanks much for your attention to this.

**facsimile
TRANSMITTAL**

to: Brenda Steinblock, Homer Senior Citizens
fax #: 907-235-3739
re: HB158
date: March 31, 1999
pages: 2, including this cover sheet.

MAR 31 1999

Brenda,

Thank you for your interest in the Insurance bill and your good questions. From what I can gather of the bill, the section of the state law has to deal with personal insurance policies which are automobile and homeowner insurance policies. I don't know if such items as health insurance, life insurance, etc. come under some other statute or regulation. I would suggest that you call Representative Rokeberg's office and ask.

Your concern regarding seniors who ignore their mail and throw it away is exactly the reason that the Representative is wanting to require that there be three notices of cancellation and that the third be by certified mail to make sure that the senior has received it. I personally think that your idea of an alternate contact person would be a good idea (or at least that individuals could request and name an alternate to receive such information). There may be reasons why such a thing would not be legal... the right of individual privacy, persons acting as "conservators" who are not so designated legally, etc... but it probably is an issue that should be raised.

Again, let Norman Rokeberg or his office know of your questions and concerns.

Doug McCoy

From the desk of...

Douglas McCoy
Executive Director
Nome Community Center, Inc.
P.O. Box 88
Nome, AK 99762

907-443-5250
Fax: 907-443-2990

HB

163

HB163
Sectional Analysis for Work Draft D dated 2/2/00
Prepared by the Division of Elections

<u>SECTION</u>	<u>EXPLANATION</u>
1	Election employees exempt from jury service during the months of a primary or general election.
2, 3, 5, 8, 10, 17-25, 29, 31-33, 37, 41, 51, 59, 61-62, 64,	Change the term election judges and clerks to election officials or board members. Change term chairman to chairperson.
4, 79	Allow permanent fund dividend mailing address to be used on the official voter registration record. Requires the PFD division to pay for the printing of the voter registration form.
6	Remove requirement to have registrars. This is outdated due to the NVRA.
7	Remove requirement that Division of Elections post names of voters 40 days prior to an election. Allow for political parties to have one free list per year. This is not an efficient way for voters to identify whether or not they are properly registered. The division will be looking into other methods, such as adding more information to the present Interactive Voice Response (IVR) system that was used to locate a voter's polling place during the 1998 primary and general elections. We are also researching a secure way of posting the voter list on the internet.
9, 11	Revise wording on election board appointments. Board names will continue to be solicited from the party district committees and state central party committees. The member from the which the governor is a member and the party from which the candidate receiving the second highest number of votes may both submit two names. The election supervisor will appoint one from each of the above political parties.

12	Change the wording which appears for a ballot initiative from "For or Against" to "Yes or No." This will make the wording for ballot questions consistent throughout Title 15.
13, 50	Revise to conform to the ballot layout of optical scan ballots. Replace square with oval.
14	Change "major election districts" to "four judicial districts."
15	Change requirement mandating that posters, which provide notice of an election, be placed in each election precinct. This works in rural Alaska but not in urban Alaska. People in urban Alaska rely more on the newspaper for the notice of an election. Posting notices in rural Alaska is an adequate method of providing notice.
16	Remove requirement to include in a broadcast notice the name of the newspaper and the date the newspaper was published.
26	Update to make consistent with the new list maintenance law.
27	Remove requirement for voter to provide former address when voting a questioned ballot. This information is not used to determine the voter's eligibility and is not printed on the questioned oath and affidavit.
28	Deletes reference to a second ballot stub. Optical scan ballots only have one stub.
30	Expands the list of acceptable identification which can be provided by a voter when voting.
34, 47	Change improperly marked ballot to spoiled ballot

35	<p>Remove the requirement that a voter, after voting, return the ballot to an election official for removal of the stub.</p> <p>Accu-Vote ballots only have one stub, which is removed by the election official when issuing the ballot.</p>
36, 38	<p>Clarifies that this section applies to hand-count precincts.</p>
39	<p>Clarifies that this section applies to hand-count precincts. Makes conforming changes to the ballot layout of optical scan ballots. Repeals the reference to stickers. Clarifies what name variations will be counted for write-in candidates.</p>
40	<p>Prohibits the use of stickers by write-in candidates.</p>
42	<p>Updates the scope of review by the state review board. The terminology in present statute is outdated.</p>
43	<p>Clarifies when ballots and stubs for national and other elections can be destroyed.</p>
44, 53	<p>Clarifies what portions of a ballot will count if someone moves from one house district to another after the 30-day cutoff.</p>
45	<p>Delete requirement that an instruction sheet be provided with each absentee ballot. This is only done with by-mail ballots.</p>
46	<p>Removes requirement that a voter may only vote absentee in-person through an Absentee Voting Official (AVO) in the voter's election district.</p> <p>Allows AVOs to conduct absentee in-person voting on election day</p>
48	<p>This is a new section on early voting. Applies to absentee in-person at the regional election offices. This would only apply to voters residing in house districts for which the regional office has</p>

