

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

10104 SENATE LABOR & COMMERCE

1 or practice [ACTS OR PRACTICES] and by prohibiting them.

2 * Sec. 3. AS 21.36.020 is amended to read:

3 Sec. 21.36.020. **Unfair methods, deceptive acts prohibited.** A person may
4 not engage in an act or a trade practice in this state or relative to a subject resident,
5 located, or to be performed in this state that is defined in this chapter as, or determined
6 under this chapter to be, an unfair method of competition or an unfair or deceptive act
7 or practice in the business of insurance.

8 * Sec. 4. AS 21.36.070(b) is amended to read:

9 (b) A person providing the director with information concerning the financial
10 condition or an act or a practice [PRACTICES] of a licensee of the division is
11 immune from liability for defamation.

12 * Sec. 5. AS 21.36.125 is amended to read:

13 Sec. 21.36.125. **Unfair claim settlement practices.** A person may not commit
14 [OR ENGAGE IN WITH SUCH FREQUENCY AS TO INDICATE A PRACTICE]
15 any of the following acts or practices:

16 (1) misrepresent facts or policy provisions relating to coverage of an
17 insurance policy;

18 (2) fail to acknowledge and act promptly upon communications
19 regarding a claim arising under an insurance policy;

20 (3) fail to adopt and implement reasonable standards for prompt
21 investigation of claims;

22 (4) refuse to pay a claim without a reasonable investigation of all of
23 the available information and an explanation of the basis for denial of the claim or for
24 an offer of compromise settlement;

25 (5) fail to affirm or deny coverage of claims within a reasonable time
26 of the completion of proof-of-loss statements;

27 (6) fail to attempt in good faith to make prompt and equitable
28 settlement of claims in which liability is reasonably clear;

29 (7) compel an insured or third-party claimant [INSUREDS] to
30 litigate for recovery of an amount [AMOUNTS] due under an insurance policy
31 [POLICIES] by offering substantially less than an amount [THE AMOUNTS]

1 ultimately recovered in an action [ACTIONS] brought by the insured or third-party
 2 claimant [THOSE INSUREDS];

3 (8) attempt to make an unreasonably low settlement by reference to
 4 printed advertising matter accompanying or included in an application;

5 (9) attempt to settle a claim on the basis of an application that has been
 6 altered without the consent of the insured;

7 (10) make a claims payment without including a statement of the
 8 coverage under which the payment is made;

9 (11) make known to an insured or third-party claimant [INSUREDS
 10 OR CLAIMANTS] a policy of appealing from an arbitration award [AWARDS] in
 11 favor of an insured or third-party claimant [INSUREDS OR CLAIMANTS] for the
 12 purpose of compelling the insured or third-party claimant [THEM] to accept a
 13 settlement or compromise [SETTLEMENTS OR COMPROMISES] less than the
 14 amount awarded in arbitration;

15 (12) delay investigation or payment of claims by requiring submission
 16 of unnecessary or substantially repetitive claims reports and proof-of-loss forms;

17 (13) fail to promptly settle claims under one portion of a policy for the
 18 purpose of influencing settlements under other portions of the policy;

19 (14) fail to promptly provide a reasonable explanation of the basis in
 20 the insurance policy in relation to the facts or applicable law for denial of a claim or
 21 for the offer of a compromise settlement; or

22 (15) offer a form of settlement or pay a judgment in any manner
 23 prohibited by AS 21.89.030.

24 * Sec. 6. AS 21.36.125 is amended by adding a new subsection to read:

25 (b) The provisions of (a)(7) or (11) of this section do not create a private cause
 26 of action against an insurer by a third-party claimant.

27 * Sec. 7. AS 21.36 is amended by adding a new section to read:

28 **Sec. 21.36.212. Prohibited denial of claim for causation.** An insurer may
 29 not deny a claim if a risk, hazard, or contingency insured against is the dominant cause
 30 of a loss and the denial occurs because an excluded risk, hazard, or contingency is also
 31 in a chain of causes but operates on a secondary basis.

DAVE,

Now critical is Sec 7
to you in this Bill?

Can you do w/out it?

Its very important
to the division and I
agree with them
This will be a real
problem in the future
if we don't fix this.

1 * **Sec. 8.** AS 21.36.320(g) is amended to read:

2 (g) In determining the penalty imposed under (d) and (e) of this section, the
3 director shall consider the amount of loss caused by the violation and the amount of
4 benefit derived by the person by reason of the violation and may consider other
5 factors, including the seriousness of the violation, whether the violation was a single
6 act or a trade practice, and deterrence of the violator or others.

7 * **Sec. 9.** This Act takes effect January 1, 2001.

Subject: Legal Opinion on AS 21.36.150

Date: Mon, 24 Jan 2000 16:52:24 -0900

From: Bob_Lohr@dced.state.ak.us

To: Jerald R Mackie <Senator_Jerry_Mackie@legis.state.ak.us>


CC: David D Gray <David_Gray@legis.state.ak.us>

Dear Mr. Chairman,

During last week's hearing on SB 177, the "Alaska Insurance Consumers Protection Act", Michael Lessmeier representing State Farm suggested that the division of insurance had ample authority under AS 21.36.150 to pursue a single unfair claims act. I indicated that I believed that this would be difficult to sustain. You requested a legal opinion on the question. I have attached a copy of the opinion on this question prepared by Assistant Attorney General Virginia Rusch.

Please let me know if you have any questions. Also, if you would like me to distribute this opinion to individual committee members, please let me know.

Bob Lohr, Director
Division of Insurance
269-7896

 1 Legal Opinion AS 21-36-150.doc	Name: 1_Legal Opinion AS 21-36-150.doc Type: Winword File (application/msword) Encoding: base64 Download Status: Not downloaded with message
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MEMORANDUM

State of Alaska Department of Law

TO: Robert A. Lohr
Director
Division of Insurance
Department of Community &
Economic Development

FROM: Virginia A. Rusch
Assistant Attorney General
Fair Business Practices Section
Anchorage

DATE: January 25, 2000

FILE NO.:

TEL. NO.: 269-5229

SUBJECT: AS 21.36.150

In connection with a pending bill that would modify AS 21.36.010, AS 21.36.020 and AS 21.36.125 to prohibit a single unfair and deceptive act (as well as repetitive acts constituting an unfair and deceptive practice), you have asked for an interpretation of AS 21.36.150.¹ Specifically, you asked

¹ This statute provides:

Sec. 21.36.150. Procedures as to undefined practices.

(a) If the director believes that a person engaged in the insurance business is engaging in this state in an unfair method of competition or in an unfair or deceptive act or practice in the conduct of the business that is not defined as being unfair or deceptive under this chapter, the director shall hold a hearing on the matter, if the director believes it would be in the public interest to do so after giving notice of the hearing and of the charges. Upon conclusion of the hearing the director shall make a written report of the findings of fact relative to the charges and serve a copy upon the person and any intervenor at the hearing.

(b) If the report charges a violation of this chapter and if the method of competition, act, or practice has not been discontinued, the director may, through the attorney general of this state, at any time after the service of the report, cause an action to be instituted to enjoin and restrain the person from engaging in the method, act, or practice. In the action the court may grant a restraining order or injunction upon just terms, but the state may not be required to give security before the issuance of the order or injunction. If a record of the proceedings in the hearing before the director was made, a certified transcript, including all evidence taken and the report and findings, shall be received in evidence in the action.

(c) If the director's report made under (a) of this section, or order on hearing made under AS 21.36.320 does not charge a violation of this chapter, an intervenor in the proceedings may appeal from the order or report within the time and in the manner provided for appeals from the director generally.

whether this statute authorizes the director of the Alaska Division of Insurance to determine that a single act, rather than a pattern of repetitive acts, constitutes a violation of these provisions of the trade practices and frauds chapter of the Alaska Insurance Code.

Briefly, the answer to your question is that AS 21.36.150 authorizes and establishes a procedure for the state insurance regulator to examine whether an activity that is not otherwise prohibited in the trade practices and frauds chapter, AS 21.36, or by regulations adopted under it, is unfair and deceptive, and should therefore be forbidden. Nothing in the language of this statute suggests that it is intended to authorize the director to determine that a single act is a violation of statutory provisions that forbid a practice of, or repetitive acts of, a defined unfair or deceptive activity. Even if AS 21.36.150 can be interpreted to give the director this authority, the process described in AS 21.36.150 would be a cumbersome way to enforce the prohibitions against unfair or deceptive acts.

The discussion below explains this answer by reviewing commentary on the source from which this section was derived and some examples of past orders issued under it.

AS 21.36.150 was adopted in 1966 as part of a major revision of the Alaska Insurance Code. It is derived from the National Association of Insurance Commissioners (NAIC) Model Unfair Trade Practices Act initially approved in 1946. According to the legislative history (See NAIC Model Regulation Service, p.880-19), this model act was the result of one of the first efforts to develop state laws regulating insurance after Congress passed the McCarran-Ferguson Act of 1945 (P.L. 79-15) that provided for continued state regulation of insurance. P.L. 79-15 contained a moratorium from the application of federal law to permit the states time to develop laws, but provided for federal regulation if the states did not take on the responsibility.

Five years after the Alaska legislature adopted AS 21.36.150 in 1966, the NAIC substantially revised the model act provisions on which this statute was based. The historical commentary for sections 7 and 8 of this model act reports that the commissioners concluded that the procedure for dealing with "undefined" unfair trade practices was too cumbersome. (NAIC Model Regulation Service, p. 880-30). The NAIC revised these sections of the model act to authorize a state insurance commissioner to hold hearings, issue cease and desist orders and impose penalties. In 1976, the Alaska legislature added AS 21.36.320, which gave the director of the Alaska division of insurance authority similar to the NAIC's revised sections 7 and 8. But the Alaska legislature left AS 21.36.150 in place, making only slight changes in 1985 (substituting a reference in subsection (c) to AS 21.36.320 for AS 21.36.140, which was repealed), and in 1992 (adding subsection (d) with other stylistic changes). The addition of subsection (d) in 1992 made clear that the director can also use the regulation adoption process to define unfair and deceptive trade practices.

This history, as well as the language of AS 21.36.150, therefore shows the statute was intended to deal with "undefined" practices. It is a procedure to determine whether questioned practices are unfair and deceptive, rather than a procedure to determine whether a person is guilty of conduct that

(d) In addition to the unfair methods and unfair or deceptive acts or practices expressly defined in this title, the director may adopt regulations to define other methods of competition and other acts and practices related to the business of insurance that are unfair or deceptive.

has previously been defined as unfair and deceptive. The statute incorporates due process protections, including requirements for notice of the issue to the person who is carrying on the activity, a hearing, and a written report with findings of fact. But this section gives the director no authority to order a cease and desist order or impose penalties for a violation. The director is required to apply to a court for enforcement orders. In contrast, under AS 21.36.320, the director is authorized to issue cease and desist orders and impose penalties for violations of the trade practice and frauds chapter, AS 21.36.

Among orders of the director of the division of insurance compiled in the National Insurance Law Service (NILS Publishing Company, Chatsworth, CA) are two examples issued under this statute in 1970. In Order R70-1, Workmen's Compensation Deposit Insurance Premium Unfair Practice (Dec 14, 1970), the director concluded that a practice of billing a voluntary expiration or termination payroll report and continuing to hold the deposit premium until a physical audit of the payroll records often resulted in substantial excess worker's compensation premiums being held by insurers. The director declared this an unfair practice and defined a practice to be used instead.

In Order R70-2, Trans-Alaska Pipeline Wrap-Up (April 17, 1970), the director held a hearing on a complaint from the Alaska Association of Insurance Agents that the proposed insurance program of the Trans-Alaska Pipeline System was an unfair practice in the insurance business. The director rejected the complaint finding that there was no evidence that the pipeline consortium "is or was at any time engaged in the insurance business or contemplates engaging the insurance business."

Conclusion. Based on the language of the statute, the historical commentary on the NAIC model on which it is based, and examples of how AS 21.36.150 has been used in the past, we conclude that its purpose is to establish a procedure for determining whether a particular activity in the insurance business should be prohibited as unfair or deceptive. More recent legislative enactments give the director other means to both define unfair and deceptive trade practices in the insurance business and enforce the prohibition against them. But we find nothing in AS 21.36.150 that authorizes the director to determine that a single act is a violation of a statute that prohibits a practice of certain defined conduct in the business of insurance.

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LAW OFFICES

Michael J. Schneider, P.C.

TELEPHONE (907) 277-9306

880 "N" STREET, SUITE 202
ANCHORAGE, ALASKA 99501

FAX (907) 274-8201

February 16, 2000

The Honorable Dave Donley
Alaska State Legislature
Mail Stop: 3100/Room 508
Juneau, AK 99801-1182

RE: SB 177: "An Act Relating to Insurance Trade Practices; and Providing for an Effective Date"

Dear Senator Donley:

I write in support of SB 177.

The Bill makes a single, unlawful, and unreasonable act by insurance carriers subject to scrutiny by the Division of Insurance. It is about time. Alaska insurance consumers should not be subject to the "one free bite" rule. It should not be incumbent upon an insurance consumer to show some sort of pattern or practice before Alaska's regulatory agency takes action on that consumer's behalf. A carrier that does not engage in illegal or predatory practices should have nothing to fear from this change in the law.

I also want to make you aware of some common insurance company practices that I hear about every day as I interview potential clients in my office. Legislators need to be aware that constituents are being taken advantage of on a regular basis in a planned and orchestrated way by major insurance carriers who have defined an uneven playing field. If insurers cannot win on the law and the facts, they can win because of the practical circumstances of these cases.

Medical payments coverage, as you know, is coverage that pays for medical bills based on status. Typically, you have to have the status of riding in an insured automobile. If you are injured and you have medical bills, the medical payments coverage is supposed to pay for those medical bills no matter who caused the precipitating incident. No one likes to go to the doctor and no one likes to run up medical bills. Your constituents, when injured, obtain health care and follow the recommendations of their physicians. Unfortunately, this does not lead to the prompt payment of these medical bills that Alaska insurance consumers have a right to expect.

Instead, the insurance industry will slow pay the medical providers, obtain a "medical records review" from some nurse or physician (often from another state), find a basis therein to deny paying bills that have already been incurred in good faith by your constituents, and then refuse to resolve the matter with either the physician, whose bills are unpaid, or your constituent, whose medical bill is unpaid and whose credit worthiness is now at risk. This, of course, is aside from the frustration that these people feel because they cannot obtain needed medical care. There are certainly circumstances where

The Honorable Dave Donley
February 16, 2000
Page 2 of 2

this practice may ultimately have adverse and serious long-term consequences for a claimant requiring time-sensitive care.


How do insurance carriers get away with it? It is really quite easy. Disputes over medical payments coverage in most auto policies are relegated to arbitration. There is nothing wrong with that. However, there is no award of attorney's fees and costs provided in these policies to the successful party. When one of your constituents appears in my office with \$10,000.00 worth of controverted and unpaid medical bills, there is little encouragement I can offer. No matter how righteous their position, they will have to spend their own money to hire an attorney, bring their doctors into testify and pay for an arbitrator. Thus, using hypothetical figures, their problem grows from \$10,000.00 to some number likely twice as large. Or, they can pay an attorney a percentage of their recovery plus litigation costs advanced by the attorney. The last approach is purely theoretical. Attorneys would have to spend more time and money than the claim is worth to get a good result. Most of us are, therefore, very disinterested in handling these cases for the same reason that your constituents who are homebuilders refuse to pay \$300,000.00 to build houses only to sell them for half that much. We simply cannot stay in business fighting some of the largest economic forces in America on a *pro bono* basis. Even if we took these cases, your constituents would be left holding the bag. They need 100% of their medical bills paid, not some percentage left over after attorneys fees and costs. Anyway you shake it, regular, ordinary, everyday Alaskans are getting the short-end of the stick from an industry that seems perfectly willing to bully them to defeat and deny these reasonable claims.

Your Bill has the advantage of giving the Division of Insurance a bit more leverage when it comes to looking into these claims. The Bill could further be improved if legislation were introduced compelling carriers to pay costs, attorney's fees, and related arbitration expenses only when they lose a dispute over medical payments or some other coverage. This costs the industry nothing when its position is righteous: it will cost it plenty on a regular basis in light of practices that the industry currently engages in. It would make it possible for private attorneys to become involved in these cases, and it would make it possible for your constituents, who have medical payments coverage claims, to be, for the first time, treated with a measure of respect and to receive what they reasonably thought they had a right to receive under their medical payments coverage.

If you or other members of the Legislature have any questions about this letter or my opinions regarding these practices, I hope you will feel free to call me. Thanks again for your good work in proposing SB 177. I hope it receives the bi-partisan support that it deserves.

Yours very truly,

LAW OFFICES
MICHAEL J. SCHNEIDER, P.C.


Michael J. Schneider

cc: Robert Lohr, Director
Division of Insurance

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of this state, at any time after the service of the report, cause an action to be instituted to enjoin and restrain the person from engaging in the method, act, or practice. In the action the court may grant a restraining order or injunction upon just terms, but the state may not be required to give security before the issuance of the order or injunction. If a record of the proceedings in the hearing before the director was made, a certified transcript, including all evidence taken and the report and findings, shall be received in evidence in the action.

(c) If the director's report made under (a) of this section, or order on hearing made under AS 21.36.320 does not charge a violation of this chapter, an intervenor in the proceedings may appeal from the order or report within the time and in the manner provided for appeals from the director generally.

(d) In addition to the unfair methods and unfair or deceptive acts or practices expressly defined in this title, the director may adopt regulations to define other methods of competition and other acts and practices related to the business of insurance that are unfair or deceptive. (§ 1 ch 120 SLA 1966; am § 14 ch 21 SLA 1985; am §§ 141, 142 ch 67 SLA 1992)

Effect of amendments. — The 1992 amendment, effective July 1, 1992, substituted "record" for "stenograph record" in the last sentence and made two

stylistic changes in subsection (b) and added subsection (d).

NOTES TO DECISIONS

Stated in *Alyeska Pipeline Serv. Co. v. H.C. Price Co.*, 694 P.2d 782 (Alaska 1985).

Sec. 21.36.160. Right of debtor or borrower to select insurance producer and insurer. If property insurance is required in connection with a debt or loan, the debtor or borrower has the reasonable right to select the insurance producer and insurer through whom the insurance is to be placed if (1) the insurance is provided for the protection of the creditor's or lender's interest in the property at the commencement of the risk; or (2) in the case of renewal of insurance, the renewal policy is delivered to the creditor or lender no later than 30 days before the renewal date. (§ 1 ch 120 SLA 1966; am § 56 ch 62 SLA 1995)

Effect of amendments. — The 1995 amendment, effective July 1, 1995, substituted "insurance producer" for "agent, broker," near the middle of the section.

