

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10607 SENATE JUDICIARY

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Alaska Airlines passenger arrested for terrorist threatening

September 24, 2001

An Alaska Airlines passenger who had lost a bag joked with an employee at the Juneau Airport that it contained a bomb. But the airline took it seriously, and the man was arrested Monday morning at his hotel room.

Twenty-nine-year-old James Longcroft was taken into custody at about 7 a.m. and charged with felony terroristic threatening. He was lodged at the Lemon Creek Correctional Center.

Longcroft, an Irish national who gave his residence as England, lost a bag on his flight in last night.

Juneau Police say that while he was describing the bag to an employee, he noted it had a bomb in it. He told the airline employee he was kidding.

But the employee contacted police, who then contacted the FBI, the Juneau District Attorney's Office and Juneau Airport Security and Alaska Airlines Dispatch Operations in Seattle.

The missing luggage had been located at the Seattle airport. Seattle police searched the bag and found no bomb.

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 **KTVA.COM**

Bomb threat shuts down Ketchikan airport

December 30, 2001

Authorities are investigating an anonymous bomb threat that shut down the Ketchikan International Airport for more than an hour Friday.

The airport was evacuated while airport police and troopers checked the premises. No explosives were found.

Airport manager David Allen says the threat was called in to Ketchikan police about 1:30 p-m. He says police then notified the airport, prompting the evacuation. Allen says he's not sure how many people were affected.

Allen says a jet was not due to land until a few hours later, so the building was relatively empty other than airport workers. He says people were allowed back in the building at about 2:45 p-m.

Alaska State Troopers say they are investigating the threat. Police are looking into the origin of the call, but Deputy Chief David Guzman says that's the department's only involvement.

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HB

362

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 362
 (H) Publish Date: 2/8/02

Revision Date/Time (Note if correction) _____ Dept. Affected _____
 Title Extend Board of Governors of Ak. Bar BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Murkowski
 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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (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 362.

Prepared by: Douglas Wooliver Phone 463-4750
 Division: Alaska Court System Date/Time 1/30/02 2:00 PM
 Approved by: Stephanie Cole Date 1/30/02
 Agency: Alaska Court System

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Memorandum

Date: February 22, 2002
To: Senator Robin Taylor
Judiciary Chair
From: Representative Lisa Murkowski 
Subject: Hearing Request

The Board of Governors of the Alaska Bar Association is scheduled to terminate June 30, 2002 and will have one year to conclude its administrative operations if the legislature does not act this session. House Bill 362 acknowledges that the Alaska Bar Association contributes greatly to the protection of the public's welfare and operates in a competent and professional manner. As recommended by the Division of Legislative Audit, House Bill 362 extends the termination date of the Bar Association for another four years.

Senate Bill 273, House Bill 362's, Senate companion, easily moved through your committee earlier this week. House Bill 362 is identical to Senate Bill 273 and unanimously passed the House. Enclosed you will find a current copy of House Bill 362, sponsor statement, audit report, and fiscal note. Please schedule House Bill 362 in Judiciary the earliest your calendar will allow. Thank you for your consideration.

Request for Hearing

ALASKA STATE LEGISLATURE

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Sponsor Statement HB 362

Extend Board of Governors of Alaska Bar Association

The Board of Governors of the Alaska Bar Association was established in 1955 to ensure that only qualified members of the legal profession of good moral character are allowed to practice law in the state. The Bar Association's primary functions are to screen applicants for admission to ensure that all successful applicants are fit to practice law, and to provide discipline by investigating grievances against members of the Bar. The Bar Association also performs a wide variety of miscellaneous functions including classes for continuing legal education, lawyer referral services, and fee arbitration.

The board consists of twelve members, nine attorneys elected by the active membership of the Alaska Bar Association, and three non-attorney public members appointed by the governor and confirmed by a joint session of the legislature. The Bar Association currently regulates 2,719 licensed attorneys.

The Division of Legislative Audit, in its 2001 report, found that the Bar Association meets the public need in an effective and economical manner. It not only ensures that persons licensed to practice law are qualified, but provides for investigations of complaints and has established a disciplinary process designed to ensure that licensed individuals act in a competent and professional manner.

The Board of Governors of the Alaska Bar Association is scheduled to terminate June 30, 2002, and will have one year to conclude its administrative operations unless the legislature acts this session. House Bill 362 reflects the recommendation of the Division of Legislative Audit and extends the termination date for the Bar Association for another four years.

Staff Contact: Amy Erickson 465-4954
Last Updated: January 29, 2002

**SPONSOR
STATEMENT**

November 30, 2001

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

BOARD OF GOVERNORS OF THE
ALASKA BAR ASSOCIATION
SUNSET REVIEW

November 30, 2001

Audit Control Number

41-20008-02

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently, under AS 08.03.010(c)(2), the Board of Governors of the Alaska Bar Association is scheduled to terminate on June 30, 2002.

In our opinion, the termination date for this board should be extended. The regulation and licensure of attorneys contributes to the protection of the public's welfare. We recommend the legislature extend the termination date to June 30, 2006.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section.

Pat Davidson, CPA
Legislative Auditor

Information
Statement

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Governors of the Alaska Bar Association. The purpose of this audit was to determine if there is a demonstrated public need for the continued existence of this board and if it has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during the legislative oversight hearings to determine whether the Board of Governors of the Alaska Bar Association should be reestablished. The law currently specifies that the board will terminate on June 30, 2002.

Objectives

The Alaska Bar Association was established in 1955 as an instrumentality of the State to ensure that only qualified members of the legal profession of good moral character are allowed to practice law in this State. A primary objective of this audit, therefore, was to determine whether the need for protection of the public continues to exist.

A secondary objective was to review the major processes instituted by the Alaska Bar Association, namely the examination of prospective members, admission, and discipline procedures, for effectiveness in meeting the public need. A tertiary objective was to evaluate those processes in particular, and Alaska Bar operations in general, for economy and efficiency of operation.

Our analysis of public need, findings and recommendations, and our conclusions have been summarized in the appropriate sections of this report.

Scope and Methodology

Under the direction and supervision of the Division of Legislative Audit, another auditor conducted the majority of this review. We followed professional standards to determine that the other auditor was independent and that their work was competent and sufficient.

The major areas of our review were the licensing, examination, and discipline functions provided by the Alaska Bar Association, as well as board proceedings. Our audit reviewed the operations and activities of the association from January 1998 through October 2001.

Our review included the following:

- Compliance with statutes and regulations, Alaska Bar Rules, and bylaws
- Minutes of board meetings and correspondence files
- Annual reports issued by the Alaska Bar Association

- Complaints filed with the Office of the Ombudsman, Department of Labor, Department of Human Rights, and Equal Employment Opportunity Commission
- Attorney discipline files
- Attorney applications for examination and licensure
- Complaint files
- Interviews with employees of the Alaska Bar Association

ORGANIZATION AND FUNCTION

The practice of law in the State of Alaska is regulated by the Board of Governors of the Alaska Bar Association. The board consists of twelve members, including nine attorneys elected by the active membership of the Alaska Bar Association and three non-attorney public members that are appointed by the governor and confirmed by a joint session of the legislature.

The powers and duties of the board are conferred by the Alaska Integrated Bar Act,¹ the Alaska Bar Rules, and the Rules of Professional Conduct, which are promulgated by the Alaska Supreme Court. Under AS 08.08.080(a), the board may approve and recommend to the state Supreme Court rules (1) concerning the admission, discipline, licensing, continuing legal education, and defining the practice of law; (2) providing for continuing legal education and for certification of a continuing legal education program; and (3) establishing a program for the certification of attorneys as specialists.

The Alaska Bar Association has two primary functions, admission and discipline of its members. To accomplish these and other functions, the Alaska Bar Association operated with a 2001 budget of approximately \$1.9 million. A schedule of revenues and expenses is included at Appendix A. Funding is provided primarily by membership dues, admission fees, lawyer referral fees, continuing legal education charges, interest income, and administrative discipline fees. The Alaska Bar Association did not receive any state funding in the period under audit.

- Admission Function: The board is responsible for screening applicants for admission to the Alaska Bar Association. The board certifies to the Alaska Supreme Court that all successful applicants are fit to practice law. The board appoints an executive director who is responsible for directing all staff functions, including the oversight of the admissions function.

- Discipline Function: The board is responsible for investigating grievances against all members of the Bar Association. The board appoints the discipline counsel. This counsel is responsible for oversight of all disciplinary actions

The Board of Governors of the Alaska Bar Association
Mauri Long, President Third Judicial District Term Expires 2004
Lori Bodwell, President-elect Fourth Judicial District Term Expires 2002
Jonathan Katcher, Vice-president Third Judicial District Term Expires 2003
Lawrence Ostrovsky, Treasurer Third Judicial District Term Expires 2004
Anastacia Cooke Hoffman, Secretary Public Member Term Expires 2003
William 'Bill' Granger Public Member Term Expires 2003
Brian Hanson First Judicial District Term Expires 2003
Robert Johnson Third Judicial District Term Expires 2004
Barbara Miklos Public Member Term Expires 2001
Kirsten Tinglum Third Judicial District Term Expires 2002
Bruce Weyhrauch First Judicial District Term Expires 2002
Daniel Winfree Fourth Judicial District Term Expires 2003

¹ AS 08.08.

taken against the Bar Association's membership and provides an ethics course that is required for all applicants. The Chief Justice of the Supreme Court appoints hearing committees from each judicial district. The board is responsible for issuing reprimands when warranted, and for recommending that the Supreme Court impose disbarment, suspension, probation, or public censure when appropriate.

- Miscellaneous Functions: The Alaska Bar Association also performs a wide variety of miscellaneous functions that includes providing classes for continuing legal education, a lawyer referral service, and fee arbitration. In conjunction with Alaska Legal Services Corporation, the Alaska Bar Association sponsors the Alaska Pro Bono Program. The Alaska Bar Association provides a number of other member services including attorney liability protection, group insurance, the *Alaska Bar Rag*, and ethics opinions.

The Alaska Bar Association's office is located in Anchorage and is currently staffed by 15 full-time and job-share employees.

REPORT CONCLUSIONS

In our opinion, the Board of Governors of the Alaska Bar Association should be reestablished. Since the first three attorneys were admitted to the practice of law in Alaska in 1884, membership has grown to its current level of 2,719 active members practicing in the State. The regulation and licensing of qualified attorneys contributes greatly to the protection of the public's welfare. A license to practice law in the State is a continuing proclamation by the Alaska Supreme Court that an attorney is fit to be entrusted with professional and judicial matters, to aid in the administration of justice as an attorney and counselor, and to act as an officer of the courts.

The Bar Association, through the Supreme Court, protects the public by ensuring that persons licensed to practice law are qualified. It also provides for the investigation of complaints and has established a disciplinary process designed to ensure licensed individuals act in a competent and professional manner. As such, we recommend that the legislature extend the termination date of the board to June 30, 2006.

In general, it is our opinion that the board meets the public need in an effective and economical manner. However, we have made recommendations that, if implemented, will improve the efficiency and effectiveness of the board's operations. See the Findings and Recommendations section of this report.

FINDINGS AND RECOMMENDATIONS

In our report *Board of Governors of the Alaska Bar Association, January 2, 1998* we made recommendations in the areas of lawyer referral services, continuing legal education, and attorney disclosure. Concerns regarding attorney disclosure have been adequately addressed.

Our recommendation on lawyer referral services has not been fully implemented and is restated in this report as Recommendation No. 1.

We also suggested that the board recommend to the Supreme Court that mandatory continuing legal education (CLE) requirements for attorneys be adopted. In response, the Supreme Court adopted a voluntary, rather than mandatory, CLE program. It adopted a three-year pilot program to determine if modest reductions in licensing fees would satisfactorily encourage attorneys to earn 12 credit hours of CLE each year. This pilot program is set to end in 2002. We will review the program's results and the 12-hour guideline during the next sunset audit.

Recommendation No. 1

The Board of Governors of the Alaska Bar Association should establish screening and oversight procedures for attorneys wishing to participate in the Lawyer Referral Service.

Alaska's Lawyer Referral Service provides an in-state, toll-free telephone number available to members of the public seeking an attorney. Persons calling the number are given the names of three attorneys who practice in the caller's area and who have expressed an interest in the field of law the person requests. A referral summary is included as Appendix D.

Attorneys are charged a \$50 annual enrollment fee for each section they want their name listed in. They are also charged a minimal fee for each referral made to them. All active Alaska Bar members in good standing are eligible and are encouraged to use the service. Participating attorneys are required to maintain errors and omissions (malpractice) insurance of at least \$50,000. However, there are no other eligibility requirements for enrollment in the service, and no screening and oversight to ensure that the attorney is qualified in any particular field of law.

This contrasts sharply with the American Bar Association's recommendation for such programs. According to the American Bar's *Model Supreme Court Rules Governing Lawyer Referral and Information Services*, "*the overriding concern of the model rules is consumer protection.*" These rules further provide that

requirements for eligibility should include sufficient experience to ensure that the lawyer is qualified in the field of practice. The [lawyer referral] service should require proof of compliance with the requirements so established, which may include certification in affidavit or affirmation form.

In commentary discussion, the model states:

The importance of establishing meaningful experience requirements cannot be underestimated. It is inappropriate for the service to simply refer callers to the next lawyer on the list without determining that the lawyer is qualified in the field of practice in which legal services are needed. Since the public relies on services to provide qualified legal representation which improves on what the consumer can obtain by lot, it is incumbent upon these services to ensure that their attorneys have substantially more qualifications than mere bar membership. [Emphasis added.]

The model concludes that "the service must establish procedures for the admission, suspension, or removal of a lawyer from any panel."²

Alaska's referral service has no such oversight procedures. As long as members are in good standing and maintain malpractice insurance they are eligible to enroll in the service. No consideration is given to past disciplinary actions or competence in the specific field.

By providing a referral, the Alaska Bar creates the appearance that it considers the attorneys referred to be competent to practice in a particular field of law. Members of the public who call the Alaska Bar Association for a referral may erroneously assume that the Alaska Bar has taken some measures to reasonably ensure the attorney has some level of expertise in that field. However, the referral service provides members of the public with little more assurance they will receive competent legal representation than they get seeking an attorney from the telephone yellow pages.