	<p>jurisdiction. Voters registered in HD 1-9 could vote in this manner at the Juneau office absentee voting station. Voters in HD 10-28 at the Anchorage absentee voting station. Voters registered in HD 29-36 at the Fairbanks office absentee voting station. Voters registered in HD 37-40 at the Nome office absentee voting station.</p> <p>The voter would verify that the registration information on file with the division is current and sign an early voting register. After voting the ballot, the voter would insert their ballot into the Accu-Vote precinct tabulator. Ballots would not be counted until after 8:00 p.m. on election day.</p> <p>If the voter's residence is different from that on the official registration file, the voter will be required to complete an absentee in-person oath and affidavit envelope. The voted ballot would be placed in this envelope and held for review by the regional office.</p> <p>This could significantly reduce the number of absentee ballots requiring review by the regional office. In the 1998 general election, there were 13,646 absentee in-person ballots cast. Of those, 12,038 were full count ballots.</p>
49	<p>Special needs voting. This is a replacement for the current absentee voting by personal representative. Although the division was successful in passing legislation last year to change the personal representative voting process, it is still not working.</p> <p>This would eliminate the requirement of the voter to complete an application. The voter would make a request to an elections official or through a personal contact (family member or friend) to get a special needs ballot.</p> <p>The representative would sign an oath, take the ballot and voting materials to the voter. After voting, the voter completes an oath and affidavit envelope similar to that as required by absentee in-person voting.</p> <p>The representative would serve as a witness and return the ballot to the election official.</p>
52	<p>Allows the questioned review board to finish their review of questioned ballots up to 15 days after the election. Current law</p>

	says the review must be completed by the 10 th day.
54	Clarifies that hand-count rules apply to challenges which arise during a recount concerning the voter's intent.
55	Allows the director to set the counting schedule for all by-mail elections.
56	Allows a declaration of candidacy to be filed by any reliable electronic means.
57	Requires that in order to appear on the general election ballot, each candidate for governor must have a lieutenant governor candidate and vice versa.
58	Requires that write-in candidates file a declaration with the division.
60	Make the requirements of a nominating petition the same as for declaration of candidacy.
63	Eliminate the requirement to have 10 copies of a constitutional amendment at the polling place. One copy will be posted in each precinct.
65	References new section on special needs voting.
66	Change the date material is required from candidates for the Official Election Pamphlet (OEP) from 7/15 to 7/22.
67	Change the mailing date of the OEP from 30 days before the election to 22 days.
68-70	Update definitions to conform with statute changes.

71	Update definition of felony involving moral turpitude to make it broader and easier to administer.
72-75	Update definitions to conform with statute changes.
76	Clarifies that is it the responsibility of local governments to determine if a voter qualifies to vote in a local election.
77	Adds the transportation of ballots to be exempt from state procurement procedures.
78	Makes conforming change to Title 39. Candidate must file a financial disclosure statement under AS 39.50 simultaneously with filing a declaration of candidacy.
80-81	Repealer section. Repeals Article 4 – Punch Card Voting and other outdated sections.
82	Gives authority to the director to adopt regulations to implement this Act.
83	Revisor s Instructions Global changes in Titles 3, 15, 44 and 46: "election district, electoral district or house election district" to "house district" "election districts" to "house districts" "chairman" to "chairperson"
84-86	Effective date clauses.

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: HB 163

1 Page 1, line 12, following "'chairman';":

2 Insert "relating to initiative, referendum, and recall petitions;"

3 Page 27, following line 11:

4 Insert new bill sections to read:

5 **"* Sec. 67.** AS 15.45.110(a) is amended to read:

6 (a) The petitions may be circulated throughout the state [ONLY BY A
7 SPONSOR AND] only in person.

8 *** Sec. 68.** AS 15.45.110(c) is amended to read:

9 (c) A circulator [SPONSOR] may not receive payment or agree to receive
10 payment that is greater than \$1 a signature, and a person or an organization may not
11 pay or agree to pay an amount that is greater than \$1 a signature, for the collection
12 of signatures on a petition.

13 *** Sec. 69.** AS 15.45.110(e) is amended to read:

14 (e) A person or organization that violates (c) or (d) [(b) - (d)] of this section
15 is guilty of a class B misdemeanor.

16 *** Sec. 70.** AS 15.45.130 is amended to read:

17 **Sec. 15.45.130. Certification of circulator [SPONSOR].** Before being filed,
18 each petition shall be certified by an affidavit by the person [SPONSOR] who
19 personally circulated the petition. The affidavit must state in substance that (1) the
20 person signing the affidavit meets the residency, age, and citizenship qualifications
21 of AS 15.05.010 [IS A SPONSOR], (2) the person is the only circulator of that
22 petition, (3) the signatures were made in the circulator's [SPONSOR'S] actual
23 presence, (4) to the best of the circulator's [SPONSOR'S] knowledge, the signatures
24 are those of the persons whose names they purport to be, (5) the signatures are of

1 persons who were qualified voters on the date of signature, (6) the person has not
2 entered into an agreement with a person or organization in violation of
3 AS 15.45.110(c), (7) the person has not violated AS 15.45.110(d) with respect to that
4 petition, and (8) the circulator [SPONSOR] prominently placed, in the space provided
5 under AS 15.45.090(5) before circulation of the petition, in bold capital letters, the
6 circulator's [SPONSOR'S] name and, if the circulator [SPONSOR] has received
7 payment or agreed to receive payment for the collection of signatures on the petition,
8 the name of each person or organization that has paid or agreed to pay the circulator
9 [SPONSOR] for collection of signatures on the petition. In determining the
10 sufficiency of the petition, the lieutenant governor may not count subscriptions on
11 petitions not properly certified.