Sec. 21.36.165. Favored agent or insurer; coercion of debtors. A person may not (1) require, as a condition to the lending of money or extension of credit, or a renewal of the loan or extension of credit, that the obligee of the money or credit negotiate a policy or contract of insurance through any particular person or group of persons; (2) disapprove the insurance policy provided by a borrower for the protection of property securing credit or a lien if disapproval is based on other than reasonable standards uniformly applied and relating to the extent of coverage required and the financial soundness and the services of the insurer; the standards may not discriminate against a particular type of insurer, or call for the disapproval of a policy containing coverage in addition to that required; (3) require a borrower, mortgagor, purchaser, insurer, broker, or agent to pay a separate charge for handling an insurance policy required as security for a loan on real property, or to pay a separate charge to substitute the insurance policy of one insurer for that of another, except that interest may be charged on premium loans of premium advancements in accordance with the security instrument; (4) use or disclose information resulting from a requirement that a borrower, mortgagor, or purchaser furnish insurance of any kind on real property being conveyed or used

(15) offer a form of settlement or pay a judgment in any manner prohibited by AS 21.89.030. (§ 6 ch 163 SLA 1976)

NOTES TO DECISIONS

A third party claimant has no cause of action against an insurer under this section. *O.K. Lumber Co. v. Providence Wash. Ins. Co.*, 759 P.2d 523 (Alaska 1988).

Punitive damages. — Not all conduct which amounts to the tort of bad faith is sufficiently outra-

geous to warrant an award of punitive damages. *State Farm Mut. Auto. Ins. Co. v. Weiford*, 831 P.2d 1264 (Alaska 1992).

Quoted in *State Farm Fire & Cas. Co. v. Nicholson*, 777 P.2d 1152 (Alaska 1989).

Collateral references. — Insurer's liability to insurance agent or broker for damages suffered as

result of insurer's denial of coverage or refusal to pay policy proceeds to insured. 6 ALR5th 611.

Sec. 21.36.130. Stock operations and advisory board contracts. A person may not issue or deliver or permit its agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in a common law corporation, or securities, or an advisory board contract or other similar contract of any kind promising returns and profits as an inducement to insurance. (§ 1 ch 120 SLA 1966; am § 7 ch 163 SLA 1976)

Sec. 21.36.140. Desist orders for prohibited practices. [Repealed, § 11 ch 163 SLA 1976.]

Sec. 21.36.145. Unfair financial planning practices. (a) A person may not represent, directly or indirectly, to be a financial planner, investment adviser, consultant, financial counselor, or similar specialist engaged in the business of giving financial planning or advice relating to investments, insurance, real estate, tax matters, or trust and estate matters when the person is in fact only engaging in the sale of insurance.

(b) A person may not engage in the business of financial planning and solicit the sale of a product or service on the basis that the person is an insurance salesperson or that a commission for the sale of an insurance product will be received in addition to a fee for financial planning without full disclosure to the client before the execution of the agreement required in (c) of this section.

(c) A person licensed under this title may not charge a fee other than a commission for financial planning unless the fee is based upon a written agreement signed before the performance of a service under the agreement. The insurance salesperson shall provide the client a copy of the signed agreement at the time of signing. The agreement must specifically state the service for which a fee is to be charged and how the fee will be determined or calculated. The agreement must provide that the client is under no obligation to purchase an insurance product. The licensee shall retain a copy of the agreement for not less than five years after completion of services and the agreement shall be available to the director upon request. (§ 140 ch 67 SLA 1992)

Sec. 21.36.150. Procedures as to undefined practices. (a) If the director believes that a person engaged in the insurance business is engaging in this state in an unfair method of competition or in an unfair or deceptive act or practice in the conduct of the business that is not defined as being unfair or deceptive under this chapter, the director shall hold a hearing on the matter, if the director believes it would be in the public interest to do so after giving notice of the hearing and of the charges. Upon conclusion of the hearing the director shall make a written report of the findings of fact relative to the charges and serve a copy upon the person and any intervenor at the hearing.

(b) If the report charges a violation of this chapter and if the method of competition, act, or practice has not been discontinued, the director may, through the attorney general



SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

**Sponsor Statement
for
Senate Bill 177
"The Alaska Insurance Consumers
Protection Act"**

Senate Bill 177 "The Alaska Insurance Consumers Protection Act" will give injured Alaskans and insurance consumers a fairer playing field when dealing with insurance companies. The Alaska Division of Insurance supports SB 177.

Section #3 of SB 177 makes a major step toward better consumer protection by allowing the Division of Insurance to investigate individual acts of unfair or deceptive trade practices. Amazingly, under existing law, the division does not have the jurisdiction to investigate individual acts of unfair insurance claims practices. The division is powerless to investigate an individual insurer until a pattern of deceptive trade practices has developed. Such a pattern is often very difficult to prove and can require staffing the division currently does not have. This lack of jurisdiction promotes bad claims practices by insurance companies since they know that there is little enforcement to protect individual injured victims and consumers.

Section #4 of Senate Bill 177 also protects consumers by protecting those who blow the whistle on illegal insurance acts. Many consumers and even insurance agents are sometimes intimidated from pursuing a fair settlement because of fear of retaliation from the insurer. This discourages claimants from pursuing a fair settlement and hinders the consumer protection ability of the Division of Insurance, as they are unable to gain access to information needed to effectively protect consumers. SB 177 provides immunity from liability for defamation for those persons who provide the division with information regarding an unfair act or practice. This provision will better protect both agents and insurance consumers.

Section #5 of SB 177 increases protections against unfair claims practices against injured Alaskans. Under existing law, injured third party claimants are not entitled to the same statutory protections as first party claimants. Insurers know this and often will require an injured third party to pay the costs of arbitration or mediation before the process even begins. If the amount at issue is less than the cost of arbitration the insurer can unfairly "low ball" the injured party. Additionally, insurers often use the high cost of litigation, which also may exceed the value of the claim, as leverage in coercing legitimate third party claimants to accept settlements that do not adequately compensate them for their injuries. Under current law such practices are prohibited as to first party claims but not as to third party claims. SB 177 expands the

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Sponsor Statement
Senate Bill 177
Page 2

prohibition against such bad faith actions to third party claimants and affords them a fair arbitration claims process while also curtailing unnecessary litigation. Affording and expanding insurance claims protections to both first and third party claimants is fair, equitable and good public policy.

Section #6 of SB 177, at the specific request of the Division of Insurance, prohibits insurers from denying a claim in which multiple causes caused the loss to occur and there is a secondary cause that is not covered by the policy. SB 177 ensures that a claim is covered when a loss has more than one cause and the dominant cause is covered by the policy.

Injured Alaskans and insurance consumers deserve better protection from insurance company unfair claims practices. Senate Bill 177 will help provide the Division of Insurance with the necessary authority it needs to protect injured Alaskans and insurance consumers.

DD/jja



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

Sectional Analysis for Senate Bill 177 "The Alaska Insurance Consumers Protection Act"

Section #1 - Describes the short title of the legislation.

Section #2 - Specifies that the purpose of AS 21.36 is to regulate not only unfair methods or trade practices but also single acts or a deceptive practice.

Section #3 - Specifies that single or multiple trade practices that are unfair or deceptive are prohibited.

Rationale: Under existing law, the Division of Insurance does not have the jurisdiction to take administrative action concerning individual acts of unfair insurance practices. In many instances, the division will not even investigate an individual insurer until a pattern of deceptive trade practices has developed. This lack of jurisdiction promotes bad practices by insurance companies since they know that there is little enforcement to regulate their practices. This language would allow the Division of Insurance to investigate and take action relative to individual acts of unfair or deceptive trade practices and to better track patterns of abuse.

Section #4 - Specifies that a person who provides the director of the division of insurance with information regarding an act or practice of a licensee is immune from liability for defamation.

Rationale: In reported instances, consumers and even insurance agents are sometimes intimidated from pursuing a fair settlement because of fear of retaliation from the insurer. This type of activity hinders the consumer protection ability of the Division of Insurance, as they are unable to gain access to information needed to effectively protect the consumer. This section will provide increased consumer protection and better protect the insured.

Section #5 - Expands existing first party protections to third parties by specifying that neither an insured or a third-party claimant can be compelled to litigate by offering to

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settle an insurance claim for substantially less than the amount that would be entitled to recover in a civil action or arbitration.

It specifies that both an insured or a third-party claimant cannot be compelled to accept an arbitration settlement or compromise by informing the insured or third party of a policy of appealing an arbitration award in favor of the insured or third party claimant.

Rationale: In some instances, an insurer may threaten or require an injured third party to pay the costs of arbitration or mediation before the process even begins. This type of activity discourages claimants from pursuing a fair settlement, especially when the amount at issue is less than the cost of arbitration. This section prohibits such bad faith action against injured third parties and affords them a fair opportunity to pursue equitable claims.

Making these provisions applicable to both first and third party claimants is fair, equitable and good public policy.

Section #6 - Specifies that an insurer may not deny a claim if the risk insured is the dominant cause of the loss and denial occurs because an excluded risk is also in the chain of the causes but operates on a secondary basis.

Rationale: In some situations, the insurer will not cover a claim if there are multiple causes which caused the loss to occur, thus escaping liability because of a secondary cause that is not covered. This section ensures that a claim is covered when a loss has more than one cause and the dominant cause is covered.

Section #7 - Specifies the effective date of the legislation.

Rationale: Gives insurance companies the necessary time to implement the provisions enacted in this legislation.

Hot CLE class: hammering Allstate

Trial lawyers in many states, irked over its tactics, target insurer.

BY MARK BALLARD

SPECIAL TO THE NATIONAL LAW JOURNAL

The National Law Journal (p. A01)
Monday, December 13, 1999

The course was called "How to Hammer Allstate," and the Connecticut Trial Lawyers Association knew it was on to something when it sold out before the advertising fliers were printed.

Other states report similar success with the same topic. In fact, the Allstate seminar has become the hot ticket for fulfilling the usually unexciting obligation to engage in continuing legal education (CLE). The class has been drawing record crowds across the country--and the reason is Allstate.

That's no surprise to many plaintiffs' lawyers. Allstate Insurance Co., many trial lawyers contend, tries to discourage low-damage lawsuits by fully litigating cases that it once routinely settled.

"There's a sense of righteous indignation," says Robert I. Reardon Jr., who organized the Connecticut seminar.

Despite efforts to ensure that no defense counsel or member of the public has access to the seminar and its course materials, news of the classes has spread among trial lawyers across the nation. The first was held last February in Washington state, and more have followed. In October alone, trial lawyer groups in Connecticut, Louisiana and Texas held "How to Hammer Allstate" seminars. Oregon has one scheduled for March; Alaska, one in January.

The Association of Trial Lawyers of America (ATLA), which has never held a seminar targeting a specific company, held a CLE telephone conference on Allstate.

"Allstate is unusual," says ATLA spokesman Carlton Carl. "They have shown a pattern."

"It started as a grassroots effort," says Mr. Reardon, of the Reardon Law Firm P.C., in New London, Conn. He heard about the Washington seminar, liked the idea and put one together for Connecticut.

About 320 lawyers attended the Oct. 1 class in Hartford, Conn. Since then, he says, he has received a dozen calls from other states asking for information.

"I think we're in our early stages of recognizing the problem, and we're in the early stages of trying to deal with it collectively," says Alonzo T. Stanga III, of Stanga & Mustian P.L.C., of Metairie, La. Mr. Stanga chairs the auto tort section of the Louisiana Trial Lawyers Association. He says that the Louisiana meeting, held in Baton Rouge on Oct. 29, attracted about 225 lawyers. His auto tort section picked up 46 new members there.

Behind the lawyers' ire with Allstate is their belief that it purposely forces trial with lowball offers, particularly in cases in which the vehicle damage is less than \$1,000, minimal soft tissue injuries are claimed and the claimant hires an attorney.

At trial, Allstate litigates aggressively at every step, demanding a jury, putting on experts and making plaintiffs prove liability. As a result, overall litigation costs sometimes exceed damages.

Allstate's position

Allstate is proud of its hardball litigation policy, says William Vainisi, the Allstate assistant general counsel in charge of the program.

"We have never said that plaintiffs' lawyers don't bring valuable services to their clients," says Mr. Vainisi from Allstate's corporate headquarters in Northbrook, Ill. "But the key where we take issue with attorney involvement...is when we get inflated demands and built-up medicals...which impact on general damages. That inures to nobody's benefits except the trial lawyers'."

The success of the CLE seminars is linked to Allstate's success, Mr. Vainisi says. "The economic impact on these lawyers has been fairly significant," he says. "The title, at least in our estimation, is a tag line to get people to attend."

LePley & Greig P.L.C. name partner Patrick LePley, of Bellevue, Wash., came up with the name "How to Hammer Allstate" during one of those gripe sessions about Allstate that a conversation inevitably turns into when two or more auto tort lawyers meet these days. This chat, between Mr. LePley, Fulton & Tuttle name partner Bradford J. Fulton and several other auto tort litigators, veered toward "what are we going to do about it," Mr. Fulton recalls.

Allstate has driven a number of lawyers in Washington state to refuse minor impact cases because they cannot afford to spend \$4,000 to win \$8,000, Mr. Fulton says.

"It works," Mr. Fulton says of Allstate's strategy. "But there is a core group of us who think we have a duty to fight it."

"The leap was deciding to target a particular insurance company," says Karen Greig, Mr. LePley's partner. "But we felt the problem in our state was so acute that we were justified."

Secret sessions

The next step, Ms. Greig says, was to assure attendees that Allstate would not learn the content of their seminars. So the Washington association--and, consequently, those that have followed--went to extraordinary lengths to keep these meetings secret. The seminar was limited to voting members only, and Mr. Fulton says that he had some friends who practice in Seattle screen the names of the applicants, looking for defense counsel. Attendees signed nondisclosure agreements, and the sessions were not videotaped.

(Mr. Vainisi says that Allstate has acquired some course materials.)

Mr. Fulton chairs a trial lawyer association task force that is investigating Allstate's practices in Washington. He developed the course outline. Topics were chosen based on his knowledge

of how Allstate handles cases in Washington.

Part of the course described the Allstate litigation policy, known as MIST (minimal impact soft tissue), and the company's methodology for determining settlements, which is called COLOSSUS after the computer program that calculates the offers.

Then the sessions moved into specific strategies for handling discovery, uninsured claims, negotiations and the actual trial. For instance, one class was devoted to how to exclude and impeach Allstate's biomechanical expert. In most cases, Allstate presents at trial an accident reconstruction expert who opines on what happened during the wreck and calculates the g-force impact on the plaintiff. The biomechanic then testifies that the g-forces could not have possibly caused the injuries claimed by the plaintiff.

The Washington state seminar was held on Feb. 18 and, with 340 lawyers, was the highest-attended CLE seminar in the association's history. Because of the response, the Washington trial lawyers set up another seminar, this time in Spokane on April 22, that was attended by another 125 lawyers.

"The seminar was really a galvanizing event. It was the biggest seminar put on, and the whole atmosphere was supercharged," says Ms. Greig, who served as an instructor.

So many cases are not clear-cut, she says. The defendants, she found, often were regular people who were just as sympathetic as her injured clients were. All these shades of gray were not how she pictured the practice of law during her school days. But she sees one villain clearly.

"Allstate, without a doubt, wears a black hat," she says. "It's an opportunity to fight a really bad, creepy presence. How often does that happen?"

TATE FARM: Judge boosts fine against insurer

By MICHAEL PEARSON
The Associated Press

MARION, Ill. — A damage award to State Farm auto insurance customers climbed to nearly \$1.2 billion Friday after a judge ruled that the nation's largest auto insurer committed fraud by its use of generic replacement parts in auto-body repairs.

Friday's \$730 million award of actual and punitive damages came on top of a jury's \$456 million verdict Monday in the same class-action lawsuit. The initial award was already believed to be the largest ever against an insurer.

At issue is the use of "aftermarket" auto parts — modeled on those made by the manufacturer but made without access to factory specifications — to repair the cars of State Farm policyholders.

Critics say aftermarket parts are not as good as those made for automakers. The lawsuit accused State Farm executives of concealing that information while flooding customers with brochures promoting the parts as a high-quality, low-cost alternative.

The jury's award to 4.7 million State Farm policyholders was based on a claim that the insurer breached its contract with customers by failing to restore their cars to their pre-accident condition.

On Friday, Judge John Speroni of Williamson County Circuit Court ruled separately that State Farm violated Illinois consumer fraud law by using substandard parts and concealing that fact from customers.

Current and former policyholders who could have claims against the company would get an average of \$100 each under the breach-of-contract judgment. It was unclear how many plaintiffs are affected by the consumer-fraud judgment, or what their average share would be.

State Farm chairman and CEO Edward B. Rust Jr. promised an appeal of both verdicts and said the company was "astonished" by

Friday's decision.

Rust said the consumer-fraud finding was particularly troubling, declaring that State Farm abides by regulations on use of aftermarket parts in every state where it does business.

"Now it's been decided that by abiding by those regulations we have violated the law," he said at a news conference at the company's headquarters in Bloomington. "That just doesn't make sense."

The award approved by Speroni is \$130 million in actual damages and \$600 million in punitive damages. The plaintiffs had sought nearly \$4 billion in actual and punitive damages, but their attorneys said they were satisfied with the decision.

"Hopefully we have State Farm's attention," said Trish Littleton, an attorney for the plaintiffs.

Industry analysts said the verdicts could increase insurance premiums and the cost of auto-body repairs if allowed to stand. The insurance industry offered scathing criticism of the ruling.

"I think this is not a good day for anybody but a handful of plaintiff lawyers and major stockholders in the three major car companies," said Kirk Hansen, director of claims for the Alliance of American Insurers, a trade association.

The judge said State Farm violated its trust with policyholders by deliberately adopting a "misleading term" — "quality replacement parts" — to refer to aftermarket parts.

But he declined to issue an injunction sought by the plaintiffs to order State Farm to better notify customers of the use of aftermarket parts, saying they could bring a lawsuit if the company continues to violate the law.

Much of the plaintiffs' case against State Farm centered on internal memos questioning the parts' quality.

