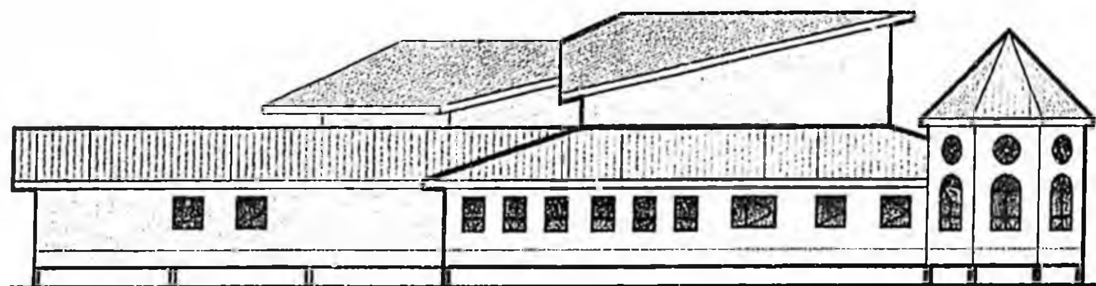
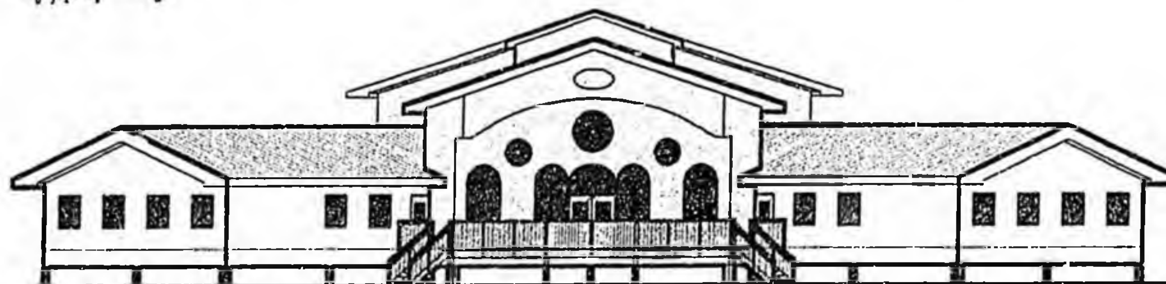
ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

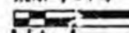
9870 HOUSE JUDICIARY



West Elevation



Northeast Elevation



Conceptual Elevations

Winchester Alaska, Inc

YKHC STATEWIDE INHALANT TREATMENT CENTER

YUKON-KUSKOKWIM HEALTH CORP
BETHEL, ALASKA

Revisions

Drawn	Date
Checked	Job No

Sheet Contents

Elevations

Category	Sheet
A	2.2

Representative Mary Sattler Kapsner
State Capitol • Juneau, Alaska 99801-1182
Phone: (907) 465-4942 • Fax: (907) 465-4589
E-Mail: Representative Mary_Kapsner@legis.state.ak.us

House District 39
Lower Kuskowkim and Upper Bristol Bay

Resources Committee
Fisheries Committee
Regulation Review Committee

Akiachak
Akiak
Aleknagik
Atmautluak
Bethel
Chefornak
Clarks Point
Dillingham
Eek
Ekuk
Ekwok
Goodnews Bay
Kasigluk
Kipnuk
Kolignanek
Kongiganak
Kwethluk
Kwigillingok
Manokotak
Napakiak
Napaskiak
New Stuyahok
Nunapitchuk
Oscarville
Platinum
Portage Creek
Quinhagak
Togiak
Tuntutuliak
Twin Hills

MEMORANDUM

TO: Representative Pete Kott, Chair (Judiciary) Pete

FROM: Representative Mary Kapsner Mary

DATE:: April 13, 2000

RE: Request for Hearing on House Bill 375

I would like to request an initial hearing on the Committee Substitute for House Bill 375, "An Act relating to abuse of inhalants" in the Judiciary Committee. This bill was heard today in ~~the~~ Health, Education, and Social Services and passed out of that Committee. Attached is a copy of the draft bill, along with the sponsor statement.

Representative Mary Sattler Kapsner
State Capitol • Juneau, Alaska 99801-1182
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E-Mail: Representative Mary_Kapsner@legis.state.ak.us

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Nunapitchuk
Oscarville
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Portage Creek
Quinhagak
Togiak
Tuntutuliak
Twin Hills

Sponsor Statement

CS FOR HOUSE BILL NO. 375 ( )

"An Act relating to abuse of inhalants"

House Bill 375 targets a problem in Alaska that has been neglected for many years. It will provide public safety official, medical personnel and the courts leverage to place individuals who use and abuse inhalants into rehabilitation. I introduced HB 375 after listening to the concerns of many providers working with young people and to VPSO's who feel they have no tools to intervene when they see someone huffing.

Although the abuse of inhalants is not a new problem, it is reaching rampant porportions throughout Alaska and among youth across the nation. As of January 1999 twenty-four states have passed laws addressing inhalant problems. These laws vary greatly in content, ranging from sending individuals to treatment to criminalizing the behavior.

One of the problems in forging a direction to deal with inhalant abuse is the lack of appropriate treatment facilities. Most substance abuse treatment programs are geared toward problems of alcohol and drugs. Nationally, there are only two residential treatment facilities designed for inhalant abusers, in Texas and South Dakota. Thanks to the efforts of Senators Frank Murkowski and Ted Stevens, the Yukon Kuskokwim Health Corporation in Southwest Alaska received a grant in 1999 to build an inhalant abuse treatment facility. Construction is scheduled to begin this summer, with completion in 2001.

A 1998 survey by the YKHC found that during 1996 and 1997, 161 Alaskans sought treatment for inahlant abuse at drug and alcohol programs. During the same period they found 46 people with a history of inhalant abuse died. A 1993 study by the Indian Health Service in Alaska looked at the cost to society if inhalant abusers are left untreated. That study found that a 19 year old with a chronic history of inhalant abuse and significant brain or organ damage will cost society $1.4 million over a lifetime of treatment, medical care, social services, law enforcement and court costs.

We are fortunate in Alaska to be at the threshhold of a new era in addressing inhalant abuse with the coming residential treatment facility. I would hope that the legislature take a pro-active look at ways in which we can raise awareness and address statutory needs to complete a package approach that includes prevention, intervention and treatment. House Bill 375 is intended to be a part of the intention component in this issue.

Thank you for your consideration.

1-LS1323\H
Luckhaupt
3/28/00

CS FOR HOUSE BILL NO. 375( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE KAPSNER

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to abuse of inhalants."**

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

3 * **Section 1.** AS 11.76 is amended by adding a new section to read:

4 **Sec. 11.76.200. Abuse of inhalants.** (a) Under circumstances not otherwise
5 proscribed under AS 11.71, a person commits the crime of abuse of inhalants if the
6 person smells or inhales any substance, other than an alcoholic beverage, with the
7 intent of causing intoxication, inebriation, excitement, stupefaction, or dulling of the
8 brain or nervous system. hazardous volatile substances

9 (b) This section does not apply to the administration of a controlled substance,
10 drug, or other substance by a practitioner or otherwise in a medical context. In this
11 subsection, "administer," "drug," and "practitioner" have the meanings given in
12 AS 11.71.900.

13 (c) In this section, "alcoholic beverage" has the meaning given in
14 AS 04.21.080.

15 (d) Abuse of inhalants is a class B misdemeanor. A court shall suspend the

sentence imposition. change to violation

1 imposition of sentence, place the defendant on probation under AS 12.55.085, and
2 require the defendant to successfully complete an inhalant abuse treatment program.
3 * **Sec. 2.** AS 47.37.170(b) is amended to read:
4 (b) A person who appears to be incapacitated by alcohol**, inhalants,** or drugs
5 in a public place shall be taken into protective custody by a peace officer or a member
6 of the emergency service patrol and immediately brought to an approved public
7 treatment facility, an approved private treatment facility, or another appropriate health
8 facility or service for emergency medical treatment. If **a** [NO] treatment facility or
9 emergency medical service is **not** available, a person who appears to be incapacitated
10 by alcohol**, inhalants,** or drugs in a public place shall be taken to a state or municipal
11 detention facility in the area if that appears necessary for the protection of the person's
12 health or safety.
13 * **Sec. 3.** AS 47.37.170(d) is amended to read:
14 (d) A person who, after medical examination at an approved private treatment
15 facility, or another appropriate health facility or service for emergency medical
16 treatment, is found to be incapacitated by alcohol**, inhalants,** or drugs at the time of
17 admission or to have become incapacitated by alcohol**, inhalants,** or drugs at any time
18 after admission, may not be detained at a facility after the person is no longer
19 incapacitated by alcohol**, inhalants,** or drugs. A person may not be detained at a
20 facility if the person remains incapacitated by alcohol for more than 48 hours after
21 admission as a patient. A person may consent to remain in the facility as long as the
22 physician in charge considers it appropriate.
23 * **Sec. 4.** AS 47.37.170(f) is amended to read:
24 (f) If a patient is admitted to an approved public treatment facility, family or
25 next of kin shall be promptly notified. If an adult patient who is not incapacitated by
26 alcohol**, inhalants,** or drugs requests that there be no notification of next of kin, the
27 request shall be granted.
28 * **Sec. 5.** AS 47.37.170(g) is amended to read:
29 (g) A person may not bring an action for damages based on the decision under
30 this section to take or not to take an intoxicated person or a person incapacitated by
31 alcohol**, inhalants,** or drugs into protective custody, unless the action is for damages

caused by gross negligence or intentional misconduct.

* **Sec. 6.** AS 47.37.170(i) is amended to read:

(i) A person taken to a detention facility under (a) or (b) of this section may be detained only (1) until a treatment facility or emergency medical service is made available, (2) until the person is no longer intoxicated or incapacitated by alcohol**,** **inhalants,** or drugs, or (3) for a maximum period of 12 hours, whichever occurs first. A detaining officer or a detention facility official may release a person who is detained under (a) or (b) of this section at any time to the custody of a responsible adult. A peace officer or a member of the emergency service patrol, in detaining a person under (a) or (b) of this section and in taking the person to a treatment facility, an emergency medical service, or a detention facility, is taking the person into protective custody**,** and the officer or patrol member shall make reasonable efforts to provide for and protect the health and safety of the detainee. In taking a person into protective custody under (a) and (b) of this section, a detaining officer, a member of the emergency service patrol, or a detention facility official may take reasonable steps for self-protection, including a full protective search of the person of a detainee. Protective custody under (a) and (b) of this section does not constitute an arrest and **an** [NO] entry or other record may **not** be made to indicate that the person detained has been arrested or charged with a crime, except that a confidential record may be made that is necessary for the administrative purposes of the facility to which the person has been taken or that is necessary for statistical purposes where the person's name may not be disclosed.

* **Sec. 7.** AS 47.37.180(a) is amended to read:

(a) An intoxicated person who (1) has threatened, attempted to inflict, or inflicted physical harm on another or is likely to inflict physical harm on another unless committed, or (2) is incapacitated by alcohol**, inhalants,** or drugs, may be committed to an approved public treatment facility for emergency treatment. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

* **Sec. 8.** AS 47.37.190(a) is amended to read:

(a) A spouse or guardian, a relative, the certifying physician, or the

1 administrator in charge of an approved public treatment facility may petition the court
2 for a 30-day involuntary commitment order. The petition must allege that the person
3 is an alcoholic **<u>or inhalant</u>** or drug abuser who (1) has threatened, attempted to inflict,
4 or inflicted physical harm on another and that, unless committed, is likely to inflict
5 physical harm on another; or (2) is incapacitated by alcohol**<u>, inhalants,</u>** or drugs. A
6 refusal to undergo treatment does not constitute evidence of lack of judgment as to the
7 need for treatment. The petition must be accompanied by a certificate of a licensed
8 physician who has examined the person within two days before submission of the
9 petition, unless the person whose commitment is sought has refused to submit to a
10 medical examination, in which case the fact of refusal must be alleged in the petition.
11 The certificate must set out the physician's findings in support of the allegations of the
12 petition.
13 * **Sec. 9.** AS 47.37.205(a) is amended to read:
14 (a) At any time during a person's 30-day commitment, the director of an
15 approved public facility or approved private facility may file with the court a petition
16 for a 180-day commitment of that person. The petition must include all material
17 required under AS 47.37.190(a) except that references to "30 days" shall be read as
18 "180 days" and must allege that the person continues to be an alcoholic **<u>or inhalant</u>**
19 or drug abuser who is incapacitated by alcohol**<u>, inhalants,</u>** or drugs, or who continues
20 to be at risk of serious physical harm or illness.
21 * **Sec. 10.** AS 47.37.235(c) is amended to read:
22 (c) A person who knowingly initiates an involuntary commitment petition
23 under AS 47.37.180 - 47.37.205 without having good cause to believe that the other
24 person is an alcoholic **<u>or inhalant</u>** or drug abuser and is incapacitated or at risk of
25 serious physical harm or illness if not treated is guilty of a class C felony.
26 * **Sec. 11.** AS 47.37.270(1) is amended to read:
27 (1) "alcoholic **<u>or inhalant</u>** or drug abuser" means a person who
28 demonstrates increased tolerance to alcohol**<u>, inhalants,</u>** or drugs, who suffers from
29 withdrawal when alcohol**<u>, inhalants,</u>** or drugs are not available, whose habitual lack
30 of self-control concerning the use of alcohol**<u>, inhalants,</u>** or drugs causes significant
31 hazard to the person's health, and who continues to use alcohol**<u>, inhalants,</u>** or drugs

1 despite the adverse consequences;
2 * **Sec. 12.** AS 47.37.270(10) is amended to read:
3 (10) "hazardous volatile material or substance" **or "inhalant"**
4 (A) means a material or substance that is readily vaporizable at
5 room temperature and whose vapors or gases, when inhaled,
6 (i) pose an immediate threat to the life or health of the
7 person; or
8 (ii) are likely to have adverse delayed effects on the
9 health of the person;
10 (B) includes, but is not limited to,
11 (i) gasoline;
12 (ii) materials and substances containing petroleum
13 distillates; and
14 (iii) common household materials and substances whose
15 containers bear a notice warning that inhalation of vapors or gases may
16 cause physical harm;
17 * **Sec. 13.** AS 47.37.270(11) is amended to read:
18 (11) "incapacitated by alcohol**, inhalants,** or drugs" means a person
19 who, as a result of alcohol**, inhalants,** or drugs, is unconscious or whose judgment is
20 otherwise so impaired that the person (A) is incapable of realizing and making rational
21 decisions with respect to the need for treatment**,** and (B) is unable to take care of the
22 person's basic safety or personal needs, including food, clothing, shelter, or medical
23 care;
24 * **Sec. 14.** AS 47.37.270(14) is amended to read:
25 (14) "intoxicated person" means a person whose mental or physical
26 functioning is substantially impaired as a result of the use of alcohol**, inhalants,** or
27 drugs;

HB
378

No: 4

FISCAL NOTE

B... Version: HB 378
(H) Publish Date: 2/16/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction):
Title: "An Act eliminating certain taxes under AS 21.09 on premiums from the sale"
Sponsor: Rules
Requestor: Governor

Department Affected: Labor
BRU: Labor Standards and Safety
Component: Occupational Safety and Health
COMPONENT SERIAL NO. 970

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

OPERATING	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
CHANGE IN REVENUE FUND SOURCE #						

FUNDING: (Thousands of Dollars)

	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
1002 Federal Receipts						
1003 GF Match		(1,131.1)	(1,131.1)	(1,131.1)	(1,131.1)	(1,131.1)
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (New Fund)		1,131.1	1,131.1	1,131.1	1,131.1	1,131.1
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY00) impact: $ 0.0

ANALYSIS: (Attach a separate page if necessary)

See attached

Prepared by: Alan Dwyer, Director
Phone: 465-2790
Division: Labor Standards and Safety
Date/Time: 1/31/00 1:07 PM

Approved by Commissioner: Ed Flanagan, Commissioner
Agency: Department of Labor
Date: 1/31/00

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Rev 10/99

FISCAL NOTE

STATE OF ALASKA **BILL NO.** ____________________
2000 LEGISLATIVE SESSION

Title: An Act eliminating certain taxes under AS 21.09 from the sale of worker's compensation insurance; relating to the establishment, assessment, collection, and accounting for service fees for state administration of workers' compensation and worker safety programs; establishing civil penalties and sanctions for late payment or nonpayment of the service fee; and providing for an effective date.

