

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10265 HOUSE JUDICIARY

100

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF AGRICULTURE

TONY KNOWLES, GOVERNOR

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PLANT MATERIALS CENTER  
HCO4 BOX 7440  
PALMER, ALASKA 99645-9706  
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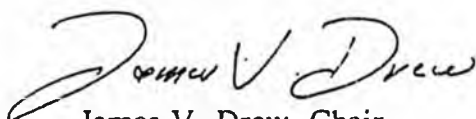
March 2, 2001

Dear Legislator:

At the Board of Agriculture and Conservation meeting on February 20, 2001, the board unanimously approved a resolution on agricultural legislation pending in the 22<sup>nd</sup> Alaska Legislature. The resolution supports, in concept, HB 82, "An Act relating to agricultural facilities and operations as private nuisances; and to disclosures in transfers of real property located within one mile of an agricultural facility or an agricultural operation;" and HB 128, "An Act relating to employment of certain minors in agriculture".

One of the principal functions of the newly created Board of Agriculture and Conservation (BAC) is to address issues affecting agriculture in Alaska. Therefore the BAC requests that the 22<sup>nd</sup> Alaska Legislature, after appropriate committee referral and review, support and approve HB 82 and HB 128. Thank you for your consideration.

Sincerely,



James V. Drew, Chair  
Board of Agriculture and Conservation

Board of Agriculture & Conservation (BAC)  
Resolution 2001-1

Resolution in Support of Agricultural Legislation Pending in the 22<sup>nd</sup>  
Alaska Legislature

Whereas one of the principal functions of the Board of Agriculture and Conservation (BAC) is to address issues affecting agriculture in Alaska; and

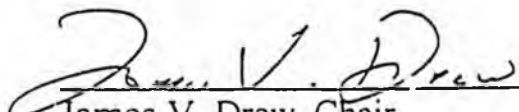
Whereas there is currently legislation pending before the 22<sup>nd</sup> Alaska Legislature which pertains to agriculture in Alaska; and

Whereas the Board of Agriculture and Conservation supports in concept HB 82 "An Act relating to agricultural facilities and operations as private nuisances; and to disclosures in transfers of real property located within one mile of an agricultural facility or an agricultural operation"; and

-Whereas the Board of Agriculture and Conservation supports in concept HB 128 "An Act relating to employment of certain minors in agriculture";

Now therefore be it resolved that the Board of Agriculture and Conservation requests that the 22<sup>nd</sup> Alaska Legislature, after appropriate committee referral and review, support and approve HB 82 and HB 128.

Board of Agriculture and Conservation

  
\_\_\_\_\_  
James V. Drew, Chair

02-26-01  
Date



# Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY  
committee name

Committee on HB 82, dated 4/4/01  
bill # / subject

SEC 4. AS 34.70.050 AMEND - UNDER SEC.  
34.70.050.

ADD:

(4) WHERE INFORMATION ABOUT LOCATION  
OR AGRICULTURAL FACILITIES / OPERATIONS  
CAN BE OBTAINED.

~~REPEATED~~ NOTABLY - THE LOCAL SOIL &  
WATER CONSERVATION ~~OF~~ DISTRICT.

Signed:

BARBARA A. NARO

Testifier

KENAI ASSOCIATION OF REALTORS - CHAIR

Representing (optional) INDUSTRY ISSUES

105 SHADY LN SOLDOTNA, AK 99669

Address

907 262 3958

Phone number

APR 10 2001



# Alaska State Legislature

Please enter into the record my testimony to the House Judiciary  
committee name

committee on HB 82 . dated 4-4-01  
bill/subject

I am in favor of this bill. I have a small (30 acre) farm on the outskirts of Homer. The area is rapidly becoming subdivided into smaller and smaller residential lots. This bill would protect my right to continue my farm operation (cattle - horses - chickens, etc.) which has been a farm since the 1950's!

Signed: Mauris Kilchen  
Testifier

Seaside Farms  
Representing (Optional)

40904 SEASIDE FARM RD, HOMER, AK 99603  
Address

907 - 235 - 7540  
Phone No.

**HB**

**85**

# ALASKA STATE HOUSE OF REPRESENTATIVES

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Session Contact:  
(907)-465-3719  
FAX# (907)-465-3258  
State Capitol  
Room 102

## REPRESENTATIVE JOHN COGHILL

### HB 85 Assault of School Employees Sponsor Statement

Parents have always sent their children to school feeling their children are in the safest place they could be when away from home. Because of acts of violence in public schools around the country in recent years, the safety of a child or a school employee in the school environment has increasingly been questioned.

On his School Safety Resource Site on the Internet, Senator Robert Byrd states:

"These acts are not limited to specific geographic regions or family backgrounds, nor do they have a single catalyst. Those who have committed such heinous acts have done so for different reasons, at different times, in different schools. But these acts of school violence have at least one thing in common-- they have spurred all of us to take a closer look at what can be done to better protect children at school.

Protecting our children is not simply a matter of public policy. It is a matter of strengthening basic values, of teaching children right from wrong, of instilling in them respect for others. We each have a responsibility to work to end youth violence and to keep schools safe for children and for those who teach them." Part of reassuring safety in the schools is assuring the safety of all school employees who facilitate that safe environment. "

HB 85 amends state statutes to allow for a judge to increase the imprisonment of a person who knowingly assaults a school employee during or because of the exercise of the school employee's duties. I believe an aggravating factor in sentencing will instill in children and their parents respect for others, especially employees of the schools they attend.

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

BILL NO. HB 85

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected \_\_\_\_\_  
 Title Aggravating Factors in Sentencing BRU Alaska Court System  
 Component Trial Courts  
 Sponsor Representative Cogill  
 Requester House Judiciary Component No. 768

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The Alaska Court System does not anticipate any fiscal impact from the passage of HB 85.

Prepared by: Douglas Wooliver Phone 463-4750  
 Division: Alaska Court System Date/Time 1/30/02 12:20 PM  
 Approved by: Stephanie Cola Date 1/30/02  
 Agency: Alaska Court System

For distribution information, call the Governor's Legislative Office

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 85  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Corrections  
 Title An act relating to conduct directed at a school BRU Administration and Operations  
employee as an aggravating factor for criminal sentencing Component All  
 Sponsor Representative Coghill  
 Requester House Judiciary Committee Component No. 694

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation would make it an aggravator in felony sentencing if the defendant knowingly directed the conduct constituting the offense at a school employee during or because of the exercise of official duties. The Department believes this bill will have minimal fiscal impact. We do not anticipate many cases that would elevate themselves to felony levels.

Prepared by: Candace Brower Phone 465-4652  
 Division Commissioners Office Date/Time 1/17/02 9:55 AM  
 Approved by: Margaret M. Pugh Date 1/17/02  
 Agency Department of Corrections

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 85  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
 Title "An Act relating to conduct directed at a BRU Criminal Division  
school employee as an aggravating factor for . . .sentencing . . ." Component 1st-4th Judicial Districts  
 Sponsor Representative Coghill  
 Requester House Judiciary Committee Component No. 2198-99;2201;61;79

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

Note: Amounts do not include inflation unless otherwise noted.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

HB 85 allows a judge to increase the presumptive sentence for certain felonies when the crime included conduct that was directed at a school employee.

This bill will have no fiscal impact on the Department of Law.

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

Phone (907) 465-5370  
 Date/Time 1/17/02 10:57 AM  
 Date 1/17/2002

# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 85  
 (H) Publish Date: 4/12/01

Revision Date/Time(Note if Correction): \_\_\_\_\_ Dept. Affected: Correction  
 Title: An Act relating to conduct directed at a school BRU: Administration & Operations  
employee as an aggravating factor for criminal sentencing... Component: All  
 Sponsor: Representative Coghill  
 Requester: House Special Committee on Education Component Number: 694

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

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation would make it an aggravator in felony sentencing if the defendant knowingly directed the conduct constituting the offense at a school employee during or because of the exercise of official duties. The Department believes this bill will have minimal fiscal impact. We do not anticipate many cases that would elevate themselves to felony levels.

Prepared by: Candace Brower Phone 465-4652  
 Division: Commissioner's Office Date/Time 4/05/01 4:30 pm  
 Approved by: Margaret Pugh Date 4/5/01  
 Agency: Department of Corrections

For distribution information, call the Governor's Legislative Office

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: HB 85  
(H) Publish Date: 4/12/01

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
Title: "An Act relating to conduct directed at a BRU: Criminal Division  
school employee as an aggravating factor for . . .sentencing . . ." Component: 1st-4th Judicial Districts  
Sponsor: Representative Coghill  
Requester: House HESS Committee Component No. 2198-99;2201;61;79

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

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
HB 85 allows a judge to increase the presumptive sentence for certain felonies when the crime included conduct that was directed at a school employee.

This bill will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone 465-5370  
Division: Attorney General's Office Date/Time 3/8/01 3:52 PM  
Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General Date 3/8/01  
Agency: Department of Law

For distribution information, call the Governor's Legislative Office

# ALASKA STATE HOUSE OF REPRESENTATIVES

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FAX# (907)-465-3258  
State Capitol  
Room 102

## REPRESENTATIVE JOHN COGHILL

Date: April 11, 2001  
To: Representative John Coghill  
From: Rynnieva Moss, Legislative Aide *Rynnieva Moss*  
Re: HB 85 Assaulting a school employee

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Sec. 12.55.125. Sentences of imprisonment for felonies.

(k) A first felony offender convicted of an offense for which a presumptive term of imprisonment is not specified under this section

(2) except as provided in (1) of this subsection, may not be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second felony offender convicted of the same crime unless the court finds by clear and convincing evidence that an aggravating factor under AS 12.55.155 (c) is present, or that circumstances exist that would warrant a referral to the three-judge panel under AS 12.55.165 .

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Sec. 12.55.155. Factors in aggravation and mitigation.

(a) If a defendant is convicted of an offense and is subject to sentencing under AS 12.55.125 (c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(4), or (i) and

(1) the presumptive term is four years or less, the court may decrease the presumptive term by an amount as great as the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation;

(2) the presumptive term of imprisonment is more than four years, the court may decrease the presumptive term by an amount as great as 50 percent of the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation.

(b) Sentence increments and decrements under this section shall be based on the totality of the aggravating and mitigating factors set out in (c) and (d) of this section.

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Sec. 12.55.165. Extraordinary circumstances.

(a) If the defendant is subject to sentencing under AS 12.55.125 (c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(4), or (i) and the court finds by clear and convincing evidence that manifest injustice would result from failure to consider relevant aggravating or mitigating factors not specifically included in AS 12.55.155 or from imposition of the presumptive term, whether or not adjusted for aggravating or mitigating factors, the court shall enter findings and conclusions and cause a record of the proceedings to be transmitted to a three-judge panel for sentencing under AS 12.55.175

(b) In making a determination under (a) of this section, the court may not refer a case to a three-judge panel based on the defendant's potential for rehabilitation if the court finds that a factor in aggravation set out in AS 12.55.155 (c)(2), (8), (10), (12), (15), (17), (18)(B), (20), (21), or (28) is present.



# NEA-ALASKA

*Affiliated with the National Education Association*

## **NEA-Alaska Position Paper April 21, 2001**

### **HB 85 – School Employee Aggravating Factor Representative John Coghill**

NEA-Alaska commends Representative John Coghill for introducing HB 85 that makes directing violent conduct to a school employee an aggravating factor for criminal sentencing. The aggravating factor applies to a school employee who is performing school-related teaching and work.

In 1996, the Delegate Assembly of NEA-Alaska went on record requesting legislation be passed making the consequences of an assault of an educational employee the same consequences as though the assault were to occur on a police officer.

Safe schools and classrooms are absolutely essential for student success. During the past few years schools have worked hard to maintain a positive school environment. Despite that, threats and instances of violent behavior toward teachers and school employees have increased. We commend the legislature for taking steps to make schools safer. For example in 2000, passage of HB 253 by Representative Fred Dyson requiring school disciplinary and safety programs provided a means for some communities to focus attention on student discipline and safety.

We now call on the legislature to take an additional step to make our schools and classrooms as free of violence as possible by passing this bill. HB 85 may deter persons from assaulting a school employee while the employee is engaged in school related responsibilities.

This aggravating factor is not automatic but may be considered by the court in adjusting a sentence. By enacting HB 85, the legislature serves notice to anyone disturbing the peace in schools that the people of Alaska take safety in our schools and the safety of Alaska's school employees as a serious matter.

NEA-Alaska has committed greater levels of its budget and staff time to make our schools safer. Passage of HB 85 is a step in the direction to make our schools safer. We request that the House Special Committee on Education pass HB 85.

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

## Logan after game

Friday in the trial of Jerome Logan, accused of killing a man after a game, one witness said he did not tell Logan about the game. The witness said in Anchorage Superior Court that Logan's team of three white men defeated Logan's team of three. Logan and others testified that Logan "had a bright future."

Logan did not use racial slurs. The witness charged Logan with assault on Billy Watterson in July 2000 and with Twete at an East Anchorage bar.

Logan was drinking that night and the witness said he might have taunted Logan. "I was in panic, I was scared, I didn't know if I said it. Now I regret it," the witness said. Rex Butler also asked the witness to tell the police, in court, that Logan as having "shiny teeth" and that Logan "had a bright future."

— Anchorage Daily News

## State to be broadcast on TV, the Internet

The annual State of the Alaska Legislature at 7 p.m. will be broadcast live on several television stations.

The broadcast can be seen on Alaska State TV Juneau, KUAC-TV Kodiak, TV Bethel, the Alaska State System (ARCS TV) and on Channel 3 in Anchorage, and Channel 12 in Kodiak.

Channel 3, the cable-TV service, will also televise the event. Viewers in the Gavel to Gavel program can watch it at [www.ktoo.org/](http://www.ktoo.org/)

The broadcast can be seen on Alaska State TV Juneau, KUAC-TV Kodiak, TV Bethel, the Alaska State System (ARCS TV) and on Channel 3 in Anchorage, and Channel 12 in Kodiak. Viewers in the Gavel to Gavel program can watch it at [www.ktoo.org/](http://www.ktoo.org/)

# Airman got in the middle of shootout

**■ FATALITY:** Gunfire erupted at trailer court during confrontation.

By LUCAS WALL  
Anchorage Daily News

The 19-year-old man shot to death Sunday in a Fairbanks trailer park was an Air Force airman who got in the middle of a shootout involving more than 20 people, including several other airmen and Army soldiers, Alaska State Troopers said Tuesday.