According to materials provided to State Farm policyholders, aftermarket parts used by the company are certified by an independent testing agency, meet high quality standards and meet the company's contractual obligation to restore a car to its pre-accident condition using parts of "like kind and quality."

But in a 1997 memo introduced as evidence, a State Farm executive wrote, "We may well say it is like kind and quality, but the bottom line is that it is not the same."

ADN 10/8/99

SB177

Cheap parts may cost State Farm millions

By MICHAEL PEARSON
The Associated Press

MARION, Ill. — A jury ordered State Farm to pay \$456 million to 4.7 million customers Monday in a lawsuit accusing the nation's largest car insurer of favoring the use of inferior parts for auto body repairs.

The plaintiffs are still seeking an additional \$4 billion on their claim that State Farm deliberately deceived customers about the parts' quality.

The case dealt with State Farm's use of aftermarket parts, which are modeled on the original door panels, fenders or other parts but are not made to factory specifications. At least 40 other insurance companies require or favor aftermarket parts, but only State Farm was named in this lawsuit.

The plaintiffs said the parts are not as good as those made for automakers. They claimed that use of the parts breached State Farm's contract to restore policyholders' cars to their pre-accident conditions.

Some plaintiffs complained that after getting cars fixed, hoods didn't fit or headlights were loose, for example.

State Farm contended the parts are merely a way to keep repair costs down. But the jury saw dozens of memos from State Farm executives in which they raised questions about the parts' quality, even as they were promoting them as a high-quality alternative.

"Their own documents said there was a problem with the parts," jury foreman Thomas Hatley said. "We fairly quickly came to a conclusion that the parts were not of like kind and quality."

Most of the policyholders involved in the case would get about \$100, but payments aren't expected for several years while State Farm appeals.

The company also plans to keep paying for aftermarket parts, which are involved in about 20 percent of the company's repairs, but will probably review the policy if the verdict is upheld, spokesman Bill Sirola said.

If the verdict — the single largest against an insurance company, according to the American Insurance Association — stands, insurers would be less likely to use aftermarket parts, industry analysts said.

"This is a victory for motorists, who don't even know they have a choice,"

said Ken Roberts, a spokesman for the Automotive Service Association, which represents 13,000 body shops throughout the country.

But Steve Goldstein, a spokesman for the nonprofit Insurance Information Institute, said the verdict could result in higher premiums and repair bills.

Consumers save about \$800 million a year in reduced premiums because of the use of less-expensive repair parts, according to industry estimates.

"There are basically two winners: the automakers and the attorneys who brought this suit," Goldstein said.

The second issue — whether State Farm deliberately deceived customers as to the parts' quality — is to be decided by state Judge John Speroni, who presided over the trial.

He said he will decide that claim by Friday.

The lawsuit was filed on behalf of 4.7 million current and former State Farm policyholders — in every state except Tennessee and Arkansas, where similar lawsuits are pending — who had cars repaired from July 1987 through February 1998.

Aftermarket parts are involved in only one-fifth of State Farm's auto-body repairs, and just 15 percent of repairs covered by all insurers, because such parts usually aren't available for newer and more expensive cars.

At the trial, dozens of body shop owners testified that aftermarket parts take longer to install and often fit poorly.

A February 1998 Consumer Reports study reached a similar conclusion, and the organization urged the Federal Trade Commission to require consumer consent and safety standards.

State Farm has settled other lawsuits in Illinois and California over aftermarket parts. At least 13 other lawsuits against seven insurance companies are pending.

ADN 10/5/99

Allstate's Master Plan?

Major insurer is accused of penalizing claimants who dare hire attorneys.

BY MARK BALLARD

SPECIAL TO THE NATIONAL LAW JOURNAL

The National Law Journal (p. A01)
Monday, November 9, 1998

CHARLES MILLER, a part-time minister, was headed home after services at his Long Beach, Calif., church. Slowing in L.A. freeway traffic, he was hit from behind by an uninsured motorist. The reverend claimed lower back injuries and sought \$3,045 for medical bills.

Police Officer Bruce Kelley was stopped at a red light near his home in Fort Wayne, Ind., when he was rear-ended by an 80-year-old man, who admitted he hadn't been paying attention.

Nina Bolden, a 24-year-old legal secretary for Locke Purnell Rain Harrell P.C., was on her way to the defense firm's plush, downtown New Orleans office when she was broadsided by a driver who ran a stop sign off a side street. She claimed \$3,644.78 in medical expenses.

All three plaintiffs had this in common: The damages they sought were small and well-documented; the defendants admitted liability; and Allstate Insurance Co. called their claims inflated.

Not long ago, such minor-impact automobile wrecks would have been handled by lawyers whose key rainmaking technique was an ad in the TV listings and whose basic strategy was to settle for policy limits.

But now, lawyers across the country are finding that Allstate is going to the wall no matter how small the case. Some plaintiffs' lawyers also say Allstate has decided, as a matter of corporate policy, to litigate fully every suit in which a claimant hires an attorney. Allstate's alleged policy was described by:

- Ten lawyers who represent Allstate, all of whom asked to remain unnamed.
- Three state court judges, two of whom asked not to be identified.
- A review of plaintiffs' filings in two lawsuits: *Miller v. Allstate*, CV-98-1974 (M.D. Calif. 1998); and *Lund v. Allstate*, 98CH00603 (Cir. Ct. Cook Co., Chancery Div., 1998).
- An examination of the Indiana insurance commissioner's bill of particulars in an enforcement action against Allstate.
- Eleven plaintiffs' lawyers, four of whom are challenging Allstate's alleged national practices; one of them asked not to be identified because he is preparing a bad-faith suit against Allstate in Florida.
- Two claims-adjustment experts, both of whom were hired by plaintiffs; and one of

whom asked to remain unidentified.

Several of the plaintiffs' lawyers interviewed claim that, in the course of discovery, they found internal correspondence showing that the nation's second-largest insurer has set itself on a course designed to keep claimants from hiring lawyers, in order to pay out less in claims.

Allstate Staff Claims Manager Todd S. Goldman says the company does have a new plan of attack. She acknowledges that some of the factors that now prompt a decision to litigate include a claimant's hiring an attorney, vehicle damage less than \$1,000 and a claim for soft-tissue injuries. But there is no corporate design to exclude plaintiffs' attorneys from the process, she says.

In fact, there are no hard-and-fast rules at all, Ms. Goldman says; the company uses a "reasonable man" approach in deciding to go to court. But once it does decide to fight, she adds, "we will pay whatever it costs to properly defend a lawsuit."

There are, however, accusations that Allstate may have pushed the envelope of vigorous advocacy too far:

- Insurance regulators in Indiana Oct. 6 accused Allstate of unfair claims settlement practices in small, soft-tissue cases. A hearing has been set for Dec. 15.
- A personal injury attorney and a former state court judge filed a bad-faith class action, on behalf of individuals "induced not to retain legal counsel based on suggestions, claims and conduct of Allstate," in state court in Chicago; a class certification hearing is set for Dec. 21.
- On March 20, U.S. District Judge Charles H. Haden II, of the Southern District of West Virginia, in Charleston, upheld a West Virginia Bar Association finding that Allstate had violated the state's unauthorized-practice statute and therefore was guilty of a misdemeanor crime. In *Allstate v. West Virginia*, 2:97-1056, the bar alleged that Allstate's adjusters had mailed letters to claimants, within seven days of their having filed a claim, posing the question "Do I Need an Attorney?" and advising, "No." The bar claimed that the correspondence misrepresented studies allegedly showing that individuals got more money if they didn't hire lawyers. Allstate has appealed Judge Haden's ruling.
- The first bad-faith suit against Allstate filed in California, dismissed on summary judgment Sept. 23, is on appeal.

Allstate's practice of aggressive litigation "does tie up court time," said Judge Carolyn Gill-Jefferson, of Orleans Civil District Court Division A, in New Orleans, after a day spent hearing testimony in the trial of a passenger in a car hit by an Allstate-insured already found liable by another court. "I just don't know how it could be cost-effective for them."

For an individual case in a specific locality, the judge may be right, but from a national perspective, Allstate's approach may be very cost-effective, says William F. Merlin Jr., 1997 chair of the American Trial Lawyers Association's Bad Faith Litigation squad, who has become plaintiffs' counsel's point man on Allstate.

Mr. Merlin claims that the company's goal is to keep claimants from hiring attorneys. "Allstate

has adopted this policy of litigating every claim in order to scare lawyers away from representing persons in these situations," he says.

Allstate hires experts, contests discovery and basically fights every step of the way, Mr. Merlin says. "It'll cost you \$4,000 to go get \$8,000 [for both plaintiff and lawyer]. Allstate knows a lot of people aren't willing to go through all that, so they take the thousand bucks" offered in settlement, Mr. Merlin says. "And a lot of attorneys can't afford to take a case with those economics."

Allstate hired management consultant McKinsey and Co. in September 1993 to help review settlement files so the process might be made "stronger and more efficient." Plaintiffs' lawyers say it was to look for ways to decrease the amount paid in claims. In any event, the analysis did find that claimants without lawyers accepted smaller settlements. "Put another way, it cost the auto insurance system an extra \$8,677 when an attorney was involved," said Allstate's filing with the West Virginia bar. Allstate says that the extra money goes to lawyers and the added medical exams they demand.

Kill All the Lawyers?

Allstate has altered its procedures for handling claims (called the Claim Core Process Redesign); this policy is outlined in a manual now being used to train claims adjusters. According to the plaintiffs' filings, this multipronged strategy, begun in January 1995, was specifically designed to discourage lawyers from the claims process in 150 markets across the country. Plaintiffs' counsel estimate that each year, Allstate handles about a million of this type of small, soft-tissue claim.

Allstate also allegedly told its claims managers that the aggressive use of the new policy would increase the company's profits and set goals for the cumulative reduction of attorney participation, say court filings as well as both plaintiffs' and outside defense lawyers hired by Allstate. Claims managers are required to report monthly how many of the claimants were represented by lawyers, the court documents and interviewed attorneys say. (Staff Claims Manager Goldman says she is "not sure" if that is the reporting requirement.)

On Oct. 21, Allstate announced in a press release that operating income rose per share 16.2 percent during the first nine months of 1998, to \$1.93 billion, "due to the company's ability to properly price insurance risks and control costs."

One tactic employed to achieve this feat, according to plaintiffs' filings and the lawyers interviewed, are the letters from claims adjusters suggesting that claimants get more money when they don't hire attorneys.

Another maneuver, the same sources claim, is known by its acronym, MIST. In the Minor Impact Soft Tissue program, those who seek soft-tissue medical damages, have less than \$1,000 in damage to their vehicles and hire attorneys have their cases earmarked for handling under the MIST protocols, Allstate acknowledges. Plaintiffs claim that this also means that the claimant is given an unfairly low settlement offer.

If that offer is refused, then no matter how little money is sought, Allstate shifts into litigation mode, plaintiffs' bad-faith suits claim. Plaintiffs' filings also allege that Allstate hires experts to look at the physical damage to the vehicle, to review testimony and reports and then to determine the speed and g-force upon impact. A second expert allegedly follows with

testimony that, based on the force of the impact, the plaintiff could not have suffered the injuries claimed.

Sobol & Raldiris principal Hiram Anthony Raldiris, of Glendale, Calif., who represents Charles Miller in a federal bad-faith suit against Allstate, says that MIST "are scarlet letters that in practice translate into, 'Take a few pennies on your questionable injury claim or these good hands are going to club you.' They'll spend tens of thousands of dollars to try to prove their policyholder is [filing a bad-faith claim] to intimidate others from pursuing legitimate claims." In Mr. Miller's case, plaintiffs' filings say, Allstate spent \$27,000 on lawyers and experts, although an arbitrator valued the suit at \$11,800. California has mandatory arbitration for cases of this size.

Thomas W. Matush, of Covina, Calif., a claims adjustment expert whom Mr. Miller hired for his federal bad-faith suit, stated in an Aug. 24 affidavit that MIST "is intended to force the attorney and claimant to think about the obstacles they must overcome to recover a significant settlement and hopefully accept a smaller or walk-away settlement. Economic leverage and the willingness to take the case all the way are key factors in the negotiation process."

Mr. Miller is a federal corrections officer and part-time minister in Long Beach, Calif. After being struck from behind by an uninsured motorist Aug. 30, 1995, he claimed pain to his lower back. As is typical with this type of case, two physicians treated him with medication and hot/wet compresses for three months, his complaint says.

Mr. Miller sought \$3,045 to pay the doctors and \$1,200 in wages lost while visiting the physicians, according to his answer to Allstate's motion for summary judgment. He also wanted about \$10,000 for pain and suffering. On Feb. 6, 1996, Mr. Miller's case was classified as a MIST case, his filings with the court claim.

Like all MIST cases, Mr. Miller's claim was run through evaluation software called COLOSSUS, his complaint alleges. For COLOSSUS, Allstate employees on a local level catalog more than just specific information about the injuries and the settlements, according to James C. Peterson, a name partner at Charleston, W. Va.'s Hill, Peterson, Harper, Bee & Dietzler. It was his challenge to Allstate's letters that prompted the West Virginia Bar Association to act.

In addition to specifics about the injuries and the accident, Allstate inputs information about the lawyers who handle any claim: how they negotiated the case, how much they accepted to settle, how many paralegals they employ, the size of their library and the firm's relative income, according to Mssr. Merlin and Petersen. COLOSSUS also tracks the judges, according to defense and plaintiffs' lawyers interviewed.

Allstate's Ms. Goldman disputes this claim. She says that COLOSSUS is merely one of many evaluative tools and that it does not gather specific information about attorneys, judges or accidents.

For Mr. Miller, COLOSSUS spit out an "evaluated amount" of no more than \$1,820. He was offered that amount in March 1996, his complaints says.

Allstate hired a "biomechanical" expert who testified that the impact was so minor that Mr. Miller could not possibly have been injured, according to his complaint. Allstate also hired a physician who examined the plaintiff after his injuries were resolved, says Mr. Miller.

Hired by both sides, the arbitrator, retired Presiding Justice of the California Court of Appeals Robert Feinerman, found Oct. 26, 1996, that Mr. Miller had suffered injuries as a result of the accident. Mr. Feinerman awarded \$11,800, according to Mr. Miller's complaint. His lawyer received 25 percent of the money.

Mr. Miller filed suit in federal court, seeking reimbursement of the \$2,278 he had paid to hire experts to counter Allstate, his insurance company. U.S. District Judge William Matthew Byrne Jr., of Los Angeles, Sept. 23 granted summary judgment in the case, finding the plaintiff had failed to show that Allstate's actions constituted bad faith.

Judge Byrne's decision basically says that Allstate has every right to play hardball. But Mr. Miller appealed to the 9th U.S. Circuit Court of Appeals, arguing that the issue is not the company's right to litigate, but Allstate's policy of automatically questioning the word of anyone who hires an attorney.

Says Mr. Miller's counsel, Mr. Raldiris, "That's not what you expected when you bought your policy."

Insurance firm told to pay up

The Associated Press

BOISE, Idaho — An Anchorage law office has won another costly verdict against an insurance company, this time representing an Idaho woman in line to collect nearly \$10 million from State Farm.

A verdict returned Thursday awards Idaho plaintiff Cindy Robinson damages after she suffered a herniated disk in her back when the rear wheel of her car fell off.

Robinson was represented by Anchorage lawyers Richard Friedman and Jeffrey Rubin.

Jeff Thompson, a Boise lawyer representing State Farm,

declined comment on the month-long trial except to say that facts were in dispute and "hotly contested."

The case alleged bad faith on the part of State Farm after Robinson was injured in 1992 and submitted medical bills to the insurance company.

Robinson claimed State Farm denied and delayed payment based on evaluations by a medical review company.

But while the reports appeared to be written by physicians, no doctor actually evaluated Robinson's claims, her lawyers said.

They also said State Farm in-

tended to defeat legitimate claims of policyholders through fraudulent reviews of medical records, and that the company put its customers under financial pressure to accept reduced settlements.

"This is the first jury that has had the opportunity to review this abhorrent practice," Friedman said. "Its verdict should send a clear message to State Farm and other companies that would cheat their insured that the conduct will not be tolerated."

Friedman and Rubin became

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STATE FARM: Jury tells insurance firm to pay \$10 million

Continued from Page F-1

involved in the case late, joining the lawsuit in early 1997 the invitation of the plaintiff's lawyers, Rubin said.

"The case, from the plaintiff's perspective, was spinning out of control," said Rubin, noting that one of the

lawyers was suffering health problems.

The Anchorage lawyers have gained attention among plaintiffs suing insurers.

"We've kind of developed an area of expertise," Rubin said.

— In a recent Juneau case, the lawyers won a \$16 million jury verdict against Aetna insur-

ance company on behalf of a woman with a disability claim.

The punitive damage award was reviewed by the 9th U.S. Circuit Court of Appeals, which agreed that punitive damages were warranted but reduced the sum to \$350,000, the law office said.

The final monetary award

for both cases is still yet away, Rubin said.

"It does take a lot of perseverance to handle these cases," he said. "They count you giving up."

□ Daily News reporter Mike Hinr contributed to this story.

Boy struck by a car finally gets insurance cash

By SVEND HOLST

THE JUNEAU EMPIRE

An arbitrator has awarded \$54,000 plus legal expenses to a Juneau boy and his family stemming from an unusual legal fight between an insurer and a policy holder.

The boy, then 4, was run over by a car driven by an uninsured driver in front of his Glacier View Mobile Home Park home in June of 1993. He suffered a broken leg, a broken arm and numerous abrasions after the car rolled over him.

The driver of the car, a 38-year-old woman, didn't have insurance. But the boy's family made a claim using their auto insurance policy, which, as with most auto insurance policies in Alaska, provides insurance for damage caused by uninsured drivers.

“
State Farm fought us every step of the way.”

Mark Choate,
attorney

”
As is the usual procedure for insurance claims, the matter went into arbitration. Ron Lorensen, the Juneau attorney who arbitrated the settlement, settled the case in March.

The money was a long time in coming, said Mark Choate, the attorney representing the child and his family, because the company holding the family's policy, State Farm Insurance, tried to keep

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Insurance...

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from paying.

“State Farm fought us every step of the way,” he said. “You can't outspend them.”

Sheldon Winters, the attorney who represented State Farm in the case, said Choate demanded an award that was way too high from his client's perspective. In the end, he said, the arbitrator's award was very close to what the company once offered the boy's family.

Choate said the case is important beyond what the family was awarded financially because it highlights the importance of uninsured driver's insurance. Under Alaska law, uninsured driver's insurance comes with auto insurance policies unless the policy holder waives the provision. It's a good idea to keep it, he said.