The bill would eliminate the 2.7% tax paid on workers' compensation insurance premiums under AS 21.09.150(b), and would replace it with an annual service fee. The annual service fee is to be paid by all insurers who provide workers' compensation insurance as well as those employers who are self-insured or uninsured.

The fee shall be paid each year to the department at the time that the annual report is required. This suggests that initial payments shall be received by the department in March, 2001 with funding available for appropriation to the workers' compensation program on July 1, 2001 (state fiscal year 2002).

For those insurers who provide workers' compensation insurance, the service fee is the following percentage of all payments reported to the Alaska Workers' Compensation Board under AS 23.30.155(m) or (n):

(1) for payment due in 2001: 3.3 percent;
(2) for payment due in 2002: 3.1 percent;
(3) for payment due in 2003: 2.9 percent;
(4) for payment due in 2004 and subsequent years: 2.6 percent

Other employers who are self-insured under AS 23.30.090 shall pay instead an annual service fee as follows, calculated according to the provisions of AS 23.05.067:

(1) for payment due in 2001, 25 percent of the amount calculated for the service fee;
(2) for payment due in 2002, 50 percent of the amount calculated for the service fee;
(3) for payment due in 2003, 75 percent of the amount calculated for the service fee; and
(4) for payment due in 2004 and subsequent years, 100 percent of the amount calculated for the service fee .

This fee would be deposited into a workers' safety and compensation administration account, and would be available, through appropriation, to fund the expenses incurred by the state in administering the occupational safety and health program. During the four-year phase-in period, this appropriation would replace the unrestricted general fund match appropriation which currently funds a portion of the cost of the state's occupational safety and health program.

The bill provides penalties for late payment of the fee, and amends AS 37.05.146(b)(4) to ensure that the receipts in the new account are accounted for separately and that appropriations from the account are not made from the unrestricted general fund.

The Division of Labor Standards and Safety does not anticipate any additional need for staff to administer this fee collection program.

No: 3

FISCAL NOTE

Bill Version: HB 378
(H) Publish Date: 2/16/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction):
Title: "An Act eliminating certain taxes under AS 21.09 on premiums from the sale"
Sponsor: Rules
Requestor: Governor

Department Affected: Labor
BRU: Workers' Compensation
Component: Workers' Compensation
COMPONENT SERIAL NO. 344

EXPENDITURES/REVENUES: (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
CHANGE IN REVENUE FUND SOURCE #						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		(2,367.1)	(2,367.1)	(2,367.1)	(2,367.1)	(2,367.1)
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (New Fund)		2,367.1	2,367.1	2,367.1	2,367.1	2,367.1
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY00) impact: $ 0.0

ANALYSIS: (Attach a separate page if necessary)

See attached

Prepared by: Paul Grossi, Director
Division: Workers' Compensation
Phone: 465-2790
Date/Time: 1/28/00 3:45 PM

Approved by Commissioner: Ed Flanagan, Commissioner
Agency: Department of Labor
Date: 1/28/00

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FISCAL NOTE

STATE OF ALASKA **BILL NO.** ______ __________
2000 LEGISLATIVE SESSION

Title: An Act eliminating certain taxes under AS 21.09 from the sale of worker's compensation insurance; relating to the establishment, assessment, collection, and accounting for service fees for state administration of workers' compensation and worker safety programs; establishing civil penalties and sanctions for late payment or nonpayment of the service fee; and providing for an effective date.

The bill would eliminate the 2.7% tax paid on workers' compensation insurance premiums under AS 21.09.150(b), and would replace it with an annual service fee. The annual service fee is to be paid by all insurers who provide workers' compensation insurance as well as those employers who are self-insured or uninsured.

The fee shall be paid each year to the department at the time that the annual report is required. This suggests that initial payments shall be received by the department in March, 2001 with funding available for appropriation to the workers' compensation program on July 1, 2001, FY2002.

For those insurers who provide workers' compensation insurance, the service fee is the following percent of all payments reported to the Alaska Workers' Compensation Board under AS 23.30.155(m) or (n):

(1) for payment due in 2001. 3.3 percent:
(2) for payment due in 2002. 3.1 percent:
(3) for payment due in 2003. 2.9 percent
(4) for payment due in 2004 and subsequent years. 2.6 percent

Other employers who are self-insured under AS 23.30.090 shall instead pay an annual service fee of the following amounts in the following years:

(1) for payment due in 2001, 25 percent of the amount calculated for the service fee under AS 23.05.067;
(2) for payment due in 2002, 50 percent of the amount calculated for the service fee under AS 23.05.067;
(3) for payment due in 2003, 75 percent of the amount calculated for the service fee under AS 23.05.067; and
(4) for payment due in 2004 and subsequent years, 100 percent of the amount calculated for the service fee under AS 23.05.067.

This fee would be deposited into a workers' safety and compensation administration account, and would be available, through appropriation, to fund the expenses incurred by the state in administering the workers' compensation program under AS 23.30. During the four-year phase-in period, this appropriation would replace the unrestricted general fund appropriation which currently funds a portion of the cost of the state's workers' compensation program.

The bill provides penalties for late payment of the fee, and amends AS 37.05.146(b)(4) to ensure that the receipts in the new account are accounted for separately and that appropriations from the account are not made from the unrestricted general fund.

The Division of Workers' Compensation does not anticipate any additional need for staff to administer this fee collection program.

No: 2

FISCAL NOTE

Bi. /ersion: HB 378
(H) Publish Date: 2/16/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction)

Dept. Affected Community & Economic Development

Title: An act eliminating certain taxes under AS 21.09 on premiums from the sale of workers' compensation insurance. . .

BRU: Insurance

Component: Insurance

Sponsor: Rule Committee

Requester: Governor

Component No. 354

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )	(3,498.2)	(3,498.2)	(3,498.2)	(3,498.2)	(3,498.2)	(3,498.2)

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost:

POSITIONS

POSITIONS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Full-time						
Part-time						
Temporary						

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

The bill will result in the elimination of tax receipts from workers' compensation premiums currently collected by the Division of Insurance. Under the bill a service fee charged by the Department of Labor and Workforce Development against workers' compensation claims payments and costs will result in fee receipts that are estimated to offset the foregone tax receipts, when the amount generated from self-insured claims is included. The loss in revenue shown above equals the amount the Department of Labor and Workforce Development estimates it will receive in fee receipts.

Prepared by: Robert A. Lohr
Phone: 269-7900
Division: Insurance
Date/Time: 2/2/00 12:24 PM
Approved by Commissioner Deborah B. Sedwick
Date: 2/2/00
Agency: Community & Economic Development

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No: 1

FISCAL NOTE

Bill Version: HB 378
(H) Publish Date: 2/16/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date 1/27/00
Title ""An act relating to the establishment, assessment, collection and accounting for service fees for the administration administration of workers' compensation and workers' safety programs....."
Sponsor Rules Committee
Requester Governor

Dept. Affected Administration
BRU Risk Management
Component Risk Management
Component No. 71

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	75.8	142.4	199.9	238.9	238.9	238.9
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	75.8	142.4	199.9	238.9	238.9	238.9
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1007 I/A Receipts	75.8	142.4	199.9	238.9	238.9	238.9
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	75.8	142.4	199.9	238.9	238.9	238.9

Estimate of any current year (FY2000) cost: 0

POSITIONS

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

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

This legislation creates an increased expense to Risk Management operating costs for a new administrative assessment fee beginning in 2001.

Applying the proposed rate schedule to the average of the five most recent fiscal years workers' compensation experience ($9,191,125) estimated costs are projected, although future loss experience will determine actual costs incurred.

As Risk Management is funded solely through Inter-agency receipts, this additional expense will require increased cost of risk allocations (premium assessments) to all state agency operating budgets.

Prepared by: Brad Thompson, Director
Division Risk Management
Phone 465-5723
Date/Time 1/27/00
Approved by Commissioner Robert Poe
Agency Administration
Date 1/27/00

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HB 378

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

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

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February 11, 2000

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

Dear Speaker Porter:

The state's workers' compensation and worker safety programs in the Department of Labor and Workforce Development provide important benefits and services to employees and employers throughout Alaska. Successive budget cuts to the department have threatened the viability of these programs to the point that a takeover of the safety program by the federal government is a distinct possibility.

Federal management of our occupational health and safety program is unacceptable to me and to most employers and employees in Alaska. The bill I am introducing changes the way in which these programs are funded to ensure these services to Alaskans are put back on firm footing.

These programs are currently paid for with general funds. The costs roughly equate to the amount of money the state collects from the tax on workers' compensation insurance premiums.

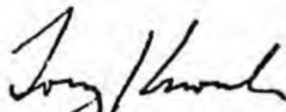
The programs clearly benefit all employers, but only those employers who purchase workers' compensation insurance are taxed. Larger self-insured employers pay no tax. This bill more equitably spreads the cost/benefit structure of worker safety programs by eliminating the premium tax and replacing it with a fee for all employers based on a percentage of their individual workers' compensation claims.

The fees would be accounted for separately and deposited into a worker safety and compensation account. The money in the account would be treated as designated program receipts available for appropriation to the workers' compensation and safety programs. The bill provides for a four-year phase-in of the fees to minimize the impact on those self-insured employers who currently pay no tax. The new fee system is designed to raise the same

amount of money as the current tax. Because the new system would spread costs among more employers, those employers currently paying the premium tax would realize a decrease in their payments.

This bill offers a fair, effective way of ensuring continued funding for vital worker protection programs. I urge your prompt and favorable action on this measure.

Sincerely,



Tony Knowles
Governor

Submitted by: Department of Labor & Workforce Development

HOUSE BILL 378/SENATE BILL 272

"An act eliminating certain taxes under AS 21.09 on premiums from the sale of workers' compensation insurance; relating to the establishment, assessment, collection, and accounting for service fees for state administration of workers' compensation and worker safety programs; establishing civil penalties and sanctions for late payment or nonpayment of the service fee; and providing for an effective date."

What it does:

1. **Provides a stable funding source for the Division of Workers Compensation (DWC) and Occupational Safety and Health (OSH).** HB 378 replaces general funds (GF) for DWC and OSH with non-GF designated program receipts and establishes a special workers' safety and compensation administration account.

2. **Creates a means of funding the two programs that is fair and equitable to all employers, regardless of whether they have purchased workers' compensation or are self-insured.** Currently, only those employers that purchase workers' compensation insurance policies pay a premium tax through their carriers. Self-insurers pay nothing. HB 378 eliminates the premium tax and enacts a user fee, charged equally among all users of the two systems.

3. **Provides an economic incentive to employers to create a safe workplace.** The user fee is based on a percentage of workers' compensation claim payments. The fewer accidents an employer has in the workplace, the less they pay for workers' compensation claims. Therefore, the less they pay for claims, the lower the user fee.

Why support HB 378/SB 272?

Successive budget cuts have threatened the very existence of workers' compensation and safety programs. Last year the Legislature (House) eliminated OSH from their budget, and a federal takeover became a distinct possibility. While OSH was put back into the budget in the Senate side. DWC took a large cut which further reduced services to injured workers and employers, primarily through longer waiting time for hearings. By leveling the playing field and changing the way these programs are funded, continuation of these critical benefits and services to Alaskans will be ensured.

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Sectional Analysis

Submitted by: Department of Labor & Workforce Development

House Bill 378/Senate Bill 272
Analysis

The legislation's intent is to enact a fee on all workers' compensation payments to establish an account for the administration of the workers' compensation program and the Occupational Safety and Health program, and to reduce those programs' reliance on general fund revenues.

HB 378/SB 272:

- Eliminates the premium tax and establishes a fee for service for funding the Workers' Compensation Division and the state match for the Occupational Safety and Health program.

- Reduces the reliance of these programs on general fund revenue.

- Sets out a funding mechanism for the two programs that is fair and equitable to all employers, regardless of whether they purchase a workers' compensation policy or are large enough to self-insure. The payment of the fee is charged equally among all users of the two systems according to their use and need. The fee is based on a percentage of the dollar amount of claims paid under the workers' compensation system. Currently, only those purchasing a workers' compensation policy pay a premium tax. Self-insurers do not pay any type of fee or tax regarding workers' compensation.

- Provides an incentive for safer work places. The fewer accidents that employers have in the workplace, the less they pay for workers' compensation claims. The less those employers or their insurance companies pay for workers' compensation claims, the lower the user fee.

Section 1 amends AS 21.09.150(a) to establish the authority of the Director of Insurance over insurers regarding the new annual user fee. Currently, this type of regulation governs premium taxes.

Section 2 amends AS 21.09.210(b) to exclude workers' compensation insurance from premium taxes.

Section 3 amends AS 21.09.210(e) to provide that the service fee is in lieu of all tax on workers' compensation insurance premiums.

Section 4 amends AS 21.09.210(n) to clarify the meaning of workers' compensation insurance for purposes of eliminating its premium tax.

Section 5 amends AS 21.09.270(b) to exempt the annual user fee from the "retaliation" provision of AS 21.09.270(a).

Section 6 amends AS 23.05 by adding a new section for an annual user fee to be charged to all insurers and employers at a rate of 3.3 percent in 2001, 3.1 percent in 2002, 2.9 percent in 2003 and 2.9 percent in 2004 and all years thereafter. The rate declines through 2004 as payments by self-insured employers are phased in. (See Section 9.)

It allows for fees due under the terms of a large lump settlement ($50,000 or more) to be paid over a five year period. This section also provides for penalties for late payment of the annual service fee.

Section 7 amends AS 23.30.090 to consider payment of the annual service fee as a factor for certification of a self-insurer.

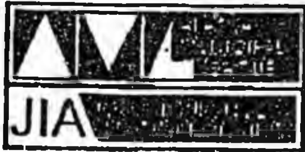
Section 8 amends AS 37.05.146(b)(4) to establish a special workers' safety and compensation administration account.

Section 9 allows for the phase-in of self-insurers and joint insurance arrangements. The phase-in would be over a four-year period starting in 2001 at 25 percent of the fee and going up 25 percent each succeeding year until the self-insurers pay 100 percent of the fee. These entities currently do not pay a premium tax, but would pay the user fee.

Section 10 allows for the promulgation of regulations to implement the new user fee.

Section 11 provides for immediate effective date to promulgate regulations to implement the new user fee.

Section 12 provides for an effective date of January 1, 2001.



ALASKA MUNICIPAL LEAGUE JOINT INSURANCE ASSOCIATION, INC.

Claims Department - Fax Cover Sheet

Anchorage Office:
807 G Street, Ste. 356
Anchorage, Alaska 99501
(907) 258-2821
(907) 258-2823 FAX

Juneau Office:
217 Second Street, Suite 200
Juneau, Alaska 99801
(907) 586-3222
(907) 463-5480

Date: 03/01/2000

From: Leandra D. Estep
Workers' Comp. Claims Manager

To: Rep. Norman Rokeberg, Chair, House Labor & Commerce Committee

Fax #: 465-2040

# of Pages: 1 including cover sheet

RE: House Bill 378

MESSAGE:

Please consider this an addendum to Kevin Smith's letter of this same date regarding House Bill 378.

We are asking for clarification on the assessment of a "User Fee" on any Excess and Reinsurance coverage. The AMLJIA purchases Reinsurance to provide coverage for losses that require payments that will exceed $250,000.00 per claim. Currently the Reinsurer pays the "Premium Tax". If HB 378 goes into affect, the Reinsurer will be relieved of their obligation to pay the "Premium Tax" but the AMLJIA will still owe the "User Fee". Once a claim exceeds the $250,000.00 retention level, we receive reimbursement from our Reinsurance carrier. How would allowance for the "User Fee" be separated out between the Self-Insurer, Commercial Insurance Co and their Reinsurer or Excess carrier?

Secondly, the allowance for recoveries received back from third party subrogation should be addressed and allowed for. If a workers' compensation claim arises as the result of a third parties negligence, we have the right of recovery from that third party. The recovery process typically does not occur until the workers' compensation claim is concluded. Therefore the AMLJIA (as well as other insurers, etc.) has already paid a "User Fee" on <u>all</u> payments made on the claim prior to any recovery.