Troopers and three local police departments responded to the Lake View Trailer Court about 12:25 a.m. Terry Hachtel died while en route to Fairbanks Memorial Hospital in a private vehicle.

Seven trooper investigators are

working the case with help from State Crime Lab technicians, the Air Force Office of Special Investigations and the Army Criminal Investigation Division.

Troopers spokesman Greg Wilkinson said events began Friday night at a party in a Fairbanks residence. There was a fight there involving military personnel and civilians, but Wilkinson said he didn't know what it was about.

The night after, a group of 20 or so people including Hachtel went to the trailer, which the Lake View manager said is owned by David Causey. Troopers said the owner was home at the time but wouldn't say how many others were with him.

The group wanted revenge for what happened the previous night, Wilkinson said, and several people

tried to enter the trailer. Gunfire erupted between those inside and outside the trailer, and Hachtel was struck in the chest.

Wilkinson said he didn't know how many people fired shots or if Hachtel was among the shooters. One firearm was recovered from inside the trailer and one from outside, he said. He didn't know the types, but said neither was a military weapon.

About 10 strings of green and orange yarn were strung up outside the trailer Monday as investigators apparently tried to plot bullet trajectory.

"We're trying to establish who fired first," Wilkinson said.

Troopers hope to conclude their investigation within the next two weeks and forward findings to the Fairbanks district attorney's office.

Lt. Esmeralda Silvestre, an Eielson spokeswoman, said Air Force investigators won't comment on the matter. Hachtel's hometown was listed as Fort Ord, Calif., an Army base 5 miles north of Monterey. He is a native of Roy, Utah.

Hachtel joined the Air Force in May 2000 and had been stationed at Eielson since November 2000, Silvestre said. He worked in the 354th Munitions Flight, responsible for taking trailers of bombs and bullets from storage to the flight line for loading onto aircraft.

The Air Force held a memorial service for Hachtel Tuesday afternoon at the base chapel.

■ The Associated Press contributed to this story. Reporter Lucas Wall can be reached at [twall@adn.com](mailto:twall@adn.com) or 257-4321.

# Mom pleads not guilty to assaulting girl's teacher

**■ CHARGES:** Woman pulled Taku teacher's hair, tore phone off wall, police say.

By NICOLE TSONG  
Anchorage Daily News

A mother who police say attacked her daughter's Taku Elementary teacher pleaded not guilty on Tuesday in Anchorage District Court to charges of assault.

Angel S. Carter, 36, of Anchorage faces two counts of fourth-degree misdemeanor assault and one count of malicious destruction of property.

The maximum penalty for one assault charge is one year in jail and a \$5,000 fine, while destroying

property carries a maximum penalty of six months in jail and a \$1,000 fine. Her trial was set for March 11.

Carter is free on her own recognizance. Judge Stephanie Rhoades also ordered her to stay away from the teacher and Anchorage School District property.

Anchorage police say Carter walked into the fifth-grade classroom on Dec. 13 and asked teacher Bonnie Lucca for documented daily reports on her daughter's behavior. At the time, the teacher was



Carter

working on an assignment with students. When Lucca told Carter she couldn't speak with her until class ended and asked her to leave, Carter became furious and attacked, pushing Lucca and pulling her hair, police said.

Lucca tried to call for help, but Carter grabbed the classroom telephone and tore it off the wall, police said. Other teachers separated the two.

Lucca suffered minor injuries, including a scratch on her face and bruises on her arm and leg. She could not be reached for comment.

In an interview five days after the incident, Carter said she lost her temper that day because of ongoing issues with Lucca. She said

her daughter was having behavioral and academic problems, so she asked Lucca to try daily progress reports for two weeks.

"I was asking for something daily, just for a short period of time, and she would always tell me, 'I don't have time, I'm not going to give this to you.'"

Carter, who also could not be reached for comment Tuesday, said at the time she was sorry the incident happened in front of children.

But "you don't deny a parent from wanting their child to excel," she said.

■ Nicole Tsong can be reached at [ntsong@adn.com](mailto:ntsong@adn.com) or 257-4450.

crime committed in  
States v. Farwell, 11  
Alaska 1948).

ns that the weapon is  
ry observation by per-  
h the person carrying  
ry and usual associa-  
188 P.2d 1039 (Alaska

hidden from ordinary  
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488 P.2d 1039 (Alaska

not required under  
State, 499 P.2d 1025  
10 U.S. 925, 93 S. Ct.  
ev'd on other grounds,  
1 L. Ed. 2d 347 (1974);  
Alaska 1975).

fully assembled or  
g in order to qualify as  
2d 1025 (Alaska 1972),  
S. Ct. 1392, 35 L. Ed.  
unds, 415 U.S. 308, 94  
1974).

er the gun is loaded  
— See Davis v. State,  
ert. granted, 410 U.S.  
d 586 (1973), rev'd on  
S. Ct. 1105, 39 L. Ed.

included under  
Robson, 576 P.2d 771

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445 P.2d 229 (Alaska  
5, 90 S. Ct. 117, 24 L.

l on circumstantial  
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vidence of possession.  
(Alaska 1972), cert.  
1392, 35 L. Ed. 2d 586  
115 U.S. 308, 94 S. Ct.

give an instruction  
l." McKee v. State, 488

P.2d 255 (Alaska Ct.

(3) discharges a firearm with reckless disregard for a risk of damage to property or a risk of physical injury to a person under circumstances other than those described in AS 11.61.195(a)(3)(A);

(4) manufactures, possesses, transports, sells, or transfers metal knuckles;

(5) manufactures, sells, or transfers a switchblade or a gravity knife;

(6) knowingly sells a firearm or a defensive weapon to a person under 18 years of age;

(7) other than a preschool, elementary, junior high, or secondary school student, knowingly possesses a deadly weapon or a defensive weapon, without the permission of the chief administrative officer of the school or district or the designee of the chief administrative officer, within the buildings of, on the grounds of, or on the school parking lot of a public or private preschool, elementary, junior high, or secondary school, on a school bus while being transported to or from school or a school-sponsored event, or while participating in a school-sponsored event, except that a person 21 years of age or older may possess

(A) a deadly weapon, other than a loaded firearm, in the trunk of a motor vehicle or encased in a closed container in a motor vehicle;

(B) a defensive weapon;

(C) an unloaded firearm if the person is traversing school premises in a rural area for the purpose of entering public or private land that is open to hunting and the school board with jurisdiction over the school premises has elected to have this exemption apply to the school premises; in this subparagraph, "rural" means a community with a population of 5,500 or less that is not connected by road or rail to Anchorage or Fairbanks or with a population of 1,500 or less that is connected by road or rail to Anchorage or Fairbanks; or

(8) being a preschool, elementary, junior high, or secondary school student, knowingly possesses a deadly weapon or a defensive weapon, within the buildings of, on the grounds of, or on the school parking lot of a public or private preschool, elementary, junior high, or secondary school, on a school bus while being transported to or from school or a school-sponsored event, or while participating in a school-sponsored event, except that a student may possess a deadly weapon, other than a firearm as defined under 18 U.S.C. 921, or a defensive weapon if the student has obtained the prior permission of the chief administrative officer of the school or district or the designee of the chief administrative officer for the possession.

(b) [Repealed, § 4 ch 63 SLA 1990.]

(c) The provisions of (a)(7) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(d) Misconduct involving weapons in the fourth degree is a class A misdemeanor. (§ 7 ch 166 SLA 1978; am §§ 21, 22 ch 102 SLA 1980; am §§ 2, 4 ch 63 SLA 1990; am § 7 ch 59 SLA 1991; am §§ 15, 16 ch 79 SLA 1992; am §§ 1, 2 ch 33 SLA 1995; am § 2 ch 89 SLA 1997; am § 3 ch 1 SLA 1998)

**Revisor's notes.** — Subsection (c) was enacted as (d). Relettered in 1995. Subsection (d) was formerly (b); relettered as (c) in 1980 and relettered again in 1995.

**Effect of amendments.** — The 1990 amendment added "in circumstances other than those described in AS 11.61.200 (a)(7)" at the end of paragraph (a)(1) and repealed subsection (b).

The 1991 amendment, effective September 15, 1991, in subsection (a), rewrote paragraph (1) and added paragraphs (4) and (5).

The 1992 amendment, effective September 14, 1992, substituted "fourth degree" for "second degree" near the beginning of subsection (a) and in subsection (d); and added paragraph (a)(6) and made related stylistic changes.

The 1995 amendment, effective August 17, 1995, added paragraph (a)(7), made a related stylistic change, and added subsection (c).

The 1997 amendment, effective September 14, 1997, in paragraph (a)(3), added "under circumstances other than those described in AS 11.61.195(a)(3)(A)" at the end.

The 1998 amendment, effective April 14, 1998, in subsection (a), inserted ", on a school bus while being transported to or from a school or a school-sponsored event," in paragraphs (7) and (8).

**Legislative history reports.** — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

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**HB**

**86**





# REPRESENTATIVE ELDON MULDER

DISTRICT 23 - MULDOON & FORT RICHARDSON

ALASKA STATE LEGISLATURE

HOUSE OF REPRESENTATIVES

"PROUD TO BE A MULDOONER"



## SPONSOR STATEMENT

### HOUSE BILL 86

#### THE FRIVOLOUS LAWSUIT PREVENTION ACT

**House Bill 86** will prevent frivolous lawsuits by requiring parties to a lawsuit and their attorneys to be truthful and responsible in their pleadings. This bill discourages false statements and claims in litigation and encourages responsibility by all parties and their attorneys. It requires more careful and focused preparation of pleadings.

This bill creates an obligation, in statute, for litigants and attorneys to make reasonable efforts to assure those claims have a reasonable basis in fact and valid under existing law. If the claim is intentionally false, both the attorney and the party can be assessed damages. Currently, there is no *effective* way of holding parties responsible for frivolous pleadings or claims. Frivolous pleadings and claims increase the costs of litigation for all the parties involved in addition to escalating the cost of our judicial system.

House Bill 86 also provides that if a party makes an intentional, false statement of material fact, the court shall dismiss the claim to which the false claim relates.

Attorneys, as well as their clients, will be required to research their claims to assure they are factually supported before filing a lawsuit. This bill will eliminate "boiler plate" pleadings in lawsuits and encourages responsible and focused pleadings. "Boiler plate" pleadings include everything anyone could ever imagine could have happened rather than focusing on those specific issues that actually did occur. Those extraneous pleadings are expensive for innocent parties to litigate and work through and are most often thrown out. They simply cause one party, and the court system, to expend significant dollars to pare down to real issues.

Many suits are often less expensive to settle than to litigate, regardless of their merit. This bill does not affect suits filed in good faith. It will, however, deter those without merit. A system allowing deceit to be rewarded because it is more costly to litigate than to capitulate must be changed.

This bill assigns financial liability to those who:

- Sign a civil pleading with the intention of asserting allegations or defenses that are false.
- Initiate or sign a civil pleading without first determining that it has a reasonable basis in fact and law
- Continues a claim or defense after determining the claim or defense does not have a reasonable basis in fact and law

The basic purpose of HB86 is to preclude bad faith litigation by providing meaningful sanctions likely to be enforced if such conduct occurs, and at the same time provide effective remedies to parties who are injured by such conduct. Those who are trying to tell the truth will have nothing to fear from this provision, as it would only apply if the trier of fact finds a party has made an intentional, false statement of material fact.



# REPRESENTATIVE ELDON MULDER

DISTRICT 23 - MULDOON & FORT RICHARDSON  
ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
"PROUD TO BE A MULDOONER"



## SECTION BY SECTION ANALYSIS OF HB86

### Section 1

**Subsection (a)(1).** Prohibits a person from signing a civil pleading containing false allegations that are material with the intention of asserting claims or defenses that are false.

**Subsection (a)(2).** Prohibits a person from initiating or signing a civil pleading before making a reasonable inquiry and forming a reasonable belief in (A) the existence of the facts upon which the claim or defense is based and (B) under those facts the claim or defense is valid under applicable law.

**Subsection (a)(3).** Prohibits a person from participating in the continuation of a claim or defense after the person discovers the claim or defense is not supported by a reasonable basis in fact or is not valid under applicable law.

**Subsection (b).** Provides that the court shall dismiss a claim or defense made by a party who intentionally makes a false statement of material fact concerning the prosecution or defense of a civil action.

**Subsection (c).** Provides that if dismissal would be unfair to a person or party not involved in the wrongdoing, ie. a case involving policy issues affecting others, the court is to award monetary damages against the party making the false statement in an amount sufficient to compensate the injured party and to deter others from similar conduct.

**Subsection (d)(1).** Allows a party injured by a violation of paragraph (a)(1) to bring an action for compensatory and punitive damages against the person who signed the pleading.

**Subsection (d)(2).** Allows a party injured by paragraph (a)(2) to bring an action for compensatory damages against a person who wrongfully initiated or signed the pleading.

**Subsection (d)(3).** Allows a party injured by a violation of (a)(3) to bring an action for compensatory damages against the person who wrongfully participates in the continuation of a claim or defense.

Paragraphs (d)(2) and (d)(3) clarify that an action for violation can be brought only against the person who wrongfully initiated, signed or participated in the continuation of a claim or defense. These two paragraphs also limit the damages to compensatory damages only.

**Subsection (e).** Provides that the court shall award actual reasonable attorney's fees and actual reasonable costs to the prevailing party in any action brought under (d). This would serve two purposes.

First, the potential for such an award would ensure an action would be filed only with careful thought and consideration, because the unsuccessful party would have to pay the other party's actual costs and attorney's fee, which could be significant. Without this provision, this deterrent affect is lost.