The Alaska Bar Association has added a disclaimer as to its prerecorded Lawyer Referral message. However, this approach does not meet the standard suggested by the American Bar Association.

We believe the people of Alaska would benefit from the board taking a proactive role in screening and overseeing attorneys participating in the Lawyer Referral Service. Adopting aspects of the American Bar's recommended model rules on such services would contribute greatly to consumer protection.

Recommendation No. 2

The Alaska Bar Association's executive director should ensure that the public is appropriately notified of board meetings.

Under AS 08.08.075, the Bar Association is subject to the Open Meetings Act.³ Improved meeting notification in two areas would benefit the public.

² The American Bar Association is a voluntary organization of attorneys. The organization's model rules, while not mandatory, provide a suggested framework for individual states' Bar Rules.

³ AS 44.62.310 - 44.62.312.

First, AS 08.08.075 states that "*the public shall be given 30 days' notice of meetings of the board . . .*" The Bar Association generally does so. However, we did note that for 3 of the 23 board meetings held since 1998, the notice period was somewhat shorter, i.e., 6 days, 21 days, and 28 days.

Second, AS 44.62.310(e) requires these meeting notices to be posted on the Alaska Online Public Notice System. The Bar Association has not yet begun to utilize this system.

A ANALYSIS OF PUBLIC NEED

The following analysis of board activities relates to the public need factors defined in the "sunset" law, Alaska Statute 44.66.050. This analysis was not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

The extent to which the board, commission, or program has operated in the public interest.

The Alaska Bar Association admits applicants to practice law through an examination process that was designed in consultation with a national expert. Admission is contingent on the passage of the Bar Examination, the Multi-state Professional Responsibility Examination, and a character investigation to determine if the applicant is of good moral character. The Alaska Bar Association also admits members by motion for reciprocity. This option is limited to attorneys in the active practice of law for five of the last seven years in states with which Alaska has a reciprocal agreement. Examination and admission statistics are shown in Appendix C.

The Alaska Bar Association has a lawyer discipline process for the investigation of complaints alleging attorney misconduct. Sanctions are imposed on those found to be in violation of the Rules of Professional Conduct. All public disciplinary action is subject to Supreme Court review; the Court follows the board's recommendations in most disciplinary actions. This process was developed through a cooperative effort of the Alaska Supreme Court, the Board of Governors, Alaska Bar Association staff, and a review team from the American Bar Association's Standing Committee on Professional Discipline. Discipline statistics are shown in Appendix B.

The American Bar Association's *Model Rules for Lawyer Disciplinary Enforcement* recommends that discipline be administered through an entity other than the Alaska Bar Association. In response to this recommendation, as well as to help alleviate public concern that discipline is not taken seriously by the Alaska Bar Association, disciplinary rules provide that once a petition for formal hearing is filed, the disciplinary proceedings become open to the public.

Analysis of the complaints filed during our audit period shows that all of the grievances were reviewed, but relatively few were pursued beyond initial investigation. On its face, this may appear troubling, but further scrutiny shows it to be reasonable. Some grievances were referred to the fee arbitration committee or to a mediation panel whose services are discussed below. If a grievance involved pending litigation, it was not accepted; however, the complainant was advised that it may be resubmitted and considered once the litigation is concluded. In some instances, grievances were dismissed because action had already been taken against the attorney. Grievances are often filed that do not have merit or are not based on tangible evidence. These types of grievances are very common in some fields of legal practice. We understand that approximately half of all grievances are filed against criminal law and family practice attorneys, both areas that lend themselves to high emotion. The

potential arises that such a grievance is based on the outcome of a case, rather than attorney misconduct.

Board procedures provide for public notice of all attorneys who have been disbarred, suspended, put on probation, publicly censured, or reprimanded. The names of these attorneys are published in four major newspapers throughout the State, the local newspaper where the attorney practiced, the *Alaska Bar Rag*, and in the board's annual report.

The Alaska Bar Association offers fee arbitration as a dispute resolution process. This process provides for a single arbitrator to address disputes of \$5,000 and less. Disputes over \$5,000 are addressed by a three-member panel that consists of two attorneys and one public member. Failure by an attorney to participate in good faith in this process may result in a civil judgment being entered against the attorney and administrative suspension of the attorney's license until the judgment is paid.

Similarly, the Alaska Bar Association offers a mediation process that attempts to resolve disputes between attorneys and their clients, when the dispute is neither fee nor misconduct related. An attorney must participate in good faith if the attorney agrees to mediation.

The Alaska Bar Association maintains the Lawyers' Fund for Client Protection. The purpose of this fund is to reimburse clients who have suffered uninsured losses of money, property, or other things of value as a result of a dishonest act by an attorney. Ten dollars of each Alaska Bar Association member's annual dues is deposited in this fund.

The Alaska Bar Association jointly sponsors the Alaska Pro Bono Program with the Alaska Legal Services Corporation in which attorneys provide free legal services to low-income Alaskans.

The Alaska Bar operates a Lawyer Referral Service, which is funded by subscribing attorneys. Members of the public can call an in-state, toll-free number and receive the names of three attorneys who have listed themselves as practicing law in a certain field. However, as discussed in Recommendation No. 1, Alaska's Lawyer Referral Service does not meet the standards recommended by the American Bar Association.

The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

The operations of the board are funded entirely by the membership through annual dues, admission fees, continuing legal education, lawyer referral fees, convention revenue, and interest income. The 2001 budgeted revenue was approximately \$1.9 million.

The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.

The board has not recommended any statutory changes during this audit period. However, the board has been active in the process of evaluating and revising the Alaska Bar Rules that govern the Alaska Bar Association's policies and procedures.

The board has also addressed certain recommendations presented in our 1998 audit. Most notably, the Alaska Bar Association introduced changes to the Alaska Bar Rules, which require written fee agreements for legal representation contracts in excess of \$500. The board prepared a pamphlet, which attorneys are encouraged to give their clients, that explains the client's rights and responsibilities. Along with the written fee agreements, attorneys are required to disclose certain items to their clients, such as the absence of professional liability insurance coverage or a reduction in coverage below required amounts.

The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

The Alaska Bar Association membership is involved in its operations. This involvement may include service on one of the six standing committees or five Alaska Bar Rules committees. It may also include participation in a section or group of members with interest in a particular field, e.g., bankruptcy law or criminal defense. Each section monitors developments in the field and produces periodic continuing education programs. It may also include participating in an adjunct organization such as the Alaska Pro Bono Program or special projects like the Lawyer Referral Service.

The Alaska Bar Association publishes all proposed changes to the Alaska Bar Rules in its semi-monthly publication, the *Alaska Bar Rag*, which is distributed to all members of the Alaska Bar Association and to interested members of the public. Members are asked to submit any and all comments on proposed rule changes for review by the board.

The board also advertises board meetings in four Alaska newspapers and in the *Alaska Bar Rag*. As discussed in Recommendation No. 2, postings to the Alaska Public Online Notice System would also be helpful to the public. Adequate time is allotted, and members of the general public are encouraged to make comments at all meetings.

The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

In addition to the three public members who serve on the Board of Governors, non-attorneys serve on disciplinary hearing committees and fee arbitration panels throughout the State.

As mentioned above, the Alaska Bar Association publicly advertises meetings of the board. Time is allotted at all board meetings for public comments.

The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

The Alaska Bar Association is an instrumentality of the State, but is not administratively assigned to any department. Four complaints have been filed against the Alaska Bar Association with the Office of the Ombudsman during the last four years. All four of the investigations were closed; full investigations were not considered necessary.

The extent to which a board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.

The Alaska Bar Association investigates complaints against its members. Since 1998, these activities have resulted in 65 sanctions against attorneys. Thirty of these sanctions were against nine attorneys. All nine were disbarred.

The Alaska Bar Association offers continuing legal education programs to its membership and it also maintains an educational library.

The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity of interest.

We found no evidence that the board was not complying with applicable personnel practices.

Nothing came to our attention that showed the Board was in violation of any affirmative action or hiring requirements.

The Board has on occasion voiced concern over the low minority pass rate of the Alaska Bar Examination. In order to overcome this concern the Board has instituted a tutoring committee to review essay examinations and offer suggestions to the failing candidate or assistance in preparation for future examinations.

The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the Findings and Recommendations section of this report.

APPENDIX A

Board of Governors of the Alaska Bar Association
Revenues Compared with Expenditures
 Calendar Years 1998 through 2001
 (unaudited)

<u>Revenues</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Membership Dues	\$ 1,314,795	\$ 1,318,629	\$ 1,308,794	\$ 1,283,575
Admission Fees	207,965	189,520	200,055	196,875
Continuing Legal Education	152,514	125,540	153,886	168,915
Lawyer Referral Fees	95,808	76,225	81,463	81,500
Annual Meeting	41,907	49,919	66,892	45,000
Interest on Investments	135,512	92,938	208,140	115,000
Other	<u>88,148</u>	<u>100,761</u>	<u>104,944</u>	<u>20,979</u>
<u>Total Revenues</u>	<u>2,036,649</u>	<u>1,953,532</u>	<u>2,124,174</u>	<u>1,911,844</u>
<u>Expenses</u>				
Admissions	172,470	169,401	177,650	176,002
Board of Governors	42,191	33,936	43,289	64,627
Discipline	558,765	586,576	584,688	603,628
Administration	397,609	419,461	413,117	409,912
Lawyer Referrals	52,775	52,326	49,236	47,573
Continuing Legal Education	288,665	290,962	338,087	404,302
Fee Arbitration	47,524	54,435	52,405	52,794
Annual Meeting	51,482	80,051	79,950	80,000
Other	<u>150,936</u>	<u>163,752</u>	<u>155,857</u>	<u>155,992</u>
<u>Total Expenses</u>	<u>1,762,417</u>	<u>1,850,900</u>	<u>1,894,279</u>	<u>1,994,830</u>
<u>Excess (deficit) of Revenues over Expenses</u>	<u>\$ 274,232</u>	<u>\$ 102,632</u>	<u>\$ 229,895</u>	<u>\$ (82,986)</u>

Source: The 1998 – 2000 data was obtained from the Alaska Bar Association’s annual reports. Budget amounts are shown for 2001.

APPENDIX B

Board of Governors of the Alaska Bar Association
Discipline Statistics
 Calendar Years 1998 through 2001
 (unaudited)

<u>Disposition of Closed Disciplinary Cases</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>Total</u>
Disbarment by Supreme Court	2	5	1	22	30
Suspension by Supreme Court	0	2	6	1	9
Public Censure by Supreme Court	0	0	0	1	1
Private Reprimand by Disciplinary Board	1	0	3	7	11
Private Admonition by Discipline Counsel	4	3	5	2	14
Dismissed	<u>28</u>	<u>25</u>	<u>27</u>	<u>12</u>	<u>92</u>
Total Closed Cases	<u>35</u>	<u>35</u>	<u>42</u>	<u>45</u>	<u>157</u>

<u>Status of Open Cases at Year End</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Attorney on Probation	1	1	1	1
Pending Supreme Court	2	2	1	18
Pending Disciplinary Board	2	0	18	0
Pending Hearing Committee	6	23	21	17
Pending Stipulation	3	4	11	6
Pending Approval to File Formal Hearing	0	15	0	1
Pending Approval to Issue Written Private Admonition	0	1	0	0
Pending Written Private Admonition	0	1	0	0
Abeyance due to Court Case	1	0	0	1
Pending Bar Counsel Investigation/Decision	82	60	50	51
Pending Complainant Reply	0	2	0	0
Pending Respondent Response	7	2	8	8
File Under Review	<u>0</u>	<u>0</u>	<u>0</u>	<u>37</u>
Total Open Cases	<u>104</u>	<u>111</u>	<u>110</u>	<u>140</u>

Source: Data for 1998 – 2000 was obtained from the Alaska Bar Association’s annual reports. 2001 data was compiled by the Alaska Bar Association’s staff. These numbers reflect individual complaints filed and not the number of attorneys under investigation.

APPENDIX C

Board of Governors of the Alaska Bar Association
Bar Examination and Admission Statistics

1998 through 2001
(unaudited)

<u>Bar Examinations</u>	<u>Number Taking Exam</u>	<u>Number Passing Exam</u>	<u>Percent Passing Exam</u>
February 1998	51	35	69%
July 1998	68	45	66%
February 1999	66	37	56%
July 1999	60	36	60%
February 2000	56	36	64%
July 2000	62	41	66%
February 2001	<u>50</u>	<u>37</u>	<u>74%</u>
Total	<u>413</u>	<u>267</u>	<u>65%</u>

Admission Under Motion for Reciprocity

<u>Calendar Year</u>	<u>Number Admitted</u>
1998	20
1999	13
2000	46
2001	<u>16</u>
Total	<u>95</u>

Source: Data for 1998 – 2000 was obtained from the Alaska Bar Association's annual reports. 2001 data was compiled by the Alaska Bar Association's staff. The 2001 reciprocity data is presented through August 9, 2001.

APPENDIX D

Board of Governors of the Alaska Bar Association
Attorney Referrals
 Calendar Years 1998 through 2001
 (unaudited)

<u>Area of Discipline</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Administrative	244	267	290	234
Admiralty	46	35	34	11
Adoption	45	48	52	46
Alaska Native Law	15	20	17	19
Arts	5	5	1	3
Bankruptcy	203	143	118	116
Commercial	207	266	215	222
Construction	34	32	29	28
Consumer	568	532	700	414
Criminal: Felony	205	275	243	169
Criminal: Misdemeanor	452	334	285	218
Discrimination	62	64	38	38
Divorce/Dissolution/Custody	1,877	1,570	1,851	1,189
Eminent Domain	6	0	6	1
Environmental	3	11	2	4
Foreign Language	2	6	1	2
Guardian/Conservator	27	43	47	30
Insurance	117	73	115	80
Labor Relations	726	636	693	502
Landlord/Tenant	289	250	293	233
Malpractice	365	334	323	202
Military	39	29	35	21
Mining	6	5	1	0
Negligence	976	843	783	812
Patent/Copyright	31	0	0	40
Public Interest	0	0	6	1
Real Estate	272	234	273	187
Social Security Insurance Cases	154	3	12	0
Tax	31	31	34	0
Traffic	122	84	65	52
Trust/Will/Estate	204	187	230	161
Workers' Compensation	263	294	337	320
Total	<u>7,596</u>	<u>6,654</u>	<u>7,129</u>	<u>5,355</u>

Source: The 1998 – 2000 data was obtained from the Alaska Bar Association's annual reports. 2001 data was compiled by the Alaska Bar Association's staff and is reported through September 9, 2001.

