

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10708 SENATE TRANSPORTATION

553

SB

265

Alaska State Legislature



Out of Session:
PO Box 531
Golovin, Alaska 99762
(907) 443-5599

In Session:
State Capitol, Suite 510
Juneau, Alaska 99801-1182
(800) 597-3707
(907) 465-3707
(907) 465-4821 Fax

SENATOR DONALD C. OLSON

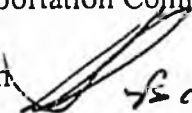
DISTRICT S

Alakanuk
Ambler
Anaktuvuk Pass
Atkasuk
Barrow
Brevig Mission
Browerville
Buckland
Chevak
Deering
Diomedea
Elim
Emmonak
Gambell
Golovin
Hooper Bay
Kaktovik
Kiana
Kivalina
Kobuk
Kotlik
Kotzebue
Koyuk
Mekoryuk
Mountain Village
Newtok
Nightmute
Noatak
Nome
Noorvik
Nuiqsut
Nunam Iqua
Pitka's Point
Point Hope
Point Lay
Savoonga
Scammon Bay
Selawik
Shaktolik
Shishmaref
Shungnak
St. Mary's
St. Michael
Stebbins
Teller
Toksook Bay
Tununak
Unalakleet
Wainwright
Wales
White Mountain

January 31, 2002

MEMORANDUM

To: Senator Cowdery, Chair
Senate Transportation Committee

From: Senator Olson 

Re: Committee schedule for SB 265, Physican Assistants and Handicap
Parking..

I would appreciate a Transportation committee hearing of SB 265 at your earliest convenience. A sponsor statement and sectional is forthcoming. If you need any other information, please contact me or Dave Gray in my office.

Thank you for consideration of this request.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 265
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title An Act relating to physician assistants BRU Insurance (116)
 Component Insurance Operations
 Sponsor Senator Olson
 Requester Senate Transportation Component No. 354

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						
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--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 would add physician assistants to the list of health care providers in AS 21.36.090(d). This would have the effect of prohibiting an insurer from refusing to cover a service if it is provided by a physician assistant, if the service is otherwise covered under the group health insurance plan of the patient/insured. No fiscal impact on the Division of Insurance is expected.

Prepared by: Robert A. Lohr, Director Phone 907-269-7900
 Division: Insurance Date/Time 2/15/02 2:45 PM
 Approved by: Deborah B. Sedwick, Commissioner Date 2/15/2002
 Agency: Department of Community & Economic Development

Alaska State Legislature

Out of Session:
PO Box 531
Golovin, Alaska 99762
(907) 443-5599

In Session:
State Capitol, Suite 510
Juneau, Alaska 99801-1182
(800) 597-3707
(907) 465-3707
(907) 465-4821 Fax

SENATOR DONALD C. OLSON

DISTRICT S

Alakanuk
Ambler
Anaktuvuk Pass
Atkasuk
Barrow
Brevig Mission
Browerville
Buckland
Chevak
Deering
Diomedes
Elim
Emmonak
Gambell
Golovin
Hooper Bay
Kaktovik
Kiana
Kivalina
Kobuk
Kotlik
Kotzebue
Koyuk
Mekoryuk
Mountain Village
Newtok
Nightmute
Noatak
Nome
Noorvik
Nuiqsut
Nunam Iqua
Pitka's Point
Point Hope
Point Lay
Savoonga
Scammon Bay
Selawik
Shaktolik
Shishmaref
Shungnak
St. Mary's
St. Michael
Stebbins
Teller
Toksook Bay
Tununak
Unalakleet
Wainwright
Wales
White Mountain

SPONSOR STATEMENT

SB 265, Physician Assistants.

I introduced SB 265 at the request of the Alaska Academy of Physician Assistants. Their desire is for the profession of physician assistant to be specifically included in lists of health care providers defined for sections of law pertaining to medical liability and to unfair trade practices in the insurance and health care business.

Section 1 amends AS 09.55.560(1) to add "physician assistant" to the definitional clause for medical liability statutes. Section 2 similarly amends AS 21.36.090(d) to include "physician assistant" as a provider that may not be unfairly discriminated against by a health insurance company, health maintenance organization, or other health delivery organization.

Section 3 responds to a third request of the academy. It is to allow physicians assistants to provide proof of eligibility for a special disabled veterans license plate and for issuance of a parking permit for a handicapped or disabled person. Eligibility is currently provided by only physicians and advanced nurse practitioners.

22-LS1338\C
Lauterbach
2/7/02

CS FOR SENATE BILL NO. 265()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): SENATORS OLSON, Leman, Wilken

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to physician assistants; providing that a physician assistant is a health**
2 **care provider covered by certain laws relating to medical malpractice actions; adding**
3 **physician assistants to the list of providers against whom unfair discrimination relating**
4 **to health care insurance is prohibited and to the list of providers who can provide proof**
5 **of disablement or handicap for the purpose of motor vehicle registration or for the**
6 **purpose of obtaining a special license plate or a special parking permit; and providing**
7 **for an effective date."**

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

9 *** Section 1.** AS 09.55.560(1) is amended to read:

10 (1) "health care provider" means an acupuncturist licensed under
11 AS 08.06; an audiologist or speech-language pathologist licensed under AS 08.11; a
12 chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a
13 dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing

1 optician licensed under AS 08.71; a naturopath licensed under AS 08.45; an
2 optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a
3 physical therapist or occupational therapist licensed under AS 08.84; a physician or
4 physician assistant licensed under AS 08.64; a podiatrist; a psychologist and a
5 psychological associate licensed under AS 08.86; a hospital as defined in
6 AS 18.20.130, including a governmentally owned or operated hospital; an employee
7 of a health care provider acting within the course and scope of employment; an
8 ambulatory surgical facility and other organizations whose primary purpose is the
9 delivery of health care, including a health maintenance organization, individual
10 practice association, integrated delivery system, preferred provider organization or
11 arrangement, and a physical hospital organization;

12 * **Sec. 2.** AS 21.36.090(d) is amended to read:

13 (d) Except to the extent necessary to comply with AS 21.42.365 and
14 AS 21.56, a person may not practice or permit unfair discrimination against a person
15 who provides a service covered under a group health insurance policy that extends
16 coverage on an expense incurred basis, or under a group service or indemnity type
17 contract issued by a health maintenance organization or a nonprofit corporation, if the
18 service is within the scope of the provider's occupational license. In this subsection,
19 "provider" means a state licensed physician, physician assistant, dentist, osteopath,
20 optometrist, chiropractor, nurse midwife, advanced nurse practitioner, naturopath,
21 physical therapist, occupational therapist, marital and family therapist, psychologist,
22 psychological associate, [OR] licensed clinical social worker, or certified direct-entry
23 midwife.