Second, a party injured by irresponsible litigation conduct is not made whole unless they have the ability to recover the actual costs and attorney's fees they incur obtaining the relief created by this legislation. A person who successfully pursues an irresponsible litigant will bear most of that cost himself because, without this provision, the court will defer to existing Civil Rules which only awards a portion of the actual attorneys fees and costs to the prevailing party. Thus, without this provision, a party injured by irresponsible litigation is also much less likely to pursue the bad faith litigant.

**Subsection (f).** Provides that a civil action under (c) may not be brought unless:

- (1) Notice of the specific conduct with supporting evidence was served on the opposing party;
- (2) The challenged conduct was not appropriately corrected within twenty-one days of the notice;
- (3) The person prevailed on the claim or defense that was the basis for the notice; and
- (4) Final judgment has been entered.

**Subsection (g).** Provides that this bill should not be construed to prohibit a good faith argument for the extension, modification, or reversal of existing law.

**Subsection (h).** Excludes a number of categories of cases from the section for policy reasons.

**Subsection (i).** Defines a pleading as including motions and affidavits "by a party to the civil action". This definition limits the obligation of inquiry to determine a claim or defense has a reasonable basis in fact and law to those who have that responsibility, i.e. the attorneys and parties, instead of those who are involved merely because of their role as a witness.

### **Conclusion**

HB86 both narrows and clarifies conduct we seek to correct.

- It imposes an objectively reasonable obligation of inquiry to determine claims or defenses are reasonably based in fact, and are valid under applicable law.
- It further provides a claim or defense lacking a reasonable basis in fact, or is invalid under applicable law, may not be continued.
- It makes clear that to file a claim, a person must have given notice and prevailed on the issue that was the basis of the notice, thus removing the concern that an unsuccessful litigant will abuse this cause of action.
- It also makes clear such an action may not be filed until judgment is entered, thus removing the concern that this cause of action will create a trial within a trial.

This proposed legislation intends to be self-corrective to the extent possible through the notice and opportunity to cure provisions of Subsection (e).

Finally, this legislation provides a clear and definite sanction to those who intentionally make false statements of material fact. It does so without adversely affecting the interests of those not involved such wrongdoing.

APR 10 2001

**HB 86 – TRUTH IN SUING... TRUTH OR CONSEQUENCES**

- PROVIDES AN OBJECTIVE OBLIGATION TO DETERMINE CLAIMS OR DEFENSES ARE REASONABLY BASED IN FACT AND ARE VALID UNDER APPLICABLE LAW
- CLAIMS OR DEFENSES LACKING A REASONABLE BASIS IN FACT OR APPLICABLE LAW ARE INVALID AND MAY NOT BE CONTINUED
- HB86 ALSO PROVIDES THAT IF A PARTY MAKES AN INTENTIONAL, FALSE STATEMENT OF MATERIAL FACT, THEY LOSE ON THAT CLAIM. THIS PROVISION RECOGNIZES THE LEGAL PROCESS CANNOT BE FAIR WHEN PARTIES CHEAT... AND CHEATERS SHOULD FACE DEFINITE AND CERTAIN SANCTIONS
- HB86 IS A BALANCED BILL, AS THE OBLIGATIONS APPLY EQUALLY, WHETHER THE PARTICIPANT IS ON THE PLAINTIFF'S SIDE, OR THE DEFENDANT'S SIDE
- HB86 PROTECTS VICTIMS OF THOSE WHO ABUSE THE SYSTEM BY REQUIRING PARTIES TO HAVE A REASONABLE BASIS FOR THEIR CLAIMS AND DEFENSES AND BY PROVIDING FOR DEFINITE AND CERTAIN SANCTION FOR THOSE WHO LIE. THIS LEGISLATION GIVES VICTIMS OF SUCH CONDUCT A REAL REMEDY. THERE IS NO SUCH REMEDY NOW.
- HB86 UTILIZES THE STANDARD OF CONDUCT CONTAINED IN CIVIL RULE 11, BUT CHANGES THE MANNER IN WHICH THE STANDARD OF CONDUCT IS ENFORCED.
- CIVIL RULE 11 ESSENTIALLY REQUIRES ATTORNEYS TO CERTIFY THE CLAIMS THEY ARE ASSERTING HAVE BEEN INVESTIGATED AND THERE IS GOOD REASON TO BRING THEM. UNDER CV11, A JUDGE HAS DISCRETION TO IMPOSE A PENALTY ON AN ATTORNEY WHO VIOLATES THE STANDARD OF CONDUCT.
- HB86 GIVES THE POWER OF ENFORCEMENT OF THE RULE TO THE PERSON MOST LIKELY TO USE THAT POWER... THE PERSON INJURED BY THE ATTY'S MISCONDUCT
- UNDER CIVIL RULE 11, SOMEONE AGAINST WHOM FRIVOLOUS CLAIMS & ALLEGATIONS ARE ASSERTED, HAS NO WAY TO BE MADE WHOLE

- HB86 STATES A PERSON WHO FAILS TO DO THE REQUIRED INVESTIGATION OR ASSERTS A CLAIM OR ALLEGATION W/O BASIS COULD BE HELD RESPONSIBLE FOR DAMAGE CAUSED BY SUCH CONDUCT... INCLUDING REIMBURSING THE ACTUAL COST OF DEFENDING AGAINST A FRIVOLOUS CLAIM OR ALLEGATION.
- ANYONE WHO HAS BEEN INVOLVED IN A LAWSUIT KNOW THE FINANCIAL AND EMOTIONAL COST OF DEFENDING FRIVOLOUS CLAIMS.
- ONE OF THE MOST SIGNIFICANT BENEFITS OF THIS BILL IS THAT IT ENCOURAGES LAWYERS TO EXPLAIN THE CONSEQUENCES OF LYING TO EVERY CLIENT AND HOPEFULLY WOULD, AT THE OUTSET, LIMIT THOSE CLAIMS WHICH ARE FALSE OR EXAGGERATED.
- THOSE THAT ARE TRYING TO TELL THE TRUTH WILL HAVE NOTHING TO FEAR FROM THIS BILL. IT ONLY COMES INTO PLAY IF THE TRIER OF FACT FINDS A PARTY OR ATTORNEY HAS MADE AN INTENTIONAL, FALSE STATEMENT OF MATERIAL FACT OR INITIATED A LAWSUIT HAVING NO REASONABLE BASIS IN FACT OR LAW.
- SINCE THE BILL APPLIES TO ALL PARTIES, IT IS HARD TO SEE HOW ONE CAN ARGUE IT IS UNFAIR.
- TO THOSE WHO CLAIM THAT SUCH A CAUSE OF ACTION WOULD RESULT IN AN EXPLOSION OF SECONDARY LITIGATION, ONE ONLY NEED TO LOOK TO SUBSECTION (e), WHICH PROVIDES THAT ACTUAL REASONABLE ATTY FEES BE AWARDED TO THE PREVAILING PARTY IN SUCH AN ACTION. GIVEN SUCH SERIOUS CONSEQUENCES, I DOUBT VERY MUCH WHETHER SUCH CLAIMS WOULD BE MADE OFTEN OR MADE WITHOUT CONSIDERABLE THOUGHT.
- CERTAINLY, THIS BILL WILL RAISE THE LEVEL OF RESPONSIBILITY OF ATTYS, REGARDLESS OF WHICH SIDE THEY REPRESENT. IT IS DIFFICULT TO SEE HOW THIS WOULD NOT BENEFIT OUR CIVIL JUSTICE SYSTEM.
- BASIC PURPOSE OF HB86 GIVES INJURED PARTIES EFFECTIVE REMEDIES FOR BAD FAITH CIVIL LITIGATION
- IT GIVES VICTIMS OF UNSCRUPULOUS ATTYS AND THEIR CLIENTS THE ABILITY TO BE COMPENSATED IN CASES OF WHAT ORDINARY PEOPLE WILL CONSIDER TO BE OUTRAGEOUS CONDUCT.

- A SIGNIFICANT ASPECT OF THE BILL IS THAT IT EMPOWERS VICTIMS OF BAD FAITH CIVIL LITIGATION, NOT THE LEGAL COMMUNITY, TO BE RULE ENFORCERS.

TWO CONCEPTS THAT ARE UNIQUE IN HB86:

- THE EMPHASIS ON TRUTH... IT PROVIDES THAT IF A PARTY LIES TO FURTHER THEIR CLAIM OR DEFENSE, THEY LOSE. AT PRESENT, THERE IS NO SUCH EXISTING DISINCENTIVE IN OUR SYSTEM. THIS BILL WOULD CHANGE THAT, FOR THE CONSEQUENCES OF MAKING A FALSE STATEMENT WOULD BE PREDICTABLE, CERTAIN AND MEANINGFUL.
- THERE ARE PROVISIONS WHICH IMPOSE LIABILITY ON PARTIES AND/OR ATTYS WHO MISUSE THE LITIGATION PROCESS, RECKLESSLY OR KNOWINGLY FILE FALSE PLEADINGS OR SIGN PLEADINGS WITHOUT MAKING A REASONABLE INQUIRY AND DETERMINING THE CLAIMS ARE WARRANTED.

## Civil Rule 11 Notes

- Every pleading shall be signed by at least one atty of record or the party if not represented... is certifying to the best of the person's knowledge, information formed AFTER reasonable inquiry (1) is not being presented for any improper purpose, such as to harass or needless delay or cost of litigation and (2) are warranted by existing law, (3) and will have evidentiary support (4) and denials of factual contentions are warranted on evidence.
- If, after notice and a reasonable opportunity to respond, the court determines this has been violated, the court may impose a sanction upon the attys, law firms or parties
- The sanction is initiated through a motion or on the court's initiative
- A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. May consist of directives of non-monetary nature, an order to pay a penalty into court, or if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney fees.
- Monetary sanctions may not be awarded against a represented party for a violation of (b)(2)... the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law
- Monetary sanctions may not be awarded on the court's initiative unless the court issue its order to show casual before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attys are, to be sanctioned.
- Under cr11, someone against whom frivolous claims & allegations are asserted has no way to be made whole.

### Notes of Advisory Committee on 1983 amendments to the Rules.

- Since its original promulgation, Rule 11 has provided of the striking of pleadings and the imposition of disciplinary sanction to check abuses.
- Experience show in practice, Rule 11 has not been effective in deterring abuses. There has been considerable confusion as to (1) the circumstances that should trigger striking a pleading or motion or taking disciplinary action (2) the standard of conduct expected of attys who sign pleadings and motions (3) the range of available and appropriate sanctions.

## INSURANCE RESEARCH COUNCIL INFORMATION

- MORE THAN ONE-THIRD OF ALL BODILY INJURY INSURANCE CLAIMS ASSOCIATED WITH CAR CRASHES APPEAR TO INVOLVE SOME ELEMENT OF FRAUD
- A NEW STUDY SHOW THAT WHILE THREE OF EVERY 100 BODILY INJURY LIABILITY CLAIMS APPEAR TO BE BASED ON PREMEDITATED CRIMINAL ACTS SUCH AS STAGED ACCIDENTS, ANOTHER 33 OF EVERY 100 CLAIMS APPEAR TO INVOLVE OPPORTUNISTIC ACTS BY DOCTORS, LAWYERS AND/OR CLAIMANTS WHO TAKE ADVANTAGE OF ACCIDENTS TO CHEAT THE SYSTEM
- AUTO INSURANCE POLICYHOLDERS COUNTRYWIDE PAY THE TAB FOR THESE CONTINUING SCAMS IN THE FORM OF EVER HIGHER INSURANCE PREMIUMS
- 17 TO 20 CENTS OF EVERY INJURY CLAIM PAYMENT DOLLAR FOR AUTO ACCIDENTS CAN BE ATTRIBUTED TO FRAUD AND/OR CLAIM BUILDUP

## Supporters of HB86 ... Frivolous Lawsuit Bill

### Associations

AK Support Industry Alliance	Anchorage
National Federation of Independent Business	Juneau
Nat Assoc of Independent Insurers	Juneau
Alaska Restaurant & Beverage Association	Anchorage
Alaska State Chamber of Commerce	Juneau
Alaska Travel Industry Association	Anchorage
Alaska Hospitality Alliance	Anchorage
Southeast Conference	Juneau
Alaska Hotel & Motel Association	Anchorage
Alaska School Activities Association	Anchorage
Bed & Breakfast Association of Alaska – INNSide Passage Chapter	Southeast

### Individuals

Dan Kennedy	Kennedy & Co, CPA	Wasilla
Robert Mintz		Anchorage
Northern AK Tours	Matt Atkinson	Fairbanks
Frank Rose	Alaska Lodging Mgt.	Fairbanks
Justin Ripley	Alaska Travel Network	Anchorage
Thomas Ely	Sockeye Cycle	
Kirk Hoessle	Alaska Wildland Adventures	Girdwood
Kelly Bay	Wrangell Mountain Air	
Robert Dindinger	Alaska Travel Adventures	Juneau
Bob Didier	Silverbow Construction	Juneau
James Ingraham	Interior Medical Supply	Fairbanks
Ronald Aksamit	MBA Consulting Engineers	Anchorage
Charles Snyder	Sand Lake Automotive	Anchorage
Heidi Atkinson		Fairbanks
Neil MacKinnon	Hyak Mining	Juneau
Erika Weld	Dalton Highway Adventures	Fairbanks
Alice Orlich	Wiseman Museum	Wiseman
Lee Kenaston	Arctic Circle Trading Post	Fairbanks
Kathy Hedges		Fairbanks
Gregg MacDonald	Aurora Drilling	Fairbanks
10 Signatures	Jan's Distributing	Anchorage
Esther Alsworth	Alaskan Aircraft Engines	Anchorage
Russell Kegler	Perseverance Glass	Juneau
James Morgan	Sand Lake Automotive	Anchorage

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

BILL NO. HB86

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected \_\_\_\_\_  
 Title False Claims and Improper Practice in Civil BRU Alaska Court System  
Cases Component Trial Courts  
 Sponsor Rep. Mulder  
 Requester House Judiciary Component No. 768

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

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	48.1	48.1	48.1	48.1	48.1	48.1
Travel						
Contractual						
Supplies						
Equipment	17.7	17.7	17.7	17.7	17.7	17.7
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>65.8</b>	<b>65.8</b>	<b>65.8</b>	<b>65.8</b>	<b>65.8</b>	<b>65.8</b>