12 * **Sec. 71.** AS 15.45.340 is amended to read:

13 **Sec. 15.45.340. Circulation [BY SPONSOR].** The petitions may be
14 circulated throughout the state [ONLY BY A SPONSOR AND] only in person.

15 * **Sec. 72.** AS 15.45.360 is amended to read:

16 **Sec. 15.45.360. Certification of circulator [SPONSOR].** Before being filed,
17 each petition shall be certified by an affidavit by the person [SPONSOR] who
18 circulated the petition. The affidavit shall state in substance that (1) the person
19 signing the affidavit meets the residency, age, and citizenship qualifications of
20 AS 15.05.010 [IS A SPONSOR], (2) the person is the only circulator of the petition,
21 (3) the signatures were made in the circulator's [SPONSOR'S] actual presence, and
22 (4) to the best of the circulator's [SPONSOR'S] knowledge, the signatures are the
23 signatures of persons whose names they purport to be. In determining the sufficiency
24 of the petition, the lieutenant governor may not count subscriptions on petitions not
25 properly certified.

26 * **Sec. 73.** AS 15.45.580 is amended to read:

27 **Sec. 15.45.580. Circulation [BY SPONSOR].** The petitions may be
28 circulated [ONLY BY A SPONSOR AND] only in person throughout the state or
29 senate or house [ELECTION] district represented by the official sought to be recalled.

30 * **Sec. 74.** AS 15.45.600 is amended to read:

31 **Sec. 15.45.600. Certification of circulator [SPONSOR].** Before being filed,
32 each petition shall be certified by an affidavit by the person [SPONSOR] who

1 personally circulated the petition. The affidavit shall state in substance that (1) the
2 person signing the affidavit meets the residency, age, and citizenship qualifications
3 of AS 15.05.010 [IS A SPONSOR], (2) the person is the only circulator of that
4 petition or copy, (3) the signatures were made in the circulator's [SPONSOR'S]
5 actual presence, and (4) to the best of the circulator's [SPONSOR'S] knowledge, the
6 signatures are those of the persons whose names they purport to be. In determining
7 the sufficiency of the petition, the director may not count subscriptions on petitions
8 not properly certified."

9 Renumber the following bill sections accordingly.

10 Page 31, line ¹⁸20, following "AS 15.20.740;":

11 Insert "AS 15.45.110(b);"

12 Page 31, line 21:

13 Delete "sec. 88"

14 Insert "sec. 96"

15 Page 32, line 1:

16 Delete "15.45.580,"

17 Page 32, line 9:

18 Delete "Section 85"

19 Insert "Section 93"

20 Page 32, line 10:

21 Delete "sec. 87"

22 Insert "sec. 95"

23 Delete "1999"

24 Insert "2000"

ALASKA STATE LEGISLATURE

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House of Representatives
House District 34

Sponsor Statement for HB 163 Changes to Election Law

House Bill 163 is primarily a housekeeping bill that will update current election law to conform with the optical scanning ballot tabulation system.

The goal of House Bill 163 is to make the electoral process more efficient while continuing to maintain the integrity of the process.

In addition to housekeeping measures which are outlined in an accompanying sectional analysis, House Bill 163 contains three policy changes which will help make the election process more efficient for both the electorate and the Division of Elections.

- *Write-in Candidates*

It became apparent after the 1998 gubernatorial election that the state needs clear procedures for the qualification of write-in candidates and for the counting of votes. House Bill 163 will prohibit the use of stickers by write-in candidates. Write-in stickers cannot be used with the state's optical scan ballot tabulation system. The Division has been advised by the manufacturer, Global Elections Systems, that stickers could damage the Accu-Vote machines.

- *Revision of Absentee by Personal Representative Process*

The current statutory process is too cumbersome and the resulting mistakes by people attempting to assist other voters have resulted in the disqualification of many ballots. Current law requires the personal representative to deliver an application to the voter, return the application to an election official, pick up the ballot and voting material, deliver the material to the voter and then return the voted ballot and material to an election official, ~~and multiple signatures on a complex form~~. The new process would allow the personal representative to deliver an application and voting material at one time and then return the voted ballot and material to an election official. The same checks and balances remain in place to protect the integrity of the electoral process.