January 3, 2002

Pat K. Davidson
Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

RE: Management Letter No. 1
Sunset Audit of the Alaska Bar Association

Dear Ms. Davidson:

Thank you for the prompt and thorough audit and the opportunity to respond to your preliminary assessment of the Alaska Bar Association.

We really appreciated the audit's conclusion that the Board of Governors meets its statutory responsibilities and public need in an effective and economical manner. We work very hard to maintain the highest level of professionalism in the Bar while remaining within our budget. It is always nice to hear that our efforts are recognized.

These comments will first address the sunset date and fiscal consequences; next we focus on the recommendations to the Board included in the audit. Steps have already been taken as to some recommendations. We have outlined our concerns about some of the proposed recommendations.

Sunset and Fiscal Note

The Board concurs with extending the sunset date of the Alaska Bar Association Board of Governors until June 30, 2006. Because you are preparing this audit so promptly, no bill has been filed with the legislature. However, when that occurs, there will be no fiscal note attached, as the Alaska Bar Association will not be seeking any state funding for its operational costs. The Bar Association has obtained state funding only during the limited time frame between 1981 and 1986, and only for the per diem and travel expenses of the three public members who sat on the Board. For the past 15 years, the Bar Association has paid those expenses without state funding.

Response to Legislative Audit
January 3, 2002
Page 2

Response to Recommendation No. 1: The Alaska Bar Association will review the Lawyer Referral Service to determine the extent it can comply with the American Bar Association Model Rules.

The audit recommends that the Board of Governors establish screening and oversight procedures for attorneys wishing to participate in the Lawyer Referral Service, consistent with the ABA Model Rules governing Lawyer Referral and Information Services.

Following the 1998 audit, the Bar Association added the following disclaimer to its prerecorded message which callers hear before they speak to the Lawyer Referral Service Assistant.

Thank you for calling the Lawyer Referral Service. All lawyers listed with this service are members in good standing of the Alaska Bar Association.

However, the Alaska Bar Association does not have a program to certify lawyers as specialists, and therefore the Bar cannot vouch for the skill of any lawyer referred.

* * *

Lawyers on the Lawyer Referral Service are the only lawyers who are required to earn 12 hours of continuing legal education (CLE) credit each year, including at least one hour of ethics. Bar Rule 65, which establishes the Voluntary CLE pilot program, provides that "only members who complete the minimum recommended hours of approved CLE are eligible to participate in the Alaska Bar Association's Lawyer Referral Service."

The audit states that "no consideration is given to past disciplinary actions" in Bar members eligibility to remain on the Service. However, the Bar removes ~~from the Lawyer Referral Service any lawyer who is subject to formal~~ disciplinary proceedings, until the proceedings are concluded. This policy is stated in the participation agreement:

In event that a petition is filed for removal to inactive status for disability and/or if formal disciplinary proceedings are initiated against me, or if a criminal complaint is filed or an indictment returned alleging a serious crime [as defined in Alaska Bar Rule 26(b)], I hereby agree to a suspension of referrals until final resolution of the matter.

The Auditor quoted the ABA Model Rules' "overriding concern" as consumer protection. The Board believes that the above referenced protections, along with the requirement that practitioners using the service maintain an errors and omissions policy, meets our goals and obligation to provide a very high

level of protection to the public. Nevertheless, since the Auditor expressed these concerns, the Board will review the Lawyer Referral Service to determine the extent to which we could further comply with the ABA Model Rules. Presently a limited number of lawyers, 113, participate in the Service. Thus, we will also review the extent to which it would be feasible to continue the program given the costs of adjusting the Service to meet the ABA's Model Rules.

Recommendation No. 2: The Alaska Bar Association agrees with the importance of public notice.

The Bar Association agrees that timely public notification of its meetings is important and the Board has conscientiously complied with the statutory requirement to give public notice of its regularly scheduled meetings.

The Audit noted 3 instances in which the notice period was somewhat shorter than the required 30 days.

Notice of the August 27, 1998 Board meeting was published on July 22, 1998, more than the required 30 days. However, the Board decided to publish an additional notice that it would, at that meeting, be considering a proposed Mandatory CLE rule at that August 27, 1998 meeting. That additional notice of a specific agenda item was published on August 21, 1998. Notice of a specific agenda item was not required under A.S. 44.62.310, so the second notice was simply a courtesy.

Our files indicate that on July 19, 1999, the Bar faxed a notice to the newspapers with a request that the August 19, 1999 Board meeting notice be published no later than July 21, 1999 (30 days prior). It was published on ~~July 22, 1999, one day late.~~

Notice of the August 9, 2001 meeting notice was published on July 18, 2001. There is a note in the file that due to an oversight the Bar staff neglected to get the notice to the newspapers timely.

Given the importance of this issue, the Executive Director and the Executive Assistant will calendar publication of Board notices with greater lead time.

To further increase public access, the Board will begin posting its meeting notices on the Alaska Online Public Notice System, beginning with its next meeting in January 2002. The Board understands that it is fulfilling its obligation under AS 08.08.075 to provide public notice and open meetings and that its participation in the Alaska Online Public Notice System does not

Response to Legislative Audit
January 3, 2002
Page 4

change its exemption under AS 08.08.100 for the adoption of bylaws and regulations. In addition, the Bar will continue publishing notices of its meetings on its website.

Concluding Comments: Lawyer self-regulation has been effective in Alaska.

The overall conclusion of the audit is that the Board effectively serves the public interest through its lawyer admission and discipline process. We also believe that lawyer self-regulation is working very effectively in Alaska. To its credit, the Alaska Bar Association has one of the most aggressive and effective discipline systems in the country.

It is also our belief that the present management system of the Bar provides a blend of private and governmental functions, insuring both accountability and good management. For example, the Bar is an instrumentality of the state and subject to legislative audits. Its meetings are open to the public. Members of the public sit on discipline hearings and fee arbitration panels as well as on the Board of Governors. Its discipline functions are overseen by the Supreme Court, which assures a sound investigative and judicial process of discipline. Finally, the statewide lawyer membership on the Board also ensures that the Bar Association is both responsive to the needs of its members and qualified to address such issues as admission standards and peer review.

Again, thank you for the opportunity to comment on the audit report. We trust that our response has been helpful, and that it demonstrates the Board's continuing commitments to improving the profession and service to the public.

Sincerely,
Alaska Bar Association

Mauri Long
President

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 362
(H) Publish Date: 2/8/02

Revision Date/Time (Note if correction) _____ Dept. Affected _____
Title Extend Board of Governors of Ak. Bar BRU Alaska Court System
Component Trial Courts
Sponsor Representative Murkowski
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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (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 362.

Prepared by: Douglas Wooliver Phone 463-4750
Division Alaska Court System Date/Time 1/30/02 2:00 PM
Approved by: Stephanie Cole Date 1/30/02
Agency Alaska Court System

For distribution information, call the Governor's Legislative Office

HB

375

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 375
 (H) Publish Date: 2/15/02

Revision Date/Time (Note if correction): _____ Dept. Affected: LAA
 Title "An act making corrective BRU Legislative Council
amendments to the Alaska Statutes as recommended..." Component Legislative Council
 Sponsor Legislative Council
 Requester House Judiciary Component No. 783

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	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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 375 makes corrective amendments to the Alaska Statutes as recommended by the Revisor of Statutes. This bill has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director Phone 465-3852
 Division Administrative Services Date/Time 2/7/02 9:53 AM
 Approved by: Pamela Varni, Executive Director Date 2/7/02
 Agency Legislative Affairs Agency

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

LEGISLATION/REGULATIONS SECTION
P.O. BOX 110300
DIAMOND COURT HOUSE, 6TH FLOOR
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2520

February 28, 2002

The Honorable Robin Taylor, Chair
Senate Judiciary Committee
State Capitol, Room 30
Juneau, AK 99801-1182

Re: HB 375 am - 2002 Revisor's Bill

Dear Senator Taylor:

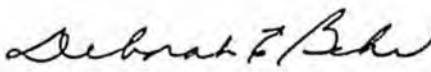
The Department of Law has had the opportunity to review HB 375 am, the 2002 revisor's bill. HB 375 is currently with the Senate Judiciary Committee.

We find that the bill makes important technical improvements to the Alaska statutes.

We find no legal difficulties with HB 375 am.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Deborah E. Behr
Assistant Attorney General

DEB:jf

cc: Pam Finley, Revisor of Statutes
Chrystal Smith, Legislative Contact, Dept. of Law
Shari Kochman, Deputy Legislative Director, Office of the Governor

Letter of Support

LEGAL SERVICES

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

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

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

MEMORANDUM

February 27, 2002

SUBJECT: HB 375 am (2002 Revisor's Bill)

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee

FROM: Pamela Finley *PF*
Revisor of Statutes

Enclosed is HB 375 am (the 2002 revisor's bill), which has been referred to the Senate Judiciary Committee. I am also including a sectional for your information. I would appreciate it if you would schedule a hearing on this bill at your earliest convenience. If you have any questions, please call me. Thank you for your attention.

PF:med
02-221.mcd

Enclosure

**REQUEST FOR
HEARING**

LEGAL SERVICES

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

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

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

MEMORANDUM

February 27, 2002

SUBJECT: CSHB 375 am (2002 Revisor's Bill)

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee

FROM: Pamela Finley *PF*
Revisor of Statutes

The following is a sectional analysis of CSHB 375 am (the 2002 revisor's bill). The bill is prepared under AS 01.05.036, which provides, in part, that the revisor of statutes . . . shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of any portion of the statute law of this state.

To assist the reader in understanding the bill, I have summarized the contents by listing sections that have similar purposes or effects.

Sections that delete, repeal, or update obsolete provisions: Sections 10, 12, 13, 15, 16, 17, and 18 amend or repeal provisions that have become obsolete through time or other legislative action.

Sections that correct errors or oversights: Sections 2-8 and 14 correct errors or oversights.

Sections that improve the form or substance of the law: Sections 1, 9, and 11 propose amendments to improve the form or substance of the statutory law of Alaska.

SECTIONAL ANALYSIS

Bill section 1 amends AS 01.10.070(d) to set out the effective date of an Act having a definite effective date specified in the bill, when the governor signs the bill (or it otherwise becomes law) after the specified effective date. The added language would indicate that the bill becomes law on the day after it is signed by the governor (or otherwise becomes law). For example, if a bill had a July 1 effective date, but was not signed until July 3, the actual effective date of the bill would be July 4. The reasoning is that a bill cannot be effective until all the required constitutional steps have occurred and that using the next day after signature in such cases comes as close as possible to the effective date intended by the legislature. This has been the practice while I have been

revisor, and my predecessor informed me that this was the way he interpreted such effective dates. See sec. 132, ch. 103, SLA 1995; sec. 98(c), ch. 61, SLA 2001; and sec. 21, ch. 63, SLA 2001. (As a matter of practice, I also have not indicated that such sections are retroactive to the specified effective date because AS 01.10.090 states that no statute is retrospective unless expressly declared therein. Also, retroactivity may, in some circumstances, be unconstitutional. However, the amendment proposed in bill section 1 would not necessarily prevent a court from finding implied retroactivity in a given case because the proposed amendment addresses only the effective date, which is conceptually different from retroactivity.) I have been informed that litigation has been filed concerning the effective date of secs. 10-13 of ch. 63, SLA 2001 (where the governor signed the bill after the specified effective date), with the defendant claiming that those sections were effective 90 days after the governor signed the bill rather than one day after the signing. That case will be decided on the law in effect at the time, but this bill section attempts to clarify the rule for future situations.

Bill section 2 attempts to resolve problems created by a floor amendment to AS 09.10.060(c) last session in ch. 86, SLA 2001. Before the amendment of AS 09.10.060(c), that subsection set a three year statute of limitations for civil actions for injuries suffered as a result of sexual abuse. Sexual abuse was defined by reference to certain sections of the criminal code, *i.e.*, felony and misdemeanor sexual assault and sexual abuse of a minor, incest, unlawful exploitation of a minor and first degree indecent exposure. If the victim was under 18 at the time of the crime, under AS 09.10.140(a) the limitations period would not begin running until the victim turned 18. Moreover, if the victim was under the age of 16 at the time of the crime, under AS 09.55.650 and AS 09.10.140(b), the victim could bring an action for injuries caused by the specified crimes even more than three years after the victim turned 18 under certain circumstances.

The floor amendment repealed and reenacted AS 09.10.060(c) so that there is no longer any statute of limitations for civil actions arising out of felony sexual abuse of a minor or felony sexual assault. The floor amendment did not define "sexual abuse" or "sexual assault" by reference to any criminal code sections, nor did the floor amendment change AS 09.10.140(b), which was predicated on a three year statute of limitations. Whatever else may now be covered by AS 09.10.060(c), it is clear that it would not cover misdemeanor sexual abuse or assault. (AS 11.41.427 and 11.41.440.) Since there is no longer a specific statute of limitations for those misdemeanors, the result of the floor amendment was to make civil actions based on those misdemeanors subject to the two year statute of limitations for torts, AS 09.10.070.

Bill section 2 amends AS 09.10.140(b) in two ways. First, it indicates that AS 09.10.140(b) does not apply to claims that are allowed under AS 09.10.060(c). This avoids any suggestion that AS 09.10.140(b) provides a statute of limitations for claims that AS 09.10.060(c) indicates have no statute of limitations. Secondly, it changes the references from "three years" to "two years", since two years will now be the statute of limitations for those crimes listed in AS 09.55.650 that are not covered by AS 09.10.060(c). Bill section 2 does not attempt to further define what crimes are

covered by "felony sexual abuse of a minor" or "felony sexual assault" in AS 09.10.060(c). That could involve policy choices that are not appropriate for a revisor's bill.

Bill section 3 amends AS 14.48.190 to change "commissioner" to "commission". AS 14.48.150 requires certain records to be deposited with the commission (on postsecondary education), not with a commissioner.