24 * **Sec. 3.** AS 28.10.181(d) is amended to read:

25 (d) Vehicles owned by disabled veterans, including persons disabled in the
26 line of duty while serving in the Alaska Territorial Guard, or other persons with
27 disabilities. Upon the request of a person with a disability that limits or impairs the
28 ability to walk, as defined in 23 C.F.R. 1235.2, the department shall (1) register one
29 passenger vehicle in the name of the person without charge; and (2) issue a specially
30 designed registration plate that displays (A) recognition of the disabled veteran if the
31 applicant's disability originated from the applicant's service with the Alaska Territorial

1 Guard or the armed forces of the United States; and (B) the standard symbol of
2 disability (the wheelchair logo). A disabled veteran who is not otherwise qualified
3 under this subsection, but who presents to the department written proof that the person
4 is at least 70 percent disabled or medically handicapped as a consequence of service in
5 the Alaska Territorial Guard or the armed forces of the United States, may register one
6 passenger vehicle without charge, and the department shall issue a specially designed
7 registration plate that displays recognition of the disabled veteran that does not display
8 the standard handicap symbol and does not carry with it special parking privileges.
9 For purposes of this subsection, proof of disability may be provided by a person
10 licensed as a physician or physician assistant under AS 08.64 or as an advanced
11 nurse practitioner under AS 08.68.

12 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 APPLICABILITY. AS 21.36.090(d), as amended by sec. 2 of this Act, applies to a
15 policy of insurance or group service or indemnity type contract issued or renewed on or after
16 January 1, 2003.

17 * **Sec. 5.** Sections 2 and 4 of this Act take effect January 1, 2003.



alaska academy of physician assistants

P.O. Box 74187 • Fairbanks, AK 99707-4187
(800) 478-8684 • (907) 455-4649
Fax (907) 452-8373 * Email akapa@aci.net



RESOLUTION

TO AMEND AS 09.55.560 TO INCLUDE PHYSICIAN ASSISTANTS IN MEDICAL LIABILITY STATUTE

Board of Directors

Jeanne Clark
President
Fairbanks, AK

Fredrick May
President Elect
Eagle River, AK

Ed Hall
Past President
Anchorage, AK

Patricia Brown
Vice President
Anchorage, AK

Lori Landstrom
Secretary-Treasurer
Soldotna, AK

Don Hussen
2-Year Board Member
Fairbanks, AK

Martha Flores
1-Year Board Member
Bethel, AK

WHEREAS, a physician assistant is licensed to practice medicine under AS 08.64.107, AS 08.64.170, and 12 AAC 40.400 through 12 AAC 40.490.

WHEREAS, there are approximately 250 physician assistant licensees in the state of Alaska. Physician assistants have been practicing medicine in Alaska for more than 20 years.

WHEREAS, physician assistants care for over 50,000 Alaskans every month, in a wide variety of institutions. Physician assistants are critical for the provision of medical care in remote areas and villages of Alaska.

WHEREAS, in 1976 the legislature codified the law with regard to medical liability. AS 09.55.530 – AS 09.55.560. The purpose of the statutes was to codify the law of medical malpractice in order to establish that the law in Alaska in this regard is the same as elsewhere. AS 09.55.530.

WHEREAS, the medical liability statutes apply only to "health care providers", as specifically defined by AS 09.55.560. The definition of "health care provider" includes acupuncturists, audiologists, speech-language pathologists, chiropractors, dental hygienists, dentists, nurses, opticians, naturopaths, optometrists, pharmacists, physical therapists, occupational therapists, physicians, podiatrists, psychologists and psychological associates. AS 09.55.560.

WHEREAS, due to a legislative oversight, physician assistants were not included in the definition of "health care provider" under AS 09.55.560. As a result, physician assistants are not covered by the medical liability statutes.

WHEREAS, the law of medical liability should apply uniformly to all health care providers licensed to practice medicine in the state of Alaska, including physician assistants.

Therefore be it resolved that the Alaska Academy of Physician Assistants wishes to amend AS 09.55.560(1) to include the words "physician assistant licensed under AS 08.64" in the definition of health care provider.

VISIT OUR WEBSITE @ akapa.org

The purpose of this Academy is to render loyal and honest service to the medical profession and to the public, to develop and enforce continuing educational programs for the Physician Assistant and the Academy membership, to promote the Physician Assistant concept through education of professional and lay people, and to promote similar interest in the student societies.

Full disclosure would have a substantially adverse effect on the patient's condition.
§ 37 ch 102 SLA 1976)

NOTES TO DECISIONS

Physician must explain risk in lay terms. — Identifying a risk does not necessarily provide patient with the information necessary for an informed decision. For a trial court to decide on summary judgment that doctor has disclosed sufficient information to allow a reasonable patient to make an informed decision about treatment, the record must establish that the physician explained to the patient in lay terms the nature and severity of the risk and the likelihood of its occurrence. *Korman v. Mallin*, 858 P.2d 1145 (Alaska 1993).

Expert testimony as to disclosure standards required. — The scope of disclosure required for subsection (a) must be measured by what a reasonable patient would need to know in order to make an informed and intelligent decision about the proposed treatment. Under the reasonable patient standard, a physician must disclose those risks which are "material" to a reasonable patient's decision concerning treatment. Under this view, expert testimony concerning the professional standard of disclosure is

not a necessary element of the plaintiff's case because the scope of disclosure is measured from the standpoint of the patient. *Korman v. Mallin*, 858 P.2d 1145 (Alaska 1993).

Signed informed consent. — The requirements set forth in 7 AAC 12.120 (c) are not inconsistent with this section. The regulations, simply impose a supplemental requirement that the patient's medical record contain a "signed informed consent" before a surgical procedure may begin. *Sweet v. Sisters of Providence*, 895 P.2d 484 (Alaska 1995).

Validity of regulation. — The trial court in an evidentiary hearing did not adequately investigate the application of 7 AAC 12.120(c) which requires a signed informed consent before a surgical procedure because there was an insufficient factual basis from which to conclude that the regulation either was or was not obscure and whether or not it could be fairly interpreted to set the standard of care. *Sweet v. Sisters of Providence*, 895 P.2d 484 (Alaska 1995).

Collateral references. — Modern status of views as to general measure of physician's duty to inform patient of risks of proposed treatment, 88 ALR3d 1008.

Duty of medical practitioner to warn patient of subsequently discovered danger from treatment previously given, 12 ALR4th 41.

Liability for failure of physician to inform patient of

alternative modes of diagnosis or treatment, 38 ALR4th 900.

Medical practitioner's liability for treatment given child without parents' consent, 67 ALR4th 511.

Malpractice: physician's duty, under informed consent doctrine, to obtain patient's consent to treatment in pregnancy or childbirth cases, 89 ALR4th 799.

