ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9864 HOUSE JUDICIARY

DANGER! DANGER!

Nothing gets people's attention like a good, loud warning sign. For those who don't have the patience to burrow through privacy policies, here's a set of icons that could flag potential perils.

This site collects financial information

This site collects health information

This site transfers data to other companies

Privacy policy located here

Opt-In

Opt-Out

❷ GIVE PEOPLE A CHOICE

Right now, there's only one way you can be sure that the sensitive details of your life won't spill out over the Internet: Don't log on in the first place.

Short of doing that, consumers who surf the Web do so at their own peril. There are practically no laws to stop sites from ferreting out as much personal information about you as they can get their hands on—and then turning around and selling it to the highest bidder. If an AIDS patient visits a health site to investigate the side effects of the drug AZT, that site is free to market the information to drug companies, insurers, or anyone else.

Things don't have to be this open. What is needed is a way to give consumers more control over what is collected about them and more say over how it can be used. Proposed new federal and state laws would require Web sites to allow consumers to "opt out" of a company's data-collecting and resale operations. How? The new laws would force sites to display a box, which, for example, could be checked off by AIDS patients if they didn't want health-care sites to track the screens they read, store their credit card numbers, or resell any of that information.

OPTING OPTIONS. Of course, many Web sites already let visitors opt out. But most of those opt-out boxes are buried. Some of the proposed new privacy laws, such as a Senate bill being sponsored by Ron Wyden (D-Ore.) and Conrad Burns (R-Mont.), would require every Web site to offer a clearly written, prominently displayed opt-out box. Under such bills, consumers who arrive at the home page of Yahoo, Amazon, or eToys, would be able to find the opt-out box right under their nose, perhaps on the upper righthand corner of their screen.

But even such prominently placed boxes might not be protection enough. Studies indicate that people who may otherwise be worried about online privacy are not going to stop their surfing long enough to read a few sentences of dense boilerplate, and then click on a box. That's why some politicians and privacy advocates are pushing even tougher protections. Rather than put the burden on consumers to opt out, they want to put the burden on companies to get Web surfers to opt in. Before a site could start collecting and selling most data, it would have to get people to check a box giving it permission to do so. A controversial Senate bill to do this has been proposed by Robert Torricelli (D-N.J.).

Industry reaction to giving consumers more choice ranges from genuine enthusiasm to hyperventilating hostility. Among critics, opt-out legislation is generally regarded as the lesser evil. But because information technology is evolving rapidly and the Internet soon will be widely available on tiny cell phones and other devices, some online executives worry that a bulky, federally required opt-out notice might not fit. "Having laws get down to pixel counts and screen layouts won't work," says Max Metral, chief technology officer for PeoplePC.

Nonetheless, most Web executives can live with opt-out. But they are terrified of opt-in. Execs worry that many people simply won't be willing to make the extra effort that opting in requires. As proof, some cite the Children's Online Privacy Protection Act, a 1998 law that limits the collection of information about kids under 13. Among other things, COPPA requires parents to opt in, by written letter or fax to the site, before their children can use online chat rooms and message boards. Just ask Julie Richer, president of San Francisco-based cyberkids.com, a site that targets 7- to 12-year-olds. Richer says COPPA has caused message board and chat room traffic to plummet by more than 40%.

But the objections to the opt-in rule go beyond the issue of reduced traffic. Advertising revenues might also suffer under Torricelli's opt-in proposal. There would be less free information available, making it harder for companies to put together the kinds of demographic profiles that allow them to target customers more precisely. Says DoubleClick President Kevin Ryan: "The Torricelli legislation would have a very negative impact on the Internet."

There's no doubt that opt-in would hike the cost of doing

INFORMED DECISION

"Do you wish to reveal personal medical information at this site?" he asked. "If so, this is how we'll share the data with others"

business online. But it's not as bad as its detractors claim. For one thing, companies would be able to lure people to opt-in by offering Web surfers cash and other incentives. It also would earn the goodwill of privacy-conscious Web surfers. One convert is Gregory Miller, chief Internet strategist for MedicaLogic, a Hillsboro (Ore.) site offering online health information, and a member of the Federal Trade Commission's new advisory committee for online access and security. His company supports opt-in on the theory that customers will be attracted to a site that takes privacy concerns seriously. "If you ask someone for permission to market to them, you build a loyal customer," says Miller. "It's our job to convince the consumer that it's a good idea to opt in by being truthful and showing what the benefit is." One way MedicaLogic would do this: It could persuade diabetes sufferers to surrender their personal information by offering timely updates on advances in treatment. "There are so many users out there, and the Net is growing so rapidly, that you can still get a reasonable return on your investment. People can be persuaded to opt in," says Miller.

Ideally, the best way to protect privacy on the Net is to combine the best elements of both opt-out and opt-in—as the European Union does. Opt-in methods are relatively extreme, so they should be used only for the most sensitive information—your chronic heart problems, for example, or the details of your financial holdings and your sexual preferences. And rules should be strict. No pre-checking of the opt-in box allowed. Instead, companies should be forced to describe what type of information they will be collecting and what they will be doing with it. Finally, opt-in also should be required before a company can resell any information about a Web surfer to a third party or share it with an ad network, since this offers few benefits to the surfer.

Apart from these extreme situations, the rule should be opt-out. Yes, it will be a pain in the neck to offer consumers this much control over how their information is used. But the bigger hurt could come from doing nothing and watching Web surfers opt out of the Internet.

ACCESS

"I don't think you have understood me properly," she said. "Please show me the online profile that you have compiled about me"

❸ SHOW ME THE DATA

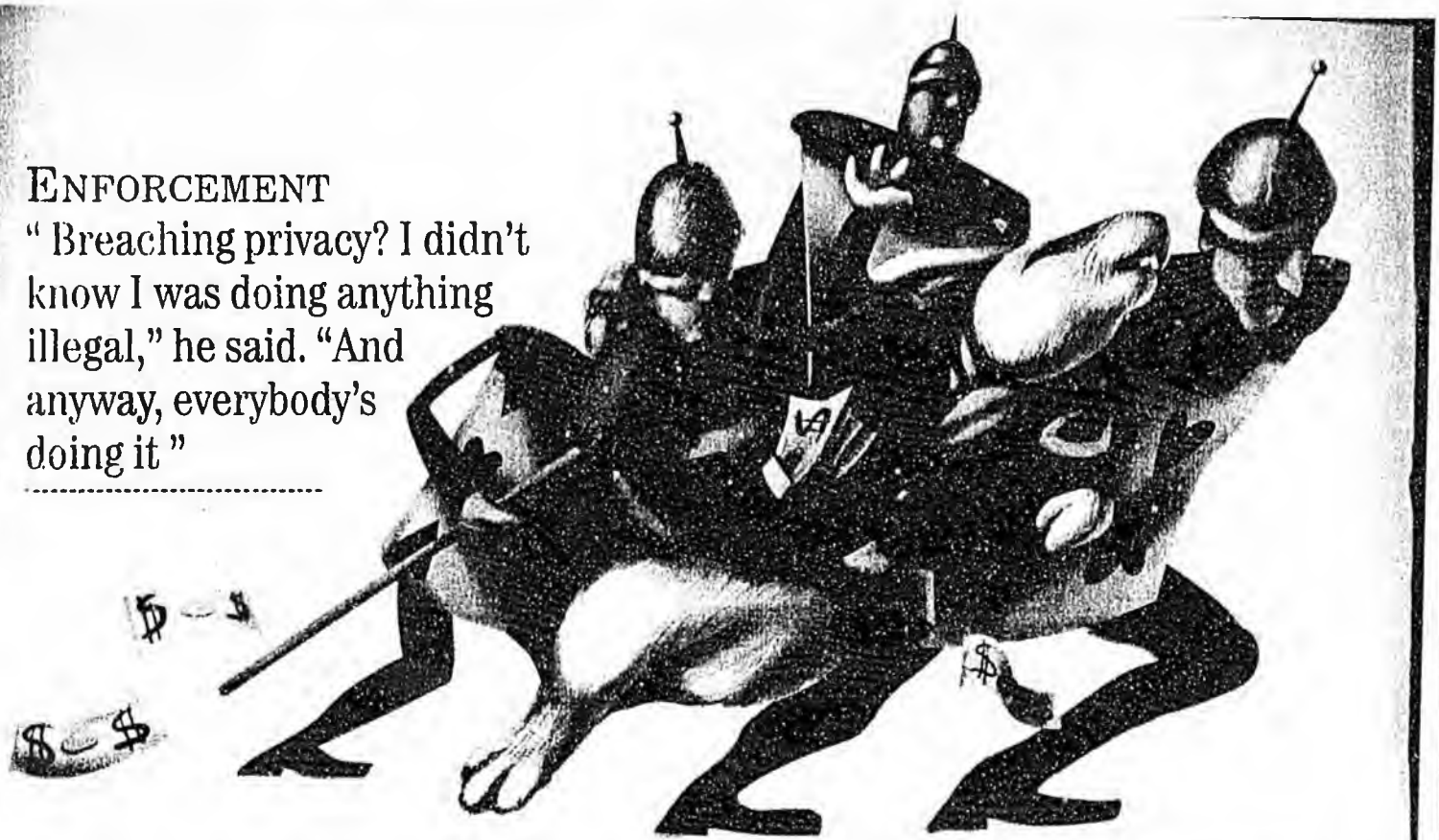
Americans gained a precious thing from the Fair Credit Reporting Act of 1970: the right to inspect their credit records and find out why the bank turned them down on a car loan or a mortgage. No such privileges exist when it comes to online profiles, and it won't be easy to invent them. But some experts say the same kinds of tools Web sites use to track visitors could be used to provide at least a partial window into the data banks that store online profiles.

First, the downsides of doing that: The information a Web site collects is often strewn among multiple databases. Companies may not have the resources to query each one every time a surfer gets curious. What's more, the profile of your browsing habits may be based on cookie files—the bits of identifying code that Web sites deposit on your hard drive so they can monitor your comings and goings. If that's the case, those profiles may be linked only to the computer you browse from, not to your identity in the outside world. Do you really want to request access to that profile? The site would have to authenticate you. And in the process, it would acquire even more information about you than it started with. "It's clear that many systems on the Web were designed without much thought to privacy," says David M. Kristol, a member of the technical staff at Lucent Technologies Inc.'s Bell Labs. "These systems may be quite difficult to retrofit."

Hard, but not impossible. Some of these challenges seem tailor-made for smart software solutions. "If there's data in a database, it's there so that you can access it," says Lorrie Cranor, an AT&T Labs researcher who chairs a privacy working group at the World Wide Web Consortium. Second point: If your profile—warts and all—is pegged to a string of numbers in cookie files, then, in theory, a Web site could manage your request for access by matching it to that same string. Authentication would be far from perfect, but perfection is rare in cyberspace. "We need a button we can push that says 'show me the profile you have on me,'" says personal privacy detective Richard Smith in Boston. "That should be relatively straightforward, because they already have an account mechanism, the sign-in." And if companies refuse? People could take it to the Fair Trade Commission.

The FTC, by the way, is on the case. It established an advisory committee on online access and security that began meeting on Feb. 4. It's made up of 40 people, including lawyers, professors, industry representatives and privacy advocates. And it plans to provide recommendations to the FTC on a range of options by May 15.

Not all the modes of online behavior that come before this committee will be so terribly controversial. Few argue against letting consumers see—and correct if neces-



ENFORCEMENT

" Breaching privacy? I didn't know I was doing anything illegal," he said. "And anyway, everybody's doing it "

sary—sensitive data such as financial records and medical data. But many execs say providing access to routine info would be a costly nuisance of dubious benefit to consumers. "Do you really need to see that Banana Republic says you bought five shirts when you bought four, and do you really need to correct that?" says a lobbyist for one Web company.

But even where it's a nuisance to business, consumers should see more of what goes on behind the curtain. If you're being hounded by a direct marketer who is convinced you are interested in sex toys, you should be able to see whose data generated this profile. The marketer will probably argue that the data are culled from too many places. But there's an easy answer to that, too: Make the marketers keep a source list. Computers excel at keeping track of such things. If they were bad at it, this privacy morass never would have happened.

4 PLAY FAIR OR PAY

Better warnings. More choice. Access to your personal records. These things will go a long way toward protecting your privacy. But they won't be enough. After passing the broad laws that we are proposing, Congress will have to take extra steps to insure that companies honor them.

The reason: Privacy laws are unusually hard to enforce. Say, for example, that you plug information about your stock portfolio into a financial Web site but deny permission for this information to be shared. Say that the site ignores your request and sells the data to a charity anyway. Most likely, you'll never find out about the privacy breach. And even if you do, the infraction didn't cause you any economic harm. That means you wouldn't have much financial incentive to sue the offender—and you'd no doubt have a hard time getting a lawyer to take your case. "Only people with a real privacy vendetta are going to sue," says Jonathan Zittrain, executive director of Harvard University's Berkman Center for the Internet & Society.