Bill section 4 amends AS 15.20.207(g) to require a certificate for the questioned ballot counting board to be returned to the director by the 16th, rather than the 11th, day following the election. In sec. 53, ch. 82, SLA 2000, the time by which the district questioned ballot counting board was required to certify the questioned ballot totals was changed from the 10th day after the election to the 15th day after the election. The equivalent change should have been made in AS 15.20.207(g), but was not. This bill section corrects that oversight.

Bill section 5 corrects an error in ch. 103, SLA 2001. This law amended AS 15.25.190 to provide that people nominated by petition would be put on the general election ballot, not, as was formerly the case, on the primary ballot. Unfortunately, ch. 103 did not make the same change in AS 15.25.180(a)(10). This section corrects that error.

Bill section 6 amends AS 16.43.160(f) to correct an inaccurate U.S. Code reference to the federal food stamp program.

Bill section 7 amends AS 18.56.300(b) by substituting "registered under AS 08.48" for "licensed under AS 08.48". AS 08.48 authorizes registration, not licensing, of architects, engineers, land surveyors, and landscape architects.

Bill section 8 amends AS 23.30.017(c) by substituting "registered under AS 08.48" for "licensed under AS 08.48". AS 08.48 authorizes registration, not licensing, of architects, engineers, land surveyors, and landscape architects.

Bill section 9 amends AS 33.32.017(d) to delete the phrase "the sum of". The phrase is inaccurate because the subsection requires the multiplication of two numbers.

Bill section 10 deletes from AS 35.15.080(f), a reference to AS 36.10.010, which was repealed in 1986. (I am planning on also deleting the references to schools in this subsection in next year's revisor's bill. This error, which appears in numerous sections in AS 35, was discovered too late to be included in this year's bill.)

Bill section 11 substitutes "James Dalton Highway" for "highway" in AS 35.40.010. Originally, AS 35.40.010 was in AS 19.40, a chapter in which "highway" refers to the James Dalton Highway. The section was renumbered in 1982. The amendment in this bill section clarifies the highway to which the section refers.

Bill sections 12 and 13 change the U.S. Code citations to the Older Americans Act in statutes that authorize the Alaska Commission on Aging to administer and set policy for the administration of the federal programs as provided under the Older Americans Act. The amendment would expand the citation to include the Older American Community Service Employment Program, Grants for Native Americans, Allotments for Vulnerable Elder Rights Protection activities, and Native American Organization provisions, all of which are now part of the federal Program for Older Americans. These amendments are based on the assumption that the legislature intended the Commission on Aging to have authority over the federal program in general, not just specific subsets of it. However, because the federal citation includes a program that is administered by the federal government, the House, at my request, adopted a floor amendment also adding the phrase "subject to state control" following "federal programs".

Bill section 14 substitutes "AS 45.29" for "AS 45.09.101 - 45.09.507" in AS 45.02.401. This corrects an oversight in ch. 113, SLA 2000, which repealed AS 45.09 and enacted AS 45.29 in its stead.

Bill section 15 substitutes "AS 46.03.250 - 46.03.313" for "AS 46.03.250 - 46.03.314" in AS 46.03.760(a). AS 46.03.314 was repealed in 1991.

Bill section 16 amends AS 47.05.012, concerning incorporation by reference by the Department of Health and Social Services, to change "HCIA, Inc." to "Solucient". Due to a merger, Solucient has replaced HCIA, Inc. Also, the "Agency for Health Care Policy and Research" is changed to the "Agency for Healthcare Research and Quality" due to a name change of that organization.

Bill section 17 repeals AS 36.10.006 and AS 18.55.934(b). AS 36.10.006 states the legislative purpose in adopting AS 36.10.010. Because AS 36.10.010 was repealed in 1986, AS 36.10.006 is superfluous. AS 18.55.934(b) refers to a special fund for the 1964 earthquake. The Legislative Finance Division confirms that the fund no longer exists, except in the reference in AS 18.55.934(b).

Bill section 18 repeals temporary law provisions in two different Acts.

Sections 1-18, ch. 99, SLA 1985 contain provisions for the longevity bonus (section 1) and a permanent fund dividend annuity (sections 2-18). Under sections 25 and 26, ch. 99, SLA 1985, section 1 would take effect when sections 2-18 were repealed, and sections 2-18 would take effect when section 1 was repealed. Since the legislature has not chosen to "activate" either alternative in the last 16 years and has in the meantime amended both the longevity bonus program and the permanent fund dividend program so substantially that sections 1-18 of ch. 99, SLA 1985 would have to be rewritten even if the legislature did decide to adopt the policy in section 1 or sections 2-18, all the relevant sections are proposed for repeal.

Senator Robin Taylor
February 27, 2002
Page 5

Chapter 148, SLA 1990 authorized a land exchange between the University of Alaska and the Department of Natural Resources of certain land in the Kenai River Special Management Area (Slikok Creek area). Several years ago, an employee at the Dept. of Natural Resources informed me that the land exchange did not happen and that the DNR is no longer pursuing the land exchange. After several more years of inaction, I am proposing that this Act be repealed.

Section 19 gives the bill an immediate effective date.

Attached hereto is the text of AS 36.10.006 and AS 18.55.934(b), which are proposed for repeal.

PF:med
02-222.med

TEXT OF PROVISIONS PROPOSED FOR REPEAL

AS 36.10.006:

Sec. 36.10.006. Statement of purpose.

The legislature adopted AS 36.10.010 in response to problems and concerns identified by the findings of facts in AS 36.10.005 to

(1) ensure that qualified resident workers do not remain unemployed while nonresident workers are employed on construction projects funded by the state or a political subdivision of the state if the purpose of the project includes reducing the unemployment of residents;

(2) ensure that qualified resident workers do not remain unemployed while nonresident workers are employed on construction projects funded by the state or a political subdivision of the state;

(3) reduce the level of unemployment among residents of the state.

AS 18.55.934(b)

(b) The governor may expend money from the natural disaster recovery fund of 1964 for state grants-in-aid provided for in (a) of this section.

PF:med
02-222.med

HB

381

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 381
(H) Publish Date: 2/15/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to the crime of failure to stop BRU Criminal Division
at the direction of a peace officer; and providing for ..." Component 1st-4th Judicial Districts; Criminal
Sponsor House Judiciary Committee Appeals/Special Litigation
Requester House Judiciary Committee Component No. 2198-99;2201/03/6/1/79

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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 381 redefines the crime of failure to stop at the direction of a peace officer in the first degree as knowingly failing to stop as soon as practical and in a reasonably safe manner when directed to stop, while driving recklessly as defined in AS 28.35.040. Current law does not limit the crime to failure to stop while violating the reckless driving statute. Failing to stop while violating any traffic law or committing another crime will do. Failure to stop at the direction of a peace officer in the first degree is a class C felony.

Because this bill limits the application of the felony for failure to stop, the Department of Law does not anticipate a fiscal impact from passage of this bill.

Prepared by: Joan M. Kasson Phone (907) 465-5370
Division: Attorney General's Office Date/Time 2/11/02 2:13 PM
Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General Date 2/11/2002
Agency: Department of Law

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Scott Ogan, Vice-Chairman
Representative John Coghill
Representative Jeannette James
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh



State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4990
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Heather M. Nobrega
Counsel to Committee

MEMORANDUM

TO: Senator Robin Taylor, Chairman
Senate Judiciary Committee

FROM: Rep. Norman Rokeberg, Chairman
House Judiciary Committee

DATE: March 22, 2002

RE: Request to hear HB 381

A handwritten signature in black ink, appearing to read "Norman Rokeberg".

I respectfully request that HB 381, Failure to Stop for Peace Officer, be scheduled for a hearing in Senate Judiciary. I have attached the following for your information:

1. Copy of the bill
2. Sponsor Statement
3. Zero fiscal note
4. Related statute
5. Felony Eluding statistics
6. Legislative history

**REQUEST FOR
HEARING**

ALASKA STATE LEGISLATURE

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Sponsor Statement for HB 381

In 1998 state law was amended to address the problem of purposefully attempting to elude a peace officer. When an individual failed to stop at the direction of a peace officer and committed another crime, the level of the offense was raised from a misdemeanor to a felony.

Unfortunately, the unintended result since the law was amended has been that the number of felony eluding charges has increased each year. Not all situations rise to the level of a felony. Under the current law, an individual could fail to stop for a peace officer and if a taillight on their vehicle was broken, they could be charged with a felony under a broad interpretation of this law. A felony could be charged even though the driver did not attempt to speed away or knowingly elude the peace officer. In calendar year 2000, only 35.8 percent of the cases charged resulted in a felony conviction.

This bill clarifies the intent of the legislature in 1998, which was to increase penalties in certain situations in order to reduce the number of cases where a driver makes the decision to elude a peace officer who is attempting to stop the vehicle. These cases usually result when a peace officer attempts to stop a driver, and then the driver generally speeds away, running red lights or taking other actions that run the risk of serious harm to pedestrians, other drivers or the police officers attempting to make the stop.

This proposed amendment would make eluding a peace officer rise to a felony only if an individual was also recklessly driving. This change would clarify Alaska Statute 28.35.182 for law enforcement officers as to when the perpetrator should be charged with a felony instead of a misdemeanor.

The committee urges your support of this bill.

HB 381: 2/9/02

Sponsor Statement

Article 3. Reckless and Negligent Driving.

Section

- 40. Reckless driving
- 45. Negligent driving

Sec. 28.35.040. Reckless driving. (a) A person who drives a motor vehicle in the state in a manner that creates a substantial and unjustifiable risk of harm to a person or to property is guilty of reckless driving. A substantial and unjustifiable risk is a risk of such a nature and degree that the conscious disregard of it or a failure to perceive it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

(b) A person convicted of reckless driving is guilty of a misdemeanor and is punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year or by both.

(c) Lawfully conducted automobile, snowmobile, motorcycle, or other motor vehicle racing or exhibition events are not subject to the provisions of this section. (§ 50-5-4 ACLA 1949; am § 1 ch 182 SLA 1955; am § 1 ch 70 SLA 1961; am § 2 ch 121 SLA 1967; am § 1 ch 13 SLA 1971; am § 46 ch 32 SLA 1971; am § 6 ch 74 SLA 1974)

NOTES TO DECISIONS

Codification of common-law standard of care. — This section and AS 28.35.045, defining reckless and negligent driving, do not set forth precise standards of care, but merely codify the usual common-law standard of care. *Bailey v. Lenord*, 625 P.2d 849 (Alaska 1981).

Specific conduct not proscribed. — This section and AS 28.35.045, defining reckless and negligent driving, do not proscribe specific conduct, but rather state that a person shall not drive a motor vehicle in a manner which creates an unjustifiable risk. *Bailey v. Lenord*, 625 P.2d 849 (Alaska 1981).

Risks to safety of general public. — Reckless driving involves risks to the safety of the public at large. *Calder v. State*, 619 P.2d 1026 (Alaska 1980).

A defendant was not placed in double jeopardy by his conviction of the lesser included offense of reckless driving on a felony charge of assault with a dangerous weapon even though a misdemeanor charge of reckless driving had already been adjudicated against him because, although the charges arose out of the same general incidents, they were based on different conduct during that incident. *Calder v. State*, 619 P.2d 1026 (Alaska 1980).

Lesser included offense of driving while intoxicated. — Trial court erred in refusing defendant's request, at his trial for driving while intoxicated, for an instruction on the lesser included offense of reckless driving and negligent driving, where the issue of defendant's intoxication was in dispute and the state presented evidence from which the jury could have found him guilty of reckless driving or negligent driving even if it acquitted him of DWI. *Comeau v. State*, 758 P.2d 108 (Alaska Ct. App. 1988).

Defendant was "in actual physical control" of her vehicle, where she was seated in the driver's seat behind the steering wheel, had possession of the ignition key and was attempting to put the key in the ignition; given these factors of control, it is not necessary that the engine be running. *State, Dep't of Pub. Safety v. Conley*, 754 P.2d 232 (Alaska 1988).

Trooper arriving at accident scene cannot ar-

rest for reckless driving without warrant. — The Alaska legislature has classified both reckless driving and operating or driving an automobile under the influence of intoxicating liquor as misdemeanors. Thus, a state trooper who arrived at an accident scene could not arrest a driver without a warrant for either reckless driving or drunk driving since neither of these offenses was committed or attempted in his presence. *Layland v. State*, 635 P.2d 1043 (Alaska 1975), aff'd, 649 P.2d 1182 (Alaska 1976), overruled on other grounds, *Anchorage v. Geber*, 592 P.2d 1187 (Alaska 1979).

Sentencing considerations. — Where it was undisputed at trial that there were three people in the rear of defendant's pickup who were extremely vulnerable in case of any accident, the judge could properly consider this fact at sentencing in evaluating the extent of defendant's recklessness, even though he could not properly consider the fact that they had died from defendant's recklessness. *Huckaby v. State*, 632 P.2d 975 (Alaska Ct. App. 1981).

Considering uncounseled moving violations in sentencing held harmless error. — Any error which might have occurred by reason of the trial court's consideration of two uncounseled moving violations in determining the sentence for negligent driving was harmless where the court also considered three counseled moving violations and where it did not restrict or suspend defendant's license but imposed a fine of \$100, which was only \$25 above that suggested by defendant's counsel. *McKenzie v. State*, 620 P.2d 791 (Alaska 1974).

Sentence upheld. — Severity of defendant's offense within the crime of reckless driving and the need to deter him, to deter others, and to reaffirm societal norms justified a one-year sentence. *Huckaby v. State*, 632 P.2d 975 (Alaska Ct. App. 1981).

Cited in *Hood v. Smedley*, 498 P.2d 120 (Alaska 1972); *Williford v. State*, 674 P.2d 1329 (Alaska 1983); *Wilson v. State*, 680 P.2d 1173 (Alaska Ct. App. 1984); *Smith v. State*, 787 P.2d 1038 (Alaska Ct. App. 1990).