Sec. 09.55.560. Definitions. In AS 09.55.530 — 09.55.560, *to add Physician Assistant*

(1) "health care provider" means an acupuncturist licensed under AS 08.06; an audiologist licensed under AS 08.11; a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; a naturopath licensed under AS 08.45; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital; an employee of a health care provider acting within the course and scope of employment; an ambulatory surgical facility and other organizations whose primary purpose is the delivery of health care, including a health maintenance organization, individual practice association, integrated delivery system, preferred provider organization or arrangement, and a physical hospital organization;

(2) "board" means an arbitration board established under AS 09.55.535;

(3) "panel" means an expert advisory panel established under AS 09.55.536;

(4) "professional negligence" means a negligent act or omission by a health care provider in rendering professional services;

(5) "professional services" means service provided by a health care provider that is within the scope of services for which the health care provider is licensed and that is not prohibited under the health care provider's license or by a facility in which the health care provider practices. (§ 37 ch 102 SLA 1976; am § 24 ch 177 SLA 1978; am § 6 ch 56 SLA 1986; am § 9 ch 131 SLA 1986; § 26 ch 2 FSSLA 1987; am § 9 ch 6 SLA 1990; am § 1 ch 14 SLA 1991; am §§ 26, 27 ch 26 SLA 1997)

NOTES TO DECISIONS

as amended in M.A. v. United States, 951 P.2d 851 (Alas-1998).

- Sec. 09.55.535. Voluntary arbitration.** (a) A patient and any health care provider may execute an agreement to submit to arbitration any dispute, controversy, or issue arising out of care or treatment by the health care provider during the period that the agreement is in force or that has already arisen between the parties. Execution of an agreement under this subsection by a patient may not be made a prerequisite to receipt of care or treatment by the health care provider.
- (b) An agreement to arbitrate executed before care or treatment is provided must clearly provide in bold print on the face of the agreement that execution of the agreement by the patient is not a prerequisite to receiving care or treatment. If this subsection is not complied with by the health care provider, the agreement to arbitrate is void. The form to be used shall be approved in advance by the attorney general of the state to assure it fairly informs both parties to the agreement and properly protects their interests.
- (c) The agreement must provide that the person receiving health care may revoke the agreement within 30 days after execution by notifying the health care provider in writing. The period for revocation shall be tolled during any period that the person receiving health care is physically unable to execute a revocation. The health care provider may not revoke the agreement after its execution.
- (d) An arbitration agreement entered into by the parents or legal guardian of a minor person receiving health care is binding upon the minor person.
- (e) An agreement to arbitrate between a patient and a hospital must be reexecuted each time a person is admitted to a hospital. The agreement may be extended by written agreement of all parties to apply to care after hospitalization. A person receiving outpatient care from a hospital or clinic or a member of a health maintenance organization may execute an agreement with the hospital that provides for continuation of the agreement for a continuing program of treatment or during continued membership.
- (f) Upon the filing of a malpractice claim that is subject to an agreement to arbitrate, the claim shall be submitted to an arbitration board. The arbitration board shall consist of three arbitrators: one arbitrator designated by the claimant or claimants, one arbitrator designated by the health care provider or providers against whom the claim is made, and a third arbitrator designated by mutual agreement who shall serve as chairperson of the board. If the parties cannot agree on the third person, the court will provide a choice of three or more persons who might serve as chairperson of the arbitration board, which shall be from a list of qualified arbitrators furnished by the attorney general. Claimant or claimants together and health care provider or providers together may each strike one or more names so that after each side has done so at least one name remains, providing a basis for the final selection by the court.
- (g) The attorney general shall prepare a list of persons consisting of lawyers or other persons qualified to serve as chairperson of an arbitration board. They shall be selected on basis of their technical expertise, judicial temperament, and capability of impartially acting on malpractice claims. The attorney general shall submit a list of at least three names whenever requested to do so by the court along with detailed biographical information on each person listed.
- (h) Each member of the arbitration board shall receive reasonable compensation to be paid by the court based on the extent and duration of services rendered. The court shall pay the costs of expert witnesses called by the board and the costs of expert witnesses called by the parties to the arbitration up to a maximum of three witnesses for each side and \$150 per day for each expert witness.
- (i) The arbitration board may appoint an expert advisory panel, with the powers of the expert advisory panel under AS 09.55.536, to advise the board on the medical facts of the case.

(j) The court shall specify the shortest practical deadline for completion of the work of the arbitration board, taking into account all the circumstances and the nature of the case.

(k) The provisions of the Uniform Arbitration Act, AS 09.43.010 — 09.43.180, apply to arbitrations under this section if they do not conflict with the provisions of this section; arbitrations under this section shall be conducted in accordance with procedures established by any rules of court which may be adopted and according to provisions of AS 09.55.540 — 09.55.548 and AS 09.55.554 — 09.55.560, and AS 09.65.090. (§ 33 ch 102 SLA 1976; am § 22 ch 177 SLA 1978; am § 1 ch 105 SLA 1988)

Cross references. — For purpose of 1978 Act, see § 1, ch. 177, SLA 1978, as amended by § 8, ch. 46, SLA 1982, in the Temporary and Special Acts.

Collateral references. — Arbitration of medical malpractice claims, 84 ALR3d 375.

Sec. 09.55.536. Expert advisory panel. (a) In an action for damages due to personal injury or death based upon the provision of professional services by a health care provider, including a person providing services on behalf of a governmental entity, when the parties have not agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within 20 days after filing of answer to a summons and complaint a three-person expert advisory panel unless the court decides that an expert advisory opinion is not necessary for a decision in the case. When the action is filed, the court shall, by order, determine the professions or specialties to be represented on the expert advisory panel, giving the parties the opportunity to object or make suggestions.

(b) The expert advisory panel may compel the attendance of witnesses, interview the parties, physically examine the injured person if alive, consult with the specialists or learned works they consider appropriate, and compel the production of and examine all relevant hospital, medical, or other records or materials relating to the health care in issue. The panel may meet in camera, but shall maintain a record of any testimony or oral statements of witnesses, and shall keep copies of all written statements it receives.

(c) Not more than 30 days after selection of the panel, the panel shall make a written report to the parties and to the court, answering the following questions and other questions submitted to the panel by the court in sufficient detail to explain the case and the reasons for the panel's answers:

- (1) Why did the claimant seek medical care?
- (2) Was a correct diagnosis made? If not, what was incorrect about the diagnosis?
- (3) Was the treatment or lack of treatment appropriate? If not, what was inappropriate about the treatment or lack of treatment?
- (4) Was the claimant injured during the course of evaluation or treatment or by failure to diagnose or treat?
- (5) If the answer to question 4 is "yes," what is the nature and extent of the medical injury?
- (6) What specifically caused the medical injury?
- (7) Was the medical injury caused by unskillful care? Explain.
- (8) If a medical injury had not occurred, what would have been the likely outcome of the medical case?

(d) In any case in which the answer to one or more of the questions submitted to the panel depends upon the resolution of factual questions that are not the proper subject of expert opinion, the report must so state and may answer questions based upon hypothetical facts that are fully set out in the opinion. The report must include copies of all written statements, opinions, or records relied upon by the panel and either a transcription or other record of any oral statements or opinions; must specify any medical or scientific authority relied upon by the panel; and must include the results of any physical or mental examination performed on the plaintiff. Each member shall sign the report and the signature constitutes the member's adoption of all statements and

...ions contained in it; however, a member may, instead of signing the report, submit a concurring or dissenting report that complies with the requirements of this subsection. A member may not attest to any portion of the report as to which the member is not qualified to give expert testimony.

