

**ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 00/2**

**10016 HOUSE STATE AFFAIRS**

1 under which the claim for payment is being made.

2 \* Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section  
3 to read:

4 TRANSITION: REGULATIONS. Notwithstanding sec. 5 of this Act, the Department  
5 of Labor and Workforce Development may proceed to adopt regulations necessary to interpret  
6 or implement secs. 1 and 2 of this Act. The regulations take effect under AS 44.62  
7 (Administrative Procedure Act), but not before the effective date of secs. 1 and 2 of this Act.

8 \* Sec. 4. Section 3 of this Act takes effect immediately under AS 01.10.07( ).

9 \* Sec. 5. Sections 1 and 2 of this Act take effect January 1, 2001.

**FISCAL NOTE** Bill Vers: HB 337

No: 1

**STATE OF ALASKA  
2000 LEGISLATIVE SESSION**

(H) Publish Date: 2/4/00

Revision Date/Time (Note if correction):  
 Title: An Act relating to ... Admin collection  
 of Perm. Fund Div. ... for amounts owed to State  
 Sponsor: Rules Committee  
 Requestor: Governor

Department Affected: Labor  
 BRU: Employment Security  
 Component: Unemployment Insurance  
 COMPONENT SERIAL NO. 2276

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

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

OPERATING	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL</b>						
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<b>CHANGE IN REVENUE</b>	<b>377.1</b>	<b>569.8</b>	<b>385.4</b>	<b>385.4</b>	<b>385.4</b>	<b>385.4</b>
<b>FUND SOURCE #</b>	<b>1004</b>	<b>1004</b>	<b>1004</b>	<b>1004</b>	<b>1004</b>	<b>1004</b>

**FUNDING:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY00) impact: \$ 0.0

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

(See Attached)

Prepared by: Rebecca Gamez, Director Phone: 465-2711  
 Division: Employment Security Division Date/Time: 1/12/00 11:36 AM

Approved by Commissioner: Ed Flanagan, Commissioner  
 Agency: Department of Labor and Workforce Development Date: 1/12/2000

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Rev 10/99

**ATTACHMENT**

HD 007

**Fiscal Note for Governor's Bill. .."Administrative Collection of Permanent Fund Dividends...for amounts owed to state."**

The Alaska Department of Labor and Workforce Development, Employment Security Division, Benefit Payment Control Unit, is responsible for recovery of overpaid unemployment insurance (UI) benefits and fraud penalties. The current outstanding debt owed to the state for overpayments is a little over 9 million dollars; comprised of \$4,900,000 paid erroneously due to a fraudulent act committed by the claimant; \$1,500,000 paid due to error, most often the claimant's; and \$3,000,000 in statutory penalty applied for receipt of benefits through fraudulent acts.

In order to obtain federal administrative funding from the U.S. Department of Labor, our division must continue to improve the percentage of overpayments we recover. Currently, the only way to attach a Permanent Fund Dividend is by voluntary assignment, a judgment through small claims action, or through a criminal prosecution judgment. The latter two actions are lengthy and time consuming and are used in less than 5% of the cases. Authority to attach Permanent Fund Dividends through administrative action would simplify the process and increase the Department's recovery of improperly received payments and penalties.

Attachment of Permanent Fund Dividends would only be used after proper notice of liability has been given and appeal rights have expired or been exhausted. It would only be used on past due accounts.

No fiscal impact to the operational costs of the Unemployment Insurance program is anticipated. The costs related to the legislation will be replaced by efficiencies and related savings realized by a reduction in the number of judgments required through small claims action, or through a criminal prosecution.

Alaska statute 23.20.390 (a) requires that the over paid UI payment when recovered is to be returned to the UI trust fund. Since unemployment insurance benefits are primarily paid through taxes from Alaska's employers, the recovery of these overpaid benefits has a positive impact on employer tax rates. Alaska statute 23.20.390 (f) requires that any penalty recovered will be deposited into the state general fund.

After all other administrative remedies are exercised, the department anticipates levies on permanent fund dividend funds will result in recovery of overpaid UI payments and penalties as follows:

<u>First Calendar Year of Implementation effective January 1, 2001</u>	
Fraud overpays	\$1,148,200
Non-fraud overpays	\$362,600
<b>Total Returned to UI Trust Fund</b>	<b>\$1,510,800</b>
<b>Penalties Recovered for GF deposit</b>	<b>\$754,200 (a)</b>
<u>Second &amp; Subsequents Calendar Years</u>	
Fraud overpays	\$638,300
Non-fraud overpays	\$128,900
<b>Total Returned to UI Trust Fund</b>	<b>\$767,200</b>
<b>Penalties Recovered for GF deposit</b>	<b>\$385,400 (a)</b>

In the first calendar year of implementation of the permanent fund levy, the UI overpay and penalty calculations represent the backlog which is greater than what would typically be expected on an ongoing annual basis. The second and subsequent year calculations is what we expect annually after the backlog is recovered.

**FOOTNOTE:**

(a) the state fiscal year distribution (see fiscal note form) of penalties recovered for deposit to the state general fund due to the 1/1/2001 effective date is as follows:

\*FY2001 = \$377,100 (50% of 1<sup>st</sup> calendar year penalties)

\*FY2002 = \$377,100 (50% of 1<sup>st</sup> calendar year penalties)

\*FY2002 = \$192,700 (50% of 2nd calendar year penalties)

\*FY2003 & subsequent fiscal years = \$385,400

# FISCAL NOTE

**STATE OF ALASKA  
2000 LEGISLATIVE SESSION**

**BILL NO. HB 337**

Revision Date/Time (Note if correction)	Dept. Affected	Revenue
Title	BRU	Revenue Operations
	Component	Permanent Fund Dividend
Sponsor	Rules	
Requester	House State Affairs	Component Serial No. 981

**Expenditures/Revenues (Thousands of Dollars)**

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

Estimate of current year (FY2000) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill allows state agencies to file claims against Permanent Fund Dividends of individuals with unpaid debts owed to state agencies. Section 2 of this bill allows the Permanent Fund Dividend Division to collect an administrative fee to cover costs associated with processing these claims. This existing fee of \$2 per claim (as set out in regulation) is based on state agencies using electronic media to transmit any and all claims to the dividend division. The division may have to increase the fee to a particular agency if that agency is unable to transmit its claims electronically and instead creates additional paperwork and manual processing for the dividend division.

Prepared by Nanci A. Jones, Director  
 Division Permanent Fund Dividend  
 Approved by Wilson L. Condon  
 Commissioner  
 Agency Department of Revenue

Phone 465-2323  
 Date/Time February 8, 2000  
 Date February 8, 2000

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**HB**

**367**

HB367

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

P.O. Box 11000  
Juneau, Alaska 99811-0000  
(907) 465-3500  
Fax (907) 465-3532  
*www.gov.state.ak.us*

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 10, 2000

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

Dear Speaker Porter:

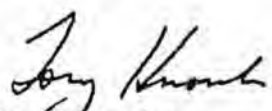
Many Alaskans are killed annually by drivers who are operating their vehicles in an unsafe way, but are not specifically violating any criminal laws. In 1998, approximately 20 deaths on our state highways may have fallen into this category. The extent of any punishment in these cases is merely a fine for a traffic violation of up to \$300.

Regardless of whether their conduct is criminal, drivers whose traffic violations contribute to an accident causing the death of another person pose a risk to people on the highways and cause much suffering to family and friends of their victims. This bill I transmit today addresses this unfortunate situation by requiring, under certain circumstances, revocation of driving privileges of a driver involved in a fatal traffic accident.

This bill requires the court to revoke driving privileges in cases where a person violated traffic laws and the violation contributed to an accident that resulted in a death. The license revocation would be for one year and applies to drivers of all vehicles, including those for commercial use. The court would be allowed to grant limited license privileges if it determines driving is critical to the person's livelihood and will not pose a danger to the public.

When people drive in an unsafe way and cause the death of another, their privilege to drive should be taken to protect other drivers and pedestrians on the roadways.

Sincerely,

  
Tony Knowles  
Governor

(7)

# HOUSE COMMITTEE REPORT

Date Referred to Committee: February 11, 2000

FURTHER REFERRALS:

Judiciary  
Finance

Date of Committee Action: 3/7/00

The STATE AFFAIRS Committee considered:

HB 367

HOUSE BILL NO. 367

REVOCATION OF DRIVING PRIVILEGES

"An Act providing for the revocation of driving privileges by a court for a driver convicted of a violation of traffic laws in connection with a fatal motor vehicle or commercial motor vehicle accident; and amending Rules 43 and 43.1, Alaska Rules of Administration."

recommends it be replaced with the following committee substitute \_\_\_\_\_  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) Admin

zero fiscal note(s) \_\_\_\_\_

zero fiscal note(s) DPS, DOL

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Deannette James</i>			<input checked="" type="checkbox"/>	
<i>Ben Kerttu</i>	<input checked="" type="checkbox"/>			
<i>Hal Smith</i>	<input checked="" type="checkbox"/>			
<i>Chris [unclear]</i>		<input checked="" type="checkbox"/>		
<i>Bill Hudson</i>			<input checked="" type="checkbox"/>	
<i>Scott [unclear]</i>			<input checked="" type="checkbox"/>	

CHAIR'S SIGNATURE *Deannette James*

# STATE OF ALASKA

## DEPARTMENT OF LAW

CRIMINAL DIVISION  
February 15, 2000

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

- CRIMINAL DIVISION CENTRAL  
OFFICE  
P.O. BOX 110300  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3428  
FAX: (907) 465-4043
- OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
310 K STREET, SUITE 308  
ANCHORAGE, ALASKA 99501-2064  
PHONE: (907) 269-6250  
FAX: (907) 269-6270

The Hon. Jeannette James  
Chair, House State Affairs Committee  
Alaska State Legislature  
State Capitol, Room 102  
Juneau, Alaska 99801

Re: HB 367 (Revocation of Driving Privileges)

Dear Representative James:

House Bill 367, introduced February 15, 2000, has been referred to the House State Affairs Committee. I am writing to request that the bill be scheduled for a hearing at your earliest convenience.

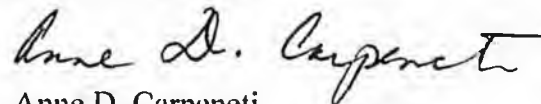
HB 367 provides that a court shall revoke the driving privileges of a driver who violates the traffic laws, and the violation contributes to an accident that results in a death. Drivers who violate traffic laws may not have committed a crime, but if their poor driving causes the death of another person, their driving privileges should be revoked. The bill provides for a one-year revocation under these circumstances. This period would be concurrent with any other revocation that might apply, and the court may grant a limited license if the court finds the limited license will not endanger the public.

If you have any questions about the bill or require further information, please feel free to call me at any time.

Sincerely,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:



Anne D. Carpeneti  
Assistant Attorney General

# Bill History/Action Display



BILL **HB 367** SHORT TITLE: REVOCATION OF DRIVING PRIVILEGES  
 BILL VERSION:  
 SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

CURRENT STATUS: (H) STA STATUS DATE: 2/11/00  
 THEN JUD, FIN

TITLE: "An Act providing for the revocation of driving privileges by a court for a driver convicted of a violation of traffic laws in connection with a fatal motor vehicle or commercial motor vehicle accident; and amending Rules 43 and 43.1, Alaska Rules of Administration."

[Full Text](#) Detailed 2000 fiscal note information currently not available on-line.

### Committee Action With Bill History

Jrn-Date	Jrn-Page	Action
2/11/00	<a href="#">2180</a>	(H) READ THE FIRST TIME - REFERRALS
2/11/00	<a href="#">2180</a>	(H) STA, JUD, FIN
2/11/00	<a href="#">2180</a>	(H) INDETERMINATE FISCAL NOTE (ADM)
2/11/00	<a href="#">2180</a>	(H) 2 ZERO FISCAL NOTES (LAW, DPS)
2/11/00	<a href="#">2180</a>	(H) GOVERNOR'S TRANSMITTAL LETTER
2/11/00	<a href="#">2180</a>	(H) REFERRED TO STATE AFFAIRS

Similar Subject Match or Exact Subject Match

COURT RULES

CRIMES

CRIMINAL PROCEDURE

DEATH

MOTOR VEHICLES

SENTENCING

Bill Root:

[Return to BASIS Main Menu\(21st Legislature\)](#)  
[Return to the Legislature Home Page](#)  
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 Please use your 'Reload' button to update this page.