Because enforcement is chancy, unethical Web sites will be tempted to cheat on the rules. So, to ensure that crime does not pay, Congress will have to shell out a lot of money for privacy cops. Which agency should handle the job? Some experts have suggested creating a brand-new federal privacy commission—but that would be a political nightmare. Others have suggested a government-authorized, industry-run group such as the Internet Corporation for Assigned Names & Numbers (ICANN). This type of quasigovernmental organization would probably move faster than a typical agency, but it also would be vulnerable to becoming the pawn of the very people they're supposed to regulate.

We favor giving the job to the Federal Trade Commission, which has begun moving aggressively on the issue of Internet privacy and which already enforces the Children's Online Privacy Protection Act, the Truth in Lending Act, and the Fair Credit Reporting Act. The agency should be empowered to impose stiff penalties for violations.

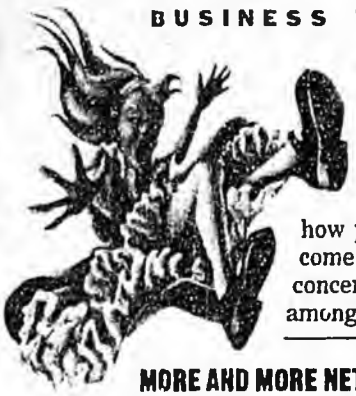
PRIVATE PROTECTION. Of course, any privacy laws will need to evolve. As the Internet makes its way onto cell phones, watches, and other devices, some of the privacy rules that make sense in a world of deskbound PCs may become irrelevant. And the long-term prospect of biometric authentication—where fingerprints and retinal scans may be used as New Age passwords to Web sites—will certainly raise serious new privacy issues. Such a scheme would require nothing less than a national database of identifying biological data, raising the spectre of abuse by both outlaw hackers and Big Brother prosecutors.

Meanwhile, new technologies will certainly emerge to help consumers safeguard their own privacy. This summer may see the launch of the long-awaited P3P software standard, which will provide the means for consumers to set privacy preferences in their browsers and allow them to be automatically alerted when the Web sites they click on have privacy policies that differ from their choices. But this technology won't be a panacea. Privacy isn't just about fancy software. It's also about making sure that information is being used in the ways companies had promised. Technology won't protect people from privacy invasions. Only people can do that.

By Heather Green, Mike France, and Marcia Stepanek in New York, and Amy Borrus in Washington, D. C.

The Cover package continues with a poll on page 96

BUSINESS WEEK/HARRIS POLL



A GROWING THREAT

Cover Story

Concern is rising over privacy on the Net, with a clear majority—57%—now favoring some sort of laws regulating how personal information is collected and used. Regulation may become essential to continued growth in e-commerce, since 41% of online shoppers say they are very concerned over the use of personal information, up from 31% two years ago. Perhaps more telling, among people who go online but have not shopped there, 63% are very concerned.

MORE AND MORE NET SHOPPERS

If you go online from home, work, or another location, have you ever used the Internet, World Wide Web, or online service to purchase anything?

	MARCH, 2000	FEBRUARY, 1999	FEBRUARY, 1998	SEPTEMBER, 1997
Have purchased	45%	31%	23%	19%
Have not purchased	55%	69%	77%	81%

ONLINE BUYERS DREAD J'UNK MAIL

If you have made online purchases, how concerned are you about each of these possibilities?

	VERY CONCERNED	SOMEWHAT	NOT VERY	NOT AT ALL
The company you buy from uses personal information you provide to send you unwanted information				
March, 2000	41%	37%	16%	6%
February, 1998	31%	34%	31%	4%
The company or one of its employees uses your credit-card information to make purchases without your consent				
March, 2000	39%	31%	22%	7%
February, 1998	56%	25%	12%	7%
In the course of the transaction, your credit-card information is made accessible to others who might use it without consent				
March, 2000	42%	34%	17%	6%
February, 1998	56%	28%	11%	3%

NONBUYERS WORRY ABOUT PRIVACY AND FRAUD

If you go online but have not purchased anything, how concerned would you be about each of these possibilities if you were to buy anything?

	VERY CONCERNED	SOMEWHAT	NOT VERY	NOT AT ALL
The company you buy from uses personal information you provide to send you unwanted information				
March, 2000	63%	31%	4%	2%
February, 1998	52%	34%	11%	3%
The company or one of its employees uses your credit-card information to make purchases without your consent				
March, 2000	71%	18%	7%	4%
February, 1998	80%	12%	6%	2%
In the course of the transaction, your credit-card information is made accessible to others who might use it without consent				
March, 2000	76%	20%	3%	*
February, 1998	86%	10%	2%	1%

AN ONLINE PROFILE IS DISCOMFORTING

Some Web sites track users' personal information to match users with products and services that meet the users' needs. Other Web sites profit by sharing or selling user information to other organizations. If you use the Internet, how comfortable would you be if a Web site did the following?

	VERY COMFORTABLE	SOMEWHAT COMFORTABLE	NOT VERY COMFORTABLE	NOT AT ALL COMFORTABLE	DON'T KNOW
Tracked your movements when you browsed the site, but didn't tie that information to your name or real-world identity	9%	28%	28%	35%	*
Merged your browsing habits and shopping patterns into a profile that was linked to your real name and identity	3%	7%	21%	68%	1%
Created a profile of you that included your real name and identity as well as additional personal information such as your income, driver's license, credit data, and medical status	3%	2%	13%	82%	0%

A PRIVACY GUARANTEE WOULD HELP

If you go online, to what extent would a policy that explicitly guarantees the security of your personal information encourage you to do the following?

	A LOT	A LITTLE	NOT AT ALL	DON'T KNOW
Use the Internet more in general				
March, 2000	40%	40%	19%	1%
February, 1998	18%	44%	38%	*
Register on that Web site, providing personal information				
March, 2000	30%	39%	31%	1%
February, 1998	12%	44%	44%	*
Purchase products or service from that company				
March, 2000	37%	36%	26%	1%
February, 1998	15%	42%	43%	0%

If privacy notices let you "opt out"—in other words, you could choose not to have your personal information collected by a particular Web site—how often would you "opt out?"

Always	56%
Sometimes	34%
Rarely	4%
Never	6%

A MAJORITY OF ALL PEOPLE POLLED FAVOR NEW LAWS

Here are three ways tha he government could approach Internet privacy issues. Which one of these three do you think would be best at this stage of Internet development?

	MARCH, 2000	FEBRUARY, 1998
The government should let groups develop voluntary privacy standards, but not take action now unless real problems arise	15%	19%
The government should recommend privacy standards for the Internet, but not pass laws at this time	21%	23%
The government should pass laws now for how personal information can be collected and used on the Internet	57%	53%
None of the above	1%	2%
More than one of the above	*	0%
Don't know	5%	3%
Refused	1%	*

Telephone survey of 1,014 adults between Mar. 2 and Mar. 6 by Harris Interactive. Except where noted, don't know and refused not included. Some categories do not total 100% due to rounding.

*Less than 0.5%

BusinessWeek ONLINE For more complete results and related stories, see the Mar. 20 issue of www.businessweek.com.

HB

275

1-LS1188\I.1
Bannister
2/18/00

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE THERRIAULT

TO: SSHB 275

Page 9, line 15, following "(a)", through line 17:

Delete all material.

Insert "A person, including a trustee, may convey real property to a trust whether or not a trustee of the trust is named as a grantee in the instrument of conveyance. A trustee of a trust may convey real property from a trust whether or not a trustee of the trust is named as a grantor in the instrument of conveyance."

Page 9, line 18:

Delete "or devise"

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. SSHB 275

Revision Date/Time (Note if correction) _____ Dept. Affected Law

Title "An Act relating to the Uniform Probate Code, including trusts and governing instruments; ..." BRU Civil Division

Component Commercial

Sponsor Representative Therriault

Requester House Judiciary Committee Component No. 2211

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						
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 (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

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

SSHB 275, relating to the Uniform Probate Code, is not anticipated to have a fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Joan M Kasson Phone 465-5370

Division Attorney General's Office Date/Time 2/21/00, 10:46 AM

Approved by Commissioner Karl for Bruce M. Botelho, Attorney General Date 2/21/00

Agency Department of Law

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House District 33

House Of Representatives

REQUEST FOR HEARING

To: **Representative Pete Kott, Chairman**
House Judiciary Committee

Subject: **SS HB 275**

Sponsor: **Representative Gene Therriault**

Date: **February 15, 2000**

I would like to respectfully request that SS HB 275 be scheduled for a hearing before the House Judiciary Committee.

House Bill 275 further refines the Uniform Probate Code to continue enhancing the estate planning climate in the State of Alaska. By a nearly unanimous vote in both the House and Senate, in 1996 the Twentieth State Legislature passed a major overhaul of the laws that had governed decedent's estates, guardianships, transfers and trusts since 1972. The changes, based on the 1990 version of the national Uniform Probate Code, as subsequently amended in 1991 and 1993, were made to adapt our laws to the increasing complexity of family structure and investment alternatives that have developed in recent decades. House Bill 275 proposes further revisions to clarify ambiguities, simplify the probate procedure, and minimize tax consequences.

Much of the language is derived from statutes of other states and reflects a consensus of ideas agreed upon by Alaskan estate planning lawyers who have met informally over the last two years to discuss possible improvements.

Email: Representative_Gene_Therriault@legis.state.ak.us

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House District 33

House Bill 275

Sponsor: Representative Gene Therriault

Sponsor Statement

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Much of the language is derived from statutes of other states and reflects a consensus of ideas agreed upon by Alaskan estate planning lawyers who have met informally over the last two years to discuss possible improvements.

Section 1

This section changes a very limited rule of construction contained in the 1993 Uniform Probate Code enacted by the Legislature in 1996.

"Nonademption of specific devises" pertains to the rules that apply when a person creating a trust or will (the decedent) designates that a specific person (specific devisee) is to receive a specific gift (specific devise), and the request is unable to be carried out, because, for example, the decedent lost or sold the gift. The question is whether, when a decedent designates a specific gift, the decedent means to give specifically *that gift* or whether the decedent would want the person to receive the *value* of the gift in the absence of the gift. **Section 1** of HB 275 deals with the specific instance of nonademption when a decedent has sold the specific devise prior to the decedent's death and is still owed money for the property. Under current law, if the property were sold and the decedent received full payment before death, the payment would be distributed equally between all parties because the identity of the property, and thus its designation as a specific devise, is presumed to have been lost. If, however, the property were sold and the decedent did not receive full payment before death, the payment received after death and any promissory note would go to the specific devisee. Under HB 275 the payment received after the decedent's death and any promissory note

would not go to the specific devisee. Instead, the payment and any promissory note would be treated in the same manner as all other property that the decedent owned, and would be distributed equally among the beneficiaries. The rationale for the change is that the question of who ultimately receives the proceeds should not depend on whether the decedent received full or partial payment before death.

For example, Susan Smith provides in her will that her son David Smith is to receive the family farm and the remaining property in her estate is to be divided equally between David and his brothers and sisters. In this case, the family farm is the specific devise. Under current law, if Mrs. Smith sold the farm prior to her death and received cash for the transaction, at her death the money would be included in the estate and shared equally between all the children. If, however, Mrs. Smith sold the farm and received a seller-financed note because the buyer was unable to obtain sufficient third-party financing, when Mrs. Smith dies, David would receive the balance of the promissory note owed to Mrs. Smith, to the exclusion of his brothers and sisters. These sections change that result and would treat the promissory note in the same manner as all other property Mrs. Smith might own. The promissory note would be shared equally by all the children. As this is only a rule of construction that controls in the absence of other language, if Mrs. Smith really wants the balance of the promissory note to go to David to the exclusion of the other children, she could state this in her will or trust.

Section 2, 13.12.712 makes the rules of construction under 13.12.606 applicable to trusts.

Section 2, 13.12.720

This section relates to the new family-owned business deduction of Internal Revenue Code section 2057. Section 2057 provides an additional estate tax deduction for the owners of family businesses. This provision follows a similar statute found in Michigan law. It is meant to provide a correct tax result by having this deduction taken into account under a provision that defines the credit shelter trust so the deduction will not be wasted on a marital bequest. It is an important provision, especially in Alaska where so many businesses are family owned.

Section 3

This section would change the amount of interest that is paid on a pecuniary devise, and would usually allow more time for the trust or will to be settled before interest begins accruing.

