

ALABAMA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9865 HOUSE JUDICIARY

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**SECTION 32.05.520. USE OF  
NONDISTINGUISHABLE NAME.**

Registration or reservation under this chapter gives the person who has registered exclusive right to the use of the name. The person may enjoin the use of a name that is not distinguishable on the records of the department from the name to which the person has the exclusive right, and the person has a cause of action for damages against a person who uses a name that is not distinguishable on the records of the department from the name to which the person has the exclusive right.

**SECTION 32.05.530. REGISTERED AGENT  
AND OFFICE.**

A registered limited liability partnership and a foreign limited liability partnership shall maintain in the state a registered office and an agent for the service of process.

**SECTION 32.05.540. CHANGE OF  
REGISTERED OFFICE OR AGENT.**

(a) A registered limited liability partnership may change its registered office, agent, or both, by filing with the department a signed statement that includes

- (1) the name of the partnership;
- (2) the address of its registered office;
- (3) the address of its new registered office if the registered office is to be changed;
- (4) the name of its registered agent;
- (5) the name of its new registered agent if the registered agent is to be changed; and
- (6) a statement that the change was authorized by one or more of the partners.

(b) If the department finds that the statement filed under (a) of this section complies with this chapter, the department shall file the statement in the department's office. The change becomes effective when the statement is filed.

(c) A registered agent of a limited liability partnership may change the location of the agent's office from one address to another in this state. The agent may change the registered office for each limited liability partnership for which the person is acting as registered agent by filing in the department a statement setting out the name of the agent, the address of the agent's office before change, the address to which the office is changed, and a list of companies for which the person is the registered agent. The statement shall be executed by the registered agent in the individual name of the agent, or, if the agent is a corporation, it shall be executed by its president or a vice-president. The statement shall be delivered to the department and the limited liability partnership, and, if the department finds that the statement complies with this chapter, the department shall file it. The change becomes effective when the statement is filed.

**SECTION 32.05.550. RESIGNATION BY REGISTERED AGENT.**

A registered agent may resign by filing a written notice and an exact copy of the notice with the department. The written notice of resignation must set out the latest address of the principal office of the partnership and the names and addresses of the general partners known by the agent. The department shall immediately mail a copy of the notice to the partnership at its principal office. The resignation becomes effective 30 days after the filing of the written notice unless the partnership appoints

a successor registered agent before the resignation becomes effective.

**SEC. 32.05.560. SERVICE OF PROCESS.**

(a) The registered agent of a registered limited liability partnership is an agent upon whom process, notice, or demand required or permitted by law to be served upon the partnership may be served.

(b) If a limited liability partnership fails to appoint or maintain a registered agent in this state or if its registered agent cannot with reasonable diligence be found at the registered office, the commissioner is an agent of the partnership upon whom the process, notice, or demand may be served. A person may serve the commissioner under this subsection by

(1) serving on the commissioner or the designee of the commissioner a copy of the process, notice, or demand, with any papers required by law to be delivered in connection with the service, and a fee established by the department by regulation;

(2) sending to the partnership being served by certified mail a notice that service has been made on the commissioner under this subsection and a copy of the process, notice, or demand and accompanying papers; notice to the partnership shall be sent to the address

(A) of the last registered office of the partnership as shown by the records on file in the department; and

(B) the use of which the person initiating the proceedings knows or, on the basis of reasonable inquiry, has

reason to believe is most likely to result in actual notice; and

(3) filing with the appropriate court or other body, as part of the return of service, the return

receipt of mailing and an affidavit of the person initiating the proceedings that this subsection has been complied with.

(c) The commissioner shall keep a record of processes, notices, and demands served upon the commissioner under this section.

(d) This section does not affect the right to serve process, notice, or demand required or permitted by law to be served upon a limited liability partnership in another permitted manner.

**SEC. 32.05.565. FINANCIAL RESPONSIBILITY.**

(a) A registered limited liability partnership shall at all times have and maintain liability insurance or qualifying assets in an amount of value not less than \$1,000,000 to satisfy liabilities described in AS 32.05.100(b). To the extent the partnership maintains liability insurance that is subject to a deductible, it shall maintain qualifying assets in the deductible amount, but the sum of the liability insurance and the qualifying assets is not required to exceed \$1,000,000.

(b) A foreign limited liability partnership may conduct business in this state under this chapter if it has and maintains liability insurance or qualifying assets in an amount of value not less than \$1,000,000 to satisfy liabilities that arise from acts or omissions in this state of the type described in AS 32.05.100 (b).

(c) To the extent that a registered limited liability partnership or a foreign limited liability partnership maintains liability insurance or qualifying assets under the laws of another jurisdiction, the liability insurance or qualifying assets maintained under

those laws satisfy (a) - (b) of this section if the amount of the insurance or assets is equal to or greater than the amount required by (a) - (b) of this section.

(d) In a court action against a registered limited liability partnership or foreign limited liability partnership in the courts of this state, upon request of a party to the court action and subject to an order of the court, the partnership shall provide a certification stating that the partnership is in compliance with this section, describing the method by which the partnership has complied with (a) - (c) of this section, and identifying the depository institution holding the qualifying assets or insurance carrier issuing the liability insurance specified in (a) - (c) of this section.

(e) If a registered limited liability partnership or foreign limited liability partnership fails to maintain the insurance or qualifying assets required by (a) - (c) of this section, the partners are jointly and severally liable for the debts, obligations, and liabilities of the partnership, except that the aggregate amount for which the partners are jointly and severally liable is limited to the amount of insurance or qualifying assets that would have been required to satisfy the requirements of (a) - (c) of this section.

(f) In this section, "qualifying assets" means

(1) cash, federally insured deposits of a bank or other financial institution, and obligations of the United States or one of its instrumentalities having a maturity of not more than one year, if the partnership segregates the cash, deposits, or obligations from other partnership property and specifically designates the cash, deposits, or obligations for the exclusive purpose of

<p>satisfying liabilities described in AS 32.05.100 (b); or</p> <p>(2) a letter of credit issued by a federally insured depository institution for the benefit of persons in whose favor a judgment has been entered against the partnership arising from liabilities described in AS 32.05.100 (b).</p>		
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### III. Reporting Requirements

#### **SECTION 32.05.570. Biennial report required.**

A registered limited liability partnership and a foreign limited liability partnership shall file a biennial report within the time established by AS 32.05.

#### **SEC. 32.05.580. CONTENTS OF BIENNIAL REPORT.**

A biennial report required under AS 32.05.570 must state

- (1) the name of the limited liability partnership and the state or country where it was formed;
- (2) the address of the registered office of the partnership in this state, the name of its registered agent in this state at that address, and, in the case of a foreign limited liability partnership, the address of its principal office in the state or country where it was formed; and
- (3) the names and addresses of the partners.

#### **SEC. 32.05.590. FILING OF BIENNIAL REPORT.**

(a) A biennial report required by AS 32.05.570 shall be filed with the department and is due before January 2 of the filing year. A domestic limited liability partnership and a foreign limited liability partnership registering during an even-numbered year shall file the biennial report each even-numbered year. A domestic limited liability partnership and a foreign limited liability partnership registering during an odd-numbered year shall file the biennial report each odd-numbered year. The biennial report is delinquent if not filed before February 1 of each odd- or even-numbered year as provided in this subsection.

#### **SECTION 1003. ANNUAL REPORT.**

(a) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this State, shall file an annual report in the office of the [Secretary of State] which contains:

- (1) the name of the limited liability partnership and the State or other jurisdiction under whose laws the foreign limited liability partnership is formed;
- (2) the street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this State, if any; and
- (3) if the partnership does not have an office in this State, the name and street address of the partnership's current agent for service of process.

(b) An annual report must be filed between [January 1 and April 1] of each year following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in this State.

(c) The [Secretary of State] may revoke the statement of qualification of a partnership that fails to file an annual report when due or pay the required filing fee. To do so, the [Secretary of State] shall provide the partnership at least 60 days' written notice of intent to revoke the statement. The notice must be mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or annual report. The notice must specify the annual report that has not been filed, the fee that has not been paid, and the effective date of the revocation. The revocation is

Both RUPA and current Alaska law require filing of a report however in Alaska the filing is only required Biennially. Both statutes contain provisions for cancellation of a registration statement or statement of qualification if the filing requirements are not complied with.

(b) Proof to the satisfaction of the department that on or before February 1 the report was deposited in the United States mail in a sealed envelope, properly addressed with postage prepaid, satisfies the deadline of (a) of this section.

(c) The department shall file the report if it conforms to the requirements of this chapter. If the department finds that the report does not conform to the requirements of this chapter, the report shall promptly be returned to the partnership for necessary corrections.

**SECTION 32.05.600. VOLUNTARY WITHDRAWAL OF REGISTRATION.**

A registered limited liability partnership may withdraw its registration by filing with the department a written withdrawal notice that is signed by a partner authorized to execute the withdrawal notice.

**SECTION 32.05.610. CANCELLATION OF REGISTRATION UPON DISSOLUTION.**

The registration of a registered limited liability partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership. A notice of cancellation shall be filed with the department and must state

- (1) the name of the registered limited liability partnership;
- (2) the date of filing of its initial registration;
- (3) the reason for cancellation;
- (4) the effective date, which must be a date certain, of cancellation if the cancellation is not to be effective upon the filing of the application; and
- (5) other information the general partners determine to be appropriate.

not effective if the annual report is filed and the fee is paid before the effective date of the revocation.

(d) A revocation under subsection (c) only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

(e) A partnership whose statement of qualification has been revoked may apply to the [Secretary of State] for reinstatement within two years after the effective date of the revocation. The application must state:

- (1) the name of the partnership and the effective date of the revocation; and
- (2) that the ground for revocation either did not exist or has been corrected.

(f) A reinstatement under subsection (e) relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred

**SECTION 32.05.620. INVOLUNTARY CANCELLATION.**

(a) A registered limited liability partnership's registration may be cancelled involuntarily by the commissioner if

(1) the partnership is delinquent six months in filing its biennial report or in paying a fee or penalty;

(2) the partnership has failed for 30 days to appoint and maintain a registered agent in the state;

(3) the partnership has failed for 30 days after change of its registered office or registered agent to file in the office of the commissioner a statement of the change; or

(4) a misrepresentation of material facts has been made in an application, report, affidavit, or other document submitted under this chapter.

(b) Before a registration may be cancelled under this section, the commissioner shall give the partnership written notice of its delinquency, failure, or misrepresentation by certified mail addressed to its registered agent, registered office, or partners at the last known address as shown by the records of the commissioner. If the partnership fails, within 60 days after the notice is sent by certified mail, to contest the alleged delinquency, failure, or misrepresentation, the partnership may be dissolved under (d) of this section.

(c) If a registered limited liability partnership contests the proposed cancellation, the partnership may request a hearing. If, following a hearing, the commissioner decides there are grounds, under (a) of this section, for involuntary cancellation under this section, the partnership may appeal the decision to the superior court.

(d) If the registration of a registered limited liability partnership is subject to cancellation under

(a) - (c) of this section, the partnership fails to correct the delinquency, failure, or misrepresentation as provided in this section, and there is no controlling order of the superior court, the commissioner shall cancel the partnership by issuing a certificate of involuntary cancellation. The certificate must contain a statement that the partnership's registration has been cancelled, and the date and the reason for the cancellation. The original certificate shall be placed in the department's files and a copy of it mailed to the partnership at its registered office or in care of its registered agent, at the last known address shown on the records of the department. Upon the issuance of the certificate of involuntary cancellation, the existence of the partnership ceases, except as otherwise provided in this chapter, and its name shall be available for use and may be adopted by another limited liability partnership on a date that is six months or more after the cancellation.

(e) If the registration of a registered limited liability partnership is cancelled under this section, the registration may be reinstated within two years from the date of the certificate of cancellation if it is established to the satisfaction of the commissioner that in fact (1) there was no cause for the cancellation, or the delinquency, failure, or misrepresentation resulting in cancellation has been corrected; and (2) the partnership pays two times the amount of any delinquent fee and the amount the partnership would have paid had it not been cancelled during the two-year period. Unless the partnership being reinstated amends its registration to change its name to comply with AS 32.05.470 - 32.05.520, reinstatement may not be authorized if the name of the partnership is not distinguishable on the records of the department under AS 32.05.480 .

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3.12

LIMITED LIABILITY COMPANIES

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3.12 TABLES

TABLE 3.1 Comparison of Business Entities

	C Corporation	S Corporation	Limited Liability Company	Limited Liability Partnership	Limited Partnership	General Partnership
<b>PREREQUISITES</b>						
<b>Number</b>	All states	All states	46 and D.C.	17 and D.C.	All states	All states
<b>Established statute</b>	None	None	Generally 2	Same as General Partnership	At least 2 (RULPA § 901(7))	At least 2 (UPA § 6(1))
<b>Limitations on number of owners</b>	None	Same as C Corporation (but see also preconditions)	Same as C Corporation Co. variation	Same as General Partnership	Any business that a general partnership may conduct (RULPA § 106)	Any business for which profit makes otherwise provided by statute (UPA § 6(1))
<b>Permissible businesses</b>	Any business purpose unless otherwise provided by statute (RMBCA § 3.01)	Same as C Corporation	Same as C Corporation Co. variation	Same as General Partnership	Any business that a general partnership may conduct (RULPA § 106)	Any business for which profit makes otherwise provided by statute (UPA § 6(1))
<b>Tax</b>						
<b>Limited to domestic entities</b>	No	Yes (IRC § 1361(b)(1))	No	No	No	No
<b>Limitations on number of owners</b>	None	No more than 35, with spouses treated as one (IRC §§ 1361(a)(2), 1361(e)(1))	Same as General Partnership	Same as General Partnership	Same as General Partnership	At least 2 but not publicly traded (IRC § 7704(b))
<b>Limitations on who can own</b>	None	Essentially only natural persons who are U.S. citizens or resident aliens (IRC §§ 1361(b)(1)(B), 1361(b)(1)(C))	None	None	None	None

Please fax your reply to Julie Yen at 312.822.0597 or mail it to:  
 Tax Assistance Program, 222 Merchandise Mart Plaza, Suite 493, Chicago IL 60654.

Thank you!