(e) The report of the panel with any dissenting or concurring opinion is admissible in evidence to the same extent as though its contents were orally testified to by the person or persons preparing it. The court shall delete any portion that would not be admissible because of lack of foundation for opinion testimony, or otherwise. Either party may submit testimony to support or refute the report. The jury shall be instructed in general terms that the report shall be considered and evaluated in the same manner as any other expert testimony. Any member of the panel may be called by any party and may be cross-examined as to the contents of the report or of that member's dissenting or concurring opinion.

(f) Discovery may not be undertaken in a case until the report of the expert advisory panel is received or 60 days after selection of the panel, whichever occurs first. However, the court may relax this prohibition upon a showing of good cause by any party. If the panel has not completed its report within the 30-day period prescribed in (c) of this section, the court may, upon application, grant the panel an additional 30 days.

(g) Members of a panel are entitled to travel expenses and per diem in accordance with state law pertaining to members of boards and commissions for all time spent in preparing its report. If a panel member is called upon as a witness at trial or upon deposition, the member is entitled to payment of an expert witness fee, which may not exceed \$150 per day. All expenses incurred by the panel shall be paid by the court. However, in any case in which the court determines that a party has made a patently frivolous claim or a patently frivolous denial of liability, it shall order that all costs of the expert advisory panel be borne by the party making that claim or denial.

(h) Parties to the case and their counsel may not initiate communication out of court with members of the panel on the subject matter of its inquiry and report or cause or solicit others to do so, except through ordinary discovery proceedings.

(i) This section applies regardless of whether a party in the action or the health care provider whose professional services are the subject of the action is a governmental entity or in the public or private sector. (§ 33 ch 102 SLA 1976; am § 23 ch 177 SLA 1978; am §§ 22 — 25 ch 26 SLA 1997)

Revisor's notes. — In 1994, "Discovery may not" was substituted for "No discovery may" in (f) of this section to conform the section to the current style of the Alaska Statutes.

Cross references. — For purpose of 1978 Act, see § 1, ch. 177, SLA 1978, as amended by § 8, ch. 46, SLA 1982, in the Temporary and Special Acts.

For a statement of legislative intent relating to the provisions of ch. 26, SLA 1997, see § 1, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts. For severability of the provisions of ch. 26, SLA 1997, see § 56, ch. 26, SLA 1997 in the 1997 Temporary and Special Acts.

Effect of amendments. — The 1997 amendment, effective August 7, 1997, in subsection (a), inserted "including a person providing services on behalf of a governmental entity," in the first sentence; rewrote subsection (c); in subsection (f), added "or 60 days after selection of the panel, whichever occurs first," at the end of the first sentence; and added subsection (i).

Editor's notes. — Section 55, ch. 26, SLA 1997 provides that the provisions of ch. 26, SLA 1997 apply "to all causes of action accruing on or after August 7, 1997."

NOTES TO DECISIONS

Chapter 102, SLA 1976, enacted in violation of Alaska Const., art. II, § 14. — Where the free conference committee recommended adoption of a version of ch. 102, SLA 1976, that differed in many respects from the version originally passed by the house; the free conference committee's bill was passed by the senate by a recorded vote; but in the house there was no roll call or recorded vote and the free conference committee bill was passed there by a

simultaneous voice vote, this voice vote constituted "final passage" of ch. 102, SLA 1976, and thus violated the recorded vote requirement of Alaska Const., art. II, § 14. *Plumley v. George E. Hale, M.D., Inc.*, 594 P.2d 497 (Alaska 1979).

Constitutionality holding is to be applied prospectively. — Although the supreme court held that ch. 102, SLA 1976, was enacted in violation of the recorded vote requirement of Alaska Const., art. II,

§ 14, the supreme court held that its holding in this case should be applied prospectively in light of its conclusions that its decision was one of first impression, that substantial reliance had followed from the legislature's alternative interpretation of law, that undue hardship would have resulted from retroactive application of its holding, and that the rationale of the holding did not compel retroactivity. *Plumley v. George E. Hale, M.D., Inc.*, 594 P.2d 497 (Alaska 1979).

Section was not invalidated. — Since neither ch. 102, SLA 1976, nor any other bill previously enacted into law by voice vote, will be overturned by its interpretation of Alaska Const., art. II, § 14, the supreme court did not invalidate this section. However, in order to effectuate the goals of fairness and intelligent advocacy, the supreme court held that this section would not be applicable in the malpractice actions consolidated for this appeal. *Plumley v. George E. Hale, M.D., Inc.*, 594 P.2d 497 (Alaska 1979).

Lifting ban on discovery before panel report.

— Good cause to lift the discovery ban is demonstrated as a matter of law when no report has been issued after 80 days have elapsed from the filing of answer, if the party wishing to begin discovery is not responsible for the delay. *Roethler v. Lutheran Hosps. & Homes Soc'y of Am.*, 709 P.2d 487 (Alaska 1985).

Constitutionality. — This section does not unconstitutionally deprive a litigant of due process of law, does not impair his right to a jury trial, and does not violate separation of powers principles by impermissibly delegating judicial power to members of the panel. *Keyes v. Humana Hosp.*, 750 P.2d 343 (Alaska 1988).

This section does not unconstitutionally deprive medical plaintiffs of their right of access to the courts. *Keyes v. Humana Hosp.*, 750 P.2d 343 (Alaska 1988).

Applied in *Kendall v. State, Div. of Cors.*, 692 P.2d 953 (Alaska 1984).

Quoted in *Snyder v. Foote*, 822 P.2d 1353 (Alaska 1991).

Cited in *Korman v. Mullin*, 858 P.2d 1145 (Alaska 1993).

Collateral references. — Validity and construction of state statutory provision relating to limitations on amount of recovery in medical malpractice claim and submission of such claim to pretrial panel, 80 ALR3d 583.

Disclosure of privileged proceedings of hospital medical review or doctor evaluation processes, 60 ALR4th 1273.

★ **Sec. 09.55.540. Burden of proof.** (a) In a malpractice action based on the negligence or wilful misconduct of a health care provider, the plaintiff has the burden of proving by a preponderance of the evidence

(1) the degree of knowledge or skill possessed or the degree of care ordinarily exercised under the circumstances, at the time of the act complained of, by health care providers in the field or specialty in which the defendant is practicing;

(2) that the defendant either lacked this degree of knowledge or skill or failed to exercise this degree of care; and

(3) that as a proximate result of this lack of knowledge or skill or the failure to exercise this degree of care the plaintiff suffered injuries that would not otherwise have been incurred.

(b) In malpractice actions there is no presumption of negligence on the part of the defendant. (§ 1 ch 49 SLA 1967; am § 34 ch 102 SLA 1976)

NOTES TO DECISIONS

The language of this section is so clear and unambiguous that the supreme court is foreclosed from broadening the standard contained therein through judicial construction. *Poulin v. Zartman*, 542 P.2d 251 (Alaska 1975), unmodified on rehearing, 548 P.2d 1299 (Alaska 1976).

