ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9943 HOUSE LABOR & COMMERCE

encompassed issue advocacy groups as well as groups expressly advocating support or defeat of particular candidates. The court held that the statute "subjects groups engaged in only issue advocacy to an intrusive set of reporting requirements" and that "[b]urdening speech of this sort is unacceptable in an area of such crucial import to our representative democracy." North Carolina Right to Life v. Bartlett, 168 F.3d 705, 713 (4th Cir. 1999).

Under the above cases, although the draft is not limited to issue advocacy corporations, if a court were to determine that the purpose or result of the statutes were to burden the speech of the corporations, it may be possible that the filing requirements would be held to violate constitutional freedom of speech provisions.

The draft may have a slightly better chance if it did not expressly identify the advocacy of positions on issues as constituting the transaction of business. However, if the underlying purpose or result of the statutes were found to burden the speech of the corporations, you would still have essentially the same problem.

3. Privacy. You have indicated that the contents of Form 990 are already available to the public, although not easy to obtain. Assuming this to be the case, there does not appear to be a privacy issue here with the public release of the information. Nonprofit corporations may not have any right to privacy under Article I, Section 22 of the state's constitution; however, this issue does not appear to have been decided conclusively by our courts yet, so the issue appears to be unresolved. If these forms are not in fact available to the public in some reasonable manner from the federal government, then automatic disclosure under the draft would at least raise the privacy issue under our state constitution.

4. Date of filing. The draft does not use the April 15 date for filing because it appears from the form you provided that some corporations may use tax years that are not based on a calendar year, which would seem to result in different filing deadlines. If, in fact, all corporations filing the form have to file it by April 15 each year, please advise so the deadline in the bill can be changed to reflect that.

If I may be of further assistance, please advise.

TLB:pl
00-049.plm

1-LS0676\G
Bannister
2/15/00

CS FOR HOUSE BILL NO. 247( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): **REPRESENTATIVE KOTT**

A BILL

FOR AN ACT ENTITLED

1 **"An Act requiring certain nonprofit corporations to file a certain form."**

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

3 * **Section 1.** AS 10.20.585 is amended to read:

4 **Sec. 10.20.585. Revocation of certificate of authority.** The certificate of
5 authority of a foreign corporation to transact business in the state may be revoked by
6 the commissioner when

7 (1) the corporation fails to file its biennial report within the time
8 required by this chapter, or fails to pay fees or penalties prescribed in this chapter
9 when they are due and payable;

10 (2) the corporation fails to appoint and maintain a registered agent in
11 this state;

12 (3) the corporation fails, after change of its registered office or
13 registered agent, to file with the commissioner a statement of the change as required
14 by this chapter;

15 (4) the corporation fails to file with the department an amendment to

1 its articles of incorporation or articles of merger within the time prescribed by this
2 chapter;
3 (5) a misrepresentation has been made of a material matter in an
4 application, report, affidavit, or other document submitted under this chapter; [OR]
5 (6) the corporation is 90 days delinquent in filing a notice of change
6 of an officer or director as required by this chapter**; or**
7 **(7) the corporation fails to file a form required by AS 10.20.633**
8 **within the time prescribed by AS 10.20.633**.
9 * **Sec. 2.** AS 10.20.590 is amended to read:
10 **Sec. 10.20.590. Limitations on revocation of certificate of authority.** The
11 commissioner may not revoke a certificate of authority of a foreign corporation unless
12 (1) the commissioner has given the corporation at least 60 days' notice
13 by mail addressed to its registered office in the state; and
14 (2) the corporation fails, before revocation, to file the annual report,
15 [OR] pay the fees, [OR] file the required statement of change of registered agent or
16 registered office, [OR] file the articles of amendment or articles of merger, [OR]
17 correct the misrepresentation**, or file a form as required by AS 10.20.633**.
18 * **Sec. 3.** AS 10.20.615 is amended to read:
19 **Sec. 10.20.615. Liability to state for transacting business without certificate**
20 **of authority.** A foreign corporation **that** [WHICH] transacts business in the state
21 without a certificate of authority is liable to the state, for the years or portions of years
22 during which it transacted business in the state without a certificate of authority, in an
23 amount equal to all fees **that** [WHICH] would have been imposed by this chapter on
24 the corporation if it had applied for and received a certificate of authority to transact
25 business in the state as required by this chapter**,** [AND] filed all reports required by
26 this chapter, **and filed the forms as required by AS 10.20.633,** plus all penalties
27 imposed by this chapter for failure to pay the fees**, the penalty for failure to file the**
28 **form as required by AS 10.20.633,** and a penalty of up to $5,000 per year or fraction
29 of a year of operating without a certificate of authority. The attorney general shall
30 bring proceedings to recover amounts due the state under this section.
31 * **Sec. 4.** AS 10.20 is amended by adding a new section to article 7 to read:

GARY A. ZIPKIN
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JAMES D. LINXWILER
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JOSEPH J. PERKINS, JR
GEORGE R. LYLE
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JOSEPH RUDD 1933-1978
FRANCIS E. SMITH, JR. 1941-1991

November 29, 1999

Representative Pete Kott
Alaska Legislature
10928 Eagle River Road, Suite 141
Eagle River, Alaska 99577

DEC 06 1999

Re: HB 247
Revision of Alaska nonprofit corporation code

Dear Representative Kott:

I recently learned that you are the primary sponsor of a bill introduced in the House on May 18, 1999 which proposes to re-write the nonprofit corporation and religious corporations codes. Because the bill touches on areas that I care about and areas I know a little bit about, I am writing to express my concerns.

Please note that while I am an attorney and represent many nonprofit corporations, and serve on the boards of directors of several other nonprofit corporations, I am writing solely in my personal capacity and not on behalf of a client or any specific nonprofit corporation. This letter simply reflects my personal concerns. And while the letter is on my law firm's letterhead, it reflects my personal views and not those of my law firm.

May I begin by describing the current, practical situation? First, nonprofit corporations are simply indispensable to the State. They play a critical role at many levels. Whether the focus is youth sports, education support, feeding the hungry, housing the homeless or the delivery of health care services, nonprofit corporations, and in particular charitable corporations, are extremely important. As the Legislature's financial support for health, social service and youth activities continues to decline, that role will only become more critical and more indispensable. The consequence is that more and more nonprofit corporations are campaigning harder and harder for donated monies which are used to meet more and more critical needs.

Second, the law regulating nonprofit corporations, and in particular tax exempt and charitable corporations, is very complex already. Not only are there multiple state laws; there are multiple federal laws, including but not limited to the Internal Revenue Code. In my experience, many nonprofit corporations operate in ignorance of those complex legal requirements.

Third, nonprofit corporations are for the most part operated on extremely tight margins. They cannot afford even minimal legal or accounting advice. They pay their permanent staff salaries at a level that is 50-60% of for-profit levels. Volunteers perform mission-critical work, at the very edge - and sometimes across the edge - of the wage and hour laws.

Fourth, volunteer organizations, and the overwhelming majority of nonprofit corporations in Alaska are volunteer organizations, make do with volunteers who donate their time. As a result, management resources are limited, institutional memory is short and business skills and legal sophistication are low.

It is in that setting that any revision to Alaska's nonprofit corporations code will occur.

The situation is so bad that, after seeing many nonprofit corporations naively get themselves into the most serious legal problems, I wrote and freely distribute the *Volunteer's Legal Handbook*, a kind of introductory manual for nonprofit boards of directors, officers and volunteers. It is available on the World Wide Web at http://www.ptialaska.net/~jdewitt/vlh. Nonprofit law has gotten so complex that even that elementary explanation now runs to 130 pages. The website receives about 12,000 visitors a year. I also chair the faculty of the United Way of Anchorage and Alaska Bar Association's biennial workshop on legal issues for nonprofit corporations, in a further effort to get knowledge into the hands of nonprofits.

I suggest that given that setting the following principles should guide any revision to existing nonprofit law:

1. Any changes that divert limited nonprofit resources from program delivery to corporate

management should be limited to those situations where there is real and serious abuse.

2. Any changes that significantly impact the structure and management of nonprofit corporations need to address real and serious abuse, because of the education and training impacts those changes will have.

3. Any changes that discourage a membership-oriented focus and community involvement should be disfavored. Any changes that encourage a membership-oriented focus and encourage community involvement should be favored.

4. Any changes must mesh well into the existing state and federal regulatory structures.

5. Any changes should encourage streamlining of services and reporting requirements, to permit the most efficient use practical of charitable contributions.

After a careful review of HB 247, I have concluded that the bill meets very few of those principles, and in many ways is counterproductive. With your patience, let me identify just a few examples. This list, while impressively long, is by no means complete, and partially analyzes just 14 sections.

1. The bill creates a distinction between a "nonprofit mutual benefit corporation" and a "nonprofit public benefit corporation." *See* Sec. 10.21.105(a)(5). Much of the bill imposes varying requirements on those two definitions, and purports to draw a bright line between those two types. I suggest the distinction is artificial, has no meaning in the year-to-year operations of a nonprofit corporation, and creates serious problems under the Internal Revenue Code. There are serious consequences under HB 247 to getting this wrong.

Consider Fairnet, Inc., a nonprofit corporation that struggles to provide training and access to the internet for the economically disadvantaged. In a good year, it receives grants and more than 90% of its income is received from those grants;

in a bad year, dues might constitute 100% of its income. Its members vote. Which species is Fairnet? A nonprofit mutual benefit corporation or a public benefit corporation? The distinction is artificial and has no meaning from year to year. And I urge you to speak with the Internal Revenue Service's Tax Exempt Organizations Division: I think the IRS might have serious concerns about the charitable corporation status of a nonprofit mutual benefit corporation.

2. The bill limits the range of members of the board of directors. *See* Sec. 10.21.145(a). This greatly limits the scalability of a nonprofit corporation, which might start small and plan to grow much larger. Under §145(a), the most directors a nonprofit corporation with an initial three directors can have in the future is five directors. That's not much room for expansion.

Consider Kids Voting Alaska, Inc. It started quite small in Fairbanks, with an initial three directors, but with the goal of a statewide board in three years consisting of 15 directors. That was a sensible, cost-effective approach to the challenges of launching a statewide nonprofit corporation. HB 247 would make that sensible approach impossible.

3. The bill requires uniform dues or assessments. *See* Sec. 10.21.155. This requirement appears to be impractical at several levels.

For example, a youth baseball nonprofit corporation might well charge its members - the parents of the children playing ball - dues based on the number of children they had playing baseball. Those dues would not be "uniform for all members." As another example, nonprofit corporations operating as condominium associations often charge dues based on the square footage of an individual member's condominium unit. That results in dues which are not "uniform for all members" in violation of §155(b).

4. The bill forbids "domestic corporations" from distributing incidental profits to members, *see* Sec. 10.21.170(b, but permits distributions to members of mutual benefit nonprofit corporations at Sec. 10.21.180(b). The standard for distributions permitted to members at Sec.

10.21.180(c) - anything that would be contract consideration - is contradicted by the rules imposed by the IRS - *de minimis* benefits - creating a serious trap for the unwary. The contradiction is so sharp that there could be trouble qualifying any Alaska nonprofit mutual benefit corporation for charitable corporation status under IRS §501(c)(3).

5. The bill restricts a nonprofit corporation's ability to accumulate assets. *See* Sec. 10.21.175. There are any number of grave problems with this limitation.

First, it makes it impossible for a nonprofit corporation to be a foundation, whose business it is to accumulate a large sum. Is that really the Legislature's intent? Owner-advised foundations are an extremely successful, highly practical fund-raising tool, useful to both the donors who give the money to a foundation and the charitable corporations who receive monies from the owner-advised foundation. Only a corporation serves as a suitable vehicle. Does the Legislature really mean to abolish this highly useful tool? United Way of the Tanana Valley maintains a significant reserve for financial emergencies like the Koyukuk River Flood. That reserve has proven indispensable. Does the Legislature mean to abolish that flexibility?