A pecuniary devise is a gift of a monetary amount, whether given outright or placed in trust for the beneficiary. Our present statute states interest must be paid on a pecuniary devise and begin one year after the appointment of a personal representative. Interest is set at the legal rate, which is presently 10.5%. This is unrealistically high and does not take into account that interest rates fluctuate. It can also shortchange other heirs. For instance, Mrs. Smith leaves $100,000 in trust for the benefit of her grandchild and leaves the rest of her estate in equal shares to her children. If a federal estate tax return is required, and taxes must be paid, the $100,000 cannot be distributed to the grandchild until the personal representative has received a closing letter from the IRS. Typically it might be 2-3 years after a decedent's death before the closing letter is received. Under present law the interest payment made to the grandchild will come out of the children's share of the estate, for no other reason than that federal bureaucracy makes it impossible for the estate to be distributed

within a year. This section changes the interest rate from 10.5 % to a variable rate taken verbatim from AS 45.45.010(b) and commonly referred to as the discount borrowing rate.

In addition, an adverse generation-skipping transfer tax can result if appropriate interest as defined by state law isn't paid in a timely manner. The principle consequence is that a trust that might otherwise be shielded from generation-skipping transfer tax may now be subjected to it. HB 275 changes the time at which interest begins to accrue from one year after a personal representative is appointed to two years after the decedent dies. This amendment allows the administrator more time to fund pecuniary bequests when the estate may still be in the process of being audited by federal tax authorities, which in turn gives the personal representative more time to settle the estate.

Our present statute comes from Uniform Probate Code Provision promulgated in 1963. Many states, such as Washington, do not require the payment of interest on pecuniary devises.

Section 4

This section also pertains to interest on a pecuniary devise. It adds a new section stating that no interest must be paid on a pecuniary marital bequest, but that a pro-rata portion of the income earned by the estate must be credited to the pecuniary marital bequest from the date of death. The provision requiring the payment of income comes from a similar provision found in Virginia law. This provision assures Alaskans that a trust established for the benefit of a spouse will meet the "all the income" requirement established by Internal Revenue Code sections 2056(b) and 2523(f), which is required of trusts qualifying for the marital deduction.

Although this section eliminates the requirement that any interest be paid on a pecuniary marital bequest, this section nonetheless meets the appropriate interest requirement set forth in the generation-skipping transfer ta. regulations. Lastly, it should be noted that, under recently promulgated federal regulations governing the allocation of estate and trust income to separate shares, the payment of interest would not only increase the amount that must be paid to a pecuniary marital bequest, (a result one generally wants to avoid because more property will ultimately be subjected to estate tax), but unnecessarily creates taxable income for the family with no corresponding deduction to the estate.

Section 5

This section gives the personal representative more discretion over how to distribute the residuary estate assets to heirs, as long as it is "in the best interests of the distributees." For example, it would allow the personal representative to make non pro-rata distributions of assets. This means if an estate consists of two assets of equal value and there are two heirs, the personal representative could distribute one asset entirely to one heir and the other asset entirely to the other heir instead of having to make a distribution of ½ of each asset to each heir. This section allows the personal representative to use this method of funding even though the authority for doing so might be absent in the will or trust. As a result better tax planning is possible. This section follows North Carolina legislation.

Section 6

This adds a new section to Chapter 36, Trust Administration. AS 13.36.153 is meant to provide a beneficial interpretation to a document that would otherwise produce a negative tax consequence in the limited circumstances addressed by this section. To achieve this, it limits distributions by a person who is not an independent trustee, (for example, a person who is both a trustee and beneficiary), by requiring an "ascertainable standard" relating to maintenance and support.

As an example, presume the settlor of a trust wants to benefit his spouse. He wants to name his spouse as trustee and also wants to give his spouse as many rights to the trust assets as possible without having the trust assets included in his spouse's gross estate for federal estate purposes. Internal Revenue Service regulations state that, in her position as trustee, the spouse can possess the right to distribute principal, provided that right is "limited by an ascertainable standard." The regulations state an ascertainable standard will be found if the spouse is given the power to use principal for her "support in reasonable comfort." However, the regulations also provide that a right to use principal for "her comfort, welfare, or happiness" is not limited by the requisite standard. While most people would think there is no meaningful difference between "support in reasonable comfort" and "comfort, welfare, or happiness," the use of the latter phrase would create the unwanted consequence of having the trust principal included in the spouse's estate for federal estate tax purposes. Section 6 prevents inadvertently triggering this horrendous tax result by providing that, unless specifically stated in the trust document, the spouse would only have the right to distribute principal to herself in a manner limited to an ascertainable standard.

This section also provides that principal and income can not be used to discharge an individual legal obligation of certain trustees who are not independent trustees.

Furthermore, these provisions would apply to a trustee who is related or subordinate to the person who has the right to remove and replace a trustee. Were it not for these provisions an unintended and harmful tax result would occur. This section is taken principally from Colorado law.

Section 7

In order to make favorable marital deduction and generation-skipping tax elections, it is necessary to be able to split a single trust into two trusts. The beneficial interests in each trust remain the same, the only difference is that the two trusts will be administered separately. This section provides that, under certain conditions, a trustee may divide a trust into two or more separate trusts as long as the resulting trusts are substantially identical in terms to the existing trust. This provision will allow a trustee to make favorable tax elections whether it relates to the marital deduction or to an allocation of generation-skipping transfer tax exemption. Trust instruments drafted subsequent to the changes in tax law that necessitate the ability of a trustee to divide trusts most likely include a provision stating the trustee can divide a trust. However, this provision might not exist in a trust created before or shortly after the change in the tax law. This section assists individuals affected by trusts lacking this provision. Typically the trustee making these elections will be the surviving spouse, who will also be named as the lifetime income beneficiary of the trust. Because the surviving spouse is also a beneficiary, she may benefit personally from the election. Subsection (a) states nonetheless a trustee can split the trust to make tax elections even though the trustee, in the trustee's dual status of beneficiary, might personally benefit from the election.

This section follows Washington legislation.

Section 8

This section states that certain asset distribution provisions applicable to the administration of a probated estate also apply to the administration of a revocable trust following the death of the settlor of the trust. The provisions that apply are: AS 13.16.540, Distribution; order in which assets appropriated; abatement. AS 13.16.545, Right of retainer. AS 13.16.550, Interest on general pecuniary devise. AS 13.16.560, Distribution in kind; valuation; method; and AS 13.38.030(a), a provision pertaining to when an income beneficiary becomes entitled to the income from a trust.

Section 9

This section relates back to Sections 6 and 7. Section 9 describes those individuals who for some unforeseen reason might want to elect out of these sections. While it can be fairly stated no one aware of the tax implications of electing out would do so, this section nonetheless defines who the "parties in interest" would be if a decision to opt out is made.

Section 10

This section provides that in those trusts where the spouse is entitled to all the income earned by a trust paid no less frequently than annually, and a marital deduction is claimed for the trust, the spouse has the power to require the trustee to make the trust assets produce income. This simple provision is a required statement in all trusts intending to qualify for the marital deduction. This section provides the required language for those trusts lacking this provision.

Section 11

This section ends the confusion over the ability to transfer real property to or from a trust in the name of the trust, whether or not the trustee is actually named on the deed. In addition, this section provides protection for good faith purchasers who purchase property held in the name of a trust.

HB 284

Amendment

OFFERED IN THE HOUSE BY REPRESENTATIVE ERIC CROFT
TO: CSHB 284

1. Page 1, line 7, Delete "disinterested"
2. Page 2 line 2, Delete "disinterested"

Subject: [Fwd: Re:]HB284
Date: Fri, 03 Mar 2000 12:48:06 -0900
From: Sarah Mcnair <Sarah_Mcnair@dced.state.ak.us>
To: "Harman, Patrick" <Pat_Harman@legis.state.ak.us>

No delayed effective date would be needed with the approach outlined here because no new policy or notice is required since the coverage is being broadened.

-------- Original Message --------
Subject: Re:
Date: Fri, 03 Mar 2000 12:03:29 -0900
From: Sarah Mcnair <Sarah_Mcnair@dced.state.ak.us>
To: Bob Lohr <bob_lohr@dced.state.ak.us>
References: <77360A6C1217.AAA42AF@ancmail1.state.ak.us>

There is no requirement for notice when coverage is being increased, only when
it is decreased. However, the policy language governs the coverage and until a
new policy or endorsement is issued the old language would apply.

I checked a couple of other provisions. AS 21.42.220 says a policy that does
not comply with the requirements of this title are construed and applied as if
they were in compliance with this title. Since the changes are in Title 28,
not Title 21, this didn't help. AS 21.42.265, says that unless otherwise
provided by law, changes to this title take effect on the date a new policy is
issued or on the renewal date. Again, since the changes are in Title 28, this
doesn't apply.

I also looked at a couple of policies, State Farm, GEICO and ISO. They all
have language to the effect that the terms of the policy may be changed only by
endorsement or by "the revision of this policy to give broader coverage without
an extra charge. If any coverage you carry is changed to give broader
coverage, we will give you the broader coverage without the issuance of a new
policy as of the date we make the change effective." This is the State Farm
language. It would seem that any policy that has this language could make the
change when the law becomes effective and the renewal policy would then be
updated with the correct language. The only drawback is that the insured
doesn't know of the change in coverage.

I tried calling, but your phone was busy and I wanted to be sure you got this.
I'll try calling again.

Bob Lohr wrote:

> *Sarah, would you please talk to Pat Harmon on Rep. Pete Kott's staff to see*
> *what kind of compromise language they may have come up with for*

> *which witnesses are acceptable in the case of the "disappearing car"*
> *involving uninsured motorist coverage? The bill is up for hearing this*
> *afternoon and we should look at and discuss the language before then.*
>
> *Thanks. Please call if you have questions.*

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 284

Revision Date/Time (Note if correction) _____ Dept. Affected Community & Economic Development

Title An Act relating to uninsured and underinsured motor vehicle insurance BRU Insurance

Component Insurance

Sponsor Representative Kott

Requester H L&C Component No. 354

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						
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 (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill has no fiscal impact on this component.

Prepared by: Robert A. Lohr Phone 269-7900

Division Insurance Date/Time 2-11-00 2:45 PM

Approved by Commissioner Deborah B. Sedwick Date 2-11-00

Agency Community & Economic Development

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Sponsor Statement
HB 284

HB 284 "An Act relating to uninsured and underinsured motor vehicle insurance" is a bill that closes a loophole in our existing statutes that in certain circumstances citizens are denied payment under their uninsured motorist insurance policy. Our current laws require direct physical contact between the victim and the uninsured vehicle.

In situations where direct physical contact does not occur, and the uninsured vehicle leaves the scene of the accident; our statutes allow the insurance company to deny coverage. HB 284 would allow the victim to make a claim against his uninsured motorist policy.

HB 284 requires a disinterested person not occupying the insured vehicle to attest to the facts of the accident and that a vehicle left the accident scene. This provision protects insurance companies against false claims being made against insurance companies allows citizens to collect under their uninsured motorist insurance when no direct contact has been made between the vehicle that left the scene. The insurance industry and Mike Ford from Legislative Legal Services have agreed the version before you today.

A letter from Michael Cohn gives a clear example of the loophole that the sponsor wants to close.

LAW OFFICES
PHILLIP PAUL WEIDNER AND ASSOCIATES
A PROFESSIONAL CORPORATION
330 L STREET, SUITE 200
ANCHORAGE, ALASKA 99501

CABLE ADDRESS:
JUSTICE

907/276-1200
FAX 907/278-6571

September 21, 1999

The Honorable Pete Kott
10928 Eagle River Road, Suite 141
Eagle River, Alaska 99577

Dear Mr. Kott:

I am writing this letter to bring to your attention what appears to be an unintended result of AS 28.20.445(f) which states:

> If both the owner and operator of the uninsured vehicle are unknown, payment under the uninsured and underinsured motorist coverage shall be made only where direct physical contact between the insured and uninsured or underinsured motor vehicle has occurred. A vehicle that has left the scene of the accident with an insured vehicle is presumed to be uninsured if the person insured reports the accident to the appropriate authorities within 24 hours.

In a case this law firm handled, the insurance company was unwilling to pay under the uninsured motorist provision of its policy as a result of an accident in which its insured, an innocent victim of an automobile accident, received injuries, utilizing AS 28.20.445(f) as its defense. In said case, the victim was proceeding east on O'Malley Road in Anchorage when she was struck by a second individual who crossed the center line heading west on O'Malley. The insurance company has claimed that the second individual crossed into the oncoming lane of traffic to avoid a collision with a third vehicle that had come out of a side street, Commodore Drive, into his lane of traffic. The third vehicle vanished during the accident. Since the vanishing vehicle did not directly strike the victim, and despite the fact that there are apparently witnesses who saw that vehicle, the insurance company took the position that under AS 28.20.445(f) it is not responsible for the actions of the third vehicle (the vehicle which had blocked the road), which allegedly caused the second driver to swerve into oncoming traffic.