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Felony Eluding a Police Officer 1998 - 2001 Charges and Convictions

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	Charges	Felony Convictions	Misdemeanor Convictions	Conviction %
1999	28	17	3	71%
2000	27	20	1	78%
2001*	40	6	0	15%
All years	95	43	4	49%

	Police Depts			
	Charges	Felony Convictions	Misdemeanor Convictions	Conviction %
1999	47	26	2	60%
2000	135	38	32	52%
2001*	143	30	20	35%
All years	325	94	54	46%

	All Agencies			
	Charges	Felony Convictions	Misdemeanor Convictions	Conviction %
1999	75	43	5	64%
2000	162	58	33	56%
2001*	183	36	20	31%
All years	420	137	58	46%

* Many 2001 charges have not yet been adjudicated, convictions can be expected to rise as cases are handled

Committee Minutes

FLEEING OR EVADING A PEACE OFFICER

House Bill 405

Number 0054

CHAIRMAN GREEN announced the first item of business would be HB 405, "An Act relating to failing to stop a vehicle when directed to do so by a peace officer," sponsored by Representative Kott.

JIM HORNADAY, Legislative Assistant to Representative Pete Kott, Alaska State Legislature, came before the committee to present HB 405 on behalf of Representative Kott. He explained the committee members should have a sponsor statement and sectional analysis of the bill. The fiscal notes are in progress from the Department of Law and the Public Defender's Agency. Mr. Hornaday read the following statement into the record:

"HB 405 increases the penalties for not stopping at the direction of a police officer. Failure to stop at the direction of a police officer in the first degree occurs if during the commission of the offense the person violates any other law during the commission of the offense and is a class C felony. Failure to stop at the direction of a peace officer in the second degree occurs if the person knowingly fails to stop as soon as possible in a safe manner and is a class A misdemeanor. "The crime of eluding a police officer is inherently dangerous for pedestrians, other drivers and innocent bystanders. As an example, in the Municipality of Anchorage in August of 1998[7], a passenger in a vehicle attempting to avoid arrest was killed when the vehicle ran a red light and struck a building. This is only one of several recent incidents where casualties have resulted from this very serious crime. "Increasing the penalties for this crime will not only help deter this potentially dangerous behavior, but will more correctly align the severity of the punishment with the severity of the crime itself."

MR. HORNADAY pointed out that the legislation is a part of the Municipality of Anchorage's legislative package. He continued to read the sectional analysis.

"Section 1 of the bill repeals AS 28.35.182 , the offense for failing to stop at the direction of a peace officer, and reenacts that section as failure to stop at the direction of a peace officer in the first and second degree. "Subsection (a) creates the new offense of failure to stop at the direction of a peace officer in the first degree which is committed when a person violates subsection (b), failure to stop at the direction of a peace officer in the second degree and the person violates another law, ordinance, or traffic regulation.

"Subsection (b) provides that a person commits the offense of failure to stop at the direction of a peace officer in the second degree if the person, while operating a vehicle, knowingly fails to stop when requested to do so by a peace officer.

"Subsection (c) provides affirmative defenses to a person charged with failure to stop at the direction of a peace officer. The defenses are that the peace officer's vehicle, if the peace officer was operating a vehicle when requesting the defendant to stop, did not meet lighting and audible

signaling requirements for law enforcement vehicles and was not marked appropriately so as to be recognizable as a law enforcement vehicle or that the peace officer was not wearing the uniform of office or displaying a badge when requesting the defendant to stop.

"Subsection (d) supplies definitions.

"Subsection (e) provides that failure to stop at the direction of a peace officer in the first degree is a class C felony, and failure to stop at the direction of a peace officer in the second degree is a class A misdemeanor."

MR. HORNADAY noted Mr. Udland was waiting to give testimony.

Number 0358

DUANE UDLAND, Police Chief, Municipality of Anchorage, testified via teleconference from Anchorage. He thanked the committee for hearing the bill and Representative Kott for sponsoring the legislation. He noted that three years ago the legislature dealt with the "joy-riding" issue and raised the penalty to a felony and started calling it "vehicle theft." Mr. Udland stated he believes it is now the time to look at the penalty of fleeing from a police officer. He pointed out that in most cases when somebody decides to flee, they know they are not going to stop until they lose the police officer or they crash. Mr. Udland said it is such a problem that five years ago they severely restricted the ability of their police officers to chase people who flee from them because of the inherent dangers of fleeing as well as the danger to the police officers themselves. Mr. Udland indicated that Mayor Mystrom and police officers support the legislation and urged passage. He referred to the impact that will be caused on the court system and the Department of Corrections and said when the legislation was passed that raised the penalty on vehicle theft, the rates of vehicle theft decreased.

Number 0553

CHAIRMAN GREEN asked Mr. Udland if the legislation were to become law, would he see any significant change in the cost of his operation. He pointed out that there isn't a fiscal note and he is trying to get an idea of what financial effect the bill would have.

MR. UDLAND said he doesn't think there would be any impact on his operation, financially or operationally.

Number 0602

REPRESENTATIVE BRIAN PORTER said, "I know that the wording here is about the same, but I guess just to get it on the record, I don't believe that the wording is now broken out as intending to mean that what is traditionally called an 'unmarked police car' would not be able to make a traffic stop and have the benefit of this statute."

MR. UDLAND said their intent is that a person who is fleeing has to clearly know that somebody behind them is a police officer. In other words, you won't have a police officer in their unmarked car, with no identification, waiving. It has to be a knowingly act on the part of the person who is fleeing.

REPRESENTATIVE PORTER noted the wording in the legislation is the same as it is in existing statute such as "unmarked" cars that are more visibly marked once the officer decides to make a stop with lights, sirens and emergency gear that any other car would have. He said, "But I just, for the record, wanted to establish that this doesn't change that - having broken it out from a big paragraph does not change the situation."

Number 0729

BARBARA BRINK, Director, Alaska Public Defender Agency, testified via teleconference from Anchorage. She said she certainly understands the reasoning and logic behind the bill, but her concern is that when a policy decision is being made that there be some good identifiable information about the cost. Ms. Brink apologized about not having forwarded to the committee, but she is still waiting on some numbers. She said there definitely are increased costs for her agency with the increase in penalties. She explained a felony trial is handled in a much different manner than a misdemeanor trial. For example, there is the grand jury proceeding. The case is tried to a 12 person jury rather than a 6 person jury. She pointed out that the client always faces the impact of having a permanent felony record which (indisc.) both civil and criminal. Ms. Brink informed the committee that some of the people who are charged will be facing presumptive sentences if they have prior felonies on their record. She stated that Chief Justice Warren Matthews in his State of Judiciary (indisc.) pointed out that felony cases are a lot more likely to go to trial than other cases. She explained she is still waiting for some figures so that she can try and make a statewide determination on the cost. Ms. Brink noted that under national standards, lawyers can handle three times as many misdemeanor cases as they can felony cases. Ms. Brink explained that those people who are impulsive enough, and if they lack the good judgement when a police officer is trying to get their attention, aren't really thinking about (indisc.) consequences and what might happen to them. She said she hopes the legislation has a deterrent effect, but she does have some real concerns as to whether the legislation will be effective.

Number 0895

CHAIRMAN GREEN referred to Ms. Brink indicating that she didn't think the legislation would have an impact on a person who currently exercises poor judgement and asked if once the word gets out that they really mean business that it won't have a beneficial effect.

MS. BRINK said it is so hard to know that. She referred to cases she has personally been involved in and said she has seen people get caught in the heat of the moment and make this impulsive choice. She doesn't believe that alluding a police officer is a well-planned premeditated thought out crime, they see the red light and impulsive behavior takes over and there isn't a whole lot of good thinking going on.

Number 0987

DEL SMITH, Deputy Commissioner, Department of Public Safety, came before the committee to testify on HB 405. He said that he believes Mr. Udland has eloquently stated the case for Ms. Brink's consideration. He said he has been informed by people in Anchorage that there were 78 cases of eluding or evading police officers in calendar year 1997, that the Alaska State Troopers did a case report on. Mr. Smith stated his presumption is that they probably wouldn't have done a case report unless they actually got somebody in hand, did some prosecution or at least made the

arrest. The 78 cases combined with the 81 that Mr. Udland had charged in 1997 would make it approximately 160 cases a year. He noted that figure doesn't include some of the smaller municipalities. Mr. Smith stated, "I was somewhat surprised by the number in Anchorage, but it creates a situation where last year I think the legislature passed a law regarding shooting at a building and making it a felony. I think it's no less important that if you're driving down the roadway at 90 miles an hour and the police have backed off long ago on the search and you are ultimately caught that there is a price you should be paying for that." He said he would answer any questions the committee may have.

Number 1096

CHAIR GREEN referred to the legislation and asked Mr. Smith if he could give a rough estimate of how many out of the 78 cases would be class A misdemeanors or class C felonies.

MR. SMITH said he hasn't had an opportunity to review the reports and he doesn't know if he could do that with any accuracy. He referred to when they originally discussed the bill and said they did not want to charge felonies against a person who is driving within the speed limit and just doesn't recognize the state of Alaska or local police's authority to stop them. He said they didn't think it should necessarily be a felony if they were obeying the speed limit. Mr. Smith stated that the legislation would trip a number of these people into a felony because all they have to do is violate another law or ordinance, including running a red light or stop sign.

Number 1160

REPRESENTATIVE ETHAN BERKOWITZ said it seems to him that if someone is speeding down the road and they're endangering other individuals, they would be liable to assaulted conduct which is already felonious.

MR. SMITH said he would defer to the Department of Law to respond. He said, "If they were doing 80 or 90 miles an hour through the middle of town, potentially I guess that's possible, Representative Berkowitz. I think with the process of screening by district attorneys if the offense, back to your ever popular turn signal violation, might well not be charged as a felony when it in fact gets to cooler heads the next morning and the screening process."

Number 1216

REPRESENTATIVE PORTER indicated that he believes that most of the assault-type of violations would require specific intent and that is the problem that you have in a vehicle situation. Unless there is serious physical injury or death, it's extremely difficult (indisc.). He said he can't recall ever having a successful prosecution for what used to be (indisc.).

ANNE CARPENETI, Assistant Attorney General, Legal Services Section - Juneau, Criminal Division, Department of Law, came before the committee. She referred to Representative Berkowitz's previous comment and said assault in the third degree has a provision that says, "recklessly place another person in fear of imminent serious physical injury by means of a dangerous instrument." She stated, "It's not something that we ... prefer to charge under a section like addressed to the particular conduct a little bit more clearly, but I suppose you could logically apply that."

REPRESENTATIVE BERKOWITZ said, "Two points here. First is look at the crime that inspired this bill. And I understand that the B misdemeanor is just not enough because it really has no effective value, but the crime where casualties resulted would have led to, at the very least, manslaughter charges in addition to the misdemeanor charges for violating traffic ordinances and disregarding the police officer."

REPRESENTATIVE PORTER said the previous iteration of the bill had a higher level of a class B felony for this conduct that might result in serious physical injury or death, but it was noted that is another crime specific. That wasn't the intent to have redundancy.

REPRESENTATIVE BERKOWITZ said, "I don't think we use the assault statutes nearly enough and we tend to draw our statutes so narrowly, which is what this does, that we have a tendency away from using the assault statute the way it should be used which is to put the facts in front of a jury and let make a determination whether assaulted conduct has occurred."

Number 1394

MS. CARPENETI said, "That would just address one incident that this bill I think is addressing and that is if a person is put in fear of eminent serious physical injury, I don't know if somebody is speeding down the street and you have to jump away whether we would be able to prove beyond a reasonable doubt to a jury of 12 people that that is fear of eminent serious physical injury. You know if somebody just turned away, I don't know whether we would..."

REPRESENTATIVE PORTER responded, "Thus, this specific offense, criminal offense of reckless driving indicates that the driving has created this hazardous situation without having to require the specific state of mind evidence from potential victims."

REPRESENTATIVE BERKOWITZ said if the recklessness inspires fear, he is worried at what level the fear is, whether it's a serious physical injury or just a mere irritation. That should be a question for a jury to determine. He indicated that he believes the legislation stacks the deck and takes the power away from the juries to make a determination as to whether a crime has occurred.

MS. CARPENETI said she thinks the bill addresses something else besides assault. It addresses conduct to where a person is asked to pull over by a police officer and knowingly refuses to do so and drives on and violates more laws not necessarily assaulting anybody, but creates the danger that might result in a crash.

REPRESENTATIVE BERKOWITZ said that his point is that the committee is focusing on the danger. He said he isn't minimizing the danger, he understands the problem of people fleeing. People who have been arrested are subject to several charges, including felony escape if they're under arrest for a felony charge. That group of people are outside the realm. He said, "We're saying that the traffic problem, itself is less serious than the failure to stop which could be felonious. I'm not sure that that's something we should do specifically do by statute or something that we should allow the district attorneys to charge, under current statutes, and try and convince a jury of 6 or 12 that the charge is correct."

MR. HORNADAY noted that Mr. Udland submitted a letter and gave a copy to the committee members.

Number 1696

REPRESENTATIVE NORMAN ROKEBERG questioned why the sponsor introduced the legislation.

MR. HORNADAY indicated the legislation is part of the Municipality of Anchorage's legislative program. He quoted from the summary that the municipality submitted making the crime of alluding a police a class C felony, "Currently the crime of alluding a police officer is a misdemeanor under the Alaska Criminal Code. The Municipality of Anchorage requests that the legislature amend the code to make this crime a class C felony for the following reasons:

The crime of alluding a police officer is inherently dangerous for pedestrians, other drivers and innocent bystanders; classification as a misdemeanor does little to detour a criminal from attempting to outrun a police officer; several other local government police departments, including the Anchorage Police Department, have adopted a no-chase policy due to the potentially dangerous outcome of police chases; and having adopted a 'no-chase' policy it is important to detour this behavior and more strictly punish offenders."

MR. HORNADAY continued to read, "In August of this year a passenger in a vehicle attempting to evade arrest was killed when the vehicle ran a red light and struck a building. This is only one of several recent incidents where causalities have resulted from this very serious crime. The Municipality of Anchorage supports legislation to increase the penalty for the crime of alluding a police officer and this will not only help detour this potentially dangerous behavior, but will more correctly align the severity of the punishment with the severity of the crime itself."

Number 1796

CHAIRMAN GREEN said Mr. Udland's testimony indicated that when we increased the consequences of joy-riding to be a serious crime, the number of car thefts decreased. It is Mr. Udland's opinion that by increasing the penalty for failure to stop, then that too will decrease. The Alaska State Troopers also feels the same way. He noted the public defender feels that it won't have an impact. Chairman Green noted there were 78 failures to stop or alluding troopers in 81 Anchorage police reports for 1997.