	<i>C Corporation</i>	<i>S Corporation<sup>a</sup></i>	<i>Limited Liability Company</i>	<i>Limited Liability Partnership</i>	<i>Limited Partnership</i>	<i>General Partnership</i>
<b>Limitations on what entity can own</b>	None	Cannot own 80% or more of the stock of another active corporation (IRC §§ 1361(b)(2)(A)-1361(c)(6))	None	None	None	None
<b>Limitations on permissible businesses</b>	None	Cannot be a bank, insurance company, or DISC (IRC §§ 1361(b)(2)(B)-1361(b)(2)(E))	Very few, some states exclude certain activities, e.g., insurance	None	None	None
<b>Limitations on capital structure</b>	None	Single class of stock (SCOS) preferred with risk of non-pro rata distributions and debt recharacterizations as a SCOS; differences in voting rights ignored (IRC §§ 1361(b)(1)(D), 1361(c)(4)-1361(c)(6))	None	None	None	None
<b>Limitations on character of income</b>	None <sup>b</sup>	Status terminates if passive income exceeds 25% of gross receipts for 3 consecutive years and entity has "earnings and profits" <sup>c</sup>	None	None	None	None
<b>CREATION</b>						
<b>Non-tax</b>						
<b>Permit acts necessary</b>	Yes (RMBCA § 1.20)	Same as C Corporation	Yes	Yes	Yes	No
<b>Public filing necessary</b>	Yes (RMBCA § 1.20)	Same as C Corporation	Yes	Yes	Yes	No

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CHOICE OF ENTITY

¶ 3.12

	<i>C Corporation</i>	<i>S Corporation<sup>a</sup></i>	<i>Limited Liability Company</i>	<i>Limited Liability Partnership</i>	<i>Limited Partnership</i>	<i>General Partnership</i>
<b>Amount of public disclosure<sup>d</sup></b>	Minimal (except for changes to important default rules) (RMBCA § 2.02 (a))	Same as C Corporation	Minimal or none, depending on enabling statute	Same as Limited Liability Company	Less than minimal (general partners must be identified, but inter se arrangements are private) (RULPA § 201(a))	None
<b>Constitutive documents</b>	Articles of incorporation, bylaws, and shareholder voting, control, and transfer restriction agreements (RMBCA §§ 2.02(a), 2.04(b))	Same as C Corporation	Articles of organization and operating agreement	Same as General Partnership plus a registration statement	Certificate of limited partnership and partnership agreement (RULPA § 201(a))	Partnership agreement (UPA § 18)
<b><u>Tax</u> Election and owner consent</b>	None	All persons who are shareholders on the day the election is made must consent to the election (IRC §§ 1362(a)(1)-1362(a)(2))	None	None	None	None
<b>Effective date of election</b>	None	Generally current year if made in first 2 1/2 months of current year; if first year, election must occur within 2 1/2 months of the earlier of when entity has shareholders, acquires assets, or "begins business" <sup>e</sup>	None	None	None	None

§ 3.12

LIMITED LIABILITY COMPANIES

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	<i>C Corporation</i>	<i>S Corporation<sup>A</sup></i>	<i>Limited Liability Company</i>	<i>Limited Liability Partnership</i>	<i>Limited Partnership</i>	<i>General Partnership</i>
<b>Status terminated by documents</b>	Liquidation; merger into non C entity (IRC § 331, 332, 336, 337)	Liquidation; merger into non-S entity; violation of eligibility requirements (e.g., shareholder agreement might inadvertently create second class of stock) (IRC § 1362(d)(2))	Liquidation; merger into nonpartnership entity; violation of two-member requirement (IRC § 706(b))	Same as Limited Liability Company	Same as Limited Liability Company	Same as Limited Liability Company
<b>TRANSFERABILITY OF OWNERSHIP INTEREST</b>						
<u>Notice</u>						
<b>Default mode</b>	Shares freely transferable	Same as C Corporation	Financial rights of all members are freely transferable. transfer of governance rights and complete membership interests requires unanimous consent*	Same as General Partnership	Financial rights of both limited and general partners are freely transferable; transfer of complete interests requires unanimous consent unless otherwise provided in partnership agreement (RULPA §§ 702, 704(a))	Financial rights of all partners are freely transferable. transfer of complete interests requires unanimous consent (UPA §§ 27, 18(g))

	C Corporation	S Corporation <sup>a</sup>	Limited Liability Company	Limited Liability Partnership	Limited Partnership	General Partnership
Permissibility of further restrictions						
Documentation	Articles of incorporation, by-laws, resolution of shareholders, or shareholder agreement; legend on certificate (otherwise ineffective against persons without knowledge) (RMBCA §§ 6.27(a), 6.27(b))	Same as C Corporation	Articles of organization, operating agreement;	Same as General Partnership	Same as General Partnership	Partnership agreement
Judicial attitude	Strictly construed; absolute prohibitions and minimum content provisions disfavored	Same as C Corporation	Statutory restrictions and analogy to partnership support acceptance of self-imposed restrictions	Same as General Partnership	Same as General Partnership	Defence to freedom to contract
Assignee liable for negligence contributions and voluntarily received contributions	No liability (RMBCA §§ 6.27(e), 6.22(b))	Same as C Corporation	Assignee is liable	Same as General Partnership	Assignee is liable (RULPA § 704(b))	No provision

	<i>C Corporation</i>	<i>S Corporation<sup>a</sup></i>	<i>Limited Liability Company</i>	<i>Limited Liability Partnership</i>	<i>Limited Partnership</i>	<i>General Partnership</i>
<u><b>Tax</b></u>						
<b>Sales of interests by owners</b>	Generally capital gain unless corporation is collapsible (IRC § 341)	Same as C Corporation	Generally capital gain unless entity has specified assets such as accounts receivable or substantially appreciated inventory (IRC §§ 741, 751)	Same as Limited Liability Company	Same as Limited Liability Company	Same as Limited Liability Company

<sup>a</sup>From a nontax perspective, there is no distinction between a C corporation and a S corporation.

<sup>b</sup>C corporations that are also personal holding companies pay additional taxes. See IRC § 541.

<sup>c</sup>For interim years, there is a "steep tax" to the corporation as well. See IRC §§ 1375, 1363(d)(3). An S corporation may have Subchapter C "earnings and profits" as a carryover from prior C status or as a result of a merger with a C corporation.

<sup>d</sup>Securities laws may impose public disclosure requirements.

<sup>e</sup>IRC § 1362(b); Prop. Reg. § 1362-1(c)(3).

<sup>f</sup>Alternative means may create continuity of life. See Chapters 2 and 9.

<sup>g</sup>Serious tax consequences arise upon the termination of a C corporation, but there generally is no current tax impact to the termination of a partnership. The termination of an S corporation merely defers the Subchapter C termination consequences.

<sup>h</sup>Most enabling statutes do not expressly bifurcate interest, referring instead to the admission of an assignee with membership.

	<i>C Corporation</i>	<i>S Corporation<sup>a</sup></i>	<i>Limited Liability Company</i>	<i>Limited Liability Partnership</i>	<i>Limited Partnership</i>	<i>General Partnership</i>
<b>ORGANIC CHANGES IN ENTITY</b>						
<b><u>Non-tax</u></b>						
<b>Entity termination</b>						
<b>Susceptibility</b>	Minimal (only through majority vote or judicial intervention) (RMBCA §§ 14.02(e), 14.20, 14.30)	Same as C Corporation	Dissociation of any member threatens dissolution unless some quantum of remaining members consent to avoid dissolution	Same as General Partnership as to dissolution; failure to renew registration ends LLP status	Moderate (RLLPA §§ 801, 802)	Extreme (any dissociation of partner causes dissolution) (UPA §§ 31, 29)
<b>Ability to avoid dissolution on account of member dissociation</b>	N/A	N/A	Moderate, depending on enabling statute; under all statutes, unanimous consent by remaining members will avoid dissolution; many statutes allow constitutive documents to provide alternative means to avoid dissolution <sup>1</sup>	Same as General Partnership	Good; dissociation of limited partner does not cause dissolution; following dissociation of general partner, dissolution is avoided either by consent of all remaining partners or per agreement (RLLPA § 801(4))	Note, any dissociation causes dissolution

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LIMITED LIABILITY COMPANIES

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	<i>C Corporation</i>	<i>S Corporation<sup>a</sup></i>	<i>Limited Liability Company</i>	<i>Limited Liability Partnership</i>	<i>Limited Partnership</i>	<i>General Partnership</i>
<b>Owner personal debt after entity termination and liquidation</b>	Up to amount of liquidating distribution for 5 years after articles of dissolution filed if creditor shows good cause for not previously filing claim against entity (RMBCA §14.07(d)(2))	Same as C Corporation	Varies according to enabling statutes; distribution recapture provision continues to apply despite termination	Same as C Corporation, except where statute provides for recapture of unlawful distributions	General partner remains liable subject to general contract and tort statutes of limitations; limited partners' liability for distributions continues despite entity termination (RULPA § 403)	Yes, subject to UPA discharge provisions concerning dissociated partner and to general contract and tort statutes of limitations (UPA §§ 40(d), 36(2))
<b>Impact on debts</b>	Paid or transferred via merger (RMBCA § 11.06(a)(3))	Same as C Corporation	Paid or transferred via merger	Same as General Partnership, except partners not liable	Ordinarily paid from entity assets or by general partner (RULPA §§ 607, 604)	Ordinarily paid from entity assets or by partners unless business continues and debts are assigned to successor entity (UPA §§ 40(d), 41)
<b>Mergers, exchanges, etc. Enabling statutes</b>	Yes (RMBCA § 11.01(a))	Same as C Corporation	Most enabling statutes provide for mergers with limited liability companies and other organizations	None	None	None

	<i>C Corporation</i>	<i>S Corporation<sup>a</sup></i>	<i>Limited Liability Company</i>	<i>Limited Liability Partnership</i>	<i>Limited Partnership</i>	<i>General Partnership</i>
Approval required	Yes, unless otherwise provided in articles of incorporation, by majority of board members present and majority of shareholder voting power (RMBCA § 11.03(b)(2))	Same as C Corporation	Those with management authority and the members; quantum of consent varies but is generally less than unanimous	Same as General Partnership	Unless otherwise agreed, general partner has discretion to make any fundamental change in the business, but is constrained by fiduciary duty to limited partners (RULPA § 403)	Unless otherwise agreed, any fundamental change in the business requires unanimous approval (UPA § 18(h))
Dissenters' exit rights	Yes (RMBCA § 13.02(a)(1))	Same as C Corporation	Only under some enabling statutes	Same as General Partnership	No (but general partner may be liable for damage and organic change may be enjoined) (RULPA § 403)	Yes (unanimous approval rights give each partner the power to demand cash-out) (UPA § 38)
<b>Tax (effect to partner)</b> <b>Reorganizations</b>	Generally tax-free with basis carryover to extent owners continue their equity interest in successor organization; any cash received treated as either dividend or partial sale in exchange of stock (IRC §§ 354, 361)	Same as C Corporation, except merger of S corporation with C corporation where surviving entity is C corporation or where surviving entity cannot make Section election that former S shareholders will no longer be S shareholders	Regardless of whether entity terminates under Section 708(b), generally no tax effect unless liability shares were altered in the surviving entity (IRC §§ 708(b), 752)	Same as General Partnership	Same as Limited Liability Company, except liability shifts are common when shifts are from limited partnerships to limited liability companies	Same as Limited Liability Company, except liability shifts are more common on general partnerships to limited partnerships or to limited liability companies

**ADDENDUM**  
**SUMMARY OF 1996 LIMITED LIABILITY PARTNERSHIP ACT AMENDMENTS TO**  
**UNIFORM PARTNERSHIP ACT (1994)**

These amendments authorize the creation of a new form of general partnership known as a limited liability partnership (LLP). An LLP formed under these amendments provides limited liability protection to the partners that is the same as they would have if they were shareholders in a corporation. The following chart summarizes the LLP Amendments.

<b>RUPA SECTION</b>	<b>TITLE</b>	<b>SUMMARY OF THE PROVISIONS</b>
§ 101	Definitions	Adds two new definitions - "foreign limited liability partnership and limited liability partnership" and modifies the definition of "statement" to include a Statement of Qualification filed by a domestic or a foreign LLP.
§ 103	Effect of Partnership Agreement; Nonwaivable Provisions	Adds a new subsection (b)(9) prohibiting the partnership agreement from varying the state law applicable to an LLP. See § 106.
§ 106	Governing Law	Provides that the law of the state where the Statement of Qualification is filed governs the rights, liabilities, and obligations of the partners in an LLP.
§ 201	Partnership Entity	Adds a new subsection (b) stating that an LLP is the same entity as existed before the filing of a Statement of Qualification.
§ 306	Partner's Liability	New subsection (c), which creates the limited liability shield for partners, is the most important section in the Amendments. Unlike most existing LLC Acts, subsection (c) makes it clear that no creditor can break through the liability shield by latching onto a partner's right of contribution from the other partners. Filing the Statement of Qualification automatically amends the partnership agreement to eliminate any

		language in the partnership inconsistent with the LLP liability shield. See also §§ 307, 703, and 807(b).
§307	Actions by and Against Partnerships and Partners	Language is added to subsection (d) stating that a partnership creditor cannot seek to satisfy a partnership claim against a partner in an LLP unless the partner is personally liable for the obligation (e.g., because the partner created the creditor claim through his or her own negligence).
§703	Dissociated Partner's Liability to Other Persons	Language is added to subsection (b) stating that a dissociated partner in an LLP is not liable to partnership creditors for two years following the dissociation, unless the partner is personally liable for the obligation in question.
§807	Settlement of Accounts and Contributions Among Partners	New language is added to subsections (b), (c), and (d) to reinforce the limited liability shield given partners in an LLC in Section 306(c).
§903	Conversion of Limited Partnership to [General] Partnership	Language is added to subsection (e) making it clear that if the resulting entity is an LLP, the partners will have the liability protection given by the Amendments to LLP partners.
§906	Effect of Merger	Language is added to subsection (c)(3) reinforcing the limited liability shield protection if the resulting entity is an LLP.
§1001	Statement of Qualification	Sets forth the requirements for a Statement of Qualification: (1) vote necessary to amend the partnership agreement (or the contribution provisions of the partnership agreement if the agreement contains specific contribution provisions); (2) the name and address of the chief executive office and address of the office, if any, in this state and if not the name and address of the agent for service of process in this state; (3) a



- for a domestic LLC.
- § 1102            **Statement of Foreign Qualification**
- The requirements for this statement are essentially the same as for the Statement of Qualification for a domestic LLP. See § 1001. In addition, subsection (a)(1) requires that the foreign LLP's name end with one of the designations authorized for domestic LLCs. See § 1002.
- § 1103            **Effect of Failure to Qualify**
- Basically, this section states that the failure to qualify has no adverse legal effect (and subsection (c) specifically states that the failure does not waive the partners' liability shield). The only legal effects of failure to file a Statement of Foreign Qualification are: (1) the automatic appointment of the Secretary of State as the agent for service of process on the foreign LLP; and (2) the possibility of an injunctive action by the Secretary of State (see § 1105).
- § 1104            **Activities Not Constituting Doing Business**
- This section contains a nonexclusive laundry list of activities which a foreign LLP can conduct in the enacting state without having to file a Statement of Foreign Qualification. The activities on the list are similar to those found in equivalent provisions in most state corporation codes applicable to foreign corporations.
- § 1105            **Action by [Attorney General]**
- This section gives the Attorney General of the state the authority to maintain an action against a foreign LLP to restrain it from doing business in the enacting state.
- § 1208-1211      **Effective Date, Repealer, and Transition Rules for States That Have Adopted RUPA and Subsequently Enact the LLP Amendments**
- These provisions provide for a phased-in applicability of the LLP Amendments depending on whether the LLP is formed before or after the effective date of the LLP Amendments. If the state adopts RUPA and the LLP Amendments at the same time, the normal RUPA transition rules apply.