As written, the statute would even preclude recovery to a victim of an uninsured vehicle in cases where the victim is at a stop light and is struck by a second vehicle which collided with the victim as a result of the actions of a third vehicle which struck the second vehicle, the third vehicle subsequently leaving the scene and not being located. In such cases, there would be no "direct"

contact between the vehicle that left the scene and the victim. Under those circumstances, an insurance company could claim the uninsured or underinsured motorist provision would not apply because of AS 28.20.445(f).

Clearly, it appears that AS 28.20.445(f) was intended to prevent claims brought by individuals who are injured in one-car collisions with objects, or have an accident such as going off the road or striking a tree, and then claim that a phantom vehicle caused them to have the accident. It was not intended, or should not have been intended, to apply to a situation where there is no question but that an accident occurred, where there were witnesses who may have observed the vehicle which left the scene, and where it is undisputed that the victim was struck by another vehicle, whether the striking of the victim occurred "directly" by the vehicle that left the scene, or "indirectly" by the vehicle that created the traffic conditions which resulted in the accident and then left the scene. At a minimum, the statute should be amended to allow the insured an opportunity to prove that he or she was injured as a result of another vehicle, even if that other vehicle did not directly strike the insured, and where there is independent evidence to prove same.

Accordingly, I would request that you take steps to remedy or rectify what appears to be an unintended result of AS 28.20.445(f) before other innocent people are victimized by an unintended result of the statute.

Thanking you in advance for your attention to this matter, I remain,

Sincerely yours,

WEIDNER & ASSOCIATES, INC.
A Professional Corporation

Michael Cohn
Attorney at Law

MC/mm

cc: Governor Tony Knowles
Alaska State Senate
Alaska State House
Robert Lohr, Director, Division of Insurance

HB 288

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 288

Revision Date 1/27/00
Dept. Affected Public Safety
Title Children Witnessing Domestic Violence
BRU CDVSA
Component: CDVSA
Sponsor Representative Kott
Requester H. HES
Component No. 521

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						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING						
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

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

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

This bill would not impact our budget.

Prepared by: Royce Weller, Special Assistant
Phone 465-4322
Division Office of the Commissioner
Date/Time 1/28/00 12:00 PM
Approved by: Ron Smith
Date 1-31-00
Agency Commissioner Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 288

Revision Date/Time (Note if correction) _____
Dept. Affected Law
Title "... to the creation of an aggravating factor for ... ... domestic violence in the physical presence of a child."
BRU Criminal Division
Component 1st-4th Judicial Districts; Criminal Appeals/Special Litigation
Sponsor Representative Kott
Requester House HESS Committee
Component No. 2198-99;2201;03;61;79

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						
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 (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

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

HB 288 creates an aggravating factor for the commission of domestic violence in the physical presence of a child.

This new aggravator would apply to felony domestic violence cases. Felony domestic violence cases are already taken very seriously by the Department of Law's prosecutors, and many have other aggravating factors. While a new aggravating factor will require putting forward additional evidence to prove it, the department anticipates any fiscal impact from passage of this bill to be minimal.

Prepared by: Joan M. Kasson Phone 465-5370
Division Attorney General's Office Date/Time 1/31/00, 10:32 AM
Approved by Commissioner Bruce M. Botelho, Attorney General Date 1/31/00
Agency Department of Law

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 288

Revision Date:
Title: "An Act relating to the creation of an aggravating factor for the commission of domestic violence in presence of child"
Sponsor: Representaive Kott
Requestor: (H) HESS

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2 003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**
CAPITAL EXPENDITURES	**	**	**	**	**	**
CHANGE IN REVENUES ( )	**	**	**	**	**	**

FUND SOURCE: (Thousands of Dollars)

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

Estimate of any current year (FY 00) cost: $ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
See attached.

Prepared by: Barbara Brink, Director
Division: Public Defender Agency
Phone: (907) 264-4414
Date:

Approved by Commissioner: Robert Poe, Jr.
Agency: Department of Administration
Date: 1/31/00

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FISCAL NOTE

STATE OF ALASKA BILL NO. HB 288

2000 LEGISLATIVE SESSION

ANALYSIS: (continued)

This bill would add another aggravating factor to the list of aggravating factors used in sentencing in felony cases. The aggravating factor would provide for increased sentences if the crime involved domestic violence and was committed in the presence of a child under 16. The child would have to be a member of the household at the time of the offense.

The Public Defender Agency will need to do more work in many of its felony sentencing cases if this aggravating factor is established. The prosecution will have to prove the aggravating factor by clear and convincing evidence. Where the facts are at issue, Public Defender attorneys will have to prepare for and conduct evidentiary hearings. If the aggravating factor is established, the court will need to hear argument concerning the weight to be given to the factor in the case before the court.

However, the amount of additional work is difficult to quantify. Although more work will need to be done, we do not anticipate more criminal cases being brought or sentencings conducted as a result of this bill. In addition, it is not possible to say how many felony sentencings this aggravating factor would affect. Because of these uncertainties, we are submitting an indeterminate fiscal note.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 288 (HESS)

Revision Date/Time (Note if correction) _____
Dept. Affected Department of Corrections

Title: An act relating to the creation of an aggravating factor for the commission of domestic violence
BRU: Administration and Operations
Component: All

Sponsor: Representative Kott
Requester: House HESS Committee
Component No.: #0694

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						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous		99.7	99.7	99.7	99.7	99.7
TOTAL OPERATING	**0.0**	**99.7**	**99.7**	**99.7**	**99.7**	**99.7**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		99.7	99.7	99.7	99.7	99.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	**0.0**	**99.7**	**99.7**	**99.7**	**99.7**	**99.7**

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

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

See attached analysis.

Prepared by: Candace Brower
Phone 465-3307
Division: Commissioner's Office
Date/Time 1/31/00 11:52 AM
Approved by Commissioner Margaret M. Pugh Margaret M. Pugh
Date 1-31-00
Agency: Dept. of Corrections

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION
DEPARTMENT OF CORRECTIONS

BILL NO. HB 288 (HESS)
PAGE 2 of 2
DATE 1/31/00

Assumptions:

1. The Department of Corrections data show that in 1999 approximately 2365 prisoners were admitted to correctional facilities on domestic violence charges. Of those admissions, 268 were charged with felony assault and 2097 with misdemeanor assault. The Deptartment of Law reports that they anticipate 75 convictions for felony domestic violence assault in calendar year 1999. This number is based on convictions of the past 3 years and the current convictions plus cases pending.

2. Assuming 65% of those incidents occured in the physical present of children, this bill would affect 49 cases.

3. Assuming that perhaps one half of those 49 would be presumptive cases affected by aggravating factors, that impacts 25 defendents.

4. Assuming 60% of those would result in increased sentences of approximately three months, (60 days to serve) the final number actually being impacted would be approximately 15. Since these cases are felony domestic violence, they are not likely to be eligible to furlough into the community because of their risk factor, so the additional cost of incarceration would be at the institutional rate which is currently $110.73 per day. Fifteen individuals serving an additional 60 days each at a rate of $110.73 per day makes a fiscal impact of $99,657.00 per year.

SPONSOR STATEMENT

HB 288

"An Act relating to the creation of an aggravating factor for the commission of domestic violence in the physical presence of a child."

This bill lets the courts to be tougher on those having been convicted of domestic violence if they committed that crime with their children present. If passed, the criminal justice system would have a new tool to further Alaska's fight against domestic violence and child abuse.

HB 288 creates an aggravated factor when domestic violence is committed in the presence of children who are also household members of the perpetrator. Under current law, a person convicted on domestic violence charges is subject to Alaska's presumptive sentencing rules found in AS 12.55.125. Although the court is given guidelines, under AS 12.55.155, it may also consider factors that can mitigate or aggravate the severity of the crime and resulting sentence. Considering the totality of the factors, the court may adjust the sentence up to the maximum or down to the minimum term of imprisonment prescribed by presumptive sentencing laws.

What is an aggravating factor? It is an act or circumstance characterized by some unique feature that enhances the severity of crime. For example that may be what the intentions of the criminal were or it may be the special vulnerability of the victim. This bill would expand the list of aggravating circumstances to include the special vulnerability of children.

Domestic violence is a scourge all over our state and Alaskans are fighting back to protect the lives of the victims and the children involved. HB 288 takes us a step further by recognizing that even if a child is not on the receiving end of the violence, they are profoundly damaged when they become witnesses to parents and caregivers engaging in this abhorrent behavior.

Sec. 12.55.155. Factors in aggravation and mitigation.

(a) If a defendant is convicted of an offense and is subject to sentencing under AS 12.55.125 (c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(4), or (i) and

(1) the presumptive term is four years or less, the court may decrease the presumptive term by an amount as great as the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation;

(2) the presumptive term of imprisonment is more than four years, the court may decrease the presumptive term by an amount as great as 50 percent of the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation.

(b) Sentence increments and decrements under this section shall be based on the totality of the aggravating and mitigating factors set out in (c) and (d) of this section.

(c) The following factors shall be considered by the sentencing court and may aggravate the presumptive terms set out in AS 12.55.125 :

(1) a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct;

(2) the defendant's conduct during the commission of the offense manifested deliberate cruelty to another person;

(3) the defendant was the leader of a group of three or more persons who participated in the offense;

(4) the defendant employed a dangerous instrument in furtherance of the offense;

(5) the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill health, or extreme youth or was for any other reason substantially incapable of exercising normal physical or mental powers of resistance;

(6) the defendant's conduct created a risk of imminent physical injury to three or more persons, other than accomplices;

(7) a prior felony conviction considered for the purpose of invoking the presumptive terms of this chapter was of a more serious class of offense than the present offense;

(8) the defendant's prior criminal history includes conduct involving aggravated or repeated instances of assaultive behavior;

(9) the defendant knew that the offense involved more than one victim;

(10) the conduct constituting the offense was among the most serious conduct included in the definition of the offense;

(11) the defendant committed the offense pursuant to an agreement that the defendant either pay or be paid for the commission of the offense, and the

pecuniary incentive was beyond that inherent in the offense itself;

(12) the defendant was on release under AS 12.30.020 or 12.30.040 for another felony charge or conviction or for a misdemeanor charge or conviction having assault as a necessary element;

(13) the defendant knowingly directed the conduct constituting the offense at an active officer of the court or at an active or former judicial officer, prosecuting attorney, law enforcement officer, correctional employee, fire fighter, emergency medical technician, paramedic, ambulance attendant, or other emergency responder during or because of the exercise of official duties;

(14) the defendant was a member of an organized group of five or more persons, and the offense was committed to further the criminal objectives of the group;

(15) the defendant has three or more prior felony convictions;

(16) the defendant's criminal conduct was designed to obtain substantial pecuniary gain and the risk of prosecution and punishment for the conduct is slight;

(17, the offense was one of a continuing series of criminal offenses committed in furtherance of illegal business activities from which the defendant derives a major portion of the defendant's income;

(18) the offense was a felony

(A) specified in AS 11.41 and was committed against a spouse, a former spouse, or a member of the social unit comprised of those living together in the same dwelling as the defendant; or

(B) specified in AS 11.41.410 - 11.41.455 and the defendant has engaged in the same or other conduct prohibited by a provision of AS 11.41.410 - 11.41.460 involving the same or another victim;

(i) — would be invited

(19) the defendant's prior criminal history includes an adjudication as a delinquent for conduct that would have been a felony if committed by an adult;

(20) the defendant was on furlough under AS 33.30 or on parole or probation for another felony charge or conviction that would be considered a prior felony conviction under AS 12.55.145 (a)(1)(B);

(21) the defendant has a criminal history of repeated instances of conduct violative of criminal laws, whether punishable as felonies or misdemeanors, similar in nature to the offense for which the defendant is being sentenced under this section;

(22) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin;

(23) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the delivery of a controlled substance under circumstances manifesting an intent to distribute the substance as part of a commercial enterprise;

(24) the defendant is convicted of an offense specified in AS 11.71 and the

offense involved the transportation of controlled substances into the state;

(25) the defendant is convicted of an offense specified in AS 11.71 and the offense involved large quantities of a controlled substance;

(26) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance that had been adulterated with a toxic substance;

(27) the defendant, being 18 years of age or older,

(A) is legally accountable under AS 11.16.110 (2) for the conduct of a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant; or

(B) is aided or abetted in planning or committing the offense by a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant;

(28) the victim of the offense is a person who provided testimony or evidence related to a prior offense committed by the defendant;

(29) the defendant committed the offense for the benefit of, at the direction of, or in association with a criminal street gang.