Thank you for your attention to these matters and please feel free to contact me at (800)337-3682 if you have any questions regarding either of these issues.

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Support

ALASKA MUNICIPAL LEAGUE JOINT INSURANCE ASSOCIATION, INC.

Claims Department - Fax Cover Sheet

Anchorage Office:
807 G Street, Ste. 356
Anchorage, Alaska 99501
(907) 258-2821
(907) 258-2823 FAX

Juneau Office:
217 Second Street, Suite 200
Juneau, Alaska 99801
(907) 586-3222
(907) 463-5480

Date: 03/01/2000

From: Leandra D. Estep
Workers' Comp. Claims Manager

To: Rep. Norm Rokeberg, Chair, House Labor & Commerce Committee

Fax #: 465-2040

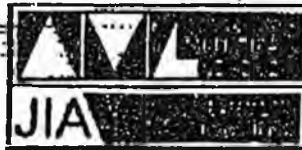
# of Pages: 4 including cover sheet

RE: House Bill 378

MESSAGE:

Attached is a letter from Kevin Smith, Risk Manager of the Southeast branch of the AML/JIA for your consideration.

HB378



Alaska Municipal League Joint Insurance Association, Inc.
– 217 Second Street, Suite 200 • Juneau, Alaska 99801 • Phone (907) 586-3222 • Fax (907) 463-5480

MEMORANDUM

Date: March 1, 2000

From: Kevin Smith, Risk Manager

To: Rep. Norm Rokeberg, Chair, House Labor & Commerce Committee

REGARDING: HB378

Thank you for the opportunity to testify before the House Labor & Commerce Committee February 28. It is still the position of the Alaska Municipal League (AML) and the Alaska Municipal League Joint Insurance Association (AML/JIA) that public entities, especially municipalities, school districts, and joint insurance arrangements organized under AS21.76 be excluded from the bill. In the interests of maintaining the most cost-effective, efficient risk financing for Alaska's citizens, it seems reasonable to consider excluding their public agencies from the taxes proposed in HB378.

While it is true that public entities also use the Alaska Workers' Compensation Board (AWCB) and AK-OSH, it may not be at a rate comparable to the private sector. For example, the AML/JIA's 1999 Annual Report to the Division of Workers' Compensation shows a controversion rate of only 0.05 percent of all workers' compensation claims we handle. With respect to AK-OSH services, the AML/JIA provides loss control services to its 141 public entities comparable to AK-OSH's voluntary compliance program. Unless there is an increase in services, the AML/JIA sees no reason to cost-shift from the private insurance industry to the public sector at a time when local government entities are struggling for their survival.

The zero fiscal note accompanying this bill provides no reason to anticipate any improvements in the current backlog of hearing dates and claims handling. If the bill is revenue neutral, as the fiscal note indicates, then additional services may not be possible and the AML/JIA can see no reason to change the existing formula.

If you do not find this reasoning compelling, however, there are some points the AML/JIA would propose the committee consider before you send this bill on to the next committee of referral.

The bill proposes to tax **all** payments made on behalf of injured workers, including vocational specialist fees (to include monitoring the worker during the vocational rehabilitation plan and tuition costs), medical benefits, defense costs, injured worker attorney fees, any interest paid on a claim as well as any payments reported in category #21of the Annual Report to the AWCB which is marked as

Or E-mail at: kevins@jnu.amljia.org

Visit our Web Site at: http://www.amljia.org

"other." The "other" category would include adjusting fees paid to an independent adjusting agency for investigation of subrogation, recorded interviews of witnesses, or any potential claims handling. This category would also include photocopying expenses and court reporters or any other payments made that do not specifically fit within the other 20 categories listed on the Annual Report.

Payment of a "User Fee" on Medical Only claims would not be reasonable since these particular claims do not burden or bog-down the system. Medical Only claims significantly contribute to our safety programs in that they serve as a warning system of where potential problems lie. "Frequency breeds Severity." Medical Only claims make up just over 2/3 of our total claims, as is the case for most employers/carriers. If HB378 is approved, then perhaps a separate, lower "User Fee" should be imposed on these type of claims.

It seemed that a large majority of the testimony heard on February 28, focused on the idea that this bill would ensure an Alaska based Occupational Safety & Health Administration. However, this bill cannot exclusively dedicate the "User Fee" to the AWCB and OSHA. Again, there is no reason to believe there would be an increase of services or retention of OSHA. Essentially, we would be paying additional funds to simply maintain the current level of service we have.

There would be less incentive, from an already largely claimant oriented Workers' Compensation Board, to give favorable decisions to employers since this would guarantee the division additional revenue. This would indicate a "conflict of interest".

The AML/JIA is successful, in part, due to good planning. Our rates are set well in advance, have already been negotiated and quotes sent to some members for the FY2001 fiscal year. It will be impossible to recoup the tax increase through premiums until July 1, 2002. The AML/JIA requests that the effective date be changed to July 1, 2002, or January 1, 2003, in order to provide joint insurance arrangements with adequate time to properly budget for the increased taxes proposed in this bill. Since commercial insurance companies would be seeing a decrease in taxes under this proposal, the effective date may not be an issue for them. However, we feel that the "User Fee" should only be assessed on claims generated within a calendar year and that fees should not be assessed on claims occurring in prior years. For commercial insurance companies, those premiums have already been taxed and this would make ~~it~~ impossible for prior premiums to be adjusted if a fee is continuing to be paid on claims that occurred in prior years and especially in the case where a particular employer is no longer insured with the same commercial carrier or joint insurance arrangement. The answer to this problem would be to assess a "User Fee" on claims generated in each calendar year only.

In summary, the AML and the AML/JIA would encourage you to exclude public entities from the provisions of this bill. The cost-shifting from the private insurance industry to the public sector could not come at a worse time. That failing, please consider revising the measure as suggested above.

Prior to and since the hearing held on February 28, the above issues have been discussed with the Municipality of Anchorage Risk Manager, Glen Smith and he concurs with these views and statements as were represented in his earlier testimony on February 28 before the committee.

Unfortunately, I will be out of town for the remainder of the week. Should you have questions, I would invite ~~you to call~~ Leandra Estep, our workers' compensation manager at 800-337-3682. She

Or E-mail at: kevins@jnu.amljia.org

Visit our Web Site at: http://www.amljia.org

intends to monitor this afternoon's hearing via teleconference as well, and should be available at the Anchorage site to answer any questions.

Thank you for your consideration of these issues.

Or E-mail at: kevins@jnu.amlija.org

Visit our Web Site at: http://www.amljia.org

Northwest Safety Management, Inc.
17710 Nitoanya Circle
Eagle River, Alaska 99577-8522
(907) 696-5730

Philip E. Ulmer
Principal Consultant

February 28, 2000

State of Alaska
State Legislature
Legislative Office Building
State Capitol
Juneau, Alaska 99811

Re: HB 378 and SB 272

Dear Legislators:

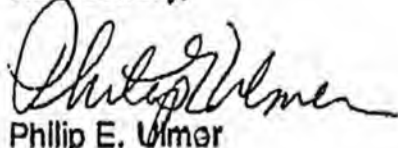
I am a practicing safety professional in the State of Alaska and an appointed citizen to the State of Alaska Workers' Compensation Board. I am in favor of passage of these collateral bills that are designed to bring more long term financial stability to the budgeting process of the Department of Labor.

As a member of the Workers' Compensation Board, I have direct knowledge of the need to provide more predictable streams of revenue to fund the Workers Compensation Division. In times of state fiscal crises and budget cutbacks, the work load of the the Workers Compensation Division does not diminish. The workload is a direct function of the number of worker injuries in the state. The Workers Compensation Division must have a more stable source of funding that is tied directly to the workload. These bills, while not a perfect solution, represent a very good way of assuring that funding stability.

As a safety professional, I understand the similar funding issue regarding the State Department of Occupational Safety and Health. Their workload, likewise, is a function of the injury rates of the state. If there were fewer injuries, there would be less need of services. As injury rates climb, the workload increases. The funding bills as proposed, bring more stability to assuring the state's worker safety agency will have the resources to assist employers with their safety management efforts. This directly benefits the workers of the state.

I encourage passage of these bills to enhance the effective work of both state agencies in assuring the efficient management of the state Workers Compensation Act and the state's efforts to assist employers and employees with safety and health protection on-the-job.

Respectfully,



Philip E. Ulmer

Office of the Governor
Press Releases

ALASKA IN THE NEWS

February 11, 2000 00048

KNOWLES' BILL PROTECTS, UPDATES WORKERS' COMPENSATION; SAFETY PROGRAMS

Calling it vital for employees and employers alike, Gov. Tony Knowles today announced legislation that provides a fair, effective way to fund workers' compensation and safety programs. A second bill updates provisions of the compensation program.

"The state's workers' compensation and worker safety programs provide important benefits and services to both employees and employers throughout Alaska," Knowles said. "The bill I am introducing changes the way these programs are funded to ensure these services to Alaskans are put back on firm footing."

Workers' compensation and safety programs are currently paid for with general funds that roughly equate to the amount that the state collects from a tax on workers' compensation insurance premiums. Since only employers who purchase such insurance are taxed, larger self-insured companies pay no tax at all. Successive budget cuts, meanwhile, have threatened the viability of these programs and a takeover of the safety program by the federal government is now considered a distinct possibility.

"Federal management of our occupational health and safety program is unacceptable to me and to most employers and employees in Alaska," Knowles said. "This bill eliminates the premium tax and replaces it with a new fee for all companies based on a percentage of their particular workers' compensation claims."

The fees would be accounted for separately and deposited into a worker safety and compensation account. Since these fees would fully fund the programs, it would be treated as self-supporting in the state budget.

The new fee system is designed to raise the same amount of money as that currently brought in by the tax. Because the new system spreads costs among more employers, fees paid by employers currently paying the premium tax would actually be decreased. The bill would provide for a four-year phase-in of the fees to minimize the impact on those self-insured employers who currently pay no tax.

"This bill gives employers a chance to control our own destiny," said Sally Ann Carey, President of the Workers' Compensation Committee of Alaska. "If we make our workplace safer and manage our claims effectively, our rates go down."

"Effective OSHA and workers' compensation programs are essential to providing a safe and healthy environment for our workforce," said "Safety Herb" Everett, President of the Denali Safety Council and Westmark of Alaska's Director of Safety and Workers Comp. "We almost lost the state OSHA program last year, which would have undone much of the improvement achieved in the last few years. This bill will prevent that from happening."

Alaska's Workers' Compensation Act has not been changed in 12 years and the second bill introduced by Knowles amends the act to keep pace with changing conditions and to ensure that the program is fair and efficient. Knowles' bill reflects the recommendations of an ad hoc committee representing both employers and employees to adjust for the effects of inflation on benefits, recent court decisions, and to provide more efficient ways of handling the workers' compensation program.

Included in the changes are increases in benefits paid to injured workers to make up for losses due

to inflation over the past 12 years. The bill also addresses Alaska Supreme Court decisions as to what benefits should be paid during the rehabilitation process and the timeframe for requests for claim hearings.

Other changes streamline the rehabilitation process, the signing of medical releases, and the dispute resolution process. Benefits are increased for workers in the retraining process and new timelines set for the payment of medical bills. Another provision updates the wage benchmarks to which benefits are tied.

Mano Frey, president of Alaska AFL-CIO, said, "Labor and management came together for the 'Ad Hoc' bill with recommendations that will make a real difference in the lives of injured workers and their families."

##

Contact:
Bob King, Press Secretary, (907) 465-3995
Claire Richardson, Deputy Press Secretary, (907) 465-3996

From: Division of Workers Compensation 3/01/2000

ANNUAL REPORT PAYMENT TOTALS
1994 TO 1998

	1994	1995	1996	1997	1998	5 Yr Total	5 Yr Average	2.6% Fee
INSURER	109,547,591	103,311,559	110,105,740	110,642,719	104,011,521	537,619,130	107,523,826	2,795,619
SELF-INSURED	24,846,006	27,149,796	29,485,881	34,054,441	36,265,321	151,801,445	30,360,289	789,368
UNINSURED	29,479	0	2,100	14,763	183,511	229,853	45,971	1,195
TOTAL	134,423,076	130,461,355	139,593,721	144,711,923	140,460,353	689,650,428	137,930,086	3,586,182

From: Division of Workers Compensation 3/1/2000

ANNUAL REPORT TOTALS BY CATEGORY
1994 TO 1998

	1994	1995	1996	1997	1998	5 Yr Total	5 Yr Average
Medical	62,205,607	57,717,435	62,751,359	67,672,646	64,190,075	314,537,122	62,907,424
TTD	23,462,515	25,183,229	27,084,382	28,171,772	24,187,575	128,089,473	25,617,895
TPD	890,470	968,922	865,035	797,399	1,164,561	4,686,387	937,277
PPI(PPD)	21,441,007	21,563,022	20,546,073	18,508,016	16,776,163	98,834,281	19,766,856
PTD	3,128,156	3,523,215	4,305,977	4,336,892	4,760,662	20,054,902	4,010,980
Penalty	131,806	283,977	141,584	260,193	165,096	982,656	196,531
SIF	2,536,356	2,499,489	2,818,651	2,355,128	3,395,574	13,605,198	2,721,040
DthBenefits	4,204,661	2,906,319	3,086,755	3,147,247	4,569,732	17,914,714	3,582,943
Interest	4,160	16,099	39,440	99,016	137,952	296,667	59,333
Ee Atty	1,811,531	1,509,331	2,053,463	2,006,037	2,100,720	9,481,082	1,896,216
Er Atty	5,688,280	5,171,791	5,768,596	5,833,955	5,848,025	28,310,647	5,662,129
Lit. Costs	1,428,870	1,176,065	1,088,785	963,094	2,318,344	6,975,158	1,395,032
Other	1,913,586	2,779,064	2,186,135	2,004,079	2,065,222	10,948,086	2,189,617
R.S. Fees	1,561,482	1,350,520	490,976	663,668	843,133	4,909,779	981,956
Fees Monitor			339,993	284,409	202,363	826,765	165,353
Plan Costs	668,179	764,117	597,035	655,858	853,144	3,538,333	707,667
Eval Costs			842,969	1,016,651	754,822	2,614,442	522,888
Wage 41(k)	3,346,410	3,048,760	4,586,513	5,935,863	6,127,190	23,044,736	4,608,947
TOTAL	134,423,076	130,461,355	139,593,721	144,711,923	140,460,353	689,650,428	137,930,086
							x 2.6% Fee
							3,586,182

From: Division of Workers Compensation 3/1/2000

	1998 Excess Policy Premiums	Est 1998 Premium Tax
Public Self Insureds		
ALASKA RAILROAD CORPORATION	-	
ALASKA, STATE OF	-	
ANCHORAGE, MUNICIPALITY OF	85,256	2,302
ANCHORAGE, SCHOOL DISTRICT	32,275	871
FAIRBANKS, CITY OF	23,750	641
FAIRBANKS, NORTH STAR BOROUGH	57,000	1,539
JUNEAU, CITY OF	29,000	783
MATANUSKA SUSITNA BOROUGH	109,020	2,944
NORTH SLOPE BOROUGH	127,196	3,434
Private Self Insureds		-
ALASKA AIRLINES, INC.	100,000	2,700
ALASKA PULP CORPORATION	-	-
ALASKA, UNIVERSITY OF	-	-
ALYESKA PIPELINE SERVICE	-	-
AMOCO PRODUCTION COMPANY	-	-
ANCHORAGE DAILY NEWS	12,750	344
AT&T / ALASCOM	2,756	74
CARR-GOTTSTEIN FOODS CO.	78,774	2,127
CHEVRON CORPORATION	-	-
COLUMBIA HEALTHCARE CORP	-	-
CONTINENTAL BAKING CO.	-	-
FEDERAL EXPRESS CORP.	12,601	340
FRED MEYER, INC.	5,940	160
HOLLAND AMERICA LINE /	40,000	1,080
ICICLE SEAFOODS, INC.	72,600	1,960
LOUISIANA - PACIFIC CORP	10,759	290
NABORS PETROLEUM SERVICE	260,620	7,037
NANA REGIONAL CORP.	-	-
PAY N' SAVE CORPORATION	-	-
SAFEWAY STORES INC.	147,143	3,973
SEA - LAND INDUSTRIES	10,000	270
SISTERS OF PROVIDENCE	39,797	1,075
UNION OIL CA. / UNOCAL	51,660	1,395
YARDARM KNOT, INC	27,054	730
Totals	1,335,951	36,071

House Finance Subcommittee
Department of Labor and Workforce Development
FY01 Operating Budget Recommendation

Final closeout recommendations were reported out of subcommittee on February 28, 2000. The subcommittee began their consideration based on the FY 00 Management Plan reflected in HB 312. The recommendation for general-purpose funds is $12,840.7. This recommendation goes beyond the allocation target of $12,918.2 or $1,577.5 below the Management Plan.