Albert Lewis Taylor  
P.O. Box 111033  
Anchorage, AK 99511  
(907) 344-7486 home  
(907) 264-0534 work

February 23, 2000

Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801

To State Representatives:

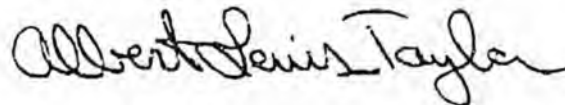
Re: House Bill #367

I was lead to believe that driving is a privilege. If a motor vehicle operator/driver chooses to drive irresponsibly, (breaking traffic laws and killing others), then their driving privileges should be taken from them. There are too many deaths on our roads and highways brought on by negligence due to the actions of careless and irresponsible drivers.

Bill #367 would be a step towards holding these irresponsible and careless drivers accountable for their actions. Also, it will be an encouragement for others to drive more responsibly.

I encourage all of you to pass this bill. It will help make our roads and highways safer for all of us.

Thank You,



Albert Lewis Taylor



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

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

P.O. Box 110001  
Juneau, Alaska 99811-0001  
(907) 465-3500  
Fax (907) 465-3532  
www.gov.state.ak.us

February 14, 2000

Mr. Albert Lewis Taylor  
P.O. Box 111033  
Anchorage, AK 99511-1033

Dear Mr. Taylor:

Thanks once again for your letter and messages to Governor Knowles about the need for legislation to hold drivers accountable for negligence that leads to a person's death. Your input has been very valuable to us, and we appreciate your sharing the tragic story of your son's death.

I am pleased to inform you that Governor Knowles has introduced legislation that requires a one-year license revocation for any driver whose traffic violation causes the death of another person. The bill is listed in the House as HB367, and in the Senate as SB264. Enclosed please find a copy of the proposed legislation and the Governor's transmittal letter.

I know that you have been in contact with your elected representatives about this issue. Now that this legislation is before them, I encourage you to call or write them with your support. Please feel free to contact me with any comments or questions.

*He lives in  
Cantwell.*

Sincerely,

Shari Kochman  
Deputy Legislative Director

Enclosures

FISCAL NOTE

No: 3

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

Bill Version: HB 367  
(H) Publish Date: 2/11/00

Revision Date: February 8, 2000  
Title: Providing for the revocation of driving privileges by a court  
For a driver convicted of a violation of traffic laws...  
Sponsor: Rules Committee  
Requestor: Governor

Department Affected: Administration  
BRU: Legal and Advocacy Services  
Component: Public Defender Agency  
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUND SOURCE: (Thousands of Dollars)

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill is likely to have some fiscal impact on the Public Defender Agency. We generally do not represent people in traffic cases. (In Alaska, a person only has the right to a court-appointed attorney if he or she is charged with a serious offense.) However, because this bill calls for a court revocation rather than an administrative revocation by the Division of Motor Vehicles, we may end up being involved. The Alaska Supreme Court has said that the potential for loss of a "valuable license" may make the offense serious enough to require a jury trial and a court-appointed attorney, if necessary.

The Public Defender Agency is submitting an indeterminate fiscal note because we may be required to represent defendants in jury trials if this bill becomes law.

Prepared by: Barbara Brink, Director  
Division: Public Defender Agency

Phone: (907) 264-4414  
Date: February 8, 2000

Approved by Commissioner: Robert Poe, Jr.  
Agency: Department of Administration

Date: February 8, 2000

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# FISCAL NOTE

Bill Version: HB 367  
 (H) Publish Date: 2/11/00

**STATE OF ALASKA  
 2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title	BRU	Criminal Division
"... revocation of driving privileges by a court for a driver convicted of a violation ... with a fatal ... accident."	Component	1st-4th Judicial Districts; Criminal Appeals/Special Litigation
Sponsor	Rules Committee	
Requester	Governor	Component No. 2198-99;2201/03/61/79

**Expenditures/Revenues (Thousands of Dollars)**

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill would require the revocation of driving privileges of a person who drives a vehicle, including a commercial vehicle, that is involved in a fatal traffic accident if the person is convicted of a violation of traffic laws in connection with the accident, and the violation of the traffic laws contributed to the accident that resulted in the death of another person.

Because conviction of the traffic offense may result in loss of a valuable license, the person has a right to a jury trial. However, a jury trial on traffic matters is a relatively short time commitment. The Department of Law estimates no more than a dozen of these trials will occur statewide per year, and does not anticipate a measurable fiscal impact from passage of this legislation.

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

Phone: 465-5370  
 Date/Time: 2/8/00, 3:18 PM  
 Date: 2/8/00

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**FISCAL NOTE** Bill Version: HB 367

(H) Publish Date: 2/11/00

**STATE OF ALASKA  
2000 LEGISLATIVE SESSION**

Revision Date \_\_\_\_\_ Dept. Affected Public Safety  
 Title An Act for the administrative revocation of driving BRU AST- Detachments  
privileges ... in connection with a fatal vehicle accident. Component AST- Detachments  
 Sponsor Rules Committee  
 Requester Governor Component No. 2325

**Expenditures/Revenues (Thousands of Dollars)**

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

**FUND SOURCE (Thousands of Dollars)**

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

Estimate of any current year (FY2000) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill will not adversely impact the budget.

Prepared by: Royce Weller, Special Assistant Phone 465-4322  
 Division \_\_\_\_\_ Date/Time 12/22/99 12:00:00 A  
 Approved by Commissioner Ronald L. Otte Date 12/22/99  
 Agency Department of Public Safety

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**HB**

**379**

(7)

# HOUSE COMMITTEE REPORT

Date Referred to Committee: February 28, 2000

FURTHER REFERRALS:

Finance

Date of Committee Action: 3/16/00

The STATE AFFAIRS Committee considered:

SSHB 379

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 379

PERS CREDIT: PEACE OFFICERS/FIRE FIGHTERS

"An Act relating to credited service under the public employees' retirement system for peace officers and fire fighters on leave without pay or receiving workers' compensation benefits because of certain on-the-job injuries."

recommends it be replaced with the following committee substitute CSHB 379 (STA)  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) DOA

zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<u>Gannette James</u>	✓			
<u>Bill Hurd</u>	✓			
<u>Hal Smalley</u>	✓		✓	
<u>Beth Kettle</u>	✓			

CHAIR'S SIGNATURE Gannette James

*Adapted  
on order of CS*

AMENDMENT #1

OFFERED IN THE HOUSE

BY REPRESENTATIVE SMALLEY

TO: SSHB 379

1 Page 1, line 2:

2 Delete "on leave without pay or"

3 Page 1, lines 6 - 12:

4 Delete "When a member who was employed as a peace officer or fire fighter in the  
5 public employees' retirement system applies for appointment to retirement, the member may  
6 claim credited service for days that the member was employed as a peace officer or fire  
7 fighter and was on leave-without-pay status because of a physical injury incurred while on  
8 the job, or was not employed and was receiving workers' compensation benefits under  
9 AS 23.30 because of a physical injury incurred while on the job, as a peace officer or fire  
10 fighter."

11 Insert "When a member applies for appointment to retirement, the member may claim  
12 credited service for days that the member was not employed and was receiving workers'  
13 compensation benefits under AS 23.30 because of a physical injury incurred while employed  
14 as a peace officer or fire fighter in a position covered by the public employees' retirement  
15 system."

# Alaska State Legislature

## Committees

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



**Representative Hal Smalley**  
District 9

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

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

## SPONSOR STATEMENT – HB 379

HB 379, "An act relating to credited service under the public employees' retirement system for peace officers and fire fighters on leave without pay or receiving workers' compensation benefits because of certain on-the-job injuries," brings parity to the Alaska Public Employee's Retirement System (PERS). It provides that when a peace officer or fire fighter losses work time for certain on-the-job injuries, the employer would contribute to the employee's credited service.

Under this legislation, the employer shall pay the member's contributions to credited service while the individual is on leave-without-pay status or is receiving workers' compensation benefits for the injury. Entitlement to the credited service ends when the employee is eligible to receive benefits under AS 39.35.330 (a) (leave of absence with pay) or under AS 39.35.410 (a) (occupational disability).

# Alaska State Legislature



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

**Representative Hal Smalley**  
District 9

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

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

## Memorandum

**To:** Representative Jeannette James, Chair  
House State Affairs Committee

**From:** Representative Hal Smalley *Hal*

**Date:** February 29, 2000

**Re:** SSHB 379

---

I would respectfully request that you hold a hearing on SSHB 379, "An act relating to credited service under the public employees' retirement system for peace officers and fire fighters on leave without pay or receiving workers' compensation benefits because of certain on-the-job injuries," at your earliest convenience.

Thank you for your consideration of this request.

# Alaska State Legislature

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



**Representative Hal Smalley**  
District 9

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

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

## Memorandum

**To:** Representative Jeannette James, Chair  
House State Affairs Committee

**From:** Representative Hal Smalley *HS Smalley*

**Date:** February 17, 2000

**Re:** HB 379

*See attached.*

I would respectfully request that you hold a hearing on HB 379, "An act relating to credited service under the public employees' retirement system for peace officers and fire fighters on leave without pay or receiving workers' compensation benefits because of certain on-the-job injuries," at your earliest convenience.

Thank you for your consideration of this request.

*Reading across  
new SS on Mon -  
Show Jeannette  
(+ then put  
up schedule  
for STA?)*



Kenai Peninsula Borough  
Nikiski Fire Department  
P.O. Box 8508  
Nikiski, Alaska 99635  
(907) 283-4388 Phone  
(907) 283-8404 Fax

*Chief Billy W. Harris*

February 17, 2000

Representative Jeanette James  
House of Representatives  
State Capitol, Room 102  
Juneau, Alaska 99801-1182

**SUBJECT: HB379 Support**

Representative James:

Please accept this letter of support, on behalf of the 21 members of the Nikiski Fire Department, for HB379 (credited service for fire and police officers on leave without pay due to on-the-job injury or illness). We request a hearing on this Bill.

Please feel free to contact me if I can be of any service in seeing this Bill through at 907-283-4202.

Respectfully submitted,

Billy W. Harris  
Fire Chief

CITY OF KENAI  
FIRE DEPARTMENT

105 SOUTH WILLOW STREET  
KENAI, ALASKA 99611  
(907) 283-7666



February 17, 2000

Representative Jeanette James  
House of Representatives  
State Capitol, Room 102  
Juneau, Alaska 99801-1182

**Subject: HB379 Support**

Representative James,

Please accept this letter of support, on behalf of the JS members of the Kenai Fire Department, for HB379 (credited service for fire and police officers on leave without pay due to on the job injury or illness). We request and encourage a hearing on this Bill.

Please feel free to contact me if I can be of any service in seeing this Bill through.

Respectfully submitted,

Scott A. Walden  
Assistant Fire Chief

**CENTRAL EMERGENCY SERVICES**  
Central Kenai Peninsula Fire & EMS Providers  
231 SOUTH BINKLEY  
SOLDOTNA, AK 99869-8064  
907-262-4792 • Fax 907-262-5770



*"Prepared for the Worst,  
Providing the Best"*

February 17, 2000

Representative Hal Smalley  
House of Representatives  
State Capitol, Room 423  
Juneau, Alaska 99801-1182


Subject: HB 379 Support

Dear Representative Smalley:

The twenty-two men and women of Central Emergency Services fully supports the concept of HB 379 (credited service for fire and police officers on leave without pay due to on-the-job injuries or illness.) The men and women who service as the front line public safety response in Alaska deserve to be fully credited for their valuable service to the communities of the state. If they are injured, or become ill, due to their work, they should be allowed full credit for such time on their retirement system.

Please contact me if I can be of any service in seeing this legislation through the legislative process.

Yours in public safety,

  
Len A. Malmquist  
Fire Chief

# 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

February 28, 2000

**SUBJECT:** Sectional Summary of SSHB 379. (PERS service for injured peace officers and fire fighters)

**TO:** Representative Hal Smalley  
Attn: Katrina Matheny

**FROM:** Teresa B. Cramer *TBC*  
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.

**Section 1** adds a new subsection to AS 39.35.370 to permit a member of the Public Employees' Retirement System (PERS) who is employed as a peace officer or fire fighter to claim credited service for days on leave-without-pay status because of a physical injury incurred on the job. The member is to claim the credited service when he or she applies for appointment to retirement. After claiming the credited service, the member owes the system an amount equal to the full actuarial cost of receiving the service credit.

TC:glc  
00-094.glc



# Alaska State Legislature

Please enter into the record my testimony to the ASTA  
committee name

committee on HB # 379, dated 3/07/06  
bill # / subject

I am a Firefighter with the Kenai Fire Dept.  
Having been in the Fire Service for over 10 years I have  
seen many injuries involving Police + Fire personnel. As  
a result, I am strongly in favor of this bill.

Signed: [Signature]  
Testifier

Kenai Fire Dept. Kenai Ak.  
Representing (Optional)

105 S. Willow St Kenai  
Address

283. 7666  
Phone number



# Alaska State Legislature

Please enter into the record my testimony to the ASTA  
 committee on firefighter on-the-job injury committee name  
 committee on HR # 379, dated 3-7-00  
 bill # / subject

As firefighting is a hazardous occupation,  
 I support this bill.