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	65.8	65.8	65.8	65.8	65.8	65.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>65.8</b>	<b>65.8</b>	<b>65.8</b>	<b>65.8</b>	<b>65.8</b>	<b>65.8</b>

Estimate of any current year (FY2001) cost: 0.0

**POSITIONS**

Full-time						
Part-time	4	4	4	4	4	4
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See Attached Analysis

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750  
 Division: Alaska Court System Date/Time 4/6/01 12:20 PM  
 Approved by: Stephanie J. Cole Date \_\_\_\_\_  
 Agency: Administrative Director

For distribution information, call the Governor's Legislative Office

Alaska Court System  
 HB86 Fiscal Note Calculations

4/9/01

Superior Court:

FY02

50 Jurors 1.5 Days for Selection	1,875
14 Jurors for 4.5 Days of Court	1,575
12 Jurors for 1.0 Days of Deliberation	300
Deliberation Meal \$11/12 jurors + bailiff	143
	<hr/>
Total per Superior Court Trial	3,893
Proposed # Superior Court Trials	4
	<hr/>
Estimated Cost of Superior Court Trials	<u>15,572</u>

District Court:

25 Jurors 1.0 Days for Selection	625
7 Jurors for 1.5 Days of Court	263
6 Jurors for .5 Days of Deliberation	75
Deliberation Meal \$11/6 jurors + bailiff	77
	<hr/>
Total per District Court Trial	1,040
Proposed # District Court Trials	2
	<hr/>
Estimated Cost of District Court Trials	<u>2,079</u>

Total Juror Costs	<u>17,700</u>
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Superior Court Judge (3 months)	20,489
District Court Judge (2 months)	13,660
In-Court Clerk (2.5 months)	8,750
In-Court Clerk (1.5 months)	5,250
	<hr/>
Court Personal Services	<u>48,149</u>

48,100

Fiscal Note Total	65,800
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Alaska Court System  
Fiscal Analysis  
HB 86

House Bill 86 creates civil liability for actions that it describes as false claims and improper practice in civil cases. Section 1 of the bill essentially codifies Civil Rule 11, with three primary differences. First, CR 11 allows a judge to impose sanctions in a case in which improper practice took place, whereas HB 86 would authorize the aggrieved party to file a separate case before a separate judge, to be heard subsequent to the initial case. Any claim that the second case involved improper practice would result in a third case, and so on.

Second, by allowing a civil action for improper practice, HB 86 essentially makes financial sanctions (in the form of compensatory and/or punitive damages) for such behavior mandatory. This differs from CR 11, which gives the judge discretion in imposing sanctions (these might include financial sanctions, exclusion or admission of disputed evidence, extension or limitation of discovery, etc.). The federal courts began requiring mandatory sanctions for improper practice in 1983. This rule generated a dramatic increase in claims, and as a result, the federal courts repealed the requirement in 1993. Federal sanctions are once again discretionary.

Third, if a party makes a false statement of a material fact the trier of fact must enter judgment against that party on the issue to which the false statement relates. This differs from CR 11, which gives the judge discretion to dismiss a case or impose lesser sanctions if appropriate under the circumstances. As noted above, the federal experience suggests that mandatory sanctions actually increase caseloads.

While potentially beneficial for certain litigants, we believe that this legislation will result in a net increase in the number of cases before the courts. Had HB 86 been in effect in FY 00 it would have applied to over 8,000 civil cases in superior court, and roughly 15,000 civil cases in district court. If only 2.5 percent of those cases had resulted in a civil action for frivolous practice (either by the defendant or the plaintiff), there would have been roughly 575 new cases filed. If only 2.5 percent of those had resulted in a trial, there would have been 15 new trials. This note provides for the judicial time, clerical costs, and jury fees necessary to cover those additional trials.

This fiscal note does not take into account the additional motion practice that will occur in those new cases that are filed but settle prior to trial. It also does not reflect the additional time required to deal with motions filed in the underlying case that relate to having the trier of fact find that one party has made a false statement of material fact. Attorneys can be expected to be aggressive in their use of HB 86 as a new tool to pressure the opposing party into settling a case on their terms. More filings and more motion practice in existing cases will result in additional judicial time, as well as increased clerical costs.

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB 86  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): 4/10/01 4:53 PM Dept. Affected: Law  
Title "An Act relating to civil liability for certain false BRU Criminal Division; Civil Division  
or improper allegations in a civil pleading or ... " Component Criminal Justice Litigation;  
Sponsor Representative Mulder Special Litigation  
Requester House Judiciary Committee Component No. 2202;2213

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

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	100.8	100.8	100.8	100.8	100.8	100.8
Travel	3.3	3.3	3.3	3.3	3.3	3.3
Contractual	43.6	43.6	43.6	43.6	43.6	43.6
Supplies	1.3	1.3	1.3	1.3	1.3	1.3
Equipment	6.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>155.6</b>	<b>149.1</b>	<b>149.1</b>	<b>149.1</b>	<b>149.1</b>	<b>149.1</b>

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

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	75.0	72.1	72.1	72.1	72.1	72.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
1007 Interagency Receipts	80.6	76.9	76.9	76.9	76.9	76.9
<b>TOTAL</b>	<b>155.6</b>	<b>149.1</b>	<b>149.1</b>	<b>149.1</b>	<b>149.1</b>	<b>149.1</b>

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

**POSITIONS**

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

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

This bill creates three new causes of action stemming from conduct occurring in civil litigation. A party to a civil suit could bring a separate civil action against persons who (1) signed pleadings containing false allegations that are material to the claims asserted, with the intention of asserting false allegations, claims or defenses; (2) "initiated" or signed a pleading without making reasonable inquiry and forming a reasonable belief in the existence of the factual basis for a claim or defense and its validity under applicable law; or (3) participated as a party or representative of a party in the continuation of a claim or defense after the person discovers that the claim or defense is not "supported by a reasonable basis in fact" or "valid under applicable law." Potential defendants in the separate action are not limited to people who were parties to the original case, but include attorneys and others who participate as representatives of parties in the litigation of the original case. A civil suit under this bill could not be brought until after a final judgment was entered in the original case. In addition, other preconditions to a separate lawsuit are that the party bringing an action under this bill must have given notice to the opposing party of the allegedly improper conduct in the original case and that party must not have corrected the challenged conduct within 21 days of the notice. The bill does not require notice and opportunity to

Prepared by: Joan M. Kasson Phone 465-5370  
Division: Attorney General's Office Date/Time 4/10/01 4:53 PM  
Approved by: Kathryn Daughhettee for Bruce M. Botelho, Attorney General Date 4/10/01  
Agency: Department of Law

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

BILL NO. HB 86

ANALYSIS CONTINUATION

correct be given to non-parties, such as representatives of parties, even though they could be sued under this bill for having signed pleadings or participated in the original case. The party bringing the action under this bill must have prevailed on the claim or defense that was at issue in the notice given to the opposing party.

As drafted, this bill would have substantial fiscal impacts on the Department of Law, not because it would authorize claims against the state or state employees that would have merit, but because it creates causes of action and remedies that do not presently exist. Although we do not anticipate having liability for the types of wrongdoing addressed by the bill, the department would incur increased litigation costs for defending cases brought under this bill. The reasons for these costs are:

1. The bill does not require that a party prevail on the original case as a whole in order to file a separate action under this bill; they need only prevail on a claim or defense that was raised in a notice to their opponent. So even if they win a battle, but lose the war, they may proceed to seek unrecovered damages, costs, and fees from their opponent and/or the opponent's lawyers;

2. There will likely be cases where the determination of who prevailed on an issue may not be clear-cut (such as where there is an allocation of fault to both plaintiff and defendant) which will require litigating if a second action is brought;

3. Even where a party has not met the preconditions to filing an action under this bill, if a separate action is brought, time and effort will be needed to demonstrate that the party is not entitled to proceed; and

4. Under subsection (a)(3), the winner in the original action can sue the loser (and that party's representatives and lawyers) for damages or costs not recovered in the first case if they claim that the loser's claim or defense was not supported by "reasonable basis in fact" or "valid applicable law." This is presumed to be a different standard than is used in subsection (a)(2) where a party has filed pleadings without making reasonable inquiry and forming a reasonable belief regarding the facts and law underlying a claim or defense. The standard for potential liability under (a)(3) appears to be much broader, and could essentially result in examination of the legal strategy and conduct of the original action, if not relitigation of the underlying issues to determine whether the loser (or the loser's representatives or lawyers) had a reasonable basis in fact or valid applicable law to support their claims or defenses. Expert witnesses may well be needed to address these issues. Factual disputes will prevent cases from being resolved on motion practice.

5. The potential for conflicts arising between losing parties and their own lawyers when they are sued in an action under this bill will likely result in the need for multiple attorneys to represent them.

The bill will provide a vehicle for parties who are not satisfied with the outcome of a case to further pursue their opponent's lawyers and other representatives to "make them whole." Some may view HB 86 actions as a means to extract additional monies through settlement from different opponents. The bill's full fee provision may not be effective due to the failure to include a court rule amendment provision in the bill. The threat of having to pay a small percentage of an opponent's fees will not prevent all questionable litigation from being brought under this bill, particularly by pro se litigants and others who are judgment-proof.

Overall, the department estimates that HB 86 would result in increased litigation defense costs. We anticipate an increase of approximately 1090 hours of attorney time (three-quarters of a full-time equivalent attorney position) in the civil division, and an estimated 120 hours of attorney time in the criminal division. This is based on an estimated 10-15 actions, of varying complexity, being handled by the civil division (compared to over 2,200 general litigation and tort litigation files open at any given time), and 3-4 actions disposed of by motion defended by the criminal division.

This estimate is conservative. In order to defend these lawsuits, the department's attorneys will not be able to simply rely on work already completed in the course of the underlying case. New discovery and proof will be required to show what the lawyers and their clients knew, when they knew it, and whether it amounted to a reasonable factual basis for a claim, or whether the claim was supported by valid applicable law.

The department's FY02 weighted cost for an attorney position is \$97.57 per hour. The weighted cost includes clerical support, communications, space, supplies, data processing, and all other normal overhead expenses. It does not include direct, out-of-pocket case costs such as experts, court reporters, and case travel, or one time new equipment purchases. The projected in-house staff cost would be \$106,332 for the civil division, plus \$6,500 in FY02 only for new equipment, (43.59% GF and 56.41% IAR) and \$11,708 in general funds for the criminal division. \$5,000 will be needed by the civil division for direct case costs (43.59% GF and 56.41% IAR), and \$1,000 for the criminal division. Additionally, due to conflicts, \$25,000 in outside counsel costs will probably be incurred by the civil division (43.59% GF and 56.41% IAR). No outside counsel costs are anticipated for the criminal division. Component line item detail follows:

	<u>Special Litigation</u>	<u>Criminal Justice Litigation</u>	<u>Total</u>
100	90.8	10.0	100.8
200	2.8	0.5	3.3
300	41.5	2.0	43.6
400	1.2	0.1	1.3
500	6.5		6.5
Total	142.9	12.7	155.6



**ALM** Alaska Lodging Management, Inc.

P.O. Box 72478  
Fairbanks, Alaska 99707-2478  
250 Cushman St., Suite 4C  
Phone 907-474-8555  
Fax 907-474-8557  
Email: [aklm@polarnet.com](mailto:aklm@polarnet.com)

**FEB 22 2001**

February 19, 2001

Representative Norman Rokeberg  
Capitol Building  
Juneau, AK 99801

Honorable

I want to express my support for passage of HB86--- commonly known as the "frivolous lawsuit" bill. My review of the provisions of this bill leads me to conclude that this is a common sense approach to a lawsuit. It seems only reasonable that parties to a lawsuit should assure that a claim or defense is based in fact and is valid under applicable law. Additionally, it is difficult for me to argue that if a party makes an intentional and false statement of material fact, that they should lose on that claim. How could a court sanction a process that would not encourage truthfulness throughout the process? It appears to me that the bill is balanced with regard to the stipulations of the bill applying to both the plaintiff and the defendant.

I encourage you to do whatever is in your power to assure that this bill passes.

Yours sincerely,

Frank W. Rose  
President  
Alaska Lodging Mgt., Inc.

**TRIPLETTE CONSTRUCTION, INC.**

PO BOX 610 JUNEAU, AK 99802  
PHONE 907 586-2705 FAX 907 586-2918

APR 10 2001

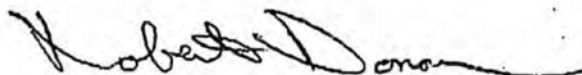
April 10, 2001

To Whom it may concern;

We are in support of **HB 86 THE FRIVOLOUS LAWSUIT PROTECTION ACT.** It is about time for such a bill to be passed, and made law.

Sincerely,

TRIPLETTE CONSTRUCTION,



Robert Donovan  
Executive Supervisor

cc. File.  
rd



**HECTOR'S WELDING, INC.**

2473 OLD RICHARDSON HWY.  
NORTH POLE, ALASKA 99705  
PHONE (907) 488-6432  
FAX: (907) 488-8385

Date 4/10/01

Page 1 of 1

TO: Representative  
Norman Rokberg -

FAX# 907-465-2050

PHONE# - -

ATTN: \_\_\_\_\_

RE: House Bill #86

MESSAGE: \_\_\_\_\_

We as small business owners urge  
your support for passage of this  
bill. It is hard enough to fight lawsuits  
that are just we don't need to be  
bogged down with untruths.

Jeanette Thurnault  
Sec. Treas.  
N.F.T.B. members

# FAX TRANSMISSION

**RIEHL SEW N VAC, INC.**

601 W 36TH AVE, STE 18

ANCHORAGE, AK 99503

907-563-2909

FAX: 907-563-1076

**To:** REP. NORMAN ROKEBERG      **Date:** April 10, 2001  
**Fax #:** 1-907-465-2040      **Pages:** ONE (1), including this cover sheet.  
**From:** E. A. HAMM JR.  
**Subject:** HB 66

**COMMENTS:**

I, PERSONALLY, AS WELL AS OUR FIRM, ENDORSE PASSAGE OF HB 66-

THE FRIVOLOUS LAWSUIT PROTECTION ACT

FURTHER SUGGESTION: PARTIES BRINGING SUIT SHOULD BE REQUIRED TO POST A SURETY BOND EQUAL TO THE COST OF DEFENDING AGAINST SUITS FOUND TO BE WITHOUT STANDING OR MERIT.