♦ *Change to the Absentee In-Person Voting Process*

Early voting would apply to absentee voting in the regional election office absentee voting stations. Voters registered in a house district in which the regional election office has jurisdiction would no longer be required to complete an absentee oath and affidavit envelope. This will significantly reduce the number of absentee ballots requiring review by the division of elections. If a voter's residence address information is different from that which appears on the division's records at the time of voting, the voter will be required to complete an oath and affidavit envelope.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 163

Revision Date/Time (Note if correction) _____ Dept. Affected Office of the Governor
 Title An Act relating to voters and elections BRU Elective Operations
 Component Elections
 Sponsor Representative James
 Requester House State Affairs Committee Component No. 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual	(12.5)					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	(12.5)	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	(12.5)					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	(12.5)	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The division will no longer be required to pay for the printing of the voter registration form in the annual permanent fund dividend booklet

Prepared by Gail Fenumia *Gail Fenumia*
 Division Division of Elections
 Approved by LI Governor Fran Ulmer *Fran Ulmer*
 Agency Office of the Lieutenant Governor

Phone 465-3935
 Date/Time 2/3/00 2:53 PM
 Date 02/03/2000

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MEMORANDUM

January 25, 2000

SUBJECT: HB 163 Amendments bringing Alaska statutes into line with Buckley v. American Constitutional Law Foundation, No. 97-930, 525 U.S. 182 (1999) (Work Order No. 21-LS0769)

TO: Representative Eric Croft
Attn: Peggy Wilcox

FROM: Kathryn L. Kurtz *KK*
Legislative Counsel

Enclosed is the draft amendment to HB 163 that you requested to bring Alaska's initiative law into line with the United States Supreme Court decision in Buckley v. American Constitutional Law Foundation, 525 U.S. 182, 119 S.Ct. 636, 142 L.Ed.2d 599 (1999).

Name Badges

The Buckley case found a Colorado provision requiring circulators to wear name tags unconstitutional. Alaska has a similar requirement in AS 15.45.110(b). That section requires a sponsor circulating an initiative petition to display identification containing the sponsor's name. This requirement is clearly unconstitutional under Buckley. To solve this problem, the enclosed amendment would simply repeal AS 15.45.110(b).

Registered Voter Requirement

The second problem presented by the Buckley case is more difficult to solve. In Buckley, the court invalidated a Colorado statute requiring that petition circulators be registered voters. The court reasoned that such a restriction unduly limited the number of people who could convey the initiative proponent's message. Buckley, 119 S.Ct. at 643-44. The court seemed particularly concerned about the exclusion of individuals who are eligible to vote, but for political reasons not willing to register to vote, from the pool of petition circulators. *Id.* at 644. The court suggested that the purposes of the registration requirement advanced by the state were better served by the state's residency requirement--which was not challenged in the case. Similarly, no "eligible to vote" qualification was challenged in the Buckley case. *Id.* at 645.

Alaska also requires, albeit indirectly, that petition circulators be registered voters. Under AS 15.45.110(a), only sponsors may circulate petitions. Sponsors are, by definition, the qualified voters who subscribed to the initiative application. AS 15.45.060, art. XI, sec. 2,

Representative Eric Croft

January 25, 2000

Page 2

Constitution of the State of Alaska. Although the constitution does not expressly make registration a prerequisite to being a "qualified voter," AS 15.05.010(6) does. So, Alaska law effectively requires all petition circulators to be registered voters--precisely what the Buckley case prohibits.

The enclosed draft removes the AS 15.45.100(a) provision that says only sponsors can circulate petitions. It also changes all references to "sponsor" in AS 15.45.130 to "circulator." I believe this is the approach Mr. Botelho was suggesting. See Botelho letter at 4 - 5. I left intact the AS 15.45.090 reference to sponsors, on the theory that sponsors would be the ones responsible for getting the petitions to non-sponsor circulators.

Mr. Botelho seems to believe that this approach is free of constitutional problems. See Botelho letter at 4. I do not share this view. Article XI, section 3 of the Constitution of the State of Alaska provides:

After certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor **for circulation by the sponsors**. If signed by qualified voters, equal in number to ten per cent of those who voted in the preceding general election and resident in at least two-thirds of the house districts of the State, it may be filed with the lieutenant governor.

(emphasis added).

This provision might be read narrowly to imply that only sponsors may circulate initiative petitions, and this may be the basis for the existing statutory requirement to that effect. There is some support for this narrow reading of the constitution in a comment made by Delegate Sweeney at the Constitutional Convention. Discussing a proposal that would require at least 10 sponsors for each initiative petition, she argued for a 15% signature requirement rather than 10%, noting that "[i]f you have 4,000 votes to get **it requires each sponsor to secure 400 votes**, and I believe it should be left at fifteen percent." Proceedings of the Alaska Constitutional Convention at 1028 (December 17, 1955) (emphasis added). This comment seems to suggest that Mrs. Sweeney envisioned each of those ten sponsors going out and getting 400 signatures each, and that she did not find this requirement especially burdensome. However, Mrs. Sweeney was one delegate among many, and it may be that a court would not find her remarks representative of the intent of the body.

A less literal reading would make sponsors responsible for gathering the necessary signatures, but allow them to delegate some of the actual work of soliciting signatures to others. This is the approach that the enclosed draft takes.