Second, the restriction appears to have been written without regard to the distribution requirements imposed on nonprofit corporations by the Internal Revenue Code. As a result, nonprofit corporations would face very serious challenges in complying with this new requirement and staying in compliance with the IRS requirements.

6. The bill requires a vote of a majority of the members of a nonprofit corporation on the distribution of all or substantially all of its assets in the regular course of business. *See* Sec. 10.21.193. "Substantially all of its assets" is not defined. If the distribution is not in the ordinary course of business then a highly complex, multi-step process, including approval of a majority of all members, and approval by the Commissioner of Community and Economic Development is required. *See* AS 10.21.195.

Consider United Way of the Tanana Valley again. Each year, it engages in its annual fund-raising drive. Each year, it

gives away substantially all of the monies it raises. In a very real sense, United Way is in the business of giving away substantially all of its assets. Every person donating $10.00 or more is a member of United Way of the Tanana Valley. In a good campaign year, there might be 12,000 to 15,000 members. This section would require a meeting of the members at which a quorum of not less than ten percent of the members was present in order to give the money away. Why? What possible purpose is served? Isn't a member's expectation that all or substantially all of the money would be given away? And if the distributions by United Way are not in the regular course of business, how can the Legislature expect a nonprofit to muster a vote of all of the members? This section seems to be hopelessly inconsistent with the realities of umbrella nonprofit organizations.

7. The bill seriously clouds the liability of members. Sec. 10.21.203 is not well drafted. The subsections contain numerous inconsistencies regarding the liability of members for additional sums. It may abolish the charitable pledge, the most common donor contribution there is, depending on how a court reconciles subsections (b) and (d). The language creates very serious problems for nonprofit condominium associations, who may have to make both regular and special assessments.

8. The bill provides that the rights of a member terminate on his or her death. *See* Sec. 10.21.218. I cannot conceive of a reason for such a provision. It jeopardizes all estate planning provisions for charitable gifts, all charitable remainder trusts and all life insurance-funded or annuity plans, for no discernible purpose. Why cannot membership in a nonprofit corporation survive the death of a member; why shouldn't one of the rights of membership be transferable on death, if the nonprofit corporation wishes?

9. While membership may not survive death, the bill elevates membership in nonprofit corporations to the status of a property right, entitled to the full panoply of due process. *See* Sec. 10.21.230. Why?

Consider the Resource Center for Parents and Children, a nonprofit corporation providing, among other services, counseling for sexually abused children. To join RCPC, you just complete a simple form and send a check for $25. Suppose RCPC

receives a form and check from a convicted child molester; suppose, too, that the victim is presently undergoing counseling at RCPC. This section would afford the convicted child molester due process rights as a condition to terminating his membership. Again, why? It affords the child molester the right to appeal his termination to the superior court. Why? How is it appropriate for RCPC's limited resources to be expended in a lawsuit with this convicted child molester?

10. The bill provides for a right in director-candidates to require the nonprofit corporation to distribute election materials for that candidate. *See* Secs. 10.21.250-253. There are some inconsistent provisions for non-liability and indemnity. And a nonprofit corporation can go to court if the proposed materials will expose the nonprofit to liability. *See* 10.21.253(c). But these sections overlook the reality that a nonprofit corporation's primary asset is its reputation. A nonprofit corporation could be forced to go to court, an expensive and time-consuming process, to protect itself from liability, but it cannot do so if distribution of the materials would damage its business reputation.

Assume a disgruntled member of United Way seeks a directorship. United Way is forced to distribute his election materials asserting that United Way "steals money" and "defrauds donors," even though there isn't a shred of proof. Because the materials don't expose United Way to liability, the nonprofit can't even go to court to seek to avoid the nonprofit equivalent of suicide. Instead, the Legislature would require United Way to badly damage its reputation by distributing the disgruntled members lies and distortions. Why?

11. One of the gravest problems facing nonprofit corporations today is the problems of mustering a quorum of members. Current law sets a minimum quorum requirement of 10% of members. AS 10.20.076. For an organization like United Way, that requirement sets an impossible threshold. Yet HB 247 actually makes matters worse. It requires that to take up an item of business not on the notice of meeting, a quorum of one-third of the members be present. The ten percent requirement is such a serious problem that electric cooperatives obtained relief from it, reducing the requirement to 50 members in the

case of a cooperative with 1,000 members or more. *See* AS 10.25.110.

In addition, the first and second sentences of §263(c) are contradictory.

12. Many donors as a condition of a charitable gift require the nonprofit corporation to agree it will not disclose their name and address to any person. Yet Secs. 10.21.290 - 303 impose a penalty of $5,000 on a nonprofit corporation attempting to comply with that member's wishes. In its zeal to allow a member access to a nonprofit corporation's membership lists - itself a dubious proposition - the Legislature proposes to sacrifice other member's wishes that their names and addresses not be disclosed.

The practical effect of these and other new rights created for members will be to cause many nonprofit corporations to convert to non-membership status, with self-perpetuating boards of directors. In essence, they will accept the difficulties presented with fund-raising when they can't confer membership status to minimize the risks created by the Legislature with having members. The community and state will suffer as a result, as the sense of its participation in the activities of nonprofit corporations declines. Is that the Legislature's intent, because I assure you it will be the practical effect?

13. HB 247 evidences a level of concern approaching obsession with getting an annual report to members. *See* Sec. 10.21.310 - 313. The bill specifies the form of the report in considerable detail, and requires publication of a notice of the report's availability. There are several issues here.

First, HB 247 doesn't seem to acknowledge the existing IRS requirements that reports be submitted to the IRS and that copies of those reports be made available to members and to the public. IRS Form 990 is required of every nonprofit that had total assets of $25,000 or more; except that IRS Form 990EZ may be used by those with assets of $250,000 or less. *See* IRS Regs. §§1.508-1 and 1.6033-2. This is the basic information return for nonprofit corporations (except private foundations). A copy of the Form 990 or 990EZ must be available for inspection by the public. IRS §6104.

Has the Legislature concluded that Form 990 is inadequate? If so, why?

While I am not an accountant, it seems clear that the forms of the reports are different. Is the advantage to the proposed HB 247 form so great that it justifies preparation of a second report, at some cost to the nonprofit corporation and attendant diversion of its assets from programming to administration? If so, why? And remember the State already gets a report under AS 45.68 and the regulations issued by the Department of Law.

Once again, the result of these overlapping and, to my mind, unnecessary reporting requirements will be to discourage membership-based nonprofit corporations. That doesn't seem to benefit anyone.

14. The bill at Sec. 10.21.313 requires an annual report of insider transactions. Once again, HB 247 appears to be operating in ignorance of parallel federal law.

Since 1995, the IRS has closely regulated anything faintly resembling insider transactions under new "excess benefits rules," which are much broader in scope than the requirements under HB 247. Tax sanctions in the form of a penalty excise tax are imposed upon "disqualified persons" who receive an improper benefit from a transaction with a charitable corporation. A penalty excise tax is also imposed upon the "organization managers" who authorized the transaction knowing that it was improper. And the excess benefit transaction must be "undone" or an additional round of penalties will be imposed and, ultimately, the exempt status of the nonprofit may be lost. *See* 26 U.S.C. §4958 and proposed regulations.

The IRS provisions are much more thorough and significantly more penal than the provisions at §313 of HB 247, imposing excise taxes of potentially 225% of the excess benefit on the recipient and 10% of the excess benefit on the board of directors that approved it. The reach of regulated persons is much broader: the definition of "disqualified person" under 26 U.S.C. §4958 is much broader than that of HB 247's section 313(b)(1).

Why are the federal requirements inadequate? How do HB 247's requirements add anything? In fact, was the Legislature aware of the federal "excess benefits" rules?

I see that I have already used nine pages. I could easily use 90 pages addressing just a part of the problems I see with this proposed bill. Make no mistake, the current nonprofit laws have very serious problems, and those problems should be repaired. But HB 247 is not the right tool for that task. The five guidelines I suggested earlier are all repeatedly violated:

> **1. Any changes that divert limited nonprofit resources from program delivery to corporate management should be limited to those situations where there is real and serious abuse.**

The Legislature proposes to require nonprofits to divert significant sums to reporting and, in particular, members' rights that in many cases are unnecessary or are duplicative of existing requirements under State law and federal law.

> **2. Any changes that significantly impact the structure and management of nonprofit corporations need to address real and serious abuse, because of the education and training impacts those changes will have.**

The Legislature proposes to reinvent nonprofit corporations. New requirements - requirements which carry very grave risks if they are not met - are imposed. The Legislature hasn't yet achieved meaningful compliance with its Charitable Solicitations Act, AS 45.68.010-900, which has been on the books since 1996. New volunteer directors of nonprofits must re-learn the little information they have acquired, without identification of problems justifying that effort.

> **3. Any changes that discourage a membership-oriented focus and community involvement should be disfavored. Any changes that encourage a membership-oriented focus and encourage community involvement should be favored.**

Most of the changes in HB 247 will prompt nonprofit corporations to immediately convert to non-membership status, as discussed above. Fund-raising will be impaired, community involvement will be reduced, and, ironically, greater risk of improper activities will be increased because of the lack of membership involvement and scrutiny.

4. Any changes must mesh well into the existing state and federal regulatory structures.

In fact, the Legislature seems to have been unaware of existing Federal requirements, and even existing State requirements. For example, the form of reports in the Charitable Solicitations Act, AS 45.68.010-900, is different from the form of report in HB 247, section 310. Existing Federal law for reports and for insider transactions is more rigorous than that proposed by HB 247, resulting in pointless diversion of nonprofit assets to compliance with useless requirements.

5. Any changes should encourage streamlining of services and reporting requirements, to permit the most efficient use practical of charitable contributions.

The bill does exactly the opposite. New forms and reports, instead of use of existing forms, will increase the burden on nonprofits, for very dubious benefits.

For these reasons, and for additional reasons that even a eleven page letter doesn't provide me space to address, I urge that HB 247 not be adopted or even reported out of committee. However well intentioned, it does not meet the real needs of the thousands of nonprofit corporations in Alaska, the needs of the tens of thousands of volunteers and donors who support those nonprofits, or the tens of thousands of citizens who benefit from the services those nonprofit corporations, volunteers and donors provide.

There are real needs for revision of Alaska's nonprofit corporations code. But HB 247 is the wrong approach.

Please feel free to contact me if you have questions.

Sincerely yours,

GUESS & RUDD P.C.

James D. DeWitt

cc: House Labor and Commerce Committee
House Judiciary Committee

HB
273

(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: January 10, 2000 FURTHER REFERRALS: Judiciary

Date of Committee Action: 24 mar 2000

The LABOR AND COMMERCE Committee considered: HB 273

HOUSE BILL NO. 273 INTERNET SERVICE PROVIDERS

"An Act relating to the disclosure of subscriber information by Internet service providers."

recommends it be replaced with the following committee substitute CSHB 273(L+C)

[✓] the same title
[ ] a new title

[ ] additional referral to ____________ Committee
[ ] attached amendment(s)

ADOPTS: ____________ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal note(s) ____________

[✓] zero fiscal note(s) LAW 3/17/00

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) ____________

[ ] zero fiscal note(s) ____________

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
[signature]	✓			
John L. Harris			✓	
[signature]	✓			
[signature]			✓	
[signature]			✓	
Norm Rokeberg			✓	

CHAIR'S SIGNATURE [signature] 3-24-2000

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 27, 2000

SUBJECT: CSHB 273(L&C) relating to consumer Internet privacy
(Work Order No. 21-LS1156\I)

TO: Representative Norman Rokeberg
Chair, House Labor & Commerce Committee
Attn: Janet

FROM: Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above.