YOURS TRULY, E A HAMM JR

COPY TO: ELDON MULDER

COPY TO: NFIB/ALASKA STATE OFFICE

**Subject:** HB-86


**Date:** Mon, 09 Apr 2001 16:10:34 -0800

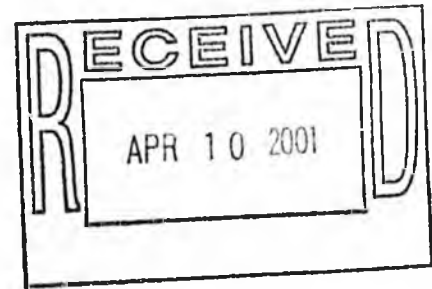
**From:** brown <kyle@aes.alaska.com>

**To:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>

**CC:** Representative Scott Ogan <Representative\_Scott\_Ogan@legis.state.ak.us>,  
Representative John Coghill <Representative\_John\_Coghill@legis.state.ak.us>,  
Representative Jeannette James <Representative\_Jeannette\_James@legis.state.ak.us>,  
Representative Kevin Meyer <Representative\_Kevin\_Meyer@legis.state.ak.us>,  
Representative Ethan Berkowitz <Representative\_Ethan\_Berkowitz@legis.state.ak.us>,  
Representative Al Kookesh <Representative\_Al\_Kookesh@legis.state.ak.us>,  
Representative Eldon Mulder <Representative\_Eldon\_Mulder@legis.state.ak.us>

Dear Committee Members,  
Please accept my thoughts on support for this bill. Thank you,  
Kyle Brown - Discovery Drilling, Inc.

 GovltrHB86.DOC	<p><b>Name:</b> GovltrHB86.DOC <b>Type:</b> Microsoft Word Document (application/msword) <b>Encoding:</b> base64 <b>Download Status:</b> Not downloaded with message</p>
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Discovery Drilling, Inc.  
P.O. Box 111165  
Anchorage, Alaska 99511-1165

April 9, 2001

House Judiciary Committee Members and Sponsor of HB 86  
State Capitol  
Juneau, Alaska 99801-1182

Re: HB 86 – The Frivolous Lawsuit Protection Act

Dear Committee Members;

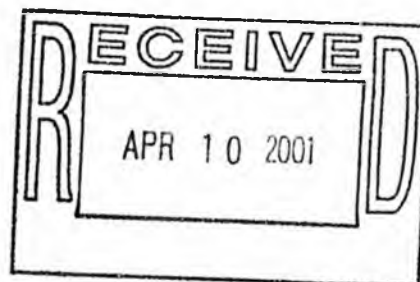
Discovery Drilling Inc. and it's employees wish to lend support to this important legislation in the strongest terms!! We have been conceptually in favor of something like this for a long time. I personally just spent almost 2 years of total time, including the last 6 weeks in superior court defending my company against a frivolous lawsuit.

Without going into detail, this case cost all the parties involved nearly 1 million dollars and was based on 1 persons fabrications. The net result was a jury that saw through the story and awarded the fellow \$ 0.00. What an incredible waste of time, money, jurors time and a big cork for the court system.

Unless there is something like this bill to create some accountability to such individuals, this sort of activity will not stop. I don't know what the actual content of the bill is, but typically the plaintiffs in these actions have no money to recover, so I feel it is essential that the attorneys filing these claims have some responsibility for making sure that they present truthful information. Thank you for your time and attention to this matter.

Sincerely,

Kyle Brown  
President



THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

# AURORA ELECTRIC DATATEL

APR 09 2001

April 9, 2001

Representative Norman Rokeberg  
Chairman

Re: House Bill 86

Dear Mr. Rokeberg,

As one of the largest electrical contractors of Alaska, Aurora Electric/DataTel would like to go on record as being in favor of House Bill 86 which will help prevent frivolous lawsuits by requiring parties to the lawsuit and their attorneys to be truthful and responsible in their pleadings. Making a person liable for false allegations or material misstatements of fact in civil matters will certainly curb many lighthearted or unmerited lawsuits.

We certainly appreciate your help in getting this legislation passed, it is long overdue, and I know we can count on you. Thank you for your attention regarding this matter.

Respectfully;

Clark L. Smith  
Business Development  
Aurora Electric/DataTel  
1118 E 70<sup>th</sup> Avenue  
Anchorage, Alaska 99518  
(907) 868-2239

APR 09 2001



MEMORANDUM

TO: NFIB/Alaska State Office Facsimile N<sup>o</sup>: 907/463-5128

FROM: Vernon Brown, General Manager

DATE: April 9, 2001

April 9, 2001

**Alaska Mechanical, Inc. a member of the National Federation of Independent Business, is in favor of passing HP 86 - The Frivolous Lawsuit Protection Act.**

House Judiciary Committee Members	Fax N <sup>o</sup>
Representative Norman Rokeberg, Chairman	465-2040
Representative Scott Ogan	465-3265
Representative John Coghill	465-3258
Representative Jeannette James	465-2381
Representative Kevin Meyer	465-3476
Representative Ethan Berkowitz	465-2137
Representative Al Kookesh	465-2827

Sincerely,

ALASKA MECHANICAL, INC.

Vernon Brown  
General Manager

cc: Representative Eldon Mulder 465-3518

**ALASKA MECHANICAL INC.**

MAIL - P.O. BOX 203649, ANCHORAGE, ALASKA 99520 ■ PHONE - (907) 349-8502 ■ FAX (907) 349-1324  
MAIN OFFICE - 8540 DIMOND "D" CIRCLE, ANCHORAGE, ALASKA 99515



**RICHARD STANTON CONSTRUCTION, INC.**  
1006 Smythe St. Fairbanks, Alaska 99701-4128  
Tel: (907) 451-7437 Fax: (907) 451-9439

**FAX TRANSMISSION COVER SHEET**

---

Date: Monday, April 9, 2001

Time:

To: Representative

Phone:

Fax:

Re: HB 86

From: Rod Stanton

---

*YOU SHOULD RECEIVE 1 PAGE(S), INCLUDING THIS COVER SHEET.  
IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL (907) 451-7437.*

---

It is unfortunate that we must legislate against intentional false statements by persons, entities and their attorneys. However, right and truth are often pushed aside by less noble motives. Therefore, please support efforts to enforce truthfulness in court proceedings.



**RANDALL MOSS INSURANCE, INC.**

2980 C ST., SUITE 200 • ANCHORAGE, AK 99503 • (907) 562-8224 FAX (907) 561-2963

*Auto • Home • Life • Annuities • Mutual Funds*

April 9, 2001

House Judiciary Committee Members  
Representative Norman Rokeberg, Chairman  
Juneau, Alaska

Dear Mr. Rokeberg:

Re: HB 86  
Frivolous Lawsuit Protection Act

Just a note of support for this very important legislation facing the House Judiciary Committee.

A litigious society is unhealthy for Alaska.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. H. Moss", is written over a horizontal line.

Randall H. Moss  
Owner/Randall Moss Insurance

RHM:tlp

# BUDGET RUBBER STAMPS

&

## ENGRAVING

Ph: 907.278.2677

Fax: 907.278.2678

To: Rep. Norman Rokegerg, Chairman

Date: April 9, 2001

From: Budget Rubber Stamps & Engraving

Account #

Subject: HB 86 - Frivolous Lawsuit Protection Act

Copy to: Rep. Eldon Mulder

NFIB

APR 09 2001

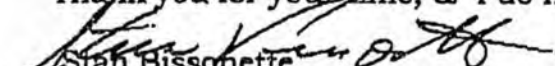
Representative Norman Rokeberg, Chairman

I am asking you to please vote for Rep. Eldon Mulders house bill #86 to prevent the frivolous law suits. To be heard in the house Judiciary Committee on Wednesday, April 11 at 1:00 pm.

I am a member of the NFIB & I do watch very close as to how our Representatives vote.

I am a 50 + year resident of our wonderful state & I do vote & encourage everyone else to vote.

Thank you for your time, & I do hope you will help us in this important vote.

  
Stan Bissonette  
Owner / Operator

# All Creatures Veterinary Clinic, Inc.

Mile 7.4, Palmer-Wasilla Highway  
4360 Snider Drive, Wasilla, Alaska 99654

(907) 376-7930  
Fax (907) 376-7931



April 9, 2001

Rep. Norman Rokeberg, Chairman  
House Judiciary Committee  
State of Alaska

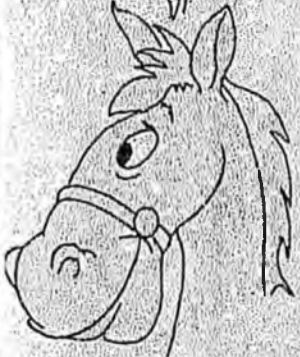
Dear Rep. Rokeberg,

I would like to go on record in support of House Bill 86 regarding frivolous lawsuits. I feel this an important and long overdue bill that will protect people from lawsuits due to false allegations. I am a member of NFIB.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joanne G. Rehn".

Dr. Joanne G. Rehn



# L&B Color Printing

590 E. Railroad Avenue, Wasilla, Alaska 99654  
(907) 376-2081 • Fax: (907) 373-3000

APR 09 2001

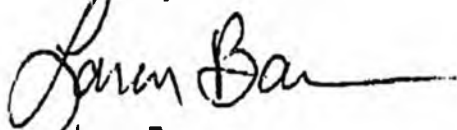
April 9, 2001

Representative Norman Rokeberg

Dear Representative Rokeberg,

I wish for you to consider House Bill 86. I find this a good lawsuit protection for truth to be brought forth.

Sincerely,



Lavon Barve  
Owner

## NORTHWEST AUTO PARTS

5700 Camelot Drive  
Anchorage, Alaska 99504  
Phone 333-8531

APR 09 2001

April 9, 2001

State of Alaska  
House of Representatives  
House Judiciary Committee  
Norman Rokeberg, Chairman

Ref. - House Bill 86.

Dear Representative Rokeberg:

Having been made aware of HB 86 by the NFIB, I am writing in support of the bill which is scheduled for hearing on April 11, 2001. I feel this legislation is long overdue and would be a positive step toward insuring that only responsible civil actions are brought before our state judicial system for a fair judgment. Those who wish to abuse the system should be held accountable for their actions. The court system being public domain, deserves the respect its limited but necessary resources have available. Secondly, those individuals wronged by knowingly false accusations in a civil suit deserve compensation for the damages such a suit can cause.

Thank you in advance for your consideration of these comments.

Sincerely,




Chuck Ossenkop, President  
Ossenkop Enterprises Inc. dba Northwest Auto Parts

# BERG DEVELOPMENT INC.

APR 09 2001

**TO:** Representative Norman Rokeberg, Chairman  
State of Alaska  
House Judiciary Committee

**FROM:** Arnie Berg, General Manager 

**DATE:** April 9, 2001

**REF:** HB 86 -- THE FRIVOLOUS LAWSUIT PROTECTION ACT

Our firm is fully in support of this legislation. It will have a positive impact on the judicial system. We respectfully request that you support the legislation.

Berg Development Inc. is an NFIB member.

Thank you for your consideration in this matter.

**MSC 171, PO. Box 875910, Wasilla, Alaska 99687-5910**  
**Phone: (907) 376-7505 Fax: (907) 376-7506**



APR 09 2001

April 9, 2001

To Whom It May Concern,

My name is Dave Mabeus, I am the owner of Signco Quality Signs, Inc. and I am a member of the NFIB.

This letter is to inform you of my support for House Bill 86, the way I see it, if passed it would save business owners a lot of valuable time not having to fight bogus lawsuits.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Mabeus", is written over the word "Sincerely,". The signature is stylized and cursive.

Dave Mabeus

---

DESIGN • CUSTOM FABRICATION • INSTALLATION • SERVICE • NEON

2840-A Commercial Drive—Anchorage, Alaska 99501—(907) 338-7446 FAX (907) 258-7192

## Cordova Airporter

201 Industry Rd. • P.O. Box 338  
Cordova, AK 99574  
(907)424-3286  
Fax (907)424-3287

APR 09 2001

Representative Norman Rokeberg, Chairman  
House Judiciary Committee  
Juneau AK


cc: Rep. Scott Ogan  
Rep. John Coghill  
Rep. Jeannette James  
Rep. Kevin Meyer  
Rep. Ethan Berkowitz  
Rep. Al Kookesh

Re: HB 66

As a member of the National Federation of Independent Business persons I strongly urge you to vote for HB 66. There are so many frivolous lawsuits plugging up our court systems, it is time to do something about them.

Thank you.

Joy Rawlins, owner



Cordova Airporter

APR 05 2001

# FAX COVER

**Message:**

Date : 4/5/01

**HB 86**, introduced by Representative Eldon Mulder, will help prevent frivolous lawsuits by requiring parties to the lawsuit and their attorneys to be truthful and responsible in their pleadings.

This Bill would make a person liable for false allegations or material misstatements of fact in a civil action. If a person is found to have intentionally made a false statement of a material fact, then the injured party may bring an action for damages. However, if honest errors are made, there will be no sanctions.

I urge your support for this worthwhile legislation.

PeggyAnn McConnochie, President and Broker  
ACH, INC.

(ALASKA COASTAL HOMES, INC.)

E-mail: peggyann@gci.net; peggyann@achconsulting.com

Web Site: www.achconsulting.com

To: Representative Norm Rokeberg

From : PeggyAnn McConnochie

Company :

Company : ach, inc. (alaska coastal homes, inc.)

Fax Number : 4652040

Fax Number : (907) 586-4491

Pages including this cover page: 1

Subject : HB 86



WORLD WIDE MOVERS, INC.

APR 11 2001

April 10, 2001

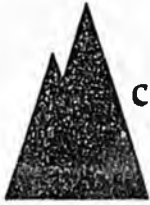
To: NFIB/Alaska State Office

From: Peter Sorenson, President, World Wide Movers Inc.