Conceptual amendments adopted by the House Labor & Commerce Committee, 2/7/00 HB 239

1. pages 33 and 34, use "biennial" system and conform dates with AS 32.05.590. Moved by Harris and unanimously adopted.
2. Sections 10 & 13, change to reflect a three year time period, 2006 to 2004.

**HB**

**300**

**Recommended Change to CS for HB300 (HES)**  
**Child Support Enforcement Division**  
**Barbara Miklos,**  
**Director**

In reviewing the committee substitute for HB 300, introduced on April 11, 2000, we have identified a potential problem with Section 7 of the bill. We believe that an amendment is needed to address this problem.

Civil Rule 90.3(d), requires a court to allocate between parents the cost of health care expenses not covered by insurance. Under our interpretation of this provision, Medicaid could rely on a medical support order to recover from a non-custodial parent a share of the health care expenses paid by Medicaid for which private insurance is not available.

Section 7 of the committee substitute, page 7 lines 9-13, appears to change this allocation process by adding the words, "or government assistance," on line 12 of page 7. With this addition, it appears that if health care costs are paid by Medicaid, those costs would not be allocated between the parents if private insurance were not available to cover those costs. Thus, the bill may eliminate Medicaid's right to recover reimbursement directly from a non-custodial parent when private insurance is not available.

We have discussed this concern with Terri Lauterbach, who drafted the committee substitute. Ms. Lauterbach stated that it was not her intent to eliminate a potential right to reimbursement for Medicaid. She further stated that she would not oppose an amendment to delete the words, "or government assistance," from line 12, page 7 of the committee substitute.

**Sectional Analysis to CS for HB300 (HES)**  
**“An Act relating to medical support orders for children;**  
**amending Rule 90.3 Alaska Rules of Civil Procedure**  
**and providing for an effective date”**

This bill makes five changes to child support statutes. First, under existing statutes, an order for medical support can only be established in conjunction with a financial support order. This bill changes the law so that a medical support order may be established on its own. Second, this bill amends the medical support statutes to provide that either parent, not simply the obligor parent, may be required to provide health care coverage. Third, this bill amends the law to require that a medical support order be issued regardless of whether health care coverage is currently available to either parent. The HES amendment to the original bill makes it clear that CSED and the court follow the same procedures regarding medical support. It also makes it clear that CSED can take enforcement actions to ensure medical support compliance with a medical support order even in the absence of a financial support order.

Sections 1-5, 8, 18-19, 21-22 and 24 change laws in order to accommodate the concept of medical support orders being authorized separately from orders for periodic monetary payments.

Section 6 removes the requirement in AS 25.27.020(a)(9) that a medical support order be issued as part of a financial support order. It also deletes all substantive requirements relating to administrative medical support orders. Those requirements are now combined with the requirements for court issued medical support orders. See Section 7

Section 7 amends AS 25.27.060 (c), combining requirements for medical support orders established by CSED in the same section as requirements for court orders. This section incorporates the provisions of Civil Rule 90.3(d) relating to the allocation of health insurance costs and uncovered health care expenses and sets up procedures for getting reimbursement for uncovered costs.

Section 9 amends AS 25.27.063(b) so that either parent may be ordered to provide medical support, not just the obligor.

Section 10 amends AS 25.27.140(a) to allow CSED to establish a medical support order as part of a duty of support and clarifies that enforcement actions may be taken on medical support orders.

Section 11 amends AS 25.27.140(c) so that it is clear that CSED will not send out an income withholding order with a medical support order.

Section 12 amends AS 25.27.160(b) to exempt medical support orders from the requirements that the notice and finding of financial responsibility set a periodic payment amount and inform the obligor of the possibility that the obligor's property and assets will be subject to execution

Section 13 adds a new section to AS 25.27.160 that clarifies that CSED must serve the obligor with a notice and finding of financial responsibility that shows they are responsible for providing medical support.

Sections 14 and 15 amend AS 25.27.170(d) and 25.27.170(f) so that hearing officers of the Department of Revenue have clear direction when holding hearings for medical support orders only. In Section 14, when the hearing relates to medical support only, the hearing officer is not required to determine the amount of periodic payments. In Section 15, when the hearing relates to medical support only, the obligor's property and income is not subject to immediate execution if the obligor fails to appear at the hearing.

Section 16 describes what must happen in a hearing for a medical support order only.

Section 17 adds the requirement that a decision issued by a hearing officer include a medical support order. It removes the requirement that the hearing officer determine the amount of periodic payments if a medical support order only is being established.

Section 20 adds the duty to provide health care coverage to the definition of duty to support.

Section 23 repeals AS 25.27.063(a) in order to combine agency and court requirements in one place. See Section 7.

Section 25 specifies that the legislation takes effect immediately.

# FISCAL NOTE

**STATE OF ALASKA**  
**2000 LEGISLATIVE SESSION**

**BILL NO. HB 300**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected \_\_\_\_\_ Revenue \_\_\_\_\_  
 Title Medical Support Orders for Children BRU Child Support Enforcement  
 Component Child Support Enforcement  
 Sponsor Governor  
 Requester House Health, Education and Social Services Component No. 111

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

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

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

Estimate of any current year (FY2000) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The main feature of this legislation would allow the Child Support Enforcement Division to issue a medical support order without it having to be in conjunction with an order for financial support. Under existing statutes, an order for medical support can only be established in conjunction with a financial support order. This bill changes the law so that a medical support order may be established on its own.

Prepared by: Barbara Miklos, Director Phone \_\_\_\_\_  
 Division Child Support Enforcement Division Date/Time 2/3/00 1:34 PM  
 Approved by: Wilson Condon, Commissioner Date \_\_\_\_\_  
 Agency Department of Revenue

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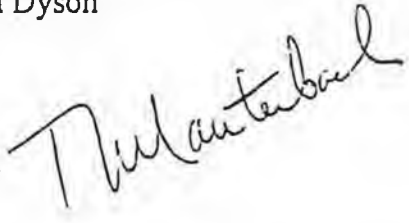
## MEMORANDUM

April 11, 2000

**SUBJECT:** Medical Support Orders (CSHB 300(HES), draft version "D")

**TO:** Representative Fred Dyson  
Attn: Wes Keller

**FROM:** Terri Lauterbach  
Legislative Counsel



Enclosed is a draft CS for HB 300. There is quite a bit of new material in the draft. This has been the first chance for the Legal Services Division to clarify this Governor's bill and to ensure that all affected laws have been considered. There seem to me to be many laws not in HB 300 that need amending in order to accommodate the concept of medical support orders being authorized separately from orders for periodic monetary payments. In this regard, I have added secs. 1-5, 8, 18-19, 21-22, and 24.

You directed that HB 300 be re-worked to accomplish the following:

- (1) allow separate medical support orders;
- (2) not allow CSED to "second-guess" the courts; and
- (3) keep responsibility for a child's health care coverage with the parents, when financially feasible for the parents.

To meet the first directive, the enclosed draft removes all statutory language that requires medical support orders to be "part of a child support order." Such language is deleted from current law in secs. 6 and 7, and additional clarifications about medical support being separate from orders for periodic payments are added in secs. 1-5, 10, 11, 13, and 16-21.

To meet the second directive, the enclosed draft enacts in the statutes the requirements currently applicable to court decisions. This new language appears in sec. 7 of the draft. The courts apply these requirements in court cases. Under this draft, the CSED will apply these requirements in agency cases. The requirements for medical support orders are consolidated in sec. 7 (AS 25.27.060(c)) in order to avoid the need for duplicative provisions elsewhere in the statutes. Therefore, duplicative details about medical support orders in sec. 6 of this draft are shown as deleted in this CS, and duplicative details about medical support orders that had been proposed in secs. 8, 11, and 12 of the original HB 300 have been omitted from this CS. Instead, references to AS 25.27.060(c) are used, where applicable, such as in secs.

Representative Fred Dyson

April 11, 2000

Page 2

6, 16-17, 20, and 22 of the enclosed draft, and AS 25.27.063(a) is repealed because it merely repeated the provisions of AS 25.27.060(c). Consolidating the provisions relating to medical support should help readability of the statutes as well as ensure consistency between court and CSED treatment of medical support orders.

To at least partially meet the third directive, the requirements for medical support orders in sec. 7 of the draft include a requirement that parents share the costs of health care expenses not covered by the Indian Health Services, insurance, or government assistance. Since government assistance is based on the household income of the household where the child lives and examining the noncustodial parent's finances is normally part of determining the parent's ability to make periodic child support payments, I am not sure how you would propose to take into consideration the financial ability of a non-custodial parent to reimburse the state for health care provided through Medicaid when only a medical support order is being established, not an order for periodic payments.

Consequently, this draft is still unclear in one very important respect. AS 25.27.120(a) says that an obligor is liable to the state in the amount of assistance granted under AS 47.07 (which is the law establishing Medicaid, including Denali Kid Care) up to the amount of support provided for in a medical order of support. I am not aware of any law that requires an "amount" in a medical order of support. According to AS 47.07.025(b), this apparently means only that, when the obligor provides insurance for a child covered by Medicaid, the obligor must send payments received from the insurance company to the state. Does the HESS Committee want to set the maximum liability differently for an obligor's responsibility to reimburse the state for Medicaid costs for their children (including Denali Kid Care costs)? If so, how would you like to amend AS 47.07.025(b)? (This law appears in sec. 22 of the enclosed draft.

PA  
No insurance provided  
State pay. at max  
No insurance

I have enclosed a sectional summary and a copy of Civil Rule 90.3(d) and AS 25.27.120(a). Please let me know if I can be of further assistance.

TML:jdr:pl  
00-155:jdr

Enclosures

Govt is there for picking up pieces of broken families  
perhaps by default  
I presumed to make more pieces  
- Easy when looking @ desire for quality care for our kids + looking @ good deal re Denali Kid Care  
unintentionally send message that Govt is ultimately responsible

COURT  
RULES  
ON  
MEDICAL  
COVERAGE

Rule 90.3,  
Alaska  
Rules of  
Civil  
Procedure

paragraph may be issued only with respect to a child whose parents are both minors, and the order terminates when either parent becomes 18 years of age. The court must specify in writing the reasons why it considers it to be appropriate to order a grandparent to pay child support under this paragraph and the factors considered in setting the amount of the child support award. In this paragraph, "grandparent" means the natural or adoptive parent of the minor parent.

(d) **Health Care Coverage.**

(1) *Health Insurance.* The court shall address coverage of the children's health care needs and require health insurance for the children if insurance is available to either parent at a reasonable cost. The court shall consider whether the children are eligible for services through the Indian Health Service (or any other entity) or other insurance coverage before ordering the obligor to provide health care coverage through insurance or other means. The court shall allocate equally the cost of this insurance between the parties unless the court orders otherwise for good cause. An obligor's child support obligation will be decreased by the amount of the obligee's portion of health insurance payments ordered by the court and actually paid by the obligor. A child support award will be increased by the obligor's portion of health insurance if the obligee is ordered to, and actually does obtain and pay for insurance.

(2) *Uncovered Health Care Expenses.* The court shall allocate equally between the parties the cost of reasonable health care expenses not covered by insurance unless the court orders otherwise for good cause. A party shall reimburse the other party for his or her share of the uncovered expenses within 30 days of receipt of the bill for the health care, payment verification, and, if applicable, a health insurance statement indicating what portion of the cost is uncovered. Reasonable, uncovered expenses exceeding \$5,000 in a calendar year will be allocated based on the parties' relative financial circumstances when the expenses occur.

(e) **Child Support Affidavit and Documentation.** Each parent in a court proceeding at which child support is involved must file a statement pleading under oath which states the parent's adjusted annual income and the components of this income as provided in subparagraph (a)(1). This statement must be filed with a party's initial pleading (such as the dissolution petition, divorce complaint,

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arrearages of support past due and amount of unpaid penalties and interest imposed under AS 25.27.020(a)(2)(B). The agency is required to provide only one audit each year for each obligee and obligor under this section. (§ 8 ch 118 SLA 1982; am § 10 ch 68 SLA 1988; am § 88 ch 87 SLA 1997)

**Delayed amendment.** — Under § 148(c), ch. 87, SLA 1997, as amended by § 53, ch. 132, SLA 1998, effective July 1, 2001, this section is amended to read: "Within 30 working days after receipt of a written request from an obligor, the obligor's legal representative, the obligee, or the obligee's legal representative, the agency shall provide an audit of all child support payments made by the obligor and received by the agency. The audit shall include the date and amount of each payment, the name of the obligee, and the total amount of arrearages of support past due and amount of unpaid penalties and interest imposed

under AS 25.27.020(a)(2)(C). The agency is required to provide only one audit each year for each obligee and obligor under this section."

**Revisor's notes.** — Formerly AS 47.23.105. Renumbered in 1990.

**Cross references.** — For nonseverability of § 53, ch. 132, SLA 1998 from other provisions of that act, see § 55, ch. 132, SLA 1998 in the 1998 Temporary and Special Acts.

**Effect of amendments.** — The 1997 amendment, effective July 1, 1997, made a subparagraph reference substitution in the next-to-last sentence.