(d) The following factors shall be considered by the sentencing court and may mitigate the presumptive terms set out in AS 12.55.125 :

(1) the offense was principally accomplished by another person, and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim;

(2) the defendant, although an accomplice, played only a minor role in the commission of the offense;

(3) the defendant committed the offense under some degree of duress, coercion, threat, or compulsion insufficient to constitute a complete defense, but which significantly affected the defendant's conduct;

(4) the conduct of a youthful defendant was substantially influenced by another person more mature than the defendant;

(5) the conduct of an aged defendant was substantially a product of physical or mental infirmities resulting from the defendant's age;

(6) in a conviction for assault under AS 11.41.200 - 11.41.220, the defendant acted with serious provocation from the victim;

(7) except in the case of a crime defined by AS 11.41.410 - 11.41.470, the victim provoked the crime to a significant degree;

(8) [Repealed, sec. 42 ch 143 SLA 1982].

(9) the conduct constituting the offense was among the least serious conduct included in the definition of the offense;

(10) before the defendant knew that the criminal conduct had been discovered, the defendant fully compensated or made a good faith effort to fully compensate the victim of the defendant's criminal conduct for any damage or injury sustained;

(11) the defendant was motivated to commit the offense solely by an overwhelming compulsion to provide for emergency necessities for the defendant's immediate family;

(12) the defendant assisted authorities to detect, apprehend, or prosecute other persons who committed an offense;

(13) the facts surrounding the commission of the offense and any previous offenses by the defendant establish that the harm caused by the defendant's conduct is consistently minor and inconsistent with the imposition of a substantial period of imprisonment;

(14) the defendant is convicted of an offense specified in AS 11.71 and the offense involved small quantities of a controlled substance;

(15) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance, other than a schedule IA controlled substance, to a personal acquaintance who is 19 years of age or older for no profit;

(16) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the possession of a small amount of a controlled substance for personal use in the defendant's home;

(17) in a conviction for assault or attempted assault or for homicide or attempted homicide, the defendant acted in response to domestic violence perpetrated by the victim against the defendant and the domestic violence consisted of aggravated or repeated instances of assaultive behavior.

(e) If a factor in aggravation is a necessary element of the present offense, or requires the imposition of a presumptive term under AS 12.55.125(c)(2), that factor may not be used to aggravate the presumptive term. If a factor in mitigation is raised at trial as a defense reducing the offense charged to a lesser included offense, that factor may not be used to mitigate the presumptive term.

(f) If the state seeks to establish a factor in aggravation at sentencing or if the defendant seeks to establish a factor in mitigation at sentencing, written notice must be served on the opposing party and filed with the court not later than 10 days before the date set for imposition of sentence. Factors in aggravation and factors in mitigation must be established by clear and convincing evidence before the court sitting without a jury. All findings must be set out with specificity.

(g) Voluntary alcohol or other drug intoxication or chronic alcoholism or other drug addiction may not be considered an aggravating or mitigating factor.

(h) In this section, "serious provocation" has the meaning given in AS 11.41.115(f).

Sec. 12.55.165. Extraordinary circumstances.

(a) If the defendant is subject to sentencing under AS 12.55.125 (c), (d)(1),

(d)(2), (e)(1), (e)(2), (e)(4), or (i) and the court finds by clear and convincing evidence that manifest injustice would result from failure to consider relevant aggravating or mitigating factors not specifically included in AS 12.55.155 or from imposition of the presumptive term, whether or not adjusted for aggravating or mitigating factors, the court shall enter findings and conclusions and cause a record of the proceedings to be transmitted to a three-judge panel for sentencing under AS 12.55.175 .

HB 292

3124/0

AMENDMENT

OFFERED IN THE BY

TO: HB 292

Page 1, line 3, following "**public;**"

Insert "**providing for the use of criminal justice information and records by the Alcoholic Beverage Control Board;**"

Page 1, following line 5:

Insert a new bill section to read:

" * **Section 1.** AS 04.06 is amended by adding a new section to read:

Sec. 04.06.095. Criminal justice information and records. (a) The board shall require a person filing or executing an application for the issuance, renewal, or transfer of a license under this title to be fingerprinted. The board shall submit the fingerprints to the Department of Public Safety to obtain a report of criminal justice information under AS 12.62 and a national criminal history record check. The Department of Public Safety is authorized to submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The board shall use the information obtained under this section in its determination of the suitability for licensure of the person filing or executing the application.

(b) In this section, "criminal justice information" has the meaning given in AS 12.62.900."

Renumber the following bill sections accordingly.

Page 16, following line 20:

Insert new bill sections to read:

" * **Sec. 9.** TRANSITION: PENDING APPLICATIONS UNDER AS 04. Notwithstanding AS 04.06.095, enacted by sec. 1 of this Act, the Alcoholic Beverage Control Board may process an application for a license under AS 04 without a national criminal history record check from the Federal Bureau of Investigation if that application was pending with the board on the effective date of sec. 1 of this Act.

* **Sec. 10.** Sections 1 and 9 of this Act take effect immediately under AS 01.10.070(c)."

Renumber the following bill section accordingly.

Page 16, line 21:

Delete "This"

Insert "Except as provided in sec. 10 of this Act, this"

Summary of Public Safety Testimony on HB 292 by Ken Bischoff, Director, Division of Administrative Services (465-5488)

HB 292 Does not: change who has access to criminal justice information, state or national. Requestors of this information will still require a basis authorized in law to receive this information.

HB 292 does the following:

1. Section 2 contains the language necessary to adopt the National Crime Prevention and Privacy Compact. The National Crime Prevention and Privacy Compact allows states to get national criminal history records by exchanging state records directly with other states, instead of relying on the FBI to keep duplicate records of all state criminal records. Because not all states manage to send duplicates of all their records to the FBI, exchanging records directly between states will provide more complete and timely access to criminal justice information for the purposes of licensing and employment. The Department of Public Safety will be better able to respond to employers and licensing agencies that are attempting to comply with Alaska Statutes and federal laws. Examples include:

- ✓ Alaska Bar Association (AS 08.08)
- ✓ Alaska Securities Act (AS 45.55)
- ✓ Assisted Living Homes (AS 47.33
- ✓ Certification of Teachers (AS 14.20
- ✓ Child Care, Child Placement and Maternity Homes (AS 07.35)
- ✓ Collection agencies (AS 08.24)
- ✓ Concealed handgun permits (AS 18.65.700)
- ✓ HUD Housing Opportunity Program (PL 104-120)
- ✓ Licensing of School Bus Drivers (AS 28.17)
- ✓ National Child Protection Act (PL 18.20)
- ✓ Regulation of Hospitals (AS 18.20)
- ✓ Security Guard Licensing (AS 18.65.410)
- ✓ Any agency that employs or licenses persons to be in authority over children or vulnerable adults (AS 12.62.160)

The Department performs approximately 20,000 of these types of checks each year.

2. Section 1 makes two house-keeping changes to AS 12.62 to provide more appropriately, all relevant information contained in a criminal history record to authorized employers and regulatory agencies. This would include arrest information without court dispositions and information beyond the ten year "unconditional discharge date" that is difficult to compute.

   This change is needed to mitigate research and costs associated with filtering specific information to be able to respond to Alaska's 20,000 requests as well as national requests which will be received as a result of adoption of the compact.

3. Section 3 updates the definition of serious offense referenced by AS 12.62 regarding release of criminal justice information.

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE: (907) 465-4322
FAX: (907) 465-4362

March 16, 2000

The Honorable Pete Kott
Chair, House Judiciary Committee
State Capitol, Room 118
Juneau, AK 99801-1182

Dear Representative Kott:

This is to request a hearing of House Bill 292, An Act adopting the National Crime Prevention and Privacy Compact.

The National Crime Prevention and Privacy Compact simplifies procedures and establishes a framework for inter-state sharing of criminal history records. The records are intended for use in noncriminal justice matters, such as employee background checks, as allowed by law.

The National Criminal History Access and Child Protection Act, which adopts the Compact, was enacted in 1998. Four states have adopted the Compact (Montana, Nevada, Georgia, Florida) and approximately twelve other states are introducing legislation to adopt the compact this year. Adoption by a majority of states is expected within the next few years.

The Compact would not change or expand the decisions Alaskans have already made about employers and licensing agents who should have access to criminal history information. Nor would adoption of the Compact change any of the procedures, such as submission of fingerprints and payment of a fee through the State repository, for obtaining information. Rather, adoption of the Compact would allow persons who may obtain criminal justice information under present law to obtain more complete, timely and accurate information.

Sincerely,

Ronald L. Otte
Commissioner

HB

294

Alaska Civil Liberties Union

An Affiliate of the American Civil Liberties Union
P. O. Box 201844, Anchorage, AK 99520-1844
Phone: (907) 258-0044 Fax: (907) 258-0288 Email: akclu@alaska.net

To: House Judiciary Committee
From: Jennifer Rudinger, Executive Director
Date: Wednesday, March 29, 2000

Re: HB 294: **DNA collection from persons convicted of burglary**

The Alaska Civil Liberties Union opposes HB 294 and respectfully urges this Committee to put an end to the progressive expansion of DNA collection by the government. DNA collected from one person not only reveals personal information about that person (much of which has nothing to do with serving the needs of law enforcement), but it also reveals very personal information about that person's blood relatives. Unlike fingerprinting, which *only* reveals information that can be used for identification purposes, DNA gives the government control over a great deal of personal, private information about anyone related to the sample source. Therefore, expansion of the government's power to collect DNA from its citizens – even people convicted of crimes – should not be taken lightly. HB 294 proposes to invade the privacy of innocent people, and the government's only justification is that burglars *might* later commit violent crimes in which they leave DNA evidence at the crime scene.

To give the Committee some background, DNA testing and profiling are becoming increasingly more common. States across the country and the federal government are expanding the scope of their DNA data banks as scientific knowledge about the content of this genetic material is growing by leaps and bounds.

In October 1998, the FBI opened a national database that brings together the DNA records from all 50 states and the federal government into one centralized system, known as CODIS (Combined DNA Index System). If this trend is allowed to continue, the most intimate and personal information about each individual could routinely become a matter of public record, to be used and abused at the state's discretion.

Initially, these DNA storehouses were created to house information about convicted sex offenders exclusively. The argument was that sex offenders were especially prone to recidivism, typically left DNA evidence at the crime scene, and hence, were important to identify. Whether or not that argument was sufficient, we were assured at the time that only convicted sex offenders would be tested, and the information gleaned from these tests would be used by law enforcement officials strictly for identification purposes.

But it is often the case that information initially collected for one, limited purpose is before long used for many other purposes. Slowly and inexorably, the pool of people being tested, and the range of uses for the data, has been expanding, raising grave concerns for personal privacy. In less than a decade, law enforcement officials across the country have gone from advocating collection of DNA from only convicted sex

offenders, to all violent offenders, to all burglars, to all persons convicted of any crime, to all juvenile offenders. In many states, the DNA record is maintained even if a conviction is overturned.

Louisiana has gone a step further. A new state law will collect DNA data from everyone *arrested* for a felony crime -- before they have been convicted. In Louisiana, the record can be kept even if the person is found innocent. U.S. Attorney General Janet Reno has asked the National Commission on the Future of DNA Evidence to look into the possibility of applying this concept across the country. In December 1998, New York City Police Commissioner Howard Safir jumped on the bandwagon, proposing the same idea. And New York's Mayor Rudy Giuliani not only voiced his support for the proposal, but went so far as to say that he would support the collection of DNA samples from all babies at birth, giving the city a genetic database of all its citizens.

The collection of DNA samples and the creation of DNA data banks have legitimate and vital medical, scientific and forensic purposes. Research can lead to treatments and even cures for many genetic diseases. DNA can prove that an individual was at the scene of a crime. It can also prove the innocence of a suspect, preventing terrible miscarriages of justice. DNA can even be used to correct wrongful convictions based upon an erroneous identification (although law enforcement and prosecutors are decidedly less enthusiastic about this use).

But it is equally clear that there is tremendous potential for abuse. The vast amount of information to be gleaned, the incredible longevity of DNA samples, and the ease with which DNA databases can be shared and accessed raise grave privacy, equality and due process concerns. Though DNA has been touted as a high-tech equivalent to fingerprints, this comparison is dangerously misleading. Where fingerprints can be used for identification purposes only, DNA can provide insight into a breathtaking wealth of singularly private information – information about a person's ethnicity, family relationships, family history and the likelihood of getting some 4,000 genetic conditions and diseases. This information belongs to each individual, not the government. Further, geneticists are constantly increasing the database of information that can be gleaned from DNA -- some even claim that there are genetic markers for "criminal tendencies," sexual orientation, substance abuse, etc. The possibilities -- and thus the dangers -- are endless.

Today, the growing law enforcement databases raise the immediate specter of widespread discrimination. Given the over-targeting of African Americans, Latinos and other minorities within the criminal justice system nationwide, the government will have the disproportionate power to track millions of people of color.