Subject: HB 86-The Frivolous Lawsuit Protection Act

As a member of the NFIB, I would like to voice my support for HB 86. We appreciate the hard work and the time that the legislators put into every session.

*Peter Sorenson*  
Peter W. Sorenson  
President



**CITY/BOROUGH OF JUNEAU**  
**ALASKA'S CAPITAL CITY**

**APR 17 2001**

**OFFICE OF THE MANAGER**

Telephone: (907) 586-5240; Fax: (907) 586-5385

Dave.Palmer@ci.juneau.ak.us

April 11, 2001

The Honorable Eldon Mulder  
State of Alaska Representative  
State Capitol, Room 507  
Juneau, AK 99801-1182

Re: House Bill 86 (HB 86)

*ELDON*  
Dear Representative Mulder:

Thanks to you and Representative Rokeberg for sponsoring HB 86. The City and Borough of Juneau (CBJ) responds to numerous complaints from plaintiffs in the course of events.

I believe that local government must accept responsibility when a loss or injury occurs that is truly the government's fault and responsibility. However, experience leads me to believe that it is accepted procedure in some legal practices to simply "shotgun" a complaint against a defendant in hopes that some of the allegations will, at a later date, be supported. After discovery, depositions, and an analysis of fact, a large share of the allegations made in an initial complaint are often not supported by fact, or even by a thread of evidence. Nevertheless, we are compelled to research and respond to every allegation, a costly time consuming process.

We have had complaints suggesting the anatomically impossible (plaintiff hit her uterus with her knee in a fall); the factually unsupported (plaintiff claimed lost wages when evidence showed no interruption in normal work hours or pay); and one that alleged our EMTs improperly failed to force the plaintiff to go to the hospital after a minor traffic accident even though the plaintiff signed a waiver and refused treatment.

I guess we are not alone, as evidenced by your introduction of HB 86.

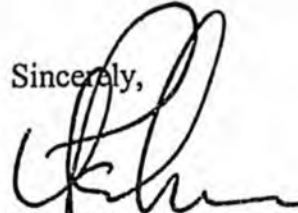
CBJ, like most large institutions, attracts its share of crank lawsuits filed by pro se plaintiffs who seek to collect damages or enjoin government action based on obscure English common law principles, inapplicable statutes, alleged conspiracies, or other theories completely devoid of

Representative Mulder - HB 86  
April 11, 2001  
Page 2

merit. Courts and defendants have little choice but to take these plaintiffs seriously. If the plaintiff who looks like a crank actually turns out to be a crank, there should be some way to put the issue to rest early on. If the complaint is drafted by knowledgeable counsel, it is only fair to expect complaints to be written with a modicum of accuracy and veracity.

I encourage support of HB 86, and appreciate your efforts. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Palmer', written over the word 'Sincerely,'.

David R. Palmer  
City & Borough Manager

cc: Senator Kim Elton  
Representative Rokeberg  
Mayor Sally Smith  
Clark Gruening  
Kevin Ritchie, AML

Discovery Drilling, Inc.  
P.O. Box 111165  
Anchorage, Alaska 99511-1165

APR 12 2001

April 9, 2001

House Judiciary Committee Members and Sponsor of HB 86  
State Capitol  
Juneau, Alaska 99801-1182

Re: HB 86 - The Frivolous Lawsuit Protection Act

Dear Committee Members;

Discovery Drilling Inc. and it's employees wish to lend support to this important legislation in the strongest terms!! We have been conceptually in favor of something like this for a long time. I personally just spent almost 2 years of total time, including the last 6 weeks in superior court defending my company against a frivolous lawsuit.

Without going into detail, this case cost all the parties involved nearly 1 million dollars and was based on 1 persons fabrications. The net result was a jury that saw through the story and awarded the fellow \$ 0.00. What an incredible waste of time, money, jurors time and a big cork for the court system.

Unless there is something like this bill to create some accountability to such individuals, this sort of activity will not stop. I don't know what the actual content of the bill is, but typically the plaintiffs in these actions have no money to recover, so I feel it is essential that the attorneys filing these claims have some responsibility for making sure that they present truthful information. Thank you for your time and attention to this matter.

Sincerely,

Kyle Brown  
President

FYI  
Eldon

# BANKSTON & MCCOLLUM

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FEB 09 2001

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STEVEN T. O'HARA  
JOHN M. SEDOR  
THOMAS V. WANG, JR.

February 7, 2001

Representative Norm Rokeberg  
House of Representatives  
State Capitol Building, Room 118  
Juneau, Alaska 99801-1182

Re: House Bill No. 86

Dear Representative Rokeberg:

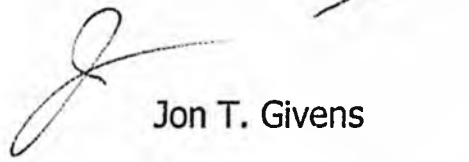
Enclosed please find a copy of a letter from Randall J. Weddle of the law firm of Holmes Weddle & Barcott. He has previously written you to criticize House Bill 42. I concur with all of his comments. I am an attorney who represents a wide variety of clients, including real estate agents, real estate developers, construction companies, insurance companies, insurance brokers, and numerous business interests too numerous to mention. All of my practice is dedicated to litigation. The proposed legislation in House Bill 42 will create a boondoggle of litigation and lawsuits. I believe this legislation is doomed to create a massive boomerang effect from what it was truly intended to do. Any time any party has any belief that there has been any level of false statement regarding a claim or defense, whether ranging from an innocent typographical error to an egregious perjury, we will see a flood of lawsuits and motions filed by the parties in the litigation. Take, for example, the scenario where a party being sued falsely states something occurred on a Tuesday, when it really occurred on a Monday, now a perfectly legitimate defense or claim of that party is in jeopardy over something that really does not matter because lawyers can argue "all day long" over whether something is "material." The court system presently has the ability to strike claims or defenses as sanctions for improper conduct, and that is sufficient. It is quite often the case in litigation that one side or the other contends one side or the other is lying, and, on many occasions, both sides

Representative Norm Rokeberg  
House of Representatives  
February 7, 2001  
Page 2

contend the other side is lying. Thus, the proposed legislation will only create an endless string of additional costly motions and additional costly lawsuits.

Very truly yours,

BANKSTON & McCOLLUM, P.C.

A handwritten signature in black ink, appearing to read "Jon T. Givens", with a long horizontal flourish extending to the right.

Jon T. Givens

JTG/ds  
Enclosure  
JTG\LTRokebergjtg1

LAW OFFICES OF  
**HOLMES WEDDLE & BARCOTT**

A PROFESSIONAL CORPORATION

701 WEST EIGHTH AVENUE, SUITE 700 · ANCHORAGE, ALASKA 99501-3408  
TELEPHONE (907) 274-0666 · FAX (907) 277-4657

April 25, 2000

**VIA FACSIMILE: (907) 465-3922  
and U.S. MAIL**

Senator Robin Taylor  
Alaska State Senate  
State Capitol Building  
Juneau, Alaska 99801-1182

Re: House Bill No. 42

Dear Senator Taylor:

I am writing to express my concern about House Bill No. 42. While the authors undoubtedly have legitimate concerns about the importance of truthful testimony in judicial proceedings, I believe the Bill will result in unintended ramifications which, if understood by the Legislature, should lead to the Bill's defeat. I write from the perspective of an attorney who routinely represents defendants in personal injury litigation. Please consider the following:

1. We already have civil and criminal sanctions for lying under oath. Also, Civil Rule 82(b)(3) provides the court with the power to sanction parties who pursue unreasonable or vexatious claims.

2. The Bill has the potential for creating mini-lawsuits within lawsuits, with each party accusing the other of making false claims and asking the jury to make special findings in that regard. Such claims will likely cause insurers to "reserve rights," thus giving rise to a need for the insured to hire private counsel, and possibly forcing the insurance company to give up control of the litigation under the terms of AS 21.89.100.

3. Attorneys will be discouraged from vigorously representing their client's interests if they face exposure to punitive damages in a suit by the party opposing their client's claims.

4. While the goal of tort reform was to limit a flood of lawsuits, this Bill will have the opposite effect. A party who wins a lawsuit will have a great incentive to bring a second suit, alleging that the unsuccessful party pursued frivolous and/or misleading defenses. This is especially true if the unsuccessful litigant is a "deep pocket" defendant.

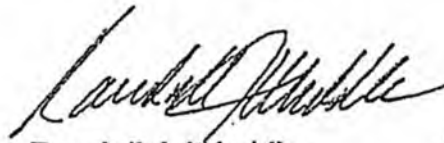
Senator Robin Taylor  
April 25, 2000  
Page - 2 -

Because of the threat of punitive damages, which are based in part upon the wealth of the defendant, the Bill creates a "blackmail" situation in which the defendant, who likely will not be covered by insurance in the second suit, may be forced to settle even though a claim in the second trial is without merit.

I am sure that some will respond to comments such as mine by saying that if there are no false statements, there is nothing to fear. As an attorney, I am sure that you recognize the problem with such a view. A person who has lost the first trial and is then faced with a second one, based upon alleged frivolous defenses in the first case, will have to seriously consider settlement of even meritless claims when faced with a potential punitive damages award, based upon the defendant's wealth, especially when insurance will probably not provide any protection.

Thank you for considering these thoughts.

Very truly,



Randall J. Weddle

RJW:clp

G:\OFFICE\RJW\Taylor.letter

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commentary

Lie-tery Winners

Who wouldn't lie to win the lottery? This is what happens in court all the time.

**Michael Jones**  
 The National Law Journal  
 March 22, 2001



Lying in lawsuits is widespread. Just ask anyone who has taken more than a handful of depositions or cross-examined witnesses at trial -- especially witnesses in tort cases.

Over the years, some very decent people have shaken my hand, smiled in my face and then lied to me -- under oath. At first I was offended. Then I came to expect it. But now I think something needs to be done about it because the oath has become virtually meaningless.

Lawsuits often generate what I call lottery lies. Who wouldn't lie in order to win the lottery? Imagine a lottery system in which there was no single winning ticket, but rather an indefinite number of winning tickets. Imagine a system in which a lotto prize was given to anyone who swore under oath that he or she had a winning ticket without any need to present a ticket in order to collect. In a system like this, many good people would lie to win the lottery. The oath would be no obstacle at all.

Truth to tell ...

This is what happens in court all the time. One witness in a recent case that I tried claimed that she could remember what was written on a can that she saw some 50 years ago -- when she was 3 years old and could not even read. Another witness (in a different case) swore in one deposition that he drove a certain truck every day, but then later swore that he only drove it once;

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SONY



**LAW**

he initially admitted that he was not wearing his seatbelt but later swore that he was. All of these witnesses were trying to win the lawsuit lottery, either for themselves or for someone else.

The following examples are a clear illustration of my point:

- The grandmother: She came to court in a wheelchair, injured, she claimed, because of a brake failure.

Not so, I laid out in my opening statement. "This is a case about the fulfillment of a medical prophecy," I argued. The medical prophecy was the statement made by a doctor long before the accident that the plaintiff's medical problems (and they were many) would get worse over time. The real cause of the accident, I told the jury, was the plaintiff. I pointed out all of the different medications that she was taking and their side effects. I also noted that many cautioned against driving while taking the medication.

This grandmother's lottery moment came when she was questioned by her lawyer. She denied taking any medication at all on the morning of the accident. I could not believe what I was hearing. If the jury believed her testimony, she was well on her way to winning her lawsuit. The problem for her was that her medical records made clear that her condition was such that she could not have gotten out of the house without her medication because she had so many ailments.

As I cross-examined her, this grandmother admitted that she could not even remember what medication she had taken just hours before coming to court, to say nothing of remembering what she had taken on the day of the accident, some years earlier. Her lottery lie did not work. The jury returned a verdict against the plaintiff.

- The former police officer: This former officer's lawsuit claimed that the door on his truck was defectively designed and had come open during an accident. His expert witness admitted that at some point after the truck was manufactured someone had modified the door, and thereafter it had been poorly maintained. The plaintiff's expert also testified that the driver's door had been in this sorry condition for a long time. It was so bad that the door would not fully close -- to close it at all, it needed to be physically lifted up and shoved. This expert agreed that this condition would have been obvious to the plaintiff long before the accident.

#### **HOPES AND DREAMS**

For his part, the plaintiff had been heard bragging around town as to how much

money he was going to get from his lawsuit. His deposition testimony presented his lottery moment. He swore that his own expert was dead wrong; that the door had been in perfect condition before the accident. He never so much as heard a rattle and had no problems with the door at all before the accident. No problem opening it, no problem closing it. I have no doubt that he would have stuck to this story at trial even after we presented our trump cards -- witnesses who had seen him get in the vehicle through the passenger door, because the driver's door (the one at issue), did not work properly. That dramatic moment never came because the court dismissed the case.

- **Strictly business:** In this case, it was not the plaintiff but her supporting witness who lied. The issue was whether the plaintiff was wearing her seatbelt during an accident while the two were on a supposed business trip. Records showed that the two had checked into a one-bedroom condo as "Mr. and Mrs." Eyewitnesses described them as acting like a loving, affectionate couple. The plaintiff's husband testified that after the accident this witness told him that he loved the plaintiff (the witness's wife) and would take care of her.

At the deposition, this witness proved to have an iron chin. We hit him with the husband's statement. Never happened, he testified. We hit him with the condo registration card, showing "Mr. and Mrs." Never happened, he testified. We hit him with hotel and credit card receipts showing that he and the plaintiff had traveled together on numerous occasions, taking the same flights and staying in the same hotels. He dismissed these records as mere coincidences. He swore that he never saw the plaintiff on the flights or at the hotels reflected in the credit card receipts.

All of these witnesses were decent people. I have no great desire to see them jailed or even fined for committing perjury. But we must do something to combat the notion that a lottery lie under oath is not really a lie.