Optometrists were not included in this section prior to 1976. *Steele v. United States*, 463 F. Supp. 321 (D. Alaska 1978).

Requirements of surgeon's report. — It is incumbent upon a surgeon to describe accurately and fully in his report of an operation everything of consequence that he did and which his trained eye observed during an operation. *Patrick v. Sedwick*, 391 P.2d 453 (Alaska 1964).

To have maximum probative force, the report should be dictated immediately after the operation. *Patrick v. Sedwick*, 391 P.2d 453 (Alaska 1964).

Informing patient of hazards of operation. —

There is good law in support of the argument that a doctor need not inform the patient of all the hazards involved in an operation; that doctors frequently tailor the extent of their preoperative warnings to the particular patient to avoid the unnecessary anxiety and apprehension which such appraisal might arouse in the mind of the patient. *Patrick v. Sedwick*, 391 P.2d 453 (Alaska 1964).

Absence of surgeon's personal recollection or of recorded facts no defense. — Under the circumstances of the instant case, the court would not permit the absence of a surgeon's personal recollection or of recorded facts to serve as a defense in an action for malpractice. *Patrick v. Sedwick*, 391 P.2d 453 (Alaska 1964).

Expenses for rearing healthy child following pregnancy misdiagnosis. — Negligent failure to diagnose a pregnancy gives rise to a cause of action for medical malpractice and is compensable to the extent

damages are ordinarily allowable in malpractice cases, but no recovery may be awarded for expenses of caring a healthy child born as a result of the misdiagnosis. *M.A. v. United States*, 951 P.2d 851 (Alaska 1998).

Prima facie case of negligence. — See *Patrick v. Sedwick*, 391 P.2d 453 (Alaska 1964).

Failure of trial court to make finding of lack of informed consent was not clearly erroneous. *Patrick v. Sedwick*, 391 P.2d 453 (Alaska 1964).

“Similar communities” instruction did not convey a standard of conduct more lenient than a national standard instruction. *Priest v. Lindig*, 583 P.2d 173 (Alaska 1978), remanded on other grounds, 591 P.2d 1299 (Alaska 1979).

Cited in *Baker v. Werner*, 654 P.2d 263 (Alaska 1982).

Stated in *Yako v. United States*, 891 F.2d 738 (9th Cir. 1989); *Korman v. Mallin*, 858 P.2d 1145 (Alaska 1993).

Collateral references. — Qualification of medical expert witness, 33 Am. Jur. POF2d, pp. 179-210.

Proximate cause, 13 ALR2d 11.

Aggravation of injuries as mitigating damages in action against physician or surgeon for malpractice, 60 ALR2d 1055.

Necessity of expert evidence to support an action for malpractice against a physician or surgeon, 81 ALR2d 697.

Competency of physician or surgeon of school of practice other than that to which defendant belongs to testify in malpractice case, 85 ALR2d 1022.

Competency of general practitioner to testify as expert witness in action against specialist for medical malpractice, 31 ALR3d 1163.

Competence of physician or surgeon from one locality to testify, in malpractice case, as to standard of

care required of defendant practicing in another locality, 37 ALR3d 420.

Necessity and sufficiency of showing of medical witness' familiarity with particular medical or surgical technique involved in suit, 46 ALR3d 275.

Patient's failure to return, as directed, for examination or treatment as contributory negligence, 100 ALR3d 723.

Propriety, in medical malpractice case, of admitting testimony regarding physician's usual custom or habit in order to establish nonliability, 10 ALR4th 1243.

Standard of care owed to patient by medical specialist as determined by local “like community,” state, national, or other standards, 18 ALR4th 603.

Manufacturer's package insert recommendations as evidence of standard of care, 82 ALR4th 166.

Sec. 09.55.546. Advance payments. In an action to recover damages under AS 09.55.530 — 09.55.560, no advance payment made by the defendant health care provider or the professional liability insurer of the defendant to or on behalf of the plaintiff is admissible as evidence or may be construed as an admission of liability for injuries or damages suffered by the plaintiff; however, a final award in favor of the plaintiff shall be reduced to the extent of any advance payment. The advance payment shall inure to the exclusive benefit of the defendant or the insurer making the payment. (§ 35 ch 102 SLA 1976)

Sec. 09.55.547. Pleading of damages. In a cause of action against a health care provider for malpractice, the complaint or any other pleadings may not contain an ad damnum clause or monetary amount claimed against the defendant health care provider, except as necessary for jurisdictional purposes. (§ 35 ch 102 SLA 1976)

Sec. 09.55.548. Awards, collateral source. (a) Damages shall be awarded in accordance with principles of the common law. The fact finder in a malpractice action shall render any award for damages by category of loss. The court may enter a judgment that future damages be paid in whole or in part by periodic payments rather than by a lump-sum payment; the judgment must include, if necessary, other provisions to assure that funds are available as periodic payments become due. Insurance from an authorized insurer as defined in AS 21.90.900 is sufficient assurance that funds will be available. Any part of the award that is paid on a periodic basis shall be adjusted annually according to changes in the consumer price index in the community where the claimant resides. In this subsection, “future damages” includes damages for future medical treatment, care or custody, loss of future earnings, or loss of bodily function of the claimant.

(b) Except when the collateral source is a federal program that by law must seek subrogation and except death benefits paid under life insurance, a claimant may only recover damages from the defendant that exceed amounts received by the claimant as compensation for the injuries from collateral sources, whether private, group, or governmental, and whether contributory or noncontributory. Evidence of collateral

sources, other than a federal program that must by law seek subrogation and the death benefit paid under life insurance, is admissible after the fact finder has rendered an award. The court may take into account the value of claimant's rights to coverage exhausted or depleted by payment of these collateral benefits by adding back a reasonable estimate of their probable value, or by earmarking and holding for possible periodic payment under (a) of this section that amount of the award that would otherwise have been deducted, to see if the impairment of claimant's rights actually takes place in the future. (§ 35 ch 102 SLA 1976; am § 7 ch 30 SLA 1992)

Effect of amendments. — The 1992 amendment, effective May 16, 1992, in subsection (a), deleted "or from the Medical Indemnity Corporation of Alaska" preceding "is sufficient" in the fourth sentence and made a stylistic change in the fifth sentence.

Sec. 09.55.550. Jury instructions. In medical malpractice actions the jury shall be instructed that the plaintiff has the burden of proving the health care provider's negligence or wilful misconduct in accordance with the standard of proof specified in AS 09.55.540. The jury shall be further instructed that injury alone does not raise a presumption of the health care provider's negligence or misconduct. (§ 1 ch 49 SLA 1967; am § 36 ch 102 SLA 1976)

NOTES TO DECISIONS

This section specifically rules out any presumptions of negligence in malpractice cases. *Poulin v. Zartman*, 542 P.2d 251 (Alaska 1975), unmodified on rehearing, 548 P.2d 1299 (Alaska 1976). Applied in *Priest v. Lindig*, 583 P.2d 173 (Alaska 1978).