Signed: Walter Williamson  
 Testifier  
Capt. Walter Williamson ; Kenai Fire Dept., Kenai AK  
 Representing (Optional)  
43289 Kenai Spur Hwy, Kenai AK 99611  
 Address  
907-283-4767  
 Phone number



# Alaska State Legislature

Please enter into the record my testimony to the State Affairs  
committee name

committee on HB 379 Credited Service PERS, dated 3-7-00  
bill # / subject

Please accept this written testimony as my support for this bill. Public employees who are injured in the line of duty should be credited service ~~at~~ they are off duty for injuries.

THANKS

Signed: James C. Bausden  
Testifier  
Kenai Fire Dept.  
Representing (Optional)  
105 S. Willow St. Kenai, AK 99611  
Address  
283-7666  
Phone number

# FISCAL NOTE

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

**BILL NO. SSBH 379**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Administration  
 Title An Act relating to credited service under BRU Centralized Administrative Services  
the public employees' retirement system for peace officers... Component Retirement and Benefits  
 Sponsor Representative Smalley  
 Requester (H) STA Component No. 64

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The Public Employees' Retirement System (PERS) allows peace officers or fire fighters to retire with 20 years of service, regardless of age. The individual would be required to pay the full actuarial cost of this conversion, either in a lump sum or through a lifetime retirement benefit reduction. Since the full actuarial cost is paid by the employee, this legislation has no fiscal impact to the State of Alaska or other PERS employers.

Prepared by: Guy Bell Phone 465-4471  
 Division Retirement and Benefits Date/Time 3/6/00 1:38 PM  
 Approved by Commissioner Robert Poe Jr. Date 3/6/00  
 Agency Department of Administration

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

For further distribution information, call the Governor's Legislative Office

**Subject:** Re: more fiscal notes

**Date:** Thu, 02 Mar 2000 16:27:31 -0900

**From:** Shari Kochman <shari\_kochman@gov.state.ak.us>

**Organization:** Alaska Office of the Governor

**To:** Barbara Cotting <Barbara\_Cotting@legis.state.ak.us>

ok  
requests are in  
thanks

Barbara Cotting wrote:

> Hi Shari,  
>  
> I've scheduled the following bills for hearing in House State Affairs on  
> Tuesday, March 7, and need fiscal notes:

> HB 379 PERS Credit: Peace Officers/Fire Fighters  
> HB 270 Sexual Assault Examinations  
> HB 299 Pioneer Home Rates

*Not received.*

\_\_\_\_\_  
\_\_\_\_\_

**HB**

**380**

HOUSE BILL NO. 380

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE THERRIAULT

Introduced: 2/16/00

Referred: State Affairs, Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to contributions to the Alaska Fire Standards Council and to  
2 an insurer tax credit for those contributions; and providing for an effective date."

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

4 \* Section 1. AS 21.89 is amended by adding a new section to read:

5 Sec. 21.89.075. Insurance tax credit for gifts to the Alaska Fire Standards  
6 Council. (a) For cash contributions made for fire services/training/programs to the  
7 Alaska Fire Standards Council established under AS 18.70.330, a taxpayer is allowed  
8 a credit against the tax due

9 (1) that is imposed on insurance that includes coverage for losses due  
10 to fire under AS 21.09.210; or

11 (2) under AS 21.66.110.

12 (b) The amount of the credit allowed under (a) of this section is the lesser of

13 (1) an amount equal to

14 (A) 50 percent of contributions of not more than \$100,000; and

*Am #1  
Passed  
omit*

1 (B) 100 percent of the next \$100,000 of contributions; or

2 (2) 50 percent of the taxpayer's tax liability under this title.

3 (c) A contribution claimed as a credit under this section may not

4 (1) be claimed as a credit under more than one provision of this title;

5 and

6 (2) when combined with credits taken during the taxpayer's tax year

7 under AS 43.20.014, AS 43.55.019, AS 43.56.018, AS 43.65.018, AS 43.75.018, or

8 AS 43.77.045, exceed \$150,000.

9 \* Sec. 2. AS 37.05.146(b) is amended by adding a new paragraph to read:

10 (6) receipts of the Alaska Fire Standards Council for which a taxpayer

11 is allowed a credit under AS 21.89.075.

12 \* Sec. 3. AS 43.20.014(d) is amended to read:

13 (d) A contribution claimed as a credit under this section may not

14 (1) be claimed as a credit under another provision of this title;

15 (2) also be allowed as a deduction under 26 U.S.C. 170 against the tax  
16 imposed by this chapter; and

17 (3) when combined with credits taken during the taxpayer's tax year

18 under AS 21.89.070, 21.89.075, AS 43.55.019, AS 43.56.018, AS 43.65.018,

19 AS 43.75.018, or AS 43.77.045, exceed \$150,000.

20 \* Sec. 4. AS 43.55.019(d) is amended to read:

21 (d) A contribution claimed as a credit under this section may not

22 (1) be claimed as a credit under another provision of this title; and

23 (2) when combined with credits taken during the taxpayer's tax year

24 under AS 21.89.070, 21.89.075, AS 43.20.014, AS 43.56.018, AS 43.65.018,

25 AS 43.75.018, or AS 43.77.045, exceed \$150,000.

26 \* Sec. 5. AS 43.56.018(d) is amended to read:

27 (d) A contribution claimed as a credit under this section may not

28 (1) be claimed as a credit under another provision of this title; and

29 (2) when combined with credits taken during the taxpayer's tax year

30 under AS 21.89.070, 21.89.075, AS 43.20.014, AS 43.55.019, AS 43.65.018,

31 AS 43.75.018, or AS 43.77.045, exceed \$150,000.

1 \* **Sec. 6.** AS 43.65.018(d) is amended to read:

2 (d) A contribution claimed as a credit under this section may not

3 (1) be claimed as a credit under another provision of this title; and

4 (2) when combined with credits taken during the taxpayer's tax year

5 under AS 21.89.070, 21.89.075, AS 43.20.014, AS 43.55.019, AS 43.65.018,

6 AS 43.75.018, or AS 43.77.045, exceed \$150,000.

7 \* **Sec. 7.** AS 43.75.018(d) is amended to read:

8 (d) A contribution claimed as a credit under this section may not

9 (1) be claimed as a credit under another provision of this title; and

10 (2) when combined with credits taken during the taxpayer's tax year

11 under AS 21.89.070, 21.89.075, AS 43.20.014, AS 43.55.019, AS 43.56.018,

12 AS 43.75.018, or AS 43.77.045, exceed \$150,000.

13 \* **Sec. 8.** AS 43.77.045(c) is amended to read:

14 (c) A contribution claimed as a credit under this section may not

15 (1) be claimed as a credit under another provision of this title; and

16 (2) when combined with credits taken during the taxpayer's tax year

17 under AS 21.89.070, 21.89.075, AS 43.20.014, AS 43.55.019, AS 43.56.018,

18 AS 43.65.018, or AS 43.75.018, exceed \$150,000.

19 \* **Sec. 9.** This Act takes effect July 1, 2000.

(7)

# HOUSE COMMITTEE REPORT

Date Referred to Committee: February 16, 2000

FURTHER REFERRALS: Labor and Commerce  
Finance

Date of Committee Action: 2/22/00

The STATE AFFAIRS Committee considered:

HB 380

HOUSE BILL NO. 380

INSURER TAX CREDIT: FIRE STANDRDS COUNCIL

"An Act relating to contributions to the Alaska Fire Standards Council and to an insurer tax credit for those contributions; and providing for an effective date."

recommends it be replaced with the following committee substitute CSA/B 380 (STA)  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) DPS

zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Jeannette James</i>	✓			
<i>John Smalley</i>	✓			
<i>Joseph [unclear]</i>	✓			
<i>[unclear]</i>	✓			
<i>Bill [unclear]</i>	✓			

CHAIR'S SIGNATURE *Jeannette James*

# FISCAL NOTE

**STATE OF ALASKA  
2000 LEGISLATIVE SESSION**

**BILL NO. HB 380**

Revision Date _____	Dept. Affected <u>Public Safety</u>
Title <u>INSURER TAX CREDIT: FIRE STANDARDS</u>	BRU <u>Ak. Fire Standards Council</u>
COUNCIL _____	Component: <u>Ak. Fire Standards Council</u>
Sponsor <u>Representative Therriault</u>	_____
Requester <u>H. State Affairs</u>	Component No. <u>2428</u>

**Expenditures/Revenues (Thousands of Dollars)**

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>						

<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	-----	-----	-----	-----	-----	-----

**FUND SOURCE (Thousands of Dollars)**

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

Estimate of any current year (FY2000) cost: 0.0

**POSITIONS**

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

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

This bill has the potential, pending taxpayer participation in the program, of generating non-general fund funding to cover costs associated with the Alaska Fire Standards Council (AFSC). The level of taxpayer participation is not known at this time.

NOTE: The Gov. FY2001 budget request includes \$220.00 for the AFSC (\$120.0 GF/\$100.0 Des/PR).

Prepared by: <u>Royce Weller, Special Assistant</u>	Phone <u>465-4322</u>
Division <u>Office of the Commissioner</u>	Date/Time <u>2/19/2000</u>
Approved by: _____	Date <u>2/19/00</u>
Agency <u>Commissioner Ronald L. Otte, Dept. of Public Safety</u>	

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Alaska collects, from the insurance companies, a 2.7% tax on all insurance premiums paid within the state.

If an insurance company makes a contribution to the Alaska Fire Standards Council established in HB 380, it would get CREDIT against any of this tax paid for fire insurance.

# Alaska State Legislature

REPRESENTATIVE  
GENE THERRIAULT

Mailing Address:  
119 N. Cushman, Suite 101  
Fairbanks, Alaska 99701  
(907) 488-0857  
Fax: (907) 488-4271



## House Of Representatives

While in session  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-4797  
Fax: (907) 465-3884

House District 33

House Bill 380

"An Act relating to contributions to the Alaska Fire Standards Council and to an insurer tax credit for those contributions."

SPONSOR: Representative Gene Therriault

### SPONSOR STATEMENT:

House Bill 380 creates an insurance tax credit for contributions to the Alaska Fire Standards Council for fire services training programs. Development of fire standards that address the unique challenges posed by Alaska's climate will benefit Alaskans as the incidence of casualty and property loss goes down, including fatalities.

The Alaska Fire Standards Council will be established on July 1, 2000 as directed in legislation passed by the 20<sup>th</sup> Alaska State Legislature. It will adopt minimum standards for employment and curriculum requirements for firefighters and fire instructors and their certification. It will establish and maintain firefighter and fire instructor training programs. The certification of firefighters will be optional. While national standards already exist, they do not take into account many of the unique qualities Alaska's climate presents.

# Alaska State Legislature

REPRESENTATIVE  
**GENE THERRIAULT**  
Mailing Address:  
119 N. Cushman, Suite 101  
Fairbanks, Alaska 99701  
(907) 488-0857  
Fax: (907) 488-4271

While in session  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-4797  
Fax: (907) 465-3884  
House District 33

## House Of Representatives

### MEMORANDUM

TO: Representative Jeanette James, Chair  
House State Affairs Committee

FROM: Representative Gene Therriault *Gene J.*

DATE: February 17, 2000

SUBJECT: HB 380 Hearing Request

---

I respectfully request that the House State Affairs Committee hear House Bill 380 at its Thursday, February 24 meeting. Members of the Alaska Fire Chiefs' Association will be in town and would like the opportunity to testify on the measure.

House Bill 380 will provide a funding source for the Alaska Fire Standards Council, which is to be established on July 1 of this year as directed in legislation passed during the 20<sup>th</sup> Legislature.

Please contact me if you have any additional questions.