“Most people aren't aware that they have this coverage,” Choate said. “If they don't, they should get it.”

S.L. TRIAL TARGETS TOP AUTO IN ... 06/30/96

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Keywords: UT, Businesses, Courts, Frauds-Scams, Lawsuits

Caption: Jump pg A3: Steve Baker/The Salt Lake Tribune
Confessions of Insurance Agents: How State Farm Handled Claims

S.L. Trial Targets Top Auto Insurer
Ex-Agents Say State Farm Urged Them to Deceive Policyholders
Utah Trial Targets Top Insurer

Byline: BY SHEILA R. McCANN THE SALT LAKE TRIBUNE

State Farm Mutual Automobile Insurance Co. vows it fairly pays claimants what they are owed -- "not a penny more, not a penny less."

But in damning testimony about the nation's largest auto insurer, former agents claim in a Salt Lake City trial that they were trained and encouraged to cheat and deceive policyholders.

With pay raises and promotions linked to containing costs, former agents contend they were forced to examine claims of accident victims with a shrewd eye on the company's bottom line.

The agents are testifying in Campbell vs. State Farm, a two-month trial that stems from a tragic 1981 car accident. It has evolved into an examination of the company's national claims-handling policies.

Curtis Campbell was driving through Sardine Canyon near Logan when he passed a truck, narrowly missing an oncoming car driven by 19-year-old Todd Ospital, who then swerved and hit a van, critically injuring driver Robert Slusher, 26.

Ospital was killed.

Ray Summers, then a State Farm agent in Cache County who represented the Campbells, said he immediately saw evidence that Campbell was at fault and wrote a report indicating the insurance company would be liable.

But Summers claims his supervisors ordered him to alter the report because State Farm wanted to go to trial rather than pay Campbell's \$50,000 policy limit.

"We were placing our insured [Campbell] in a situation of jeopardy," Summers testified.

State Farm hired an attorney to fight lawsuits filed by Slusher and Ospital's parents. But a Logan jury put 100 percent of the fault on Campbell, assessing him \$253,000 in damages.

Campbell and his wife, Inez, then sued State Farm, contending the insurance company betrayed them by hiding evidence implicating Campbell -- and rejecting offers to settle the case. Last fall, a Salt Lake City jury decreed that State Farm acted unreasonably -- or in bad faith -- by refusing to settle and risking the Campbells' house and assets at trial.

A second jury now is hearing the Campbells' multimillion-dollar claims of fraud, infliction of emotional distress and punitive damages. Any award the jury may hand down will be shared with Slusher and the

Ospital family, who in exchange agreed not to foreclose on the Campbell home.

State Farm's defense is expected to begin this week before 3rd District Judge William Bohling. With rebuttal testimony from both sides, the trial is expected to run through July.

Despite the first jury's verdict that it acted unreasonably, the insurer defends its decision to take the Campbell case to trial. State Farm also denies any scheme to defraud claimants.

Under cross-examination by State Farm attorneys, the critical agents have acknowledged the company's average payments to claimants increase each year.

Fye testified. "It creates a situation where people will handle a claim to achieve an average and not handle it on its merits."

Under cross-examination by State Farm lawyer Paul Belnap, Fye acknowledged the average amount State Farm pays to claimants has increased every year. Fye also conceded he does not object to a company carefully tracking its costs, making prompt contact with injured customers or negotiating to settle claims.

Belnap pointed to a 1992 State Farm manual that warned "it is inappropriate" to include reduction in claim payments as a measure of job performance or condition of promotion. Fye called the statement a "very hopeful sign," adding, "It's an acknowledgment that it was wrong." The Campbells' attorneys, Roger Christensen and Rich Humpherys, have shown employee reviews dated 1994 through 1996 that still focus on reductions in payments.

The plaintiffs' attorneys have called agents from out of state to buttress Summers' descriptions of cost-saving tactics.

Bruce Davis, a State Farm agent in Colorado between 1978 and 1984, testified he was not allowed to remind people of the benefits they deserved. He also acknowledged purging files. Davis added that he was urged to place partial blame on a State Farm policyholder -- even if the customer was "clearly innocent" -- to reduce the settlement value with the client.

The former Colorado agent also described in-house contests and said statistics were kept on how much money agents shaved.

For example, agents were encouraged to push foreign-made replacement parts to repair policyholders' cars, he said. An American-made car grille and other parts were put on display with their foreign equivalents, and an accompanying sign read, "Can You Tell the Difference?"

The parts were lower quality, fit poorly and rusted more quickly than American-made parts, he said. But with savings of up to 65 percent above U.S. parts, the "equivalent parts" saved the office \$234,189 between September 1980 and January 1982.

Yet the display backfired when the foreign parts mounted on the wall began to rust and pit, Davis said. Policyholders would glance up at the display and announce, "Hell, yeah, I can tell the difference, and I don't want any of those parts!"

Ina DeLong, a former California agent for State Farm Fire, also recounted tactics to trim settlements.

DeLong has appeared on "60 Minutes" and other national media to publicize her claims that State Farm cheated California earthquake victims. She has created United Policyholders, a nonprofit organization to help people understand their policies after an accident or natural disaster. She told jurors she saw State Farm Fire use its "economic superiority" to defeat upset policyholders -- like the Campbells -- who threatened to sue.

"So what if they're upset?" she said of State Farm's attitude. "We can wear them down or we can use the [legal] system against them. We have more money. We have attorneys that we pay hourly rates to [who will] defend our conduct."

But State Farm attorney James Crandall, also from California, called DeLong a "mad woman" on an "anti-State Farm crusade." United Policyholders is a front to funnel policyholders to lawyers who sue insurance companies, he alleged.

DeLong retorted: "That is about as far from truth as you could get."

JURY ORDERS STATE FARM TO PAY ... 08/01/96

Publication: The Salt Lake Tribune

Types: Nation-World

Published: 08/01/96

Page: A1

Keywords: UT, Lawsuits, Frauds & Scams, Accidents Motor Vehicles, Injuries

Caption: Campbell

Jury Orders State Farm To Pay \$145 Million
Insurer Ordered to Pay \$145 Million

Byline: BY SHEILA R. McCANN THE SALT LAKE TRIBUNE

A Salt Lake City jury imposed \$145 million in punitive damages against State Farm Mutual Automobile Insurance Co. on Wednesday night, siding with a retired Lewiston couple who accused the company of fraud and widespread cheating.

Jurors also awarded \$2.6 million in compensatory damages to Curtis and Inez Preece Campbell. They were not in the courtroom when the verdict was read.

The couple sued the nation's largest auto insurer in 1989, charging State Farm with failing to protect Campbell's interests after he was sued for causing a fatal 1981 car accident in Cache County. The jury's award will be shared with the Ogden parents of Todd Ospital, 19, who was killed, and Robert Slusher, then 26, who lost partial use of his left arm.

Throughout two months of testimony, Campbell and his attorneys accused State Farm of routinely betraying its policyholders nationwide and depriving claimants of fair payments.

State Farm vehemently denied the allegations. In a statement to be released today, the company says it will seek to have the verdict set aside, through pursuing a new trial or an appeal.

The Campbells' attorney, Roger Christensen, said he was "really gratified" by the award.

"It's exactly what we had hoped to achieve," he said. "It makes the years the Campbells have maintained the battle worthwhile."

On May 22, 1981, Campbell passed a camper in Sardine Canyon near Logan as Ospital approached in the oncoming lane. Campbell moved back into his own lane, but Ospital lost control after the close pass and hit Slusher's car. Ospital was killed.

Slusher and Ospital's parents sued Campbell, but offered to settle for his \$50,000 insurance policy limit. State Farm refused to settle and took the case to trial in Logan. Campbell denied he was at fault but was assessed \$253,000 in damages.

Campbell and his wife then sued State Farm for putting their home and assets at risk instead of settling the lawsuits. Last November, a Salt Lake City jury found State Farm had acted unreasonably.

The new jury heard the couple's claims of fraud and intentional infliction of emotional distress and requests for damages.

State Farm is "terribly disappointed" by the verdict, said vice president and counsel Michael Bragg. He is based at the company's headquarters in Bloomington, Ill., but has been in Salt Lake City during the trial.

"We certainly thought we had done everything we could," Bragg said. "We defended them [at the Logan trial]; we fully did everything we could to protect their interests."

After an appeal failed, State Farm paid the Logan jury's full judgment plus interest, Bragg noted.

At trial, the Campbells contended they had suffered emotional distress from State Farm's decision to gamble with their assets at trial, and the subsequent delay in paying the judgment.

To show the company's alleged intent to defraud the Campbells, their attorneys presented wide-ranging testimony about the company's claims-handling practices. Former State Farm employees claimed they misled claimants about benefits and altered or hid damaging documents. But State Farm called employees, state regulators and a statistical expert, who defended the company's work and said there was no evidence of a pattern of misconduct.

In closing arguments Wednesday, Campbell attorney Rich Humpherys asked jurors to punish

State Farm and deter future wrongdoing by assessing a punitive damage award between \$25 million and \$100 million.

"When you have \$55 billion in assets, what does it take to get [State Farm's] attention?" he asked.

"What will cause even the president to listen?"

State Farm collects \$4.3 million a day in surplus funds, Humpherys said. An award of \$25 million, for example, would represent one week's surplus, he said.

Defense attorneys called the request "outrageous." Concern about the Campbell case has already led to a new regional policy, said attorney Paul Belnap.

Now, if a policyholder gets an offer to settle a lawsuit within policy limits -- but State Farm opts to go to trial -- the company will guarantee its payment of any amount over the policy limit, Belnap said.

"This is a well-run, properly motivated and honest company," he said.

"What does it take to get State Farm to change?" he asked. "It doesn't take an award like the plaintiff is claiming in this case."

Defense attorney Stuart Schultz had urged jurors to award a nominal amount -- \$2,800 -- for State Farm's refusal to settle. He asked the jury to reject the couple's claims of fraud and emotional distress.

About a year after the Logan jury's verdict, the Campbells had negotiated a deal to preserve their assets and knew they were not at risk, Schultz noted. The Ospitals and Slusher had agreed not to foreclose on the Campbell's home, and in exchange, they will share in the jury's award.

The testimony about unrelated company claims practices "has nothing to do with the Campbell case," Schultz objected.

WILL HUGE JURY AWARD STAY INTA ... 08/04/96

Publication: The Salt Lake Tribune

Types: Utah

Published: 08/04/96

Page: B1

Keywords: Ut, Courts, Lawsuits, Accidents Injuries, Scams-Frauds, Insurance

Will Huge Jury Award Stay Intact?

State Farm to Appeal, Expects a Reduction
Appeal Could Reduce Jury Award

Byline: BY SHEILA R. McCANN THE SALT LAKE TRIBUNE

Onlookers were stunned when a Salt Lake City jury returned a \$145 million punitive damage award last week against State Farm Mutual Automobile Insurance Co.

As soon as jurors accepted thanks for their two-month stint and left the courtroom, plaintiff's attorney Rich Humpherys asked the court clerk whether she read the zeros correctly.

State Farm Vice President for Claims and Counsel Michael E. Bragg later said: "We really didn't see it coming . . . I've never seen anything like this against anybody."

The award is easily the largest-ever against the country's biggest automobile insurer, Bragg said. Now, both sides are disputing what the verdict means and whether it will withstand a post-trial attack and appeal by State Farm.

Curtis B. and Inez Preece Campbell of Lewiston had accused State Farm of acting in bad faith by failing to protect them after Curtis Campbell was sued over a fatal 1981 car accident. But trial testimony ranged far beyond Campbell, as his attorneys tried to show his case was part of a national scheme to save money by betraying policyholders and cheating claimants.

Jurors told 3rd District Judge William B. Bohling and the trial attorneys that they did not want to discuss the reasons for their decisions. But State Farm plans to ask the judge for permission to contact jurors and have them interviewed by a neutral consulting firm, Bragg said.

"There was something there that so impassioned and inflamed the jury," he said. "It would sure help us to know" what it was.

State Farm contends the jurors were deceived about the company's practices by disgruntled former employees and "highly paid experts," who criticized the insurer based on out-of-context statements taken from out-of-date documents. They plan to appeal the scope of evidence allowed in the case.

Humpherys defends the verdict, citing "substantial evidence" of widespread abuses.

Jurors heard former State Farm employees claim they had altered documents in Utah, lied about benefits in Colorado and counted on the company's wealth to discourage lawsuits over misconduct in California.

"The Campbells believe this verdict does not represent a runaway jury, but one that followed the law and is necessary to have State Farm change its conduct," Humpherys said.

As for the amount of the award:

"There's absolutely no chance this thing would stand as that dollar figure," State Farm's Bragg said.

"Absolutely I think it can stand," Humpherys responded.

Also yet to resolve: How much of the plaintiff's attorneys fees will be paid by State Farm and how much will be taken out of the jury's award. Bohling has already ruled the company will pay some of the Campbell's legal fees, but has yet to decide how much.

Usually, a 1989 Utah law would further pare the award. Plaintiffs who win big punitive damages get the first \$20,000 after attorneys' fees are paid -- but must split the rest with the state.

However, since the misconduct and fraud alleged in the Campbell case occurred before 1989, that law has not been an issue, Humpherys said.

Whatever the final sum -- after review by the judge and resolution of the attorneys' fees -- the money will be shared by the Campbells with the victims of the 1981 accident.

The tragedy occurred after Campbell passed a camper in Sardine Canyon near Logan in May 1981. Driver Todd Ospital, 19, was approaching in the oncoming lane as Campbell veered back into his own lane. Ospital swerved out of control after the close pass and hit a van driven by Robert Slusher, 26.

Ospital was killed and Slusher was seriously injured. The teen-ager's parents, John and Winnifred Ospital, and Slusher sued Campbell, but agreed to settle for \$50,000, the amount of his insurance policy limits.

Instead, State Farm took the two claims to trial, where a jury blamed Campbell for the accident and assessed him \$253,000 in damages.

The Campbells later sued State Farm for putting their property at risk -- and inflicting emotional distress on them -- by refusing the offers to settle.

The Ospitals and Slusher agreed not to foreclose on the Campbells' property in exchange for a share of an eventual verdict. An early agreement gave the victims the lion's share. But the current arrangement will allot one-third each to Slusher, the Ospital family and the Campbells.

Campbell's award for \$1.4 million for emotional distress will go into the pot. But Inez Campbell will keep all of her \$1.2 million award for distress.

The \$145 million punitive award is not the largest handed down in a Utah courtroom. In 1993, a Tooele County jury awarded \$250 million in punitive damages in a long-running mining dispute. But that whopping punitive award was thrown out by the trial judge, who was upheld by the Utah Supreme Court. State Farm claims the Campbell award is likewise vulnerable to attack.

A crucial 1991 Utah Supreme Court decision set a general rule of thumb: Punitive damages of more than three times the compensatory award likely will be overturned. For punitive awards above \$100,000, the generally acceptable ratio is even lower.

The Campbells' combined compensatory award is \$2.6 million -- which means the the punitive award is more 50 times higher.

"It wouldn't stand anywhere," Bragg said, especially under Utah's conservative law.

But Humpherys points to comments by the opinion's author, Justice Michael Zimmerman, who is now the high court's chief justice. Zimmerman noted an "absolute ceiling" set by a ratio might defeat the purpose of punitive damages.

Flexibility is needed for cases where "the conduct of the defendant is so flagrant as to justify a large punitive award," Zimmerman wrote.

Trial judges are not obligated to reduce punitive awards higher than a 3-to-1 ratio, he added.

"For example, a trial court might conclude that an award should stand, despite a ratio that is higher than we have generally approved, because the defendant displayed an extremely high degree of malice

... or a high degree of likelihood of great harm based on the reprehensible nature of the act."

Salt Lake City's legal community is expecting the judge to cut the award -- but are wondering how high a ratio he may allow.

Other factors a trial judge must consider, Humpherys added, weigh in favor of the Campbells. For example, the wealth of the defendant: State Farm has more than \$50 billion in assets, making the \$145 million award less than 1 percent of its worth.

"The message has to be sent in dollars," Humpherys had urged the jury. "That's the only language they understand."

But Bragg said the company has already made changes to its policies. Such big verdicts, he said, "chills the insurance industry. It makes all of us realize Utah is a place we're going to expect to see large punitive damages on occasion."

He added: "Whatever damages we pay come out of the fund that's there to pay for catastrophic losses; \$145 million is a significant cost. It's just like a huge catastrophe, a huge tornado going through

Salt Lake City."

But Robert Hunter, insurance director of the Consumer Federation of America, says large verdicts for bad-faith conduct help regulate the industry.

"In theory at least, a punitive damage verdict will in fact push management toward better behavior and

will also put out a signal to other companies," Hunter said.

"They get the message," he said. "No insurance company wants to be in the press as the bad guy."

SUMMARY OF SURVEY RESULTS

The Division of Insurance recently polled all the states on the following questions. The following states responded. This is a very brief paraphrase and summary of the results. Most state laws have some variations and unique features not mentioned here. The relevant statutes and regulations should be consulted.

	“Regarding unfair trade practices, unfair methods and deceptive acts, does your statute prohibit single incidents, or only ongoing patterns and practices?”	Regarding unfair claim settlement practices, does your statute protect insureds only, or does it also protect third-party claimants? Does your statute specifically mention insured and/or third party claimants, or simply refer to any person or any claimant?	Cite:
California	Knowingly on one occasion or frequently enough to indicate a practice.	Some regulations protect insureds, others protect all claimants.	California Insurance Code section 790.03; 10 CCR 2695.1
Connecticut	Single acts, except claim settlement practices which must be committed or performed with such frequency to indicate a general business practice.	All claimants, except that “insureds” cannot be compelled to litigate claims.	CT. Gen. Stat. 38a-816(6), as amended 10/1/99 by Public Act 99-284 §30.
Florida	Isolated events and business practices, but some claim settlement practices must be done with such frequency to indicate a general practice.	Insureds and “other persons.”	FS §626.9541(1)
Idaho	Single incident.	No reference to either 1 st or 3 rd party; insurer must perform reasonably and fairly.	
Indiana	Single incidents prohibited.	Different sections protect insureds, insureds and beneficiaries, and claimants. Insureds cannot be compelled to litigate.	Ind. Code §27-4-1-4.5, 6
Kentucky	Not specified. Commissioner has authority and discretion for all issues.	Commissioner authority and discretion	KRS 304.1, 304.12
Maryland	Single incidents and general business practices.		MD Code Ann., Ins. §§27.301-305; COMAR 31.15.07, 08.