Division of Worker's Compensation

In an attached Letter of Intent the subcommittee adopted a statement of support for a bill that would eliminate the premium tax for Workers' Compensation insurance and replace it with a new fee for all companies based on a percentage of their particular workers' compensation claims. The fees would be accounted for separately and deposited into a worker safety and compensation account. The subcommittee reduced the general-purpose funds by $1.0 million leaving a total budget for this component, which is currently funded primarily with general funds, of $1,442.0. HB 378 would create designated program receipts that would provide for a four-year phase-in of the fees to minimize the impact on the self-insured employers who currently pay no premium tax. The new system would also spread costs among more employers, and those employers currently paying the premium tax would see a decrease in their payments.

Division of Labor Standards and Safety

Closely related to the above recommendation language, the Division of Labor Standards and Safety absorbed $500.0 of the total reduction. This came out of the general fund match for the Occupational Safety and Health component to accommodate the expected passage of HB 378 and the transition to the fee based worker safety and compensation account. The total remaining funds in this component, in general purpose funds is $631.8 for a total budget of $2,508.3.

Employment Security Division

The Community Development Assistance Program was moved into the Department of Labor and Workforce Development from the former Department of Community and Regional Affairs due to passage HB 40. This program was subsequently transferred to the Department of Education and Early Development effective October 1, 1999. The subcommittee recognized a general fund reduction totaling $77.5 associated with the transfer.

ALASKA STATE HOMEBUILDERS ASSOCIATION

February 28, 2000

Chairman Rokeberg
Alaska House Labor and Commerce Committee
Juneau, Alaska

Honorable Chairman,

The Alaska State Home Builders Association voted to support House Bill 378 for the following reasons.

Home Builders across Alaska recognize the importance of dealing with workers compensation claims and disputes in a timely manner. We know this can only be done with a stable source of funding which this bill would provide. We further advocate that the funds collected remain separate from the State's general fund and be used for the purpose stated in the bill.

Second, as employers engaged in an industry that deals with OSHA on a regular basis, we support this bill because we adamantly insist on in-state management of the OSHA program. Under federal control any appeal hearings would be held in Seattle. The cost of travel, hiring lawyers, and the time involved would create an economically disastrous situation for small employers across the state.

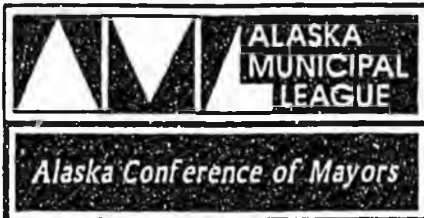
The Alaska State Home Builders Association understands the importance of a stable funding source for the Workers Compensation and in-state management of OSHA programs. It is with this goal that we support House Bill 378.

Sincerely,

Alan Wilson

Alan Wilson
President, Alaska State Home Builders Association

8301 SCHOON ST • SUITE 200 • ANCHORAGE, ALASKA • 99518
(907) 522-3931 • FAX (907) 522-3757



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

February 28, 2000

The Honorable Norm Rokeberg
Chairman House Labor & Commerce Committee
Alaska State House of Representatives
Alaska State Capitol
Juneau, Alaska 99801

Dear Representative Rokeberg:

The Alaska Municipal League (AML) opposes HB 378 as currently written. HB 378 is the workers' compensation "fees" bill presently being considered in your committee.

As drafted, the bill shifts costs currently paid by insurance companies through a premium tax, to self-insureds, including public entities, as well as insurance companies. Currently, self-insureds do not pay the premium tax, so municipal taxpayers take the full brunt of the shift of costs. The Department of Labor estimates that public entities would account for approximately 20 percent of the $3.5 million expected to be raised through this proposal, or approximately $700,000 (much of which would come from the State itself). This could not come at a worse time for Alaska's municipalities.

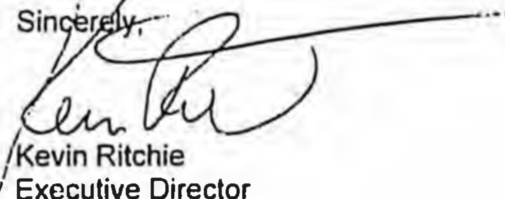
As you are well aware, municipalities are suffering from last year's unprecedented 33% cut in traditional revenue sharing from the State. While the AML does not oppose the concept of sharing the cost of direct State services, we simply cannot absorb the cost of additional state mandates without raising taxes or cutting local services. Municipalities are now facing a property taxpayer revolt. HB 378 is one of many mandates and cuts being considered by the Legislature that will simply add fuel to the fire.

On the other hand, private insurance carriers may see some relief. However, will these carriers cut their rates correspondingly?

As the representative agency of 142 municipalities, the AML requests that you eliminate the public sector, including joint insurance arrangements from the bill, or take other action to eliminate the negative financial impact on municipal taxpayers.

Until Alaskans successfully develop a long-range state and local financial plan (that considers all taxes that constituents pay), municipalities will continue to be forced to spar with the State over inadequate revenues to fund critical public services. The AML and Alaska Conference of Mayors unanimously voted to participate in providing all assistance to the State in developing a State and local long-range financial plan, and is willing to offer suggestions and assistance.

Sincerely,



Kevin Ritchie
Executive Director

NANA Training Systems
NANA (HSE) Department
Health, Safety, Environmental

Physical Address: 341 W. Tudor Road, Suite 202
Mailing Address: 1001 East Benson Blvd
Anchorage, AK 99508
Phone: 565-3300
Fax: 565-3320

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To: Janet Seitz
From: Chris Ross
Fax:
Date:
Phone:
Pages:
Re:
CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Notes: Hi Janet,

I would like to testify in favor of HB 328 today.

Here is copy of my testimony if you could copy to the committee. I will be at LIO in Anchorage.

Thanx
Chris Ross
565-3301

465-2040

Testimony of Chris Ross, CSP
Corporate Health, Safety & Environmental Manager
NANA Development Corporation
341 West Tudor Road, Suite 202
Anchorage, Alaska 99503
907-565-3301

HB 378 – Worker's Compensation and Safety Funding

Dear Mr. Chairman, Committee Members and Guests;

I am testifying today in support of HB 378. My name is Chris Ross and I work for the NANA Development Corporation family of companies. NANA is one of Alaska's largest employers, with over 26 operating entities. Last year our average year-round employment was about 1,800 employees, with several hundred additional seasonal positions during the summer.

Our business operations are quite widespread, including : hotels, tourism, oilfield services, electrical power generation, engineering, security, foodservice and hospitality, housekeeping and janitorial, facility maintenance and operations, and military base operations support.

As the Corporate Health, Safety and Environmental Manager for NANA , my role is to protect our people, property and the environment. I have been in this position for over ten years, and have been involved in health and safety for over 30 years. I have earned both CSP and OHST designations. I am serving my second term on the Alaska Safety Advisory Council and am past chairman of the Governor's Safety and Health Conference. And, as many of you know, I am also the Division Director of the National Ski Patrol and serve on the national board of directors.

I would like to share several key points about HB 378 that really appeal to me:

First it will spread the cost of funding DOL programs such as worker safety and worker's compensation over a much larger group. Under the current premium tax, there are many employers who are not contributing to the process. The State of Alaska, self-insured employers, and insurance pools such as the Timber Exchange all enjoy the benefits of these DOL programs, but do not pay premium tax. This bill charges a user fee on all claims, not traditional premium payments, a much more equitable arrangement.

In other words, all users will now be assessed and contribute their fair share.

The second consequence of this bill also relates to equity and paying a fair share. Because of the new funding, employers with high claims will pay more, while employers with good loss control programs in place will pay less.

Ten years ago NANA embarked on a journey to completely overhaul our safety process. Our losses were unacceptable, claims were high and our frequency and severity rates were much worse than average. Because we obtained a high degree of management commitment, invested necessary resources and made a determination to change our culture, we achieved remarkable results. Our claim cost per employee has gone from $1.25 per employee hour in 1989 to .02 cents per hour in 1999. This is a savings to us of nearly $800,000 per year.

HB 378 will provide even more of an incentive for employers to implement effective loss control strategies, as we have done. This is a far more effective approach – the carrot; than implementing tougher laws or stepping up enforcement – the stick.

And the third very attractive element of this bill is the bright outlook for the Alaska Department of Labor.

Recent funding cuts to the DOL have jeopardized the Occupational Safety and Health Division. One possible outcome of these reductions is a federal takeover of Alaska OSH, resulting in Alaska being a Federal OSHA state.

That is not a desirable outcome for Alaskan employers. We would far prefer dealing with a state entity, that has the flexibility to adapt to the unique conditions of Alaska, and employs local residents who more fully understand the risks associated with our workplaces.

This bill will provide a stable funding mechanism that will protect the mission of worker safety and effective worker's compensation insurance administration. As a side-note, it will also help to preserve the Governors Safety and Health Conference, an important event that is self-sustaining and helps to reach and educate many Alaskans each year.

As I review each section of this proposed legislation, it all makes good, common sense. It spreads the cost of these important functions throughout the users in the State, it rewards excellence and it helps to maintain our important local relationships.

Thank you for this opportunity to present my views, Mr. Chairman, and I would be pleased to answer any questions from you or the committee.

WCCA WORKERS' COMPENSATION COMMITTEE OF ALASKA
P.O. Box 200631 • Anchorage, Alaska • 99520

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Department of Labor
Office of the Commissioner

February 4, 2000

Ed Flanagan
Commissioner of Labor and Workforce Development
P.O. Box 21149
Juneau, Ak 99802

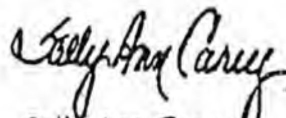
Dear Commissioner Flanagan:

A majority of WCCA board members participating, voted to support the draft legislation to assess service fees for the administration of workers' safety and compensation programs. Several board members choose to abstain or did not participate in the vote.

While the "yes" vote constituted the majority of those voting, there is still some opposition to the draft legislation, primarily from those who represent self-insured interests. The support from those voting in the affirmative was based on the qualification that the fees raised be used specifically for the purpose stated and not be diverted to the other uses or the general fund.

WCCA board members recognize that it is in everyone's interest to have workers' compensation programs administered fairly and as expeditiously as possibly. That requires an adequate level of funding and that is why we lend our qualified support to the draft legislation.

Sincerely,



Sally Ann Carey
President, Board of Directors

February 28, 2000

Alaska State Legislature

Dear Honorable Senators and Representatives:

As a current member of the Alaska Workers Compensation Board, I see first hand the faces of many of Alaska's injured workers. I see many injuries that should never have occurred and many others that are bogged down in an overburdened system.

The current level and method of funding for Occupational Safety and Health (OSH) and Workers Compensation needs to be addressed. I believe House Bill 378 and Senate Bill 272 addresses theses concerns in a common sense manner. The bill rightfully rewards employers with a good safety record and seeks higher funding from employers with a higher amount of injuries. The bill would also ensure that these funds remain in the arena of worker safety and be dedicated for those purposes.

I respectfully urge your support of these bills and thank you for your consideration.

Sincerely,

Valerie Baffone
10606 Flagship Circle
Anchorage, AK 99515
276-7211 work
349-1178 home

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P.O. Box 46
Kotzebue, Alaska 99752

City Hall
442-3401

Police Dept.
442-3351

Fire Dept.
442-3404

Public Works
442-3401

February 28, 2000 Via fax (907) 465-2040

The Honorable Norm Rokeberg, Chairman
House Labor & Commerce Committee
Alaska State House of Representatives
Alaska State Capitol
Juneau, Alaska 99801

Dear Representative Rokeberg:

This letter represents our opposition to HB 378, the Workers' Compensation "fees" Bill presently being considered in your committee.

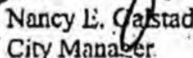
As drafted, the bill shifts costs currently paid by insurance companies to self-insureds, including public entities. As you know, our municipalities are facing unprecedented financial challenges and governments seeking the most cost effective risk financing have turned to self-insurance or pooling arrangements to reduce the cost of protecting their constituents (and yours). This Bill would impose additional costs to Alaska's public entities. As written, this Bill would cause our Pooling Arrangement with the Joint Insurance Association another unnecessary increase in the cost of operations with absolutely no advantage to the citizens we serve and you represent.

The Workers' Compensation and OSHA divisions are not alone in suffering the pain inflicted by recent state budget cuts. You are certainly aware that municipalities have borne the brunt of these cuts since 1986, and many are on the brink of dissolving. Please do not continue to shift the costs of State government programs to the backs of local government.

It is our understanding that Department of Labor estimates show that public entities would account for approximately 20 percent of the $3.5 million expected to be raised through this proposal, which amounts to about $700,000. The remainder of the new dollars generated will be by cost shifting from the private sector to the public sector. In this scenario, the private carriers will see some relief, yet can you realistically believe that those carriers will cut their rates correspondingly?

We strongly urge you to eliminate the public sector, including joint insurance arrangements (that the legislature allowed for by Statute for municipal pooling in the mid-'80's) from this Bill. Thank you. I will be happy to answer additional questions should you or your staff desire more information.

Sincerely,



Nancy E. Galstad
City Manager

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FEB 28 2000

International Brotherhood of Electrical Workers
Local 1547

60 HALL STREET
FAIRBANKS, ALASKA 99701-4693

TELEPHONE (907) 456-4248 or 456-4249 FAX (907) 456-4292

BUSINESS MANAGER • FINANCIAL SECRETARY PRESIDENT

February 25, 2000

Honorable Tony Knowles
Governor
State of Alaska
P. O. Box 110001
Juneau, Alaska 99811

Re: HB378/HB272

Dear Governor Knowles:

The above referenced bills will create a much more equitable funding source for the Division of Workers' Compensation and Occupational Safety and Health. The user fee provision in the bills will financially reward the employer who chooses to invest in workplace safety by way of education and/or use of the safest equipment possible.

Other reform that is long overdue are the provisions of SB278. It has been hard to watch the cost of living go up in Alaska for the last 12 years and benefits for injured workers stay the same.

This is all good legislation. Please support the above mentioned bills.

Sincerely,

John Gluchici

John Gluchici
Assistant Business Manager
IBEW – Fairbanks
Workers' Compensation Board Member

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FAX

February 25, 2000

To: The Legislature

RE: House Bill 376
Senate Bill 272

I have been privileged to serve on the Workers Compensation Board as an industry at-large member since 1991. Over that time period, I have seen the services provided by the Workers Compensation Division decline substantially due to budget cuts. The Workers Compensation division is comprised of hard-working and dedicated staff members. However, there is a limit to their accomplishments when funding is restrained.

I support the passage of the above-proposed legislation in that it will support the Workers Compensation Division through a new funding source -- paid for by the people that use the program. As an employer, it provides an incentive to make a safe work place and to monitor claims. The employee will benefit from a safer working environment and prompt resolution of controverted claims.

I ask for your passage of the above-proposed legislation.

Very truly yours,

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FEB 28 2000

Marc D. Stemp
President and Chief
Executive Officer

ALASKA STATE AFL-CIO

2501 Commercial Drive · Anchorage, Alaska 99501 · 907-258-6284 · Fax 274-0570

MANO FREY
Executive President

BRUCE LUDWIG
Secretary / Treasurer

Alaska State Legislature
State Capitol
Juneau, Alaska 99801

The Alaska State AFL-CIO strongly endorses House Bill 378 and Senate Bill 272. The bills would establish a service fee system to pay for the State of Alaska's worker safety and workers compensation programs. Both of these programs are vital to the interests of working people in Alaska.

Workplace safety is a very high priority for the AFL-CIO. We're proud to say that Alaska has made good progress in recent years in preventing job-related accidents. This progress must continue. However, if the budget for the state's worker safety programs continues to be reduced, as it has for the past several years, we see no alternative to the federal government stepping in and taking over the programs. This would be unfortunate because the federal government cannot do as good a job as the State of Alaska. The state has much greater knowledge of Alaska's workplace conditions as well as established communication channels with both labor organizations and the business community.