Number 1860

REPRESENTATIVE ERIC CROFT said almost any time a misdemeanor is increased to a felony, or define a felony, we're going to increase business for the public defender's office. He asked Ms. Brink if there were other problems with the way the bill is written.

MS. BRINK pointed out that her testimony was about how much more costly felony cases are than misdemeanor cases. She said, "I would like to point out one problem that I don't believe has been brought up yet. The numbers that we've received, about 150 combining the troopers and APD (Anchorage Police Department) is still lacking, I think, another group of folks. The municipal prosecutor told me that they prosecuted 66 of these cases as misdemeanors, but the way the statute is written there is also an alluding infraction that involves specifically failing to stop at the direction of a police officer. Those numbers aren't included here. So I feel pretty

comfortable that the 150 cases a year that we've gotten are fairly good numbers. I just think there is potential for the number to be even higher. And my concern with the effectiveness of this as a deterrent measure is simply that the clients that I've dealt with in an alluding case didn't make any plan or didn't have a premeditated course of action to allude ... the red light went on and they engaged in some bad judgement and very impulsive behavior without thinking clearly. So my concern was we will have great costs. I'm insecure about what kind of a benefit we're going to get derived from this because the people that I've seen involved in alluding or running away from police officers aren't really thinking about the consequences. It's a very impulsive short-sided adrenalin rush kind of situation where they make a bad judgement call. I hope I'm wrong if this does become a felony."

REPRESENTATIVE BERKOWITZ suggested that instead of going to an A misdemeanor and a C felony, have a B misdemeanor and an A misdemeanor, and then have a statutory aggravator in felony cases for some kind of failure to stop.

MS. BRINK said, "That would it would reduce that costs. I mean it's the fact of the different procedures involved in a felony case that increases our cost. Once again, who knows whether this will enter anybody's thought process, but you certainly would have a harsher hammer to use against somebody who engaged in this behavior if you had a graduated scheme like that."

Number 1981

REPRESENTATIVE PORTER said he would agree with Ms. Brink that a certain percentage of people make an initial reaction without contemplated thought. He said he believes the bill gets at people at either end of that scale. At one end, there will be the person who isn't going to stop because of some constitutional issue of theirs. Then at the other end of the scale, the person who makes that initial judgement and then continues with it, which does require conscious thought, that is the person for whom the felony is very appropriate. Unfortunately, in Anchorage, as in a couple of other communities, there has been a lot of publicity over the last couple of years on pursuit policies. He indicated that many people are aware that the largest community in the state has a policy that the Anchorage Police Department will not pursue in a hazardous situation unless it is very hazardous like shooting guns out of windows. He stated for those reasons, he believes it is appropriate legislation.

REPRESENTATIVE JAMES noted the Fairbanks Police Department also has the no-chase policy. She indicated she agrees with a bigger penalty as it might be a deterrent.

Number 2120

CHAIRMAN GREEN referred to the roughly 150 cases and asked Mr. Hornaday if he knows how many of those might be young drivers as opposed to more mature drivers. He asked how many are teenagers.

MR. SMITH said without reviewing the police reports, he couldn't answer.

Number 2136

REPRESENTATIVE BUNDE asked Representative Porter if there is a difference between failure to stop and alluding.

REPRESENTATIVE PORTER said he couldn't answer that question unless he reviewed the statutes and read the definitions.

REPRESENTATIVE ROKEBERG referred to the step up in the offenses and asked if the bill would preclude any infraction for an unintentional failure to stop.

MR. HORNADAY responded that he believes it requires a "knowingly" in the statute as defined in the criminal statutes.

REPRESENTATIVE ROKEBERG asked if that is currently the level or standard for the infraction.

MR. HORNADAY responded that he isn't sure what it currently is, but in the legislation it states it has to be knowingly which is generally required.

REPRESENTATIVE BERKOWITZ said, "I'm curious to know if [Department of] Corrections has any idea of what the additional cost of turning this into felonious (indisc.) would be bearing in mind that a lot of these people would be hopped up and be presumptive?"

Number 2235

BRUCE RICHARDS, Program Coordinator, Office of the Commissioner, Department of Corrections, came before the committee. He said, "We are currently in about the same boat as everybody else as far as numbers go. We've heard the number is near 150 cases per year. It's unclear to us how many of these people would be convicted as felons, which has a substantially higher penalty. In looking at the bill, it seems like a good many of them could be convicted as felons if they violate, under the law, ordinance or traffic regulation law while they're failing to stop. So I think that's pretty common. If they fail to stop, I would assume they're probably speeding, driving recklessly. So I think that you're going to have a significant number of felonies and we are trying to figure out, if we can, how many of those will be, but it's difficult and we're trying to get with everybody else on these numbers as well. I don't know the answer to Representative Berkowitz's question at this point."

REPRESENTATIVE CROFT said he would hope that most of the people that are stopped would be for a good reason - for a violation, and a lot of them would be felonies for that reason. He stated that he would like to see how many felonies will be added to the Department of Corrections.

REPRESENTATIVE PORTER referred to the cost of these kinds of pieces of legislation has gone on and on and said, generally, most of the offenses that have been put on the books have been used as tools. He referred to the fiscal note on the felony conspiracy statute and said it was outrageous. He stated that this is another one of those kinds of crimes that would be used as a tool. In an egregious situation, there would probably be a prosecution for a felony. He said he would guess that in at least 50 percent of the cases, if not more, that are currently on the books, thorough plea bargain, or just general discretion at the prosecutor's level, there would not be a felony crime, but it would get out that there are felony type consequences for (indisc.) failing to stop.

Number 2339

REPRESENTATIVE BUNDE observed that the part that can't be calculated is how many fewer people would fail to stop. He said we have to presume that consequences of our behavior does affect behavior, otherwise, a lot of laws could be removed.

REPRESENTATIVE JAMES said, "Well I think also if you're going think that you're going to decrease the number, that might not stop. You might also increase safety of the public."

Number 2371

REPRESENTATIVE BERKOWITZ said that before the bill is moved he would like to conceptual amendment to implement a stepped up scheme which is leave the low level B misdemeanor as failure in the second degree. Make failure in the first degree an A misdemeanor and create a statutory aggravator of failure to stop if there is felonious behavior such as an assault, manslaughter, theft of a vehicle, et cetera. He said, "The way an aggravator works is when someone who is sentenced for a felony, the prosecution and the defense make a ... statutory list of good things, bad things - aggravators and mitigators, and if we make this one of the aggravators, then prosecutors will be able to say, 'This is one of the bad things, this sentence should be enhanced consequently.' But what it also does is allow the Department of Corrections some flexibility here because I am concerned about the fiscal note - concerned about the fiscal note for corrections, for public defenders and probably for the prosecutors office as well. So that being the case, that's my amendment."

REPRESENTATIVE PORTER objected to the adoption of the conceptual amendment. He said, "I understand what the maker of the amendment is trying to respond to, and I don't disrespect that. I just think that, first of all, I'm not too sure if there isn't the language that would be close to what this would constitute as an aggravator already - felony list. So that might be a bit redundant in some cases, but like it or not sometimes life is more effected by sound bites than comprehensive knowledge. And the sound bite that says this is now a felony is one heck of a sound bite. It has an effect, believe me. (Indisc.) lowest felony that there is."

TAPE 98-29, SIDE B

Number 0010

REPRESENTATIVE ROKEBERG said he would like to know if there is an aggravator in existing state statute and/or in the municipal code.

REPRESENTATIVE BERKOWITZ responded, "Title 12 through 55."

MS. CARPENETI explained there are currently 29 aggravating factors in Title 12. She noted she didn't see one of them on the list of 29.

REPRESENTATIVE PORTER said his recollection of the 29 was there was something about adding an aggravator if the action presented a risk to 30 or more people.

MS. CARPENETI said she believes that is one.

REPRESENTATIVE PORTER stated that in a reckless driving situation that could very well be.

REPRESENTATIVE BERKOWITZ said you would still need to show three more people which he thinks will be one of the problems in charging assault of conduct for this behavior.

MS. CARPENETI stated that she would like to point out that the way the bill is written, you couldn't be charged or convicted if you didn't know knowingly fail to stop. It wouldn't be a question of not noticing the police officer and not stopping under those circumstances. You would have to be aware of the fact that they had asked you to pull over.

Number 0091

REPRESENTATIVE ROKEBERG asked that someone from the Department of Corrections address his next question. He said if they knew there was going to be ten people incarcerated under a class C felony, what would the annual fiscal note be for ten people.

MR. RICHARDS if you're currently under a class B misdemeanor, which is 90 days maximum, a class C felony can be up to five years. He indicated he doesn't know what the average sentence would be for these cases.

REPRESENTATIVE ROKEBERG asked what the annual amount would be for ten people for one year for a felony.

MR. RICHARD responded it would be approximately \$360,000.

Number 0142

REPRESENTATIVE BERKOWITZ said, "It occurs to me ... that you're going to get probably felons who get traffic stopped who are worried about parole violations. I mean the idea of making it a felony for failure to stop is going to discourage -- cuts both ways because it could encourage people to flea as well because they'd be worried about picking up a second felony, in which case they would be presumptive which is four years at the very least - or two years."

Number 0167

REPRESENTATIVE CROFT said he thinks the bill is trying to accomplish good public policy goals. He stated he believes the amendment improves the bill.

REPRESENTATIVE ROKEBERG asked that Representative Berkowitz clarify more specifically about what would constitute the aggravation. He asked if a reckless driving activity would constitute aggravation.

REPRESENTATIVE BERKOWITZ responded, "Conceptually, I would hope that the conduct that would constitute a failure to stop at the direction of a peace officer, that's listed here, ... that language would be used in the aggravator. And I haven't reviewed it closely, but it would seem to me that that would be okay as an aggravator's description. It's basically knowingly fail to stop at the direction of a peace officer would be the aggravator."

CHAIRMAN GREEN asked if that would apply to a misdemeanor or would it be a felony to invoke the aggravator.

REPRESENTATIVE BERKOWITZ stated it would be in a felony situation.

CHAIRMAN GREEN indicated he was confused.

REPRESENTATIVE BERKOWITZ said if somebody has a previous felony and they now have stolen a car, they refuse to stop, this would be an aggravator on that felony charge.

Number 0241

REPRESENTATIVE ROKEBERG said he thinks one of the problems with a pursuit is it generates a reckless driving problem and hazard to the public. He asked if that would constitute the aggravator and noted he thinks it should. He asked Representative Berkowitz if that was his intention.

REPRESENTATIVE BERKOWITZ stated that if you are being trailed by a cop and you don't stop, and you eventually do end up in custody, the failure to stop would be an aggravator to the felony charge. If there was reckless driving and failure to stop, that person could be charged with reckless driving.

REPRESENTATIVE ROKEBERG asked, "Is that enough to get you into the C felony list?"

REPRESENTATIVE BERKOWITZ said, "No, but under the way it's written currently, yes, if you were driving recklessly and then were eventually stopped, that would constitute, as I understand it, a violation of a law which would make this a C felony."

REPRESENTATIVE ROKEBERG asked if reckless driving egregious enough to fit the aggravator.

REPRESENTATIVE BERKOWITZ stated that it could be.

REPRESENTATIVE ROKEBERG said, "If we're going to adopt that, I'd like to see that."

Number 0240

CHAIRMAN GREEN asked for a roll call vote on Representative Berkowitz's conceptual amendment. Representatives Porter, James, Bunde and Green voted against the amendment. Representatives Croft, Rokeberg and Berkowitz voted in favor of adopting the amendment. The amendment failed to be adopted by a vote of 4-3.

Number 0333

REPRESENTATIVE JAMES made a motion to move HB 405 out of committee with individual recommendations and with the appropriate forthcoming fiscal notes. There being no objection, HB 405 moved out of the House Judiciary Standing Committee.

HB

393

TIME SENSITIVE – IMMEDIATE ATTENTION NEEDED

Altacor Inc.
7575 Fulton St. East
Ada, MI 49355 USA
616.787.1000 phone
www.altacor.com

May 10, 2002

Senator Robin Taylor
State Capitol, Room 30
Juneau, AK 99801-1182

Subject: House Bill 393 – Sales of Business Opportunities

Dear Senator Taylor:

I write on behalf of Altacor and our thousands of Alaskan Amway Distributors and Quixtar Independent Business Owners to express our concerns regarding HB 393 – a bill proposing to create a business opportunity law. While we support the sponsor's intent to protect Alaskans from unscrupulous, risky or overly expensive business investments – this bill contains a fundamental flaw that should be corrected. We'd like to offer a potential practical solution.

HB 393 currently contains a **\$250 threshold** for business opportunities that would be regulated by the act. However, the majority of other states that have found a need to regulate this activity typically use a **\$500 threshold**. It is revealing that many states with a reputation for strong consumer protection programs (California, Florida and Illinois) – as well as the Federal Trade Commission - also utilize \$500 thresholds.

This standard \$500 threshold protects small income opportunities such as those offered by direct sellers including Amway/Quixtar distributors, Avon ladies, and Mary Kay beauty consultants from the unnecessary burdens of state filing, bonding, reporting and other requirements that may be appropriate for larger enterprises. These small entrepreneurs earn money to supplement their family incomes by selling products to family, friends and neighbors while interesting others to do the same. Certainly, we wish to prevent unnecessary burdens upon these small Alaska businesses.

The most fundamental reason for excluding opportunities under \$500 (especially direct sales opportunities) from the law is that such low-cost opportunities have not been a significant source of business opportunity frauds – the very problem HB 393 attempts to address. In addition, the mere cost of the regulation could easily exceed the cost of the opportunity itself; and the financial statements and other required documents are largely meaningless to direct sellers.

I have attached a proposed amendment for your consideration that would address our concerns. Adoption of this amendment will protect Alaskan consumers while avoiding inadvertent or unnecessary coverage of Alaskan direct sellers.

Senator Taylor, thank you for your kind attention. If you have any questions please feel free to contact me at (616) 787-5633 or email bharrison@alticor.com.

Sincerely,



Bryan Harrison
Corporate Government Affairs

cc: Senate Judiciary Committee Members
John Hesse, Direct Selling Association

Add the underlined text to Sec. 45.66.220. Exemptions.