*He said he  
knows the  
date may have  
been changed.*

Barb 2/17/00  
Rep Theriault will be  
sending down a request  
for this bill to be heard  
next Thursday. (2/24/00)  
Reason: Fire Chiefs  
will be in town -  
let me know if I can  
help or if you  
have any questions  
586-5033

Give me  
a call  
586-5033  
Dorothy  
Randy Stewart

**Subject:** Re: fiscal notes

**Date:** Fri, 18 Feb 2000 08:47:54 -0900

**From:** Shari Kochman <shari\_kochman@gov.state.ak.us>

**Organization:** Alaska Office of the Governor

**To:** Barbara Cotting <Barbara\_Cotting@legis.state.ak.us>

ok  
we're on it

Barbara Cotting wrote:

- > I have scheduled the following bills for hearing in the House State
- > Affairs Committee on TUESDAY, FEBRUARY 22, at 8:00 A.M., and need fiscal
- > notes:
- >
- > HB 380, Insurer Tax Credit: Fire Standards Council; Division of
- > Insurance
- > HB 411, Distribution of Permanent Fund Income; Revenue
- >
- > Thanks.
- >
- > Barbara

*Not received as of 2/21/00  
bcc*

**HB**

**387**

(7)

# HOUSE COMMITTEE REPORT

Date Referred to Committee: March 15, 2000

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 4/4/00

The STATE AFFAIRS Committee considered:

HB 387

HOUSE BILL NO. 387

FREEDOM OF RELIGION

"An Act prohibiting governmental entities, including municipalities and school districts, from restricting a person's free exercise of religion."

recommends it be replaced with the following committee substitute CSHB 387 (HES)

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) All

fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Janette James</i>	✓			
<i>John Kertula</i>		✓		
<i>Chris [unclear]</i>	✓			
<i>Bill Hudson</i>				✓
<i>Scott [unclear]</i>	✓			

CHAIR'S SIGNATURE Janette James



**STATE OF ALASKA**  
**LEGISLATIVE AFFAIRS AGENCY**  
**DIVISION OF PUBLIC SERVICES**

DATE: 3/30/00

Please accept the enclosed original(s) of written testimony  
for the House State Affairs teleconference hearing that was  
scheduled on 3/30/00.

A copy of this testimony was transmitted to your committee via  
fax on 3/30/00.

Thank you,

LEGISLATIVE AFFAIRS AGENCY  
Sitka Legislative Office  
210 Lake Street  
Sitka, Alaska 99835  
747-6276



# Alaska State Legislature

Please enter into the record my testimony to the House State Affairs Committee  
 committee name  
 committee on HB 387, dated 3-30-00  
 bill/subject

*I support Housebill 387. I believe it is a necessary reinforcement of the right to freedom of religious practice as stated in the Bill of Rights. I support this bill as it is stated and believe that any carveouts would make it ineffective. Please vote to pass this bill.*

Signed: Steven Pzd  
 Testifier

Representing (Optional)

PO Box 1236, Sitka  
 Address

(907) 966-2235  
 Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the House State Affairs Committee  
 committee name  
 committee on HB 387, dated 3-30-00  
 bill/subject

I support Bill HB387 with my whole heart. I am very thankful for representative Croft bringing this Bill. AGAIN I give full support.

Sincerely

*Keith Fredrickson*

Signed: *Keith Fredrickson*  
 Testifier

Self

Representing (Optional)

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Exempt ① prisons ② Civil Rights ??

1-LS1461NH

**CS FOR HOUSE BILL NO. 387(HES)**

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

**TWENTY-FIRST LEGISLATURE - SECOND SESSION**

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

**Offered: 3/15/00**

**Referred: State Affairs, Judiciary**

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

**A BILL**

**FOR AN ACT ENTITLED**

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

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

5 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new  
6 section to read:

7 **SHORT TITLE.** This Act may be cited as the "Alaska Religious Freedom Protection  
8 Act."

9 \* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section  
10 to read:

11 **FINDINGS.** The legislature finds that

12 (1) the First Amendment to the Constitution of the United States and art. I,  
13 sec. 4, Constitution of the State of Alaska, recognize and protect the right of free exercise of  
14 religion;

1 (2) in 1990, the United States Supreme Court retreated from over 200 years  
 2 of respect for the right to free exercise of religion in *Employment Division v. Smith*, 494 U.S.  
 3 872 (1990), an opinion written by Justice Scalia, by holding that the government no longer  
 4 had to make reasonable exceptions to general laws in order to accommodate the religious  
 5 beliefs of its citizens;

6 (3) while the Alaska Supreme Court has not chosen to follow this retreat from  
 7 protection for religion, the free exercise rights of Alaska citizens are so vital and fundamental  
 8 that it is in the public interest to provide a statutory guarantee of these rights to secure against  
 9 a change in judicial interpretation; and

10 (4) while it is improper for the legislature to tell the judiciary how to interpret  
 11 the Constitution of the State of Alaska, it is proper for the legislature to establish different  
 12 rights or to secure established rights in a different manner or to a different degree than the  
 13 minimum set by the Constitution of the State of Alaska as long as that legislative action does  
 14 not interfere with the rights of other persons.

15 \* Sec. 3. The uncoded law of the State of Alaska is amended by adding a new section  
 16 to read:

17 INTENT. It is not the intent of the legislature, by protecting the individual free  
 18 exercise of religion, to create an establishment of religion or an official state religion.

19 \* Sec. 4. AS 14.14 is amended by adding a new section to article 1 to read:

20 **Sec. 14.14.210. Personal exercise of religious freedom protected.** (a) A  
 21 school board or school district may not place a substantial burden on a person's free  
 22 exercise of religion unless

23 (1) the burden is in the form of a rule of general applicability and does  
 24 not intentionally discriminate against religion or among religions; and

25 (2) application of the burden to the person is essential to further a  
 26 compelling governmental interest and is the least restrictive means of furthering that  
 27 compelling governmental interest.

28 (b) A person may bring a civil action against a school board or school district  
 29 for a violation of this section, and the court may grant appropriate relief.

30 (c) This section may not be construed to create an establishment of religion  
 31 or to authorize the infringement of the individual rights of a third party.

1 \* **Sec. 5.** AS 29.10.200 is amended by adding a new paragraph to read:

2 (60) AS 29.71.070 (personal exercise of religious freedom protected).

3 \* **Sec. 6.** AS 29.71 is amended by adding a new section to read:

4 **Sec. 29.71.070. Personal exercise of religious freedom protected.** (a) A

5 municipality may not place a substantial burden on a person's free exercise of religion  
6 unless

7 (1) the burden is in the form of a rule of general applicability and does  
8 not intentionally discriminate against religion or among religions; and

9 (2) application of the burden to the person is essential to further a  
10 compelling governmental interest and is the least restrictive means of furthering that  
11 compelling governmental interest.

12 (b) A person may bring a civil action against a municipality for a violation of  
13 this section, and the court may grant appropriate relief.

14 (c) This section may not be construed to create an establishment of religion  
15 or to authorize the infringement of the individual rights of a third party.

16 (d) This section applies to home rule and general law municipalities.

17 \* **Sec. 7.** AS 44.62 is amended by adding a new section to article 2 to read:

18 **Sec. 44.99.130. Personal exercise of religious freedom protected.** (a) A

19 state agency may not place a substantial burden on a person's free exercise of religion  
20 unless

21 (1) the burden is in the form of a rule of general applicability and does  
22 not intentionally discriminate against religion or among religions; and

23 (2) application of the burden to the person is essential to further a  
24 compelling governmental interest and is the least restrictive means of furthering that  
25 compelling governmental interest.

26 (b) A person may bring a civil action against a state agency for a violation of  
27 this section, and the court may grant appropriate relief.

28 (c) This section may not be construed to create an establishment of religion  
29 or to authorize the infringement of the individual rights of a third party.

30 (d) In this section, "state agency" means a department, institution, board,  
31 commission, division, authority, public corporation, committee, or other administrative

- 1 unit of the executive branch of state government, including the University of Alaska,
- 2 the Alaska Railroad Corporation, and the Alaska Aerospace Development Corporation.



Representative Eric Croft

HB 387

**The Alaska Religious Freedom Protection Act**

**Sponsor Statement**

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

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

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

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

The Smith decision met a storm of protest. In 1993, a broad bipartisan majority of both houses of Congress passed The Religious Freedom Restoration Act (federal RFRA) and the bill was signed into law by President Clinton. RFRA attempted to use congressional power to restore the "compelling state interest" test for religious freedom. In 1997, the United States Supreme Court ruled that the federal RFRA statute was an unconstitutional extension of federal power. City of Boerne v. Flores, 521 U.S. 507 (1997). The Flores decision effectively left any protection of religious freedom to the individual states. The Alaska Supreme Court has consistently interpreted the free exercise clause of the Alaska Constitution to require a compelling state interest analysis.

See Frank v. State, 604 P.2d 1068 (Alaska 1979) (allowing a religious exemption for the taking of a moose for an Athabaskan funeral potlatch). There is no present indication that the Alaska Supreme Court intends to follow the direction of the Smith decision in interpreting the Alaska Constitution. However, a change in the composition of the court or judicial philosophy could lead to this change in the future.

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

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

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FACSIMILE TRANSMISSION SHEET

DATE: MARCH 30, 2000

TO: Jeanette JAMES

COMPANY: \_\_\_\_\_

FAX NUMBER: 1-907-465-2381

FROM: Rebecca A. Glidden

FAX NUMBER: (907) 883-5245

NUMBER OF PAGES INCLUDING COVER SHEET: 2

MESSAGE: Concerning RERA Bill of Alaska -  
HB 387

Jeanette James  
State Affairs Office  
1-907-465-2381

Dear Ms James,

I am greatly concerned about the possibility of the loss of our religious freedom - due to no bill effective in our state at this time. If the state of Alaska does not have to show "Burden of Proof" to restrict us, we have infinitely lost our religious rights afforded to us when our nation was established.

Please help us by letting Jeanne know that we need the RFRA Bill for Alaska - HB 387.

Thank you,

Rebecca G. Glidden

P.O. Box 104  
mile 1320 AK Hwy  
Tok, Alaska 99780  
1-907-883-5245

TOK CLINIC

P.O. BOX 289  
TOK, AK 99780  
(907) 883-5855

FACSIMILE TRANSMISSION SHEET

DATE: 3/30/00

TO: Jeanette James - Chair

COMPANY: State Affairs Committee

FAX NUMBER: 907-465-2381

FROM: Francine Lee

FAX NUMBER: (907) 883-5245

NUMBER OF PAGES INCLUDING COVER SHEET: 1

MESSAGE: I wish to register My Support  
of Bill HB 287. I want  
See The burden of Proof Put back  
on Government To Guarantee My  
First Amendment Rights

Thanks  
Francine

FACSIMILE TRANSMISSION FROM THE  
ALASKA CIVIL LIBERTIES UNION FOUNDATION

P.O. Box 201844 Anchorage, Alaska 99520-1844  
907-258-0044, Fax 907-258-0288, E-Mail: akclu@alaska.net

TO: Rep. Jeannette James FAX NO: 465-2381  
WITH: Chair, House State Affairs Committee  
FROM: Jennifer Rudinger DATE: 3-29-2000  
NO. PAGES IN TRANSMISSION (INCLUDING COVER SHEET): 3

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NOTES:

Dear Rep. James  
My Board President (June Pinnell -  
Stephens) and I enjoyed meeting with you  
to discuss this bill on Friday, March 10<sup>th</sup>.  
I am attaching a packet of materials, as  
promised, and I would appreciate it if  
you would distribute this packet to the other  
members of the State Affairs Committee  
Thursday morning before the hearing on  
CSHB 387.

I look forward to testifying to  
the Committee to explain the AKCLU's  
concerns and our suggestions for how to  
clarify in the bill that religious exercise  
should get the highest level of protection  
AS LONG AS OTHER PEOPLE DON'T GET  
HURT IN THE PROCESS.

- Jennifer

## **Alaska Civil Liberties Union**

*An Affiliate of the American Civil Liberties Union*

P. O. Box 201844, Anchorage, AK 99520-1844

Phone: (907) 258-0044 Fax: (907) 258-0288 Email: akclu@alaska.net

To: House Committee on State Affairs  
From: Jennifer Rudinger, Executive Director  
Date: March 30, 2000  
Re: CSHB 387 ("ARFPA")

Enclosed please find the following materials, to be included in the State Affairs Committee's bill packets for CSHB 387:

- (1.) 1-page summary of amendments suggested by AkCLU
- (2.) 11-page AkCLU position paper on CSHB 387
- (3.) Two 2-page letters by NAACP in opposition to federal RLPA unless civil rights are protected
- (4.) 2-page testimony by Texas Representative Scott Hochberg regarding the civil rights amendment to the Texas RFRA, signed into law by Gov. George W. Bush
- (5.) 2-page letter from National Fair Housing Alliance urging civil rights amendment in federal RLPA
- (6.) 2-page letter from Coalition for the Free Exercise of Religion opposing federal RLPA because it could jeopardize civil rights laws
- (7.) 1-page letter from the Episcopal Church withdrawing support for federal RLPA because of civil rights concerns
- (8.) 3-page letter from a consortium of church organizations (United Church of Christ, Friends Committee on National Legislation, United Synagogues of Conservative Judaism, Evangelical Lutheran Church in America, and Union of American Hebrew Congregations) opposing federal RLPA without civil rights protections
- (9.) 4-page Jewish Telegraphic Agency on-line article citing withdrawal of support for federal RLPA by Baptist and Jewish religious groups

I expect to be able to testify via teleconference from Anchorage on CSHB 387 in the House State Affairs Committee at 8:00 a.m., Thursday, March 30<sup>th</sup>, and I thank the Committee for allowing me to speak to our proposed amendments. Please feel free to call me at 258-0044 if I may be of assistance.