Collateral references. — Propriety and effect of instruction or argument directing attention to injury to defendant's professional reputation or standing, 74 ALR2d 662. Propriety and effect of instructions in civil case on the weight or reliability of medical expert testimony, 86 ALR2d 1038.

Sec. 09.55.554. Immunity for oral contracts. A cause of action against a health care provider does not arise for breach of an oral contract to provide a cure or achieve a specific medical result. (§ 37 ch 102 SLA 1976)

Revisor's notes. — In 1994, "A cause of action against a health care provider does not arise" was substituted for "No cause of action against a health care provider arises" to conform the section to the current style of the Alaska Statutes. **Cross references.** — For other immunity provisions related to health care providers, see AS 09.65.090, 09.65.091 and 09.65.095.

Sec. 09.55.556. Informed consent. (a) A health care provider is liable for failure to obtain the informed consent of a patient if the claimant establishes by a preponderance of the evidence that the provider has failed to inform the patient of the common risks and reasonable alternatives to the proposed treatment or procedure, and that but for that failure the claimant would not have consented to the proposed treatment or procedure.

(b) It is a defense to any action for medical malpractice based upon an alleged failure to obtain informed consent that

- (1) the risk not disclosed is too commonly known or is too remote to require disclosure;
- (2) the patient stated to the health care provider that the patient would undergo the treatment or procedure regardless of the risk involved or that the patient did not want to be informed of the matters to which the patient would be entitled to be informed;
- (3) under the circumstances consent by or on behalf of the patient was not possible; or
- (4) the health care provider after considering all of the attendant facts and circumstances used reasonable discretion as to the manner and extent that the alternatives or risks were disclosed to the patient because the health care provider reasonably believed

January 22, 2002

To: Senator Donald Olson and Mr. Dave Gray

Re: Addendum for Consideration

From: Ed Hall PA-C
Alaska Academy of Physician Assistants
(907) 222-7612 wk
(907) 345-9365 hm

222 6976
PA-C

Dear Senator Olson and Mr. Gray:

I am sending you a copy of the current Alaska statutes that address, who is eligible to provide proof of disability for issuance of handicapped parking permits. Once again it appears that we as Physician Assistants have been excluded as providers of medical services equivalent to those of Nurse Practitioners. It could be the same problem in that the law was written before PA's became viable providers of medical care in Alaska. Since this is similar to our other resolutions, would it be possible to include this all on the same bill?

We appreciate your help and support in these matters.

Regards



Subject Parking**AS 28.10.181d**

(d) Vehicles owned by disabled veterans, including persons disabled in the line of duty while serving in the Alaska Territorial Guard, or other persons with disabilities. Upon the request of a person with a disability that limits or impairs the ability to walk, as defined in 23 C.F.R. 1235.2, the department shall (1) register one passenger vehicle in the name of the person without charge; and (2) issue a specially designed registration plate that displays (A) recognition of the disabled veteran if the applicant's disability originated from the applicant's service with the Alaska Territorial Guard or the armed forces of the United States; and (B) the standard symbol of disability (the wheelchair logo). A disabled veteran who is not otherwise qualified under this subsection, but who presents to the department written proof that the person is at least 70 percent disabled or medically handicapped as a consequence of service in the Alaska Territorial Guard or the armed forces of the United States, may register one passenger vehicle without charge, and the department shall issue a specially designed registration plate that displays recognition of the disabled veteran that does not display the standard handicap symbol and does not carry with it special parking privileges. For purposes of this subsection, proof of disability may be provided by a person licensed as a physician under AS 08.64 or as an advanced nurse practitioner under AS 08.68.

Note this does not auth Chiropractor or Poditrist, It is questionabe maybe poditrist is covered

My Guess that CFR 1235 is the criteria used on the application.

Sec. 28.10.495. Parking permit for vehicle transporting disabled person.

(a) Upon application by a disabled or medically handicapped person, or by an organization that transports disabled or medically handicapped persons, the department shall issue to the applicant, without charge, a special permit bearing the control number of the applicant. The permit issued under this section, when displayed in the front windshield of a parked or standing vehicle, shall provide for special consideration by the public with respect to the parking or standing in designated spaces of a vehicle that is being used for the transportation of a disabled or medically handicapped person.

(b) A person is not entitled to use the special permit provided for in (a) of this section except when providing transportation for a disabled or handicapped person. Upon the death of a disabled or handicapped person to whom a special permit has been issued, the special permit shall be returned to the department. If an organization to which a special permit has been issued ceases transporting disabled or handicapped persons, or ceases operating, it shall return the special permit to the department.

(c) Proof of disablement or medical handicap, for the purpose of this section, shall be the same as that required for the purposes of AS 28.10.181(d).

SB

269

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 269
 (S) Publish Date: 2/01/02

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
 Title Name Bridge for James Bondsteel BRU Central Region Highways & Aviation
 Component Central Region Highways & Aviation
 Sponsor Rules by Request of Governor
 Requester _____ Component No. 564

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--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 require the department to install 2 traffic signs on a bridge. The cost will be absorbed by our Central Region highways and aviation sign budget.

Prepared by: Dennis R. Poshard Phone 465-3904
 Division Commissioner's Office Date/Time 12/12/01 9:21 AM
 Approved by: Joseph L. Perkins, Commissioner Date 12/12/2001
 Agency DOT&PF

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



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

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

January 29, 2002

The Honorable Rick Halford
President of the Senate
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear President Halford:

I am pleased to transmit this bill that recognizes James Leroy Bondsteel. This veteran and Alaska Medal of Honor recipient lost his life on a Glenn Highway bridge crossing the Knik River. Veterans join me in supporting this proposal to rename this bridge the Sergeant James Bondsteel Bridge of Honor.

James Leroy Bondsteel was born on July 18, 1947 in Jackson, Michigan. He died in a traffic accident on April 9, 1987 on bridge number 1121 on the Glenn Highway while returning to his home in Houston.

Mr. Bondsteel contributed greatly to his country during three tours of duty during the Vietnam War. As a Staff Sergeant, he was awarded the Medal of Honor for his conspicuous gallantry for actions in battle on May 24, 1969. In that battle he destroyed 10 enemy bunkers and rallied his troops despite his own wounds.

Mr. Bondsteel remained in the Army after his Vietnam service. He was an infantry training instructor and a mentor to younger troops. He retired from the Army in the mid-1980s and moved to Alaska to work, first as a counselor at the Wasilla Vet Center and later for the U.S. Veteran's Administration in Anchorage. At the time of his death, Mr. Bondsteel left behind a wife and two young daughters. He is buried at the Ft. Richardson National Cemetery.

Fellow veterans on the Alaska Veterans Advisory Council asked that the state name bridge number 1121 in honor of Mr. Bondsteel. This gesture would be a fitting tribute to the memory of this Alaska hero while recognizing the sacrifices all veterans have made for our country.