Although I am not entirely comfortable with this approach, I feel it is superior to the only other option I could think of--which would be to change statutory references requiring that sponsors be "qualified voters" to requiring that they meet the residency, age, and citizenship requirements of AS 15.05.010. That approach is problematic, because the constitution uses

Representative Eric Croft
January 25, 2000
Page 3

the term "qualified voters" for both petition sponsors and petition signers. Given that, it would be odd to require different qualifications for the two groups in statute. Also, the Buckley case does not say that a state can not require initiative sponsors or signers to be registered voters--the issue in that case was limited to petition circulators.

Your observation that a provision of the state constitution which conflicted with the federal constitution should be considered void was, by the way, correct--the Alaska Supreme Court has observed that "provisions of state law, including state constitutional law, are void if they conflict with federal law." Hickel v. Southeast Conference, 846 P.2d 38, 51 n.22 (Alaska 1992).

Referenda and Recalls

The Buckley case only specifically addressed the circulation of initiative petitions. However, I think the same logic extends to referendum and recall petitions as well. The enclosed amendment addresses referendum and recall petitions as well as initiative petitions.

Other Changes

This amendment also changes the effective date of HB 63 from 1999 to 2000.

If I may be of further assistance, please advise.

KLK:glc:pl
00-021.glc

Enclosure

BUCKLEY, SECRETARY OF STATE OF COLORADO
v. AMERICAN CONSTITUTIONAL LAW FOUNDATION, INC., et al.

certiorari to the united states court of appeals for the tenth circuit

No. 97-930. Argued October 14, 1998--Decided January 12, 1999

Colorado allows its citizens to make laws directly through initiatives placed on election ballots. The complaint in this federal action challenged six of the State's many controls on the initiative-petition process. Plaintiffs-respondents, the American Constitutional Law Foundation, Inc., and several individuals (collectively, ACLF), charged that the following prescriptions of Colorado's law governing initiative petitions violate the First Amendment's freedom of speech guarantee: (1) the requirement that petition circulators be at least 18 years old, Colo. Rev. Stat. §1-40-112(1); (2) the further requirement that they be registered voters, *ibid.*; (3) the limitation of the petition circulation period to six months, §1-40-108; (4) the requirement that petition circulators wear identification badges stating their names, their status as "VOLUNTEER" or "PAID," and if the latter, the name and telephone number of their employer, §1-40-112(2); (5) the requirement that circulators attach to each petition section an affidavit containing, *inter alia*, the circulator's name and address, §1-40-111(2); and (6) the requirements that initiative proponents disclose (a) at the time they file their petition, the name, address, and county of voter registration of all paid circulators, the amount of money proponents paid per petition signature, and the total amount paid to each circulator, and (b) on a monthly basis, the names of the proponents, the name and address of each paid circulator, the name of the proposed ballot measure, and the amount of money paid and owed to each circulator during the month, §1-40-121. The District Court struck down the badge requirement and portions of the disclosure requirements, but upheld the age, affidavit, and registration requirements, and the six-month limit on petition circulation. The Tenth Circuit affirmed in part and reversed in part. That court properly sought guidance from this Court's recent decisions on ballot access, see, e.g., *Timmons v. Twin Cities Area New Party*, 520 U. S. 351, and on hand-bill distribution, see, e.g., *McIntyre v. Ohio Elections Comm'n*, 514 U. S. 334. The Tenth Circuit upheld, as reasonable regulations of the ballot-initiative process, the age restriction, the six-month limit on petition circulation, and the affidavit requirement. The court struck down the requirement that petition circulators be registered voters, and also held portions of the badge and disclosure requirements invalid as trenching unnecessarily and improperly on political expression. This Court agreed to review the Court of Appeals dispositions concerning the registration, badge, and disclosure requirements. See 522 U. S. ____.

Precedent guides this review. In *Meyer v. Grant*, 486 U. S. 414, this Court struck down Colorado's prohibition of payment for the circulation of ballot-initiative petitions, concluding that petition circulation is "core political speech" for which First Amendment protection is "at its zenith." *Id.*, at 422, 425. This Court has also recognized, however, that "there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order ... is to accompany the democratic processes." *Storer v. Brown*,

415 U. S. 724, 730; see *Timmons*, 520 U. S., at 358; *Anderson v. Celebrezze*, 460 U. S. 780, 788.

Held: The Tenth Circuit correctly separated necessary or proper ballot access controls from restrictions that unjustifiably inhibit the circulation of ballot-initiative petitions. Pp. 7-22.

(a) States have considerable leeway to protect the integrity and reliability of the ballot-initiative process, as they have with respect to election processes generally. "[N]o litmus-paper test" will separate valid ballot-access provisions from invalid interactive speech restrictions, and this Court has come upon "no substitute for the hard judgments that must be made." *Storer*, 415 U. S., at 730. But the First Amendment requires vigilance in making those judgments, to guard against undue hindrances to political conversations and the exchange of ideas. See *Meyer*, 486 U. S., at 421. The Court is satisfied that, as in *Meyer*, the restrictions in question significantly inhibit communication with voters about proposed political change, and are not warranted by the state interests (administrative efficiency, fraud detection, informing voters) alleged to justify those restrictions. This judgment is informed by other means Colorado employs to accomplish its regulatory purposes. Pp. 7-8.