Now the Governor wants the Alaska Legislature to expand DNA sampling to include convicted burglars. It will help identify more violent criminals in the future, proponents say. Claiming that this is a minor and necessary expansion of the present system, proponents ask, "What's the harm?"

Because genetic information pertains not only to the individual whose DNA is sampled, but to everyone who shares in that person's blood line, potential threats to genetic privacy posed by their collection extend well beyond the millions of Americans

whose samples are currently on file. Moreover, there is no requirement in HB 294 or in the Alaska Statutes that the DNA sample from which genetic information is taken be destroyed. This allows for the future possibility that all of the information could be used in other ways that we cannot even anticipate.

There is a long and unfortunate history of despicable behavior by governments toward people whose genetic composition has been considered "abnormal" under the prevailing societal standards of the day. While the FBI states that this information will be used for limited forensic purposes, the history in our country is that information compiled for one purpose will be used for another. For example, Social Security numbers were initially intended only for use as an aid tracking social security payments but are now a universal identifier. Another example, Census records created for general statistical purposes were used to round up innocent Japanese Americans and place them in internment camps during World War II.

Your constituents throughout Alaska are concerned about the government's ever-increasing control over their personal information, and their concerns cross party and ideological lines. The Alaska Civil Liberties Union fields inquiries virtually every week regarding the government's demand for personal information – Social Security numbers, Census information, background checks, DNA and genetic information, etc. Almost every week, Alaskans voice concerns that the government cannot be trusted to keep this information confidential or to limit its use to the initial purpose for which it is given. And we agree. Your constituents are right.

In conclusion, HB 294 does not "only" affect burglars – it affects their relatives, who are law-abiding citizens innocent of any crime. And the government's proposed justification for collecting DNA from burglars just doesn't fly in Alaska – we do not take DNA from people who have never committed a violent crime on the theory that someday they *might* commit a violent crime. If so, where will this end?

Please end it here and now. Please do not pass HB 294 out of Committee.

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 111200
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February 28, 2000

FEB 2 8 2000

The Honorable Pete Kott
Chair, House Judiciary Committee
State Capitol, Room 118
Juneau, AK 99801

Dear Representative Kott: Pete

This is to request a hearing of HB 294, "An act relating to violations of an order to submit to deoxyribonucleic acid (DNA) testing, to court orders and conditions of parole to collect samples for DNA testing, to removal of material from the DNA identification registration system; and to the collection and processing of samples from certain burglary perpetrators for the DNA identification registration system; and providing for an effective date." DNA identification is an increasingly effective tool for law enforcement investigation. This bill would expand the State's ability to use this method for detecting and abating the conviction of serious crimes by allowing the State to obtain DNA samples from convicted burglars.

In 1995, Alaska adopted a DNA identification registration system. In this program, persons convicted of most felony offenses against a person, and minors 16 years of age or older adjudicated delinquent for similar crimes, must provide a DNA sample to the Department of Public Safety for testing. Most other states in the country have a similar system of obtaining DNA samples from persons convicted of serious crimes. Since 1995, the technology and research into the uses of this information has grown rapidly. Research in other states into the criminal history of persons convicted of homicide and serious sexual assault has shown that over half the persons convicted of homicide or sexual assault were convicted of burglary before their convictions for the more serious crimes. DNA information from burglary convictions would be invaluable to law enforcement in the investigation of subsequent, more serious crimes against a person.

The bill also allows juvenile and adult correctional, probation, and parole officers and peace officers to collect oral DNA samples. The collection technology has improved so that a simple, inexpensive, non-obtrusive kit allows the tested person to take an oral swab without the need of a medical professional. If a blood sample is required, it would still be taken by a medical professional.

Penalties are provided for failure to cooperate with these sample requests. The bill also clarifies the procedures for removal of DNA material from the identification registration system, specifying that a court order is necessary for such removal.

Your consideration of this request is greatly appreciated.

Sincerely,

Del Smith
Deputy Commissioner

HB 294

TONY KNOWLES
GOVERNOR
governor@gov.state.ak.us

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

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January 18, 2000

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Porter:

Using DNA identification is an increasingly effective tool for law enforcement investigation. This bill I transmit today expands the state's ability to use this method for detecting and abating the conviction of serious crimes by allowing the state to obtain DNA samples from convicted burglars.

In 1995 Alaska adopted a DNA identification registration system. In this program persons convicted of most felony offenses against a person, and minors 16 years of age or older adjudicated delinquent for similar crimes, must provide a DNA sample to the Department of Public Safety for testing. Most other states in the country have a similar system of obtaining DNA samples from persons convicted of serious crimes. Since 1995 the technology and research into the uses of this information has grown rapidly. Research in other states into the criminal history of persons convicted of homicide and serious sexual assault has shown that over half the persons convicted of homicide or sexual assault were convicted of burglary before their convictions for the more serious crimes. DNA information from burglary convictions would be invaluable to law enforcement in the investigation of subsequent, more serious crimes against a person.

The bill also allows juvenile and adult correctional, probation, and parole officers and peace officers to collect oral DNA samples. The collection technology has improved so that a simple, inexpensive, non-obtrusive kit allows the tested person to take an oral swab without the need of a medical professional. If a blood sample is required, it would still be taken by a medical professional.

Penalties are provided for failure to cooperate with these sample requests. The bill also clarifies the procedures for removal of DNA material from the identification registration system, specifying that a court order is necessary for such removal.

I urge your prompt and favorable consideration of this bill.

Sincerely,

Tony Knowles
Governor

FISCAL NOTE

No: 2

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Bill Version: HB 294
(H) Publish Date: 1/21/00

Revision Date:
Title: "An Act relating to the collection and processing of DNA from burglary perpetrators..."
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**
CAPITAL EXPENDITURES	**	**	**	**	**	**
CHANGE IN REVENUES ( )	**	**	**	**	**	**

FUND SOURCE: (Thousands of Dollars)

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

Estimate of any current year (FY 00) cost: $

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill will most likely have some fiscal impact on the Public Defender Agency. Failing to comply with a valid request to provide a DNA sample is a class A misdemeanor. See AS 11.56.760. The Agency would be appointed to represent people accused of this crime.

Currently, the Public Defender Agency has few of these cases. If the sampling program becomes more widespre[illegible] with the inclusion of additional crimes and more samples being requested, more refusals will, undoubtedly, be prosecuted. In that case, there could be a significant fiscal impact on the Public Defender Agency.

Prepared by: Barbara Brink, Director
Division: Public Defender Agency
Phone: (907) 264-4414
Date:

Approved by Commissioner: Bob Poe
Agency: Department of Administration
Date: 12/12/99

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COMMITTEE COPY

No: 1

FISCAL NOTE

Bill Version: HB 294
(H) Publish Date: 1/21/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) _____
Dept. Affected Public Safety
Title An Act relating to DNA testing, collection of sample and to persons convicted of burglary
BRU Statewide Support
Component Laboratory Services
Sponsor Rules Committee
Requester Governor
Component No. 527

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						
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 (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill should not adversely impact the budget.

Prepared by: Royce Weller, Special Assistant
Phone 465-4322
Division Office of the Commissioner
Date/Time 12/27/99
Approved by Commissioner Ronald L. Otte
Date 12/27/99
Agency Department of Public Safety

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HB 296

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February 10, 2000

Representative Pete Kott, Chair
House Judiciary Committee
Alaska House of Representatives
Room 118, State Capitol
Juneau, Alaska 99801-1182

HAND-DELIVERED

Re: Location of statutory definition sections,
and HB 296 (Uniform Partnership Act)

Dear Representative Kott:

I want to repeat my request that the provisions of HB 296 (Uniform Partnership Act) be slightly reorganized to restore the definition section and other general provisions to the beginning of the new AS chapter (AS 32.06), reflecting the nationwide organization of this Uniform Act.

Revisor of Statutes Pam Finley's February 9, 2000 memo to you on this subject is an excellent statement of the reason not to comply with my request. She has done a careful job of finding other Uniform Acts in the Alaska Statutes where Alaska disregarded the national arrangement. As she points out "The primary reason is consistency – users of the Alaska Statutes know to look at the back for the definitions."[1]

As the state's second Revisor of Statutes (1967 – 1973), and as the author/editor of two or three (or more?) editions of the Legislative Drafting Manual myself, I am familiar with the organizational requirements for the Alaska Statutes. I was involved in the development and enforcement of many of the Alaska drafting style and format requirements. When Alaska adopted the "definitions-at-the-end" rule, there was the choice of putting them there (as some states do) or putting them at the front (as some states, the federal code compilers, and the Uniform Law Commissioners do) or leaving the point unaddressed (which everyone agreed would be a bad idea). So, for ease of use

[1] She does not give any further reason, but then says "In addition, the drafting manual states that the definitions section should be at the end." This fact is not an additional reason, but merely the written statement of the approach taken in Alaska, based on the reason Pam describes as the "primary" one. Actually, the consistency of location, with its consequent ease of use, is the only reason.

within Alaska, a consistency rule was adopted, and it was the one stating that definitions and other general provisions should be put at the end of a chapter, section, or whatever.

But we simply did not address the interstate use of the Alaska Statutes. In the 1960's, we did not have computers. We certainly knew about the work of the Uniform Laws Conference, Alaska having already enacted many Uniform Acts, but life was slower. Now, in the 2000's, we need to do everything we can to facilitate interstate activities under Alaska law.

So, I would make the following responses to Pam's memo:

1. We enact Uniform Acts to promote and ease the flow of commercial as well as personal activities between Alaska and the rest of the nation. One part of this effort is to assure the consistency of the substance of our law with that of the other states. And, to facilitate the use of that substance, the other part is to assure consistency of the organization of that substance. We need to make that substance easy to find. The best way to do that is to adhere to the national version of Uniform Acts, and not to substitute intransigence for reason, persisting in our own parochial approach to section location.

2. For many areas of the law, such as commercial transactions, partnerships, child custody jurisdiction, etc., the relevant Uniform Act promulgated by the NCCUSL is the law of this country. It's what is studied in law schools, business schools, social work schools, etc., and constitutes the heart of the material in those fields. People entering the workforce from those backgrounds are familiar with the Uniform Acts. So, even within Alaska, and not considering the interstate aspects for a moment, most people will be most familiar with the "official" numbering of each particular Uniform Act. National legal research, whether in court decisions or other sources such as West Publishing's Uniform Laws Annotated, depends upon interstate consistency. Knowing where to look for definitions – Pam's point – will be easier when we adhere to the original.

3. The fact that the several Uniform Acts enacted in Alaska that are cited by Pam in her second paragraph reflect the Alaska approach rather than the NCCUSL approach does not mean that it was a good idea in any of those instances. The fact that it has happened does not make it good. Hurricanes happen; they're not good. Each of Pam's examples could merely result from the legislative drafter's position prevailing over mine. Or it could be that no one noticed, or, if I or someone like me was not around, that no one cared.

4. Several of the Acts cited in Pam's second paragraph are relatively short, making the question of the location of the definition section of little or no significance. They'll be easy to find at either the front or the back. But, for long, complicated Acts, such as the Uniform Commercial Code and Uniform Probate Code (current exceptions), and this Uniform Partnership Act (much longer than the original 1914 version now on our books), interstate consistency of location is essential. We must view the larger picture.

I conclude that Pam's very point – knowing where to look for the definitions – will be furthered, in the Uniform Act context, by maintaining the Uniform Act's location.[2] I repeat my request that they be restored to the original location in HB 296.

Yours truly,

Arthur H. Peterson
Uniform Law Commissioner
for Alaska

cc: Pam Finley
Revisor of Statutes
Legislative Affairs Agency

[2] It would be a good idea for the drafting manual to say so. I wish that I had put such a statement in the manual years ago.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FEB 0 9 2000

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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February 9, 2000

The Honorable Pete Kott
Chair
House Judiciary Committee
State Capitol
Juneau, AK 99801 - 1182

Re: CSHB 296(L&C) (relating to partnerships)

Dear Representative Kott:

CSHB 296(L&C) has been referred to the House Judiciary Committee.

Alaska Uniform Law Commissioners request an early hearing on CSHB 296(L&C), relating to partnership. The bill updates our statutes to conform to amendments recommended by the National Conference of Commissioners on Uniform State Laws. Uniform laws are especially important to keep Alaska as an attractive market for interstate commerce.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: Deborah E. Behr

Deborah E. Behr
Assistant Attorney General

DEB:jf

cc: All Uniform Law Commissioners
Chrystal Smith, Legislative Contact, Dept. of Law
Pat Pourchot, Legislative Director, Office of the Governor

03-C5LH

From: Art Peterson
Uniform Law Commissioner

SPONSOR STATEMENT
for
HB 296, UNIFORM PARTNERSHIP ACT

1/31/2000

Alaska currently has the 1914 version of the Uniform Partnership Act promulgated by the National Conference of Commissioners on Uniform State Laws. HB 296 updates that law.