Sincerely,

A handwritten signature in black ink that reads "Tony Knowles".
Tony Knowles
Governor

SB

271



SENATOR JERRY WARD

ALASKA STATE LEGISLATURE

SPONSOR STATEMENT

Senate Bill No. 271

“An Act establishing the Alaska Marine and Rail Transportation Authority”

The intent of this Act is to establish a state-owned authority that would be directly responsible for the operation and management of both the Alaska Railroad Corporation and the Alaska Marine Highway.

In 1985 the State of Alaska purchased the Alaska Railroad from the Federal Government for \$20 million dollars. This transaction came with a significant amount of excess land that assists in the operational costs of the railroad. The Alaska Railroad currently has a surplus land base. The Alaska Railroad is not currently under the executive budget act. The Alaska Marine Highway was created under the authority of the Federal Government in 1963 and was not given a land base. For the past several years the Alaska Marine Highway has relied on the general fund for costs because of lack of a capital equity base in order to make it self-sufficient.

Creating an authority and conveying an additional 500,000 acres of land would allow the excess land to generate revenue and provide a stable funding base for the Alaska Marine and Rail Transportation Authority. The idea is to reduce the requirements to fund the Alaska Marine Highway through the general fund. The overall transportation plan in Alaska would benefit from the re-organization and provide for a system to utilize both services and cut the cost of doing so. Currently the Alaska Marine Highway and the Alaska Railroad share the use of facilities in many locations.

The authority will be a public corporation of the state and a division of the Department of Transportation and Public Facilities. The authority will operate the Alaska Marine Highway system and the state-owned Alaska Railroad as separate divisions of the authority.

The authority will make all of its financial records available to the legislature and an appointee of the Governor. The authority shall submit an annual budget for the Alaska Marine Highway system and the Alaska Railroad Corporation to the legislature through the governor.

The primary duties of the authority will be to assist residents, businesses and communities of the state to obtain the highest quality of the marine, rail passenger and freight services. The authority will be responsible to encourage and integrate with other public and private carriers in

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-4940 • FAX (907) 465-3766

ANCHORAGE: 716 W. 4th AVE. • STE. 450 • ANCHORAGE, AK 99501 • (907) 269-0106 • FAX (907) 269-0109

KENAI: 145 MAIN STREET LOOP • KENAI, AK • 99611 • (907) 283-7996 • FAX (907) 283-3075

Vice-Chair, Senate Finance Committee • Vice-Chair, Senate Transportation • Member, Senate Health Education & Social Services
Senator_Jerry_Ward@legis.state.ak.us

and outside the state to provide the highest quality of service within the state. The authority is required to employ Alaskan residents to the highest legal level possible.

The authority will operate under the name "Alaska Marine and Rail Transportation Authority." The authority shall prepare a comprehensive long-range plan for the development and improvement of the Alaska Marine Highway system and the Alaska Railroad.

The authority may acquire by purchase, gift, or exchange land in fee simple easements that it considers necessary and reasonable for either temporary or permanent public use. The authority may transfer land, other than rail land under AS 44.90.240 that is not considered necessary for use by the marine highway system. The authority will have the power to receive additional land grants from the state. The proceeds of disposal by the Department of Natural Resources shall be credited to the funds from which the purchase of the land was originally made.

It is my hope as sponsor of SB 271 that it becomes legislation in order to ensure a long-term transportation network that serves all Alaskans.

Personal Services New Position Detail

DRAFT

Department of Natural Resources

Scenario: DNR FY2003 Fiscal Notes - for Positions (2481)
 Component: Land Sales & Municipal Entitlements (2456)
 BRU Name: Minerals, Land, and Water Development (330)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs	
10-#078	Natural Resource Mgr I	FT	A	GG	Anchorage	2A	18 C	6.0		23,280	140	0	8,607	32,027	
Justification: SB271						Funding Detail:									
						1004	General Fund Receipts						100.00%	32,027	
													Total Funding:	100.00%	32,027
10-#079	Natural Resource Off II	FT	A	GG	Anchorage	2A	16 D	6.0		20,964	126	0	8,133	29,223	
Justification: SB271						Funding Detail:									
						1004	General Fund Receipts						100.00%	29,223	
													Total Funding:	100.00%	29,223
10-#080	Natural Resource Off I	FT	A	GG	Anchorage	2A	14 C	6.0		17,574	106	0	7,438	25,118	
Justification: SB271						Funding Detail:									
						1004	General Fund Receipts						100.00%	25,118	
													Total Funding:	100.00%	25,118
10-#081	Natural Resource Off II	FT	A	GG	Anchorage	2A	16 D	6.0		20,964	126	0	8,133	29,223	
Justification: SB271						Funding Detail:									
						1004	General Fund Receipts						100.00%	29,223	
													Total Funding:	100.00%	29,223

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

Personal Services New Position Detail

DRAFT

Department of Natural Resources

Scenario: DNR FY2003 Fiscal Notes - for Positions (2481)
Component: Land Sales & Municipal Entitlements (2456)
BRU Name: Minerals, Land, and Water Development (330)

Component Summary:

Total New Positions: 4

<u>Fund Description</u>	<u>Fund Percent</u>	<u>Fund Amount</u>
1004 General Fund Receipts	100.00%	115,591
Total Funding:	100.00%	115,591

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

22-LS1353\C
Utermohle
4/19/02

CS FOR SENATE BILL NO. 271(TRA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE TRANSPORTATION COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS WARD, Austerman, Cowdery, Taylor

A BILL
FOR AN ACT ENTITLED

1 **"An Act establishing the Alaska Marine Highway Authority; establishing the marine**
2 **highway transportation fund; relating to ferries and ferry terminals; and providing for**
3 **an effective date."**

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

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

7 **PURPOSE.** The purpose of this Act is to establish an authority for the operation,
8 management, planning, construction, and maintenance of the Alaska marine highway system.
9 The authority shall be the exclusive state entity directly associated with the operation,
10 management, planning, construction, and maintenance for the Alaska marine highway system.

11 *** Sec. 2.** AS 19 is amended by adding a new chapter to read:

12 **Chapter 55. Alaska Marine Highway Authority.**

13 **Article 1. Creation and Organization.**

14 **Sec. 19.55.010. Alaska Marine Highway Authority. (a)** The Alaska Marine

1 Highway Authority is established. The authority is a public corporation of the state.
2 The authority is an instrumentality of the state in the Department of Transportation
3 and Public Facilities but has a legal existence independent of and separate from the
4 state and has continuing succession until its existence is terminated by law.

5 (b) The authority shall operate the Alaska marine highway system.

6 (c) The powers of the authority are vested in the board of directors of the
7 authority.

8 (d) The continued operation of the Alaska marine highway system as provided
9 in this chapter is an essential government function of the state.

10 **Sec. 19.55.020. Directors.** (a) The board of directors of the authority consists
11 of seven voting directors appointed by the governor. The commissioner of
12 transportation and public facilities is an ex officio, nonvoting member of the board.
13 Appointed directors must include

14 (1) four residents who have a significant high level of experience in
15 maritime matters in the state;

16 (2) one resident who is a member of a union that represents employees
17 of the Alaska marine highway system; and

18 (3) two public members who are residents.