1. Possible contract impairment issue. This issue did not result from the changes made by the committee, but existed in the original bill. The application of this bill to Internet service provider contracts entered into before the effective date of this Act (see sec. 3 of the bill) may raise an issue under the state and federal prohibitions against state impairment of contracts (U.S. Const. art. I, sec. 10; Alaska Const. art. I, sec. 15).

If the use of the subscriber information were determined to be an essential part of the contract, there could be an impairment problem. Since consumers in the past have not even been aware that their information was being used, it may not be considered essential; however, if providers consider the use of the information to be a very valuable result of the contract, the answer to the question of whether the information use is "essential" is not clear. If the proposed restriction can be characterized as curing a significant privacy problem, there may be less chance of an impairment problem. I do not know how the impairment issue would be resolved in this situation, but I want you to be aware that it exists.

2. Suggested clarification in sec. 3. Depending on the intent of the new language, I suggest tha. sec. 3 of the bill be clarified to apply the new material in proposed AS 45.50.479(c) only to contracts entered into on or after the effective date of the Act. Although this is a logical conclusion since subsection (c) covers "new accounts," the language of sec. 3 covering existing contracts technically applies to subsection (c) as well. Since this has passed out of your committee, you may wish to let the next committee consider this clarification.

If I may be of further assistance, please advise.

TLB:lmb
00-020.lmb
Enclosure

Alaska Civil Liberties Union
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phone (907) 258-0044
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e-mail: akclu@alaska.net

March 24, 1999

Testimony to the House Labor and Commerce Committee

Regarding House Bill 273 relating to disclosure of personal information by an internet service provider.

House Bill 273,.

Comments of the Alaska Civil Liberties Union

The Alaska Civil Liberties Union wishes to thank Representative Kerttula for introducing House Bill 273, addressing the important issue of internet privacy, and thank the House Labor and Commerce Committee's hearing this bill.

This measure gives important statutory support to the goal of protecting individual rights and personal dignity in the new era of electronic communication.

The Alaska Civil Liberties Union supports the language of HB273, requiring that affirmative consent be obtained from a subscriber prior to the release of any personal information by an internet service provider about that subscriber.

The Alaska Constitution is clear about the right to privacy, and in the face of technological change this legislation is an important and necessary.

Requiring that an internet service provider obtain consent before disclosing personal information about a subscriber is a most basic provision in a computer-based environment where every purchase, any expression of interest or curiosity, all messages in or messages out can be tracked and monitored.

We urge the Committee to consider this bill and move its provisions forward.

Privacy Policy

AOL's Privacy Policy - An Overview

America Online, Inc. is strongly committed to protecting the privacy of consumers of its interactive products and services. Throughout cyberspace, we want to contribute to providing a safe and secure environment for consumers, and in particular, ensure that kids' information is protected.

While this privacy policy applies to the AOL.COM site and all of the other Internet-accessible AOL-branded services, like AOL Instant Messenger, we will refer here only to AOL.COM to make reading this policy easier. The AOL Internet online service has a separate privacy policy for its members. If you are an AOL member, you can find that policy within our Terms of Service. The purpose of this AOL.COM privacy policy is to inform you, as a welcome visitor to AOL.COM, what kinds of information we may gather about you when you visit AOL.COM, how we may use that information, whether we disclose it to anyone, and the choices you have regarding our use of, and your ability to correct, the information. Finally, please note that this policy applies only to AOL.COM and Web sites that carry the AOL.COM brand, and not to other companies' or organizations' Web sites to which we link. We have clearly marked AOL.COM and these branded Web sites with our logo so you know where this policy applies.

Information About All AOL.COM Visitors

In general, our service automatically gathers certain usage information like the numbers and frequency of visitors to AOL.COM and its areas, very much like television ratings that tell the networks how many people tuned in to a program. We only use such data in the aggregate. This collective data helps us determine how much our customers use parts of the site, so we can improve our site to assure that it is as appealing as we can make it for as many of you as possible. For example, AOL.COM uses a technology nicknamed "cookies" that tells us how and when pages in our site are visited, and by how many people. AOL cookies do not collect personally identifiable informatio and we do not combine information collected through cookies with other personally identifiable information to tell us who you are or even what your screen name or e-mail address is. We also may provide statistical "ratings" information, never information about you personally, to our AOL.COM partners about how our members, collectively, use AOL.COM. We do this so they too can understand how much people use their areas and our site in order for them to provide you with the best possible Web experience as well.

Information About You

Sometimes, we may specifically ask for information about you when you sign up to use a service, like AOL Instant Messenger, or when you order a product. We will need certain information -- such as name, Internet address or screen name, billing address, type of computer, credit card number -- in order to provide that service or product to you. We may also use that information to let you know of additional products and services about which you might be interested. You can choose not to receive such information if you don't want to by letting us know on the registration screen when you sign up for the product or service. We may ask you for information about your interests so that both you and we can take advantage of the interactivity of the online medium, but you may always choose to respond or not. Additionally, we may provide you with an opportunity to be listed in a directory on one of our AOL- branded services -- these listings are also optional and you can make changes to or eliminate this information when you want to.

Disclosure

We do not use or disclose information about your individual visits to AOL.COM or information that you may give us, such as your name, address, email address or telephone number, to any outside companies. But as we mention above, we may share with our Web site partners aggregated statistical "ratings" information about the use of AOL.COM.

Special Attention to Kids

America Online, Inc. takes special care to protect the safety and privacy of young people using our services. We do not specifically collect information about children and believe that children should get their parents' consent before giving out any personal information. We encourage you to participate in your child's experience in cyberspace and to review our important safety tips before your child explores the Internet. We also encourage you and your child to visit AOL.COM's Kids Only Web Channel, which provides access to age-appropriate content available on the Web. AOL also recommends that parents who are AOL members use AOL's Parental Controls or, if not, other Web filtering technology to supervise their kids' access to the Web.

AOL.COM Privacy Policy Changes

If we decide to change our privacy policy for AOL.COM, we will post those changes here so that you will

always know what information we gather, how we might use that information and whether we will disclose it to anyone.

TRUSTe
America Online, Inc. is a member of the TRUSTe program. This above statement discloses the privacy practices for AOL.COM.

TRUSTe is an independent, non-profit initiative whose mission is to build users' trust and confidence in the Internet by promoting the principles of disclosure and informed consent. Because this site wants to demonstrate its commitment to your privacy, it has agreed to disclose its information practices and have its privacy practices reviewed and audited for compliance by TRUSTe. When you visit a Web site displaying the TRUSTe mark, you can expect to be notified of:

1. What information is gathered/tracked.
2. How the information is used.
3. Who information is shared with.

CLICK TO VERIFY reviewed by TRUSTe site privacy statement

Questions regarding the above statement should be directed to America Online, Inc., or TRUSTe for clarification. To return to the Site, please use the "Back" button on your browser.

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Representative Beth Kerttula

Alaska State Legislature, District 3
State Capitol • Juneau, Alaska 99801-1182 • (907) 465-4766 • Fax (907) 465-4748
E-mail: Representative_Beth_Kerttula@legis.state.ak.us • http://www.kerttula.net

Memorandum

Date: February 9, 2000

To: Representative Norman Rokeberg, Chairman
House Labor & Commerce Committee

From: Representative Beth Kerttula Beth

Re: **HB 273 – Internet Privacy for Alaskan Consumers**

I respectfully request that you schedule a hearing in the House State Affairs Committee for this bill. Attached you will find a copy of the bill, sponsor statement, and sectional analysis. I request that the hearing be teleconferenced to Anchorage, as I have requested participation by the Attorney General's Office staff.

I would like to talk to you about this bill, and will have my staff arrange a meeting. I am still investigating one aspect of this bill, and will likely have an amendment for your consideration shortly.

Attachment

thanks
-Norm

RECEIVED
FEB 09 2000

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Representative Beth Kerttula

Sponsor Statement

House Bill 273
Internet Privacy for Alaskan Consumers

In the past few years, Alaskans have eagerly embraced Internet service into their homes and businesses. Access to the World Wide Web enables Alaskans to overcome geographic remoteness and time differences and to interact globally for ideas, information, and business. However, technological advances and business practices in the rapidly evolving electronic world have the potential for unprecedented access to Internet consumers' personal information and their on-line usage and preferences. Building upon the Alaska Constitution's strong foundation of Alaskans' right to privacy, HB 273 updates our consumer protection laws to address Internet activity.

HB 273 takes an important first step to protect Alaskan consumers' privacy at their entry point to the World Wide Web – their Internet service provider. HB 273 prevents an Internet service provider and its employees from disclosing a subscriber's personal identification information and any data that records a subscriber's Internet use or preferences ***unless the subscriber agrees in writing to the use of their information.*** Family, friends, or employees using the subscriber's Internet account are also protected. HB 273 makes an exception for disclosure of information in the case of a law enforcement investigation. As with other violations of Alaska consumer protection laws, HB 273 provides for civil penalties.

HB 273 protects a subscriber whose address is located in this state. It focuses solely on the subscriber's contractual relationship with an Internet service provider and does not address consumer privacy at the "other end" as Alaskans visit the virtually limitless web sites. The U.S. Federal Communications Commission and Federal Trade Commission, U.S. Congress, international organizations, and Internet business alliances are wrestling with these interstate and global privacy issues. HB 273 also does not legislate Internet content, minors' access to adult sites, or the collection of taxes on Internet sales.

HB 273 protects Alaskans' privacy by helping individuals maintain control over use of their personal information as they access the Internet.

House Bill 273
Internet Privacy for Alaskan Consumers

Sectional Analysis

Section 1. New paragraph AS 45.50.471(b)(43) adds disclosure of information by an Internet service provider (ISP) to the list of unlawful acts and practices.

Section 2 New section AS 45.50.479 places limitations on an Internet service provider's use of a subscriber's personal information.

subsection (a) – prohibits an ISP or their employee from disclosing a subscriber's information unless the subscriber gives consent. The subscriber is protected without taking action; the burden is on the ISP to obtain consent. Other users of the subscriber's Internet account (such as a family members) are also protected.

The section may raise a legal issue since regulating Internet service providers who operate outside Alaska places some burden on interstate commerce. However, the burden to examine Alaska law and remove subscriber information from that disclosed to third parties does not appear to be onerous in relation to the value of privacy benefits that accrue to Alaskans living in the state under AS 45.50.479. As noted by Theresa Bannister, Legislative Counsel, in her 11/15/99 memorandum accompanying a work draft of HB 273, "It is likely that individual privacy rights would be considered very valuable. The burdens on the interstate providers do not, at least on the surface, appear to be very onerous."

subsection (b) – permits an ISP to disclose subscriber information in a law enforcement investigation.

subsection (c) – establishes a civil penalty for disclosure of subscriber information. The penalty is set at $500, similar to the other unlawful acts governed by this statute. However, the Internet subscriber is not required to prove actual damages as in AS 45.50.531, since it would be subjective and difficult, at best, to place a monetary value on the loss of personal information and one's privacy. Other legal remedies, such as action by the state attorney general, are also allowed.

subsection (d) – makes an allowance for ISP disclosure of information in a case of actions violating protection of children from pedophiles.

subsection (e) – provides several definitions, including:

"affirmative consent" is written consent by the subscriber;

"subscriber" is a person (i.e., individual or business) with an in-state address;

"subscriber information is both personal identifying information *and* records of a subscriber's pattern of Internet use.