Workers compensation is also extremely important. The system protects the interests of both employees and employers by providing funds to compensate and retrain workers following job-related accidents. It also provides for the adjudication of disputes. The system eliminates a large amount of the financial uncertainty that would hurt both employees and employers if they had to deal with the aftermath of workplace injuries on their own.

The proposed fee system appropriately shifts the payment burden from the current tax on premiums to a service fee on claims filed. It would complement Alaska's safety programs by providing a financial incentive for greater vigilance in preventing workplace accidents.

We view HB 378 and SB 272 as both pro-labor and pro-business bills. They would help preserve programs that are necessary for business and commerce in Alaska, as well as protect the interests of Alaska's working people.

The Alaska State AFL-CIO urges your support for the passage of these bills.

Don Etheridge
AFL-CIO Lobbyist

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FUNDING BY FUND TYPE

	COVERAGE	FUND TYPE	ASSESSMENT	PAID BY	OTHER INCOME
AK	PRIVATE	GENERAL FUND			
II	PRIVATE	GENERAL FUND			
A	PRIVATE	GENERAL FUND			
L	PRIVATE	GENERAL FUND			
N	PRIVATE	GENERAL FUND			
ND	EXCLUSIVE FUND	GENERAL FUND	PREMIUMS	EMPLOYERS	FINES AND PENALTIES
UT	PRIVATE AND STATE FUND	GENERAL FUND			
CA	PRIVATE AND STATE FUND	GENERAL FUND AND SPECIAL ACCOUNT	.013459 X TOT INDEM SELF INSURED .005233 X TOT INDEM CARRIERS	CARRIERS AND SELF INSUREDS	
MD	PRIVATE AND STATE FUND	GENERAL FUND AND SPECIAL ACCOUNT	BUDGET SET BY LEGISLATURE AND FUNDING DERIVED FROM PRORATED % OF TOTAL PAYROLL	CARRIERS, SELF INSUREDS AND STATE FUND	$500 ANNUALLY FOR SELF INSUREDS & GROUPS
MI	PRIVATE	GENERAL FUND AND SPECIAL ACCOUNT	.75% OF TOTAL COMP PAID FOR EDUCATION FUND	CARRIERS	
NC	PRIVATE	GENERAL FUND AND SPECIAL ACCOUNT	22% OF NET WRITTEN PREMIUMS	STOCK & MUTUAL CARRIERS & SELF INSUREDS	
OK	PRIVATE AND STATE FUND	GENERAL FUND AND SPECIAL ACCOUNT	1% PREMIUM TAX AND 2% SELF INSURED PTD AND DEATH PAYMENTS	CARRIERS AND SELF INSUREDS	FINES AND PENALTIES
SC	PRIVATE	GENERAL FUND AND SPECIAL ACCOUNT	2.5% OF PREMIUMS	CARRIERS AND SELF INSUREDS	FINES AND PENALTIES
SD	PRIVATE	GENERAL FUND AND SPECIAL ACCOUNT	$14 PER POLICY WRITTEN		
TN	PRIVATE	GENERAL FUND AND SPECIAL ACCOUNT	4% OF PREMIUMS	CARRIERS AND SELF INSUREDS	

FUNDING BY FUND TYPE

	COVERAGE	FUND TYPE	ASSESSMENT	PAID BY	OTHER INCOME
KS	PRIVATE	SPECIAL ACCOUNT	2.597% PAID LOSES UP TO 3% LIMIT	CARRIERS, SELF INSUREDS AND GROUPS	
KY	PRIVATE	SPECIAL ACCOUNT	9% OF PREMIUMS	CARRIERS AND SELF INSUREDS	
LA	PRIVATE	SPECIAL ACCOUNT	1.59% OF PAID LOSES	CARRIERS AND SELF INSUREDS	FINES & PENALTIES
MA	PRIVATE	SPECIAL ACCOUNT	PRIVATE INDUSTRY PAYS .04% SURCHARGE ON POLICY PREMIUM. PUBLIC ENTITIES PAY .154% SELF INSUREDS PAY .14567% AND GROUPS PAY .03245%	EMPLOYERS	FINES AND PENALTIES
ME	PRIVATE	SPECIAL ACCOUNT	2.26% OF CARRIER PREMIUMS AND 2.41652302% FOR SELF INSUREDS	CARRIERS	LATE PAY PENALTIES
MN	PRIVATE AND STATE FUND	SPECIAL ACCOUNT	30% OF INDEMNITY PAYMENTS	CARRIERS, SELF INSUREDS AND STATE FUND	
MO	PRIVATE	SPECIAL ACCOUNT	2% OF PREMIUMS	CARRIERS AND SELF INSUREDS	
MS	PRIVATE	SPECIAL ACCOUNT	$250 ANNUAL FEE PLUS PORTION OF BUDGET BASED ON INSURER'S % OF AGGREGATE COMPENSATION PAID BY ALL INSURERS	CARRIERS AND SELF INSUREDS	CIVIL PENALTIES
MT	PRIVATE AND STATE FUND	SPECIAL ACCOUNT	3% OF TOTAL MEDICAL AND INDEMNITY PAYMENTS - $200 MINIMUM	CARRIERS, SELF INSUREDS AND STATE FUND	FINES
NE	PRIVATE	SPECIAL ACCOUNT	1% OF PREMIUMS	CARRIERS AND SELF INSUREDS	
NH	PRIVATE	SPECIAL ACCOUNT	PRORATED ON TOTAL COMP PAID	CARRIERS AND SELF INSUREDS	
NJ	PRIVATE	SPECIAL ACCOUNT	NO RESPONSE	CARRIERS AND SELF INSUREDS	
NM	PRIVATE	SPECIAL ACCOUNT	$2.00 QTLY	EACH EMPLOYER AND EMPLOYEE	CIVIL PENALTIES
NV	EXCLUSIVE FUND	SPECIAL ACCOUNT	PREMIUMS	EMPLOYERS	

FUNDING BY FUND TYPE

	COVERAGE	FUND TYPE	ASSESSMENT	PAID BY	OTHER INCOME
KS	PRIVATE	SPECIAL ACCOUNT	2.597% PAID LOSES UP TO 3% LIMIT	CARRIERS, SELF INSUREDS AND GROUPS	
KY	PRIVATE	SPECIAL ACCOUNT	9% OF PREMIUMS	CARRIERS AND SELF INSUREDS	
LA	PRIVATE	SPECIAL ACCOUNT	1.59% OF PAID LOSES	CARRIERS AND SELF INSUREDS	FINES & PENALTIES
MA	PRIVATE	SPECIAL ACCOUNT	PRIVATE INDUSTRY PAYS .04% SURCHARGE ON POLICY PREMIUM. PUBLIC ENTITIES PAY .154% SELF INSUREDS PAY .14567% AND GROUPS PAY .03245%	EMPLOYERS	FINES AND PENALTIES
ME	PRIVATE	SPECIAL ACCOUNT	2.26% OF CARRIER PREMIUMS AND 2.41652302% FOR SELF INSUREDS	CARRIERS	LATE PAY PENALTIES
MN	PRIVATE AND STATE FUND	SPECIAL ACCOUNT	30% OF INDEMNITY PAYMENTS	CARRIERS, SELF INSUREDS AND STATE FUND	
MO	PRIVATE	SPECIAL ACCOUNT	2% OF PREMIUMS	CARRIERS AND SELF INSUREDS	
MS	PRIVATE	SPECIAL ACCOUNT	$250 ANNUAL FEE PLUS PORTION OF BUDGET BASED ON INSURER'S % OF AGGREGATE COMPENSATION PAID BY ALL INSURERS	CARRIERS AND SELF INSUREDS	CIVIL PENALTIES
MT	PRIVATE AND STATE FUND	SPECIAL ACCOUNT	3% OF TOTAL MEDICAL AND INDEMNITY PAYMENTS - $200 MINIMUM	CARRIERS, SELF INSUREDS AND STATE FUND	FINES
NE	PRIVATE	SPECIAL ACCOUNT	1% OF PREMIUMS	CARRIERS AND SELF INSUREDS	
NH	PRIVATE	SPECIAL ACCOUNT	PRORATED ON TOTAL COMP PAID	CARRIERS AND SELF INSUREDS	
NJ	PRIVATE	SPECIAL ACCOUNT	NO RESPONSE	CARRIERS AND SELF INSUREDS	
NM	PRIVATE	SPECIAL ACCOUNT	$2.00 QTLY	EACH EMPLOYER AND EMPLOYEE	CIVIL PENALTIES
NV	[illegible]CLUSIVE	SPECIAL ACCOUNT	PREMIUMS	EMPLOYERS	

FUNDING BY FUND TYPE

	COVERAGE	FUND TYPE	ASSESSMENT	PAID BY	OTHER INCOME
NY	PRIVATE AND STATE FUND	SPECIAL ACCOUNT	PORTION OF BUDGET BASED ON INSURER'S % OF AGGREGATE COMPENSATION PAID BY ALL INSURERS	CARRIERS, SELF INSUREDS AND STATE FUND	FINES AND PENALTIES
OH	EXCLUSIVE FUND	SPECIAL ACCOUNT	PREMIUMS	EMPLOYERS	
OR	PRIVATE AND STATE FUND	SPECIAL ACCOUNT	7.3% OF PREMIUMS AND .2% OF SELF INSURED GROUPS	CARRIERS, SELF INSUREDS AND STATE FUND	FINES AND PENALTIES
PA	PRIVATE AND STATE FUND	SPECIAL ACCOUNT	PRORATED ON TOTAL COMP PAID	CARRIERS, SELF INSUREDS AND STATE FUND	
RI	PRIVATE	SPECIAL ACCOUNT	5.75% OF PREMIUMS	CARRIERS AND SELF INSUREDS	FINES AND PENALTIES
VA	PRIVATE	SPECIAL ACCOUNT	2.5% OF PREMIUMS	CARRIERS AND SELF INSUREDS	
VT	PRIVATE	SPECIAL ACCOUNT	1.19% OF PREMIUMS FOR CARRIERS AND 1% TOTAL COMP FOR SELF INSUREDS	CARRIERS AND SELF INSUREDS	
WA	EXCLUSIVE FUND	SPECIAL ACCOUNT	PREMIUMS	EMPLOYERS	FINES AND PENALTIES
WV	EXCLUSIVE FUND	SPECIAL ACCOUNT	PREMIUMS	EMPLOYERS	
WY	EXCLUSIVE FUND	SPECIAL ACCOUNT	PREMIUMS	EMPLOYERS	PENALTIES FINES AND INCOME ON INVESTMENTS

HB
385

Alaska Association of Chiefs of Police

February 28, 2000

Representative Andrew Halcro
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Representative Halcro:

On behalf of the Alaska Association of Chiefs of Police, I am writing in support of HB 385, an Act relating to search warrants.

For many years, law enforcement officers have been able to obtain search warrants for property used in the commission of violations. The recent ruling by a magistrate which prohibits the use of a warrant in cases that are not clearly distinguished as "crimes" will seriously hamper the enforcement of many laws currently classified as violations. These include minors consuming alcohol, certain fish and game violations, and others which often require investigation beyond a mere citation or summons.

Search warrants are an effective and necessary tool critical to the job that police officers are mandated to accomplish. I encourage your support of this important legislation.

Sincerely,

Duane S. Udland
President

TESTIMONY PRESENTED TO THE HOUSE JUDICIARY COMMITTEE
MONDAY, FEBRUARY 28, 2000
HB 385 – A BILL TO ALLOW SEARCH WARRANTS TO APPLY TO ANY VIOLATION OF THE LAW.
PRESENTED BY PAULETTE SIMPSON
402 ALASKA BELLE COURT, DOUGLAS, ALASKA.

Thank you for the opportunity to testify today. I speak in support of HB 385 to allow search warrants to apply to any violation of the law.

To me, this is a simple public safety issue - not a problem of constitutional law. And as the mother of three - ages 21, 19 and 16 - I am acutely aware of situations that make this legislation necessary. Young people are remarkably adept at identifying which of their peers have parents who leave their homes unsupervised. If kids know that there is no legal way the police can enter a house where minors are drinking, they are more likely to organize the party in the first place. This will lead to a greater number of underage drinking parties, more kids participating in them, and a greater likelihood of young people with impaired judgment getting into their cars and attempting to drive home…at great risk to themselves and others.

If the police have probable cause to believe that minors are drinking, they should be allowed to obtain a warrant and enter the premises. This bill discourages underage drinking and drug use and thus has the potential to save lives and it does so without whittling away at anyone's constitutional rights. Please support this legislation. Thank you.

Rule 4. Warrant or Summons Upon Complaint.

(a) **Issuance.**

(1) *Probable Cause.* A warrant or summons shall be issued by a judge or magistrate only if it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it.

(2) *Summons.* A summons shall be issued in all cases unless the judge or magistrate has reason to believe that the defendant will not appear in response to a summons or that the defendant poses a danger to other persons and the community.

No warrant shall issue where bail has previously been established in that case except upon a showing that conditions of release have been violated, that a warrant is necessary to assure the presence of the defendant in court, or that the defendant poses a danger to other persons and the community. In any case in which it is lawful for an officer to arrest a person without a warrant, the officer may give the person a summons instead of arresting the person.

(3) *Failure of Defendant to Appear After Summons.* If a defendant who has been duly summoned fails to appear or if there is reasonable cause to believe that the defendant will fail to appear, a warrant of arrest shall issue; provided that in the case of a defendant charged with a minor offense as defined in Rule 8, District Court Rules of Criminal Procedure, additional summons may issue in lieu of a warrant of arrest. If a defendant corporation fails to appear after having been duly summoned, a plea of not guilty shall be entered by the court if the court is empowered to try the offense for which the summons was issued and the court may proceed to trial and judgment without further process. If the court is not so empowered it shall proceed as though the defendant has appeared.

(4) *Additional Warrants or Summonses.* More than one warrant or summons may issue on the same complaint.

(b) **Form and Contents.**

(1) *Warrant.* The warrant shall be signed by the judge or magistrate, or by a clerk directed to do so on the record. The warrant shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty, and shall describe the offense charged in the complaint. The warrant shall be directed to any peace officer or other person authorized by law to execute the warrant and shall command that the defendant be arrested and brought before the nearest available judge or magistrate without unnecessary delay. The judge or magistrate shall endorse the amount of bail upon the warrant.

(2) *Summons.* The summons shall be signed by the judge or magistrate or by a clerk directed to do so on the record. The summons shall be in the same form as the warrant, except that it shall summon the defendant to appear before a judge or magistrate at the time and place stated therein, and shall inform the defendant that if the defendant fails to appear a warrant will issue for the defendant's arrest.

(c) **Execution or Service and Return.**

(1) *By Whom.* The warrant shall be executed by any peace officer or other officer authorized by law. The summons may be served by any peace officer or by any other person authorized to serve a summons in a civil action.

(2) *Territorial Limits.* The warrant may be executed or the summons may be served at any place within the jurisdiction of the State of Alaska.

(3) *Manner.* The warrant shall be executed by the arrest of the defendant. The officer need not possess the warrant at the time of the arrest, but upon request shall show the warrant to the defendant as soon as possible. If the officer does not possess the warrant at the time of the arrest, the officer shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon the defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or in any other manner provided for service of process in civil actions.

(4) *Return.* The officer executing the warrant shall make return thereof to the judge or magistrate before whom the defendant is brought pursuant to Rule 5. At the request of the prosecuting attorney any unexecuted warrant shall be returned to the judge or magistrate by whom it was issued and shall be canceled by the judge or magistrate. On or before the return day, the person who served the summons shall make return thereof to the judge or magistrate before whom the summons is returnable. At any time while the complaint is pending and upon the request of the prosecuting attorney, any unexecuted and uncancelled warrant or unserved original or duplicate summons shall be re-executed or re-served.

(Adopted by SCO 4 October 4, 1959; amended by SCO 98 effective September 16, 1968; by SCO 127 effective April 29, 1971; by SCO 157 effective February 15, 1973; by SCO 224 effective December 15, 1975; by SCO 517 effective October 1, 1982; by SCO 650 effective July 1, 1985; by SCO 904 effective January 15, 1989; by SCO 1100 effective January 15, 1993; and by SCO 1153 effective July 15, 1994)

PART VIII. SPECIAL PROCEEDINGS

Rule 37. Search and Seizure.