**Sec. 25.27.107. Certification of arrears.** [Effective July 1, 1999.] Within 30 days after receipt of a written request from an obligee or an obligee's personal representative, the agency shall provide the obligee with a document that certifies whether or not the obligor was, at the end of the most recent calendar year,

(1) in arrears under the support order in an amount more than four times the monthly obligation under the order in cases where a payment schedule has not been established for payment of continuing support and accumulated arrears under the support order; or

(2) in arrears under a payment schedule in an amount more than four times the monthly obligation under the payment schedule if a payment schedule has been established for payment of continuing support and accumulated arrears under the support order. (§ 27 ch 132 SLA 1998)

**Effective dates.** — Section 58, ch. 132, SLA 1998 makes this section effective July 1, 1999.

## ALASKA STATUTES

**Sec. 25.27.120.** Obligor liable for public assistance furnished obligee. (a) An obligor is liable to the state in the amount of assistance granted under AS 47.07 and AS 47.27 to a child to whom the obligor owes a duty of support except that, if a support order has been entered, the liability of the obligor for assistance granted under AS 47.27 may not exceed the amount of support provided for in the support order, and, if a medical order of support has been entered, the liability of the obligor for assistance granted under AS 47.07 may not exceed the amount of support provided for in the medical order of support.

(b) An obligor is liable to the state in the amount of the cost incurred if the state is maintaining a child to whom the obligor owes a duty of support in a foster home or institution, except that if a support order has been entered, or an agreement for payment of that cost executed between the obligor and the state, the liability of the obligor may not exceed the amount provided in the support order or agreement.

(c) Within 30 days after the agency knows the identity and address of an obligor who resides in the state and who is liable to the state under this section, the agency shall send written notification by certified mail to the obligor and the obligee of the obligor's accruing liability and that the obligor shall make child support payments to the agency. The notice required under this subsection must be in clear, concise, and easily readable language. The notice may accompany other communications by the agency.

(d) If the agency fails to comply with (c) of this section, interest does not accrue on the liability to the state unless a support order or medical support order, as applicable, has been entered.

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## MEMORANDUM

April 11, 2000

**SUBJECT:** Sectional Summary of CSHB 300(HES). (Draft Version "D")

**TO:** Representative Fred Dyson  
Attn: Wes Keller

**FROM:** Terri Lauterbach  
Legislative Counsel



Following is a sectional summary of CSHB 300(HES), draft version "D".

Sections 1 and 2. These two bill sections address the ambiguity of the phrase "child support" in AS 11.51.122(a). The ambiguity arises under HB 300 because "child support" could mean either periodic payments or payments for medical support. Sections 1 and 2 resolve the ambiguity by providing that failure to give information about health insurance coverage is also criminal. However, if you wish, these sections could be clarified the other direction - so that they clearly relate only to child support that is in the form of periodic monetary payments.

Section 3. This section allows temporary child support to be restricted to medical support.

Section 4. This section clarifies the term "child support." The change clarifies that an acknowledgment of paternity may not be withdrawn after the date on which judicial or administrative procedures are initiated to establish either monetary or medical child support.

Section 5. This section is about dissolutions. It clarifies the term "child support" to ensure that agreements between the parties to the dissolution provide for health care expenses of the child.

Section 6. This section corresponds to sec. 1 of HB 300, but is in the proper drafting form, which requires setting out the whole subsection, not just paragraph (9). In paragraph (9), rather than specifying the details that must be covered by a medical support order, the language merely refers to the requirements of AS 25.27.060(c) and 25.27.063.

Section 7. This section is amended to refer both to court and agency medical support orders. The new language comes from the court rules already applicable to health care coverage except that I have added a reference to "government assistance" on page 7, line 11, based on my understanding that the committee wishes to retain some responsibility for the parents to cover health care expenses that may not be covered by either private insurance or Medicaid.

Representative Fred Dyson

April 11, 2000

Page 2

such as co-payments or uncovered categories of care. Placing the court rule language in the statutes ensures that both CSED and the courts are issuing comparable medical support orders.

Section 8. Provides that an income withholding order is not required if only a medical support order is issued. I realize that the option of requiring an income withholding order even if only medical support has been ordered has been discussed by the committee; however, I need further instructions in order to draft that concept. An income withholding order must state an amount to be withheld from the obligor's paycheck during each pay period. How would the level of income withholding be set if only medical support was ordered? How would the CSED or court know ahead of time what the government's cost for the child were going to be?

Section 9. Since either parent may have insurance available for the child, "obligor" is changed to "parent" in this section.

Section 10. Clarifies that medical support may be separate from periodic payments of support.

Section 11. Same concept as sec. 8.

Section 12. Refers to an exception explained in the next section of the CS so that the notice and finding of responsibility can be different if only a medical support order is being established.

Section 13. This section sets out the contents of a notice and finding of responsibility when only a medical support order is being established.

Sections 14 - 17. These sections provide details for a hearing officer to follow when only a medical support order is being established. Section 14 and 15 refer to the language in sec. 16. A reference is used in secs. 16 and 17 (to AS 25.27.060(c)) so that duplicative language doesn't have to be used and all of the requirements of AS 25.27.060(c) will clearly govern the hearing officer's decision.

Sections 18 - 19. These sections relate to the laws that allow an occupational license or driver's license to be suspended when a child support obligor is in arrears. The definitions of "substantial compliance" are clarified so that they refer only to arrears in periodic payments, not failure to pay under an order that is only for medical support. If the committee wishes to make these definitions include arrears under medical support orders, let me know how you would want to define "substantial compliance" with respect to medical support.

Section 20. This section clarifies that, under a "duty of support" imposed by a court or CSED, there may only be a duty to provide health care coverage, not periodic payments of money.

Representative Fred Dyson

April 11, 2000

Page 3

Section 21. This section clarifies that a support order does not necessarily include all of the items listed in subparagraph (B). The word "and" is changed to "or" in (B)(iv) and the introductory language following "(B)" is further clarified.

Section 22. This section governs reimbursement to DHSS for the costs of Medicaid for a child when there is a medical support order in effect for the child. Current law requires only that the obligor must send to DHSS any third-party reimbursements that are received by the obligor for the child's health care. The reference is changed here to AS 25.27.060(c) because AS 25.27.060(c) is the section under which medical support orders are issued to the parent, not AS 25.27.063. AS 25.27.063 requires that a copy of the support order be sent to the parent's employer.

Section 23. AS 25.27.063(a) is repealed because it unnecessarily overlaps with AS 25.27.060(c).

Section 24. Refers to the court rule amendment.

Section 25. Immediate effective date. The committee may wish to consider whether there needs to be implementation time for new CSED regulations, amendments to court rules, or other matters.

TML:glc  
00-171.glc

**CS FOR HOUSE BILL NO. 300(HES)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - SECOND SESSION**

**BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to medical support orders for children; amending Rule 90.3,**  
2 **Alaska Rules of Civil Procedure; and providing for an effective date."**

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

4 **\* Section 1. AS 11.51.122(a) is amended to read:**

5 (a) A person commits the crime of aiding the nonpayment of child support if  
6 the person

7 (1) knows that an obligor has a duty under an administrative or judicial  
8 order for periodic payment of child support or for the provision of health care  
9 coverage for a child under a medical support order; and

10 (2) intentionally

11 (A) withholds information about the residence or employment  
12 of the obligor when that information is requested by a child support  
13 enforcement agency; [OR]

14 (B) being an employer of the obligor, withholds information

1 about the eligibility of the obligor's children for coverage under the  
2 employer's health insurance plan or about the cost of the coverage of the  
3 children under the plan when that information is requested by a child  
4 support enforcement agency; or

5 (C) participates in a commercial, business, or employment  
6 arrangement with the obligor, knowing at the time that the arrangement is made  
7 that it will allow the obligor to avoid paying all or some of the support when  
8 it is due or to avoid having a lien placed on assets for the payment of  
9 delinquent support; receipt of a substantial asset for less than fair market value  
10 from an obligor after the obligor's support order has been established  
11 constitutes a rebuttable presumption that the person receiving the asset knew  
12 that the transfer would allow the obligor to avoid paying all or some of the  
13 support or to avoid having a lien placed on the asset.

14 \* Sec. 2. AS 11.51.122(b) is amended to read:

15 (b) In a prosecution under (a)(2)(B) and (C) [(a)(2)(B)] of this section, it is  
16 a defense that the

17 (1) defendant did not intend to assist the obligor in the nonpayment of  
18 child support or in the avoidance of a duty to provide health care coverage of a  
19 child; or

20 (2) obligor did not intend to avoid paying child support or to avoid  
21 providing health care coverage of a child.

22 \* Sec. 3. AS 25.20.050(k) is amended to read:

23 (k) Upon the motion of the child support enforcement agency or another party  
24 in the action to establish paternity, the tribunal shall issue a temporary order for  
25 support of the child whose paternity is being determined. The order may require  
26 periodic payments of support, health care coverage, or both. The order shall be  
27 effective until the tribunal issues a final order on paternity and a permanent order for  
28 support is issued or the tribunal dismisses the action. The temporary order may only  
29 be issued if the tribunal finds clear and convincing evidence of the paternity of the  
30 putative father on the basis of the results of the genetic tests and other evidence  
31 admitted in the proceeding.

1 \* Sec. 4. AS 25.20.050(1) is amended to read:

2 (1) The tribunal shall consider a completed and signed form for acknowledging  
3 paternity that meets the requirements of AS 18.50.165(a) as a legal finding of paternity  
4 for a child born out of wedlock. For an acknowledgment signed on or after July 1,  
5 1997, the acknowledgment may only be withdrawn by the earlier of the following  
6 dates: (1) 60 days after the date that the person signed it, or (2) the date on which  
7 judicial or administrative procedures are initiated to establish child support in the form  
8 of periodic payments or health care coverage for, or to determine paternity of, the  
9 child who is the subject of the acknowledgement. After this time period has passed,  
10 the acknowledgment may only be contested in superior court on the basis of fraud,  
11 duress, or material mistake. The parent wishing to contest the acknowledgment carries  
12 the burden of proof by a preponderance of the evidence. Unless good cause is shown,  
13 the court may not stay child support or other legal responsibilities while the action to  
14 contest the acknowledgment is pending.

15 \* Sec. 5. AS 25.24.210(e) is amended to read:

16 (e) If the petition is filed by both spouses under AS 25.24.200(a), the petition  
17 must state in detail the terms of the agreement between the spouses concerning the  
18 custody of children, child support in terms of periodic payments and in terms of  
19 health care expenses, visitation, spousal maintenance and tax consequences, if any,  
20 and fair and just division of property, including retirement benefits. Agreements on  
21 spousal maintenance and property division must fairly allocate the economic effect of  
22 dissolution and take into consideration the factors listed in AS 25.24.160(a)(2) and (4).  
23 In addition, the petition must state

- 24 (1) the respective occupations of the petitioners;  
25 (2) the income, assets, and liabilities of the respective petitioners at the  
26 time of filing the petition;  
27 (3) the date and place of the marriage;  
28 (4) the name, date of birth, and current marital, educational, and  
29 custodial status of each child born of the marriage or adopted by the petitioners who  
30 is under the age of 19;  
31 (5) whether the wife is pregnant;

1 (6) whether either petitioner requires medical care or treatment;

2 (7) whether any of the following has been issued or filed during the  
3 marriage by or regarding either spouse as defendant, participant, or respondent:

4 (A) a criminal charge of a crime involving domestic violence;

5 (B) a protective order under AS 18.66.100 - 18.66.180;

6 (C) injunctive relief under former AS 25.35.010 or 25.35.020;

7 or

8 (D) a protective order issued in another jurisdiction and filed  
9 with the court in this state under AS 18.66.140;

10 (8) whether either petitioner has received the advice of legal counsel  
11 regarding a divorce or dissolution;

12 (9) other facts and circumstances that the petitioners believe should be  
13 considered;

14 (10) that the petition constitutes the entire agreement between the  
15 petitioners; and

16 (11) any other relief sought by the petitioners.

17 \* Sec. 6. AS 25.27.020(a) is amended to read:

18 (a) The agency shall

19 (1) seek enforcement of child support orders of the state in other  
20 jurisdictions and shall obtain, enforce, and administer the orders in this state;

21 (2) adopt regulations to carry out the purposes of this chapter and  
22 AS 25.25, including regulations that establish

23 (A) procedures for hearings conducted under AS 25.27.170 and  
24 for administrative enforcement of support orders;

25 (B) subject to AS 25.27.025 and to federal law, a uniform rate  
26 of interest on arrearages of support that shall be charged the obligor upon  
27 notice if child support payments are 10 or more days overdue or if payment is  
28 made by a check backed by insufficient funds; however, an obligor may not be  
29 charged interest on late payment of a child support obligation, other than a  
30 payment on arrearages, if the obligor is

31 (i) employed and income is being withheld from the

1 obligor's wages under an income withholding order;

2 (ii) receiving unemployment compensation and child  
3 support obligations are being withheld from the obligor's unemployment  
4 payments under AS 23.20.401; or

5 (iii) receiving compensation for disabilities under  
6 AS 23.30 and child support obligations are being withheld from the  
7 obligor's compensation payments;

8 (C) procedures for establishing and disestablishing paternity  
9 under AS 25.27.165 and 25.27.166, including procedures for hearings; and

10 (D) procedures under which the agency shall enter into contracts  
11 or agreements with financial institutions, including brokerage houses, insurance  
12 companies, and other companies providing individual investment, transaction,  
13 or deposit accounts, doing business in the state to develop and operate an  
14 automated data match system as required by 42 U.S.C. 666(a)(17); the agency  
15 may pay a reasonable fee to a financial institution for conducting a data match  
16 under a contract or agreement under this subparagraph; the fee may not exceed  
17 the actual costs incurred by the financial institution for conducting the data  
18 match;

19 (3) administer and enforce AS 25.25 (Uniform Interstate Family  
20 Support Act);

21 (4) establish, enforce, and administer child support obligations  
22 administratively under this chapter;

23 (5) administer the state plan required under 42 U.S.C. 651 - 669 (Title  
24 IV-D, Social Security Act) as amended;

25 (6) disburse support payments collected by the agency to the obligee,  
26 together with interest charged under (2) (B) of this subsection;

27 (7) establish and enforce administratively under this chapter, or through  
28 the superior courts of the state, child support orders from other jurisdictions pertaining  
29 to obligors within the state;

30 (8) enforce and administer spousal support orders if a spousal support  
31 obligation has been established with respect to the spouse and if the support obligation

1 established with respect to the child of that spouse is also being administered; and

2 (9) obtain a medical support order that meets [AS PART OF A CHILD  
3 SUPPORT ORDER IF HEALTH CARE COVERAGE IS AVAILABLE TO THE  
4 OBLIGOR AT A REASONABLE COST; THE AGENCY SHALL CONSIDER  
5 WHETHER ADEQUATE HEALTH CARE IS AVAILABLE TO THE CHILD  
6 THROUGH THE INDIAN HEALTH SERVICE OR OTHER INSURANCE  
7 COVERAGE BEFORE IT ORDERS AN OBLIGOR TO PROVIDE HEALTH CARE  
8 COVERAGE THROUGH INSURANCE OR OTHER MEANS; THE MEDICAL  
9 SUPPORT ORDER MUST MEET] the requirements of AS 25.27.060(c) and  
10 25.27.063;

11 (10) act on behalf of the Department of Health and Social Services in  
12 the enforcement of AS 47.07.025(b);

13 (11) establish or disestablish, administratively under AS 25.27.165 -  
14 25.27.166 or through court action, the paternity of a child;

15 (12) promptly provide to the Bureau of Vital Statistics, in a format  
16 approved by the bureau, any final agency decision administratively establishing or  
17 disestablishing the paternity of a child born in this state; and

18 (13) act as the central registry for all child support orders and exchange  
19 information as required by federal law.