(1) a business opportunity if the total amount of the payments to be made by the buyer under the contract is less than ~~\$250~~ \$500;

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 393
 (H) Publish Date: 3/1/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to unfair and deceptive trade BRU Criminal Division; Civil Division
practices and to the sale of business opportunities; . . ." Component Criminal Appeals/Special Litigation
 Sponsor Representative Stevens Fair Business Practices
 Requester House Labor and Commerce Committee Component No. 2279; 2206

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						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

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						
1108 Statutory Designated Prog Rcpts	*****	*****	*****	*****	*****	*****
TOTAL	*****	*****	*****	*****	*****	*****

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 393 would provide for the registration and regulation of sellers of business opportunities, which are prepackaged small business deals offered mainly to novice entrepreneurs over the Internet and through newspaper and radio advertisements, television "infomercials," and seminars. Typically, a business opportunity is an arrangement by which the seller provides products, equipment, supplies, or services to the buyer; assists the buyer in finding outlets or accounts for the buyer's products or services; purchases the products made, produced, or modified by the buyer; or provides the buyer with a marketing plan.

 The bill would require that sellers of business opportunities register with the state, disclose specific information regarding the business to the buyer before sale, use an escrow account to assure delivery of business assets, and provide a 30-day right of cancellation for the buyer.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division: Attorney General's Office Date/Time 2/21/02 2:42 PM
 Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General Date 2/21/2002
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. HB 393 - FN#1

ANALYSIS CONTINUATION

A seller who recklessly violates the registration requirements would be guilty of a class C felony. A seller who recklessly violates the contract or cancellation provisions would be guilty of a class A misdemeanor. The bill would also amend AS 45.50.471(b) to specify that a violation of the sale of business opportunities statute constitutes an unfair or deceptive act or practice in the conduct of trade or commerce.

The Department of Law does not anticipate significant revenues or costs from passage of this legislation. However, because there is no regulatory scheme now in effect, we cannot say with certainty how much additional staff time will be required to implement this bill.

Given our experience with implementing the Telephone Solicitation Act, we would guess that no more than ten or twelve sellers of business opportunities will register in the first year. Assuming an initial registration fee of \$150, the revenue in the first year would be approximately \$1,500 to \$1,800. With an annual renewal fee of \$50, the revenue from these same sellers would be \$500 to \$600 in the second year, plus any new initial registrations.

Costs will be generated both by the time spent processing the registration applications, and by time spent on any enforcement actions against unscrupulous sellers of business opportunities, who are generally located out of state and who make exaggerated earnings claims to induce buyer participation, and who would be unlikely to register with the state. We expect that processing ten to twelve applications per year, while perhaps more time consuming than other registrations due to the relative complexity of the business opportunity registration requirements, can be handled within existing funding levels. We have no way of anticipating how many enforcement actions may be required. The Consumer Protection unit is aware of dozens of business opportunity scams around the country, and they know Alaskans are being targeted, but not to what extent. However, the department does not believe the cost of pursuing limited enforcement actions against a few sellers will entail significant amounts of staff time. If our assumptions prove to be inaccurate, the department may need to seek additional funding in the future.

Alaska State Legislature

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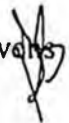


INTERIM ADDRESS:
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Kodiak, Alaska 99615
(907) 486-4925
Fax: (907) 486-5264

Representative Gary Stevens

Memorandum

To: Senator Robin Taylor, Chair
Senate Judiciary Committee

From: Representative Gary Stevens 

Date: May 6, 2002

Re: HB 393

I would like to respectfully request that you schedule HB 393, "An act relating to unfair and deceptive trade practices and to the sale of business opportunities; amending Rules 4 and 73, Alaska Rules of Civil Procedure", for a hearing at your earliest convenience.

Thank you for your consideration of this request.

Alaska State Legislature

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Representative Gary Stevens BUSINESS OPPORTUNITIES BILL

Sponsor Statement – HB 393

This bill creates a new, comprehensive statute regulating the sale of business opportunities. Business opportunities, commonly referred to as "biz opps," are prepackaged small business deals primarily targeted to novice entrepreneurs. Although some business opportunities offer consumers legitimate methods for earning income, the field is fraught with unfair and deceptive practices.

Typical business opportunities range from work-at-home schemes, like medical billing, to the sale of vending machines, ATMs, greeting card display racks and other products, to the sale of "900 numbers." These deals are initially pitched to consumers through classified ads, over the Internet, and through "infomercials," and potential buyers are subjected to high-pressure sales tactics. Unwary consumers are enticed by the promise of high earnings, which rarely materialize. According to the Federal Trade Commission, biz opp scams bilk consumers across the country of tens of millions of dollars each year.

With this bill, Alaska will join approximately half of the states in regulating the sale of business opportunities. Persons who want to sell or advertise business opportunities in Alaska would be required to register with the state, to disclose information to buyers, to use escrow accounts to assure delivery of business assets, and to provide a 30-day right of cancellation to the buyer. Violators will be subject to civil and criminal penalties. The bill provides important consumer safeguards for entrepreneurial-minded Alaskans.

CS HB 393 (JUD) – THE BUSINESS OPPORTUNITIES BILL

Sectional Analysis

***Sec. 1.** Amends AS 37.05.146(b)(4) to include receipts of fees for business opportunity registration and renewals as program receipts.

***Sec. 2.** Amends AS 45.50.471(b) to provide that a violation of the business opportunity statute is a violation of the Unfair Trade Practices and Consumer Protection Act.

***Sec. 3.** Amends AS 45 by creating a new chapter regulating the Sale of Business Opportunities.

***Sec. 45.66.010. Registration required.**

Prohibits a person from selling or offering to sell a business opportunity unless the person is registered with the department at least 30 days before selling or offering to sell a business opportunity.

***Sec. 45.66.020. Registration procedure.**

Requires that a person pay a registration fee and file certain documents in order to register with the department. The required documents include a copy of advertising materials, a disclosure statement to potential buyers, a surety bond, and a completed application form. The application form will require the seller to disclose the nature of the business opportunity and the method by which it will be advertised; the identity of the seller and owners or agents affiliated with the seller; and criminal convictions, civil judgments, and administrative determinations involving allegations of fraud, theft, and unfair trade practices.

***Sec. 45.66.030. Renewal of registration.**

Provides that a person must file a renewal application if the person sells or offers to sell a business opportunity for more than a year following the department's acknowledgment of registration.

***Sec. 45.66.040. Registration Fees.**

Requires that a seller pay a non-refundable fee to the department for a first-time application and a renewal fee for a renewal application. The amount of the fee will be established by regulation.

***Sec. 45.66.050. Material changes in registration information.**

Requires the reporting of any material changes to the application within 10 days of the change.

***Sec. 45.66.060. Surety bond required.**

Requires a business opportunity seller to post a surety bond in the amount of \$75,000 in order to do business in the state.

***Sec. 45.66.070. Location of offer and sale.**

Provides that the statute applies to a sale or offer to sell a business opportunity if the seller directs the offer to residents of this state, if the offer originates in this state, or if the buyer will operate the business opportunity in this state.

***Sec. 45.66.080. Disclosure requirements.**

Establishes that at least 10 days before the buyer signs the contract, the seller shall give the buyer a written disclosure statement. The disclosure statement must include information about the seller's business history, the seller's financial condition, the seller's legal history, the seller's history of business opportunity registration, the total price and payment schedule for the business opportunity, and the rights and obligations of the parties. Requires that if the seller makes claims about potential earnings, the seller must provide the basis for the claim and associated economic risks.

***Sec. 45.66.090. Written contract required.**

Requires that a seller use a written contract for selling the business opportunity. Contract provisions must include: payment terms; contact information for the seller, the seller's agent, and suppliers; a description of services that the seller is to provide; delivery dates; a complete description of the buy-back agreement if applicable; and a statement of the buyer's right to cancel.

***Sec. 45.66.100. Restrictions on down payments.**

Precludes a seller from requiring a buyer to pay as a down payment more than 20 percent of the initial payment unless any amount above the 20 percent is placed in an escrow account.

***Sec. 45.66.110. Escrow account requirements.**

Requires that the escrow account be held by a person who is independent from the seller, and requires that a seller who establishes an escrow account provide account information to the department. Also prevents the release of escrow funds until the buyer provides written notification to the escrow holder that the products or services required by the contract have been delivered.

***Sec. 45.66.120. Actions for claims against escrow account.**

Allows a buyer who has a claim against an escrow account to bring a civil action against the seller or escrow account holder to recover money from the escrow account.

***Sec. 45.66.130. Cancellation of contract.**

Allows for a buyer to cancel a contract for any reason if the buyer gives notice of the cancellation to the seller within 30 days after signing the contract. Also permits a buyer to cancel the contract at any time if the seller fails to meet disclosure requirements, makes deceptive statements about the business opportunity, or fails to provide services or products required under the contract. Provides that within 15 days of such notice by the buyer, the seller must tender payment to the buyer and terminate the buyer's financial obligations.

***Sec. 45.66.140. Prohibited representations.**

Prohibits sellers from representing that they are registered with the department unless they have complied with the registration requirements, and prohibits other misleading representations about registration status or compliance with the law.

***Sec. 45.66.150. Untrue statements or omissions.**

Prohibits a seller from making an untrue statement of material fact in registration information, disclosure statements, advertising or other communications.

***Sec. 45.66.160. Unwarranted conclusions.**

Provides that acknowledgment of registration by the department does not constitute a recommendation or approval of a seller or a business opportunity.

***Sec. 45.66.170. Waiver prohibited and void.**

Prohibits a seller from requesting that a buyer waive rights or defenses under this chapter.

***Sec. 45.66.180. Seller's records and files.**

Requires that a seller maintain records of the advertisement or promotion of a business opportunity for five years and that the seller allow access to the records by the department. Also requires that a seller keep all documents relating to a contract for four years.

***Sec. 45.66.190. Public records.**

Provides that documents required under this chapter are public records. However, testimony and records related to an investigation by the department would not be public records.

***Sec. 45.66.200. Denial, suspension, or revocation of registration.**

Allows the department to deny, suspend, or revoke a registration for a number of reasons, such as the seller's failure to comply with registration requirements; for fraud or deceit perpetrated on the buyer; or if a person represents an unreasonable risk to the public interest and has been convicted of a crime involving fraud or theft or has violated consumer protection laws. Establishes that prior to taking action under this provision, the department must provide to the person a notice of intent to deny, suspend, or revoke the

registration, and the person has an opportunity to respond to the notice by submitting a sworn statement.

***Sec. 45.66.210. Criminal penalties.**

Provides that a person who recklessly violates the registration, disclosure, or contract provisions of the chapter is guilty of a Class C felony; other violations are punishable as Class A misdemeanors.

***Sec. 45.66.220. Exemptions.**

Exempts from coverage certain transactions including sales or offers to sell:

- A business opportunity if the payments by a buyer under the contract are less than \$250
- a franchise under 16 CFR 436
- an ongoing business to be sold in its entirety
- equipment, materials, or samples for use in sales demonstrations and not for resale, or product inventory sold to the buyer at a bona fide wholesale price
- securities
- a business opportunity in which the buyer is a bank or financial institution
- a business opportunity involving a marketing plan made in conjunction with the registration of a trademark or service mark and where the seller has a minimum net worth of \$1,000,000
- a business opportunity where either the seller or the buyer is licensed as a real estate broker, associated real estate broker, or real estate sales person under AS 08.88 and the sale or offer is regulated by AS 08.88

***Sec. 45.66.230. Coordination with other laws.**

Provides that this chapter governs if a sale or offer to sell a business opportunity is regulated by this chapter and by other laws and if compliance with both is not possible.

***Sec. 45.66.240. Regulations.**

Allows the department to adopt regulations under the Administrative Procedure Act to implement this chapter.

***Sec. 45.66.900. Definitions.**

Provides definitions, including the definition of "business opportunity" as a contract or agreement for the sale of products, equipment, supplies, or services enabling the buyer to start a business and in which the seller agrees to provide additional services, such as

- Assisting in finding locations for the use or operation of vending machines, racks, display cases, or other similar devices
- Assisting in finding outlets or accounts for the buyer's products or services;
- Purchasing any or all products made, produced, fabricated, grown, bred, or modified by the buyer
- Agreeing to buy back products from the buyer products

-
- Representing that the buyer will derive income from the business that will exceed the price paid to the seller
 - Providing the buyer with a marketing plan

*Sec. 4. Changes the court rules to require the court clerk, in actions brought against escrow accounts under AS 45.66.120, to mail a copy of the complaint and subsequent orders or judgments to the attorney general.

*Sec. 5. Provides for a grace period for the registration of sellers of business opportunities who are in business before the effective date of Section 3, allowing them to continue selling or offering to sell for up to 45 days, after which time they must be registered.

*Sec. 6. Allows the Department of Law to adopt regulations to implement the act.

*Sec. 7. Provides that AS 45.66.120(b) takes effect only if sec. 4 receives the two-thirds majority vote of each house.

*Sec. 8. Provides that Section 6 of the act takes effect immediately under AS 01.10.070(c).

*Sec. 9. Provides that this act, other than Sec. 6, takes effect July 1, 2002.

April 15, 2002

So you want to work at home?

You're conflicted. You need extra income, but you want to be around for your kids. So you're tantalized by the idea of staying home and earning cash. Clever marketers know they have you. They promise a whole world of work-at-home possibilities that sound perfect: "Stuff envelopes on your own time." "Doctors need you to do their medical billing from home." "Like crafts? Great pay for assembly work." They try to lure you with enticing salaries: "Earn hundreds: The faster you work, the more you make."

The problem is, you rarely end up making the money you're promised. In fact, few people make any at all, and most lose money. An investigation of 112 work-at-home companies conducted in 2000 by Operation Job Fraud, a task force made up of several Better Business Bureaus and the U.S. Postal Inspection Service, turned up nothing but scams. When the task force investigated ads on the Internet, on posted flyers, and in magazines and newspapers, they "found no evidence of making the money promised," says Katy Conklin of the Better Business Bureau in Chattanooga, Tennessee. "We tried them ourselves. We spent our own money on the kits and materials, and we never made back our investment."