(a) **Search Warrant Issuance and Contents.**

(1) A search warrant authorized by law shall issue only on

(i) (aa) affidavit sworn to before a judge or magistrate or any person authorized to take oaths under the law of the state, or

(bb) sworn testimony taken on the record, and

(ii) establishing the grounds for issuing the warrant.

(2) If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, the judge or magistrate shall issue a warrant

(i) identifying the property, and

(ii) naming or describing the person or place to be searched.

(3) The warrant

(i) shall be directed to a peace officer of the state authorized to enforce or assist in enforcing any law thereof, and

(ii) shall state the ground or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof, and

(iii) shall command the officer to search the person or place named for the property specified within a reasonable period not to exceed 10 days of the issuance of the warrant, and

(iv) shall direct that it be served between 7:00 a.m. and 10:00 p.m., unless the issuing authority by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at other than this time, and

(v) shall designate the judge or the magistrate to whom it shall be returned.

(b) **Execution and Return with Inventory.** The warrant shall be executed and returned within 10 days after its date. However, upon sworn application made before the expiration of the initial 10 day period or any subsequent extension, the court may for good cause extend the execution period for a reasonable time not to exceed 10 days. The officer taking property under the warrant

(1) shall give to the person from whom or from whose premises the property was taken a copy of the warrant, a copy of the supporting affidavits, and receipt for the property taken, or

(2) shall leave the copies and the receipt at the place from which the property was taken.

The return shall be made promptly and shall be accompanied by a written inventory of any property taken as a result of the search pursuant to or in conjunction with the warrant. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be signed by the officer under the penalty of perjury pursuant to AS 09.63.020 or sworn to in front of a magistrate or judge, or a notary public. The magistrate or judge or the court to which the return is made shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(c) **Motion for Return of Property and to Suppress Evidence.** A person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the property and to suppress for use as evidence anything so obtained on the ground that the property was illegally seized.

(d) **In Camera Hearing.** A person who challenges the validity of a search and seizure predicated on information gained from an informant used either in

(1) support of an application for a warrant, or

(2) as the basis of a search without warrant may move the court for disclosure of the identity of the informant pursuant to Rule 16. In the event the court determines that disclosure of the identity of the informant is not required under Rule 16, the court shall conduct an in camera recorded hearing in which it shall investigate and take evidence so as to determine whether or not a search based on the informant's information was justified. Following the in camera hearing, the court shall grant or deny the motion to suppress on the record, and shall make written findings concerning the validity of the search based on the informer's information. The written findings, together with the record of the hearing, shall be sealed, and if the validity of the search is upheld the sealed testimony and findings shall, on appeal of a conviction in which evidence of the search was admitted, be transmitted to the court of appeals and the supreme court for automatic review of the motion to suppress.

(e) **Confidentiality of Warrant Information.**

(1) The record of proceedings under this rule and all documents related to these proceedings, including search warrants, affidavits, receipts and inventories, are confidential and must be kept sealed before a criminal proceeding is formally initiated. However, the court may order release of these documents for good cause shown.

(2) After charges are filed, the record of proceedings under this rule and all related documents are open to public inspection unless the court, for good cause shown, orders a further period in which the documents will be kept under seal.

(3) The initial charging document in all prosecutions must be accompanied by a listing of the numbers of all warrants issued in relation to the case unless the court waives this requirements for good cause shown.

(Adopted by SCO 4 October 4, 1959; amended by SCO 49 effective January 1, 1963: by Chapter 17 SLA 1969 effective June 25, 1969; by SCO 157 effective February 15, 1973; by SCO 505 effective April 16, 1982; and by SCO 645 effective September 15, 1985; by SCO 784 effective March 15, 1987; and by SCO 882 effective July 15, 1988; by SCO 968 effective July 15, 1989; by SCO 1149 effective July 15, 1994; and by SCO 1153 effective July 15, 1994)

Cross References

(a) CROSS REFERENCES: AS 12.35.010; AS 12.35.020; AS 12.35.030

(b) CROSS REFERENCES: AS 12.35.050; AS 12.35.080; AS 12.35.090: AS 12.35.100; AS 12.35.110

EDITOR'S NOTE: Section 43, Chapter 143, Session Laws of Alaska 1982, provides that "AS 12.35.015, added by sec. 18 of this Act [Chapter 143, Session Laws of Alaska 1982], has the effect of changing Rule 37, Rules of Criminal Procedure, by allowing search warrants to be issued upon sworn oral testimony communicated by telephone or other appropriate means."

Annotations

Cases

Where defendant failed to move for return of property under Criminal Rule 37(c), the admission of such property taken from defendant was not error. **Goss v. State**, Op. No. 76, 368 P2d 884 (Alaska 1962).

Right to attack search of suitcase and seizure of gun as illegal was waived by pleading guilty to a charge of illegal possession of firearm. **Rivett v. State**, Op. No. 249, 395 P2d 264 (Alaska 1964).

Denial of motion to suppress evidence sustained where probable cause existed for arresting appellant without warrant and evidence was taken from him as an incident to such arrest. **Maze v. State**, Op. No. 400, 425 P2d 235 (Alaska 1967); **Merrill v. State**, Op. No. 392, 423 P2d 686 (Alaska 1967).

Where in the investigation of a rape case the accused, his father and an accused accomplice were voluntarily present in the police station, and the police officer learned through a statement of the accomplice that a note written by victim was in the accused's possession, constitutional provisions proscribing unreasonable searches and seizures did not prohibit seizure of the note to prevent its destruction or removal and motion to suppress the note as illegally obtained evidence was properly defined. **Woltz, et al. v. State**, Op. No. 433, 431 P2d 502 (Alaska 1967).

Since order of trial court suppressing evidence obtained by search would likely result in terminating the prosecution and involved a controlling question of law, review was appropriate. **State v. Stump**, Op. No. 1250, 547 P2d 305 (Alaska 1976).

Search warrant need not set out contents of the affidavit on which it is issued. **Kirstich v. State**, Op. No. 1264, 550 P2d 796 (Alaska 1976).

Valid service of a search warrant between the hours of 10:00 p.m. and 7:00 a.m. requires a determination by issuing judge that the warrant may be served at any time. **State v. Shelton**, Op. No. 1311, 554 P2d 404 (Alaska 1976).

That warrant was presented to judge in the middle of the night, with affidavit containing requisite showing for nighttime service under this rule and requesting an immediate search, clearly indicates that nighttime service was contemplated and authorized. **State v. Shelton**, Op. No. 1311, 554 P2d 404 (Alaska 1976).

A showing of probable credibility of a confidential informant is adequate where the affidavit alleges "that the informant has given accurate information in the past." **Johnson v. State**, Op. No. 2169, 617 P2d 1117 (Alaska 1980).

Fact that judge met police at a parking lot and then issued a search warrant within just a few minutes after an affidavit was presented to him did not mean that he failed to act in a neutral and detached manner. **Johnson v. State**, Op. No. 2169, 617 P2d 1117 (Alaska 1980).

A description of the property to be searched is sufficient if there is no reasonable probability that the wrong premises will be searched. **Johnson v. State**, Op. No. 2169, 617 P2d 1117 (Alaska 1980).

A warrant for a nighttime search may be issued pursuant to an affidavit showing probable cause that at some future time

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To: Rep. Pete Kott
Chairman
House Judiciary Committee
From: Rep. Andrew Halcro
Re: HB 385, Search Warrants
Date: February 22, 2000

Attached are copies of HB 385, my sponsor statement for the bill, and supporting information. I would appreciate your scheduling this bill for consideration by the House Judiciary Committee at your earliest convenience.

E-Mail: Representative_Andrew_Halcro@legis.state.ak.us

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HB 385

SPONSOR STATEMENT

A Juneau Magistrate determined state law did not allow for the issuance of search warrants for property used to commit a violation. The Magistrate held that AS 12.35.020(3) only allows for a judicial officer to issue a search warrant if the property is being utilized to commit a crime.

Other areas of the Alaska Statutes distinguish between an "violation" and a "crime." AS 12.35.020 does not. This has resulted in confusion and needs to be clarified. For the history of the State of Alaska, judicial officers have issued search warrants for property utilized in an offense. This new interpretation would prohibit the issuance of a search warrant in violation cases.

HB 385 would clarify current statute and would permit judicial officers to issue warrants to search for property utilized in the commission of a violation.

This clarification is particularly important. Minor consumption of alcohol is a serious problem in Alaska and search warrants are a needed tool for law enforcement officers to use to combat this problem. HB 385 returns this tool to police officers.

E-Mail: Representative_Andrew_Halcro@legis.state.ak.us

Sec. 12.35.020. Grounds for issuance.

A search warrant may be issued if the judicial officer reasonably believes any of the following:

(1) that the property was stolen or embezzled;

(2) that the property was used as a means of committing a crime;

(3) that the property is in the possession of a person who intends to use it as the means of committing a crime, or in possession of another to whom the person may have delivered it for the purpose of concealing it or preventing its being discovered;

(4) that the property constitutes evidence of a particular crime or tends to show that a certain person has committed a particular crime;

(5) that either reasonable legislative or administrative standards for conducting a routine or area inspection with regard to air pollution are satisfied with respect to the particular place, dwelling, structure, premises, or vehicle, or there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises, or vehicle.

(§ 4.02 ch 34 SLA 1962; am §§ 1, 2 ch 198 SLA 1968; am § 4 ch 86 SLA 1969; am § 14 ch 69 SLA 1970)

NOTES TO DECISIONS

Anticipatory search warrants. - An anticipatory search warrant, i.e., one which is based upon an affidavit showing probable cause that at some future time - but not presently - certain evidence will be at the location set forth in the warrant, are constitutionally permissible and not invalid for lack of present probable cause, and they are not precluded by the statutory authority of paragraph (3), which requires only reasonable belief of possession of the item for issuance of the warrant, without specifying that possession must be contemporaneous with the issuance, as distinct from the execution, of the warrant. Johnson v. State, 617 P.2d 1117 (Alaska 1980).

Paragraph (3) of this section encompasses possession at the time of execution of the warrant, thus permitting anticipatory searches. Johnson v. State, 617 P.2d 1117 (Alaska 1980).

Just as anticipatory warrants based on probable cause are constitutionally permissible as long as the evidence creates a substantial probability that the seizable property will be on the premises when searched, such a warrant may be issued where positivity as required by Cr. R. 37(a)(3)(iv) is the standard. Johnson v. State, 617 P.2d 1117 (Alaska 1980).

For an anticipatory warrant to be valid, there must be probable cause to believe that the items to be seized will be at the place to be searched at the time the warrant is executed, or in other words, that the warrant will not be prematurely executed. Johnson v. State, 617 P.2d 1117 (Alaska 1980).

In anticipatory warrant situations, the magistrate should insert a direction in the search warrant making execution contingent on the happening of an event which evidences probable cause that the item to be seized is in the place to be searched, rather than directing that the warrant be executed immediately or forthwith. Johnson v. State, 617 P.2d 1117 (Alaska 1980).

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Sec. 12.35.120. Definition of search warrant.

A search warrant is an order in writing, signed by a judge or magistrate or signed at the direction of a judicial officer in accordance with AS 12.35.015, directed to a peace officer, commanding the peace officer to search for personal property and bring it before the judge or magistrate.
(§ 4.01 ch 34 SLA 1962; am § 14 ch 8 SLA 1971; am § 20 ch 143 SLA 1982)

NOTES TO DECISIONS

Quoted in Johnson v. Johnson, 849 P.2d 1361 (Alaska 1993).

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AS 11.81.090. Definitions. (a) For purposes of this title, unless the context requires otherwise,

. . . .

(9) "crime" means an offense for which a sentence of imprisonment is authorized; a crime is either a felony or a misdemeanor;

. . . .

(36) "offense" means conduct for which a sentence of imprisonment or fine is authorized; an offense is either a crime or a violation;

. . . .

(59) "violation" is a noncriminal offense punishable only by a fine, but not by imprisonment or other penalty; conviction of a violation does not give rise to any disability or legal disadvantage based on conviction of a crime; person charged with a violation is not entitled

(A) to a trial by jury: or

(B) to have a public defender or other counsel appointed at public expense to represent the person;

Web posted Friday, January 28, 2000

Drinking party rules make searches harder

By ERIC FRY
THE JUNEAU EMPIRE

Youths would enjoy more privacy, but police would be hamstrung in combating teen-age drinking under a new court ruling that blocks **search warrants** for evidence of underage drinking in homes.

"I'm not going to condone kids drinking, but I don't think it **warrants** the intervention that our society here in this town grants it," said attorney Patrick Conheady.

"It's not a mere technicality," said attorney David Mallet, who sought the new ruling for a client. "We're talking constitutional protections and what the Legislature has specifically authorized the courts to do."

Juneau Police Lt. Ron Forneris said teen-age drinking is a serious problem, leading to dangerous behavior such as drunken driving. But court decisions are making it harder for the police to deal with the issue, he said.

"We keep attempting to do what the courts tell us we have to do to deal with these cases. Most of our options are being rapidly foreclosed by these decisions," Forneris said.

Juneau Magistrate John Sivertsen Jr. earlier this week threw out evidence against Matthew Futemeier gained from a search warrant. The 20-year-old man was cited for underage drinking Oct. 31, 1999, at a house party near Gold and Fifth streets.

Sivertsen agreed with defense attorney Mallet that state law doesn't include underage drinking in the types of offenses search warrants may be used for. And Sivertsen agreed invited guests have a reasonable expectation of privacy.

State law restricts search warrants to looking for evidence of a crime, and the state defines crimes as [illegible] offenses that may carry jail sentences.

The state's definition of crime doesn't include lesser offenses such as minor

vehicle infractions or underage drinking violations, which are subject only to fines.

The law's language is plain and unambiguous, Sivertsen wrote in his order suppressing the evidence against Euteneier. If legislators wanted **search warrants** to include lesser offenses, they could have written the law that way, he said.

When the Legislature wrote the **search warrant** law, underage drinking was a misdemeanor, said Assistant District Attorney David Brower. But even after lawmakers made it a lesser offense, in 1995, a 1980 law that applies most misdemeanor laws to lesser violations would allow **search warrants,** he said.

Brower said he will file a motion asking Sivertsen to reconsider his decision.

Sivertsen's ruling applies only to the one case. But if other Juneau judges, handling similar motions, were to agree with the reasoning, it would affect the way police deal with teen-agers' drinking parties in homes.

Conheady said he will file motions similar to Mallet's in two underage drinking cases - before District Court Judge Peter Froehlich and Superior Court Judge Patricia Collins - stemming from the same Oct. 31 party.

Juneau police just recently started to apply to judges for **search warrants** to enter homes where underage drinking was suspected.

Police previously had entered some homes without a **warrant** or the resident's permission. They based it on the doctrine that some emergencies justified exceptions to the Fourth Amendment's protections against unreasonable **searches.**

But in several recent decisions, Juneau judges ruled police generally may not enter homes without a **warrant** or the tenant's permission.

Police spokesman Forneris said enforcement can effectively stop youths from drinking in the short term. The court cases stemming from it usually lead to counseling that can help in the long term, he said.

But if the police aren't allowed to respond to youth drinking parties, Forneris wonders who will.

Last Halloween, police responded to reports of a loud party and possible young drinkers on Gold and Fifth streets, and found a 19-year-old girl holding a beer on the porch. Police saw other youths leaving the [illegible] of the house.

The 21-year-old man who lived there wouldn't let police enter, so they got a **search warrant** from Judge Froehlich to look for underage drinkers.

Froehlich, at the hearing to grant a **warrant**, said there were adequate grounds to issue the **warrant** based on the dangerousness of minors drinking, the possible destruction of evidence and the possibility that someone 19 or older had furnished alcohol to minors. That was the case Sivertsen threw out this week.