*Michael Jones is a partner at Washington, D.C.'s Kirkland & Ellis.*

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**HB**

**97**

22-LS0329\C  
Luckhaupt  
2/26/01

**CS FOR HOUSE BILL NO. 97( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - FIRST SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE FOSTER**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the transfer of structured settlements."**

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

3 **\* Section 1. AS 09.68 is amended by adding new sections to read:**

4 **Sec. 09.68.200. Conditions to transfers of structured settlement payment**  
5 **rights and structured settlement agreements. (a) A transfer of structured**  
6 **settlement payment rights is not effective and a structured settlement obligor or**  
7 **annuity issuer is not required to make a payment directly or indirectly to a transferee**  
8 **of structured settlement payment rights unless, not less than 30 days before the date on**  
9 **which the payee first incurs an obligation with respect to the transfer, the transferee**  
10 **has provided to the payee, the structured settlement obligor, and the annuity issuer, a**  
11 **disclosure statement in bold type, no smaller than 14 points,**

12 (1) specifying the amounts and due dates of the structured settlement  
13 payments to be transferred;

14 (2) specifying the aggregate amount of the payments;

15 (3) specifying the discounted present value of the payments, together

1 with the discount rate used in determining the discounted present value;

2 (4) specifying the gross amount payable to the payee in exchange for  
3 the payments;

4 (5) specifying an itemized listing of all broker's commissions, service  
5 charges, application fees, processing fees, closing costs, filing fees, referral fees,  
6 administrative fees, legal fees, notary fees, and other commissions, fees, costs,  
7 expenses, and charges payable by the payee or deductible from the gross amount  
8 otherwise payable to the payee;

9 (6) specifying the net amount payable to the payee after deduction of  
10 all commissions, fees, costs, expenses, and charges described in (5) of this subsection;

11 (7) specifying the quotient, expressed as a percentage, obtained by  
12 dividing the net payment amount by the discounted present value of the payments;

13 (8) specifying the amount of any penalty and the aggregate amount of  
14 any liquidated damages, including penalties, payable by the payee in the event of a  
15 breach of the transfer agreement by the payee;

16 (9) containing a warning that there may be tax consequences for the  
17 payee resulting from the transfer and, if those tax consequences are known or can be  
18 reasonably ascertained, disclosing the consequences;

19 (10) containing a warning that the payee should obtain independent  
20 professional advice regarding the legal, tax, and financial implications of the transfer  
21 and, if the payee chooses to obtain that advice, specifying that the transferee will  
22 reimburse up to \$500 of those expenses.

23 (b) If a structured settlement was intended to benefit a dependent of the payee  
24 in addition to the payee, then a transfer of structured settlement payment rights is not  
25 effective without court approval of the transfer after a finding by the court that the  
26 transfer is in the best interests of the dependent.

27 (c) Nothing in AS 09.68.200 - 09.68.230 authorizes the transfer of structured  
28 settlement payment rights when the transfer is otherwise illegal or improper under the  
29 terms of the structured settlement agreement.

30 (d) A provision in a transfer agreement giving a transferee power to confess  
31 judgment against a payee is unenforceable to the extent the amount of the judgment

1 would exceed the amount paid by the transferee to the payee, less any payments  
2 received from the structured settlement obligor or the payee.

3 **Sec. 09.68.210. Jurisdiction; procedure for approval of transfers.** (a) The  
4 superior court where the action giving rise to the structured settlement was maintained  
5 or could have been maintained has jurisdiction over an application for approval under  
6 AS 09.68.200(b) of a transfer of structured settlement payment rights.

7 (b) Not less than 30 days before the scheduled hearing on an application for  
8 authorization of a transfer of structured settlement payment rights under  
9 AS 09.68.200, the transferee shall file with the court and serve on any other  
10 government authority that previously approved the structured settlement and all  
11 interested parties a notice of the proposed transfer and the application for its  
12 authorization. The notice must include

- 13 (1) a copy of the transferee's application to the court;
- 14 (2) a copy of the transfer agreement;
- 15 (3) a copy of the disclosure statement required under AS 09.68.200;
- 16 (4) notification that an interested party is entitled to support, oppose, or  
17 otherwise respond to the transferee's application, either in person or by counsel, by  
18 submitting written comments to the court or by participating in the hearing; and
- 19 (5) notification of the time and place of the hearing and notification of  
20 the manner in which and the time by which written responses to the application must  
21 be filed in order to be considered by the court.

22 (c) Written responses to the application must be filed within 15 days after  
23 service of the transferee's notice.

24 **Sec. 09.68.220. No waiver and no penalty.** (a) The provisions of  
25 AS 09.68.200 - 09.68.230 may not be waived.

26 (b) A payee who proposes to make a transfer of structured settlement payment  
27 rights may not incur a penalty, forfeit an application fee or other payment, or  
28 otherwise incur any liability to the proposed transferee based on the failure of the  
29 transfer to satisfy the conditions of AS 09.68.200 - 09.68.230.

30 **Sec. 09.68.230. Definitions.** In AS 09.68.200 - 09.68.230,

- 31 (1) "annuity issuer" means an insurer that has issued an annuity

1 contract to be used to fund periodic payments under a structured settlement;

2 (2) "dependent" means a payee's spouse or minor child or another  
3 family member or another person for whom the payee is legally obligated to provide  
4 support, including spousal maintenance;

5 (3) "discounted present value" means, with respect to a proposed  
6 transfer of structured settlement payment rights, the fair present value of future  
7 payments, as determined by discounting the payments to the present using the most  
8 recently published applicable federal rate for determining the present value of an  
9 annuity, as issued by the United States Internal Revenue Service;

10 (4) "independent professional advice" means advice of an attorney,  
11 certified public accountant, actuary, or other professional adviser

12 (A) who is engaged by a payee to render advice concerning the  
13 legal, tax, and financial implications of a transfer of structured settlement  
14 payment rights;

15 (B) who is not in any manner affiliated with or compensated by  
16 the transferee of the transfer except for the reimbursement available under  
17 AS 09.68.200; and

18 (C) whose compensation for providing the advice is not  
19 affected by whether a transfer occurs or does not occur;

20 (5) "interested parties" means the payee, a beneficiary designated  
21 under the annuity contract to receive payments following the payee's death or, if the  
22 designated beneficiary is a minor, the designated beneficiary's parent or guardian, the  
23 annuity issuer, the structured settlement obligor, and any other party that has  
24 continuing rights or obligations under the structured settlement;

25 (6) "payee" means an individual who is receiving tax-free damage  
26 payments under a structured settlement and proposes to make a transfer of payment  
27 rights under the structured settlement;

28 (7) "qualified assignment agreement" means an agreement providing  
29 for a qualified assignment as provided by 26 U.S.C. 130 (United States Internal  
30 Revenue Code), as amended through December 31, 1998;

31 (8) "settled claim" means the original tort claim or workers'

1 compensation claim resolved by a structured settlement;

2 (9) "structured settlement" means an arrangement for periodic payment  
3 of damages for personal injuries established by settlement or judgment in resolution of  
4 a tort claim or for periodic payments in settlement of a workers' compensation claim;

5 (10) "structured settlement agreement" means the agreement,  
6 judgment, stipulation, or release embodying the terms of a structured settlement,  
7 including the rights of the payee to receive periodic payments;

8 (11) "structured settlement obligor" means the party that has the  
9 continuing periodic payment obligation to the payee under a structured settlement  
10 agreement or a qualified assignment agreement;

11 (12) "structured settlement payment rights" means rights to receive  
12 periodic payments, including lump-sum payments, under a structured settlement,  
13 whether from the settlement obligor or the annuity issuer, where

14 (A) the payee or any other interested party is domiciled in the  
15 state;

16 (B) the structured settlement agreement was approved by a  
17 court in the state; or

18 (C) the settled claim was pending before the courts of this state  
19 when the parties entered into the structured settlement agreement;

20 (13) "transfer" means a sale, assignment, pledge, hypothecation, or  
21 other form of alienation or encumbrance made by a payee for consideration;

22 (14) "transfer agreement" means the agreement providing for transfer  
23 of structured settlement payment rights from a payee to a transferee;

24 (15) "transferee" means a person who is receiving or will receive  
25 structured settlement payment rights resulting from a transfer.

# Alaska House of Representatives

FEB 12 2001

Richard Foster  
P.O. Box 1630  
Nome, AK 99762  
907-443-5036  
Fax 907-2162



During Session  
State Capitol Rm. 410  
Juneau, AK 99801-1182  
907-465-3789  
Fax 907-465-3242

**Majority Whip**

**House Bill 97**

**"An Act relating to court approval of the purchase of structured settlements."**

## **Sponsor's Statement**

House Bill 97 was introduced to address a concern brought forward by some of the states trial lawyers.

Apparently firms have been contacting recipients of structure settlements and offering to buy those settlements for a small portion of their value. When a person living in a village is contacted, they may not fully understand the implications of the purchase and realize what they are giving up in terms of long term benefit versus a quick cash payoff.

This act would allow the reassignment of a structured settlement only after it had been approved by the courts and outlines the considerations that must be made before such a transfer is approved.

The specific provisions of the bill are outlined in the analysis provided by Legislative Legal Services.

# LEGAL SERVICES

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

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

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

FEB 12 2001

## MEMORANDUM

February 9, 2001

**SUBJECT:** Sectional Summary of HB 97

**TO:** Representative Richard Foster

**FROM:** Gerald P. Luckhaupt *GLP*  
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill creates AS 09.68.200 which provides that structured settlements may not be transferred without court approval of the transfer. The court may not approve a transfer unless

- the structured settlement arose from an action filed in Alaska or which could have been filed in Alaska or the payee of the structured settlement is domiciled in Alaska;
- the transfer complies with state and federal law;
- the transferee has provided a disclosure statement to the payee as required by proposed AS 09.68.200(a)(3);
- the transfer is in the best interests of the payee and the payee's dependents;
- the payee has received independent professional advice regarding the transfer;
- notice has been provided to the payer (the annuity issuer and obligor);
- choice of law forum that complies with proposed AS 09.68.200(a)(7) is included in the transfer agreement;
- transferee must indemnify the annuity issuer and obligor for all liability and costs.

Creates AS 09.68.210 which provides the procedure for approval of a transfer of a structured settlement.

Creates AS 09.68.220 which provides that the provisions of AS 09.68.200 - 09.68.230 may not be waived nor may a penalty be charged the payee if the proposed transfer does not meet the requirements of AS 09.68.200 - 09.68.230.

Creates AS 09.68.230 which provides definitions.

GPL:lmb  
01-042.lmb

from the year 2000 date change and caused directly or indirectly by a failure of an electronic computing device.

(f) In this section,

(1) "business" means a person or a for profit or a nonprofit entity engaged in a trade, service, profession, or activity with the goal of receiving a financial benefit in exchange for the provision of services, goods, or other property;

(2) "electronic computing device" includes any computer hardware or software, a computer chip, an embedded chip, process control equipment, or other information system that is used to capture, store, manipulate, or process data;

(3) "year 2000 date change" includes processing date or time data from, into, and between the Twentieth and Twenty-First Centuries, and leap-year calculations; in this paragraph, "processing" includes calculating, comparing, sequencing, displaying, and storing. (§ 2 ch 79 SLA 1999)

**Postponed repeal effective date.** — Under § 3, ch. 79, SLA 1999, this section is repealed January 1, 2006.

**Cross references.** — For effect of (c) of this section on Alaska Rule of Civil Procedure 23, see § 4, ch. 79, SLA 1999 in the 1999 Temporary & Special Acts.

**Effective dates.** — Section 6, ch. 79, SLA 1999

makes this section effective June 30, 1999, in accordance with AS 01.10.070(c).

**Editor's notes.** — Section 5, ch. 79, SLA 1999 provides that this section "applies to a cause of action arising from any failure described in" this section "that accrues on or after June 30, 1999 but before January 1, 2006."

**Sec. 09.65.270. Civil immunity related to the sale or transfer of a firearm.**

(a) A person may not bring a civil action for damage or harm caused by an individual for whom a federal firearm certificate was executed if the action arises from the execution of the federal firearm certificate by a public official with the authority under federal law to execute the certificate and the individual causing the damage or harm

(1) is the transferee of the firearm; and

(2) at the time the certificate is executed either

(A) has a permit to carry a concealed handgun issued under AS 18.65.700; or

(B) meets the qualifications imposed under AS 18.65.705(1) — (5) for obtaining a concealed handgun permit.

(b) In this section, "federal firearm certificate" means the certificate required on a federal "Form 1 (Firearms)," "Form 4 (Firearms)," or "Form 5 (Firearms)." (§ 1 ch 1 SSSLA 1999)

**Chapter 68. Miscellaneous Provisions.**

**Section**

- 20. Successive actions
- 30. Corporate sureties
- 40. Parties exempt from giving bond
- 60. Defense not prejudiced by assignment

**Section**

- 110. Civil liability for shoplifting
- 115. Bad check civil penalties
- 120. Definition of death
- 130. Collection of settlement information

**Sec. 09.68.020. Successive actions.** Successive actions may be maintained upon the same contract or transaction when a new cause of action arises under the contract. (§ 5.01 ch 101 SLA 1962)

**Revisor's notes.** — Formerly AS 09.65.020. Renumbered in 1994.

**Cross references.** — For related court rules, see Civ. R. 13(e) and 15(d).

**Sec. 09.68.030. Corporate sureties.** When, by the laws of the state or by a charter, ordinance, rule, or regulation of a political subdivision, municipality, public corporation, or by a board, body, organization, court, or judge, a recognizance, stipulation, bond, undertaking, or bail in an action, suit, proceeding, or matter conditioned for the faithful performance of an act or duty or for the doing of an act or thing is permitted or required to be given with one or more sureties, it is sufficient compliance if the instrument is

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# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

**BILL NO. HB 97**

Revision Date/Time (Note if correction)	Dept. Affected
Title <u>Transfers of Structured Settlements</u>	BRU <u>Alaska Court System</u>
Sponsor <u>Rep. Foster</u>	Component <u>Trial Courts</u>
Requester <u>House Judiciary</u>	Component No. <u>768</u>

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

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

Estimate of any current year (FY2001) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 House Bill 97 will require a superior court hearing for each transfer of a structured settlement that arose from an action filed in Alaska or one that could have been filed in Alaska or one where the payee of the settlement is domiciled in Alaska.  
 The court system does not anticipate a significant fiscal impact from the passage of HB 97 because the number of structured settlement transfers, and thus court hearings, is assumed to be relatively small. If this assumption turns out to be in error, the court system may return to the legislature for additional funding.