Section 3. Applies AS 45.40.479 to new and existing contracts between Internet service providers and subscribers. The application of this bill to contracts entered into prior to the effective date of this Act may raise an issue under state and federal prohibitions against state impairment of existing contracts. The issue depends on:

- whether the subscriber information is an essential part of a contract with valuable results to the ISP;
- whether the consumers have been aware that their information is being used; and
- if the proposed restriction cures a significant privacy problem.

The final analysis of this issue may depend on testimony; however, at this point there is no information that would lead to the conclusion that the bill would impair existing contracts. If ISPs consider subscriber information to be highly valuable and marketable, then the Alaskan consumers' personal data and Internet patterns are most likely being used and HB 273 would overcome a significant consumer privacy problem.

Representative Beth Kerttula

Alaska State Legislature, District 3
State Capitol • Juneau, Alaska 99801-1182 • (907) 465-4766 • Fax (907) 465-4748
E-mail: Representative_Beth_Kerttula@legis.state.ak.us • http://www.kerttula.net

Memorandum

Date: March 22, 2000

To: Janet Seitz, Committee Aide
House Labor & Commerce Committee

From: Gretchen Keiser *GKeiser*

Re: **HB 273: Internet Privacy for Alaskan Consumers**

On behalf of Rep. Kerttula, I am providing additional information for the HB 273 bill packet for Friday's committee hearing, as follows:

1. A blank CS for HB 273 that amends Sec. 45.50.479:
   - (a) and (b) to clarify what is needed from a law enforcement agency to gain access to subscriber information without the subscriber's consent when undertaking a *criminal* investigation versus a *civil* investigation. The new language is found at: page 1, lines 9, and page 1, line 13 through page 2, line 10.
   - (c) to allow the state (Attorney General Office), on behalf of a subscriber, to bring a civil action. New language is found at: page 2, line 13.

2. A 3/17/00 zero fiscal note from the Department of Law.

3. An updated Sectional Analysis, to reference CS improvements, and to incorporate a 3/2/00 Department of Law analysis.

4. The 3/2/00 Department of Law analysis, responding to our questions on two legal issues: commerce clause and contract impairment.

5. A 1-page glossary on Internet terminology.

6. A February 9, 2000 statement on behalf of the National Association of Attorneys General which presents an overview of the array of Internet-induced legal issues being addressed by the 50 states, including privacy of Internet consumers.

You have Rep. Kerttula's sponsor statement and HB 371.

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As you know, I have been working with Peter Torkelson regarding Rep. Dyson's HB 410 and a possible CS to combine portions of HB 410 into HB 273. I'm still working on this with Rep. Kerttula, and will let you know its status as soon as possible.

Let me know if I can answer any questions. 465-4767.

Attachments.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 273

Revision Date/Time (Note if correction) ______

Title "An Act relating to the disclosure of subscriber information by Internet service providers."

Sponsor Representative Kerttula

Requester House Labor and Commerce Committee

Dept. Affected Law

BRU Civil Division

Component Fair Business Practices

Component No. 2206

Expenditures/Revenues (Thousands of Dollars)

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: ______

POSITIONS

Full-time						
Part-time						
Temporary						

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

HB 273 adds to the Unfair Trade Practices and Consumer Protection Act disclosure of information about a subscriber, or other user of provided Internet access services, by the Internet service provider to a third party without the subscriber's permission. This prohibition would not apply to disclosure of such information to law enforcement in the course of an investigation. The subscriber could bring a civil action against the Internet service provider for violation of this section.

This bill is not anticipated to have a fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson

Division Attorney General's Office

Phone 465-5370

Date/Time 3/17/00, 3:08 PM

Approved by Commissioner Bruce M. Botelho, Attorney General

Agency Department of Law

Date 3/17/00

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House Bill 273
Internet Privacy for Alaskan Consumers

Sectional Analysis
(Updated 3/22/00)

Section 1. New paragraph AS 45.50.471(b)(43) adds disclosure of information by an Internet service provider (ISP) to the list of unlawful acts and practices.

Section 2 New section AS 45.50.479 places limitations on an Internet service provider's use of a subscriber's personal information.

subsection (a) – prohibits an ISP or their employee from disclosing a subscriber's information unless the subscriber gives consent. The subscriber is protected without taking action; the burden is on the ISP to obtain consent. Other users of the subscriber's Internet account (such as a family members) are also protected.

The section may raise a legal issue since regulating Internet service providers who operate outside Alaska places some burden on interstate commerce. However, the burden to examine Alaska law and remove subscriber information from that disclosed to third parties does not appear to be onerous in relation to the value of privacy benefits that accrue to Alaskans living in the state under AS 45.50.479. As noted by Theresa Bannister, Legislative Counsel, in her 11/15/99 memorandum accompanying a work draft of HB 273, "It is likely that individual privacy rights would be considered very valuable. The burdens on the interstate providers do not, at least on the surface, appear to be very onerous." See also the attached 3/2/00 Department of Law analysis of this issue.

subsection (b) – permits an ISP to disclose subscriber information in a law enforcement investigation. A CS offered in (H) Labor & Commerce 3/24/00 clarifies ISP disclosure for civil and criminal investigations.

subsection (c) – establishes a civil penalty for disclosure of subscriber information. The penalty is set at $500, similar to the other unlawful acts governed by this statute. However, the Internet subscriber is not required to prove actual damages as in AS 45.50.531, since it would be subjective and difficult, at best, to place a monetary value on the loss of personal information and one's privacy. Other legal remedies, such as action by the state attorney general, are also allowed.

subsection (d) – makes an allowance for ISP disclosure of information in a case of actions violating protection of children from pedophiles.

subsection (e) – provides several definitions, including:

"affirmative consent" is written consent by the subscriber;

"subscriber" is a person (i.e., individual or business) with an in-state address;

"subscriber information is both personal identifying information *and* records of a subscriber's pattern of Internet use.

Section 3. Applies AS 45.40.479 to new and existing contracts between Internet service providers and subscribers. The application of this bill to contracts entered into prior to the effective date of this Act may raise an issue under state and federal prohibitions against state impairment of existing contracts. The issue depends on:

- whether the subscriber information is an essential part of a contract with valuable results to the ISP;
- whether the consumers have been aware that their information is being used; and
- if the proposed restriction cures a significant privacy problem.

See the attached Department of Law 3/2/00 analysis that addresses this issue. At this point, there is no information that would lead to the conclusion that the bill would impair existing contracts. If ISPs consider subscriber information to be highly valuable and marketable, then the Alaskan consumers' personal data and Internet patterns are most likely being used and HB 273 would overcome a significant consumer privacy problem.

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907)269-5100
FAX: (907)276-3697

March 2, 2000

The Honorable Beth Kerttula
House of Representatives
State Capitol
Juneau, AK 99801-1182

Re: HB 273
Internet Privacy for Alaskan Consumers

Dear Representative Kerttula:

Here is the analysis you recently requested regarding the Commerce Clause and Contract Impairment issues relating to HB 273, the Internet Privacy for Alaskan Consumers bill.

I. Commerce Clause Analysis

A. Question presented.

You have posed the following question to the Department of Law:

> "*The U.S. Constitution_Commerce Clause and regulation of Internet service providers.* Does HB create an issue by imposing an excessive burden on interstate commerce, compared with the likely valuable individual privacy benefits?"

B. Short Answer.

Any burden proposed AS 45.50.479 may impose on interstate commerce is likely to be seen as incidental when balanced against the legitimate government interest in protecting consumers from unwarranted intrusions upon their privacy and insuring that consumers are protected against abusive and unwarranted disclosure practices.

C. **Analysis.**

Proposed AS 45.50.479 raises the question of whether prohibiting out-of-state Internet service providers from disclosing subscriber information to a third party discriminates on the basis of interstate commerce, thereby violating the Commerce Clause of the United States Constitution. States retain authority to exercise police powers to control matters of local concern even though interstate commerce may be affected. Maine v. Taylor, 477 U.S. 131, 133, 106 S.Ct. 2440, 91 L.Ed.2d 110 (1986). Courts apply a two-tiered analytical approach to Commerce Clause challenges. Brown-Forman Distillers Corp. v. New York Liquor Authority, 476 U.S. 573, 579, 106 S.Ct. 2080, 90 L.Ed.2d 552 (1986); Dayhoff v. Temsco Helicopters, Inc., 848 P.2d 1367, 1370-71 (Alaska 1993). If the practical effect of the statute is to discriminate or directly regulate interstate commerce, courts typically strike down the statute as invalid without further inquiry. Id. at 1370, n. 1.

Conversely, if the statute only indirectly impacts on interstate commerce and does not discriminate, courts apply the balancing test articulated in Pike v. Bruce Church, Inc., 397 U.S. 137, 142, 90 S.Ct. 844, 25 L.Ed.2d 174 (1970), wherein the court must determine (a) whether the statute effectuates a legitimate local interest, and (b) "whether the burden on interstate commerce clearly exceeds the local benefits." Brown-Forman, 476 U.S. at 579; Pike, 397 U.S. at 142.

A court would likely apply the Pike balancing test in evaluating proposed AS 45.50.479's effect on interstate commerce, because proposed AS 45.50.479's terms apply equally to both in-state and out-of-state Internet service providers. In applying the Pike test, any burden proposed AS 45.50.479 may impose on interstate commerce is likely to be seen as incidental when balanced against the legitimate government interest in protecting consumers from unwarranted intrusions upon their privacy and insuring that consumers are protected against abusive and unwarranted disclosure practices. Therefore, proposed AS 45.50.479 does not "clearly exceed" the local interests promoted by the bill. Brown-Forman, 476 U.S. at 579; Pike, 397 U.S. at 142.

II. **Contract Impairment analysis**

A. **Question presented.**

You have also posed the following question to the Department of Law:

> "*Contract Impairment issue.* HB 273 would apply the requirements to existing subscriber contracts. Does this provision raise an issue under the state and federal prohibitions against state impairment of contracts?"

B. **Short Answer.**

A court would likely determine that proposed AS 45.50.479 does not substantially impair an Internet service provider's rights under existing contracts, and would therefore uphold the validity of the legislation in the face of an Impairment of Contract challenge.

C. **Analysis.**

Proposed AS 45.50.479 raises the question of whether an Internet service provider's rights under existing contracts (as opposed to contracts not yet entered into) with subscribers would substantially impaired in violation of the Contract Clause of the U.S. Constitution.

The Contract Clause prohibits states from enacting any law that retroactively impairs contract rights. (It does not affect contracts not yet entered into.) The Contract Clause prevents only substantial impairments of contract (i.e., destruction of most or all of a party's rights under a contract.) Moreover, not all substantial impairments are invalid.

In determining whether HB 273 is valid under the Contract Clause, a court would employ the following two-part test:

(1) Does the legislation substantially impair an Internet service provider's (or subscriber's) rights under existing contracts? If it does not, the legislation is valid under the Contract Clause. I would argue that the legislation only incidentally affects an Internet Service Provider's rights under existing contracts with subscribers, since the main purpose of such contracts is to provide the subscriber with Internet access in return for a fee. The Internet service provider's right under existing contracts to disclose subscriber information to a third party is only ancillary to the main purpose of the contract with a subscriber, and therefore prohibiting such disclosure through state legislation does not constitute a substantial impairment under a Contract Clause analysis.

(2) If the legislation were to be considered a substantial impairment of contract rights, the legislation would only be valid if it:

(a) serves an important and legitimate public interest; (I would argue that HB 273 certainly accomplishes an important and legitimate public interest in protecting subscribers from unwarranted intrusions upon their privacy and insuring that subscribers are protected against abusive and unwarranted disclosure practices.); and

(b) is a reasonable and narrowly tailored means of promoting that interest; (again, I would argue that HB 273 satisfies this test as well).