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Research on Youth

Drinking, Driving and Other Drugs

- In 1997, 21 percent of the young drivers involved in fatal crashes had been drinking. (NHTSA, 1999)
- These young drivers make up 6.7 percent of the total driving population, but constitute 13 percent of the alcohol-involved drivers in fatal crashes. (NHTSA, 1999)
- Alcohol-related traffic deaths among youth between the ages of 15 and 20 decreased from 2,218 in 1997 to 2,210 in 1998. (NHTSA, 1999)
- Alcohol use is the number one drug problem among young people. (CSAP, 1996)
- About 10 million current drinkers were under age 21 in 1995. Of these, 4.4 million were binge drinkers, including 1.7 million heavy drinkers. (SAMHSA, 1996)
- 2.6 million teenagers don't know that a person can die from an alcohol overdose. (CSAP, 1996)
- Eight young people a day die in alcohol-related crashes. (CSAP, 1996)
- The younger an individual starts drinking, and the greater the intensity and frequency of alcohol consumption, the greater the risk of using other drugs. (CASA, 1994)
- Youth who drink alcohol are 7.5 times more likely to use any illicit drug, and 50 times more likely to use cocaine than young people who never drink alcohol. (CASA, 1994)
- Younger people (age 16-20) are most likely. of any age group, to use various strategies, when hosting a social occasion where alcohol is served, to try to prevent their guests from drinking and driving. (NHTSA, 1996)
- More than 35% of all 16-to-20 year-old deaths result from motor vehicle crashes.(NCHS, 1997) 37% were in alcohol-related crashes. Estimates are that 2,104 persons aged 16-20 died in alcohol-related crashes in 1998. (NHTSA, 1999)
- Between 1988 and 1998, the proportion of drivers 16-to-20 years of age who were involved in fatal crashes, and were intoxicated, dropped 33 percent. 21% in 1988 to 14% in 1990-the largest decrease of any age group during this time period. (NHTSA, 1999)

- In single-vehicle fatal crashes occurring on weekend nights in 1994, 72.3% of the fatally injured drivers 25 years of age or older were intoxicated, as compared with 57.7% of drivers under the age of 25. (NHTSA, 1995)
- Of all persons arrested for DUI/DWI nationally in 1993, persons in the under 25 age group accounted for 23.4% of those in the cities, 23.7% of those in the suburban counties and 22.1% of those in the rural counties. (FBI, 1994)
- Approximately 240,000 to 360,000 of the nation's 12 million current undergraduates will ultimately die from alcohol-related causes---more than the number that will get MA's and PhD's combined. (Eigen, 1991)
- During a typical weekend, an average of one teenager dies each hour in a car crash. Nearly fifty percent of those crashes involved alcohol. (NHTSA, 1999)
- According to the National High School Senior Survey, seniors reporting any alcohol use in the prior month fell from a peak of 72% in 1980 to 51% in 1993. (University of Michigan, 1994)
- The proportion of seniors reporting having five or more drinks in a row on at least one occasion during the prior two weeks fell by 0.4 percentage points from 1993 to 27.5%----down from a high of 41% in 1980. (University of Michigan, 1994)
- White males drink far more than any other group, averaging more than 9 drinks per week. The next highest drinkers are Hispanic males (5.8), white females (4.1), and black males (3.6). Black females average only one drink per week. (Core Institute, 1993)
- Thirty-five percent of college women reported drinking to get drunk in 1993, more than triple the 10% in 1977. (Wechsler & Isaac, 1992)
- Each year, students spend $5.5 billion on alcohol, more than they spend on soft drinks, tea, milk, juice, coffee or books combined. On a typical campus, per capita students spending for alcohol---$446 per student---far exceeds the per capita budget of the college library. (Eigen, 1991)
- Poor grades are correlated with increased use of alcohol. Alcohol is implicated in more than 40% of all academic problems and 28% of all dropouts. (Anderson, 1992)
- College students who reported D and F grade point averages consumed an average of 10 alcoholic drinks per week, while those who earned mostly A's consumed slightly more than three drinks per week. (Core Institute, 1993)
- While more than one-third (35.6%) of the college students surveyed reported to have driven under the influence, only 1.7% said they were arrested. (Core Institute, 1993)
- Sixty percent of college women diagnosed with a sexually transmitted disease were drunk at the time of infection. (Advocacy Institute, 1992)
- Nearly one-third of college students surveyed said they wished alcohol was not available at campus events, and nearly 90% wished that other drugs would disappear

from campuses. (Core Institute, 1993)

Small Children

- It is estimated based upon 1992 data that one out of every 280 babies born today will die in a crash with an intoxicated driver. (NHTSA, 1996)
- Traffic crashes are the major cause of death for children in the age group 0-14. Almost one quarter (21.4%) of these deaths is alcohol related. (NHTSA, 1995)

  Children younger than 5 have higher passenger vehicle occupant death rates than older children do. (IIHS, 1995)
- Children younger than 13 represented 19 percent of the U.S. population in 1994 and six percent of all motor vehicle deaths. Child deaths have represented about this percentage of vehicle deaths since the early 80's. (IIHS,1995)

Minimum Drinking Age Laws

- Minimum Drinking Age Laws reduce traffic fatalities involving drivers in 18 to 20 years old by 13%. These laws have saved an estimated 18,220 lives since 1975. (NHTSA, 1999)
- The overwhelming majority of surveyed respondents (90%) said that strictly enforcing age restrictions of the purchase of alcohol would be a good or excellent idea to reduce crashes. (IRC, 1993)

HB
387

The amendment proposed by Representative Croft, while well intentioned, presents several problems for this bill. The adoption of attorney's fees language goes far beyond the scope of the problem the sponsor sought to address. It may be an idea worthy of consideration, but due to the proximity of adjournment, could realistically mean this bill will die in committee. It would be better if it were addressed as a separate bill, so as to not jeopardize passage of SB 193.

The adoption of the concept of attorney's fees from the liquidated damages statute AS 23.10.110 alters the court rule for the awarding of attorney's fees. It is one-sided in that it does not allow attorney fees to a successful defendant. This will most likely cause considerable floor debate as to why only plaintiff's should be able to get attorney's fees, with the likely outcome that the whole attorney fees sections from AS 23.10.110 will be adopted into the bill. This action will have a chilling effect on private litigation and negate the favorable outcome the amendment sponsor desires to foster.

Finally, "reasonable attorney's fees" as awarded by the court seldom equates to the actual attorney's fees. Average awards run 20 -30% of the attorney's billable hours. The plaintiff has to make up the difference out of their award. This does not resolve the economic imbalance of the cost to prosecute a small Wage and Hour case versus the likely recovery.

Al Dwyer
DOL/WD
4-12-00

(Dept of Law)

HOME SCHOOL LEGAL DEFENSE ASSOCIATION

Advocates for Family & Freedom

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ATTORNEY (PA, MD, DC)

To: Members of the Alaska House Judiciary Committee

From: Chris Klicka

Date: April 11, 2000

Re: House Bill 387, The Alaska Religious Freedom Protection Act

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By way of introduction, the Home School Legal Defense Association is a national organization which has as its primary purpose the protection of the right of parents to direct the education of their children. We presently have more than 66,000 member families in all 50 states and the District of Columbia, with many member families in Alaska. Because the vast majority of our members choose to home school out of religious convictions, the protection of religious freedom is essential to our cause.

The Alaska Legislature has a tremendous opportunity to restore the protection of religious freedom for all citizens in the state. The U.S. Supreme Court, in 1997, denigrated the right of the free exercise of religious beliefs to a second class right. The Alaska Legislature must ac now to protect religious liberty. Below are some commonly asked questions about state Religious Freedom Restoration Acts.

What will HB 387, the Alaska Religious Freedom Restoration Act, do?

The Alaska Religious Freedom Restoration Act (RFRA) reestablishes a test which courts must use to determine whether a person's religious belief should be accommodated when a government action or regulation restricts his or her religious practice. Known as the "compelling interest test," this test requires the government to prove with evidence that its regulation is (1) *essential* to achieve a compelling governmental interest and (2) the *least restrictive means* of achieving the government's compelling interest.

For example, in *People v. DeJonge*, a case argued by the Home School Legal Defense Association (HSLDA), a Michigan couple had the religious belief that they as the parents, although they were not certified teachers, should be teaching their children in their home rather than sending them to school. But the state law requiring all teachers to be certified did not permit

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the couple to exercise this religious belief. Using the "compelling interest test," the court required the state to show that (1) teacher certification is *essential* to fulfill the state's compelling interest that children be educated and (2) that teacher certification was the *least restrictive means* to fulfill its interest. The state was able show without much difficulty that it had a compelling interest in seeing that its citizens were educated. But because this couple's children were scoring above the 90th percentile on standardized tests, the state could not prove teacher certification was *essential* for children to be educated and the least restrictive means to achieving that end. Thus, because the state could not satisfy the "compelling interest test," the parents were allowed to continue teaching their children according to their religious beliefs.

Why does Alaska need a RFRA?

Prior to 1990 the U.S. Supreme Court used the above test—the "compelling interest test"—when deciding religious claims. However, in a 1990 decision (*Employment Div. of Oregon v. Smith*) the Court tipped the scales of justice in favor of government regulation. The Court threw out the compelling interest test, which had shielded our religious freedom from onerous government regulation for more than 30 years.

The *Smith* decision reduced the standard of review in religious freedom cases to a "reasonableness standard." In other words, if a state regulation is "reasonable" (which they nearly always are), a religious objector loses. While all other fundamental rights (freedom of speech, press, assembly, etc.) remain protected by the stringent "compelling interest test," the Court singled out religious freedom, reducing its protection to the weak "reasonableness test."

In 1993, Congress attempted to remedy the *Smith* decision by enacting the federal Religious Freedom Restoration Act. This Act simply restored the "compelling interest test" in religious freedom cases. Four years later, the federal RFRA was struck down by the U.S. Supreme Court in the 1997 *City of Boerne* case.

As a practical matter, here are a few real-life examples of government restricting the free exercise of religion that have taken place under the "reasonableness test."

a) the long-standing practice of pastor-laity confidentiality has been repeatedly violated;

b) a Catholic hospital was denied accreditation for refusing to teach abortion techniques;

c) among other zoning ordinance conflicts, a church ministry to the homeless was shut down because it was located on the second floor of a building with no elevator;

d) a church was prohibited by a local city ordinance from feeding more than 50 people per day; and

e) Justice Fellowship reports that a Jewish minimum-security prisoner (CPA in jail for fraud, in 6th year of 8-year term) was denied the right to attend high holy day celebrations.

But Hasn't the U.S. Supreme Court already ruled the RFRA unconstitutional?

The 1993 federal RFRA attempted to use Congress' powers under Section 5 of the 14th Amendment to require both the federal and state governments to use the "compelling interest test" in religious freedom cases.

However, when the Supreme Court struck down the federal RFRA in 1997 (*City of Boerne v. Flores*), the problem wasn't with the "compelling interest test." The test had been used, as mentioned earlier, by the U.S. Supreme Court itself for more than 30 years. Rather, while the Supreme Court recognized the legitimacy of the "compelling interest test," it ruled that Congress could not *require* states to use this test in religious freedom cases.

A widely recognized principle of law is that states are free to protect an individual's right with a much higher standard than the U.S. Constitution itself affords. Under this principle and the *Boerne* decision, states are free to enact their own RFRAs, thereby choosing to apply the higher "compelling interest test" standard in their own religious freedom cases.

Should civil rights laws and ordinances be exempted from application of the Religious Freedom Restoration Act?

No. Religious freedom is one of many civil rights which all Americans should be allowed to enjoy. A civil rights exclusion in the RFRA simply makes religious freedom a "second-class" right subordinate to all other civil rights. Instead, when a religious freedom right conflicts with
another civil right, the two rights should be given the same level playing field by a balancing of
interests using the compelling interest test.

In some situations, a civil rights law or ordinance should be upheld even when it conflicts with an individual's religious practice, while in other situations, the religious practice should be accommodated. Using the "compelling interest test" provided by HB 387, a court will be able to properly determine whether the government's interest in enforcing a particular civil rights law is compelling enough to override an individual's religious practice. If, however, civil rights laws are exempted from HB 387, religious freedom will *always* be curtailed when it conflicts with civil rights laws, even if the courts could have made a reasonable accommodation.

Will HB 387 create an increase in litigation?

No. This bill will simply restore the "compelling interest test," which the U.S. Supreme Court established almost 40 years ago as the standard of review for fundamental rights cases.

This "compelling interest test" worked well for over 30 years with no explosion of religious freedom cases. The consistent application of the "compelling interest test" in the courts "evened the playing field," giving people of sincere religious faith a fair chance against state regulations that violated their religious beliefs. Many times, both conservative and liberal religious and civil liberty organizations successfully used the "compelling interest test" to defend individuals' rights to freely exercise their religious beliefs.

As mentioned above, the federal RFRA, which restored the "compelling interest test" in religious freedom cases, was effective from its enactment in 1993 until the U.S. Supreme Court struck it

down in 1997. There is no record of an explosion in religious freedom litigation during this four-year period.

Furthermore, eight states have formally passed RFRAs to specifically restore the application of the "compelling interest test" in religious freedom cases (AL, IL, FL, TX, AZ, CT, RI, and SC). Seven more states, through state court precedents, have established a "compelling interest test" independent of the U.S. Supreme Court's damaging precedence in *Smith* and *Boerne*. (KS, MA, MN, VT, WA, WI, and MI.) None of these 15 states are experiencing an explosion in free exercise litigation.

Based on the lack of examples of excessive litigation during the almost 30 years of experience of using the "compelling interest test" for religious liberty (both before the *Smith* decision and during the federal RFRA years), we believe that restoring this test will generate very little, if any, new litigation. In fact, clarifying the standard for religious liberty under state law may prove to *reduce* the amount of litigation, because a clearly defined legal standard often leads parties to settle disputes before litigation ensues.

Will the passage of HB 387 result in a huge increase in litigation against local governments? Will this also increase the costs for the attorney general's office in defending state officials?

No. The same arguments above apply. The "compelling interest test" is not new. It has been in effect for most of the last 40 years. Local governments and state officials have not been inundated with religious freedom suits.

None of the eight states that have passed state RFRA have experienced any explosion of religious liberty cases, including Rhode Island where the law is seven years old. The "compelling interest test" is time-tested.

Furthermore, the "compelling interest test" is simply a "balancing test." It does not give religious claimants an automatic win. It only "evens the playing field" for the little guy.

Is it acceptable to exclude certain people, such as prisoners, from protection under HB 387?

No. As an inalienable right, religious liberty should not be denied to any class of persons. Home School Legal Defense Association urges states not to deny the protections of a state RFRA to anyone (including prison inmates). Religious liberty is diminished for all if it is denied to any. Once the government excludes one politically unpopular group, it is all too easy to exempt others. Of the states that have enacted RFRAs to date, none has found the need to exclude anyone.

But won't HB 387 create an explosion in frivolous cases filed by prisoners?

No. Studies show no sudden surge in religious freedom litigation filed by prisoners during the four years of the federal RFRA demonstrate there was no explosion of cases. Justice Fellowship compiled the following data (provided by the Statistical Division of Administrative Office of the U.S. Courts):

- Prisoner RFRA cases for the years 1995–1996 accounted for about one-tenth of one percent (0.01%) of cases in U.S. courts.
- The National Federal Court statistics show that in 1995, out of 43,158 total U.S. civil cases nationwide (1110 prisoner cases), only 50 of the cases invoking the federal RFRA were filed by prisoners.
- In 1996, out of 48,755 U.S. civil cases, only 51 RFRA cases were filed by prisoners.

A state-by-state breakdown of information was only available for the following three states:

- In New Mexico, out of 407 U.S. civil cases filed in 1995, 0 were filed by prisoners invoking the federal RFRA. In 1996, out of 492 U.S. civil cases filed, 0 were filed by prisoners invoking the federal RFRA.
- According to the Virginia Attorney General's office, out of 1,099 prisoner lawsuits filed against sheriff departments between 1993 and 1997 only 7 were "religious-styled" cases.
- In Florida, only 5 prisoner religious freedom cases invoked the federal RFRA during 1993–1997.

These statistics show that the federal RFRA caused no explosion of cases filed by prisoners—a group considered most likely to take advantage of such a law.

What is HB 387 based on?

The state RFRA model supported by HSLDA is based on other time-tested state Religious Freedom Restoration Acts. It is a combination of the Rhode Island RFRA (the oldest—passed in 1993) and the Illinois RFRA. The substantive provisions of the bill, its heart, are found in all RFRA states. (e.g. Texas, South Carolina, Arizona, Connecticut, Florida, and Alabama). Of course, the "compelling interest test" is patterned directly after the U.S. Supreme Court's description of the test found in dozens of cases over the last 40 years.