Prepared by: <u>Douglas Wooliver</u>	Phone <u>463-4750</u>
Division: <u>Alaska Court System</u>	Date/Time: <u>2/16/01 10:39 a.m.</u>
Approved by: <u>Stephanie Cole</u>	Date: <u>2/16/01</u>
Agency: <u>Alaska Court System</u>	

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# ALASKA STATE LEGISLATURE

## HOUSE JUDICIARY COMMITTEE

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Representative Scott Ogan, Vice-Chairman  
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Representative Ethan Berkowitz  
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State Capitol  
Juneau, AK 99801-1182  
Telephone: (907) 465-4990  
Fax: (907) 465-2040

Heather M. Nobrega  
Counsel to Committee

### MEMORANDUM

To: All Judiciary Committee Members

From: Heather Nobrega, Aide *JUN*  
House Judiciary Committee

Date: February 19, 2001

Re: Fiscal notes

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The following fiscal notes have been requested, but have not yet been received:

HB 102: Theft of Propelled Vehicles  
Department of Law  
Department of Public Safety  
Department of Administration-DMV & Public Defender's

HB 97: Purchase of Structured Settlements  
Department of Law

**LESSMEIER & WINTERS**

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FEB 22 2001

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February 20, 2001

Representative Ethan Berkowitz State Capital, Room 110 Juneau, Alaska 99801-1182	Representative Kevin Meyer State Capital, Room 404 Juneau, Alaska 99801-1182	Representative Scott Ogan State Capital, Room 108 Juneau, Alaska 99801-1182
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Re: HB 97 - Court Approval For The Purchase Of Structured Settlements

Dear Representatives Berkowitz, Meyer and Ogan.

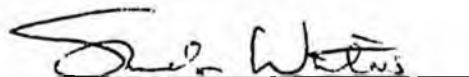
At the Judiciary Committee hearing on 2/19/01, I introduced myself as a lobbyist for State Farm Insurance Companies, and spoke briefly in support of HB 97 and the concept of court approval for transfer of structured settlements. As I mentioned, State Farm's concern with this legislation is the 20 day notice requirement prior to the court hearing. Notice to interested parties is obviously critical, but only meaningful if it provides enough opportunity to gather the necessary information, evaluate the situation, decide whether a response is necessary and prepare for the hearing. State Farm suggests that the notice requirement be changed to 30 days. This extra ten days should have no downside to any of the interested parties, but could be critical in allowing enough time to adequately respond. It is my understanding the sponsor, Representative Foster, is not opposed to this change. If you have any questions about this issue, please feel free to contact me and I will try to answer them.

Also, I realize there were quite a few unanswered questions raised at the hearing that you will be attempting to answer in the next weeks. If you believe State Farm can provide you any information, please do not hesitate to contact me and I will do my best to respond.

Sincerely,

LESSMEIER & WINTERS

By:

  
Sheldon E. Winters

cc: Representative Richard Foster  
Representative Norman Rokeberg, House Judiciary Committee Chairman

SEW/sgw

0015-006/Representatives-HB97.wpd



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## MONEY

### Settling for less

Should accident victims sell their monthly payouts?

BY MARGARET MANNIX

Orion Olson has had his share of hard knocks. When he was 3 years old, a dog bite caused him vision and neurological problems, as well as injuries requiring plastic surgery. In his teens, he dropped out of high school and wound up homeless. But he had hope. On his 18th birthday, the Minneapolis man was to start receiving the first of five periodic payments totaling \$75,000 from a lawsuit stemming from the dog attack. He received the first installment of \$7,500, but the money didn't last long.

So when Olson saw a television ad for a finance company named J. G. Wentworth & Co. that provided cash to accident victims, he saw a way to get his life back on track. He agreed to sell his remaining future payments of \$67,500 to Wentworth for a lump sum of \$16,100. "I needed money," says Olson, now 20 years old. "If I could get the money out like they were saying on TV, I wouldn't have to worry about being on the street anymore." Within six months, however, Olson had spent all the money and was living in a car. He now wishes he had waited for his regular payments.

Olson may be financially unsophisticated, but he is also caught up in a burgeoning, and unregulated, new industry that specializes in converting periodic payments into fast cash. Also known as factoring companies, these firms can be a godsend to accident victims, lottery winners, and others who have guaranteed future incomes but need immediate funds. But like a modern-day Esau trading his inheritance for a bowl of soup, the unwary consumer may be selling future sustenance for cheap. A growing number of federal and state legislators, as well as several attorneys general, contend that factoring companies charge usurious interest rates, fail to properly disclose terms, and take advantage of desperate people. "It's unconscionable," says Minnesota Attorney General Mike Hatch. "They are really preying upon the vulnerable."

**Frittering away.** Critics further allege that factoring companies undermine the very law that Congress

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Also on the Web

The National Structured Settlements Trade Association promotes the use of structured settlements as a means of resolving injury, workers' compensation, and other claims using periodic payments.

National Underwriter, a publisher of insurance and financial planning information, examines the House's review of a structured settlement bill.

passed to help beneficiaries of large damage awards. In 1982, seeking to prevent accident victims from frittering away large sums intended to provide for them over their lifetimes, Congress instituted tax breaks for those who agreed to receive their money over a period of years. But now, contends Montana Sen. Max Baucus, a sponsor of that legislation, the careful planning that goes into the structuring of these payments "can be unraveled in an instant by a factoring company offering quick cash at a steep discount."

A number of advanced-funding companies compete for their share of future payments that include more than \$5 billion in structured settlements awarded each year. The largest buyer is Wentworth, handling an estimated half of all such transactions. Based in Philadelphia, the firm began by financing nursing homes and long-term-care facilities. In 1992 it started buying settlements that auto-accident victims were owed by the state of New Jersey. Since then, Wentworth has completed more than 15,000 structured-settlement transactions with an approximate total value of \$370 million.

The deals work like this: A structured-settlement recipient who wants to sell, say, \$50,000 in future payments, will not get a lump sum of \$50,000. That's because, as a result of inflation, money scheduled to be paid years from now is worth less today. Formulas based on such factors as inflation and the date that payments begin are used to determine the "present value" of the future payments. The seller is, in essence, borrowing a lump sum that is paid back with the insurance company payments. The interest on the borrowed sum is called the "discount rate."

Wentworth and other advanced-funding companies say they are providing a valuable service because structured settlements have a basic flaw: They are not flexible. Consumer needs change, they note, and a fixed monthly payment does not. Wentworth points to an Ohio woman who sold the company a \$500 portion of her monthly payments for six years when her bills were piling up and her home mortgage was about to be foreclosed. She received instant cash of \$21,000, at a discount rate of 15.8 percent. The customer, who did not wish to be identified, says she is grateful to Wentworth for advancing her the money when her insurance company would not. "The insurance companies just don't understand," she says. "When I needed their help, they were not there." Likewise, a New York quadriplegic, who also did not want to be named, says he secured funds from Wentworth at a 12 percent discount rate to expand his own business and, as a result, is more successful than ever. "It was definitely worth it for me," he says.

But other customers are not as satisfied. New York City resident Raymond White lost part of one leg when he was struck by a subway train in 1990. A lawsuit led to a settlement that guaranteed White a monthly payment of \$1,100, with annual cost-of-living increases of 3

percent. In 1996, White, who did not have a job, wanted cash to buy a car and pay medical bills. So he turned to Wentworth, selling portions of his monthly payments for the next 15 years in six different transactions.

Altogether White gave up future payments totaling \$198,000. He received a total of \$54,000 in return, but the money, which he used for living expenses, is now gone. He bought a car, but it has been repossessed. He bought a plot of land in Florida, but lost it to foreclosure. With debts mounting, he now relies partially on public assistance to get by. "Unfortunately I was so overwhelmed with debt and striving for a better life that I went along with it," says White. "In reality, what I was doing was accumulating more debt for myself."

Some Wentworth customers say they might have realized the repercussions of their transactions had the contracts been clearer about the long-term costs. Jerry Magee of Magnolia, Miss., who has filed a class action suit against the company, is one of them. In a mortgage contract, for instance, lending laws require that consumers see their interest rate and the total amount of money they will be paying over the life of the loan. By contrast, Magee's lawyer says, neither the effective interest rate nor the total amount of the transaction was clearly spelled out in the 13-page contract or in the 25 other documents Wentworth required him to sign. Wentworth says it has been revising its documents to make them easier to understand.

**Change of address.** While the factoring transaction itself is complex, the transfer of payments is simple. The structured settlement recipient instructs the insurance company to change his or her address to that of the factoring company. The check remains in the recipient's name, and the factoring company uses a power of attorney, granted by the recipient, to cash it.

This roundabout method is used because insurance companies say structured payments should not be sold. Most settlement contracts specify that payments cannot be "assigned," and the Internal Revenue Service says that payments "cannot be accelerated, deferred, increased or decreased." Selling payments, the insurance companies say, amounts to accelerating them. And that may threaten the claimant's tax break. Insurance companies say that if their annuitants start selling their payments, the social good that justifies the tax break disappears. Ironically, they make this argument even though some insurance companies themselves are now making counteroffers to factoring companies, accelerating payments to their own claimants. Berkshire Hathaway Life Insurance Co., for example, recently offered a claimant a lump sum of \$59,000, beating Wentworth's offer of \$45,000. The IRS has not formally addressed the tax issues, but the U.S. Department of the Treasury has recommended a tax on factoring transactions to discourage them.

Insurance companies also worry about having to pay

twice. Last year, a judge ruled an insurance company was obligated to pay a workers' compensation recipient his monthly payments because the factoring transaction he entered into was invalid under Florida's workers' compensation statute. For their part, the factoring companies argue that even though the claimants do not own the annuities—the insurance companies do—the factoring companies can buy the "right to receive" the payments.

Insurance companies are getting wise to these factoring deals—CNA, a Chicago-based insurer, noticed that annuitants from all over the country were changing their addresses to Wentworth's Philadelphia post office box—and some are trying to stop the transactions. Some insurance companies, for example, refuse to honor change-of-address requests or redirect the payments back to the annuitant after the deal is done. But redirecting a payment can cause serious consequences for the claimant. In Wentworth's case, the company has each customer sign a clause called a "confession of judgment," which allows the factoring company to sue customers quickly for default when their payments are not received; customers also waive the right to defend themselves.

Christopher Hicks, a 20-year-old accident victim from Oklahoma City, learned the effects of that clause the hard way. In 1997, Hicks signed over to Wentworth half of his \$2,000 monthly payments for the next 32 months and \$1,500 for the 26 months after that. In exchange, Hicks received \$37,500, which he admits he quickly spent on furniture, clothes, and other items. When Wentworth failed to receive a check from the insurance company that pays Hicks the annuity, it secured a judgment against him for the *entire* amount of the deal—\$71,000.

**No clue.** To collect, Wentworth garnisheed Metropolitan Life, meaning that Metropolitan Life was supposed to start sending Hicks's monthly checks to Wentworth. It did not—the company won't say why—and Hicks, who was supposed to be getting \$1,000 back from Wentworth, was left with nothing. "When the money stopped, I had no clue what was going on," says Hicks, who had to rely on family and friends until the two companies settled their differences in court. Hicks now wishes he had never gotten involved with Wentworth. "They make you think you are doing the right thing in the long run," says Hicks, "but you are really messing up your life."

Wentworth makes liberal use of confession-of-judgment clauses even though they are illegal in consumer transactions in the company's home state of Pennsylvania. The Federal Trade Commission also bans the clauses as an unfair practice in consumer-credit transactions. The clauses *are* allowable in business transactions in Pennsylvania if they are accompanied by a statement of business purpose. So in each case Wentworth certifies that the agreements "were not entered into for family, personal,

or household purposes."

Such language is used in affidavits despite cases like that of Davinia Willis, a 24-year-old resident of Richmond, Calif., who entered into a transaction with Wentworth in 1996 to stop her house from being foreclosed upon and to repair wheelchair ramps—clearly, she says, personal uses. In a class action lawsuit against the company, she cites the confession of judgment as one reason why the contract is "illegal, usurious, and unconscionable." Wentworth says the clauses are necessary to keep its customers from reneging on their agreements.

In the end, the controversy over factoring companies comes down to a fundamental disagreement over the definition of their business. The factoring companies say they are not subject to usury or consumer-credit disclosure laws because they are not, in fact, lenders. "We don't make loans," declares Andrew Hillman, Wentworth's general counsel. "We buy assets." But some state attorneys general say these transactions differ very little, if at all, from loans and perhaps should be classified as such. That way, says Shirley Sarna, chief of the New York attorney general's consumer fraud and protection bureau, the law could prevent factoring companies from charging discount rates that she says in some cases have exceeded 75 percent. Wentworth says its average rate is 16 percent, and several factoring companies insist their rates would be much lower if insurance companies did not make it expensive for them to complete the deals. "By getting the insurance companies to process the address changes, it would overnight transform our discount rates from high teens to the single digits," says Jeffrey Grieco, managing director of Stone Street Capital, an advanced-funding firm in Bethesda, Md.

Who is right and who is wrong is being hammered out in courtrooms and statehouses across the country. The insurance companies were heartened last summer when a Kentucky judge denied four of Wentworth's garnishment actions, saying the purchase agreements the customers signed were neither valid nor legal. But other courts have ruled differently.

In Illinois, a new state law says that structured settlements can be sold as long as a judge approves the transaction. Wentworth notes that more than 100 such sales have been approved. At the same time, several state attorneys general are examining the factoring industry's practices. "You have got to worry about people who have a debilitating injury," says Joseph Goldberg, senior deputy attorney general for Pennsylvania. "The injury is never going away and they have no real means of income and probably no means of employment. . . . If they give that monthly payment up, it could have serious consequences." Voicing similar concerns, disability groups like the National Spinal Cord Injury Association, which now refuses to accept factoring companies' advertisements in its magazine, are warning members about the hazards of