Sincerely,



## **Alaska Civil Liberties Union**

*An Affiliate of the American Civil Liberties Union*

P. O. Box 201844, Anchorage, AK 99520-1844

Phone: (907) 258-0044 Fax: (907) 258-0288 Email: [akclu@alaska.net](mailto:akclu@alaska.net)

To: House Committee on State Affairs  
From: Jennifer Rudinger, Executive Director  
Date: March 30, 2000

Re: Summary of Proposed Amendments Submitted re: CSHB 387 ("ARFPA")

The AkCLU proposes the following three amendments to clarify the intent of CSHB 387 and to protect religious freedom at the same time as CSHB 387 protects the rights of others.

- To clarify subsection (d) throughout CSHB 387, we suggest rephrasing (d) to read, "This section may not be construed to create an establishment of religion or to authorize the infringement of the rights of others by the person claiming a religious exemption to a facially neutral law of general applicability. This Act does not establish or eliminate a defense to a civil action or criminal prosecution under a federal, state, or local civil rights law."

The sponsor has stated that his intent in (d) is to prevent one person's free exercise of religion from infringing on the rights of another person. In other words, everyone has the right to practice his/her religion freely, exempt from laws that burden his/her religious exercise, as long as no one else is injured in the process. The AkCLU agrees with this assertion, but we feel that our amendment clarifies the necessary balancing and gives the court more guidance than the current language of (d). Our suggested amendment fairly balances the religious freedom of the individual with the rights of the rest of society by preventing harm to any third parties from the exercise of an individual's religious rights.

- We have some qualms about the wording of Section (4) in the legislative findings. We think that the intent of (4) is to protect the rights of others, but by limiting the protection to the degree currently set forth in the Alaska Constitution, Section (4) leaves open a lot of gray area where courts have not yet granted compelling interest status to the state's interest in remedying certain types of discrimination. We suggest the following wording for Section (4): "while it is improper for the legislature to tell the judiciary how to interpret the Constitution of the State of Alaska, it is proper for the legislature to codify protection for the free exercise of religion, so long as that legislative action does not authorize the infringement of the rights of others by the person claiming a religious exemption to a facially neutral law of general applicability."
- Finally, we urge the Committee to adopt a legislative finding that clarifies that this bill is not intended to alter the application of the *Swanner* decision.

**Alaska Civil Liberties Union  
Statement on the Protection of Religious Liberty  
Before the House Committee on State Affairs**

**Presented by Jennifer Rudinger, Executive  
Director**

**March 30, 2000**

**I. INTRODUCTION**

Madam Chairperson and members of the Committee,

The Alaska Civil Liberties Union (AkCLU) greatly appreciates the opportunity to present this position paper on the importance of ensuring that any state legislation enhancing the protection of religious exercise will not cause any unintended harm to the enforcement of state and local civil rights laws. The American Civil Liberties Union (ACLU) historically supports legislation providing stronger protection of religious exercise—even against neutral, generally applicable governmental restrictions. But our concern is that some courts may turn a statutory shield for religious exercise into a sword against state and local civil rights laws.

Thus, the AkCLU respectfully urges the Committee to amend the CS for House Bill 387 (Alaska Religious Freedom Protection Act, or "ARFPA") to clarify that the exercise of an individual's religious freedom will have no adverse consequences on the rights of others. We offer several amendments, described at the end of this paper, to prevent any unintended adverse consequences. For the past decade, the ACLU has fought in Congress and the courts to preserve or restore the highest level of constitutional protection for claims of religious exercise. We have directly represented persons asserting burdens on their religious beliefs, filed *amicus* briefs with the Supreme Court, and were founding members of the coalition that supported the Religious Freedom Restoration Act in 1993, and the Religious Liberty Protection Act ("RLPA") during most of the last Congress.

However, we are no longer part of the coalition supporting the federal RLPA, as introduced in the House, because we could not ignore the potentially severe consequences that it may have on state and local civil rights laws. Although we believe that courts should find civil rights laws compelling and uniform enforcement of those civil rights laws the least restrictive means, we know that at least several courts have already rejected that position. We agree with the Sponsor of ARFPA that the result reached by the Alaska Supreme Court in *Swanner* is a good result. *Swanner, d.b/a Whitehall Properties v. Anchorage Equal Rights Commission*, 874 P.2d 274 (Alaska 1994). However, we all know that the principle of *stare decisis* is not absolute. Furthermore, it is not at all clear whether the same compelling interest the *Swanner* Court found in preventing housing discrimination on the basis of marital status would also be extended to preventing discrimination on the basis of other classifications, such as familial status, pregnancy status, disability, or even religion.

There is much disagreement in other jurisdictions about the issues raised in *Swanner*. We have found that landlords across the country have been using state religious liberty claims to challenge the application of state and local civil rights laws protecting persons against marital

status discrimination. None of the claims, including those in *Swanner*, involved owner-occupied housing; all of the landlords owned so many investment properties that they were outside the state laws' exemptions for small landlords. These landlords all sought to turn the shield of religious exercise protections into a sword against the civil rights of prospective tenants.

To confuse matters even more, an en banc panel of the U.S. Court of Appeals for the Ninth Circuit (which governs Alaska) is currently reviewing a case brought by two commercial landlords in Anchorage who claim that compliance with state and municipal anti-discrimination laws protecting unmarried couples from discrimination based on marital status burdens the landlords' religious beliefs. *Thomas v. Anchorage Equal Rights Commission*, 165 F.3d 692 (9th Cir. 1999), *vacated and reheard en banc*. In a January, 1999, decision which has since been vacated, a three-judge panel of the Ninth Circuit originally held 2-1, with a very strong dissent, that the governmental interest in preventing marital status discrimination was not compelling. As a result, the landlords did not have to comply with those laws. However, as I have noted, this was a split decision which has since been vacated so that a larger panel of the Court could review this case. *Thomas* was reheard by the larger en banc panel just last Thursday, March 23<sup>rd</sup>. The AkCLU has submitted an *amicus* brief in this case, arguing that the state does have a compelling interest in preventing discrimination on the basis of marital status in housing, a la *Swanner*. It is not known when the Ninth Circuit will issue its decision.

In addition, the Massachusetts Supreme Court and a plurality of the Minnesota Supreme Court have also found that defendants in similar civil rights cases may have a religious liberty defense against state civil rights claims. The only two state court decisions that found in favor of the civil rights plaintiffs in similar cases are in California and Alaska—but both states are in the Ninth Circuit and might be governed by *Thomas*.

An improperly drafted statute could jeopardize more than marital status protection. The application of strict scrutiny in these types of cases calls into question all state and local civil rights laws which are not motivated by a "firm national policy" in favor of eradicating specific forms of discrimination. Thus, persons protected because of characteristics such as marital status, familial status, pregnancy status, disability, and perhaps religion itself, could find their protections under state or local laws eroded. An applicant for a job or housing may have no state or local law protection against having to answer questions such as: Is that your spouse? Are those your children? Are you straight or gay? Are you pregnant? Are you HIV-positive? Mentally ill? Physically disabled? What is your religion?

Even where a "firm national policy" in eradicating certain types of discrimination could be shown, such as classifications based on race or sex, courts may conclude that such a compelling governmental interest could be achieved without prohibiting the discriminatory conduct of the particular defendant claiming a religious exemption to a civil rights law. I am attaching a paper submitted by the NAACP to Congress in opposition to the federal RLPA. The NAACP paper analyzes this danger in greater detail.

In the wake of recent court decisions around the country, and in light of the lack of Alaskan precedent on so many of these issues, the Committee should not leave the problem of a state religious liberty statute's potential effect on state and local civil rights laws unresolved. The stakes are too high.

Instead, the AkCLU urges you to consider other alternatives for providing a shield for religious exercise without creating a sword against civil rights laws. As Texas State Representative Scott Hochberg's testimony to Congress (also attached with this paper) explains, Texas Governor George W. Bush signed into law—only last summer—a state RFRA that protects

Texas' civil rights laws. In Congress, the ACLU and many other groups are supporting a civil rights amendment to RLPA offered by Congressman Nadler that will have a similar result.

The ACLU very much appreciates your willingness to consider these concerns as you consider ARFPA. We believe that members of the legislature who justifiably care deeply about protecting both religious exercise and state and local civil rights laws should not be forced to choose. It is a false choice because both goals can be made compatible. We hope to work with members of the Committee to resolve this problem. Thank you once again for this opportunity to present our concerns.

## II. SCOPE OF THE POTENTIAL PROBLEM

This Committee is presently considering CSHB 387, the Alaska Religious Freedom Protection Act ("ARFPA"), which would provide extensive statutory protection for religious exercise to replace or enhance the constitutional protection previously afforded religious exercise prior to a 1990 Supreme Court decision that lowered the standard of review for religious exercise claims. CSHB 387 provides, in relevant part, that:

A [government entity] may not place a substantial burden on a person's free exercise of religion unless (1.) the burden is in the form of a rule of general applicability and does not intentionally discriminate against religion or among religions; and (2.) application of the burden to the person is essential to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

... This section may not be construed to create an establishment of religion or to authorize the infringement of the individual rights of a third party.

As currently drafted, CSHB 387 does not have any provision specifically addressing its potential effect on state and local civil rights laws.

The scope of the potential civil rights problem raised by religious freedom statutes is broad. The U.S. Court of Appeals for the Ninth Circuit is considering, and four state supreme courts have recently decided, five cases with nearly identical fact patterns, namely, landlords claiming that their religious beliefs defeat housing discrimination claims brought by unmarried heterosexual persons based on marital status. The decisions were split, with the vacated panel of the Ninth Circuit and the Massachusetts and Minnesota courts holding that a religious liberty defense could defeat civil rights claims based on state or local laws. The courts could apply the reasoning in those decisions to civil rights claims made by members of other groups that also receive less protection from the courts and the federal government. Although the Alaska Supreme Court in *Sivanner* upheld the anti-discrimination laws in the context of marital status, it is unclear whether the court's reasoning would extend to other types of civil rights claims.

The intent of at least some of the supporters of the federal RLPA is clear. Several witnesses during hearings before the House and Senate Judiciary Committees specifically stated their belief that RLPA could and should be used as a defense to civil rights claims based on gender, religion, sexual orientation, and marital status.

In applying standards of review substantially similar to the ARFPA and RLPA religious exercise standard, numerous courts have recently decided cases in which defendants raised a religious liberty defense to civil rights claims based on state or local laws protecting against discrimination in housing based on marital status. See *Smith v. Fair Employment & Housing Comm'n*, 913 P.2d 909 (Cal. 1996) [hereinafter "*Smith v. FEHC*"] (no substantial burden on religious exercise found), *Attorney General v. Desilets*, 636 N.E.2d 233 (Mass. 1994)

(remanding for further consideration of whether the governmental interest in eliminating discrimination based on marital status was compelling and whether uniform application of the state anti-discrimination law was the least restrictive means); *Swanner, d/h/u Whitehall Properties v. Anchorage Equal Rights Comm'n*, 874 P.2d 274 (Alaska), cert. denied, 115 S. Ct. 460 (1994) (the government's interest in providing equal access to housing was compelling and uniform application of the state anti-discrimination law was the least restrictive means); *Cooper v. French*, 460 N.W.2d 2 (Minn. 1990) ("marital status" did not include unmarried cohabiting couples; a plurality of the court also found no compelling governmental interest in preventing marital status discrimination).

In those housing cases, the owner-occupied exceptions found in all state fair housing laws did not apply; the rental properties at issue were *not* owner-occupied, but instead were used solely for investment purposes. See *Desilets*, 636 N.E.2d at 238 n.8 (law applicable only to "dwellings that are rented to three or more families living independently of each other"); *Swanner*, 874 P.2d at \_\_\_ (statute provides exception for individual home "wherein the renter or lessee would share common living areas with the owner"); *French*, 460 N.W.2d 2 (owner did not live in subject property, a two-bedroom house); *Smith v. FEHC*, 913 P.2d at 912 (Smith "does not reside in any of the four units"). The landlords all claimed that their sincerely held religious beliefs about premarital sexual relations required them to deny housing to unmarried couples, despite state or local laws prohibiting discrimination on the basis of marital status in housing. Although the religious liberty defense was not always successful, the courts were split on whether the anti-discrimination laws impose a substantial burden on the exercise of the landlord's religion, and on whether the governmental interest in eradicating marital status discrimination in housing is compelling and pursued by the least restrictive means.