HB 273 should, in all likelihood, survive a Contract Clause challenge. Its restrictions on existing contract rights are minor compared to other instances in which Impairment of Contract challenges to state statutes failed. Here are three examples of cases in which state statutes survived Contract Clause challenges:

(1) Home Building & Loan Association v. Blaisdell, 290 U.S. 398 (1934): A Minnesota statute that imposed a moratorium on mortgage foreclosures during a severe depression did not violate the Contract Clause;

(2) Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 815 (1983): A state statute placing a ceiling on price increases that a natural gas supplier could charge a public utility under the "escalator clause" of a preexisting contract did not violate the Contract Clause; and

(3) Keystone Bituminous Coal Association v. DeBenedictis, 480 U.S. 470 (1987): A state statute that restricted underground coal mining to protect a variety of public and private uses of surface land (and buildings) and that left the owners of subsurface mining rights with some reasonable value in, and return from, their investment did not violate the Contract Clause.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: Daveed A. Schwartz
Daveed A. Schwartz
Assistant Attorney General

DAS:jem

cc: Chrystal Smith
Legislative Liaison
Alaska Department of Law

Glossary

Terms Used in E-Commerce

Access Provider — A company that provides its customers with a service whereby they can access the Internet.

Banner Advertising — A marketing mechanism, popular on the World Wide Web, that contains strips of advertisements sporadically positioned on a Web page.

Bandwidth — The speed of transmitting data, measured in bits per second (bps).

Browser — The generic term for software programs that retrieve, display, and print information on the World Wide Web.

Cookies — Small files that are automatically downloaded from a Web server and installed on the computer of someone browsing a website. Cookies allow websites to "personalize" their appearance by identifying visitors, storing passwords, tracking preferences, and other means.

Direct Marketing — A technique that encourages the customer to order from home.

Domain Name — The exclusive name that identifies an Internet site. Domain names have two or more parts, separated by dots. The part on the left is the most specific, and the part on the right is the most general. Major domains include: com (commercial), edu (educational), net (network operations), gov (U.S. Government), and org (other organizations).

Electronic Commerce (E-Commerce) — The processing of economic transactions, such as buying and selling, through electronic communication. E-commerce often refers to transactions occurring on the Internet, such as credit card purchases at websites.

Encryption — The scrambling of information sent over the Internet. Data encryption ensures that only the intended recipient has the ability to read and understand the information.

Extranet — Selected external users (such as suppliers, customers, and vendors) that are allowed to connect to a company's intranet.

File Transfer Protocol (FTP) — A set of standard codes for transferring files over the Internet. FTP is usually used for retrieving large files or files that cannot be displayed through a browser.

Gopher — A simple, menu-based system for searching and retrieving information from resources across the Internet.

Hypertext Markup Language (HTML) — Language used to create documents for the World Wide Web.

Hypertext Transfer Protocol (HTTP) — The protocol used to transfer World Wide Web pages throughout the Internet.

Internet — A global information system formed by combining thousands of smaller networks to create a single larger network.

Internet Service Provider (ISP) — A company that charges startup and monthly fees to users and provides them with the initial host connection to the rest of the Internet, usually via a dial-up connection.

Intranet — An internal information network created with low-cost Internet technologies.

Network — A group of computers that is connected by a communications channel capable of communicating data.

Server — A computer or series of computers that shares its resources with other computers.

Uniform Resource Locator (URL) — The standard method of expressing the address of any Internet resource that is part of the World Wide Web.

World Wide Web — The entire collection of files written in HTML and similar mark-up languages available on the Internet. The Web is only a portion of the Internet; other parts include email communication, FTP, and gopher. ■

National Association of Attorneys General

Promoting cooperation, coordination, and communication among the state chief legal officers

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Test Your Consumer IQ!

Tuff Customer Quiz for National Consumer Week

Prepared Statement of The Honorable William Sorrell Attorney General of the State of Vermont on February 9, 2000

Chairman Ashcroft, Senator Bryan, and members of the Subcommittee, thank you for your invitation to testify today on issues of importance to the state Attorneys General: supporting and strengthening the long-standing partnership between the states and the Federal Trade Commission in protecting this nation's consumers; protecting consumers as they navigate the Information Superhighway; and preserving the privacy of those consumers.

The Attorneys General strongly support the work of the Federal Trade Commission, with which we have had an ongoing, longstanding, and valued partnership. As the Commission stated after the passage of the FTC's Telemarketing Sales Rule, which gave the states the ability to go into federal court and obtain nationwide relief against fraudulent telemarketers, there are now "fifty-one cops on the beat" against telemarketing fraud. This collective enforcement approach has been very successful. Since 1996, the states have obtained more than 300 injunctions against and over 150 convictions of fraudulent telemarketers. Many of those injunctions have been obtained in concert with the FTC, and the FTC has served as an invaluable resource to the states as they pursue fraudulent telemarketers.

In addition, with the help of funding from the Department of Justice, the National Association of Attorneys General has coordinated the training of over 500 state and local law enforcers from all 50 states, the District of Columbia, and three territories in the investigation and prosecution of fraudulent telemarketers. This collaborative effort with district attorneys and state and local investigators has allowed state and local governments to leverage scant resources and shared expertise in the telemarketing fraud arena. The states and the FTC have continued their partnership as fraud has shifted from the phone lines to cyberspace. Joint state-federal enforcement sweeps and surfs B targeting false health claims, fraudulent business opportunities, and pyramid schemes B have put cyber-scammers on notice that we will continue our "zero tolerance" policy, no matter the medium chosen to exploit consumers. State Attorneys General have recently recognized the need for a coordinated, "real time" state and local effort to root out Internet fraud. Federal, state and local law enforcers are already at work to develop a "24/7" network of investigators and prosecutors dedicated to the detection, investigation, and prosecution of Internet criminals.

Certainly, increased funding to ensure that the state and local network is strong, smart, and well-equipped will, as in the telemarketing arena, enable state and local enforcers to provide a valuable complement to federal civil and criminal cyber-enforcement efforts. We look forward to a continued cooperative relationship with the FTC. Apart from our coordinated efforts with the FTC, the nation's Attorneys General have long been the local cops on the beat protecting consumers from fraudulent business practices.

In the early 1990's, the office of Iowa Attorney General Tom Miller revolutionized telemarketing fraud enforcement when it instituted an undercover taping protocol through which fraudulent telemarketers' deceptive pitches were captured on tape. Iowa's work provided the evidence for myriad state and local criminal and civil prosecutions of fraudulent telemarketers, both in this country and abroad. Iowa s

work grew into the National Tape Library, a joint state-federal repository housing tens of thousands of fraudulent tape recordings. The National Association of Attorneys General currently serves as chair of the joint state-federal steering committee that oversees the operation of the Library. In fulfilling our mission to protect the consumers in our states, we have followed fraudulent scammers as they moved from Main Street to the Information Superhighway.

The Attorneys General have pursued such traditional law violations as deceptive sales, investment and business opportunity scams, pyramid schemes, and false health claims onto the Internet. In addition, the states have taken the lead on some law enforcement problems that are peculiar to the Internet. Led by Kansas Attorney General Carla Stovall, the Attorneys General have brought law enforcement actions against dozens of defendants for the illegal online sale of prescription drugs.

The Attorneys General also have attacked the illegal sale of Indian bidis cigarettes to this nation's youth; online auction fraud; Internet gambling; and Internet spamming, cramming, and slamming. What has emerged as a result of our activity is a united and concerted assault at the state level on myriad forms of Internet fraud. Protecting consumers who travel on the Internet is a priority for the state Attorneys General. When she became NAAG's President last summer, Washington Attorney General Christine Gregoire deemed the Internet as one of the major initiatives of her Presidential year.

Toward that end, last month NAAG convened a conference at Stanford University Law School to address the impact of the Internet and high technology on the mission of the Attorneys General. The conference, which was hosted by California Attorney General Bill Lockyer, highlighted the ongoing Internet-related law enforcement initiatives undertaken by the Attorneys General and provided a forum at which Attorneys General could grapple with upcoming Net issues and challenges. We also addressed the best means by which state Attorneys General and their federal and local partners can attack cybercrime. The state Attorneys General have a particular interest in addressing consumers' concerns about protecting their privacy as Internet commerce becomes the norm. NAAG has created a Privacy Working Group, which I serve as co-chair.

Many Attorneys General have introduced legislation that will enhance the privacy of consumers who transact business over the Internet. Idaho Attorney General Al Lance, Illinois Attorney General Jim Ryan, Minnesota Attorney General Mike Hatch, Missouri Attorney General Jay Nixon, New York Attorney General Eliot Spitzer, Washington Attorney General Christine Gregoire, and I have recently introduced Internet privacy legislation targeting spam; prohibiting Internet companies from selling personal information obtained from Internet users; and requiring web sites that collect information from users to disclose how that information will be used. The concerns of the Attorneys General and our constituents are also reflected in the Report of Washington Attorney General Christine Gregoire's Privacy Task Force. The Task Force included business, consumer, and legislative leaders. During a four-month span, more than 125 consumers testified, wrote to, or e-mailed the Task Force. Consumers' concerns included: the frequency with which personal information is collected; the entities with whom that information is shared; the disclosure of that personal information without the consent or knowledge of the consumer; consumers' lack of access to the information that is collected from and disseminated about them; the accuracy of the information that is disseminated; and the need for meaningful regulatory and/or enforcement approaches to these issues. In closing, I want to stress a couple of points.

First, any federal law enforcement approach to protecting consumers who travel the World Wide Web must include the states. We ask you to take such steps to ensure that the states can play a full and constructive role in the effort to police the Internet. Second, we urge you to not preempt the states. As fifty-one Attorneys General recently said to each of you with respect to pending Electronic Signatures bills, "[w]e have strong concerns about any federal legislation that preempts state laws in areas traditionally reserved to the states, particularly when there should be no conflict between the federal goals and state jurisdiction . . . ." Consumer protection on the Internet is one such area.

Thank you.

Here are a few examples of state enforcement actions and initiatives:

• Online Pharmacies: Kansas, Illinois, Missouri, and Michigan have filed suits against online pharmacies and physicians for illegally selling prescription-only drugs. The defendant pharmacies and physicians were not properly licensed in these states. Furthermore, the defendants dispensed drugs without proper examinations, placing consumers at a health risk.

• Bidis cigarettes: All fifty State Attorneys General and the U.S. Virgin Islands drafted letters to Health and Human Services Secretary Donna E. Shalala, the Federal Trade Commission, U.S. Customs Service Commissioner Raymond W. Kelly, and the Chairs and ranking minority members of several Congressional committees detailing the dangers posed to American youth by bidis and the possibility that the manufacture of bidis involves indentured children's labor. As a result, bidis retailers have removed the sale of bidis cigarettes from their Internet web sites.

• Online Auctions: Arizona, Illinois, Missouri, Pennsylvania, South Dakota, and many others have filed suits against individuals and business that advertise goods and services over Internet auction sites, but failed to deliver the sold merchandise. As a result of these enforcement actions, states received restitution on behalf of defrauded consumers, civil penalties, and investigatory costs. In some instances, the defendant was criminally charged and faced from five years to twenty-five years imprisonment.

• Privacy Policy Violations: New York reached a settlement with Infobeat, resolving allegations that the internet company violated its own privacy policy. Infobeat provides e-mail services to more than two million people. According to Attorney General Spitzer, Infobeat inadvertently disclosed confidential information about its customers to advertisers, in violation of the company's policy of not sharing personal identifying information. Due to a software problem, the company disclosed to third party advertisers the e-mail addresses of those subscribers who clicked on certain banner advertisements that were embedded in the html version of its online newsletter. Under the terms of the settlement, Infobeat will take further steps to guard against unauthorized disclosure of confidential information about its customers, hire an independent auditor to review the accuracy of its privacy pledges, and pay $75,000 in investigatory costs.