20 \* Sec. 7. AS 25.27.060(c) is amended to read:

21 (c) In a court or administrative proceeding where the support of a minor child  
22 is at issue, the court or agency, as applicable, may order either or both parents to pay  
23 the amount necessary for support, maintenance, nurture, and education of the child.  
24 Regardless of whether a support order for periodic payments is issued, the [THE]  
25 court or agency shall issue a medical support order. The medical support order  
26 shall require health care insurance coverage for the child [AS PART OF A CHILD  
27 SUPPORT ORDER] if health care insurance coverage is available to either parent  
28 for the child [THE OBLIGOR] at a reasonable cost. The court or agency shall  
29 consider whether the child is eligible for services through the Indian Health Service  
30 or other insurance coverage before ordering either parent [THE OBLIGOR] to  
31 provide health care coverage through insurance or other means. The court or agency

1 shall allocate equally the cost of health care insurance for the child between the  
 2 parents unless there is good cause to allocate the costs unequally. If the obligor  
 3 has the duty to make periodic payments for non-medical child support, the  
 4 obligor's periodic payments shall be decreased by the amount of the other  
 5 parent's portion of payments for health insurance ordered by the court or agency  
 6 and actually paid by the obligor. If the obligor has a duty to make periodic  
 7 payments for non-medical child support, the periodic payments shall be increased  
 8 by the obligor's portion of payments for health insurance if the other parent is  
 9 ordered to and actually does obtain and pay for insurance. [Except as otherwise  
 10 provided in this subsection for uncovered expenses exceeding \$5,000, the court or  
 11 agency shall allocate equally between the parents the cost of reasonable health  
 12 care expenses not covered by private insurance or government assistance unless  
 13 there is good cause to allocate the costs unequally.] One parent shall reimburse  
 14 the other parent for the first parent's share of the uncovered expenses paid by the  
 15 parent within 30 days after receipt by the first parent of the bill for the health  
 16 care, payment verification, and, if applicable, a health insurance statement  
 17 indicating what portion of the cost is uncovered. [Reasonable, uncovered expenses  
 18 exceeding \$5,000 in a calendar year shall be allocated based on the parents'  
 19 relative financial circumstances when the expenses occur, as determined by the  
 20 court or agency.] The medical support order must meet the requirements of  
 21 AS 25.27.063. Upon a showing of good cause, the court may order the parents  
 22 required to pay support to give reasonable security for payments.

23 \* Sec. 8. AS 25.27.062(a) is amended to read:

24 (a) Unless the court or agency is establishing only a medical support order,  
 25 a [A] judgment, court order, or order of the agency under this chapter providing for  
 26 support must contain an income withholding order. Except as provided in (m) of this  
 27 section, the income withholding order must provide for immediate income withholding  
 28 if the support order is

29 (1) being enforced by the agency and was issued or modified on or  
 30 after July 8, 1994; or

31 (2) not being enforced by the agency and was issued on or after July 8,

1 1994.

2 \* Sec. 9. AS 25.27.063(b) is amended to read:

3 (b) If a parent [AN OBLIGOR] who is required to provide health care  
4 coverage under a medical support order is eligible for family health coverage through  
5 an employer, the court or agency issuing the medical support order shall send a copy  
6 of the medical support order to the employer. If the agency has notice that the parent  
7 [OBLIGOR] has changed or will be changing employment and is or will be eligible  
8 for family health coverage through the new employer, the agency shall send a copy of  
9 the medical support order to the new employer.

10 \* Sec. 10. AS 25.27.140(a) is amended to read:

11 (a) If a [NO] support order has not been entered, the agency may establish  
12 paternity and a duty of support, which may include periodic payments of support,  
13 a medical support order, or both, utilizing the procedures prescribed in  
14 AS 25.27.160 - 25.27.220 and may enforce a duty of support utilizing the procedure  
15 prescribed in AS 25.27.230 - 25.27.270. Action under this subsection may be  
16 undertaken upon application of an obligee, or at the agency's own discretion if the  
17 obligor is liable to the state under AS 25.27.120(a) or (b).

18 \* Sec. 11. AS 25.27.140(c) is amended to read:

19 (c) Unless the agency is establishing only a medical support order, a [A]  
20 decision of the agency determining a duty of support shall include an income  
21 withholding order as provided under AS 25.27.062.

22 \* Sec. 12. AS 25.27.160(b) is amended to read:

23 (b) Except as provided in (c) of this section, the [THE] notice and finding  
24 of financial responsibility served under (a) of this section must state

25 (1) the sum or periodic payments for which the alleged obligor is found  
26 to be responsible under this chapter;

27 (2) the name of the alleged obligee and the obligee's custodian;

28 (3) that the alleged obligor may appear and show cause in a hearing  
29 held by the agency why the finding is incorrect, should not be finally ordered, and  
30 should be modified or rescinded, because

31 (A) no duty of support is owed; or

1 (B) the amount of support found to be owed is incorrect;

2 (4) that, if the person served with the notice and finding of financial  
3 responsibility does not request a hearing within 30 days, the property and income of  
4 the person will be subject to execution under AS 25.27.062 and 25.27.230 - 25.27.270  
5 in the amounts stated in the finding without further notice or hearing.

6 \* Sec. 13. AS 25.27.160 is amended by adding a new subsection to read:

7 (c) If the agency is establishing only a medical support order, the notice and  
8 finding of financial responsibility must state

9 (1) that health care insurance shall be provided for the child to whom  
10 the duty of support is owed if health care insurance is available to the alleged obligor  
11 at a reasonable cost and that the alleged obligor and the other parent shall share  
12 equally the cost of the health care insurance and the costs of reasonable health care  
13 expenses not covered by insurance;

14 (2) the name of the alleged obligee and the obligee's custodian;

15 (3) that the alleged obligor may appear and show cause in a hearing  
16 held by the agency why the finding is incorrect, should not be finally ordered, and  
17 should be modified or rescinded, because

18 (A) no duty of support is owed;

19 (B) health care insurance for the child is not available to the  
20 alleged obligor at a reasonable cost;

21 (C) adequate health care is available to the child through the  
22 Indian Health Service or other insurance coverage; or

23 (D) there is good cause to allocate the costs of health insurance  
24 or uninsured health care expenses unequally between the parents;

25 (4) that, if the person served with the notice under this subsection does  
26 not request a hearing within 30 days, a copy of the ~~medical support order~~ will be sent  
27 to the person's employer under AS 25.27.063(b) without further notice or hearing for  
28 inclusion of the child in family health coverage if it is available through the person's  
29 employer.

30 \* Sec. 14. AS 25.27.170(d) is amended to read:

31 (d) Except as provided in (g) of this section, the [THE] hearing officer shall

1 determine the amount of periodic payments necessary to satisfy the past, present, and  
 2 future liability of the alleged obligor under AS 25.27.120, if any, and under any duty  
 3 of support imposable under the law. The amount of periodic payments determined  
 4 under this subsection is not limited by the amount of any public assistance payment  
 5 made to or for the benefit of the child.

6 \* Sec. 15. AS 25.27.170(f) is amended to read:

7 (f) Except as provided in (g) of this section, if [IF] the alleged obligor  
 8 requesting the hearing fails to appear at the hearing, the hearing officer shall enter a  
 9 decision declaring the property and income of the alleged obligor subject to execution  
 10 under AS 25.27.062 and 25.27.230 - 25.27.270 in the amounts stated in the notice and  
 11 finding of financial responsibility.

12 \* Sec. 16. AS 25.27.170 is amended by adding a new subsection to read:

13 (g) If the agency is establishing only a medical support order, the hearing  
 14 officer shall enter a decision about the parents' respective responsibilities for the child's  
 15 health care expenses that complies with the requirements of AS 25.27.060(c).

16 \* Sec. 17. AS 25.27.180(a) is amended to read:

17 (a) Within 20 days after the date of the hearing, the hearing officer shall adopt  
 18 findings and a decision determining whether paternity is established and whether a  
 19 duty of support exists, and, if a duty of support is found, the decision must specify

20 (1) unless a medical support order only is being established, the  
 21 amount of periodic payments or sum for which the alleged obligor is found to be  
 22 responsible; and

23 (2) the parents' respective responsibilities for the costs of the child's  
 24 health care: this medical support order must be in compliance with  
 25 AS 25.27.060(c).

26 \* Sec. 18. AS 25.27.244(s)(6) is amended to read:

27 (6) "substantial compliance" regarding a support order or payment  
 28 schedule means that, with respect to periodic payments required under a support  
 29 order or a negotiated payment schedule under (g) of this section, whichever is  
 30 applicable, the obligor has

31 (A) no arrearage;

- 1 (B) an arrearage in an amount that is not more than four times  
2 the monthly obligation under the support order or payment schedule; or  
3 (C) been determined by a court to be making the best efforts  
4 possible under the obligor's circumstances to have no arrearages under any  
5 support order that requires periodic payments or under a negotiated payment  
6 schedule relating to child support.

7 \* Sec. 19. AS 25.27.246(n)(5) is amended to read:

8 (5) "substantial compliance" regarding a support order or payment  
9 schedule means that, with respect to periodic payments required under a support  
10 order or a negotiated payment schedule under (f) of this section, whichever is  
11 applicable, the obligor has

12 (A) no arrearage;

13 (B) an arrearage in an amount that is not more than four times  
14 the monthly obligation under the support order or payment schedule; or

15 (C) been determined by a court to be making the best efforts  
16 possible under the obligor's circumstances to have no arrearages under any  
17 support order that requires periodic payments or under a negotiated payment  
18 schedule relating to child support.

19 \* Sec. 20. AS 25.27.900(5) is amended to read:

20 (5) "duty of support" includes a duty of support imposed or imposable  
21 by law, by a court order, decree, or judgment, or by a finding or decision rendered  
22 under this chapter whether interlocutory or final, whether incidental to a proceeding  
23 for divorce, legal separation, separate maintenance, or otherwise, and includes the duty  
24 to pay arrearages of support past due and unpaid together with penalties and interest  
25 on arrearages imposed under AS 25.27.020(a)(2)(B) and the duty to provide health  
26 care coverage in compliance with AS 25.27.060(c) and 25.27.063;

27 \* Sec. 21. AS 25.27.900(11) is amended to read:

28 (11) "support order" means any judgment, decree, or order that is  
29 issued by a tribunal for the support and maintenance of a child or of a parent with  
30 whom the child is living; "support order" includes a judgment, decree, or order

31 (A) on behalf of a child who has reached the age of majority

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if the judgment, decree, or order was lawfully issued; and

(B) for any or all of the following:

(i) monetary support, including arrearages;

(ii) payment of health care costs or maintenance of health insurance;

(iii) reimbursement of related costs;

(iv) payment of attorney fees and legal costs and other fees; or [AND]

(v) penalty, interest, and other relief as required by a tribunal;

\* Sec. 22. AS 47.07.025(b) is amended to read:

(b) Through the child support enforcement agency or on its own behalf, the department may garnish the wages, salary, or other employment income of a person who

(1) is required by a medical support order under AS 25.27.060(c) [AS 25.27.063] to provide coverage of the costs of medical care to a child who is eligible for medical assistance under this chapter;

(2) has received payment from a third party for the costs of the services; and

(3) has not used the payments to reimburse, as appropriate, the other parent or custodian of the child, the provider of the services, or the department.

\* Sec. 23. AS 25.27.063(a) is repealed.

\* Sec. 24. The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT AMENDMENT OF COURT RULE. This Act amends Rule 90.3, Alaska Rules of Civil Procedure, by specifying that a medical support order may be issued even when a support order for periodic monetary payments is not issued and by setting the requirements for medical support orders.

\* Sec. 25. This Act takes effect immediately under AS 01.10.070(c).

**HB**

**304**

TONY KNOWLES, GOVERNOR

410 Willoughby Ave., Ste 105  
Juneau, AK 99801-1795  
PHONE: (907) 465-5065  
FAX: (907) 465-5070  
<http://www.state.ak.us/dec/>

**DEPT. OF ENVIRONMENTAL CONSERVATION**

OFFICE OF THE COMMISSIONER

February 23, 2000

The Honorable Bill Williams  
Chairman, DEC Finance Sub-Committee  
Alaska State House of Representatives  
Capital Building, Room 502  
Juneau, AK 99801

Dear Representative Williams:

During yesterday's meeting with the House Finance sub-committee we discussed how the department might reduce it's FY 2000 authorized general purpose fund level by 251.6 for FY 2001. You requested that the department provide proposals in advance of hearings. The following describes the department's proposal to meet your reduction target. In response to Representative Kott's comments, additional information is also provided on general purpose fund savings that can be realized by the Clean Water Fund bonding authority currently in place and Alaska Drinking Water Fund bonding as proposed in HB 304.

**Proposed Reductions**

The Governor's proposed FY 2001 budget includes a 111.6 general fund reduction below the FY 2000 authorized budget. The department recommends that the sub-committee accept these savings.

In addition to the 111.6 general fund reduction, 140.0 in general funds could be reduced from the Governor's proposed FY 2001 budget by authorizing a fund source switch in the air permit program. 80.0 can be saved by funding regulation work from the Clean Air Protection Fund. 60.0 can be saved by funding enforcement work from the Clean Air Protection Account. These reductions achieve the sub-committee's target without further reducing services.