Defendants in civil rights cases have also raised religious liberty defenses in cases involving such characteristics as race or sexual orientation and in contexts ranging from educational institutions to employment. For example, defendants or courts unsuccessfully raised religious rationales for racially discriminatory practices. E.g., *Bob Jones Univ. v. United States*, 461 U.S. 574, 604 (1983) (religious university claimed that its religious beliefs about miscegenation - interracial marriage - justified racial discrimination in admissions); see also *Loving v. Virginia*, 388 U.S. 1 (1967) (invalidating a Virginia antimiscegenation statute).<sup>2</sup>

Prior to the Supreme Court lowering the standard of review for religious liberty claims in *Employment Division of Oregon v. Smith*, 485 U.S. 660 (1988), the use of religious liberty defenses to civil rights claims was widespread. See, e.g., *Bob Jones Univ.*, 461 U.S. 574, 604; *EEOC v. Pacific Press Publishing Ass'n*, 676 F.2d 1272 (9th Cir. 1982) (religious publishing house claimed that dismissing employee in retaliation for bringing discrimination charges was based on religious doctrine forbidding members of the church from bringing lawsuits against the church); *Minnesota ex rel. McClure v. Sports & Health Club, Inc.*, 370 N.W.2d 844 (Minn. 1985) (health club's owners insisted on hiring only employees whose religious beliefs were consistent with the owners' religious beliefs despite state anti-discrimination law forbidding employment discrimination based on religion, sex, and marital status); *Gay Rights Coalition v. Georgetown Univ.*, 536 A.2d 1 (D.C. App. 1987) (religious university argued that its religious beliefs justified the denial of "university recognition" to gay student group, despite a District of Columbia civil rights law prohibiting discrimination on the basis of sexual orientation).

Currently, Alaska state and local laws also provide protection based on other characteristics that receive less than strict scrutiny, such as disability, sex, age, familial status, or pregnancy. Although the governmental interest in eradicating discrimination has been found

compelling in the context of *Swanner*, providing a new defense in civil rights actions will—at a minimum—increase the cost of litigation for plaintiffs. However, the risk for persons claiming civil rights protection based on characteristics that receive lower levels of scrutiny is substantial. Because many of the groups claiming protection under state and local civil rights laws do not currently receive heightened scrutiny for their claims in court, and receive little or no explicit federal statutory protection from Congress, it is likely that at least some courts would find that the governmental interest in ending discrimination against these groups is not compelling. As noted above, courts around the country are divided on these questions, and these decisions have come from states that traditionally have been vigorous and strict in enforcing their civil rights laws.

### III. APPLICATION OF THE FOUR-PART ARFPA TEST TO CIVIL RIGHTS CLAIMS

CSHB 387 provides, in relevant part, that:

A [government entity] may not place a substantial burden on a person's free exercise of religion unless (1.) the burden is in the form of a rule of general applicability and does not intentionally discriminate against religion or among religions; and (2.) application of the burden to the person is essential to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

Thus, in deciding a challenge to a civil rights claim based on a state or local anti-discrimination law, a court must apply a four-part test: (i) is the defendant's discrimination "religious exercise"?; (ii) does the applicable state or local anti-discrimination law "substantially burden" the defendant's religious exercise?; (iii) is the government's interest in eradicating the discrimination "compelling"?; and (iv) are uniformly applied anti-discrimination laws the least restrictive means of furthering any compelling governmental interest?

#### A. Is Discrimination "Religious Exercise" Under ARFPA?

The first part of the ARFPA test is whether a refusal to comply with civil rights laws is religious exercise. Because ARFPA does not define what constitutes a religious exercise, any civil rights defendant who can show that his or her discriminatory actions were "substantially burdened" will be able to meet this prong of ARFPA. Under the pre-*Smith* Free Exercise Clause jurisprudence which ARFPA purports to restore, the "Supreme Court free exercise of religion cases have accepted, either implicitly or without searching inquiry, claimants' assertions regarding what they sincerely believe to be the exercise of their religion, even when the conduct in dispute is not commonly viewed as a religious ritual." *Desilets*, 636 N.E.2d at 237 (citing *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 137 (1987); *United States v. Lee*, 455 U.S. 252, 257 (1982); *Thomas v. Review Bd. of the Ind. Employment Sec. Div.*, 450 U.S. 707, 715 (1981)).

Courts have held that refusal to rent an apartment to an unmarried heterosexual couple based on the landlord's religious belief that promoting premarital sex is sinful is religious exercise. See, e.g., *Smith v. FEHC*, 913 P.2d at 923 ("While the renting of apartments may not constitute the exercise of religion, if Smith claims the laws regulating that activity indirectly coerce her to violate her religious beliefs, we cannot avoid testing her claim under the analysis codified in RFRA."); *Desilets*, 636 N.E.2d at 237 ("Conduct motivated by sincerely held religious convictions will be recognized as the exercise of religion.") Similarly, in the

employment context, courts have accepted the argument that hiring decisions are religious exercise, if the employer can demonstrate that the decision was based on religious belief or doctrine. See, e.g., *Pacific Press*, 676 F.2d at 1280 (retaliatory action taken by religious publisher against employee who instituted EEOC proceedings alleging sex discrimination was religious exercise because church doctrine prohibited lawsuits by members against the church).

#### **B. Do State and Local Civil Rights Statutes "Substantially Burden" Religious Exercise?**

Congress has not defined "substantial burden," and there is no generally applicable test to determine whether a substantial burden exists. See *Smith v. FEHC*, 913 P.2d at 924. However, several circuit courts have adopted a broad reading of "substantial burden," holding that

a substantial burden on the free exercise of religion, within the meaning of the [RFRA], is one that forces adherents of a religion to refrain from religiously motivated conduct, inhibits or constrains conduct or expression that manifests a central tenet of a person's religious beliefs, or compels conduct or expression that is contrary to those beliefs.

*Muck v. O'Leary*, 80 F.3d 1175, 1179 (7th Cir. 1996); see also *Werner v. McCotter*, 40 F.3d 1476, 1480 (10th Cir. 1995) ("To exceed the 'substantial burden' threshold, governmental regulation must significantly inhibit or constrain conduct or expression that manifests some central tenet of a [person's] individual beliefs."); *Brown-El v. Harris*, 26 F.3d 68, 70 (8th Cir. 1994) (substantial burden imposed when person is compelled, "by threat of sanctions, to refrain from religiously motivated conduct") (quotations omitted). *But cf. Goodall v. Stafford Cty. Sch. Bd.*, 60 F.3d 168, 171-72 (4th Cir. 1995) (substantial burden not imposed where plaintiffs "have neither been compelled to engage in conduct proscribed by their religious beliefs, nor have they been forced to abstain from any action which their religion mandates that they take"); *Cheffer v. Reno*, 55 F.3d 1517, 1522 (11th Cir. 1995) (same); *Bryant v. Gomez*, 46 F.3d 948 (9th Cir. 1995) (*per curiam*) (same).

Economic cost alone does not constitute a substantial burden. See *Braunfeld v. Brown*, 366 U.S. 599, 605 (1961); *Smith v. FEHC* at 926-27. However, even those courts that have adopted a narrow definition of substantial burden—where a substantial burden is imposed only where someone is compelled to engage in conduct forbidden by his or her religion, or forbidden to engage in conduct mandated by religious belief—have held that imposing liability on an employer for non-compliance with employment anti-discrimination laws constitutes a substantial burden when compliance would contradict religious belief or doctrine. See, e.g., *Pacific Press*, 676 F.2d at 1280 ("there is a substantial impact on the exercise of religious beliefs because EEOC's jurisdiction to prosecute . . . will impose liability on Press for disciplinary actions based on religious doctrine").

One court has held that compliance with state fair housing laws does not impose a substantial burden, in part because "one who earns a living through the return on capital invested in rental properties can, if she does not wish to comply with an anti-discrimination law that conflicts with her religious beliefs, avoid the conflict, without threatening her livelihood, by selling her units and redeploying the capital in other investments." *Smith v. FEHC*, 913 P.2d at 925. The court also noted that "the landlord in this case does not claim that her religious beliefs require her to rent apartments; the religious injunction is simply that she not rent to unmarried couples. No religious exercise is burdened if she follows the alternative course of placing her capital in another investment." *Id.* at 926.

Because the court in *Smith v. FEHC* used an analysis for "substantial burden" that may be more stringent than the analysis required by ARFPA, Alaska courts are likely to view the "choice" of engaging in a different occupation or complying with the anti-discrimination law and violating one's religious beliefs as too harsh, and conclude that the burden is substantial. See, e.g., *Desilets*, 636 N.E.2d at 237-38 (substantial burden imposed because the civil rights law "affirmatively obliges the defendants to enter into a contract contrary to their religious beliefs and provides significant sanctions for its violation," and "both their nonconformity to the law and any related publicity may stigmatize the defendants in the eyes of many and thus burden the exercise of the defendants' religion"). Indeed, all courts, other than the court in *Smith v. FEHC*, that have considered the question in the housing context have found that the state or local anti-discrimination law substantially burdened the defendant's exercise of his or her religious beliefs.

### C. Is the Governmental Interest in Eradicating Discrimination Compelling?

The third part of the ARFPA test provides that only a compelling governmental interest justifies imposing a restriction on the exercise of religion. The courts that recently decided civil rights cases in which a defendant raised a religious liberty defense have split most sharply on this part of the test.

The governmental interest in eradicating certain types of discrimination, particularly racial and sex-based discrimination, should meet the compelling interest standard. See *Bob Jones Univ. v. United States*, 461 U.S. 574, 604 (1983) ("The governmental interest at stake here is compelling. . . . [T]he government has a fundamental, overriding interest in eradicating racial discrimination in education . . . . That governmental interest substantially outweighs whatever burden denial of tax benefits places on petitioners' exercise of their religious beliefs."); *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984) (the state government's "compelling interest in eradicating discrimination against its female citizens justifies the impact . . . on the male members' associational freedoms"). Such plaintiffs, however, should anticipate incurring added litigation costs as defendants raise the defense.

Because marital status, disability, and other newly protected classes currently do not receive the same level of judicial scrutiny as race and sex, however, it may be more difficult to persuade all courts that the governmental interest in preventing discrimination on those grounds is compelling. For example, courts have reached divided results in determining whether preventing discrimination based on characteristics such as sexual orientation or marital status is compelling. See, e.g., *Gay Rights Coalition v. Georgetown Univ.*, 536 A.2d 1, 37 (D.C. App. 1987) (District of Columbia's interest in prohibiting educational institutions from denying equal access to tangible benefits on the basis of sexual orientation is compelling); *Swanner*, 874 P.2d at 282-83 (Anchorage's interest in prohibiting marital status discrimination in housing is compelling), *Desilets*, 636 N.E.2d 233 (remanding for further consideration of whether the government's interest in prohibiting marital status discrimination is compelling); *French*, 460 N.W.2d at 10-11 (plurality op.) (no compelling governmental interest in ending discrimination against unmarried couples).

Because ARFPA requires that the "application of the burden to the person is essential to further a compelling governmental interest", courts could require the government to prove that there is a compelling interest in requiring the specific landlord or employer to comply with the civil rights law. See, e.g., *Desilets*, 636 N.E.2d at 238 (the issue is "whether the record establishes that the Commonwealth has or does not have an important governmental interest that is sufficiently compelling that the granting of an exemption to people in the position of the defendants would unduly hinder that goal"); *French*, 460 N.W.2d at 9 ("French must be granted

an exemption . . . unless the state can demonstrate compelling and overriding state interest, not only in the state's general statutory purpose, but in refusing to grant an exemption to French."). However, the majority of courts have considered simply whether the government had a compelling interest in enforcing the law at issue.

When a state or municipality chooses to target and prohibit a specific form of discrimination, presumably it does so because it believes that there is a serious problem. See *EEOC v. Pacific Press Publishing Ass'n*, 676 F.2d 1272, 1280 (9th Cir. 1982) ("By enacting Title VII, Congress clearly targeted the elimination of all forms of discrimination as a 'highest priority.'). Courts have sometimes found that legislative determination alone, however, is not always dispositive of whether the state's interest is compelling. See *Gay Rights Coalition*, 536 A.2d at 33 ("While not lightly to be disregarded, the Council's strong feelings do not resolve the issue whether its ban on sexual orientation discrimination represents a compelling governmental interest."); *Desilets*, 636 N.E.2d at 240 ("we are unwilling to conclude that simple enactment of the prohibition against discrimination based on marital status establishes that the state has" a compelling interest in ending marital status discrimination in housing).

To the extent that other state or municipal laws or policies discriminate against the class, courts are sometimes less likely to find that the governmental interest in ending discrimination against that class is compelling. Thus, in some states, anti-fornication or sodomy statutes have provided additional support for concluding that there is no compelling governmental interest in protecting against discrimination based on marital status or sexual orientation. See, e.g., *French*, 460 N.W.2d at 10 (plurality op.) ("How can there be a compelling state interest in promoting fornication when there is a state statute on the books prohibiting it?"); *Desilets*, 636 N.E.2d at 240 (the existence of a criminal statute against fornication "suggests some diminution" in the state's interest). On the other hand, the Alaska Supreme Court in *Swanner* noted that differential treatment of married and unmarried people in areas other than housing does not prove that the state views marital status discrimination in housing as insignificant.