(b) Beyond question, Colorado's registration requirement drastically reduces the number of persons, both volunteer and paid, available to circulate petitions. That requirement produces a speech diminution of the very kind produced by the ban on paid circulators at issue in *Meyer*. Both provisions "limi[t] the number of voices who will convey [the initiative proponents'] message" and, consequently, cut down "the size of the audience [proponents] can reach." *Meyer*, 486 U. S., at 422, 423.

The ease with which qualified voters may register to vote does not lift the burden on speech at petition circulation time. There are individuals for whom, as the trial record shows, the choice not to register implicates political thought and expression. The State's strong interest in policing lawbreakers among petition circulators by ensuring that circulators will be amenable to the Secretary of State's subpoena power is served by the requirement, upheld below, that each circulator submit an affidavit setting out, among several particulars, his or her address. ACLF did not challenge Colorado's right to require that all circulators be residents, a requirement that more precisely achieves the State's subpoena service objective. Assuming that a residence requirement would be upheld as a needful integrity-policing measure--a question that this Court, like the Tenth Circuit, has no occasion to decide because the parties have not placed the matter of residence at issue--the added registration requirement is not warranted. Pp. 8-13.

(c) The Tenth Circuit held the badge requirement invalid insofar as it requires circulators to display their names. The District Court found from evidence ACLF presented that compelling circulators to wear identification badges inhibits participation in the petitioning process. Colorado's interest in enabling the public to identify, and the State to apprehend, petition circulators who engage in misconduct is addressed by the requirement that circulators disclose their names and addresses on affidavits submitted

with each petition section. Unlike a name badge worn at the time a circulator is soliciting signatures, the affidavit is separated from the moment the circulator speaks, when reaction to the message is immediate and may be the most intense, emotional, and unreasoned. Because the badge requirement compels personal name identification at the precise moment when the circulator's interest in anonymity is greatest, it does not qualify for inclusion among "the more limited [election process] identification requirement[s]" to which this Court alluded in *McIntyre*, 514 U. S., at 353. Like the Tenth Circuit, this Court expresses no opinion on the constitutionality of the additional requirements that the badge disclose whether the circulator is paid or volunteer, and if paid, by whom. Pp. 13-16.

(d) The Tenth Circuit invalidated the requirement that ballot-initiative proponents file a final report when the initiative petition is submitted insofar as that requirement compels disclosure of each paid circulator by name and address, and the total amount paid to each circulator. That court also rejected compelled disclosure in monthly reports of the name and address of each paid circulator, and the amount of money paid and owed to each circulator during the month in question. In ruling on these disclosure requirements, the Court of Appeals looked primarily to this Court's decision in *Buckley v. Valeo*, 424 U. S. 1. In *Buckley*, the Court stated that "exacting scrutiny" is necessary when compelled disclosure of campaign-related payments is at issue, but nevertheless upheld, as substantially related to important governmental interests, the reporting and disclosure provisions of the Federal Election Campaign Act of 1971. Mindful of *Buckley*, the Tenth Circuit did not upset Colorado's disclosure requirements as a whole. Notably, the Court of Appeals upheld the State's requirements for disclosure of payors, in particular, proponents' names and the total amount they have spent to collect signatures for their petitions. Disclosure of the names of initiative sponsors, and the amounts they have spent to gather support for their initiatives, responds to Colorado's substantial interest in controlling domination of the initiative process by affluent special interest groups. The added benefit of revealing the names of paid circulators and amounts paid to each circulator, the lower courts fairly determined from the record as a whole, has not been demonstrated. This Court expresses no opinion whether other monthly report prescriptions regarding which the Tenth Circuit identified no infirmity would, standing alone, survive review. Pp. 16-20.

(e) Through less problematic measures, Colorado can and does meet the State's substantial interest in regulating the ballot-initiative process. To deter fraud and diminish corruption, Colorado retains an arsenal of safeguards. To inform the public about the source of funding for ballot initiatives, the State legitimately requires sponsors of ballot initiatives to disclose who pays petition circulators, and how much. To ensure grass roots support, Colorado conditions placement of an initiative proposal on the ballot on the proponent's submission of valid signatures representing five percent of the total votes cast for all candidates for Secretary of State at the previous general election. Furthermore, in aid of efficiency, veracity, or clarity, Colorado has provided for an array of process measures not contested here by ACLF. P. 21.

120 F. 3d 1092, affirmed.

Ginsburg, J., delivered the opinion of the Court, in which Stevens, Scalia, Kennedy, and Souter, JJ., joined. Thomas, J., filed an opinion concurring in the judgment. O'Connor, J., filed an opinion concurring in the judgment in part and dissenting in part, in which Breyer, J., joined. Rehnquist, C. J., filed a dissenting opinion.