Why can't we simply let the Alaska Supreme Court reestablish the "compelling interest test"?

States which have neither an enacted RFRA nor their own body of case law applying the "compelling interest test" have simply followed whatever the current federal standard is. Courts in these states have always relied on the U.S. Supreme Court's religious freedom standard of review and its interpretation and application of the "compelling interest test." The states need to establish their own standard.

Since *Smith* and *Boerne* set the current federal precedent, this means trouble for Christians and other people of sincere religious faith.

Does HB 387 replace all existing remedies to protect religious freedom?

No. It only creates an additional "track" which a religious claimant can use to protect his free exercise of religion. State constitutional and federal constitutional remedies are still available.

In state offices, if a person, because of a religious belief, wanted to have something distasteful on his desk, could his supervisor—under this law—ask for it to be removed?

It depends. If the item was on a teacher's desk, it could probably be removed under the Establishment Clause. If the item was on a desk not open for public view, it may be protected by the employee's free speech rights.

Free speech, the prohibition of establishment of religion, and Title VII considerations all would come into play here. However, like the school example, this scenario is likely going to be considered under the Free Speech Clause. Under U.S. Supreme Court precedent, when government regulates its employees' speech, a different test applies than when government regulates its citizens' speech. It's an easier test for the government to satisfy.

If the dispute over the object on the desk could not be resolved, the state RFRA could be invoked and the courts would have to balance the state's interest with the free exercise claim through application of the "compelling interest test."

Anti-Defamation League

Memo

To: Shari Kochman, Deputy Legislative Director for Governor Tony Knowles

From: Tamar Galatzan, ADL Western States Associate Counsel

CC: Brian David Goldberg, ADL Pacific Northwest Regional Director

Date: April 11, 2000

Re: Alaska RFRA

The current test for analyzing free exercise claims under the Alaska Constitution is the same strict scrutiny test formerly applied by the United States Supreme Court under *Sherbert v. Verner*,[1] abandoned by the Supreme Court in *Employment Division v. Smith*,[2] and briefly revived by the federal Religious Freedom Restoration Act of 1993.[3] Therefore, enactment of an Alaska RFRA would be unnecessary.

Before the Supreme Court's decision in *Smith*, free exercise claims under the Alaska Constitution were examined under the pre-*Smith* federal strict scrutiny standard.[4] In *Swanner v. Anchorage Equal Rights Commission*,[5] the Alaska Supreme Court decided its only free exercise claim since the United States Supreme Court's decision in *Smith*. In *Swanner*, a landlord refused to rent or show properties to unmarried couples because the co-habitation of unmarried persons offended his Christian beliefs.[6] Three individual claimants filed suit against Swanner, the landlord, alleging that his refusal to show or rent them his properties constituted marital status discrimination in violation of Anchorage Municipal Code 5.20.020 and AS 18.80.240,[7] which prohibit discrimination in the sale or rental of real property. The Alaska Supreme Court held that enforcement of Alaska's anti-discrimination laws against Swanner did not violate his free exercise rights under either the United States or Alaska Constitutions.[8]

In finding no free exercise violation under the US Constitution, the court performed its analysis pursuant to the rule set forth in *Smith*.[9] Under *Smith*, a "law that is neutral and of general applicability need not

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[1] 374 W.S. 398 (1963).
[2] 494 U.S. 872 (1990).
[3] Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb-2000bb-4 (1994). The United States Supreme Court determined that RFRA was unconstitutional in *City of Boerne v. Flores*, 521 U.S. 507 (1997).
[4] *See, e.g.,* Seward Chapel, Inc. v. City of Seward, 655 P.2d 1293 (Alaska 1982); Frank v. State, 604 P2d 1068 (Alaska 1979)
[5] 874 P.2d 274 (Alaska 1994), *cert. denied*, 513 U.S. 979 (1994).
[6] *Id.* at 276-77.
[7] *Id.* as 276.
[8] *Id.* at 280,284.
[9] *Id.* at 279-81.

be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice."[10] Consequently, no compelling state interest was required, and the Alaska laws passed constitutional muster under the First Amendment.

For purposes of its state constitutional analysis, however, the court expressly recognized that:

> even though the Free Exercise Clause of the Alaska Constitution is identical to the Free Exercise Clause of the United States Constitution, [the court is] not required to adopt and apply the *Smith* test to religious exemption cases involving the Alaska Constitution merely because the United States Supreme Court adopted that test to determine the applicability of religious exemptions under the United States Constitution.[11]

Therefore, the court looked to its own precedent in considering whether enforcement of Alaska's anti-discrimination laws against Swanner violated his free exercise rights under the Alaska Constitution.

The *Swanner* court applied the strict scrutiny test set forth in *Frank v. State*[12] to determine the issue of whether the state's regulations violated Swanner's free exercise rights under the state constitution.[13] The Alaska court in *Frank* adopted the federal *Sherbert* test and required that in order to invoke a religious exemption to a facially neutral law, (1) a religion must be involved, (2) the disputed conduct must be religiously based, and (3) the claimant must be sincere in his or her religious belief.[14] If those three requirements are met, the government can only forbid religiously based actions if they pose a substantial threat to the public or if there is a competing government interest of the highest order.[15] In other words, to infringe upon sincere religiously based conduct, the government must meet a strict scrutiny standard.

The *Swanner* court found that the three requirements for religious exemption were met, because there was no dispute "that a religion [was] involved . . . (Christianity), or that Swanner [was] sincere in his religious belief that cohabitation is a sin and by renting to cohabitators, he [was] facilitating sin"[16] and because "Swanner's refusal to rent to unmarried couples [was] not without an arguable basis in some tenets of the diverse Christian faith, and therefore, his conduct [was] sufficiently religiously based to meet [the] constitutional test."[17] The court, though, found that the government, in enacting the anti-discrimination laws, possessed two compelling interests: a "derivative" interest in ensuring access to housing and a "transactional" interest in preventing discrimination based on irrelevant characteristics.[18] As a result, the court held that the disputed statutes passed strict scrutiny, and therefore the state's enforcement of its anti-discrimination laws against Swanner did not deprive him of his free exercise rights under the Alaska Constitution.[19]

Although the statutes were found to be constitutionally permissible under both the federal and state constitutions, the Alaska Supreme Court has apparently recognized and seized upon its ability to perform independent state constitutional analysis. Because the court has chosen to apply the strict scrutiny standard for purposes of analyzing free exercise claims under the Alaska Constitution, enactment of a state RFRA would be unnecessary.

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[10] *Swanner*, 874 P.2d at 279 (quoting Church of the Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520 (1993).
[11] *Id.* at 28081.
[12] 604 P.2d 1068 (Alaska 1979)
[13] *Swanner*, 874 P.2d at 281
[14] *Id.* at 281 (citing *Frank*, 604 P.2d at 1070).
[15] *Swanner*, 874 P.2d at 281 (citing *Frank*, 604 P.2d at 1070).
[16] *Swanner*, 874 P.2d at 281.
[17] *Id.* at 282.
[18] 494 U.S. 872 (1990).
[19] *See Swanner* at 284.

- HB 387 is particularly problematic in the area of prisons, where many inmates have a track record of doing whatever they can to cause problems for the correctional system. It is not unusual for offenders to "find religion" while incarcerated, and to claim those beliefs are connected to a new or traditional religion. The inmates then wish to engage in religious practices or rituals which can cause serious security and administrative problems.

For example, the Alaska Human Rights Commission has officially recognized witchcraft as a bonafide religion for prisoners to practice, and pursued a complaint against Department of Corrections in 1992-93. The department was forced to enter into a consent decree with the Commission, which allows inmates to receive information and visits from witchcraft practioners. Even before the Human Rights Commission action, several inmates had filed state and federal lawsuits, claiming a right to possess witchcraft books. Some of the inmates pursuing these lawsuits were dangerous sex offenders, and the witchcraft books they were prohibited from receiving included drawings of nude women, along with instructions on how to tie up the women in witchcraft ceremonies. The books also included instructions on making sacred witchcraft knives. These lawsuits were resolved in the state's favor, but it is not clear if the state would prevail under HB 387.

- Prisoners will also request to engage in other religious-based practices, such as:
  - Meeting in groups at times when sufficient staff is not available to supervise
  - Use of candles
  - Use of wine
  - Special foods which are expensive or difficult to obtain or which have not passed health inspections
  - Refusal to participate in required aspects of Sex Offender Treatment such as talking about their offenses or submitting to the Plethysmograph (tool designed to measure sexual arousal level)
  - Use of tobacco or other contraband (e.g., jewelry) which could cause thefts and violence
  - Demands for religious clothing such as caps and robes which could hide contraband or weapons
  - Sweat lodges at unreasonable times
  - Refusal to participate in groups or classes or work or be housed with members of other races
  - Associating only with members of their own religions, leading to creation of gangs
  - Inmates in segregation could request to meet in groups
  - Witchcraft or cult practices which cause elements of the population to be frightened and could lead to violence (this has occurred in the past)
  - Demands for untraditional forms of medical care
  - Demands by inmates for participation in religious meetings with members of the public, including minors

REPRESENTATIVE ERIC CROFT

Memorandum

TO: Rep. Pete Kott, Chair
House Judiciary Committee

FROM: Rep. Eric Croft

DATE: 4/4/00

RE: HB 387

I am requesting a hearing, pending referral from the House State Affairs Committee, for HB 387, the Alaska Religious Freedom Protection Act.

This bill has had extensive hearings in three other committees. I have no doubt that the Judiciary Committee will give it careful scrutiny.

Enclosed for your information is:

1. Copy of the Bill
2. Sponsor Statement
3. Letters of support
4. Pertinent Testimony/Articles

January-May: State Capitol • Juneau, Alaska 99801-1182 • (907) 465-4998 • (800) 689-4998 • Fax (907) 465-4419
June-December: 716 W. 4th Avenue • Anchorage, Alaska 99501 • (907) 258-8162
Representative_Eric_Croft@legis.state.ak.us

Representative Eric Croft

HB 387
The Alaska Religious Freedom Protection Act

Sponsor Statement

The Alaska Religious Freedom Protection Act (ARFPA) is a state response to United States Supreme Court decisions that have undermined the religious freedoms of Americans in recent years.

The United States and Alaska Constitutions contain nearly identical provisions stating that governments shall make no law "respecting an establishment of religion, or prohibiting the free exercise thereof." For most of the nation's history, the "free exercise" clause of the United States Constitution was interpreted to require that governments make reasonable exceptions to general laws if the implementation of those laws impinged on the religious practice of its citizens.

A good example is the case of Wisconsin v. Yoder, 406 U.S. 205 (1972). Members of the Old Order Amish religion allow their children to attend public school until the eighth grade to learn basic reading, writing, and math skills, but then the Amish religion requires the children begin preparation for adult baptism and life under the religious precepts of their faith. Pennsylvania allows Amish children of high school age to attend special vocational schools for three hours and then go home for religious and other instruction. Wisconsin, however, did not allow any exception to the compulsory school attendance law. Frieda Yoder, a 15-year old member of the Old Order Amish religion refused to attend public high school on religious grounds and her father, Jonas, was convicted of violating the law. The United States Supreme Court ruled that the compulsory attendance law violated the free exercise rights of the Yoder family. The Court ruled that the government may place a substantial burden on the free exercise of religion only if the government can show a compelling state interest and that the government's action is the least restrictive means of accomplishing that interest. This is known as the "compelling state interest" test for religious freedom. The Court noted that because the Amish children attended school until the 8th grade the burden on their education was relatively light and that the burden on the religion was proven to be substantial. The Yoder case and others stood for the proposition that a "regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion." Yoder, 406 U.S. 221; see also Sherbert v. Verner, 374 U.S. 398 (1963).

The constitutional respect for freedom of religion embodied in the "compelling state interest" test was eliminated in 1990 by the United States Supreme Court in Smith v. Emp. Div., 494 U.S. 872 (1990). Justice Scalia, writing for a court divided 5-4, ruled that government no longer had to provide a religious exemption to general laws. "The Court today . . . interprets the [free exercise clause] to permit the government to prohibit, without justification, conduct mandated by an individual's religious beliefs, so long as that prohibition is generally applicable." Smith, 494 U.S. at 893 (Justice, O'Conner, dissenting).

The Smith decision met a storm of protest. In 1993, a broad bipartisan majority of both houses of Congress passed The Religious Freedom Restoration Act (federal RFRA) and the bill was signed into law by President Clinton. RFRA attempted to use congressional power to restore the "compelling state interest" test for religious freedom. In 1997, the United States Supreme Court ruled that the federal RFRA statute was an unconstitutional extension of federal power. City of Boerne v. Flores, 521 U.S. 507 (1997). The Flores decision effectively left any protection of religious freedom to the individual states. The Alaska Supreme Court has consistently interpreted the free exercise clause of the Alaska Constitution to require a compelling state interest analysis.
See Frank v. State, 604 P.2d 1068 (Alaska 1979) (allowing a religious exemption for the taking of a moose for an Athabaskan funeral potlatch). There is no present indication that the Alaska Supreme Court intends to follow the direction of the Smith decision in interpreting the Alaska Constitution. However, a change in the composition of the court or judicial philosophy could lead to this change in the future.

HB 387, the Alaska Religious Freedom Protection Act (ARFPA), will provide statutory protection for religious freedom in Alaska by enshrining the compelling state interest test for all state, municipal, and school district actions.

HB 387 is not intended to create an establishment of religion or allow a claim of religious freedom to authorize the infringement of the rights of others. It simply recognizes that Alaskans value their religious liberties and are willing to allow an exception from generally applicable laws for religious freedom unless the government shows a compelling state interest.

CS FOR HOUSE BILL NO. 387(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 3/15/00
Referred: State Affairs, Judiciary

Sponsor(s): REPRESENTATIVES CROFT, Coghill, Dyson, Halcro, Cissna, Whitaker

A BILL

FOR AN ACT ENTITLED

1 **"An Act requiring governmental entities, including municipalities and school**
2 **districts, to meet certain requirements before placing a substantial burden on a**
3 **person's free exercise of religion."**

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

5 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new
6 section to read:
7 SHORT TITLE. This Act may be cited as the "Alaska Religious Freedom Protection
8 Act."
9 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section
10 to read:
11 FINDINGS. The legislature finds that
12 (1) the First Amendment to the Constitution of the United States and art. I,
13 sec. 4, Constitution of the State of Alaska, recognize and protect the right of free exercise of
14 religion;

1 (2) in 1990, the United States Supreme Court retreated from over 200 years
2 of respect for the right to free exercise of religion in Employment Division v. Smith, 494 U.S.
3 872 (1990), an opinion written by Justice Scalia, by holding that the government no longer
4 had to make reasonable exceptions to general laws in order to accommodate the religious
5 beliefs of its citizens;
6 (3) while the Alaska Supreme Court has not chosen to follow this retreat from
7 protection for religion, the free exercise rights of Alaska citizens are so vital and fundamental
8 that it is in the public interest to provide a statutory guarantee of these rights to secure against
9 a change in judicial interpretation; and
10 (4) while it is improper for the legislature to tell the judiciary how to interpret
11 the Constitution of the State of Alaska, it is proper for the legislature to establish different
12 rights or to secure established rights in a different manner or to a different degree than the
13 minimum set by the Constitution of the State of Alaska as long as that legislative action does
14 not interfere with the rights of other persons.
15 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section
16 to read:
17 INTENT. It is not the intent of the legislature, by protecting the individual free
18 exercise of religion, to create an establishment of religion or an official state religion.
19 * **Sec. 4.** AS 14.14 is amended by adding a new section to article 1 to read:
20 **Sec. 14.14.210. Personal exercise of religious freedom protected.** (a) A
21 school board or school district may not place a substantial burden on a person's free
22 exercise of religion unless
23 (1) the burden is in the form of a rule of general applicability and does
24 not intentionally discriminate against religion or among religions; and
25 (2) application of the burden to the person is essential to further a
26 compelling governmental interest and is the least restrictive means of furthering that
27 compelling governmental interest.
28 (b) A person may bring a civil action against a school board or school district
29 for a violation of this section, and the court may grant appropriate relief.
30 (c) This section may not be construed to create an establishment of religion
31 or to authorize the infringement of the individual rights of a third party.