Courts have taken different positions on defining the scope of the governmental interest at stake in prohibiting discrimination. Defining the governmental interest broadly, the *Swanner* court had no difficulty in concluding that the state's "interest in preventing discrimination based on irrelevant characteristics" is compelling. *Swanner*, 874 P.2d at 282-83. "The government views acts of discrimination as independent social evils even if the prospective tenants ultimately find housing. Allowing housing discrimination that degrades individuals, affronts human dignity, and limits one's opportunities results in harming the government's transactional interest in preventing such discrimination." *Id.*; accord *Gay Rights Coalition*, 536 A.2d at 37 ("The compelling interests . . . that any state has in eradicating discrimination against the homosexually or bisexually oriented include the fostering of individual dignity, the creation of a climate and environment in which each individual can utilize his or her potential to contribute to and benefit from society, and equal protection of the life, liberty, and property that the Founding Fathers guaranteed to us all.").

In contrast, the Massachusetts Supreme Court in *Desilets* insisted on a much more narrow reading of the governmental interest, noting that "[t]he general objective of eliminating discrimination of all kinds . . . cannot alone provide a compelling State interest that justifies the . . . disregard of the defendants' right to free exercise of their religion. The analysis must be more focused." *Desilets*, 636 N.E.2d at 238. This narrow reading led the court to insist that Massachusetts "demonstrate that it has a compelling interest in the elimination of discrimination

in housing against an unmarried man and an unmarried woman who have a sexual relationship and wish to rent accommodations to which [the civil rights statute] applies." *Id.*

**D. Are Uniformly Applied Anti-Discrimination Laws the Least Restrictive Means Available?**

The fourth part of the ARFPA test is whether the challenged state or local law uses the least restrictive means to achieve the government's compelling interest. Several courts have held that uniform application of anti-discrimination laws is the least restrictive means available. *See, e.g., Swanner*, 874 P.2d at 280, n.9 ("The most effective tool the state has for combating discrimination is to prohibit discrimination; these laws do exactly that. Consequently the means are narrowly tailored and there is no less restrictive alternative."); *Gay Rights Coalition*, 536 A.2d at 39 ("The District of Columbia's overriding interest in eradicating sexual orientation discrimination, if it is ever to be converted from aspiration to reality, requires that Georgetown equally distribute tangible benefits to the student groups."); *McClure*, 370 N.W.2d at 853 ("the state's overriding compelling interest of eradicating discrimination based upon sex, race, marital status, or religion could be substantially frustrated if employers, professing as deep and sincere religious beliefs as those held by appellants, could discriminate against the protected class"). However, the Massachusetts Supreme Court remanded that question when it held that the government may be required to prove that "uniformity of enforcement of the statute . . . [is] the least restrictive means for the practical and efficient operation of the anti-discrimination law." *Desilets*, 636 N.E.2d at 241.

Persons using a religious liberty defense to a civil rights claim have argued that uniform application of civil rights laws cannot be the least restrictive means if the civil rights statute in question contains exemptions for religious organizations and small landlords or employers. Those defendants have argued that a less restrictive means is available, namely, granting an exemption to persons who hold sincere religious beliefs. For example, one court found that "the compulsion of the state's interest appears somewhat weakened because the statute permits discrimination by a religious organization in certain respects . . . if to do so promotes the principles for which the organization was established." *Desilets*, 636 N.E.2d at 240. However, another court recognized that while the government permits exemptions for "religious corporations when religious beliefs shall be a bona fide occupational qualification," "the state's overriding interest permits of no exemption to appellants in this case. . . . [W]hen appellants entered into the economic arena and began trafficking in the market place, they have subjected themselves to the standards the legislature has prescribed not only for the benefit of prospective and existing employees, but also for the benefit of citizens of the state as a whole in an effort to eliminate pernicious discrimination." *McClure*, 370 N.W.2d at 853. The split on how to apply the least restrictive means part of the strict scrutiny test is particularly important when most state and local civil rights laws have numerous exemptions.

Finally, as we pointed out in our introduction to this position paper, we concur with the analysis by the NAACP. We share their concerns, and those of many other civil rights and religious groups, that even where a "firm national policy" in eradicating certain types of discrimination could be shown, such as classifications based on race or sex, courts may conclude that such a compelling governmental interest could be achieved without prohibiting the discriminatory conduct of the particular defendant claiming a religious exemption to a civil rights law.

#### IV. CONCLUSION AND SUGGESTED AMENDMENTS

The AkCLU urges the Committee, as it addresses the problem of increasing protection for religious exercise against neutral state and local laws, to avoid unintentional harm to the enforcement of state and local civil rights laws. Without careful drafting, a state religious liberty statute could provide a new defense against state and local civil rights claims made by persons who already receive the least protection from the courts and the federal government. This Committee should not pass any religious liberty legislation without ensuring that it will not deprive Alaskans of their civil rights under state and local laws.

The AkCLU therefore proposes the following three amendments to clarify the intent of the bill and to protect religious freedom at the same time as it protects civil rights.

- (1.) To clarify subsection (d) throughout CSHB 387, we suggest rephrasing (d) to read, "This section may not be construed to create an establishment of religion or to authorize the infringement of the rights of others by the person claiming a religious exemption to a facially neutral law of general applicability. This Act does not establish or eliminate a defense to a civil action or criminal prosecution under a federal, state, or local civil rights law."

The sponsor has stated that his intent in (d) is to prevent one person's free exercise of religion from infringing on the rights of another person. In other words, everyone has the right to practice his/her religion freely, exempt from laws that burden his/her religious exercise, as long as no one else is injured in the process. The AkCLU agrees with this assertion, but we feel that our amendment clarifies the necessary balancing and gives courts more guidance than the current language of (d).

To cite for you a specific example where we support ARFPA, last year the AkCLU looked into a case in which a Muslim couple objected on religious grounds to the State of Alaska performing an autopsy on their deceased infant. Alaska law requires an autopsy to be performed in all SIDS (Sudden Infant Death Syndrome) cases, but the parents in this case sincerely believed, in accordance with their faith, that their baby would not go to Heaven if the baby's body was not presented whole unto God. (FYI, other faiths, such as Hmong and Orthodox Jews, also profess this religious tenet.) Since the cause of death can often be determined by "less restrictive" means that do not involve cutting into the corpse - i.e. magnetic resonance imaging, or MRI - CSHB 387 would protect the rights of relatives to be exempt from the state's generally applicable autopsy laws. Similarly, if the cause of death for suspected SIDS cases can be determined by means that do not infringe on religion, then the state should respect the religious practices of the parents of that infant.

Our suggested amendment fairly balances the religious freedom of the individual with the rights of the rest of society by preventing harm to any third parties from the exercise of an individual's religious rights.

- (2.) We have some qualms about the wording of Section (4) in the legislative findings. We think that the intent of (4) is to protect the rights of others, but by limiting the protection to the degree currently set forth in the Alaska Constitution, Section (4) leaves open a lot of gray area where courts have not yet granted compelling interest status to the state's interest in remedying certain types of discrimination. For

purposes of clarification, we suggest the following wording for Section (4): "while it is improper for the legislature to tell the judiciary how to interpret the Constitution of the State of Alaska, it is proper for the legislature to codify protection for the free exercise of religion, so long as that legislative action does not authorize the infringement of the rights of others by the person claiming a religious exemption to a facially neutral law of general applicability."

- (3.) Finally, we urge the Committee to adopt a legislative finding that clarifies that HB 387 is not intended to alter the application of the Alaska Supreme Court's decision in *Swanner*.

#### ENDNOTES

<sup>1</sup>In addition, the supreme courts of Michigan and Illinois recently vacated decisions that had held that their respective state fair housing laws protecting persons based on marital status served a compelling governmental interest and were narrowly tailored. *McCready v. Hoffius*, 1999 Mich. Lexis 694 (Mich. April 16, 1999), *vacating and remanding*, 586 N.W.2d 723 (Mich. 1998); *Jasniewski v. Rushing*, 685 N.E.2d 622 (Ill. 1997), *vacating for lack of case or controversy*, 678 N.E.2d 743 (Ill. App. 1997). The Michigan Supreme Court reversed its own earlier decision after newly elected justices joined the court. The Illinois Supreme Court vacated an intermediate appellate decision for the procedural reason of a lack of a case or controversy.

<sup>2</sup>In *Loving*, the Supreme Court reversed a decision of the Virginia Supreme Court which had affirmed, in part, a Virginia state trial court decision that stated:

Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with this arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix.

Decision of Circuit Court for Caroline County (Jan. 6, 1959), (*quoted in Loving*, 388 U.S. at 3).



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## THE POTENTIAL HARMFUL EFFECTS OF THE RELIGIOUS LIBERTIES PROTECTION ACT OF 1999 IN RACE DISCRIMINATION CASES

### ◆ **RLPA Will Permit Defendants in Civil Rights Cases to Avoid Liability by Claiming Their Discriminatory Acts are Protected under RLPA.**

RLPA would establish a defense for all persons who claim that their discriminatory acts were compelled by their religious beliefs. As a result, landlords, employers, motel and restaurant operators, schools, and many others who would discriminate against persons on the basis of race could attempt to avoid liability under state and local antidiscrimination laws by asserting that their religious beliefs prevented them from treating persons equally. Lawyers hired to defend claims of discrimination are likely routinely to inform their clients that such a defense is available.

### ◆ **RLPA Will Force Plaintiffs to Prove the Justification for Each Antidiscrimination Law.**

An individual victim of discrimination proceeding under an anti-bias statute could overcome a RLPA defense only by proving that the antidiscrimination statute serves a compelling interest and that the statute is the least burdensome means to achieve that compelling interest. As a result, a RLPA defense would place the burden on private citizens in a discrimination case to gather substantial historical and contemporary materials that prove a state or locality's commitment to racial equality. The plaintiff would also be required to prove that the state or locality's design of the statute does not unnecessarily burden others. Regardless of the ultimate outcome of each RLPA defense, RLPA will create an additional burden for individuals attempting to vindicate their civil rights.

### ◆ **RLPA Defenses May Preclude Plaintiffs from Proceeding under Some Laws Prohibiting Racial Discrimination.**

Even if plaintiffs are ultimately successful in demonstrating that states and localities have a compelling interest in eradicating racial discrimination, courts may conclude that such an interest could be achieved without prohibiting the discriminatory conduct of the defendant. Any defendant raising a RLPA defense will be able to identify other exemptions in the relevant state or local antidiscrimination law and may be able to argue successfully that exempting one more entity or group from the application of the law would not impede the eradication of discrimination. For example, many state fair housing statutes do not apply to the rental of rooms in owner-occupied single-family dwellings. A court may conclude that if the state can achieve its goal of eradicating racial discrimination in housing rentals without applying its fair housing statute to the numerous rental transactions involving owner-occupied single-family dwellings, then the state may also achieve its goal if the statute did

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not apply to rental transactions made by landlords with religious beliefs that could cause them to discriminate on the basis of race. The result could be to close off large areas of everyday life from state or local protections against discrimination.

◆ **The RLPA Defense May Be Invoked in a Variety of Circumstances.**

The RLPA defense will likely be often raised in the context of discrimination against persons because of their interracial associations. Cases of landlords refusing because of claimed religious beliefs to rent to interracial couples are not uncommon. The asserted burden on a landlord's exercise of religion if forced to rent to an interracial couple has been a defense raised in fair housing cases, including those filed with the United States Department of Housing and Urban Development. Some defendants may raise the RLPA defense even when they discriminate against persons simply because they are minorities. For example, white separatist groups have begun owning and operating racially exclusive rental housing and defending that exclusivity on the grounds that it is required by their religious beliefs. Further, RLPA defenses may disproportionately affect African Americans and other minorities in the context of discrimination against other groups, such as unwed mothers. RLPA defenses will also arise in cases involving discrimination based on religion that may have a larger impact on persons of a particular race or national origin.