**Drinking Water Fund Bonds**

HB 304 would allow the department to sell bonds from interest earned on the Drinking Water Fund to be used as state match for future federal grants. The current interest on the Drinking Water Fund

is approximately 600.0 which, under the bonding authority in HB 304, could be turned into general fund savings beginning in FY 2001. Representative Kott expressed interest in possibly using these savings to support a rebuild of the food safety program

Sincerely,



Kurt Fredriksson  
Acting Deputy Commissioner

cc: Representative Eric Croft  
Representative John Davies  
Representative Joe Green  
Representative Pete Kott  
Representative Beverly Masek

1-GH2031\A.5  
Cook  
2/25/00

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: HB 304

1 Page 8, line 23:

2 Following "assistance to":

3 Insert "organizations that are not exempted from regulation under  
4 AS 42.05.711(d) and that provide water service under a certificate of convenience and  
5 necessity from the former Alaska Public Utilities Commission or the Regulatory Commission  
6 of Alaska and to"

7 Delete "municipal"

8 Page 9, line 18:

9 Delete "A"

10 Insert "An organization that provides water service under a certificate of convenience  
11 and necessity or a"

12 Page 10, line 9, following "section.":

13 Insert "The regulations may establish different standards, criteria, procedures, and  
14 requirements for loans to organizations that provide water service under a certificate of  
15 convenience and necessity from those established for loans to municipalities."

**FISCAL NOTE**

Bill Version: HB 304

(H) Publish Date: 1/21/00

**STATE OF ALASKA  
1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Revenue  
 Title Drinking Water Fund Bonds BRU Revenue Operations  
 Component Treasury Division  
 Sponsor Rules Committee  
 Requester Governor Component Serial No. 121

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

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

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

Estimate of current year (FY00) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The Alaska Drinking Water Fund will pay all costs of issuance, administration, and debt service for bonds issued. Bond proceeds will be deposited in the Drinking Water Fund to make loans to municipalities. There is no other fiscal impact on state funds.

Prepared by Deven Mitchell, Debt Manager *Deven Mitchell*  
 Division Treasury Division  
 Approved by Wilson L. Condon *Wilson L. Condon*  
 Commissioner  
 Agency Department of Revenue

Phone 465-3750  
 Date/Time December 22, 1999  
 Date December 22, 1999

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## FISCAL NOTE

Bill. Version: HB 304

(H) Publish Date: 1/21/00

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected DEC  
 Title AK Bonding - AK Drinking Water Fund BRU Facility Construction and Operation  
 Component Facility Construction and Operation  
 Sponsor Rules Committee  
 Requester Governor Component No. 637

**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	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	(1,551.4)	(1,551.4)	(1,551.4)	(1,551.4)	(1,551.4)
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
1075 Clean Water Loan Fund	0.0	0.0	(395.5)	(455.3)	(455.3)	(455.3)
1100 Drinking Water Loan Fund	0.0	70.0	(380.4)	(448.4)	(448.4)	(448.4)
Drinking Water Fund Bond Recpts	0.0	1,551.4	1,551.4	1,551.4	1,551.4	1,551.4
Clean Water Administrative Fund	0.0	0.0	395.5	455.3	455.3	455.3
Drinking Water Administrative Fund	0.0	0.0	450.4	518.4	518.4	518.4
<b>TOTAL</b>	<b>0.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>

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 legislation would provide for:

- 1) Using bond proceeds instead of GF Match to capitalize the Alaska Drinking Water Fund; and
- 2) Using fees deposited into (and appropriated from) two new administrative funds to pay the operating expenses of the Clean Water and Drinking Water loan programs. (Continued next page.)

Prepared by: Dan Easton, Director Phone 465-5135  
 Division Facility Construction and Operation Date/Time 12/30/99 12:04 PM  
 Approved by: [Signature] Date 12-29-99  
 Agency Dept. of Environmental Conservation

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# STATE OF ALASKA

**DEPT. OF ENVIRONMENTAL CONSERVATION**  
OFFICE OF THE COMMISSIONER

**TONY KNOWLES, GOVERNOR**  
410 Willoughby Ave., Ste 105  
Juneau, AK 99801-1795  
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<http://www.state.ak.us/dec/>

February 8, 2000

The Honorable Peter Kott, Chair  
House Judiciary Committee  
Alaska State Legislature  
Juneau, AK 99801

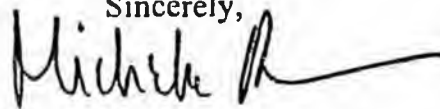
RE: Request for Hearing on HB 304

Dear Representative Kott:

The Office of the Governor and the Department of Environmental Conservation request that a hearing be scheduled for HB 304, the clean water fund/drinking water fund bill. This bill is important to Alaskans for many reasons. This bill affords communities the opportunity to obtain low cost loans for drinking water and sewer projects while reducing the need for general funds. A safe source of drinking water and a sanitary means of sewage disposal are basic to the health of our communities. Adequate sewer and water also form the infrastructure needed for economic growth.

This legislation is a win - win for communities, state government and for Alaskans. It provides for healthy communities, good infrastructure and growing economies. For this reason we ask that hearings be scheduled as soon as possible. Enclosed is a bill analysis, fact sheet and copy of an Alaska Municipal League Resolution. If you wish to discuss this legislation, please call Dan Easton at 465-5135. Thank you for your consideration.

Sincerely,



Michele Brown  
Commissioner

Enclosures

**HOUSE BILL 304**  
**SENATE BILL 210**

**SECTIONAL ANALYSIS**

Introduction. This bill authorizes revenue bonds to be sold to make available bond receipts for the Alaska Drinking Water Fund by providing the same bonding authority that currently exists with the Alaska Clean Water Fund. The bill also creates two administrative funds to provide the authority to use a portion of the repayments being made on the loans to support program operations for both Funds. And it clarifies the uses of the Alaska Drinking Water Fund to ensure that its purposes conform to current federal statutes.

Section 1 and 2. AS 37.15.560 (a) (b). BOND AUTHORIZATION- Authorizes the state bond committee to issue and sell bonds to raise money to be placed into the **Alaska Drinking Water Fund**. Because these are revenue bonds, they can be issued when the committee decides and this does not require a public vote. The committee may enter into agreements and perform those functions that are normally required to accomplish the task of issuing and selling bonds.

Section 3. AS. 37.15.565. BOND REDEMPTION FUND- A new bond redemption fund is established as the **Alaska Drinking Water Fund Revenue Bond Redemption Fund**. This is a standard industry technique for making it easier and more accountable to perform the many functions necessary in the bond issuance and sales process. And also, to provide accountability for any future principle and interest payments and any premium redemption on the bonds.

Sections 4, 5, 6, 7. AS 37.15.570(c)(d)(e)(f) BOND TERMS- The state bond committee may issue, sell, control or redeem bonds for the **Alaska Drinking Water Fund** in such a way as to achieve the greatest advantage for the State. They can make decisions based upon the market conditions of that moment and do not require approval of another agency or group to execute these decisions. The committee will decide the level of security required from the fund that will provide this collateral security. A trustee may be appointed by the committee to perform all necessary functions as directed by the committee. The committee must give due regard to the federal requirements of this drinking water fund, but any decisions made after giving this consideration are final. Bond resolutions that reference these statutes shall be regarded as having given this consideration.

Section 8. AS 37.15.573. BOND RESOLUTION- The committee must adopt a bond resolution to issue bonds for the **Alaska Drinking Water Fund**. The resolution will contain those items that are necessary to identify and define the bonds and the bond sales process.

Section 9. AS 37.15.575. STATE AID INTERCEPT- This paragraph defines the procedure for allowing the State to intercept or garnish other legitimate sources of State aid should a community default on a loan from the **Alaska Drinking Water Fund**. This paragraph is included in the legislation to enhance investor confidence in the program and ultimately, lower

program costs.

Section 10 AS 37.15.580. PLEDGE OF THE STATE- The committee has the right to make contracts for any bonding effort for the **Alaska Drinking Water Fund** and not have the terms of those contracts altered by any subsequent state action. The bond investors also have the right to rely upon the terms of any contracts.

Section 11. AS 37.15.583. ENFORCEMENT BY BONDOWNER- For any resolution of disagreements between the bondowners and the committee involving a bonding issue of the **Alaska Drinking Water Fund**, 10% or more of the owners of any series or issue of the bonds can bring suit in Superior Court in Juneau. The amount of 10% was selected to prevent frivolous suits from being brought.

Section 12. AS 37.15.585. AMOUNTS REQUIRED FOR PAYMENTS- Each year the committee will inform the commissioners of the departments of Environmental Conservation and Revenue of the amounts needed in that year to pay for the costs of issuing or maintaining the bonds from the **Alaska Drinking Water Fund**. The notice will be given at this time so that the departments will be able to incorporate these numbers into their financial planning for the next fiscal year.

Section 13. AS 37.15.587. PURPOSES AND SUFFICIENCY OF REVENUE- Bond proceeds will be used to build projects that are eligible in the **Alaska Drinking Water Fund** program. No bonds will be issued if there is not enough security available in the fund to make it prudent to sell the bonds.

Section 14. AS 37.15.590. REFUNDING- If it is in the best interests of the State, the committee will refund all or some of the bonds for the **Alaska Drinking Water Fund**. They do not need any authority from the voters or the legislature to do this. The committee will follow the defined procedures to conduct the refunding process. The committee is authorized to incur the expenses inherent with this process. A trustee may be appointed to conduct this process. The trustee has the right to invest funds in short-term federal instruments until the refunding proceeds are needed.

Section 15, 16, 17 AS 37.15.605(1), (3), (7) DEFINITIONS. These sections update the definitions to include the **Alaska Drinking Water Fund** and the funds bonding accounts.

Section 18 AS 46.03.034 ALASKA CLEAN WATER ADMINISTRATIVE FUND. Replaces the current Alaska Clean Water Account with Alaska Clean Water Administrative Fund which is composed of the 1). Alaska Clean Water Administrative Operating Account that can be used to pay for the Departments costs in managing the fund and the 2). Alaska Clean Water Administrative Income Account to receive payment of fees and earnings of the Alaska Clean Water Administrative Fund.

Section 19 AS 46.03.035. FEES CHARGED FOR THE LOANS MADE FROM THE ALASKA CLEAN WATER FUND. This authorizes the department to charge and collect reasonable fees

for making and servicing loans.

Section 20 AS 46.03.036 ALASKA DRINKING WATER FUND. This section is updated so that the proceeds and interest from the sale of bonds can be deposited into the fund and well as funding the administration of the fund. The requirement is set that municipalities wishing to borrow money have to have the authority to incur debt and establish a source of revenue for payment. Regulations are required that set out criteria for priority setting, standards for borrowers eligibility, types of projects to be funded and long term interest rates, standards for self sufficiency, collateral and loan terms.

Section 21. AS 46.03.038 ALASKA DRINKING WATER ADMINISTRATIVE FUND. This fund is set up the same as the Alaska Clean Water Administrative Fund in Section 18 with a 1). Alaska Drinking Water Administrative Operating Account and the 2). Alaska Drinking Water Administrative Income Account to receive payment of fees and earnings of the Alaska Clean Water Administrative Fund.

Section 22. AS46.03.039 FEES CHARGED FOR LOANS MADE FROM THE ALASKA DRINKING WATER FUND. This authorizes the department to charge and collect reasonable fees for making and servicing loans.

Section 23. Clarifies that this portion of the legislation would create a change in Civil Procedure 3 and cause all actions to be filed in Superior Court in Juneau. The second paragraph recognizes that in order for this procedure change to be in effect, this section must receive a two-thirds majority vote of each house as required by Article IV, Section 15, Constitution of the State of Alaska.

Section 24. Specifies that the regulations adopted under this statute may not take effect before the statutory effective date of sections 1 through 22.

Section 25. States that section 24 takes effect immediately upon passage of the statute.



Alaska Department of Environmental Conservation  
Division of Facility Construction and Operation  
Municipal Loans Program

**Loan Fund Bonding and Fee Authority Legislation  
FACT SHEET**

February 1, 2000

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**What does the legislation do?**

Authorizes DEC to:

- Sell bonds as a means of capitalizing the Alaska Drinking Water Fund; and
- Designate a portion of the interest charged on Drinking Water and Clean Water program loans to help pay for program operations.

**What are the Drinking Water and Clean Water Loan Programs?**

DEC-operated loan programs that offer low-interest loans to municipalities for drinking water, sewerage and other water-quality construction projects.

**How are the programs funded?**

Each year the State may apply for two federal capitalization grants: one for the Drinking Water Loan Program and one for the Clean Water Loan Program. Both federal grants require a 20 percent state match. In state fiscal year 2000, the State received \$15.5 million in federal grants and contributed \$3.1 million in state funds.

In addition to annual contributions of state and federal capitalization money, the funds also earn interest. Funds that have yet to be loaned out are invested in interest bearing accounts and earn investment interest. Communities also pay interest when they repay their loans. Both investment and repayment interest must, by federal law, be retained in the Alaska Drinking Water and Clean Water Funds and thus contribute to the growth of the Funds.

**What are the rules about how the programs are operated?**

The funds must be used in accordance with federal rules derived from the Safe Drinking Water Act for the Alaska Drinking Water Fund and the Clean Water Act for the Alaska Clean Water Fund. The federal rules are complex, but an important concept is central: Once money is deposited into a fund, it must remain in the fund and unavailable for any

purposes other than to make loans to communities – except in a very limited number of special cases.

#### **How do the programs work?**

Each year DEC mails applications to all Alaska municipalities. Interested communities complete and return the applications proposing specific projects for funding. DEC ranks the applications based primarily on the degree of public health benefit expected from the projects. Loan agreements with municipalities are executed for the highest-ranking projects. As construction costs are incurred, monies are drawn from the Funds and loaned to municipalities. The municipalities pay back the loans when projects are complete. This money is returned to the loan Funds where it becomes available for other projects.

For each loan project, DEC assigns an engineer to assist the community in selecting an appropriate project design, in getting permits and other authorizations, and generally in serving as an advisor to the community on the project. There is a broad range of assistance provided depending on each community's capabilities and needs. The engineers also approve all payments to communities to make certain that all costs are eligible for funding under state and federal law.