• Deceptive Internet Sales: State Attorneys General have brought numerous enforcement actions against Travel Sellers, Website Design Firms, "Furby" dealers, and others for failing to deliver the purchased goods or services. As a result of the enforcement actions, defrauded consumers received restitution and defendants were order to pay civil penalties and investigatory costs.

• Investments: The World Wide Web has become the new medium for age-old promises, bogus claims, and illegal representations about investment opportunities. Unsuspecting investors receive e-mail messages containing false investment opportunities in foreign currencies, films and restaurants, Internet-related and "offshore" dealings, and viatical settlements. Or, web surfers come across fraudulent web sites touting phony investments. Many of these fraudulent investments promise "unlimited profits" and "minimized risk factors." State Attorneys General have brought numerous enforcement actions against these online fraudulent investment opportunities.

• Business Opportunities: The Internet has made it easier for purveyors of fraudulent business opportunities to perpetrate their schemes. These common schemes include: inflated earnings claims or work-at-home plans that falsely promise easy work and easy money. Twenty-four States participated in the FTC-sponsored Business Opportunity "Surf" Day. Over 215 sites touting possible fraudulent business opportunities were identified and e-mail messages sent to these sites, warning them that state and federal laws require them to have solid evidence to substantiate all earnings claims made on their web site. In addition, several State Attorneys General have brought enforcement actions as a result of the "Surf" day.

• Pyramid Schemes: Hawaii, Maryland, Nevada, North Carolina, Pennsylvania, Tennessee, Virginia, and the FTC filed suit against Equinox, International Corporation, alleging that the company operated a massive pyramid scheme over the Internet. In addition, twenty-six State Attorneys General brought more than 70 enforcement actions.

- Health Care Claims: More and more individuals are turning to the Internet to find treatment for serious, life threatening illnesses. Many web sites contain false or deceptive advertising claims about the treatment, cure, or prevention of arthritis, cancer, diabetes, heart disease, AIDS, and multiple sclerosis. Seventeen Attorneys General participated in the FTC-sponsored International Health Claim "Surf" Day during which more than 1,200 web sites were identified as possible fraudulent sites. E-mail messages warning these sites that advertisers must have reliable scientific evidence to support these claims, were sent.

- Internet Cramming and Slamming: These common frauds in the area of telecommunications have crossed-over onto the Internet. Companies offer businesses a web site on a trial-free basis; however, the companies charge set-up fees or continue to bill for the service unless the business affirmatively cancel the trial. Some telecommunication companies have "switched" consumers' Internet Service Providers without their knowledge or authorization, resulting in Internet "Slamming." Illinois, Minnesota, Pennsylvania, and others have filed suits against these fraudulent businesses.

- Internet Gambling: Gambling has also worked its way onto the Internet. Missouri filed suit against Coeur D'Alene and two businesses for offering and promoting online lottery gambling in the state. Minnesota obtained a ruling that the office of Attorney General has jurisdiction to enforce Minnesota's false advertising and consumer fraud laws against a Las Vegas company offering gambling services over the Internet.

- Spam: Several States, including Washington and New York, have enacted legislation that makes it illegal to use false or misleading information when sending unsolicited, commercial e-mail. • Internet Crimes Legislation: Missouri, New York, Vermont, and others have introduced legislation aimed at 1) discouraging crimes and misuse of the Internet; 2) improving the privacy of Internet users; and 3) expanding the criminal statutes by making false advertising, false alarms, and gambling illegal activities.

HB

278

Received 1/26/00 after noon deadline

REPRESENTATIVE ERIC CROFT

Memorandum

Norm

To: Rep. Norm Rokeberg, Chair, House Labor & Commerce Committee
From: Rep. Eric Croft
Re: HB 278
Date: 1/26/00

I request a hearing for HB 278 in your Labor & Commerce Committee. This legislation seeks to strengthen the privacy rights of individuals regarding ownership of genetic information, electronic monitoring of employees, and release of certain consumer information.

Enclosed for your information are:

- Sponsor Statement
- Sectional Analysis
- Anchorage Daily News, "Employer snooping's legal in most states", Nov. 15, 1999
- Anchorage Daily News, "Grocery discount cards raise privacy issue", Oct. 31, 1999

Should you require any more information please feel free to contact Peggy Wilcox in my office.

Thank you for your attention.

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
Sponsor Statement

House Bill 278
"Privacy Omnibus"

"The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section." Alaska State Constitution, Article I, Section 22

Significant advances in technology have occurred since the right to privacy was added to the Alaska Constitution in 1972. Developments such as DNA testing, inexpensive video equipment, and the grocery store scanner are able to infringe on people's privacy in ways not possible twenty-six years ago. HB 278 protects and updates our constitutionally guaranteed right of individual privacy, a right that will slowly erode if we do not shore up its protections with periodic review. The bill implements and updates our privacy rights in three distinct areas -- genetic privacy, restrictions on the electronic monitoring of employees, and restrictions on releasing specific forms of consumer information.

Genetic Privacy In the last ten years genetic science has rocketed forward - a human chromosome is mapped, sheep are cloned and genetic sampling is used as a means of identification. This bill establishes and defends an individual's ownership of their own genetic material.

Electronic Monitoring of Employees HB 278 protects workers from being electronically monitored at home, in an employee bathroom, locker room, shower or bath facility, and establishes that workers must be notified of electronic monitoring in the workplace, and protects a worker from being fired for asserting their right to these simple privacy considerations.

Release of Certain Consumer Information Retail outlets often issue cards which serve the same purpose as coupons. These cards provide a mechanism for retailers to collect and store information on an individual's purchases. HB 278 would prohibit retailers from selling information gathered on an individual's purchasing habits without first notifying the consumer and receiving permission to release the information.

HB 278 updates Alaska statute to keep in touch with technology as we enter the 21st century.

January-May: State Capitol • Juneau, AK 99801-1182 • (907) 465-4998 • Fax (907) 465-4419
June-December: 716 W. 4h Avenue • Anchorage, AK 99501• (907) 269-0216 • Fax (907) 269-0218
Representative_Eric_Croft@legis.state.ak.us

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM January 20, 2000

SUBJECT: Sectional Summary of HB 278. (Work Order No. 21-LS1229\D)

TO: Representative Eric Croft
Attn: Peggy Wilcox

FROM: Kathryn L. Kurtz KK
Legislative Counsel

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

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Findings.

Section 2. Purpose.

Section 3. Adds a new chapter, AS 18.14, regarding genetic privacy. Prohibits collection and analysis of a DNA sample without obtaining written authorization from the sample source. Requires that a person collecting a DNA sample orally inform the sample source of certain matters regarding DNA samples, and before taking the sample, provide a written notice of rights and assurances. Establishes that an identifiable DNA sample remains the property of the sample source, and that the sample source may inspect and obtain copies of records containing their private genetic information. Prohibits disclosure of private genetic information without written authorization from the sample source. Establishes a procedure for a sample source to request correction or amendment of records containing their private genetic information. Sets forth rules governing the release of private genetic information in legislative, administrative, and court proceedings, changing Alaska Rule of Civil Procedure 26.

Section 4. Adds a new article, AS 23.10, restricting electronic monitoring of employees. Sets forth the conditions under which an employer may electronically monitor employees. Requires that the employer notify the employee of monitoring in some cases, but not in the case of a quality control program or when the employer has grounds to believe that the employee is engaged in conduct that violates the policies of the employer and imposes a

burden on the employer or other employees. Requires notice to persons other than employees who will be monitored. Provides penalties for violations.

Section 5. Restricts the release of certain consumer information. Prohibits a retailer from releasing information about a consumer to whom they have issued a discount card or other discount device unless the retailer has obtained authorization from the consumer after giving the consumer the option of preventing release of the information. Makes violation of this section an unfair trade practice under AS 45.50.471.

KLK:glc:jr
00-012.glc

Grocery discount cards raise privacy issue

By MARY DEIBEL
Scripps Howard News Service

ARLINGTON, Va. — Safeway Club Card member Lois Diehl McDonley doesn't mind others knowing her shopping habits, but she has a tip for those who do: Pay separately in cash for purchases you want kept private and use the discount card for the rest.

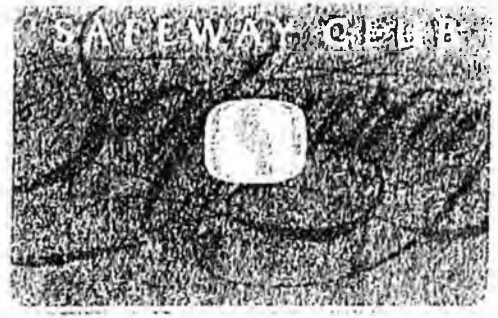
"It's your business if you don't want people knowing if you buy cigarettes, alcohol, certain reading materials or some other item, but those things don't usually get discounts anyway," says McDonley, a 57-year-old medical secretary and mother of two. "Segregating your goods the way you do if you run an errand for a neighbor or need a receipt to be reimbursed at work not only protects your privacy, it messes up Big Brother's data base," she says.

But Safeway says it doesn't sell or lease information about individual club card customers.

"Privacy has never been an issue," says spokeswoman Karen Darnells from company headquarters in Pleasanton, Calif. "Club card members and their identities are kept strictly confidential."

It's the same at other grocery chains that see the bar-coded reward cards as a weapon in the battle for customer business in the $400-billion-a-year grocery wars: The cards typically carry discounts of 15 percent or more on specified goods, in return for customers letting the stores build detailed personal profiles from their purchases.

"We have an absolutely strict policy that we do not share that information with any third party," said Kroger spokesman Gary



Rhodes. Kroger is the top-selling supermarket in the nation.

However, Rhodes and spokesmen for other big markets, including No. 2 Albertson's, No. 3 Wal-Mart, No. 4 Safeway and No. 5 Ahold USA, agree that information can and will be surrendered to law enforcement authorities armed with a court order.

Nob Hill Foods in the San Francisco Bay Area and Wild Oats natural food stores out of Boulder, Colo., did away with loyalty cards in response to customer surveys.

Privacy experts say there's nothing to keep loyalty card data secret from a subpoena if someone is being sought in a criminal case or caught in a child custody fight.

"You may innocently buy junk food, a pregnancy kit or over-the-counter sleeping aids, but how would it look if you decided to run for the school board or mayor 10 years from now?" says Judith DeCew, a Clark University professor and author of "In Pursuit of Privacy: Law, Ethics & the Rise of Technology" (Cornell University Press, 1997).

"Whatever promises retailers make, nobody can be sure who has access to their data warehouses, and that goes for all kinds of stores, not just supermarkets," she says.

"Internet e-tailers are especially aggressive when collecting data on customers: Look at how Amazon.com targets your book-buying and music interests, and consider that it's setting itself up as a worldwide virtual mall, and remember what was made of Monica Lewinsky's book purchases in the real world."

California recently became the first state in the nation to limit the information that grocery stores can require as a condition for signing up for reward cards: A new state law stops stores from requiring would-be club card members to list driver's license or Social Security numbers. The statute also makes it illegal to rent or sell customer names, even though stores say they don't as a matter of policy.

"Grocery shoppers will no longer have to risk their privacy to save a few dollars on grocery purchases," California state Sen. Jackie Speier, D-Daly City, says.

So far, federal authorities have been slow to safeguard shoppers' privacy. What few steps they've taken include prohibitions on:

- Release of video rental lists after Robert Bork's viewing preferences made it into press accounts in the midst of his failed 1987 Supreme Court bid.
- Third-party interceptions of cell phone calls, which prompted a fine for a Florida couple who passed on a taped conversation in which Rep. John Boehner, R-Ohio, was overheard plotting strategy with fellow House Republican leaders during an attempted overthrow of then-House Speaker Newt Gingrich of Georgia.
- Internet firms collecting personal data from youngsters. Anyone older than 14, however, presumably is old enough to check a web site's privacy policy or look for labels like those voluntarily adopted by the On-line Privacy Alliance, to which nearly 100 corporations and associations belong.