The bill proposes enactment of the NCCUSL's 1994 comprehensive revision, and picks up its 1996 provisions on limited liability partnerships, along with a 1997 amendment by the NCCUSL. Making minor adjustments to accommodate Alaska drafting style requirements, HB 296 closely tracks the national version.

The changes reflect modern business practices and more than eight decades of court decisions and scholarship.

A fundamental aspect of the revision is the recognition of a partnership as a separate legal entity (the "entity" concept), and not merely as an aggregate of individuals (the "aggregate" concept). (Current law is a confusing blend of the two.) This principle is reflected in many provisions.

HB 296 recognizes the primacy of the partnership agreement over statutory rules, except for certain rules protecting specific partner interests in the partnership. It

addresses the fiduciary obligations of loyalty, due care, and good faith. It allows partners control and flexibility to meet their business needs, but defines "partnership" as a distinct entity. This bill also allows for the continuity of life of the partnership so that the partnership no longer dissolves every time a partner leaves. It also provides new rules for conversion and merger so that partnerships may convert to a limited partnership and vice versa, or may merge with another partnership or limited partnership.

The 1996 amendments on limited liability partnerships provide limited liability for general partners of a registered limited liability partnership. They provide greater protection to partners against personal liability than is the case under most of the existing state limited liability partnership statutes. Limited liability partnerships can be created simply by filing a registration statement. However, individual partners are personally liable for any injury they cause, and their personal assets are available to satisfy a judgment against them.

The bill integrates the nationally uniform version of the limited liability partnership law into the nationally uniform version of the regular partnership law, thus significantly improving upon Alaska's 1996 enactment on limited liability partnerships and facilitating the use of Alaska partnership law. It helps bring Alaska into the modern business world.

* * * * *

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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January 25, 2000

The Honorable Norman Rokeburg
Chair
House Labor & Commerce Committee
State Capitol
Juneau, AK 99801 - 1182

Re: HB 296 (relating to partnerships)

Dear Representative Rokeburg:

HB 296 has just been introduced and referred to the House Labor and Commerce Committee.

Alaska Uniform Law Commissioners request an early hearing on HB 296, relating to partnership. The bill updates our statutes to conform to amendments recommended by the National Conference of Commissioners on Uniform State Laws. Uniform laws are especially important to keep Alaska as an attractive market for interstate commerce.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: Deborah E. Behr
Deborah E. Behr
Assistant Attorney General

DEB:jf

cc: Hon. Pete Kott, Chair, House Judiciary Committee
All Uniform Law Commissioners
Chrystal Smith, Legislative Contact, Dept. of Law
Pat Pourchot, Legislative Director, Office of the Governor

JAN 25 2000

03-C5LH

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB296

Revision Date/Time (Note if correction) _____
Dept. Affected Community & Econ. Dev.
Title Uniform Partnership Act
BRU Banking, Securities, and Corporations
Component Banking, Securities, and Corporations
Sponsor Judiciary
Requester House Labor and Commerce
Component Serial No. 1233

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						
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 (FY00) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

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

Prepared by Franklin T. Elder, Director Phone 465-2521
Division Banking, Securities and Corporations Date/Time 1/31/00 8:16 AM
Approved by Commissioner Deborah B. Sedwick Date 1/31/00
Agency Community and Economic Development

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National Conference of Commissioners on Uniform State Laws

211 East Ontario, Suite 1300, Chicago, Illinois 60611·312/915-0195·Facsimile 312/915-0187

John M. McCabe
Legislative Director / Legal Counsel
jmmccabe@nccusl.org

Memo to: Arthur H. Peterson

From: John M. McCabe

Date: February 4, 2000

Subject: Comparison of Limited Liability Partnerships Under Current Alaska Law and The Revised Uniform Partnership Act.

As per your request please find attached a chart comparing key provisions of current Alaska Law with regard to limited liability partnerships and how they differ from the Revised Uniform Partnership Act (RUPA).

There are differences, some major and some minor:

- Alaska's current liability shield is limited to tortious actions and does not cover ordinary commercial transactions of the partnership
- Both Alaska's current law and RUPA require registration to become a limited liability partnership. Alaska, however, requires a more detailed filing, requires a distinguishable name, and requires that the name of the partnership be registered.
- Existing Alaska law requires that a limited liability partnership carry a set amount of liability insurance or have qualified assets of a certain amount.
- Both Alaska and RUPA require a periodic filing however Alaska requires reports be filed biennially while RUPA provides for annual filing.

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February 1, 2000

Robert H. Hume, Jr., Co-chair
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Krista S. Stearns, Co-chair
Alaska Bar's Business Law Section
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825 W. 8th Avenue, Suite 200
Anchorage, Alaska 99501

Re: HB 296, Uniform Partnership Act
(last legislature's SB 198)

Dear Mr. Hume and Ms. Stearns:

HB 296 proposes enactment of the Revised Uniform Partnership Act in Alaska. It was promulgated by the National Conference of Commissioners on Uniform State Laws in 1994, and significantly amended by the NCCUSL (i.e., by adding the limited liability partnership provisions) in 1996. A 1997 amendment was also added by the NCCUSL. Alaska has the 1914 version of the Act!

In 1992, Alaska enacted the revision of the Uniform Limited Partnership Act (repealing the old AS 32.10 and enacting AS 32.11); in 1994, we enacted AS 10.50, on limited liability companies; and ch. 52, SLA 1996 enacted a set of amendments (primarily, AS 32.05.405 -- 32.05.760) on limited liability partnerships. In one way or another, those enactments are related to, but do not do the job of, HB 296.

The bill consists of two basic parts:

1. the 1994 comprehensive revision of the 1914 UPA, a key feature of which is statutorily establishing the "entity" concept of partnerships; and

2. the 1996 amendments of the 1994 version, presenting the limited liability partnership provisions, integrating them into the official revision of the UPA, itself.

I am enclosing for each of you an information packet prepared by the NCCUSL. It includes the official text of the Act and commentary, along with a fact sheet, summaries, and other helpful material. A copy of HB 296 is also in there.

January 3, 1997, I sent such a packet to John Tindall, your predecessor in the section, but I suspect that his copy is so dog-eared by this time that he probably has not passed it along to you.

We need to have an updated, nationally consistent UPA, with the properly integrated limited liability partnership provisions in it. There should be general support for such an Act. I trust that you and your colleagues in the section will endorse it.

Hope to hear from you soon. Thanks.

Yours truly,

Art Peterson

Arthur H. Peterson
Uniform Law Commissioner
for Alaska

Enclosure

cc w/o enc.: Rest of Alaska's ULC Delegation:
Jay A. Rabinowitz
W. Grant Callow
Tamara Brandt Cook
L. S. Kurtz, Jr.
Deborah E. Behr

UNIFORM PARTNERSHIP ACT – QUICK CHRONOLOGY

1914 – Original Uniform Partnership Act

1992 – Promulgation of Uniform Partnership Act (1992) by Uniform Law Commissioners

1993 – Amendments to Uniform Partnership Act (1992)
Becomes Uniform Partnership Act (1993)

1994 – Amendments to Uniform Partnership Act (1993)
Becomes Uniform Partnership Act (1994)

1996 – Amendments to Uniform Partnership Act (1994)
Adds Limited Liability Partnership. Becomes Uniform Partnership Act (1996)

1997 – Amendment to Uniform Partnership Act (1996), Section 801
Becomes Uniform Partnership Act (1997)

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
312/915-0195

A Few Facts About
THE UNIFORM PARTNERSHIP ACT (1994)(1996)(1997)

PURPOSE: This act revises the Uniform Partnership Act of 1914. The 1994 act establishes a partnership as a separate legal entity, and not merely as an aggregate of partners. It recognizes the primacy of the partnership agreement over statutory rules, except for specific rules protecting specific partner interests in the partnership. The 1994 act explicitly addresses the fiduciary responsibilities of partners to each other, providing for express obligations of loyalty, due care, and good faith. The act was amended in 1996 and 1997 to provide limited liability for partners in a limited liability partnership.

ORIGIN: Completed by the Uniform Law Commissioners in 1994, and amended in 1996 and 1997.

APPROVED BY: American Bar Association

ADOPTIONS OF UPA (1992)(1994):

Connecticut
Florida
West Virginia
Wyoming

ADOPTIONS OF UPA WITH 1996 and 1997 AMENDMENTS:

Alabama
Arizona **
Arkansas *
California **
Colorado
Delaware
District of Columbia
Hawaii
Idaho
Iowa
Kansas
Maryland
Minnesota
Montana
Nebraska
New Mexico
North Dakota
Oklahoma
Oregon
Puerto Rico **
US Virgin Islands
Vermont
Virginia **
Washington

2000 INTRODUCTIONS:

For any further information regarding the Uniform Partnership Act (1994)(1996)(1997), please contact John McCabe or Katie Robinson at 312-915-0195.

** *Limited Liability Partnership Equivalent*

(1/1/00)

(Please note: This information can also be found on our Web Site at www.nccusl.org)

Uniform Partnership Act (1997)

- A Summary of Summaries -

Because of the complex chronology of the Uniform Partnership Act since its initial revision in 1992, this short summary does two things, 1) it provides a short history of the revision process, and 2) it provides a short summary of the 1997 Amendment. An initial revision of the 1914 Uniform Partnership Act was promulgated in 1992. It was officially amended in both 1993 and 1994. In 1996, the Limited Liability Partnership Amendments to the Uniform Partnership Act were promulgated. In 1997, a short amendment was added to Section 801. **This progression through revision and amendment is now all together in one final act called the Uniform Partnership Act (1997).**

A summary of both the Uniform Partnership Act (1994) and the Limited Liability Partnership Amendments to the Uniform Partnership Act were prepared as separate documents. Both of these summaries are part of the materials explaining the Uniform Partnership Act (1997), and should accompany this document. If you do not find the two summaries accompanying this document, call the ULC national office at 312 915 0195 or FAX it at 312 915 0187 or send an e-mail to nccusl@nccusl.org. Any of these modes of communication will get you the full array of summaries.

The 1997 amendment to Section 801 of the Uniform Partnership Act reflects the changes in tax policy unveiled by the Internal Revenue Service in late 1996. Section 801 is the basic section in the Uniform Partnership Act governing dissolution of the partnership. The Uniform Partnership Act (1994) provided a safe harbor for a term or particular purpose partnership from dissolution when a partner dissociated. A majority in interest of the remaining partners could agree to continue the partnership within 90 days after the dissociation. This agreement saved the partnership from dissolution and winding up. In 1994, this was considered the most that could be done for the continuation of the partnership under the tax rules at that time.

Under the 1997 amendment, a partner's dissociation in a term or particular purpose partnership no longer triggers a dissolution and winding up, unless a majority in interest of partners agree to continue. The partnership continues under the 1997 amendment unless at least half the remaining partners move by express will to dissolve the partnership within 90 days after the initial dissociation. Only then is there a dissolution and winding up. The new rule favors the continuity of the partnership more than the old rule does. The new tax rules have simply eliminated the old concern for continuity of life as a corporate characteristic, making the new rule favoring continuity of a partnership feasible.

For Immediate Release:

Revised Uniform Partnership Act Reflects Modern Business Practices
28 Jurisdictions Have Now Updated Venerable 80-year-old Partnership Law

January 2000 -- Partnership law in the United States has been derived from only one source--the Uniform Partnership Act (UPA), originally promulgated in 1914 by the National Conference of Commissioners on Uniform State Laws, and subsequently enacted in 49 states. The more recent Revised Uniform Partnership Act (RUPA), was approved by the Conference in 1994, bringing the law of partnerships in line with modern business practices and trends while retaining many of the valuable provisions in the original act. It was amended in 1997 to provide limited liability for partners in a limited liability partnership.

Adopted with the newest amendments in 21 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands, and without the limited liability partnership amendments in four additional states, RUPA is the only revision since the original was promulgated. It governs the relations among general partners and between the partners and the partnerships.

RUPA makes basic revisions to several subjects in the Uniform Partnership Act. For example, it clearly expresses the primacy of the partnership agreement. That agreement is any agreement between the partners, whether written, oral or implied, concerning the partnership. An important concept of RUPA is that it operates, for the most part, as a default statute for matters that are not covered by the partnership agreement.

An important feature of the Revised Uniform Partnership Act is that it moves away from the aggregate approach to partnership law, and instead adopts an entity approach. RUPA states that a partnership is an entity distinct from its partners--thus achieving greater partnership stability under this more modern approach. A partnership may sue and be sued in the partnership name; property may be acquired in the partnership name as well.