#### **Why is bonding authority needed?**

Until now, the State of Alaska has met its match obligation using general funds. However, the federal government recently offered the states another option for meeting their match requirements. The option is to use interest retained in the Funds in a form of short-term bonding exercise to meet the state match requirement. In essence, this form of bonding lets the states convert interest earned by the funds into bonds and then use the bonds to meet the state match requirement. To take advantage of that option requires that state statutes provide bonding authority. The statutes establishing the Alaska Clean Water Fund currently provide authority to use bonds for financing. That authority does not exist for the Alaska Drinking Water Fund.

#### **Since the statutes currently provide authority to use bonds to capitalize the Alaska Clean Water Fund, does DEC plan to exercise that authority in FY 2001?**

Yes. DEC intends to use the existing Clean Water Loan Program bonding authority to obtain the \$1.5 million in state match needed to capture the \$7.5 million in federal grant funds expected for FY 2001. That will save the State \$1.5 million in general funds in FY 2001.

**What will the bonding costs be?**

The costs for preparing bond documents and finance charges will be approximately \$50,000.

**What about the Alaska Drinking Water Fund? Can the State do the same for the Alaska Drinking Water Fund?**

Not until two things happen. First, the statutes need to be amended to provide authority to use bonds to capitalize the Alaska Drinking Water Fund. Second, there needs to be an amount of interest earnings in the Alaska Drinking Water Fund equal to the state match requirement plus bonding costs. In other words, there needs to be about \$1.5 million in interest in the Fund to execute a short-term bonding exercise. Because the Alaska Drinking Water Fund is much younger than the Alaska Clean Water Fund, there aren't enough interest earnings in the fund to take advantage of this short-term bonding option in FY 2001.

**When will the State be in a position to use short-term bonds to meet its capitalization obligation for the Alaska Drinking Water Fund?**

There should be enough interest earnings in the Alaska Drinking Water Fund by FY 2002. With enough interest and bonding authority for this Fund, the State would be positioned to save \$1.5 million in general funds in the FY 2002 budget.

**What overall savings could the State realize by bonding for both the loan Funds?**

The State could save about \$3 million each year in money needed to capture \$15 million in federal grants. Our hope is to save \$1.5 million beginning in FY 2001 and \$3.0 million in FY 2002 and beyond.

**Will bonding affect the amount of federal grant funds the state qualifies for?**

No. The amount of the federal grant awards will be the same whether the State match comes from general funds or bond proceeds.

**Switching to the second part of this legislation, why is fee authority needed?**

It costs about \$1 million each year to operate the two programs – to provide engineering assistance, to execute loan agreements, to review payment requests and issue payments to communities, to track loan debt, to collect and record repayments from communities, and to pay for audits by CPA firms. Federal law allows states to use a small part of the federal capitalization grants to pay for program costs. For the past few years, DEC has relied entirely on this source to fund program operations. With decreasing federal grant levels, this funding source will not be sufficient to cover program costs – even though those costs are expected to remain stable. Another source of funding is needed. Most states already use a portion of the repayment

interest to pay for program costs. Eventually all states will be doing the same. We think it makes sense in Alaska as well.

**Are personnel and other costs increasing?**

No. The number of personnel and other program costs are expected to remain at current levels for the foreseeable future. We are seeking only to replace the declining federal subsidy.

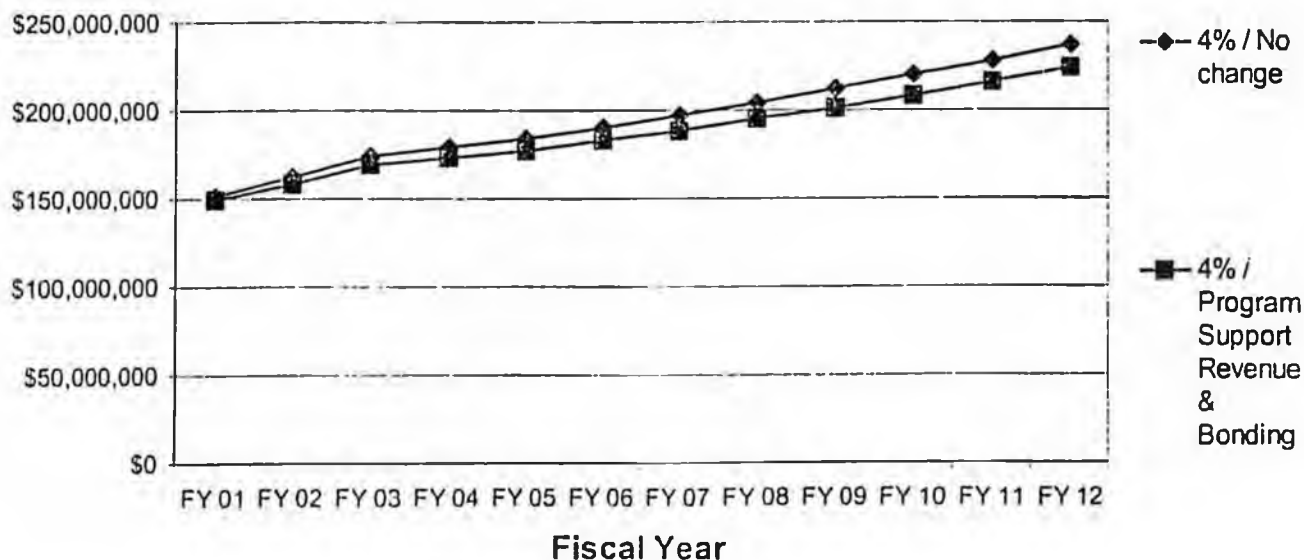
**How will these changes affect the terms of the loans DFC makes to communities? Will costs go up?**

Finance charges on the loans will not go up. In fact we are proposing to lower finance rates. All of the finance charges for the loans are currently treated as interest and returned to the Funds. To assess fees, the finance charges that communities pay would be broken into two parts: a portion that is interest to be returned to the Fund, and a portion that would go to paying for program operations. For example, if the overall financing charge is 2.5 percent, 2 percent might be interest that is returned to the Fund, and 0.5 percent might go to fund program operations. Again though, the overall debt service cost to the municipalities is expected to go down.

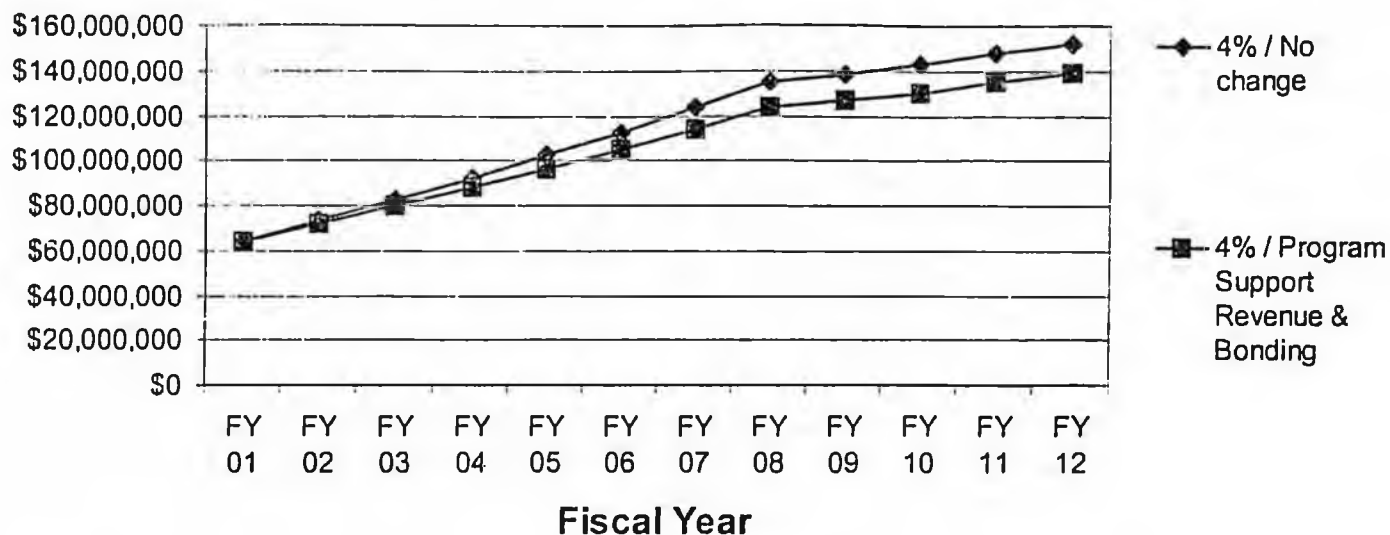
**What about the impacts on the amount of money available to loan out? Will the changes reduce the rate of growth of the funds?**

Yes. The changes will result in slower growth in the Funds. For example, the projected annual growth in the Alaska Clean Water Fund over the next 12 years is expected to decrease from 5.3% to 4.6% per year. Similarly the annual growth in the Alaska Drinking Water Fund is expected to slow from 13.8% to 11.9%. Nevertheless, the funds will remain healthy and capable of meeting the expected demand for loans.

**Clean Water Projected Growth**



### Drinking Water Projected Growth



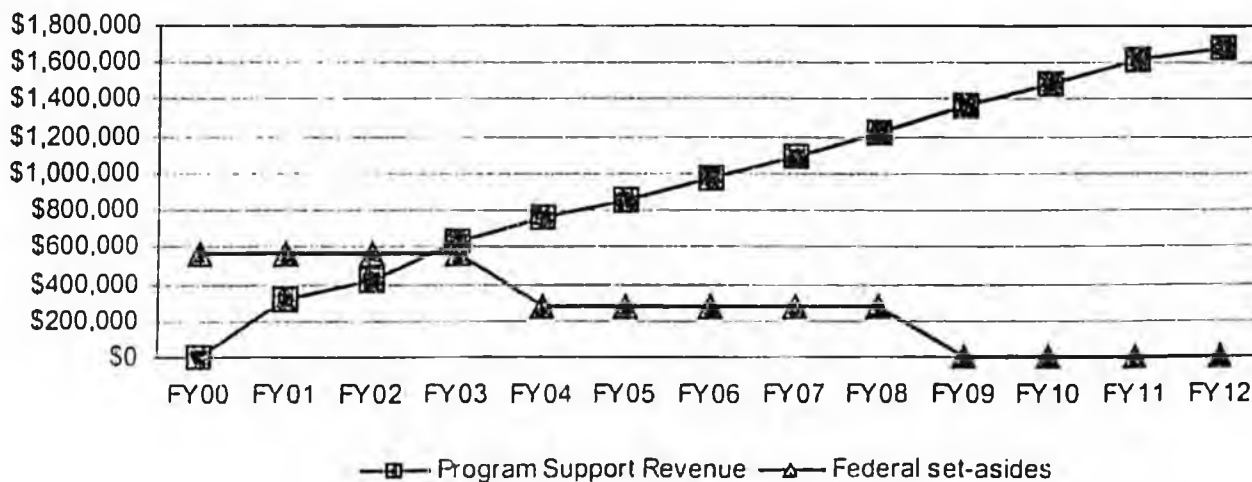
#### What else needs to happen?

The new finance charge structure and amounts need to be established in regulation (18 AAC 76). We are proposing a structure that satisfies the conflicting goals of trying to provide the lowest loan cost to the communities and still protect the long-term financial integrity of the Funds. We are proposing a fiat loan rate of 2.5% that graduates to a bond-indexed rate when the municipal bond index hits 8 percent. Included within that rate is a designated 0.5% to pay for program administration. For purposes of comparison, the current interest rate is about 4.3%.

#### Will this cover program costs?

The expected revenue will be small at first and gradually increase. At the proposed rate of 0.5%, we expect to collect enough money to cover operating expenses. The following chart shows the relationship between the expected revenues and program costs.

### CW & DW Set-Asides & Program Support Revenue



**When interest rates go down, what will happen to the existing loans made at higher rates? Will communities be stuck with the higher rate loans?**

We will offer all communities with existing loans the opportunity to convert to the new rate structure. No communities will be stuck with higher rate loans.

**If more fees are collected than are needed to cover program costs, what will happen?**

Fees will be deposited into an income account. Each year we will request that the legislature appropriate funds from the income account to an operating account to cover program costs. If there are more funds in the income account than are needed to cover program costs, we will use those excess funds to make loans to communities.

**HB**

**310**

# FISCAL NOTE

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

BILL NO. HB 310

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Community & Economic Development  
 Title An Act relating to the Alaska Insurance Guaranty BRU Insurance  
 Association; and amending Rule 24, Alaska Rules of Civil Procedure. Component Insurance  
 Sponsor H L&C  
 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>3.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

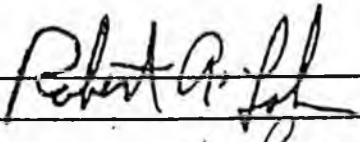
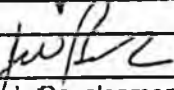
Estimate of any current year (FY2000) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill has no fiscal impact on this component.

Prepared by: Robert A. Lohr  Phone 269-7900  
 Division Insurance Date/Time 2-18-00 1:59 PM  
 Approved by Commissioner Deborah B. Sedwick  Date 2-18-00  
 Agency Community & Economic Development

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## SPONSOR STATEMENT FOR CSHB 310

This bill amends the Alaska Insurance Guaranty Association Act, AS 21.80.010 *et seq.* The Act provides a mechanism to protect policyholders and claimants in the event of the insolvency of a property and liability insurer licensed to sell policies in Alaska. The current statutory scheme was enacted in 1970 and was based on the 1969 National Association of Insurance Commissioners' (NAIC) State Post-Assessment Insurance Guaranty Association Model Bill. The NAIC model act has undergone a series of amendments to reflect lessons learned at a nationwide level from application of the model act to actual insolvencies during the ensuing years. CSHB 310 updates the Alaska Act to bring it into conformance with the 1996 NAIC Post-Assessment Property and Liability Insurance Guaranty Association Model Act. In so doing, the Act becomes better suited to meet its intended purpose of protecting Alaska policyholders and claimants. Updating the Act to comply with the model act provides the added benefit of uniformity among the states in terms of this type of legislation. The Alaska Division of Insurance and the Alaska Insurance Guaranty Association support CSHB 310.

Submitted by: Alaska Guaranty Association  
February 2, 2000

## SECTION-BY-SECTION ANALYSIS OF CSHB 310

As used herein, "the Alaska Act" or "Act" refers to the Alaska Insurance Guaranty Association Act, AS 21.80.010 *et seq.*

As used herein, "the Model Act" refers to the National Association of Insurance Commissioners' 1996 Post-Assessment Property and Liability Insurance Guaranty Association Model Act.