Another voluntary privacy program is BBBOnLine, which just awarded its 100th privacy seal with more than 400 applications still in the pipeline. BBBOnLine chief operating officer Robert Bodoff says firms that qualify are banking on privacy being good business for them and for their customers and "helping to build confidence in on-line commerce."

Marketing expert Martha Rogers of Bowling Green University agrees: "The future of one-to-one marketing in which a customer is willing to sell some privacy in return for letting the retailer buy information about that person's buying preferences depends on building trust," she says.

Rogers adds that the relationship may involve getting Americans to "shop in new ways: You can always slide what you don't want anyone to know you're buying into a second shopping cart and forgo the discount."

If that advice sounds familiar, it's Lois Diehl McDonley's advice too, gleaned from years as a supermarket shopper. Take discounts if you want to and skip them where you feel your privacy could be compromised, she says. Oh, and "chill out a little" in the bargain.

As she sees it, "some people might be embarrassed, but I can't fathom who'd be remotely interested in the stuff I buy."

Employer snooping's legal in most states

By LIZ STEVENS
Knight Ridder Newspapers

Big Brother is watching. And it's increasingly likely that the Omniscient One is your boss.

She might be recording the casual conversations between you and a co-worker, or tracking e-mails on your company computer, or watching the goings-on in the staff lounge.

Sound like an invasion of your privacy? Think again. Most employee monitoring in the workplace is perfectly legal, and it happens more than most people realize.

"There's a lot of misunderstanding about it," says William Hubbartt, a human resources management consultant in Illinois. "People think, 'I have my rights,' but I found out after doing my research that, unfortunately, Mr. and Mrs. Employee, you don't."

Two-thirds of U.S. businesses eavesdrop on their employees in some fashion — on the phone, via videotape and through e-mail and Internet files — according to a 1999 survey by the American Management Association International.

And that number continues to creep upward, for several reasons.

First, monitoring equipment is increasingly cheaper and more sophisticated. Employers can trace everything from deleted e-mails and voice mails to the exact computer keys a worker strikes. Special software can follow employees' paths across the Internet, and high-tech employee badges even let bosses track their workers' movement within an office building. Wireless video cameras are small enough these days to fit in pagers.

Second, more workers use technology that lends itself to monitoring: e-mail, the Internet and voice mail.

"A good deal of this is done because it can be done, because the technology allows it," says Eric Rolfe Greenberg, director of management studies at the American Management Association International. "If, 10 years ago, a CEO had put out a dictate that everything typed (on a typewriter) had to have a carbon and the carbon had to be filed, it would have been unenforceable."

Today, it's a cinch to trace computer files and digital recordings.

"Employers, for the most part, unless they are voyeurs, don't set out to spy on their employees," says Hubbartt, author of "The New Battle Over Workplace Privacy." Most snooping ensues, he suggests, only after an employer gets wind of an employee transgression.

Businesses have lots of good reasons to monitor workers: to deter workplace crime, to protect business secrets and to make sure, for instance, that employees aren't calling Timbuktu on the company dime.

Businesses concerned about workplace violence often use video surveillance for security purposes, and those worried about the Internet sites that employees are surfing at work can buy software that watches employees' screens.

Not monitoring can sometimes cost companies a bunch. After Chevron Corp. employees sent a sexually harassing e-mail through the company system, Chevron was forced to pay four plaintiffs $2.2 million. Had the company been monitoring employees' e-mail, it might have caught the problem before it went to court.

The biggest problem with monitoring is, "It can go overboard," says Beth Givens, director of the Privacy Rights Clearinghouse in San Diego. "There are virtually no laws to protect employees from the excesses of monitoring."

Givens and other critics of workplace monitoring say that abuses of power run rampant, from employers videotaping workers in lavatories and locker rooms to businesses that hire investigators to follow workers home.

Only one federal law addresses workplace privacy. The Electronic Communications Privacy Act forbids employers to eavesdrop on phone conversations and e-mail after it becomes clear that the content is personal, says Robert Ellis Smith, publisher of "Privacy Journal." Only one state, Michigan, prohibits secret videotaping of employees.

On Aug. 31, the California Legislature became the first in the nation to pass a workplace monitoring bill, prohibiting employers from secretly monitoring employee e-mail and computer records. The measure awaits the governor's signature.

"What happens is, technology increases and the law does not keep up," says Harriette Topitzes, the chief union steward for airline reservationists at Trans World Airlines. That group unionized in 1992, primarily as a way to protect members against unreasonable monitoring. Now the company must give a telephone reservationist five-day notice before monitoring her calls.

Spying on employees goes back to Henry Ford at the turn of the century. The automobile magnate employed "a bunch of goons," says Smith, who tracked the off-hours behavior of Ford's assembly-line workers. Drunkenness and adultery were grounds for firing.

Modern workplace privacy concerns arose with the advent of electronic devices.

"What happened in the mid- to late-'80s is that technology became available, really to any size employer," says Cindia Cameron, organizing director for 9 to 5, National Association of Working Women. "It crossed the line to monitoring people instead of productivity."

Today's technologies allow "near ubiquitous monitoring" if an employer so chooses, Givens says. But there's a downside to that.

A 1990 University of Wisconsin study showed that monitored workers have significantly higher rates of severe fatigue and depression than nonmonitored workers.

And probably a more adversarial relationship with management, Givens says.

"I can't think of a better way to create low morale than a ubiquitous monitoring situation," she says. "If you're being monitored every hour of the day, there's really not a shred of dignity you can take from your work situation."

Most employers expect that workers will make the occasional personal phone call or send a nonbusiness e-mail. But employees ought to be fully aware of the ground rules, Hubbartt says.

"The key for the employer is, No. 1, to have a legitimate reason for (monitoring), and define a policy in terms of what they intend to do," he says. "Then communicate that policy to everyone, which minimizes the privacy expectation.

"If you don't expect it," Hubbartt adds, "then you're not as upset not to have it."

Workers can protect privacy

Knight Ridder Newspapers

A 1999 survey of more than 1,000 businesses by the American Management Association International found that:

- Sixty-seven percent of companies use some form of electronic monitoring or surveillance.
- Forty-five percent review employee communications such as e-mail, phone calls and computer files.
- Thirty-nine percent review telephone numbers called and time spent on each call.
- Twenty-seven percent store and review e-mail messages that employees send.

Sixteen percent videotape employees' job performance.

- Eighty-four percent of the companies that monitor say they inform their employees of their policies.

WANNA DO SOMETHING ABOUT IT?

You can take steps to protect your privacy at work, say members of 9 to 5, National Association of Working Women. The group, the largest membership organization of working women in the country, aims to "mobilize women for improved public and workplace policies":

- Know your employer's monitoring policies. Ask who reviews the data and how it is used. Ask your supervisor about all the electronic systems you use. (Employer policies on monitoring, communicated via handbooks, memos and union contracts, are legally binding, notes the Privacy Rights Clearinghouse.)
- Take precautions. Use a pay phone for personal calls or ask for phones available to employees at break time that are not monitored. Ask for a mute button on your headset to use between calls. Assume that e-mail and voice mail are not private.
- Work with co-workers to improve monitoring practices. 9 to 5 offers several monitoring policies that businesses can use.
- Write elected officials urging reintroduction of the Privacy for Consumers and Workers Act. The legislation was debated in Congress for several years up until 1994.
- Ask your union to negotiate contract language to limit monitoring. Several unions have won provisions that protect workers from intrusive forms of monitoring.

"I can't think of a better way to create low morale than a ubiquitous monitoring situation. If you're being monitored every hour of the day, there's really not a shred of dignity you can take from your work situation."

— Beth Givens, director of the Privacy Rights Clearinghouse in San Diego.

Subject: **Internet Use Notice**
Resent-Date: Tue, 4 Apr 2000 21:06:07 -0800
Resent-From: everyone@state.ak.us
Date: Tue, 4 Apr 2000 21:01:04 -0800
From: "Internet Usage" <internet_usage@state.ak.us>
To: all_state_employees@state.ak.us

State of Alaska
Internet Use Notice

This notice is sent on a regular basis as a reminder to all Alaska state employees concerning the proper use of the Internet. The state's Internet connection is a limited resource which all state employees are urged to use responsibly.

The following notice does not apply to members of the public using terminals designated for public use at libraries or similar facilities.

Because the network and the computer systems you are now using belong to the State of Alaska, the state reserves the right to monitor, search, or disclose data or information on the systems. Any information or data you submit, store, or obtain through these computer systems may be a public record. Reports of Internet use, including identification of sites to which users have gained access, may be provided periodically to designated representatives of state agencies. State employees are reminded that prohibitions and limitations regarding the use of these systems, for both work and non-work purposes, are set out in the State Policy Regarding Personal Use of State Office Technologies

http://www.state.ak.us/local/offpol.html

and any specific policy developed by your agency, which all state employees have signed.

Signed,
TIC Policy Committee
Lt. Governor Fran Ulmer, Chair
Annalee McConnell, Director, Office of Management and Budget
Commissioner Bob Poe, Administration
Commissioner John Shively, Natural Resources
Commissioner Rick Cross, Education
Deputy Commissioner Jim Chase, Military and Veterans Affairs
Deputy Commissioner Del Smith, Public Safety

STATE OFFICE

ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355

Business Manager

Joseph E. Young
Anchorage

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Anchorage

Robin Lown, Vice President
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Leroy Mestas, Member
Ketchikan
Pres. First City Chapter

Robert Claus, Member

Pres. Prince of Wales Chapter

John Lucking, Jr., Member
Unalaska
Pres. Aleutian Islands Chapter

February 2, 2000

Representative Norm Rokeberg
Alaska State Legislature
State Capital
Juneau, Alaska 99801-1182

Dear Representative Rokeberg:

On February 27, 200C we sent you a letter that we were in opposition to HB 278. That letter was sent in error. At this time APOA has not taken a position on the bill. We ill monitor the bill as it progresses through committees and may take a position at a later date. We apologize for any inconvenience this may have caused.

You may contact us at the APOA office in Anchorage at 277-0515.

Sincerely,

John Charbonneau
State President

cc: Representative Eric Croft

RECEIVED
FEB 07 2000

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355

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Pres. First City Chapter

Robert Claus, Member
Craig
Pres. Prince of Wales Chapter

John Lucking, Jr., Member
Unalaska
Pres. Aleutian Islands Chapter

January 27, 2000

Representative Norm Rokeberg
Alaska State Legislature
State Capital
Juneau, Alaska 99801-1182

Dear Representative Rokeberg:

At a recent meeting of the APOA Board of Directors, we unanimously agreed to oppose HB 278.

You may contact us at the APOA office in Anchorage at 277-0515.

Sincerely,

John Charbonneau
State President

cc: Representative Eric Croft

RECEIVED
FEB 0 2 2000

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Andrew Halcro, Vice-Chairman
Representative John Harris
Representative Lisa Murkowski
Representative Jerry Sanders
Representative Tom Brice
Representative Sharon Cissna

State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4954
Fax: (907) 465-2040

ADDITIONAL INFORMATION FOR YOUR

HOUSE BILL 278 FILE FOR

HEARING ON APRIL 7, 2000

RECEIVED
APR 0 6 2000

April 5, 2000

The Honorable Norman Rokeberg
Alaska State House of Representatives
State Capitol, Room 24
Juneau, AK 99801-1182

Sent via Fax and U.S. mail
this date

Ref: HB 278

Dear Representative Rokeberg:

I serve on the Government Relations Council for the American Bankers Association, as well as serving as a member of the Alaska Bankers Association. I just returned from a meeting in Washington D.C. where the GRC worked on final comments on the proposed rules regarding *Privacy of Consumer Financial Information as mandated under the Gramm-Leach Bliley Act.*

The ***Gramm-Leach-Bliley Act***, (Financial Modernization) requires that final regulations be adopted by May 12, 2000. While the Act addresses the financial services industry, there are no boundary lines drawn as to the type of business that will be impacted by these regulations. Once the Federal Trade Commission (FTC), the Federal Reserve, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) agree on the definition of "financial transaction," retail businesses, who have never been required to engage in consumer disclosure and related regulation, are going to find themselves being required to comply with all requirements for the protection of consumer information.