Nebraska	Flagrantly and in conscious disregard, or a general business practice, with a statutory exception elsewhere in statutes for "victims of abuse" protection.	Claimants and insureds. May not compel "insureds and beneficiaries" to litigate.	Neb. Stat. 44-1539-1544.
Oregon	Single incidents prohibited. Unfair practices specified by administrative rule.	Acts are simply prohibited.. Any reference is to a "claimant."	ORS 746.075, 100, 110, 160, 240; OAR 836-080-0205 et seq.
Pennsylvania	Commissioner has some discretion in isolated incidents, but by precedent an ongoing practice is generally required for enforcement action. Claims practice must be frequent enough to indicate business practice.	Some generically without reference to "claimant" or "insured," others specifically reference claimants, insureds, and beneficiaries.	40 PS §1171.1-15.
Rhode Island	Flagrant disregard of law or committed with such frequency. Enforcement action usually taken for patterns.	All claimants, first and third party.	RI §27-9.1
Tennessee	Statute does not specify, except unfair settlement practices which must be a general business practice.	Various sections refer to insured, claimant, or both, or are silent.	TCA 56-8-101 et seq.
Wisconsin	Single incidents prohibited.	The rule specifically promotes fair and equitable treatment of policyholders, claimants, and insurers. Compelling "insureds and claimants" to litigate prohibited.	§628.34 Wis.Stat.; Ins 6.11, Wis. Adm. Code

SB

193



Teleconference Participants

TCN: 10296

Participant Lists

View List for

ALL ▾

Testifiers ▾

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Participants

Unidentified Testifiers: 0

Unidentified Observers: 0

ANCHORAGE (ANC)

1

Name: Mr. Randy Carr ans ?s *S/ed*

Phone: 265 4914

Address: PO Box 107021

Affiliation: Dept Labor

City /St /Zip: Anchorage AK 99510

Type: Testifier

Bill: SB 193: COLLECTION OF UNPAID WAGES

2

Name: Mr. Jay Seymour *Old*

Phone: 279 8561

Address: 1029 W 3rd Ave #200

Affiliation:

City /St /Zip: Anchorage AK 99501

Type: Testifier

Bill: SB 193: COLLECTION OF UNPAID WAGES

3

Name: Mr. Ken Eggers *Old*

Phone: 562 6474

Address: 3201 C St #400

Affiliation:

City /St /Zip: Anchorage AK 99503

Type: Testifier

Bill: SB 193: COLLECTION OF UNPAID WAGES

1-LS1263A.1
Cramer
2/10/00

AMENDMENT

OFFERED IN THE SENATE

TO: SB 193

- 1 Page 2, lines 24 - 29:
- 2 Delete all material and insert:
- 3 **** Sec. 3.** AS 23.05.140 is amended by adding a new subsection to read:
- 4 (e) In an action brought by the department under this section, an employer
- 5 found liable for failing to pay wages withing three working days of termination shall
- 6 be required to pay the penalty set out in (d) of this section. The amount of the
- 7 penalty shall be calculated based on the employee's straight time rate of pay for an
- 8 eight-hour day."

Alaska State Legislature



During Interim: (June - Dec.)
716 West 4th Avenue, Suite 500
Anchorage, Alaska 99501-2133
(907) 269-0200
Fax (907) 269-0204

During Session: (Jan. - May)
State Capitol
Juneau, Alaska 99801-1182
(907) 465-4993
Fax (907) 465-3872

Senator Drue Pearce

Justification For Amendment #1

The amendment to SB 193 would give the Department of Labor and Workforce Development (DLWD) authority to examine individual cases and subject those cases to a penalty equal to straight time rate of pay for an eight-hour day. The new language makes the penalty mandatory in DLWD cases only. This is amiable to the defense attorney's who oppose the current proposal in section (3).

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Senator Drue Pearce

Sponsor Statement

SB 193

“An Act relating to the payment of wages and claims for the payment of wages”

The Department of Labor and Workforce Development (DLWD) was established to serve the interests of the employee through fair business practice. SB 193 is designed to address complaints from the public regarding unethical employers who illegally withhold final wages from employees.

SB 193 increases the amount of past wages from \$7500 to \$20,000 that employees are allowed to retain within three days of termination. SB 193 will update the law making it possible for attorneys and the DLWD to pursue small wage claims. In the current statute AS 23.05.220(c), it is not feasible for private attorneys to take such cases on a contingency fee basis when the maximum cap is \$7500.

SB 193 would provide a source of assistance for this category of employee. The State of Alaska would serve in its best interests by keeping these cases in small claims rather than District or Superior Court in order to expedite resolution and keep down costs to all parties.

This measure would serve as a tool assisting employees to acquire representation for wages not paid by their previous employer. SB 193 is a sensible bill that will strengthen Alaskan labor relations.

OWENS & TURNER

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

1500 WEST 33RD AVENUE, SUITE 200

ANCHORAGE, ALASKA 99503-3502

THOMAS R. OWENS, JR.
TERRANCE A. TURNER
WILLIAM F. MEDE
SCOTT J. NORDSTRAND
ERIN ROSE
PATRICK J. MCCABE
KIMBERLY K. GEARIETY
DENNIS J. EFTA

TELEPHONE
(907) 276-3963
FACSIMILE
(907) 277-3695

January 27, 2000

RECEIVED

FEB 01 2000

Ans'd.....

The Honorable Drue Pearce
President of the Alaska Senate
State Capitol, Room 107
Juneau, Alaska 99801-1182

RE: SB 193

Dear Sen. Pearce:

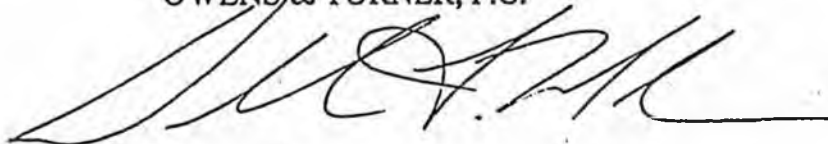
I am an Anchorage attorney. A significant portion of my practice includes defending employers throughout Alaska against wage and hour claims. I am writing in support of portions of SB 193 relating to increasing the jurisdiction of the small claims court for wage and hour claims assigned to the Alaska Department of Labor and Workforce Development. I cannot support, however, the provision eliminating a court's discretion regarding penalties for late payment of wages.

It is my understanding that sections 1, 2 and 4 of SB 193 would allow the Department to accept assignment of wage and hour claims up to \$20,000, exclusive of interest, costs and fees, and allow the district court to hear such claims as in small claims court. This is an increase from the current cap of \$7,500. I believe this provision would be of benefit to all parties concerned, including employers, legitimate claimants and the Department, by reducing litigation costs.

I am opposed to section 3, which would make penalties mandatory in cases in which an employer fails to pay an employee's wages within three business days after the termination of the employment relationship. There may be justifiable reasons for such delay, and the current statute allowing a court to exercise its discretion in awarding penalties has not led to abuse.

Very truly yours,

OWENS & TURNER, P.C.



William F. Mede

ROBERT W. LANDAU
ATTORNEY AT LAW, ARBITRATOR & MEDIATOR
2525 BLUEBERRY ROAD, SUITE 103
ANCHORAGE, ALASKA 99503

(907) 272-2266
FAX (907) 272-1077

February 4, 2000

Senator Drue Pearce
State Capitol
Juneau, AK 99801

Representative Andrew Halcro
State Capitol
Juneau, AK 99801

Re: SB 193 / HB 276
Wage and Hour Claim Limit

Dear Senator Pearce and Representative Halcro:

I am actively involved in the area of labor and employment law as an attorney, arbitrator and mediator. I am writing in support of the above bills which would raise the jurisdictional amount limit for wage and hour claims brought by the Department of Labor in small claims court from \$7,500 to \$20,000. I believe that raising the wage claim limit would allow the Department to seek relief for a greater number of employees who otherwise would not be able to obtain legal representation because of the relatively small size of their claims. In addition, I believe that the Department should be provided with sufficient resources and staffing to adequately pursue the greater number of wage claims it is being asked to handle. Without adequate funding, the goal of these bills would be nothing more than an empty promise.

Thank you for your consideration of these comments.

Sincerely,



Robert W. Landau

RL:hs

1-LS1263\A.1
Cramer
2/10/00

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 193

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Senator Drue Pearce

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PERKINS COIE LLP

1029 WEST THIRD AVENUE, SUITE 300 - ANCHORAGE, ALASKA 99501-1970
TELEPHONE: 907 279-8501 - FACSIMILE: 907 276-3108

February 8, 2000

Senator Jerry Mackic
Senator Druc Pearcc
Members of the Senate Labor and Commerce Committee

Re: SB 193

Dear Senators:

Senate Bill 193, as currently written, is a flawed bill. I urge that SB 193 be amended or killed.

I support that part of SB 193 that raises the jurisdiction of the Department of Labor to prosecute wage and hour claims from \$7,500 to \$20,000. The Department of Labor, in my experience, has always been professional, courteous, knowledgeable, and relatively easy to deal with. The DOL has been fair when an employer has made a good faith mistake. They have been reasonable when an employer has questioned the clarity of the law as applied to the employer's situation. Providing the DOL with authority to resolve wage and hour claims up to \$20,000 makes sense and is good public policy.

What doesn't make sense is amending AS 23.05.140 (d) to provide a mandatory penalty for failure to pay wages within three working days of termination. This will create windfalls for employees and penal consequences for many employers who have a legitimate dispute and are acting in good faith.

AS 23.95.140 currently provides that an employee may be entitled to 18 weeks of pay (90 working days) if the employer doesn't pay all compensation owed, within three working days of termination. Thus, if an employee and an employer have a legitimate dispute over whether one dollar is owed, the employee could win over four months pay for the unpaid dollar. This is unfair.

I have represented numerous employers in wage and hour disputes, including many where the employer and the employee have a good faith dispute over whether the employee should have been treated as a non-exempt employee entitled to overtime pay. In almost all cases, the employee also asserts that if they win, they are also entitled to 90 working days pay for failure to pay the overtime that was in dispute.

[09901-9500/AA003671.017]

February 8, 2000

Page 2

Sometimes, judges grant this request. Thus, the employee receives the disputed overtime, an equal amount in liquidated damages, full attorneys' fees, and 18 weeks of pay on top. A legitimate dispute over \$10,000 of overtime can mushroom to a judgment of \$50,000 or more. This can be a crippling blow to small businesses.

The amendment of AS 23.05.140 should be deleted from SB 193. Also, to bring a bit of fairness to the process, AS 23.05.140 should be amended to:

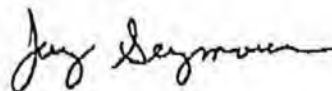
- Clarify that it does not apply when the employee receives some other penalty award (e.g. liquidated damages under AS 23.10.110) under AS 23.05 or AS 23.10; and
- Is not to be awarded when the employer reasonably believed, by a preponderance of the evidence, that the employee was not entitled to the compensation demanded.

I base my views and comments on over a decade of representing Alaska employers in wage and hour cases, including my present work as a labor and employment attorney with the law firm of Perkins Coie. I currently serve as the Legislative Director for the State Council for the Society for Human Resource Management (SHRM) and I chair the Legislative Affairs Committee for the Anchorage Society for Human Resource Management (ASHRM).

The views expressed in my written comments and oral testimony are my personal views. I do not speak for Perkins Coie, SHRM, the State Council, or ASHRM.

I would be pleased to provide additional testimony and comment to the Committee, if the information would be helpful.

Very truly yours,



S. Jay Seymour

Subject: [Fwd: Fw: SB193]
Date: Mon, 07 Feb 2000 12:32:15 -0900
From: "J. R. (Randy) Carr" ?Randy_Carr@labor.state.ak.us?
Organization: Alaska Department of Labor and Workforce Development
To: Dwight L Perkins ?dwright_perkins@labor.state.ak.us?

here are Wil's comments

Subject: Fw: SB193
Date: Sat, 5 Feb 2000 13:23:54 -0800
From: "Will Schendel" ?schenlaw@ptialaska.net?
To: ?randy_carr@labor.state.ak.us?

----- Original Message -----
From: Will Schendel
To: Senator Drue Pearce@legis.state.ak.us
Sent: Saturday, February 05, 2000 1:22 PM
Subject: SB193

Dear Senator Pearce,

I write in support of SB 193 regarding raising the limit on unpaid wage claims assignable to Wage and Hour. My perspective and experience is as an attorney specializing in employment law. I represent both employees and employers.

Very few ex-employees with unpaid wage claims for less than \$20,000.00 or \$30,00.00 can find a private attorney to represent them (because they cannot afford to pay an attorney on an hourly basis, and because no rational attorney will represent them for a percentage of the possible recovery when the costs of going to trial, if necessary, will greatly exceed the possible fee recovery). There are two solutions to this problem: One solution is to make a statutory change to award the winning employee a full recovery of attorney fees, as is currently the case for suits over unpaid minimum or overtime wages. That solution, of course, will add to the expense to the losing employer, and doesn't address another problem in unpaid wages suits - that the defaulting employer often is insolvent (and no rational attorney will be motivated by the prospects of a full fee award against an insolvent defendant). The second solution is to provide essentially free counsel to the unpaid employee, by permitting Wage and Hour to take the claim to court (without charge to the ex-employee). That second solution, however, assumes that Wage and Hour has the time (or, if it contracts with the Department of Law for legal services, that it has the money) to go to court. It's been my experience, here in Fairbanks, that Wage and Hour goes to court once in a blue moon, because its staff can do more good for other employees, by doing non-court claims processing. Raising the Wage and Hour cap isn't going to do much to actually induce Wage and Hour to take these claims, unless there are additional appropriations to Wage and Hour to actually pursue these claims, or, maybe, until Wage and Hour is given authority to recover its actual costs and fees from the defaulting employers. If the Legislature isn't in favor of enacting a full attorney's fee award provision for unpaid wages (though I would encourage it to do so), or in favor of increasing the Wage and Hour Division's appropriations for enforcement, raising the cap won't do much good, but it might frighten a few employers into paying wages.

My first preference, then, is for the Legislature to put some real teeth into the unpaid wage assignment law in Alaska by encouraging the private bar to take more of these cases (through an award of full attorney fees); at the same time, the cap on wage and Hour assignments could be raised, so that Wage and Hour could, if it had the resources and time, take more of the claims, but the Division should also be given a bigger hammer and inducement to enforce these claims, by awarding full fees and costs to the Department of Labor, and by increasing enforcement-targeted appropriations to the Division.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. SB 193

Revision Date/Time (Note if correction): _____
 Title: Collection of Unpaid Wages

Department Affected: Labor and Workforce Develop
 BRU: Labor Standards and Safety
 Component: Wage and Hour

Sponsor: Senator Pearce
 Requestor: Senate L&C

COMPONENT SERIAL NO. 345

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

CAPITAL						
----------------	--	--	--	--	--	--

CHANGE IN REVENUE						
FUND SOURCE #						

FUNDING: (Thousands of Dollars)

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

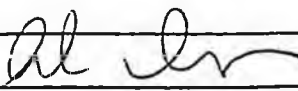

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY00) impact: \$ none

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Alan Dwyer, Director  Phone: 465-4855
 Division: Labor Standards and Safety Date/Time: 2/7/00 10:36 AM
 Approved by Commissioner: Ed Flanagan, Commissioner 
 Agency: Department of Labor Date: 2/7/00

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Fiscal Note: SB 193 - Collection of Unpaid Wages

This bill will allow the Department to represent those wage claimants that cannot find an attorney to represent them due to the relative small size of their claim. The Department of Labor and Workforce Development (DOL) statutory cap for a straight claim for unpaid wages under AS 23.05.220(c) is tied to the Small Claims cap of \$7,500. Wage claims exceeding \$7,500 cannot be pursued by DOL. Private attorneys cannot profitably handle those cases. This leaves a large gap where employees with wage claims between \$7,500 up to about \$20,000 are unable to get representation.

There is no incentive for attorneys to pursue private wage claims under \$20,000. It is not cost effective for an employee to pay hourly attorney's fees and it is not profitable for an attorney to take such cases on a contingency fee basis. The only recourse for such employees is to proceed Pro Se in the appropriate court, a daunting option for the average non-attorney and usually unsuccessful due to unfamiliarity with the system.

By raising the limit for Wage and Hour cases handled in Small Claims Court, this amendment provides a source of assistance for this category of employee. It is desirable to keep these cases in Small Claims Court rather than District or Superior Court in order to expedite resolution and keep down costs to all parties.

The division does not anticipate that the volume of such claims will require additional staff in order to handle them.

SB

220

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

No. 1
Bill Version: SB 220
(S) Publish Date: 1-24-00

Revision Date/Time (Note if Correction): _____
Title: LLC/LLP's qualifying for Alaska Bidder Preference and Disability Preference
Sponsor: Rules Committee
Requestor: Governor

Department Affected: All
BRU: Centralized Administrative Services
Component: Purchasing

COMPONENT SERIAL NO. 60

Expenditures/Revenues: (Thousands of Dollars)
Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2001	FY 2002	FY2003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE: (Thousands of Dollars)

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

Estimate of any current year (FY 2000) cost: \$ 0.0

POSITIONS:

FULL-TIME	N/A					
PART-TIME	N/A					
TEMPORARY	N/A					

ANALYSIS: (Attach a separate page if necessary.)

This bill would amend AS 36.30.170(b) and (e) to establish qualifications for application of the Alaska Bidder and Disability preferences to Limited Liability Companies and Limited Liability Partnerships bidding on State contracts.

There is no fiscal impact.

Prepared by: Marsha Hubbard, Director
Division: General Services

Phone: 465-5687
Date: 11/29/99

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

Date: 11/30/99

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STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 110200
JUNEAU, ALASKA 99811-0200
PHONE: (907) 465-2200
FAX: (907) 465-2135

February 2, 2000

The Honorable Jerry Mackie
Alaska State Senator
State Capitol, Room 427
Juneau, AK 99801

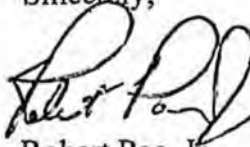
Dear Senator Mackie:

I respectfully request that you schedule Senate Bill 220, an act clarifying the requirements for limited liability companies (LLCs) and partnerships (LLPs) to qualify for the Alaska bidder's and disability preferences under the State Procurement Code, for a hearing in the Senate Labor and Commerce Committee.