As used herein, "the AIGA" refers to the Alaska Insurance Guaranty Association created by AS 21.80.040.

### Section 1.

A.mends AS 21.80.010, "Purpose," to bring into conformance with Section 2 of the Model Act. The primary change is to specify an intent to minimize, consistent with the limitations contained in the Act, a claimant's or policyholder's financial loss related to an insolvency. Prior national litigation experience under the existing language ("avoid financial loss") showed insureds were trying to argue that the language should be read to avoid *any* financial loss, despite limitations within the Act. The phrase regarding detection and prevention of insolvencies is being deleted consistent with changes to AS 21.80.110, whereby the AIGA's role in that regard is reduced.

### Section 2.

Repeals and reenacts AS 21.80.020, "Applicability," to bring into conformance with Section 3 of the Model Act. Experience has shown the existing language is not definite enough in specifying what types of insurance are not covered by the Act. The amendment expands on the categories of insurance and other indemnity agreements not covered by the Act. As explained by the NAIC's comment to Section 3:

This bill focuses on property and liability kinds of insurance and therefore exempts those kinds of insurance deemed to present problems quite distinct from those of property and liability insurance. The bill further precludes from its scope certain types of insurance that provide protection for investment and financial risks.

The Alaska Life and Health Insurance Guaranty Insurance Association Act, AS 21.79.010 *et seq.*, provides coverage for some of the lines excluded by this provision. Unlike the Model Act, the amendment preserves existing coverage under the Alaska Act for ocean marine insurance, and preserves an existing exclusion for a risk retention group formed under 15 U.S.C. 3901-3906. Subsection (10) adds an exclusion not found in the Model Act. It is adopted from an Idaho statute, and indicates that for policy reasons, there is no coverage for any type of insurance written on a retroactive basis to cover known losses which existed when the insurance was bound.

### Section 3.

Amends AS 21.80.030, "Construction," to bring into conformance with Section 4 of the Model Act. The amendment deletes the word "liberally." Prior national litigation experience showed courts were using the presence of this word to justify the extension of coverage under similar acts in such a manner as to disrupt the balance between reducing the financial loss of claimants/policyholders of an insolvent insurer and increasing the expense of insurance coverage to the purchasers of insurance generally.

### Section 4.

Amends AS 21.80.040, "Creation of association," to simply rename "board of directors" to "board of governors," which is consistent with the appellation used in the Alaska Life and Health Insurance Guaranty Insurance Association Act. It also avoids confusion with references within the Act to the Director of Insurance. This change is also seen in subsequent sections where the board members are presently referred to as "directors."

### Section 5.

Amends AS 21.80.040, "Creation of association," by adding a new subsection. The language comes from the definition of "member insurer" in Section 5.H(2) of the Model Act. The language is placed here to avoid putting substantive law in a definition section. It makes clear when a member insurer is no longer liable for assessments as to new insolvencies, and when it remains liable even though its license has expired or been terminated. The intent is to eliminate certain objections by members as to their liability for assessments.

### Section 6.

Amends AS 21.80.050, "Board of governors," to bring into conformance with Section 7 of the Model Act. The primary change is to allow for up to two public members to be appointed to the board at the discretion of the Director of Insurance. Limitations on who can serve as a public member are given. There are related changes on how vacancies on the board are to be filled, with the board filling vacancies of member insurers, and the Director filling public member vacancies. The existing language provides that the board consists of between five and nine members. This amendment adds a requirement for the plan of operation to establish the exact number of members currently comprising the board within that range. This will allow the Director of Insurance to know whether vacancies exist on the board. "Persons" is changed to "members" to reflect the actual practice that AIGA members, and not individual persons, serve as board members.

### Section 7.

Amends AS 21.80.060, "Powers and duties of the association," to bring into general conformance with Section 8 of the Model Act. Subsection (a)(1) removes past ambiguity by providing a bright line test for when the AIGA becomes obligated, i.e., when an order of

liquidation is entered. A policy decision regarding the allocation of the AIGA's limited resources is reflected by removal of the requirement for a claim to exceed \$100 to be covered, and the addition of a limitation that a claim for unearned premiums may not exceed \$10,000 per policy. A deadline, or bar date, is also added for when a claim must be filed with the AIGA to be covered. This prevents a situation the AIGA has faced in the past where a claim is made against it after the time when the AIGA can make a subrogation claim against the insolvent estate for reimbursement. A bar date is found in virtually every other state's insurance guaranty acts.

Subsection (a)(3) deletes existing language referencing AS 21.80.110 because it is superfluous. An existing ambiguity is also cured by specifying that the applicable "preceding year" to be used in calculating assessments is the calendar year "preceding the assessment." This also reflects the AIGA's actual practice. Language allowing a financially-troubled member to be "exempt" from an assessment is deleted as unnecessary given the fact assessments in Alaska are passed through directly to insureds, and thus, an assessment would not impair the financial position of the member. Language is also added to make clear the AIGA is empowered to decide in what order claims are paid. This reduces the risk of suits stemming from dissatisfaction with the order chosen. New language also addresses the AIGA's ability to collect on assessments that had been deferred because of a member insurer's financial condition, and how other member insurers who have to cover a deferred assessment can later recoup the excess assessment they may have paid. An assessment should not be paid where it would drive an insurer closer to insolvency, and a member who has to pay extra because of some other member's inability to do so should be able to get paid back when the deferment ends.

Subsection (a)(5) deletes certain existing language given a corresponding deletion to AS 21.80.080. The deleted language is replaced with new language recognizing the right of the AIGA to control the defense of a covered claim. If the AIGA is the one paying the claim, it should be allowed to control the direction of the defense of the claim, including identity of defense counsel. This reflects the AIGA's existing practice.

Subsection (b)(7) is deleted. It has never been part of the Model Act, and it is uncertain what it adds beyond what would be authorized under subsection (b)(3).

#### Section 8.

Amends AS 21.80.070(c), "Plan of operation," to bring into conformance with Section 9 of the Model Act. Requires the plan of operation to establish procedures for handling assets received from the estate of an insolvent insurer, and to require board members to designate an individual as their representative on the board, as well as the alternate or substitute representative for the appointed person. Such requirements place reasonable bounds on the discretion of the board in its operations.

#### Section 9.

Amends AS 21.80.080, "Duties and powers of the director," to bring into conformance with Section 10 of the Model Act. In so doing, the former requirement for the AIGA to notify insureds

of insolvent insurers of the insolvency and their rights under the Act is deleted. This role has historically been accomplished by the Division of Insurance itself, or through the receiver for the estate of the insolvent insurer.

#### Section 10.

Amends AS 21.80.090(a), "Effect of paid claims," to bring into conformance with Section 11.A of the Model Act. The changes are limited to stylistic clarifications and cross-referencing changes in the next section.

#### Section 11.

Amends AS 21.80.090(b), "Effect of paid claims," to bring into conformance with Section 11.C of the Model Act. Adds language recognizing the AIGA's status as a claimant in the estate of the insolvent insurer as to amounts paid out by the AIGA to satisfy covered claims against the insolvent insurer, and also grants the AIGA the right to receive distributions under applicable liquidation statutes with a priority equal to what the claimant would have been entitled. Such rights allow the AIGA to recoup some or all of the amounts it pays to satisfy covered claims, and thus not overburden the system or Alaska insureds. A clarification is made that although a receiver is bound by the AIGA's determinations or settlements which release the AIGA's liability to a claimant, this does not extend to claim amounts alleged to exceed the AIGA's statutory limit. This primarily comes up when there is a dispute as to the amount of the AIGA's statutory limit as to certain claims. If the receiver contends the AIGA paid more than its statutory limit, the amendment makes clear the receiver may seek review of the issue by the court, and is not automatically bound by the amount of the AIGA's payment.

#### Section 12.

Creates new section AS21.80.095, "Prohibited claims." The language comes from the Model Act's definition of "covered claim," and is also present in existing AS 21.80.180(3). The language is placed in a separate section to avoid putting substantive law in a definition section.

#### Section 13.

Amends AS 21.80.100(a), "Nonduplication of recovery," to bring into conformance with Section 12.A of the Model Act. Makes clear that the obligation of a claimant to exhaust other available insurance coverage before seeking a recovery from the AIGA extends to insurance available from insurers other than those who are members of the AIGA.

#### Section 14.

Repeals and reenacts AS 21.80.110, "Prevention and detection of insolvencies," to bring into conformance with Section 13 of the Model Act. Makes the AIGA's role in advising the Director on insurer insolvency and reporting discretionary. The changes reflect actual practice and avoid the appearance of any conspiracy by the board against an impaired member.

#### Section 15.

Amends AS 21.80.120, "Examination of the association," to change the due date for the AIGA to file its certified financial report. The report is prepared by an outside auditing firm. By not having it due until after April 15, the AIGA obtains the report at a cheaper price. The due date also coincides with the board's annual meeting, when the report is provided to the Director.

#### Section 16.

Amends AS 21.80.150, "Immunity," to bring into conformance with Section 17 of the Model Act. Clarifies that immunity is provided not only for action taken, but for any failure to act. Also expressly extends immunity to an alternate or substitute representative of a board governor.

#### Section 17.

Amends AS 21.80.160, "Stay of proceedings and reopening of default judgments," to bring into general conformance with Section 18 of the Model Act, except it was felt a 90-day stay, rather than the six months specified in the Model Act, would be sufficient as the remaining language would allow extensions to be sought. Also gives the AIGA the right to waive a stay of proceedings. Under this section, a stay of proceedings is automatic. The waiver option provides a quick and easy way to allow a suit to continue where the AIGA sees that to be advantageous.

#### Sec 18.

Repeals and reenacts AS 21.80.180, "Definitions," to bring into conformance with Section 5 of the Model Act. Adds definitions for "affiliate," "claimant," "control," and "resident." These terms are contained within language being added to the Act under previous sections.

#### Section 19.

This section provides a transitional provision regarding how the amendments will affect the existing terms of the board of governors.

**ALASKA INSURANCE GUARANTY ASSOCIATION  
HB 310**

The AIGA is a statutory association of insurance companies (carriers) who are licensed (or "admitted") to write property and casualty insurance, including Workers Compensation, in the state of Alaska. Some classes of insurance are excluded. All licensed insurance companies are required to be members under the Act.

The AIGA functions through a Board of Directors. The Board has contracted with a third party to administer the day-to-day operation of the AIGA under a written Plan of Operations.

In general, the AIGA provides a mechanism to pay certain covered claims of those insurance carriers who have been declared insolvent by a court. An amount is assessed to each member of the Association and the collected assessment is used to pay the claims of the insolvent carrier. The assessment is based on the amount of premium a company collects on Alaskan insurance policies.

A receiver is generally appointed by the Court in the insolvent carrier's state of domicile. The receiver, similar to an executor, of the estate of the insolvent company attempts to sell off the assets of the carrier and gather liquid assets from all possible sources. The receiver also sets a date after which he/she will not allow any additional claims against the estate. This date is referred to as the *bar date*. The deadline is typically less than a year.

By comparison, no deadline exists for insureds or claimants to file a claim against the AIGA. In the past the lack of a deadline, or "bar date," has resulted in situations where the AIGA was still receiving and paying claims after the deadline for filing claims for recovery against the estate of the insolvent insurer had passed. In such situations, the cost of these old claims is borne solely by subsequent purchasers of insurance through premium surcharges

After paying expenses and claims of the estate, the receiver distributes funds to the AIGA to reimburse for claims and administrative expenses paid. A receiver will review each claim submitted by the AIGA for reimbursement and denies recovery on claims filed with the AIGA after the bar date established by the receiver. This is necessary to allow a fixed date on which to calculate the prorata amounts to be distributed to each creditor of the estate.

When collected assessments and recovered funds from the receiver exceed the amount needed to pay claims and administrative expenses of the AIGA for that particular insolvency, then the excess funds are refunded to the membership in proportion to the amount originally assessed.

The act allows members to recoup the assessments they pay through surcharges on insurance premiums charged policyholders. Historically, the AIGA has recovered millions of dollars from liquidators/receivers of insolvent members. The recovery is rarely 100% on the dollar. Thus, recovery of assets from the estate of insolvent insurers plays a direct role in reducing the cost of property and casualty insurance to Alaska policyholders.

Received from: Dwight Perkins, Deputy Commissioner  
Department of Labor & Workforce Development

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MEMO

This is in response to your request to review House Bill 310, a proposal to amend AS 21.80.010, et seq., relating to the Alaska Insurance Guaranty Association (AIGA). This bill was introduced into the Alaska House on 1/21/2000, and referred to the Labor and Commerce and the Judiciary Committees. As you requested, I examined it only in light of the Alaska Workers' Compensation Act (AWCA) (AS 23.30) and the regulations and case law relating to workers' compensation in Alaska.

Although the proposed legislation appears to provide for coverage of the full benefit amount of most workers' compensation claims against insolvent member insurers, it does not appear to provide coverage for all workers' compensation claims. Specifically, proposed AS 21.80.060(a)(1)(B) contains time limits on the filing of claims with the AIGA, which would bar certain (otherwise compensable) workers' compensation claims.

Proposed AS 21.80.060(a)(1) places a \$10,000.00 maximum cap on the AIGA's liability for claims against an insolvent member insurer. However, this section specifically exempts workers' compensation claims from this monetary amount limit, permitting the AIGA to meet liability for full benefits provided under the AWCA.

Proposed AS 21.80.060(a)(1)(B) exempts the AIGA from liability for claims filed with the AIGA more than 18 months after the order liquidating the insolvent member insurer, or the liquidation order's final date for filing claims (whichever is earliest). The AWCA at AS 23.30.105(a) specifically permits workers' compensation claims to be filed more than two years after a work injury for "latent defects pertinent to and causing compensable disability." In plainer English, an injured worker can file a claim more than two years after a work injury, if that injury later progresses into a disabling condition. It is also worth noting that the AWCA provides that even very late notice-of-injury reports will not bar a claim under certain, enumerated, circumstances. AS 23.30.100(d).

In the proposed legislation, there appears to be no workers' compensation exception to the AIGA liability time limits. From our years of experience, we know that a fair number of compensable claims are filed more than two years after a work injury. H.B. 310 appears to have a significant gap in the AIGA's proposed coverage of the workers' compensation liability of insolvent member insurers. If the proposed legislation contained a workers' compensation exception to the claim time limits, similar to the proposed exception to the monetary limits, this gap in liability would presumably close.