Consumer privacy is clearly a major public issue and is being addressed at the federal level. I would urge the Legislature to delay any action on privacy issues until the federal legislation passes in final form.

Thank you for your consideration.

Sincerely

Craig E. Dahl
President & CEO
Alaska Pacific Bank

cc: The Honorable Eric Croft
Lisa Murkowski

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HB
284

(7)

..OUSE COMMITTEE REPC..T

Date Referred to Committee: January 12, 2000 FURTHER REFERRALS: Judiciary

Date of Committee Action: Feb 21, 2000

The LABOR AND COMMERCE Committee considered: HB 284

HOUSE BILL NO. 284 UNINSURED MOTOR VEHICLE INSURANCE

"An Act relating to uninsured and underinsured motor vehicle insurance."

recommends it be replaced
with the following committee substitute CSHB 284(L&C)

[✓] the same title
[ ] a new title

[ ] additional referral to ____________ Comm.ittee
[ ] attached amendment(s)

ADOPTS: ____________ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal note(s) ____________

[✓] zero fiscal note(s) DCED 2/18/00

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) ____________

[ ] zero fiscal note(s) ____________

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
[signature]			✓	
John K. Harris	✓			
[signature]			✓	
Tom Brice			✓	
[signature]			✓	
Norm Rokeberg			✓	

CHAIR'S SIGNATURE [signature] 2/21/00

Amendment HB284

*Section 1. AS 28.20.455(f) is amended to read:

(f) If both the owner and operator of the uninsured vehicle are unknown, payment under the uninsured and underinsured motorists coverage shall be made only where direct physical contact between the insured and uninsured or underinsured motor vehicles has occurred, **or where the accident is witnessed by a disinterested person, not occupying the insured vehicle, who will attest to the facts of the accident and the involvement of a motor vehicle that left the accident scene without being identified.** A vehicle that has left the scene of the accident with an insured vehicle is presumed to be uninsured if the person insured reports the accident to the appropriate authorities within 24 hours.

Insert twice the underlined portion above to underlined section of bill
Section 1, p1, lines 7-8
Section 2 p1, line 15 thru p2, line 2

adopted

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 284

Revision Date/Time (Note if correction)
Dept. Affected Community & Economic Development
Title An Act relating to uninsured and underinsured motor vehicle insurance
BRU Insurance
Component Insurance
Sponsor Representative Kott
Requester H L&C
Component No. 354

Expenditures/Revenues (Thousands of Dollars)

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill has no fiscal impact on this component.

Prepared by: Robert A. Lohr
Phone 269-7900
Division Insurance
Date/Time 2-11-00 2:45 PM
Approved by Commissioner Deborah B. Sedwick
Date 2-11-00
Agency Community & Economic Development

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House of Representatives

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10928 EAGLE RIVER RD., SUITE 141
EAGLE RIVER, AK 99577

SESSION:
ALASKA STATE CAPITOL
JUNEAU, AK 99801

Memorandum

TO: Representative Norm Rokeberg, Chairman
House Labor & commerce Committee

FROM: Representative Pete Kott Patrick Hanna (for)

SUBJECT: Request for Hearing, HB 284

DATE: February 5, 2000

I request that HB 284, an Act relating to uninsured and underinsured motor vehicle insurance", be heard as soon as possible. Enclosed with this request is the following:

- Current version of the bill
- Sponsor Statement
- Letter from Michael Cohn

Mr. Cohn's testimony would be valuable. He has given the following phone numbers: 907-276-1200, 1907-279-2237, and 1907-278-6571.

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

Sponsor Statement
HB 284

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

In situations where direct physical contact does not occur, but the uninsured is found to be the cause of a motor accident, HB 284 would allow the victim to make a claim against his uninsured motorist policy.

HB 284 requires a person other than the insured to attest that a motor vehicie involved in the accident had left the scene. This provision protects insurance companies against false claims being made against insurance companies.

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

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

CABLE ADDRESS
JUSTICE

907/276-1200
FAX 907/278-6571

OCT 04 1999

September 21, 1999

The Honorable Gail Phillips
Alaska State House
Room 411
State Capitol
Juneau, Alaska 99801-1182

Dear Ms. Phillips:

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

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

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

As written, the statute would even preclude recovery to a victim of an uninsured vehicle in cases where the victim is at a stop light and is struck by a second vehicle which collided with the victim

as a result of the actions of a third vehicle which struck the second vehicle, the third vehicle subsequently leaving the scene and not being located. In such cases, there would be no "direct" contact between the vehicle that left the scene and the victim. Under those circumstances, an insurance company could claim the uninsured or underinsured motorist provision would not apply because of AS 28.20.445(f).

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

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

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

Sincerely yours,

WEIDNER & ASSOCIATES, INC.
A Professional Corporation

Michael Cohn
Attorney at Law

MC/mm

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

ALASKA STATE LEGISLATURE
House of Representatives

Labor and Commerce Committee

2/25/00

For your hb 284
file.

Janet

Lessmeier & Winters

LAWYERS - LLC

431 North Franklin Street
Suite 400
Juneau, Alaska 99801-1186

MICHAEL L. LESSMEIER
GREGORY W. LESSMEIER
SHELDON E. WINTERS

TELEPHONE: (907) 586-5912
FACSIMILE: (907) 463-3020
E-MAIL: l-w@gci.net

RECEIVED
FEB 24 2000

By Hand-Delivery
February 24, 2000

Representative Rokeberg
Capital Building - Room 24
Juneau, Alaska

Re: HB284

Dear Representative Rokeberg:

Pursuant to your request, I am enclosing herewith a chart that shows the rate change history for uninsured and underinsured motorist coverage in Alaska from April 15, 1994 to the present time. As you can see, this history vividly demonstrates the increased cost of this coverage, especially in comparison to the fact that for all coverages, there was actually a 1% decline in cost over the same period of time. More than anything else this shows why we are particularly sensitive to any changes that will result in further increases in the cost of this coverage.

Sincerely,

LESSMEIER & WINTERS

By: [signature]
Michael L. Lessmeier

Enclosure

MLL/wmg
0015-006/Rokeberg-MLL-02-24-00.wpd

Alaska Rate Change History

State Farm Mutual Automobile Insurance Company

Effective Date	Uninsured (including Underinsured) Motor Vehicle Coverage	All Types, All Coverages
04/15/84	19.2%	7.3%
11/01/85	18.2%	9.8%
06/01/87	0.0%	-10.2%
01/01/91	28.0%	2.2%
09/01/91	0.0%	0.0%
12/01/91	0.0%	-0.2%
08/01/92	0.0%	4.0%
03/01/94	13.0%	0.2%
07/01/96	24.8%	4.9%
09/15/97	0.0%	-2.4%
10/15/98	0.1%	-9.1%
04/01/99	0.0%	-0.2%
04/15/99	0.0%	-5.2%
Rate Change Since 01/01/84	154.6%	-1.0%
Average Annual Change	6.0%	-0.1%

Note: The Uninsured Motor Vehicle Coverage limits are determined on an excess limits basis as of January 1, 1991. Prior to 1991, the Uninsured Motor Vehicle Coverage limits were determined on a difference in limits basis.

HB
296

(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: January 21, 2000   FURTHER REFERRALS: Judiciary

Date of Committee Action: 2/07/2000

The LABOR AND COMMERCE Committee considered: HB 296

HOUSE BILL NO. 296   UNIFORM PARTNERSHIP ACT

"An Act relating to partnerships; amending Rule 25(c), Alaska Rules of Civil Procedure; and providing for an effective date."

recommends it be replaced with the following committee substitute CSHB 296(L+C)   [ ] the same title   [ ] a new title

[ ] additional referral to ____________ Committee
[ ] attached amendment(s)

ADOPTS: ____________ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)   APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) ____________   [ ] fiscal note(s) ____________

[✓] zero fiscal note(s) DCED 1/31/00   [ ] zero fiscal note(s) ____________

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
[signature]	✓			
John L. Harris			✓	
[signature] Sanders			✓	
Norm Rokeberg	✓			
[signature]	✓			

CHAIR'S SIGNATURE [signature] 2/7/00

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

1. pages 33 and 34, use "biennial" system and conform dates with AS 32.05.590. Moved by Harris and unanimously adopted.

2. Sections 10 & 13, change to reflect a three year time period, 2006 to 2004.

National Conference of Commissioners on Uniform State Laws
211 East Ontario, Suite 1300, Chicago, Illinois 60611·312/915-0195·Facsimile 312/915-0187

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

Memo to: Arthur H. Peterson

From: John M. McCabe

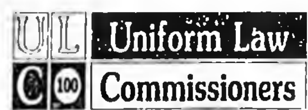
Date: February 4, 2000

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

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

There are differences, some major and some minor:

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



I. Liability of Partners

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

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

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

II. Registration Requirements

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

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

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

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

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

Alaska Current Law	Revised Uniform Partnership Act	Analysis
SECTION 32.05.520. USE OF NONDISTINGUISHABLE NAME. Registration or reservation under this chapter gives the person who has registered exclusive right to the use of the name. The person may enjoin the use of a name that is not distinguishable on the records of the department from the name to which the person has the exclusive right, and the person has a cause of action for damages against a person who uses a name that is not distinguishable on the records of the department from the name to which the person has the exclusive right. **SECTION 32.05.530. REGISTERED AGENT AND OFFICE.** A registered limited liability partnership and a foreign limited liability partnership shall maintain in the state a registered office and an agent for the service of process. **SECTION 32.05.540. CHANGE OF REGISTERED OFFICE OR AGENT.** (a) A registered limited liability partnership may change its registered office, agent, or both, by filing with the department a signed statement that includes (1) the name of the partnership; (2) the address of its registered office; (3) the address of its new registered office if the registered office is to be changed; (4) the name of its registered agent; (5) the name of its new registered agent if the registered agent is to be changed; and (6) a statement that the change was authorized by one or more of the partners.		

Alaska Current Law	Revised Uniform Partnership Act	Analysis
(b) If the department finds that the statement filed under (a) of this section complies with this chapter, the department shall file the statement in the department's office. The change becomes effective when the statement is filed. (c) A registered agent of a limited liability partnership may change the location of the agent's office from one address to another in this state. The agent may change the registered office for each limited liability partnership for which the person is acting as registered agent by filing in the department a statement setting out the name of the agent, the address of the agent's office before change, the address to which the office is changed, and a list of companies for which the person is the registered agent. The statement shall be executed by the registered agent in the individual name of the agent, or, if the agent is a corporation, it shall be executed by its president or a vice-president. The statement shall be delivered to the department and the limited liability partnership, and, if the department finds that the statement complies with this chapter, the department shall file it. The change becomes effective when the statement is filed. **SECTION 32.05.550. RESIGNATION BY REGISTERED AGENT.** A registered agent may resign by filing a written notice and an exact copy of the notice with the department. The written notice of resignation must set out the latest address of the principal office of the partnership and the names and addresses of the general partners known by the agent. The department shall immediately mail a copy of the notice to the partnership at its principal office. The resignation becomes effective 30 days after the filing of the written notice unless the partnership appoints		