The Federal Trade Commission estimates that tens of millions of dollars a year are lost on these pitiful offers. Although most people are cheated out of anywhere from \$20 to a couple of hundred, some lose more.

Targeting potential victims is easy. Conklin recalls it happening in her own family. "Two years ago my daughter gave

Read this before you fall for some of the most common rip-offs. **BY JANICE LIEBERMAN**



BEEN CONNED?

Complain! Consumer agencies can go after bogus companies only if they know about them. File a complaint with the regional Better Business Bureau where the company is located, and call the Federal Trade Commission at 877-FTC-HELP or log on to ftc.gov.

using guilt tactics such as "Why would you leave your kids at home to work?" The scamsters stop at nothing!" Conklin says that working moms, the disabled, the elderly, students, and non-English-speaking immigrants most often fall victim to these scams.

So why aren't these fraudulent companies tracked down—and shut down? For one thing, many change their names

or addresses and go out of business within a year or two, making it daunting for investigators to track them. Second, such scams often go unreported: Many victims are too embarrassed to complain or don't want to spend time filing a claim.

All of which means it's up to you to protect yourself. As an assistant director of the Bureau of Consumer Protection at the Federal Trade Commission, Mona Spivack works to put these shady companies out of business. We asked her to describe three of the most common fraudulent schemes:

RIP-OFF #1: MEDICAL BILLING FROM HOME

This scam robs you of big bucks up front: According to Spivack, you're typically asked to shell out several hundred dollars for medical-billing software and a list of doctors who need your services. You're told that the doctors will give you lists of patients to bill and forms to input into your computer. You're supposed to submit the computerized forms to a clearinghouse that will forward them to Medicare for reimbursement. "They tell you it can be done on your own time and that you can make \$1,500 a week," says Spivack.

Sounds great, right? But here's the reality: You get the software, and it's hard to use. And when you send out letters to doctors offering them your help, they've never heard of you and aren't interested in your services. In fact, Tom Collier of the Better Business Bureau in Tucson, along with the Pima County Medical Society, surveyed 2,100 doctors to find out whether they'd even consider

CS HB 393 (JUD) -THE SALE OF BUSINESS OPPORTUNITIES

- Business opportunities, or "biz opps," are prepackaged small business deals offered primarily to novice entrepreneurs. Fraudulent biz opps bilk consumers nationwide of tens of millions of dollars a year, according to the FTC. These scams take a variety of forms, from stuffing envelopes or doing medical billing at home, to the sale of vending machines or greeting card display racks, to selling internet businesses. Promoters use high-pressure sales tactics and promise huge earnings to buyers. The scams often target vulnerable Alaskans: senior citizens, individuals at home because of disability or illness, or people experiencing financial difficulties.
- HB 393 will protect Alaskans from this type of scam by requiring sellers of business opportunities to register with the state and providing safeguards for consumers. It will allow the Department of Law to take preventative action *before* consumers are scammed. The bill:
 - Requires promoters to register prior to offering to sell business opportunities in Alaska. They will have to disclose information about the business opportunity and about their civil and criminal history and meet other registration requirements.
 - Obligates a promoter to give a buyer a disclosure statement 10 days before selling a business opportunity. The disclosure must include information about the seller's legal and financial background and the total price and payment schedule.
 - Requires the use of a written contract that sets out the payment terms, the services to be provided by the seller, delivery dates, and the buyer's right to cancel.
 - Precludes a seller from obtaining more than 20% of payment up front, unless the additional amount is placed in an escrow account at a financial institution.
 - Allows a buyer to cancel the contract within 30 days. The contract can also be cancelled after this 30-day period if the seller failed to meet disclosure requirements, made deceptive statements about the business opportunity, or failed to provide services.
- HB 393 provides exemptions for business opportunities that involve total payments under \$250, for business transactions that fall under other regulatory schemes, for ongoing business transactions, and for direct sellers under certain circumstances.
- Under HB 393, violations of the business opportunity registration requirements are also violations of the Unfair Trade Practices and Consumer Protections Act, AS 45.50.471, et seq. In addition, they may be punishable as criminal offenses.



Honorable Ben Stevens, Chair
Senate Labor and Commerce Committee
Alaska Capitol Room, Room 119
Juneau, AK 99801-1182

April 26, 2002

RE: HB 393 (Stevens) – Support

Dear Chair Stevens:

On behalf of the members of AARP In Alaska, we urge you and your colleagues on the Senate Labor and Commerce Committee to support HB 393, authored by Representative Gary Stevens, and co-sponsored by Representatives Kertula, Dyson, and Murkowski.

HB 393 will address an issue that is often of concern to retirees. . . prepackaged "business opportunities" targeted at novice entrepreneurs and "work at home" schemes.

The bill would require that sellers of business opportunities register with the State and would require them to disclose specific information to the potential buyer before the sale. They would also be required to use an escrow account to assure delivery of promised goods and provide a 30-day right of cancellation to the buyer.

Representative Stevens has provided exceptions for some recognized direct selling operations. HB 393 would target those individuals and organizations that should not be allowed to operate in Alaska.

Government has a legitimate role in consumer protection. AARP believes HB 393 is an excellent example of appropriate oversight and regulation.

On behalf of all Alaskans who have been taken in by phony "business opportunities", AARP urges an "AYE" vote on HB 393.

Should you have any questions about our position, please feel free to contact Marie Darlin (586-3637), Coordinator of the AARP Capitol City Task Force; Patrick Luby (907-762-3314), AARP Legislative Representative; or me (907-245-5259).

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Marguerite Stetson".

Marguerite Stetson
Executive Council Member for Advocacy

cc: Senator Austerman
Senator Leman
Senator Torgerson
Senator Davis
Representative Gary Stevens
Representative Kertula
Representative Dyson
Representative Murkowski

HB

405

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 405
 (H) Publish Date: 2/20/02

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Crimes committed on state BRU Alaska Court System
watercraft Component Trial Courts
 Sponsor Representative Meyer
 Requester House Transportation Component No. 788

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

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)
 The court system does not anticipate any fiscal impact from the passage of HB 405.

Prepared by: Douglas Wooliver Phone 463-4750
 Division: Alaska Court System Date/Time 2/20/02 9:24 AM
 Approved by: Stephanie Cole Date 2/20/02
 Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 405
 (H) Publish Date: 2/20/02

Corrected Version

Revision Date/Time (Note if correction): 2/19/02 8:27 AM Dept. Affected: Law
 Title "...prosecution of criminal offenses committed on or against ferries and other watercraft..." BRU Criminal
 Sponsor Representative Meyer Component All
 Requester House Transportation Committee Component No. _____

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

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 bill will allow the state to prosecute offenses committed on, or against, ferries and other state-owned or -operated vessels. Recently, a superior court judge dismissed a prosecution for rape that occurred on an Alaska ferry while in Canadian water. The court found that there was no statutory authority for the State of Alaska to prosecute the crime, even though the victim was an Alaskan, and the ferry was an Alaskan ferry. This bill will clarify that the state has that statutory authority.

Crimes of this nature are relatively rare, and passage of this legislation is not anticipated to have a fiscal impact on the Department of Law.

Prepared by: Jean M. Kasson Phone (907) 465-5370
 Division: Attorney General's Office Date/Time 2/19/02 8:27 AM
 Approved by: Kathryn Daughhelee for Bruce M. Botelho, Attorney General Date 2/19/2002
 Agency: Department of Law



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 19

MEMORANDUM

DATE: April 11, 2002

TO: Senator Robin Taylor
Chair, Senate Judiciary Committee

FROM: Representative Kevin Meyer *Kevin*

RE: Scheduling of HB 405 Crimes Committed on State Watercraft

At your earliest convenience please schedule HB 405 Crimes Committed on State Watercraft for a hearing in your committee.

HB 405 gives the State jurisdiction on state owned watercraft even if the watercraft is outside state waters.

Attachments.



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 19

SPONSOR STATEMENT

HB 405

“An Act relating to the prosecution of criminal offenses committed on or against ferries and other watercraft owned or operated by the state; and providing for an effective date.”

House Bill 405 gives the State jurisdiction over state owned watercraft including watercraft that is outside state waters.

Last year a young woman was sexually assaulted on a state ferry while it was traveling from Bellingham to Ketchikan. The assault occurred while the ferry was in Canadian waters. Under federal maritime law, the United States government has jurisdiction over crimes committed on United States vessels in Canadian waters.

The jurisdiction to prosecute the crime by the federal government is not exclusive. The State of Alaska may also prosecute the offense, as long as the state shows a sufficient connection between the offense and a valid state interest, and the federal government has not indicated intent to exercise exclusive authority over the offense.

In this particular situation, the District Attorney in Ketchikan presented the case to a grand jury and the grand jury indicted the man on two counts of felony sexual assault and four counts misdemeanor assault. However, the Superior Court dismissed the indictment, finding that without a statute specifically authorizing the state to prosecute under these circumstances, Alaska had no jurisdiction. The State is appealing that ruling.

The dismissal by the court is a concern because the crime is unlikely to be prosecuted by the federal government or the Canadian government. The federal government does not generally prosecute offenses such as sexual assault, and the Canadian government has little interest in pursuing charges involving an Alaska victim and defendant on an Alaska ferry.

HB 405 will eliminate the loophole that prevents the State from prosecuting such crimes in the future.

2/20/02

Bottom of
page 1.

Alleged crime aboard Alaska ferry in

By LEILA KHEIRY
Daily News Staff Writer

A man accused of rape on board a state ferry might not be prosecuted if the Alaska Court of Appeals upholds a recent Superior Court judge's decision.

On July 12, Superior Court Judge Larry Weeks of Juneau dismissed a Ketchikan grand jury's indictment against Vernon Jack, 29, of Boise, Idaho, who is accused of sexually

assaulting a 16-year-old girl. The alleged assault took place on board the Alaska Marine Highway Ferry M/V Matanuska while the ship was in Canadian waters. The dismissal is based on Jack's claim that Alaska does not have jurisdiction.

Weeks, presiding judge for the First Judicial District which includes Ketchikan and Juneau, wrote in his dismissal order that "there is no question that this offense was com-

mitted outside the State of Alaska if it was committed."

He cited a statute that allows the state to prosecute crimes committed outside of Alaska only if the crime is completed within the state.

"That, and the lack of any explicit statutory authority allowing for prosecutions on an Alaskan ferry in Canadian waters causes this court to find that it does not have jurisdiction in the case," Weeks wrote.

Canadian waters raises jurisdiction issue

State prosecutors appealed Weeks' decision on July 17, claiming that Alaska does have jurisdiction over crimes committed on an Alaska vessel. The Matanuska is an American-flagged ship, and is owned and operated by the State of Alaska, said Ketchikan Assistant District Attorney Dan Schally in a Wednesday telephone interview.

Before Weeks' decision, the local prosecutor's office had cited a previ-

ous Ketchikan case in which a man allegedly assaulted a crew member aboard the same ship while it was in Canadian waters. That man was prosecuted, pleaded guilty to the charges and was sentenced to 60 days in jail.

Prosecutors also cited U.S. foreign relations laws to support its jurisdiction claim.

Responding to the prosecutor's opposition, defense attorney Eurb

Kissner wrote that her client does not necessarily question the United States' jurisdiction in the matter.

"The issue before this court is whether the State of Alaska has jurisdiction over this case," she wrote.

The Alaska Legislature has "expressly limited its jurisdictional boundaries" in its statutes, wrote Kissner, who was unavailable for an interview. See, "Crime jurisdiction," page 3

C7

interview Wednesday.

Unless the Legislature drafts a broader jurisdiction statute, cases where criminal conduct occurs outside of Alaska's boundaries should not be prosecuted in Alaskan courts, she argued.

"In the instant case, it would ... violate jurisdictional due process for this court to exercise jurisdiction simply because the United States may have jurisdiction," Kissner wrote.

The problem, said Schally, is that if Alaska does not prosecute the case, Jack likely will not be prosecuted at all.

Federal prosecutors do not try "ordinary" criminal cases, he said; most criminal prosecutions in the United States occur at the state or local level.

"Pedestrian or ordinary crimes, even serious ones ... the feds are just not involved in that," Schally said.

Canada could possibly prosecute Jack, said Schally, but is unlikely to do so.

"It has nothing to do with them other than the fact that it happened off their coast," he said. "Their interest in getting involved in that probably would be low."

Therefore, he said, the State of Alaska is responsible for prosecuting crimes committed on its ferries, even when they are in Canadian water.

The prosecution also claims that Alaska has a vital interest in this case.

Its written opposition to the dismissal motion states, "If people believe that crimes can be committed on ferries to Alaska without any real risk of being prosecuted, then this could have a harmful effect on the welfare of Alaska's community, particularly tourism."

According to a clerk at the state Court of Appeals office in Anchorage, paperwork on the case could take up to six months, which means the court might not see the case until January. Schally said the court could choose to act quickly in this case after that, partly because the defendant is still in jail, but that the appeals process can take more than a year.

In the meantime, Jack is being held at the Ketchikan Correctional Center on \$3,000 bail. According to Alaska statutes, if the state appeals a dismissal, the court will set bail as if a trial was going to take place.

Thursday, Aug. 2, 2001
KETCHIKAN DAILY NEWS

INFORMATION
STATEMENT

Discussion

The defendant bases the motion to dismiss on AS 12.05.010.¹ There is no question that this offense was committed outside the state of Alaska if it was committed.

The State cites Corbin v. State,² for the proposition that the jurisdiction of the criminal law of Alaska extends beyond the Alaska three mile limit normally associated with territorial jurisdiction. Corbin, however, does not deal directly with the issue in this case. Corbin was convicted of theft on a crab boat in the Bering Sea. He did not contest that state statutes on jurisdiction authorize a prosecution for an offense outside the three mile limit.³ This defendant does contest that. The Corbin court was dealing with U.S. waters, even if it was not State of Alaska territorial water. The Corbin court cited AS 44.03.110 to explain how the criminal law of

¹ That statute provides:

Crime commenced outside state but consummated inside.

When the commission of a crime commenced outside the state is consummated inside the state, the defendant is liable to punishment in this state even though out of the state at the time of the commission of the crime charged, if the defendant consummated the crime through the intervention of an innocent or guilty agent, or by other means proceeding directly from the defendant.

² 672 P.2d 156 (Alaska App. 1983)

³ Ibid, Page 156