This bill provides needed clarification in recognizing LLCs and LLPs under the state procurement code and furthers the legislative objective of ensuring Alaska businesses receive a preference while safeguarding application of the preferences to bonafide resident businesses.

If you have any questions or need additional information, please feel free to contact me or my legislative liaison, David Koivuniemi.

Thank you in advance for your cooperation.

Sincerely,

Robert Poe, Jr.
Commissioner

RP/DMD/jd

cc: Pat Pourchot, Legislative Director, Office of the Governor



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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

January 21, 2000

SB 220

The Honorable Drue Pearce
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

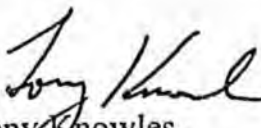
Dear President Pearce:

I am transmitting a bill clarifying the statutory requirements for limited liability companies and limited liability partnerships to qualify for the Alaska bidder's and disability preferences under the State Procurement Code.

Limited liability companies (LLCs) and limited liability partnerships (LLPs) were recently recognized in state law, well after the state procurement code established its Alaska bidder and disability preferences. Therefore, the procurement code preferences do not clearly prescribe qualification requirements for LLCs or LLPs.

By providing needed clarification and recognizing LLCs and LLPs under the state procurement code, this bill furthers the legislative objective of ensuring that Alaska businesses receive a preference while safeguarding application of the preferences to bonafide resident businesses.

Sincerely,


Tony Knowles
Governor

SB

222

FISCAL NOTE

No. 1

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL | Bill Version: SB 222
(S) Publish Date: 1-24-00

Revision Date/Time (Note if correction): _____
 Title: An Act relating to the Alaska
Employment Security Act
 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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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CHANGE IN REVENUE FUND SOURCE #						
------------------------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY00) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

This bill proposes to amend the standard industrial classification for, and eligibility for benefits while in training as recognized under the Alaska Employment Security Act, AS 23.20.

Prepared by: Rebecca Gamez, Director
 Division: Employment Security Division

Phone: 465-2711
 Date/Time: 10/14/99 2:05 PM

Approved by Commissioner: Ed Flanagan, Commissioner
 Agency: Department of Labor

Date: 10/14/1999

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ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE COMMITTEE

*TO: Senator
Mackie
For Your Info.*

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



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

MEMORANDUM

TO: Rep. John Cowdery, Chairman
House Rules Committee

FROM: Rep. Norman Rokeberg, Chairman
House Labor & Commerce Committee *Norman Rokeberg*

DATE: February 29, 2000

RE: HCS SB 222 (L&C)
Employment Security Act

Please schedule HCS SB 222 (L&C) for a vote on the House floor.

Attached are the following:

1. HCS SB 222 (L&C)
2. Fiscal Note
3. Governor's Transmittal Letter
4. The difference between SB 222 and HCS SB 222 (L&C) is contained in Section 4, page 2, lines 21-27. The Committee added this language to make it plain that drug or alcohol abuse is to be considered "misconduct" under an unemployment insurance claim if the employer has a written policy concerning same. The Committee feels that drug or alcohol policies established by an employer should be supported in every manner. Under a written policy, an employee knows what is expected, what kind of tests may be administered, and other items. The Committee has been informed of cases concerning dismissal for failure of such tests where benefits have started immediately. The impact of this legislation would be to delay the start of unemployment insurance payments on the same time line as others that quit without cause.
5. The Department of Labor & Workforce Development supports HCS SB 222 (L&C) and has worked with the Committee on drafting the language. The Committee has heard no opposition to the legislation.

Thank you.

HOUSE CS FOR SENATE BILL NO. 222(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 3/1/00
Referred: Rules

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to standard industrial classification for, eligibility for benefits
2 under, and the definition of 'benefit year' for the Alaska Employment Security
3 Act; and providing for an effective date."

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

5 * Section 1. AS 23.20.110(n) is amended to read:

6 (n) The department may produce statistical and other public reports based on
7 information obtained in the course of administering this chapter, so long as the reports
8 do not reveal wage and payroll data for an employing unit or the name or number
9 identifying an individual. The reports may include the firm name, address, North
10 American Industry Classification System [STANDARD INDUSTRIAL
11 CLASSIFICATION] code, census area code, number of workers employed, and
12 occupational staffing patterns for an employing unit.

13 * Sec. 2. AS 23.20.170(b) is amended to read:

14 (b) An employer who is not entitled to a rate determination under

1 AS 23.20.280 - 23.20.310 because the employer is ineligible under AS 23.20.281 shall
 2 pay contributions at a rate equal to the average industry tax rate as determined by the
 3 commissioner. Assignment by the commissioner of employers to industrial
 4 classification, for the purposes of this subsection, shall be to the industry group code
 5 specified in the most current version of the North American Industry
 6 Classification System, United States [TWO-DIGIT MAJOR GROUP PROVIDED IN
 7 THE STANDARD INDUSTRIAL CLASSIFICATION CODE], in accordance with
 8 established classification practices found in the most current version of the North
 9 American Industry Classification System manual prepared by the United States
 10 Office of Management and Budget ["STANDARD INDUSTRIAL
 11 CLASSIFICATION MANUAL" ISSUED BY THE UNITED STATES DEPARTMENT
 12 OF LABOR].

13 * Sec. 3. AS 23.20.379(a) is amended to read:

14 (a) An insured worker is disqualified for waiting-week credit or benefits for
 15 the first week in which the insured worker is unemployed and for the next five weeks
 16 of unemployment following that week if the insured worker

17 (1) left the insured worker's last suitable work voluntarily without good
 18 cause; or

19 (2) was discharged for misconduct connected with the insured worker's
 20 last work.

21 * Sec. 4. AS 23.20.379 is amended by adding a new subsection to read:

22 (f) In this section,

23 (1) "alcohol" has the meaning given in AS 23.10.699;

24 (2) "drugs" has the meaning given in AS 23.10.699;

25 (3) "misconduct" includes conduct in violation of an employer's policy
 26 concerning the use of drugs or alcohol, but only if the policy is consistent with
 27 AS 23.10.620.

28 * Sec. 5. AS 23.20.382(d) is amended to read:

29 (d) An otherwise eligible individual may not be denied benefits or waiting-
 30 week credit for any week because the individual is in any training approved under
 31 P.L. 105-220 (Workforce Investment Act of 1998) [29 U.S.C. 1651 - 1658,

1 AS AMENDED BY P.L. 100-418,] and, while attending the training, is not available
2 for work, fails to seek work, or refuses work.

3 * Sec. 6. AS 23.20.520(5) is repealed and reenacted to read:

4 (5) "benefit year" means a period of 52 consecutive weeks beginning
5 at 12:00 a.m. of the Sunday preceding the day that an insured worker first files a
6 request for determination of the worker's insured status, and, thereafter, the period of
7 52 consecutive weeks beginning at 12:00 a.m. of the Sunday preceding the day that
8 the insured worker next files the request after the end of the worker's last preceding
9 benefit year; however, for a worker covered by this paragraph, "benefit year" also
10 means a period of 53 weeks if the filing of a request for determination would result
11 in overlapping any quarter of the base year of a previously filed request for
12 determination; the filing of a notice of unemployment is considered a request for
13 determination of insured status if a current benefit year has not previously been
14 established;

15 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section
16 to read:

17 TRANSITION PROVISION. Notwithstanding the change to the definition of "benefit
18 year" enacted by sec. 6 of this Act, for an insured worker who, on October 6, 2001, has an
19 established current benefit year, the definition of "benefit year" as it existed in
20 AS 23.20.520(5) on October 6, 2001, applies to that worker's claim under AS 23.20 until that
21 worker's current benefit year is completed. If an insured worker's current benefit year under
22 this section ends on a day other than Sunday, the current benefit year is extended until 11:59
23 p.m. of the Saturday following that ending week.

24 * Sec. 8. Sections 1 - 5 of this Act take effect July 1, 2000.

25 * Sec. 9. Sections 6 and 7 of this Act take effect October 7, 2001.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

No. 1
BILL | Bill Version: SB 222
(S) Publish Date: 1-24-00

Revision Date/Time (Note if correction): _____
Title: An Act relating to the Alaska
Employment Security Act
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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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CHANGE IN REVENUE FUND SOURCE #						
------------------------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY00) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

This bill proposes to amend the standard industrial classification for, and eligibility for benefits while in training as recognized under the Alaska Employment Security Act, AS 23.20.

Prepared by: Rebecca Gamez, Director Phone: 465-2711
Division: Employment Security Division Date/Time: 10/14/99 2:05 PM
Approved by Commissioner: Ed Flanagan, Commissioner
Agency: Department of Labor Date: 10/14/1999

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Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532
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SB 222

January 21, 2000

The Honorable Drue Pearce
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Pearce:

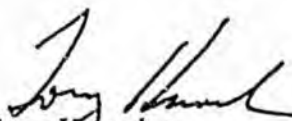
Recent amendments to federal law regarding job training and unemployment insurance require the state to update certain statutory references in these areas. This bill I transmit today accomplishes this requirement.

Congress repealed the Job Training Partnership Act, replacing it with the Workforce Investment Act of 1998. This bill makes corresponding changes to state law. Similarly, the bill updates the classification system for employers determining their contribution rate to the unemployment compensation fund. The federal Office of Management and Budget decided in 1997 to replace the Standard Industrial Classification Code with the North American Industry Classification System. The updated coding system was developed jointly by the United States, Canada, and Mexico to provide new comparability in data about business activity across North America.

The bill also clarifies that an unemployment insurance claimant is not entitled to benefits for the first six weeks of unemployment if termination was for misconduct connected with the claimant's last work. Finally, the bill provides definite beginning and ending dates for a claimant's "benefit year."

In order to keep Alaska's labor and unemployment statutes current with federal law, I urge your prompt and favorable action on this measure.

Sincerely,


Tony Knowles
Governor

Overview

SB 222

Section 1

- Amends AS 23.20.110 (n)
- Statute pertains to items contained in statistical or other public reports
- Replaces reference to Standard Industrial Classification System with North American Industry Classification System
- North American Industry Classification System (NAICS) ensures uniform and comparable data among North American countries.
- New system to be in place for reporting purposes 1/1/01.
 - Federal Reports:
 - ETA 203 Distribution of Characteristics of the Insured Unemployed
 - ETA 9049 Worker Profiling and Re-employment Services Outcomes

Section 2

- Amends AS 23.20.170 (b)
- Statute pertains to Employer Rate of Contributions
- Replaces reference to Standard Industrial Classification System with North American Industry Classification System
- Industry tax rate determined by industry classification code
- Employer rates determined in fall and mailed in December for following year.
- Initial analysis indicates new classification will have minimal or no affect on employer rates - no different than current system.

Section 3

- Amends AS 23.20.379 (a)(2)
- Statute pertains to potential disqualification for voluntary leaving work or a discharge for misconduct connected with the work.
- Technical change to clarify that potential disqualification for misconduct applies only to the last period of employment held prior to filing for unemployment benefits.
- Proposed language parallels voluntary leaving provision

Section 4

- Amends AS 23.20.382 (d)
- Statute pertains to payment of benefits while attending approved vocational training
- Amends reference to training approved under 29 U.S.C. 1651-1658 (JTPA) to P.L. 105-220 Workforce Investment Act (WIA)
- WIA repeals JTPA effective 7/1/2000

Section 5

- Amends AS 23.20.520 (5)
- Repeals current definition of an unemployment benefit year and replaces it with a new definition.
- New definition sets out that benefit years will begin on the Sunday of the week filed and continues for 52 weeks.
- Allow for 53 week benefit year if subsequently filed benefit year will result in overlapping base periods.
- Proposed change will make benefit years mutually exclusive and eliminate confusion in determining on which benefit year a week will be filed.
- Positions UI program for future technological advances such as Internet filing.

Section 6

- Adds a transitional provision in uncodified law to address benefit years that began under old definition but will expire under new definition.

Section 7

- Sections 1 - 4 take effect 7/1/2000

Section 8

- Sections 5 and 6 take effect 10/7/2001

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

SB 222

January 21, 2000

The Honorable Drue Pearce
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Pearce:

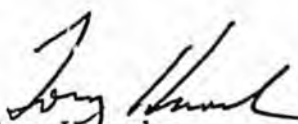
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The bill also clarifies that an unemployment insurance claimant is not entitled to benefits for the first six weeks of unemployment if termination was for misconduct connected with the claimant's last work. Finally, the bill provides definite beginning and ending dates for a claimant's "benefit year."

In order to keep Alaska's labor and unemployment statutes current with federal law, I urge your prompt and favorable action on this measure.

Sincerely,


Tony Knowles
Governor

NOTES TO DECISIONS

Cited in State, Dep't of Labor v. Boucher, 581 P.2d 660 (Alaska 1978).

Sec. 23.20.510. Pay period. (a) If the service performed during one-half or more of a pay period by an individual for an employing unit constitutes employment, all the service of the individual for the period is considered employment.

(b) If the service performed during more than one-half of a pay period by an individual for an employing unit does not constitute employment, then none of the service of the individual for the period is considered employment.

(c) In this section, "pay period" means a period of not more than 31 consecutive days for which a payment for service is ordinarily made to the individual by the employing unit. This section does not apply to service performed in a pay period by an individual for an employing unit when any of the service is excluded because it is subject to an unemployment insurance program established by an Act of Congress. (§ 235 ch 5 ESLA 1955)

Sec. 23.20.515. Earnings of fishermen not subject to contributions. [Repealed, § 26 ch 122 SLA 1977.]

Sec. 23.20.520. Definitions. In this chapter, unless the context otherwise requires,

(1) "American vessel" means a vessel documented or numbered under the laws of the United States, or a vessel not documented or numbered under the laws of the United States nor documented under the laws of a foreign country, if its crew performs service solely for one or more citizens or residents of the United States or corporations organized under the laws of the United States or of a state;

(2) "average annual wage" means the amount determined by dividing the total wages paid by covered employers during a 12-month period by the average monthly employment reported by covered employers for the same period;

(3) "base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year;

(4) "benefits" means the money payments payable to an individual, as provided in this chapter with respect to the individual's unemployment;

(5) "benefit year" means a one-year period beginning with the day as of which an insured worker first files a request for determination of the worker's insured status, and thereafter the one-year period beginning with the day as of which the insured worker next files the request after the end of the worker's last preceding benefit year; the filing of a notice of unemployment is considered a request for determination of insured status if a current benefit year has not previously been established;

(6) "calendar quarter" means the period of three consecutive calendar months ending March 31, June 30, September 30, or December 31;

(7) "claimant" means an individual who has filed a request for a determination of insured status, a notice of unemployment, a certification for waiting-week credit, or a claim for benefits;

(8) "contribution" and "payment in place of contribution" mean the money payment to be made to the fund, which payments are taxes due to the state;

(9) "employer" means (A) an employing unit which for some portion of a day within the calendar year has or had in employment one or more individuals; and (B) for the effective period of its election under AS 23.20.325, an employing unit which has elected to become subject to this chapter;

(10) "employing unit" means one or more departments or other agencies of the state, a political subdivision of the state, an individual, or a type of organization, partnership, association, trust, estate, joint trust company, insurance company, or domestic or foreign

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corporation, or the receiver, referee in bankruptcy, trustee, or successor of one of these, or the legal representative of a deceased person, which has or, after January 1, 1937, had one or more individuals performing service for it in the state; an individual performing services in the state for an employing unit which maintains two or more separate establishments in the state is considered as employed by a single employing unit for the purposes of this chapter; notwithstanding any provision in this chapter, any employing unit which employs individuals whose services must be covered by the unemployment insurance laws of this state after December 31, 1971 as a condition of approval of the unemployment insurance laws of this state under 26 U.S.C. 3304(a) (Internal Revenue Code of 1954), as amended, will be considered an employer as to those individuals and is subject to contributions on all wages paid after December 31, 1971, or reimbursement payments to cover benefits paid based on services performed after December 31, 1971, depending on the applicable law;

(11) "employment office" means a free public employment office or branch of one operated by this state or another state or territory as a part of a state-controlled system of public employment offices or by a federal agency or an agency of a foreign government charged with the administration of an unemployment insurance program or of free public employment offices;

(12) "fund" means the unemployment compensation fund established by this chapter;

(13) "hospital" means any institution primarily engaged in the treatment of emotional or physical disability which provides, on a regular basis, 24-hour a day bed care under the supervision of licensed medical personnel and those components, of other institutions, which are primarily engaged in the treatment of emotional or physical disability and which provide, on a regular basis, 24-hour a day bed care under the supervision of licensed medical personnel;

(14) "institution of higher education" means an educational institution which

(A) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of a high school graduation certificate;

(B) is legally authorized in the state in which it is located to provide a program of education beyond high school;

(C) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward either degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(D) is a public or other nonprofit institution;

(15) "insured work" means employment for employers;

(16) "insured worker" means an individual who, with respect to a base period, meets the wage and employment requirements of AS 23.20.350;

(17) "state" includes the states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands;

(18) "vocational training or retraining course" means a course of vocational or technical training or retraining in schools or classes, including but not limited to, field or laboratory work and related remedial or academic instruction, which is conducted as a program designed to prepare individuals for employment in trades, skills, or crafts; the term "vocational training or retraining course" does not include a program of instruction for an individual, including a transfer credit program of instruction given at a community college, which is intended as credit for a degree from an institution of higher education;

(19) "waiting week" means the first week of unemployment for which an individual files a claim during the individual's benefit year and for which no disqualification is imposed under AS 23.20.360, 23.20.362, 23.20.375, and 23.20.378 — 23.20.387;

(20) "week" means the period of seven consecutive days which the department may by regulations prescribe. (§§ 202 — 204 ch 5 ESLA 1955; § 205 ch 5 ESLA 1955; am § 1 ch 169 SLA 1957: §§ 206, 208, 210, 212, 213, 236 — 238, 240, 241, 252, 253 ch 5 ESLA 1955:

SB

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Teleconference Participants

TCN: 10540

Participant Lists

View List for

Participants

Unidentified Testifiers:

Unidentified Observers:

ANCHORAGE (ANC)

1 Name: Mr. William Theuer Phone:
 Address: Affiliation:
 City /St /Zip: Type: Testifier
 Bill: SB 230: RIGHT TO WORK

2 Name: Mr. Raymond Smith Phone:
 Address: Affiliation:
 City /St /Zip: Type: Testifier
 Bill: SB 230: RIGHT TO WORK

3 Name: Mr. Kevin D. McGee Phone:
 Address: Affiliation:
 City /St /Zip: Type: Testifier
 Bill: SB 230: RIGHT TO WORK

4 Name: Mr. R Scott Bridges Phone:
 Address: Affiliation:
 City /St /Zip: Type: Testifier
 Bill: SB 230: RIGHT TO WORK

FAIRBANKS (FBX)

1 Name: Mr. Andrew Hodnik Phone:
 Address: Affiliation: Loc 302
 City /St /Zip: Type: Testifier
 Bill: SB 230: RIGHT TO WORK

2 Name: Mr. Jay Quakenbush Phone:
 Address: Affiliation: IBEW 1547
 City /St /Zip: Type: Testifier
 Bill: SB 230: RIGHT TO WORK

3 Name: Mr. Don Swarner Phone:
 Address: Affiliation: Loc 1243
 City /St /Zip: Type: Testifier
 Bill: SB 230: RIGHT TO WORK

4 Name: Mr. Bob Toth Phone:
 Address: Affiliation: Loc 1243
 City /St /Zip: Type: Testifier
 Bill: SB 230: RIGHT TO WORK

PETERSBURG (PSG)

STEVE GOODRICK / WASH DC, / Right To Work

International Brotherhood of Electrical Workers
Local 1547

3333 DENALI STREET
ANCHORAGE, ALASKA 99503-4038

TELEPHONE DISPATCH FAX
(907) 272-6571 (907) 276-1547 (907) 276-1963

GARY BROOKS
BUSINESS MANAGER • FINANCIAL SECRETARY

KNUTE ANDERSON
PRESIDENT



Testimony of Gary Brooks
Before the Senate Labor and Commerce Committee

Thank you Mr. Chairman and members of the Senate Labor and Commerce Committee for this opportunity to speak before you today. I am Gary Brooks, Business Manager and Financial Secretary of IBEW Local Union 1547, an organization that represents approximately 5,000 working Alaskans from Barrow to Ketchikan in a variety of diverse occupations that range from journeyman electrician to nuclear medical technician. I am here today to tell you why these working Alaskans do not support Senate Bill 230.