◆ **Defendants in Race Discrimination Cases Have Successfully Used RLPA-like Defenses.**

Although ultimately reversed by an appellate court, a federal district court in Virginia upheld a religious school's RLPA-like defense in a case challenging the school's dismissal of a student on the grounds that her interracial relationship violated the school's religious tenets. *Fielder v. Marumco Christian School*, 486 F. Supp. 960 (E.D. Va.), reversed, 631 F.2d 1144 (4<sup>th</sup> Cir. 1980). In Cincinnati, a man relied in part on a RLPA-like defense when successfully overturning his conviction for publishing material that promoted racial hatred. *City of Cincinnati v. Blake*, 8 Ohio App. 2d 143 (1966). In *Brown v. Dade Christian Schools, Inc.*, 556 F.2d 310 (5<sup>th</sup> Cir. 1977), the district court found that a sectarian school's policy of barring children from enrolling on the grounds of their race was not one adopted in the exercise of religion. One of the appellate judges voting to overturn that ruling argued that "no court should have the power to compel any church to admit any student to any school operated for religious reasons." *Brown*, 556 F.2d at 326 (Coleman, J., dissenting). Six judges found a serious conflict between the free exercise clause and antidiscrimination policy and voted to remand the case to the district court for further consideration. *Brown*, 556 F.2d at 326 (Roney, J., dissenting).

◆ **RLPA's Harmful Effect on Anti-Discrimination Laws Can Be Eliminated by a Provision Exempting Civil Rights Laws.**

Defendants would be unable to invoke RLPA to avoid liability for their discriminatory acts if RLPA contained a provision stating that the Act shall not be construed to provide a defense to any civil rights law. A civil rights exception would permit plaintiffs to vindicate their civil rights without affecting RLPA's purpose of enhancing religious liberties in other contexts.



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July 14, 1999

Congressman John Conyers, Jr  
2426 Rayburn Office Building  
Washington, D.C. 20515-2214

Dear Congressman Conyers:

The NAACP Legal Defense and Educational Fund, Inc. ("LDF"), urges you to oppose final passage of H.R. 1691, The Religious Liberty Protection Act of 1999 ("RLPA"). LDF litigates civil rights cases throughout the country on behalf of African Americans and other minorities in an effort to preserve equity, fairness and justice in education, employment, housing, health care, environment, criminal justice, and voting rights. RLPA poses a potential threat to this type of litigation as RLPA may be used in a manner to limit African Americans and other minorities' rights to seek protection from discrimination under state and local antidiscrimination laws.

Defendants in discrimination cases brought under state or local fair housing, employment, etc., laws may seek to avoid liability by claiming protection under RLPA. This would require individuals and groups proceeding under such state and local antidiscrimination laws to prove that the law they wish to utilize is a least restrictive means of furthering a compelling governmental interest. This requirement would significantly increase the litigation time and expense of pursuing even workaday antidiscrimination actions and as a result could hinder or preclude some plaintiffs from pursuing their claims.

Even if the courts ultimately rule, as they should, that the various state and local antidiscrimination statutes are least restrictive means to further compelling governmental interests, the uncertainty of whether statutes will withstand a RLPA defense may dissuade plaintiffs from seeking redress under antidiscrimination statutes. Of course, if any court were to determine that a particular antidiscrimination statute were not a least restrictive means of furthering a compelling governmental interest, a successful RLPA defense would completely bar a plaintiff from proceeding under that statute. In either event, RLPA will create an additional burden for plaintiffs attempting to vindicate their civil rights.

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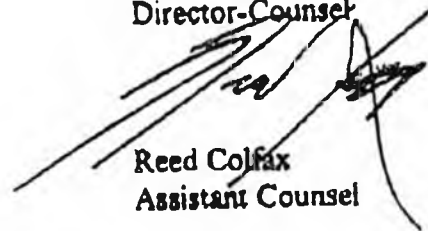
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For these reasons, LDF asks that you oppose RLPA, which may be used as a mechanism to limit African Americans and other minorities from proceeding under the state and local laws that prohibit discrimination in a wide range of areas.

Sincerely,  
Elaine R. Jones  
Director-Counsel



Reed Colfax  
Assistant Counsel

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TESTIMONY OF TEXAS STATE REPRESENTATIVE SCOTT HOCHBERG  
SENATE JUDICIARY COMMITTEE - JUNE 23, 1999

Mr. Chairman and Members of the Committee,

I appreciate the opportunity to share some thoughts with you today.

Two weeks ago, Governor George W. Bush signed the Texas Religious Freedom Restoration Act (Texas RFRA) into law. I was privileged to work with Gov. Bush as the House author of this important bill. And I'm proud of the bill, because I believe it strengthens religious freedom in Texas without weakening other fundamental individual rights.

Long before I ever heard of the Smith case or the federal RFRA, I knew how hard it was for individuals to assert their first amendment religious freedoms against the bureaucracy. I've fought battles with our prison system over allowing Jewish prisoners to practice their faith. And I found I had to pass a law before I could be sure that judges would not repeat the incident that occurred in a Houston courtroom, where an Orthodox Jewish man was required to remove his skullcap, in direct conflict with his religious practice, before he could testify.

So when the American Jewish Committee and the Anti-Defamation League, on whose local boards I serve, put the state Religious Freedom Restoration Act on their legislative agendas, I was eager to become the lead sponsor. And I was certainly encouraged by the early and strong support of Gov. Bush, who announced just before the opening of our legislative session that Texas RFRA would be one of his legislative priorities as well.

Of course you know that no bill is a simple bill. Early on, I saw that the model RFRA language left open a possibility that the act could be used to get around Texas' civil rights laws. That concern was first raised to me by the AJC, and then later by the ADL, the two groups that had initially brought me the legislation, and two groups with long histories of defending civil rights internationally.

Clearly, the intended purpose of this bill was not to weaken civil rights laws. When Gov. Bush talked about the need for RFRA, he cited examples, including the skullcap situation, where RFRA could be used to help protect a person's religious practice from government interference. None of the examples were about giving any individual the right to deny

another person's equal protection rights.

The Texas Constitution is very clear about the primacy of civil rights. The third and fourth sections of our Bill of Rights guarantee equal protection under the law. The next three sections protect religion and guarantee freedom of worship. So, clearly, our framers saw these fundamental rights as being on the same plane.

I wanted to pass a strong RFRA in Texas, but not one that would rewrite Texas civil rights laws. So I added language clarifying that the act neither expanded nor reduced a person's civil rights under any other law. That language drew no objection initially.

But later, some RFRA coalition members argued that to completely move civil rights out from under RFRA might imply that even a religious organization could not use religion as a criteria in hiring - an exemption that is included in our state labor code as well as in federal law.

So coalition members helped craft language to apply RFRA to the special circumstances of religious organizations, while continuing to leave the task of balancing religious and equal protection rights to the courts. That language was unanimously adopted in a bipartisan amendment on the House floor, and remained intact in the bill as it was signed by Gov. Bush.

The RFRA coalition in Texas endorsed the civil rights language and strongly supported the bill, from the Texas Freedom Network on the left to the Liberty Legal Institute on the right. I must tell you, however, that one or two conservative groups in this very broad coalition objected and went so far as to ask Gov. Bush to veto the bill. He chose not to do so. Those particular groups said that they had hoped to use RFRA to do exactly what others had feared - to seek to override, in court, various civil rights laws that they had not been able to override legislatively.

I urge you to adopt a strong law to reinforce what we have done in Texas. But in so doing, I would also ask that you follow the wisdom of our governor and our legislature and include language to protect state civil rights laws.

I offer whatever assistance I can be to help develop and refine the language of this bill so that those goals are met.

This is too important a bill to be lost as a result of a fear of weakening civil rights. But likewise, national and state civil rights policies are too important to be weakened as an unintended by-product of a bill with the noble purpose of strengthening religious rights.

Thank you again for your consideration, your time and your hard work.

# NATIONAL FAIR HOUSING ALLIANCE

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### Executive Director

Shanna L. Smith  
Washington, DC

July 26, 1999

The Honorable Orrin G. Hatch  
131 Senate Russell Building  
1<sup>st</sup> & C. Streets, NE  
Washington, D.C. 20515

Senator Edward M. Kennedy  
315 Senate Russell Building  
1<sup>st</sup> & C. Streets, NE  
Washington, D.C. 20515

Dear Senators Hatch and Kennedy:

The National Fair Housing Alliance (NFHA), a consortium of over 100 groups across the country dedicated to enforcement of fair housing laws at the federal, state and local level, urges you to support the amendment of the Religious Liberty Protection Act (RLPA) to include an exception for civil rights laws. As written, the bill would inadvertently become an unintended shield for grossly discriminatory conduct and undercut carefully crafted exceptions already contained in civil rights laws.

Without a civil rights amendment to RLPA, Americans currently protected against discrimination in housing based on race, religion and national origin could find themselves at the mercy of discriminators who claim that discrimination is justified by their religious beliefs. The federal Fair Housing Act, which was passed in 1968 and amended in 1988 with strong bipartisan support, protects Americans from discrimination in housing based on race, color, religion, national origin, sex, disability and familial status (the presence of children in a household). It already contains a carefully crafted exemption, included in the law since its initial passage, allowing housing operated in conjunction with religious organizations to favor members of that religion unless membership in the religion is limited based on race, color or national origin. Similar state and local laws with similar exemptions have been passed throughout the country, some also protect against discrimination based on marital status and sexual orientation.

Passage of RLPA without an exception preserving these civil rights protections would inadvertently create a new, broad defense to civil rights laws. Conduct that is currently prohibited by civil rights laws would be allowed in the name of religion.

For example, as it currently stands, RLPA would allow:

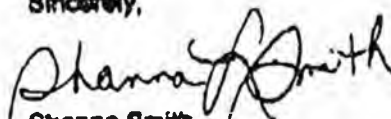
- A private landlord with a 200-unit apartment complex to refuse to rent to interracial couples because racial mixing violated his religious beliefs.
- Members of a religious organization that supported racial separatism and religious hatred to develop a subdivision which excluded African Americans and Jews in the name of religion.

- A KKK member to refuse to sell his home to a person of color if he cited the Bible in support of his refusal.
- The same KKK member to act criminally by burning a cross or physically threatening a person of color who moved into his neighborhood.
- A landlord who refused to rent to a single woman who was pregnant, and later claimed it was because of personal religious beliefs.
- A property management company which refused to handle transactions with unmarried couples because it violated the religious beliefs of its owner.

And, in a most ironic reversal of the intended consequences of RLPA, it would permit a private housing provider to use religious beliefs to discriminate based on religion. A large private landlord could exclude people who were not Christian if he defended the denial of housing due to his Christian beliefs. The manager of a housing authority could decide not to rent to a Black Muslim, ostensibly based on his religious beliefs. Seventh Day Adventists could be preferred or A.M.E. members refused or Baptists evicted in favor of Presbyterians. Or, as was reported to NFHA just last week, the owner of twelve rental units could advertise for white, Christian, male tenants and claim religious beliefs for the preference.

NFHA strongly urges your continued support for fair housing rights for all Americans by voting for an amendment to RLPA which protects federal, state, and local civil rights laws and their existing exemptions from the ambit of RPLA. NFHA joins with other organizations in urging you not to defeat civil rights protections when you act to protect religious tolerance.

Sincerely,

  
Shanna Smith  
Executive Director

September 24, 1999

Dear Senator:

The undersigned members of the Coalition for the Free Exercise of Religion are writing to inform you that we have reluctantly withdrawn our support for the Religious Liberty Protection Act (RLPA). Our decision does not represent a change in commitment. We remain strongly committed to finding a solution that would undo the damage to religious liberty done by the Supreme Court's 1990 ruling in *Employment Division v. Smith*. We are convinced that the compelling state interest standard is the proper standard to apply when governmental actions substantially burden the free exercise of religion. Religious liberty is a cherished part of American life and deserves a high level of protection.

However, we have become convinced that our efforts should be refocused to deal specifically with areas where the threat to religious liberty is currently the greatest and Congress's power to act is strongest, such as land use.

Initially, three rulings handed down by the Supreme Court in late June, shortly before the House passed RLPA, coupled with previous Court rulings have raised serious concerns about whether the current Supreme Court would strike down any broad-based legislation such as RLPA. These three rulings—in *Alden v. Maine*, *College Savings Bank v. Florida Prepaid*, and *Florida Prepaid v. College Savings Bank*—continue a trend by the Court to reduce Congress's power to impose legislative restrictions on state activity, making it more likely that this particular Court would overturn RLPA.

The prospect that the Court would overturn RLPA raises further concerns. First, it would delay and further erode the effort to restore legal protections to those most seriously damaged by *Smith*. Second, a ruling overturning RLPA could set a precedent that could jeopardize civil rights and other laws that are based on similar constitutional principles as RLPA.

In addition, some Religious Right leaders, organizations, and allies have made statements that suggest a rejection of one of the fundamental principles behind this bill—the principle of outcomes neutrality. The bill was designed to create a framework within which to resolve religious liberty claims, not to dictate a specific outcome in a particular set of cases.

Some of the same people have signaled an intention to use RLPA as a means to restrict others' civil rights. We and others in the civil rights community are deeply concerned about this possibility. While we believe that this strategy would not prevail ultimately, we also believe that this battle would harm both civil rights and religious liberty by producing a divisive, rancorous public climate that would pit our fundamental liberties against each other.