[http://www.caselaw.findlaw.com/cgi-bin/getcase.pl?court=US&vol=000
&invol=97-930#section2](http://www.caselaw.findlaw.com/cgi-bin/getcase.pl?court=US&vol=000&invol=97-930#section2)

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December 10, 1999

The Honorable Fran Ulmer
Lieutenant Governor
Office of the Lieutenant Governor
P.O. Box 110015
Juneau, AK 99811-0015

Re: *Effect of Buckley v. American Constitutional
Law Foundation on State of Alaska Initiative
Statutes*
A.G. file no: 663-99-0171
1999 Op. Att'y Gen. No. 2

Dear Lt. Governor Ulmer:

I. Introduction

We have prepared this opinion to advise you and your staff about the effect on Alaska statutes of a recent United States Supreme Court decision. The decision is *Buckley v. American Constitutional Law Foundation*, 119 S. Ct. 636, 142 L. Ed. 2d 599, 67 U.S.L.W. 4043 (1999), in which the Court invalidated certain requirements set out in Colorado law regarding initiative petitions. This is important to Alaska because the *Buckley* case will affect some of Alaska's laws on initiative petitions. The holding of *Buckley* leads to the conclusion that a few of Alaska's laws governing initiatives are clearly unconstitutional, and that these laws should therefore be amended and not enforced until the constitutional defects are cured.¹

¹ As you will see from the discussion below, the Court's holding in *Buckley* as applied to certain of Alaska's election statutes satisfies the requirements of our supreme court's holding in *O'Callaghan v. Coghill*, 888 P.2d 1302, 1304 (Alaska 1995) (executive branch may abrogate a statute which is clearly unconstitutional under a United States Supreme Court decision dealing with a similar law, without having to wait for another court decision specifically declaring the statute unconstitutional).

**II. *Buckley* Invalidates Requirements on Residency, Identification Badges,
and Reporting of Payments to Individual Petition Circulators**

The Court in *Buckley* invalidated three types of requirements for initiative petitions set out in Colorado's statutes and constitution. First, the Court struck down the requirement that initiative petition circulators be registered voters. *Buckley*, 119 S. Ct. at 644. Second, the Court invalidated the requirement that initiative petition circulators wear identification badges containing the circulator's name. *Buckley*, 119 S. Ct. at 646. Third, the Court invalidated the requirement that proponents of an initiative report to the state the names and addresses of all paid circulators and the amounts paid to each circulator. *Id.* at 647. The Court found that the three controls at issue were excessively restrictive of political speech, in violation of the First Amendment to the United States Constitution.

III. Impact of *Buckley* Decision on Alaska Law Regarding Initiatives

A. Registered Voter Requirement

There are a number of provisions in Alaska's constitution and statutes that may be affected by the holding of *Buckley* invalidating the requirement that initiative petition circulators be registered voters. First, Alaska law requires that persons who sponsor, sign, or circulate initiative petitions be "qualified voters," and part of the test for being a qualified voter is that the person be registered to vote. An explanation of "qualified voter" is set out in two places. Alaska Statute 15.05.010, entitled "voter qualification," provides that

A person may vote at any election who

(1) is a citizen of the United States;

(2) is 18 years of age or older;

...

(4) has been a resident of the state and of the election district in which the person seeks to vote for at least 30 days just before the election; and

(6) *has registered before the election as required under AS 15.07 and is not registered to vote in another jurisdiction.*

(Emphasis added.) Similarly, AS 15.60.010, entitled "definitions," provides:

(25) "qualified voter" means a person who has the qualification of a voter and is not disqualified as provided by art. V, sec. 2, of the state constitution and AS 15.05.030.

However, the scope of *Buckley's* prohibition on requiring that an initiative petition circulator be a registered voter is not entirely clear. First, it is unclear whether the *Buckley* Court meant to include petition signers as well as circulators in its holding on this point. The Alaska Constitution and Alaska statutes require that initiative petition signers and circulators be "qualified voters."² The constitutional provisions addressing the requirements for an initiative petition are article XI, sections 2 and 3.³ The statutes requiring that qualified voters sign and circulate an

² There are similar requirements for a referendum set out in the constitutional provisions referenced below and in Alaska Statutes 15.45.250 – 15.45.465.

³ The Alaska Constitution, article XI, section 2, sets out the requirements for an application for an initiative or referendum as follows:

An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by not less than one hundred *qualified voters* as sponsors, and shall be filed with the lieutenant governor. If he finds it in proper form he shall so certify. Denial of certification shall be subject to judicial review.

(Emphasis added.)

The Alaska Constitution, article XI, section 3, sets out the requirements for a petition for an initiative or referendum as follows:

(continued. . .)

initiative petition are AS 15.45.030(2), AS 15.45.060, AS 15.45.100, AS 15.45.120, AS 15.45.130(5), and AS 15.45.140.