As I prepared my testimony, I pondered the question – “Where else in a Democracy do we allow the minority to dictate to the majority?” For that is exactly what this bill seeks to do – impose the will of the minority on the majority.

A union is a group of workers who have joined together so they may draw on their collective strengths - much the same as the Union of the states did when this nation was formed. In order to form a bargaining unit within an employee workforce, fifty percent plus one of the employees must vote in the affirmative to form a union, and to tax themselves to pay for the expenses incurred in representing the interests of the bargaining unit as a whole.

As I asked myself that question, “Where else in a democracy do we allow the minority to dictate to majority?” I can only think of examples of the problems society as a whole would incur by the imposition of that minority’s will on the majority. What if I didn’t want to pay that portion of my property tax bill that is dedicated to school bonds? If I were allowed to decline to participate, I would suggest that many of my neighbors would also choose not participate. Or in the case of a road service district – if I decide not to pay, but still enjoy the benefits

March 7, 2000

of the local improvements – paid for only by my neighbors, is that just and fair? Presumably fifty percent plus one of my neighbors felt strongly enough about the need for improvements to my local road service area that they voted to tax themselves. Why should I enjoy the benefit without having to pay?

Union representation is exactly the same. The workers - fifty percent plus one – have democratically chosen to form a union. A union shop is not formed by virtue of a dictatorship – or a coup, rather the people who work in that workplace have democratically chosen to avail themselves of the benefits of collective bargaining and they have chosen to pay the expense of that representation.

The testimony of the gentleman from the Right to Work foundation is laced with much hyperbole – words like tyranny and forced unionism. I ask you to bear in mind the fundamental democratic principle of the right to form a union as you consider this issue.

The Right to Work Foundation's testimony also introduced a lot of unsupported numbers essentially claiming that earnings were higher in so called "Right to Work" states.

This assertion runs contrary to conventional wisdom – but we decided to do some research and comparisons and offer the following example of the results of "right to work" laws on the standard of living for the people who live and work there.

We looked to the example of Missouri and Kansas. In Topeka Kansas, the prevailing wage for a journeyman electrician is \$19.85 an hour plus \$5.59 in benefits for a total hourly compensation package of \$23.44.

Across the border in Missouri a mere 70 miles away, the same journeyman electrician from Kansas City earns \$25.34 in base wages and enjoys a benefit package of \$10.97 per hour for a total hourly wage of \$36.31.

What this means is that the wages in the so-called "right to work" state for a journeyman electrician are 55 percent lower than those of the same occupation in the neighboring "free state".

In conclusion, I would ask that you refuse to turn back the standard of living for Alaskan workers by adopting this un-democratic legislation that you have before you. I will provide the committee with a copy of my remarks and am happy to answer any questions you might have.

If It Doesn't Work for Working Families, It Doesn't Work in Alaska!

The Effect of Right To Work Laws on Working Families AFL-CIO, February 2000

One fifth of the Working Families in Alaska organize to bargain the terms and conditions of employment with the Employer. This high rate of union density has resulted in better lives for all Alaskans. When the organized Working Families bargain for fair wages and decent benefits, they pull most other workers up with them. The positive effects of collective bargaining are seen throughout the economy and the society, managers as well as workers.

Organized Workers and Employers often agree to a requirement that all workers pay a fair share of the costs of negotiating and administering a collective bargaining agreement, also known as the union contract. All workers then must pay dues to pay for the benefits of the contract.

Under federal and state law, no worker is required to belong to a union.

Under federal and state law, no worker is required to pay for political activities, community service work, or any organized activity except the negotiation and administration of the union contract.

So called "Right to Work" laws allow some selfish employees to benefit from a collectively bargained agreement without paying his or her fair share of the workers cost of getting that agreement. The net effect is fewer resources for the Working Families to bargain effectively. Contracts grow progressively weaker and all workers in the area, union and non-union, are hurt. The effect of weakened worker organizations is felt throughout the society.

Twenty-nine Free States, including Alaska, now allow fair share provisions in union contracts when the workers and the employer agree to such provisions. Twenty-one Right To Work States have laws that attack the resources of workers to bargain effectively by allowing selfish employees to refuse to pay their fair share.

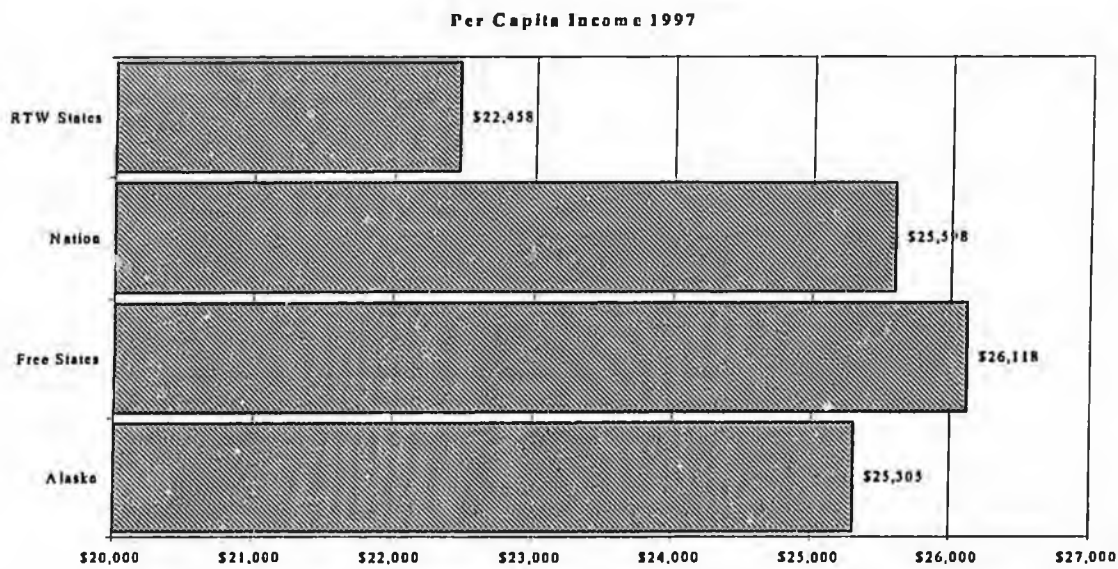
The differences to Working Families between the Free States and the Right-To-Work states are startling. The Right-To-Work attack on worker resources is felt not only in wages but also in worker safety net programs, education of our children and in workers' health.

The national AFL-CIO is preparing a national comparison of Free States to Right-To-Work States. Data is gathered from the US Department of Labor, the Bureau of Labor Statistics, and the US Department of Health and Social Services. This information is used here for Alaska specific comparisons. In addition, data was gathered from the US Internal Revenue Service and the US DOL Occupational Employment Statistics survey for various states to look at other aspects of the economy. In all instances the most recent year's available data is used. In most instances this is 1997 and 1998.

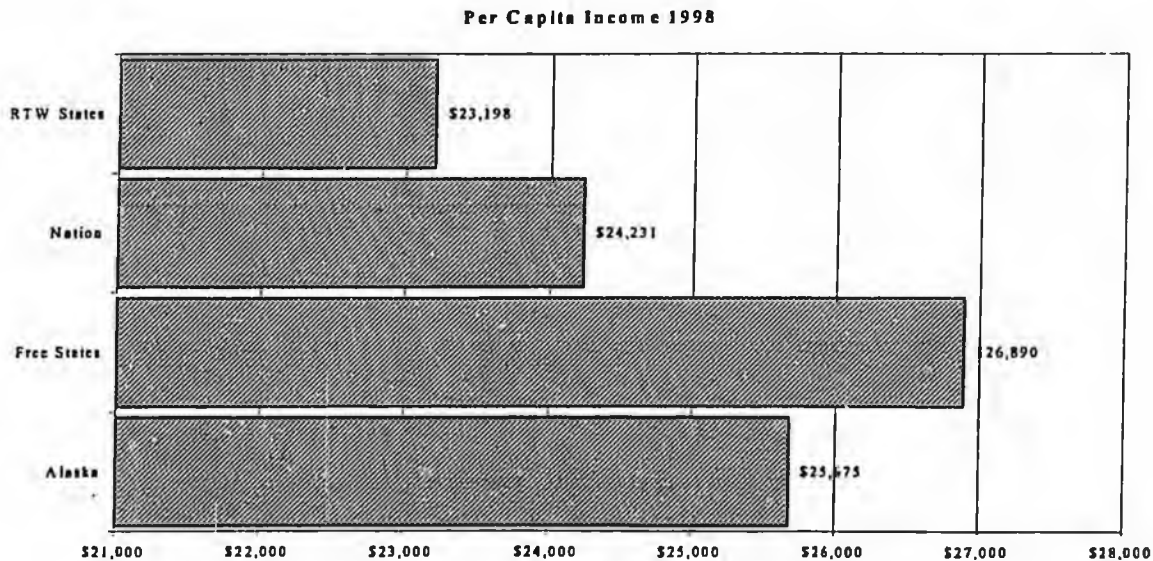
Wages

In both 1997 and 1998, Working Families earned substantially more in Free States than in Right-To-Work States. This was true in union households and in non-union households. A basic comparison can be made with per capita income by state. This measures all income received in the state during the year divided by all people in the state. It would include items such as capital gains on the stock market, the Alaska Permanent Fund Dividend, and wages.

In 1997, Working Families in Free States averaged \$3,660 more per capita than in Right-To-Work states.



In 1998, working Families in Free States averaged \$3,692 more per capita than in Right-To-Work States.



Another comparison can be made looking at specific jobs and rates of pay. For this type of comparison, the Free States of Alaska and Washington were compared to the Right-To-Work States of Texas and Louisiana. Union density is the percent of the workforce belonging to a union. In 1998, Alaska Union Density was 20%; in Washington, 21%; in Texas, 6%; and Louisiana 8%.

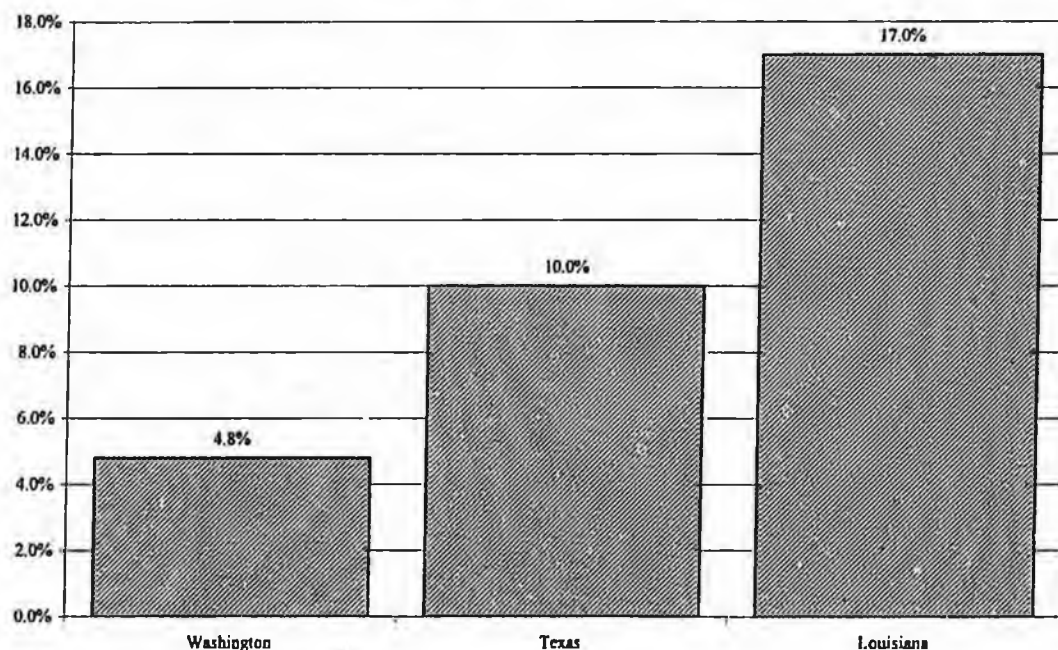
Using the US Department of Labor Occupational Employment Statistics for 1998, thirty-two jobs were compared in each state. Jobs are in the managerial, finance, professional, hospitality, education, public safety, construction, and service sectors of the economy.

It is recognized that the cost of living is very different among these four states. Wages were adjusted to the Anchorage Alaska cost of living factor using the ACCRA (American Chamber of Commerce Research Association) cost of living index for the third quarter of 1999. Under ACCRA study, that national average cost of living for a city equals 100. The four states value was:

Anchorage Alaska =	123.3
Seattle Washington =	118.7
Dallas Texas =	101.1
Baton Rouge Louisiana =	102.8

With and without the cost of living adjustment, wages were generally highest in Alaska followed by Washington State – the two Free States under study. When the cost of living adjusted wages were considered as a whole, Alaska workers earned 4.8% more than Washington workers, a full 10% more than Texas workers, and a whopping 17% more than workers in Louisiana.

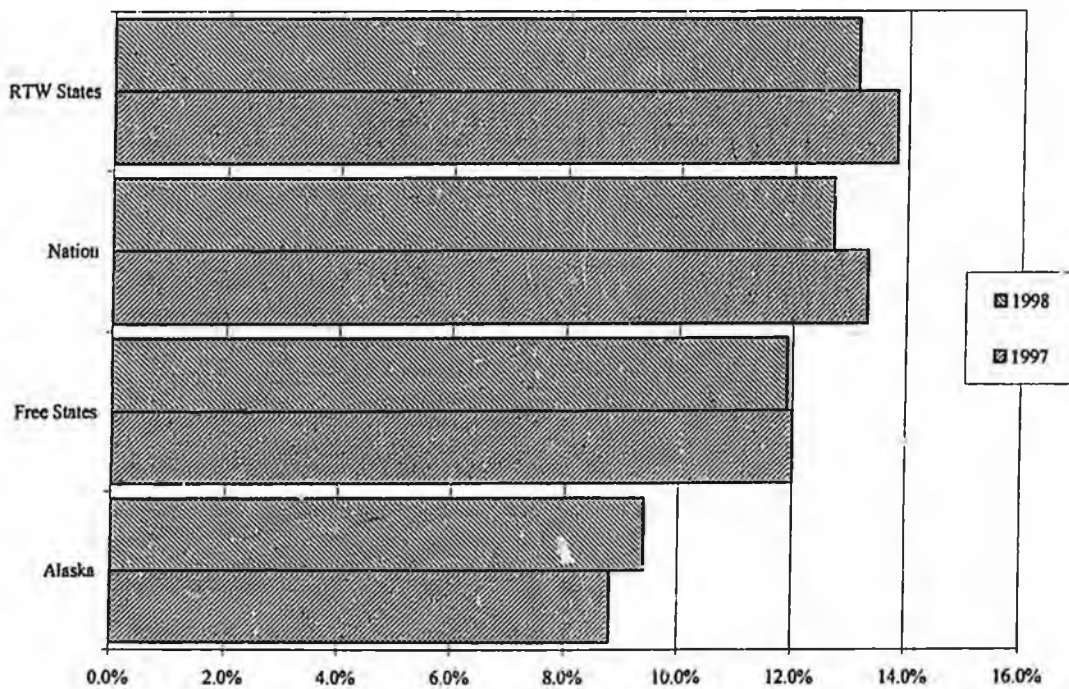
Alaska Wage Advantage With Cost Of Living Adjustment



Poverty Rates

Right To Work laws affect all people in a state. A measure of this effect can be the rate of poverty as defined by the US Department of Health and Social Services. In 1998, the people in the Right-To-Work States had a poverty rate a full 1.2% greater than people in Free States. Alaskans enjoyed a poverty rate 3.3% less than the full national average in 1998. The same trends held true in 1997.