The partner's interest is viewed as a separate group of rights and liabilities associated with participation in the partnership. No partner has an interest in specific property of the partnership. Creditors of a partner may attach the interest of a partner, but may not attach specific partnership property.

RUPA also changes the rule on the dissolution of a partnership. Partnership breakups under RUPA do not require a dissolution every time a partner leaves. In most cases, a partnership may buy out the interests of a partner who leaves. A term partnership will not dissolve so long as one-half of the partners choose to remain. RUPA also establishes and defines the scope of the partners' duties of care and loyalty, and the obligation of good faith and fair dealing.

The 1997 amendments to the Uniform Partnership Act provide greater protection to general partners of a registered limited liability partnership than is the case under most of the existing state limited liability partnership statutes.

The National Conference of Commissioners on Uniform State Laws is now in its 109th year. The organization comprises more than 300 lawyers, judges, and law professors, appointed by the states as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, to draft proposals for uniform and model laws and work toward their enactment in their legislatures. Since its inception in 1892, the group has promulgated more than 200 acts, among them such bulwarks of state statutory law as the Uniform Commercial Code, the Uniform Probate Code, and the Uniform Partnership Act.

For further information, please contact John McCabe or Katie Robinson at 312-915-0195, or Gabrielle Bamberger at 212-333-5222.

I. Liability of Partners

SECTION 32.05.080. LIABILITY OF PARTNERSHIP FOR WRONGFUL ACTS OR OMISSIONS OF PARTNER. Where, by a wrongful act or omission of a partner acting in the ordinary course of the business of the partnership, or with the authority of the copartners, loss or injury is caused to a person not a partner in the partnership, or a penalty is incurred, the partnership is liable for the loss or injury to the same extent as the partners so acting or omitting to act. **SECTION 32.05.090. PARTNERSHIP'S LIABILITY FOR PARTNER'S MISAPPLICATION OF MONEY OR PROPERTY.** The partnership shall make good the loss (1) where one partner acting within the scope of apparent authority receives the money or property of a third person and misapplies it; and (2) where the partnership in the course of its business receives the money or property of a third person and the money or property is misapplied by a partner while it is in the custody of the partnership.	**SECTION 305. PARTNERSHIP LIABLE FOR PARTNER'S ACTIONABLE CONDUCT.** (a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership. (b) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.	Both the current Alaska law and the Revised Uniform Partnership Act (RUPA) contain provisions for liability of the partnership as an entity separate and apart from the partners personally. Alaska, however, has not adopted a section similar to RUPA Section 200 which defines a partnership as an entity separate and apart from its partners.

SECTION 32.05.100. LIABILITY OF PARTNERS. (a) Except as provided in (b) of this section, all partners are liable (1) jointly and severally for everything chargeable to the partnership under AS 32.05.080 and 32.05.090; (2) jointly for all other debts and obligations of the partnership; but any partner may enter a separate obligation from the partnership contract. (b) A partner is a registered limited liability partnership that is in substantial compliance with AS 32.0.405 - 32.05.760 is not liable, directly or indirectly, including through indemnification, contribution, assessment, or other manner, for the debts, obligations, and liabilities of, or chargeable to, the partnership, whether in tort, in contract, or under another theory, that arise from negligence, wrongful acts, wrongful omissions, malpractice, or misconduct committed by another partner or by an employee or agent of the partnership (1) while the partnership is a registered limited liability partnership; and (2) in the course of the partnership business. (c) the liability limitation in (b) of this section does not affect the liability of a partner in a registered limited liability partnership for the (1) partner's own negligence, wrongful acts, wrongful omissions, malpractice, or misconduct; (2) negligence, wrongful acts, wrongful omissions, malpractice, or misconduct in the course of the partnership business of a person under the partner's direct supervision and	**SECTION 306. PARTNER'S LIABILITY.** (a) Except as otherwise provided in subsections (b) and (c), all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law. (b) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner. (c) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under Section 1001(b).	**Extent of Liability Shield** RUPA provides a full shield for liability of other partners in a registered limited liability partnership. Under RUPA, partners are never obligated personally for the obligations of the partnership merely because they are partners. Alaska's current statute provides only a partial shield of liability. Section 32.05.100(b) establishes a limit on liability only for "debts, obligations, and liabilities . . . that arise from negligence, wrongful acts, wrongful omissions, malpractice, or misconduct committed by another partner or by an employee or agent of the partnership. This limitation is expressed positively in Section 32.05.100(c)(1) which states that there is no limited liability in the case of "loans, leases, or other ordinary commercial debts and obligations. . ." incurred by the partnership. Alaska includes additional language in section 32.05.100(c)(1) and (2) which provide that a partner is still liable personally for the negligence of the partner or a person under the partner's direct supervision and control. Both statutes limit the liability shield to the period during which the partnership qualifies as a limited liability partnership (see section III of this document for an outline of these provisions). Additionally, both statutes limit the liability to actions taken in the course of partnership business.

control; or (3) loans, leases, and other ordinary commercial debts and obligations entered into by the partnership or by a partner with apparent authority to bind the partnership, even if the partner lacked actual authority or acted in breach of the partnership agreement or of a duty owed to the partnership or other partners, unless the creditor knew, or in the exercise of reasonable diligence should have known, that the partner was acting without actual authority or in breach of the partnership or of a duty or other partners (d) The liability limitation in (b) of this section may be waived by a registered limited liability partnership. The waiver may not be made unless made by the agreement of at least a majority in interest of the partners, or in a manner otherwise provided in a written partnership agreement. The waiver is valid and binding upon all partners, and may be relied upon by a person dealing with the partnership under AS 32.05.040(a). The waiver may be modified or revoked by the agreement of at least a majority in interest of the partners, or in a manner otherwise provided in a written partnership agreement, except that the modification or revocation does not affect the liability of a partner for debts, obligations, or liabilities incurred, create, or assumed by the partnership before the modification or revocation.		

II. Registration Requirements

SECTION 32.05.415. REGISTRATION REQUIRED. A partnership that is formed and operates under an agreement authorized by AS 32.05.405 may not conduct affairs in this state unless it registers as a registered limited liability partnership with the department. To register, the partnership must submit a registration document and the identification code statement required by AS 32.05.435 with the department. **SECTION 32.05.425. CONTENTS OF REGISTRATION DOCUMENT.** (a) A registration document under AS 32.05.415 must provide (1) the name of the partnership; (2) the address of the partnership's principal office, if the partnership's principal office is not located in this state; (3) the address of the partnership's registered office in this state; (4) the name and address of the partnership's registered agent in the state for the service of process; (5) a brief description of the purpose for which the partnership is formed, which may be stated to be or to include the conduct of all lawful affairs for which a limited liability partnership may be formed under this chapter; (6) the name and address of each general partner maintaining an office in this state; (7) a statement that the general partners executing the registration document acknowledge the responsibility of the partnership under AS 32.05.565;	**SECTION 1001. STATEMENT OF QUALIFICATION.** (a) A partnership may become a limited liability partnership pursuant to this section. (b) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions. (c) After the approval required by subsection (b), a partnership may become a limited liability partnership by filing a statement of qualification. The statement must contain: (1) the name of the partnership; (2) the street address of the partnership's chief executive office and, if different, the street address of an office in this State, if any; (3) if the partnership does not have an office in this State, the name and street address of the partnership's agent for service of process; (4) a statement that the partnership elects to be a limited liability partnership; and (5) a deferred effective date, if any. (d) The agent of a limited liability partnership for service of process must be an individual who is a resident of this State or other person authorized to do business in this State. (e) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to Section 105(d) or revoked pursuant to	**Registration Statement** Both current Alaska Law and RUPA require a filing to receive the benefits of a limited liability partnership. Under RUPA this is considered a statement of qualification while current Alaska law refers to it as a Registration Document. While the contents of the document are similar under either statute, Alaska has required that the contents of the statement be more complex than RUPA under section 32.05.425. Section 32.05.435 also includes a requirement that the registration statement be accompanied by a statement of the purpose for which the partnership was organized. Both statutes contain similar provisions regarding amending the registration statement although Alaska has specified certain items which must be contained within an amendment. **Partnership Names** Both statutes contain provisions governing the proper name for a limited liability company although Alaska has also included requirements that the name be distinguishable and provisions for registration of that name. **Registered Agent** Alaska adds a number of specific requirements regarding registered agents of the partnership for service of process purposes. **Liability Insurance** Alaska has also required registered limited liability partnerships to maintain liability insurance or maintain certain qualified assets under section 32.05.565. Additionally a party in an

(8) if an election has been made that the existence of the partnership will continue until a certain date or event, a statement of the election and the date or event; (9) a statement that the partnership is applying for registration. (b) A partnership formed under AS 32.05.405 may include other information in the registration document. **SEC. 32.05.435. DISCLOSURE OF PARTNERSHIP PURPOSES.** An application for registration under this chapter must be accompanied by a separate statement of the codes taken from the identification codes established under AS 10.06.870 that most closely describe the activities in which the corporation intends to engage. **SEC. 32.05.440. EFFECTIVE DATE AND DURATION OF REGISTRATION.** Registration under AS 32.05.415 is effective immediately when the registration document is filed under AS 32.05.415 . The registration remains effective until the earlier of the date when (1) the partnership voluntarily withdraws its registration under AS 32.05.600; or (2) the partnership's registration is cancelled under AS 32.05.610 - 32.05.620. **SECTION 32.05.450. AMENDMENT OF REGISTRATION DOCUMENT** (a) A registration document filed under AS 32.05.415 is amended by filing an amended registration document with the department. The document must state (1) the name of the limited liability	Section 1003. (f) The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (c). (g) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership. (h) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation. **SECTION 1002. NAME.** The name of a limited liability partnership must end with "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.", "RLLP," or "LLP".	action against the partnership may request that the partnership furnish a compliance statement. The partners of any limited liability partnership which fails to comply with the section are jointly and severally liable up to the policy limit of an insurance policy which would have satisfied the section.

partnership; (2) the date of the filing of the original document of registration; (3) the amendment to the document. (b) An amendment may be filed at any time for any purpose that the partners determine to be proper. (c) A restated registration document may be executed and filed in the same manner as an amendment. **SECTION 32.05.460. STATUS UNAFFECTED BY ERRORS OR SUBSEQUENT CHANGES.** The registration status of a registered limited liability partnership is not affected by errors in the information provided in a registration application or by changes that occur in the information provided in the registration application after the application is filed. **SECTION 32.05.470. NAME.** (a) The name of a registered limited liability partnership must contain the words "Limited Liability Partnership," the abbreviation "L.L.P.," or the abbreviation "LLP," as the last words or letters of its name. (b) The name of a city, borough, or village may be used in a limited liability partnership name; however, the name may not contain the word "city," "borough," or "village," or otherwise imply that the partnership is a municipality. (c) A person may not adopt a name that contains the words "Limited Liability Partnership," the abbreviation "L.L.P.," or the abbreviation "LLP" unless the person has been issued a certificate of registration under this chapter.		

SECTION 32.05.480. DISTINGUISHABLE NAME. The name of a limited liability partnership must be distinguishable on the records of the department from the name of any other organized entity and from a reserved or registered name. The department may adopt regulations to implement this section. In this section, "organized entity" and "reserved or registered name" have the meanings given in AS 10.35.040. **SECTION 32.05.490. RIGHT TO RESERVE NAME.** The exclusive right to use a name may be reserved by a (1) person intending to register a limited liability partnership and to adopt the name; (2) person intending to register a foreign limited liability partnership under this chapter; (3) limited liability partnership or a foreign limited liability partnership registered under this chapter that intends to change its name. **SECTION 32.05.500. APPLICATION TO RESERVE NAME.** Reservation of a name under AS 32.05.490 is made by filing an application with the department. If the department finds that the name is available for use by a limited liability partnership, the department shall reserve it for the exclusive use of the applicant for a period of 120 days.		

SECTION 32.05.510. REGISTRATION OF NAME. (a) A foreign limited liability partnership not intending to conduct affairs in this state may register its name if the name is distinguishable on the records of the department under AS 32.05.480 . (b) Registration of a name by a foreign limited liability partnership under (a) of this section is made by filing with the department (1) a signed application for registration setting out the name of the partnership, the state or territory under the laws of which it is formed, and the date the partnership was formed; and (2) proof from the jurisdiction where the partnership is formed indicating that the partnership was formed in that jurisdiction. (c) The registration of a name under this section is effective until the close of the calendar year in which the application for registration is filed. (d) The registration of a name under this section may be renewed each year by filing (1) an application for renewal setting out the facts required in an original application; and (2) proof of formation as required by (b)(2) of this section. (e) An application for renewal must be filed between October 1 and December 31 in each year. The renewal extends the registration for the following calendar year.		