Under *O'Callaghan*, 888 P.2d 1304, the holding of *Buckley* should be read narrowly and limited to its express terms. Under the language set out in *Buckley*, the Court struck down the requirement that petition circulators be registered voters. The Court did not address the issue of a requirement set out in state law that persons who sign an initiative petition application be registered voters.⁴ Therefore, Alaska could retain the requirements set out in the Alaska Constitution and statutes that petition signers be qualified voters. However, it is clear that Alaska may not retain the requirement that petition circulators be qualified voters. The Court in *Buckley* suggested that the requirement that petition circulators be registered be replaced with a requirement that the circulators provide an affidavit demonstrating that they are residents of the state. *Id.* at 644.⁵

Under this limiting analysis, article XI, sections 2 and 3, of the Alaska Constitution would stand. Similarly, the following statutes would stand: AS 15.45.030, AS 15.45.060, AS 15.45.100, AS 15.45.120, AS 15.45.130(5), and AS 15.45.140. However, AS 15.45.110(a)

(...continued)

After certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor for circulation by the sponsors. If signed by *qualified voters*, equal in number to ten per cent of those who voted in the preceding general election and resident in at least two-thirds of the election districts of the State, it may be filed with the lieutenant governor.

(Emphasis added.)

⁴ In *Buckley* the Colorado law challenged did require that persons who signed initiative petitions be "registered electors" at the time of signing. *Id.* at 119 S. Ct. 640-641 n. 7.

⁵ However, the Court expressly reserved judgment on the question of whether an actual statutory residency requirement would be permissible. Until there is authority to the contrary it is not clear that a court would invalidate the residency requirement.

requiring that petition circulators be sponsors would be clearly unconstitutional because of the requirement that sponsors be registered voters. Instead, under *Buckley*, Alaska could impose a requirement that petition circulators provide an affidavit that they are state residents, rather than registered voters. Similarly, many parts of AS 15.45.130 would be clearly unconstitutional because of the requirement that petition circulators be sponsors. Again, the sponsor requirement could be replaced by a requirement that the petition circulators provide an affidavit that they are Alaska residents. We suggest that your staff prepare an administrative regulation to address this matter. Under the regulation an initiative petition circulator could establish Alaska residency either by demonstrating that he or she was a registered voter or by submitting an affidavit attesting to residency in Alaska.

B. Identification Badge Requirement

The *Buckley* Court invalidated the requirement that initiative petition circulators wear identification badges containing the circulators' names. Alaska Statute 15.45.110(b) provides that "a sponsor shall display identification containing the sponsor's name when circulating a petition." Thus, AS 15.45.110(b) is clearly unconstitutional under *Buckley*.

C. Requirement That Payment to Individual Petition Circulators be Reported

The *Buckley* court struck down a requirement that ballot initiative proponents who pay circulators file a final report disclosing information specific to each paid circulator, including the circulators' names and addresses and the total amount paid to each circulator. In contrast, unpaid petition circulators were not required to disclose their names or other information. *Id.* at 646. The *Buckley* Court also invalidated the requirement that initiative proponents file a monthly report containing the names and addresses of each paid circulator and the amount of money paid and owed to each circulator during the month in question. Alaska Statute 15.45.130(8) includes a requirement

that all sponsors file an affidavit containing the petition circulator's name and whether the circulator has or will receive payment for collection of signatures. Alaska's requirements are not the same as those invalidated in *Buckley*. In Alaska, all sponsors, paid or unpaid, must disclose their names. Those sponsors who did receive payment for petition circulation only need identify the fact of payment, not the amount. Therefore, the requirement of identifying the petition circulators by name is not clearly unconstitutional under *Buckley*.

Similarly, it is unclear whether the requirement of identifying whether petition circulators are paid or unpaid is unconstitutional under the holding of *Buckley*, noted above. The requirement set out in AS 15.45.130(8) is not identical to the requirements invalidated in *Buckley*. The Court in *Buckley* left open the question of whether the state could require petition circulators to disclose whether they were paid or unpaid. *Id.* at 646. Therefore, although it is a fairly close question, we would advise that the requirement set out in AS 15.45.130(8), that the sponsor's affidavit state whether petition circulators are paid or unpaid, is not clearly unconstitutional. Finally, the remaining language set out in AS 15.45.130(8) requiring identification of each person or organization that has paid or agreed to pay the sponsor for collection of signatures is allowable under *Buckley*. *Id.* at 647.

IV. Corrective Action in Light of *Buckley*

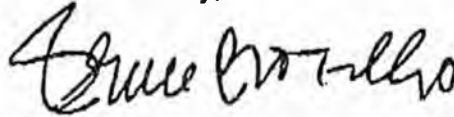
The next consideration is determining what action the state should take regarding the Alaska statutes that are clearly unconstitutional under *Buckley*. First, we recommend that corrective legislation be introduced to cure the constitutional defects. During this past legislative session we worked with the Division of Elections on legislation to update the elections code. This legislation was introduced as HB 163 and SB 120. We are available to work with your staff to add provisions to one of these bills that will address the constitutional problems with the initiative provisions of the

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elections code in light of *Buckley*. Second, for the reasons set out in this opinion we advise you not to enforce the statutes discussed above as we have concluded they are "clearly unconstitutional."

Sincerely,



Bruce M. Botelho
Attorney General

BMB:bw

cc: Janet Kowalski, Director
Division of Elections
Office of the Lieutenant Governor