Poverty Rates 1997 and 1998

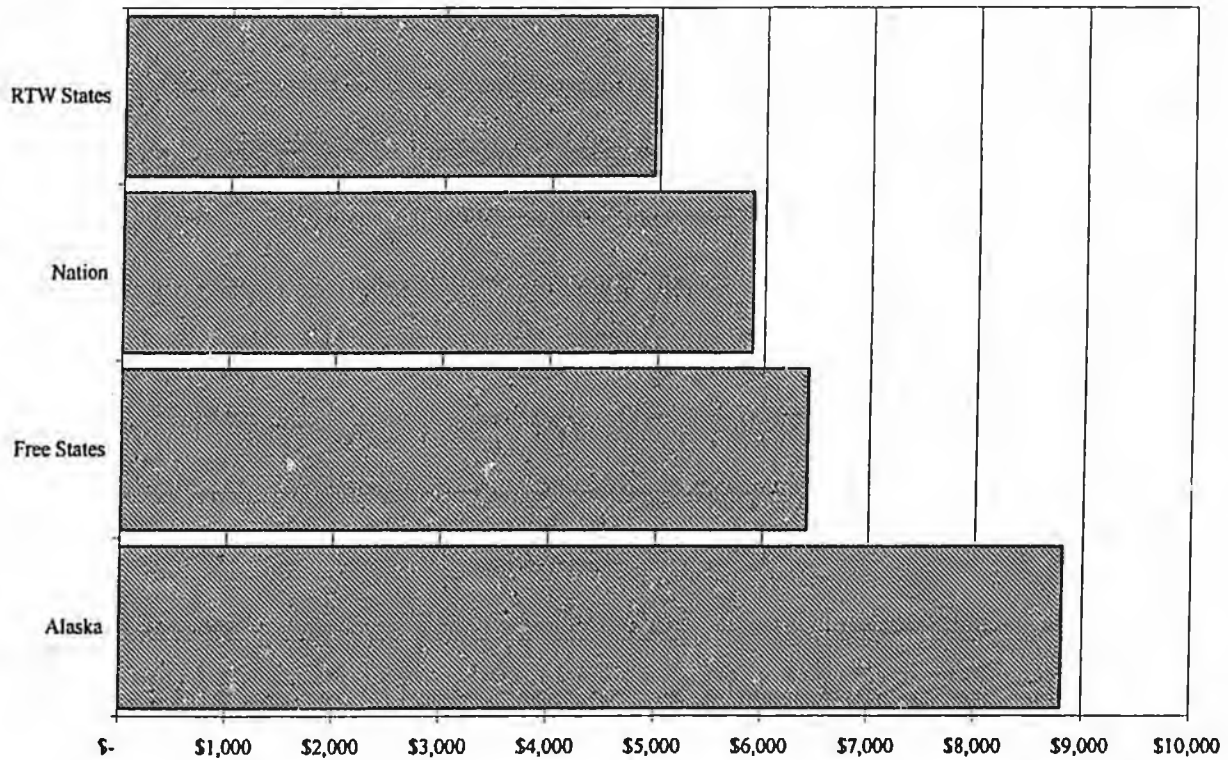


Education

In Free States, greater economic security for all Working Families translates into better public education for the children of those states. A comparison between the Free States and the Right-To-Work States in education can be made in comparing the dollars spent per pupil in public schools in 1997. Here as elsewhere the Free States are remarkable better than the others. An average of \$ 1,461 more per pupil was spent on better education in the Free States in 1997.

The unique costs of public education in Alaska make the differences even more startling for us.

1997 Dollars Per Student in Public School

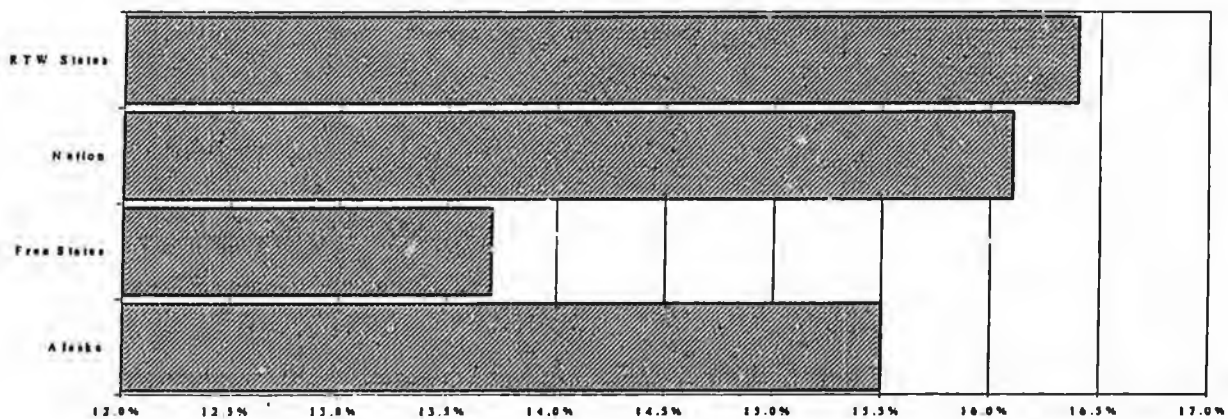


Health

Strong collective bargaining by Working Families also appears to affect the general health of the population. We measure this effect by comparing the percent of the population not covered by health insurance and by looking at three measures of health at birth.

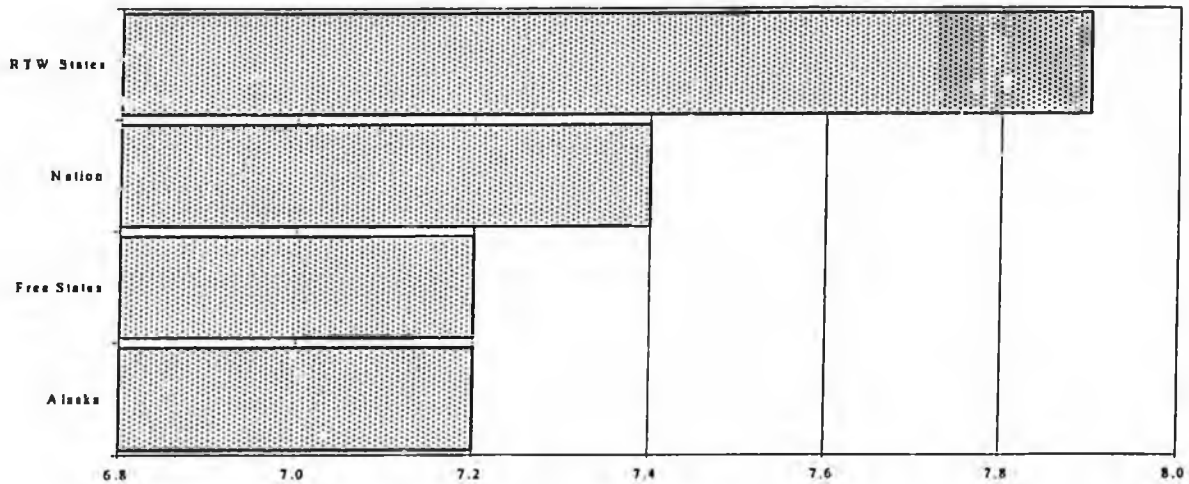
A full 2.7% more workers in the Right-To-Work States were not covered by any health insurance in 1997.

Percent of Population NOT Covered by Health Insurance 1997

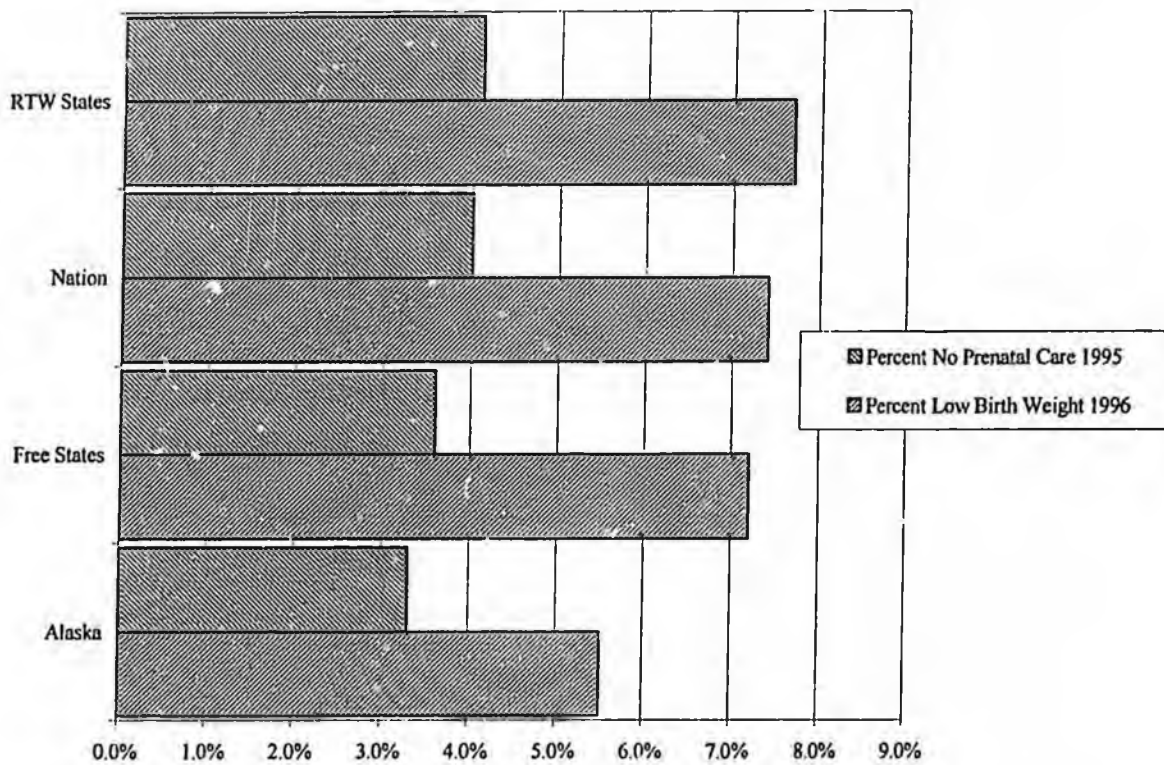


The same positive effect of fair bargaining is seen in the Free States rates for infant mortality, low birth weight rates, and the percent of women receiving late or no prenatal care. In the Free States, women are better able to receive adequate health care during pregnancy.

Infant Mortality Rate Per 1000 Births 1996

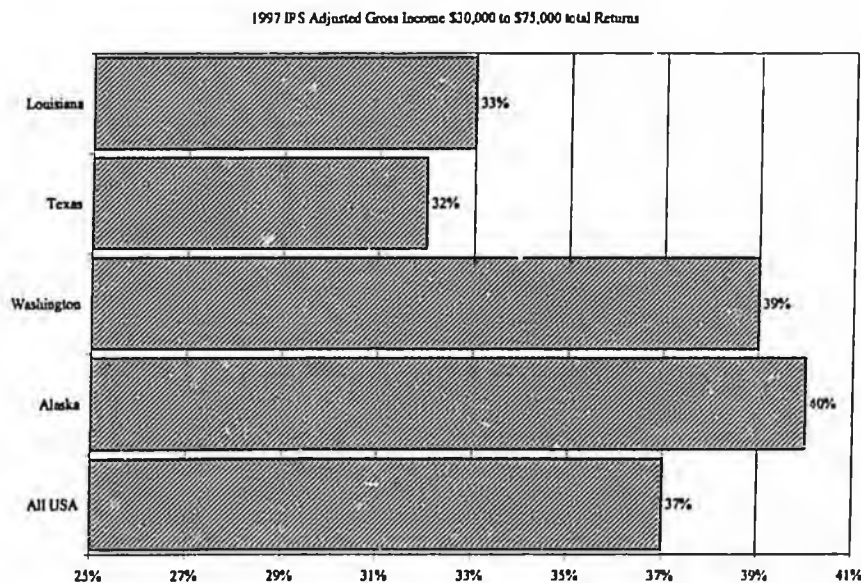


Low Birth Weight and No Prenatal Care Rates



Wage Gap

A final area of comparison is the wage gap in the various states. For this comparison, the US Internal Revenue Service tax returns by state for 1997 were considered. The middle class was determined by adding returns in the \$30,000 to \$50,000 range to returns in the \$50,000 to \$75,000 return range. Thus "middle class" was defined as the total adjusted gross income on returns in the \$30,000 to \$75,000 range. The returns for the USA, Alaska, Washington, Texas, and Louisiana were considered.



Again, the Free States showed a much stronger middle class than the Right-To-Work states. In Alaska, 40% of the total AGI in 1997 fell in the \$30,000 to \$75,000 range. In Louisiana only 33% of the state's AGI was in the middle class.

Conclusion

No matter what the criteria, Working Families do better in the Free States than in the Right-To-Work States. In wages, poverty rates, worker safety nets, education, and health, Working Families, both union and non-union, are better off with fair laws on collective bargaining.

All Working Families lose in Right-To-Work States. The only winners are those who profit from depressed wages and benefits.

	Per Capita 1997	Per Capita 1998	1997 Poverty Rate	1998 Poverty Rate	Average UI Weekly Benefits 1998	Dollars Per Pupil in Public Schools 1997	Percent of Population Not Covered by Health Insurance 1997	Infant Mortality Rates Per 1,000 Births 1996	Low Birth Weight as Percentage of All Births 1996	Percentage of Mothers Receiving No or Late Prenatal Care 1995
Alaska	\$25,305	\$25,675	8.8%	9.4%	\$ 176	\$ 8,813	15.5%	7.2	5.5%	3.3%
Free States	\$26,118	\$26,890	12.0%	11.9%	\$ 200	\$ 6,413	13.7%	7.2	7.2%	3.6%
Nation	\$25,598	\$24,231	13.3%	12.7%	\$ 190	\$ 5,885	16.1%	7.4	7.4%	4.0%
RTW States	\$22,458	\$23,198	13.8%	13.1%	\$ 171	\$ 4,952	16.4%	7.9	7.7%	4.1%

If If Doesn't Work For Working Families,
 It Doesn't Work for Alaska
 Right To Work
 Appendix A

US Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics
 1998 by State and Occupation
 Median Hourly Wage Adjusted for Cost of Living Difference to Anchorage Alaska
 ACCRA COLI Data - Third Quarter 1999

OES Code	Occupation	Alaska	Washington	Texas	Louisiana	AK to WA	AK to TX	AK to LA
19999	All Other Managers and Administrators	\$ 26.55	\$ 26.29	\$ 27.93	\$ 22.98	1.0%	-5.2%	13.5%
21108	Loan Officers	\$ 20.71	\$ 17.78	\$ 20.84	\$ 18.07	14.1%	-0.7%	12.8%
25105	Computer Programmers	\$ 24.28	\$ 23.67	\$ 29.65	\$ 23.89	2.5%	-22.1%	1.6%
27305	Social Workers except Medical and Psychiatric	\$ 16.80	\$ 17.34	\$ 11.98	\$ 17.06	-3.2%	28.7%	-1.5%
28108	Lawyers	\$ 39.22	\$ 37.40	\$ 47.68	\$ 37.61	4.6%	-21.6%	4.1%
31214	English Language & Literature Teachers (post secondary)	\$ 59,740	\$ 41,946	\$ 49,406	\$ 40,996	29.8%	17.3%	31.4%
31305	Elementary School Teachers	\$ 51,510	\$ 40,586	\$ 43,238	\$ 42,026	21.2%	16.1%	18.4%
32502	Registered Nurses	\$ 22.37	\$ 22.67	\$ 23.08	\$ 23.44	-1.3%	-3.2%	-4.8%
43002	Sales Agent - Insurance	\$ 17.09	\$ 16.06	\$ 18.92	\$ 16.59	6.0%	-10.7%	2.9%
49011	Retail Sales	\$ 9.23	\$ 9.09	\$ 9.01	\$ 8.22	1.5%	2.4%	11.0%
49023	Cashiers	\$ 8.18	\$ 8.26	\$ 7.80	\$ 7.33	-1.0%	4.6%	10.4%
53102	Tellers	\$ 9.50	\$ 9.64	\$ 10.15	\$ 9.02	-1.5%	-6.9%	5.0%
53808	Hotel Desk Clerks	\$ 8.03	\$ 7.89	\$ 8.36	\$ 8.06	1.8%	-4.1%	-0.4%
55108	Secretary except Legal and Medical	\$ 13.46	\$ 12.84	\$ 13.09	\$ 11.26	4.6%	2.7%	16.3%
61005	Police and Detective Supervisor	\$ 32.61	\$ 31.99	\$ 24.62	\$ 18.52	1.9%	24.5%	43.2%
63008	Firefighter	\$ 19.90	\$ 22.77	\$ 18.41	\$ 12.42	-14.4%	7.5%	37.6%
65005	Bartender	\$ 9.94	\$ 7.56	\$ 7.17	\$ 7.12	24.0%	27.9%	28.4%
65026	Cook - Restaurant	\$ 9.48	\$ 8.91	\$ 8.42	\$ 8.21	6.1%	11.1%	13.4%
67002	Maids and Housekeepers	\$ 8.36	\$ 7.77	\$ 7.25	\$ 7.16	7.0%	13.2%	14.3%
79002	Forest and Conservation Workers	\$ 14.03	\$ 14.55	na	\$ 13.74	-3.7%	na	2.1%
85302	Auto Mechanic	\$ 17.42	\$ 14.65	\$ 15.62	\$ 14.64	15.9%	10.4%	16.0%
87102	Carpenter	\$ 19.81	\$ 18.26	\$ 14.12	\$ 15.17	7.8%	28.7%	23.4%
87202	Electrician	\$ 24.21	\$ 20.97	\$ 18.03	\$ 17.66	13.4%	25.5%	27.1%
87502	Plumbers Pipefitters and Steamfitters	\$ 27.92	\$ 22.27	\$ 17.96	\$ 17.98	20.3%	35.7%	35.6%
87921	Roustabout	\$ 17.34	na	\$ 10.58	\$ 11.35	na	39.0%	34.6%
89132	Sheetmetal Worker	\$ 22.95	\$ 17.83	\$ 13.36	\$ 13.36	22.3%	41.8%	41.8%
93935	Cannery Worker	\$ 7.46	\$ 7.99	\$ 8.18	\$ 7.81	-7.1%	-9.6%	-4.7%
97102	Truck Driver - Heavy or Tractor Trailer	\$ 16.85	\$ 15.68	\$ 14.10	\$ 13.14	6.9%	16.3%	22.0%
97514	Able Seaman	\$ 16.03	\$ 18.27	\$ 15.47	\$ 13.18	-14.0%	3.5%	17.8%
97956	Operating Engineer	\$ 25.98	\$ 22.24	\$ 17.58	\$ 16.71	14.4%	32.3%	35.7%
97108	Bus Driver	\$ 10.68	\$ 14.64	\$ 14.09	\$ 11.45	-37.0%	-31.9%	-7.2%
87999	All Other Construction & Extraction Workers except Helpers	\$ 18.93	\$ 18.00	\$ 11.87	\$ 11.17	4.9%	37.3%	41.0%
Average State to State Difference						4.8%	10.0%	17.0%
						WA	TX	LA