19 (b) The appointed directors serve staggered five-year terms and may be
20 removed by the governor only for cause. Each appointed director shall hold office for
21 the term of the director's appointment and until a successor is appointed and qualified.
22 A director is qualified for reappointment. A vacancy in a directorship occurring other
23 than by expiration of term shall be filled in the same manner as the original
24 appointment but only for the unexpired term.

25 (c) The appointed directors shall comply with AS 39.50 (conflict of interest).
26 Each director before entering upon the director's duties shall subscribe to an oath to
27 perform the duties of office faithfully, impartially, and justly to the best of the
28 director's ability. A record of the oath shall be filed with the Office of the Governor.

29 (d) An appointed director is entitled to compensation at a rate of \$350 for each
30 day the director is engaged in actual performance of duties under this chapter. The
31 board of directors of the authority may provide by regulation for compensation for

1 partial days for an appointed director. In addition, an appointed director is entitled to
2 per diem and travel expenses authorized for boards and commissions under
3 AS 39.20.180.

4 **Sec. 19.55.030. Officers and quorum.** The directors shall elect one of the
5 appointed directors as chair of the board of directors. The directors shall elect a
6 secretary and a treasurer who need not be directors, and the same person may be
7 elected to serve both as secretary and treasurer. Four voting directors constitute a
8 quorum of the board of directors. The board of directors may take action and adopt
9 motions and resolutions at a meeting by the affirmative vote of at least four voting
10 directors. A vacancy in the board of directors of the authority does not impair the
11 right of a quorum to exercise all the powers and perform all the duties of the board.

12 **Sec. 19.55.040. Staff.** (a) The board of directors shall employ a chief
13 executive officer who serves at the pleasure of the board. The chief executive officer
14 may, with the approval of the board, select and employ additional administrative staff
15 and officers as necessary to administer the operations of the authority under this
16 chapter.

17 (b) All officers and employees of the authority are in the exempt service under
18 AS 39.25.110.

19 (c) In addition to its staff and employees under this chapter, the board of
20 directors may contract for and engage the services of consultants and professional,
21 technical, and financial advisors the authority considers necessary for the purpose of
22 developing information, conducting hearings, studies, investigations, or other
23 proceedings, or otherwise exercising its powers.

24 **Sec. 19.55.050. Audit.** (a) The board of directors shall have the financial
25 records of the authority audited annually by an independent certified public
26 accountant.

27 (b) The authority shall make all of its financial records available for
28 examination by the legislative auditor or by an auditor appointed by the governor.

29 **Article 2. Powers and Duties.**

30 **Sec. 19.55.110. Powers of authority.** (a) In addition to other powers granted
31 in this chapter, the authority may

- 1 (1) sue and be sued;
- 2 (2) adopt and alter an official seal;
- 3 (3) adopt and enforce policies for the conduct of its business and for
- 4 the use of its services and facilities;
- 5 (4) maintain offices at a place in the state and at places out of the state
- 6 that are served by the Alaska marine highway system;
- 7 (5) establish terms and conditions of employment by the authority and
- 8 conduct or designate a representative to conduct labor negotiations with employees;
- 9 (6) subject to appropriation by the legislature, acquire, hold, use, and
- 10 dispose of its income, revenues, funds, and money;
- 11 (7) acquire, hold, use, lease, rent, construct, and dispose of personal
- 12 property for its purposes, except that the authority may dispose of a ferry only on
- 13 approval by the legislature by law;
- 14 (8) acquire, hold, use, lease, or rent real property and dispose of real
- 15 property under AS 19.55.210 - 19.55.230;
- 16 (9) modify scheduled routes after public hearings;
- 17 (10) do all acts and things necessary, convenient, or desirable to carry
- 18 out the powers expressly granted or necessarily implied in this chapter.

19 (b) The authority may participate at any stage in any transportation planning
20 process undertaken by the Department of Transportation and Public Facilities that
21 relates to marine transportation. The authority may designate representatives to
22 participate as full members of any transportation planning committee, working group,
23 planning team, rating panel, or similar organization established by the department or
24 required for state participation in federal transportation programs. The department
25 shall include the authority as a full participant in the departmental transportation
26 planning process, including the statewide transportation plan and the statewide
27 transportation improvement program.

28 **Sec. 19.55.120. Duties of authority.** The authority shall

- 29 (1) operate, maintain, improve, and extend a system of ferries
- 30 connecting with the public roads and highways of the state and including the boats,
- 31 vessels, wharves, docks, approaches, landings, and appurtenances the authority

1 determines necessary or desirable for safe and efficient operation of the ferry system
2 to best serve the public;

3 (2) assist the residents, businesses, and communities of the state in
4 obtaining optimal marine passenger and freight service;

5 (3) schedule vessel sailings to optimize the frequency of service to all
6 ports;

7 (4) encourage and integrate with other public and private carriers to the
8 greatest extent possible to provide ferry service within the state and between Alaska
9 ports and ports outside the state in order to provide optimum service within the state;

10 (5) provide reservation access and marketing information throughout
11 the state;

12 (6) encourage vessel construction, maintenance, and service in the
13 state to the greatest extent possible;

14 (7) employ residents of the state to the greatest extent legally possible;

15 (8) recognize Alaska unions and employee associations to the greatest
16 extent legally possible.

17 **Sec. 19.55.130. Use of name authorized.** The authority is authorized to
18 operate a ferry system under the name "Alaska Marine Highway System."

19 **Sec. 19.55.140. Comprehensive long-range plan.** The authority, with the
20 cooperation of the Department of Transportation and Public Facilities, shall prepare a
21 comprehensive long-range plan for the development and improvement of the Alaska
22 marine highway system. The authority shall revise and update the comprehensive plan
23 at least every five years. The authority shall submit the comprehensive plan and
24 revisions and updates of the plan to the legislature.

25 **Sec. 19.55.150. Transportation of members of the Alaska organized**
26 **militia.** To the extent that space is available, the authority shall provide free
27 transportation on vessels of the Alaska marine highway system for a member of the
28 Alaska National Guard, the Alaska Naval Militia, or the Alaska State Defense Force
29 who is en route to or from drill, training, or other official militia activities.

30 **Article 3. Acquisition and Management of Property.**

31 **Sec. 19.55.210. Acquisition of land and easements.** The authority, as part of

1 the cost of constructing, maintaining, or improving the Alaska marine highway system
2 may acquire by purchase, gift, or exchange land in fee simple or easements that it
3 considers necessary and reasonable for either temporary or permanent public use. By
4 the same means, the authority may obtain material, including clay, gravel, sand, or
5 rock, or the land necessary to obtain the material, including access to it. The authority
6 may acquire the land or materials notwithstanding the fact that title to the land or
7 materials is vested in the state or a department, agency, commission, or institution of
8 the state.

9 **Sec. 19.55.220. Authority to purchase property for the purpose of**
10 **exchange.** When the directors of the authority declare that it is in the interest of the
11 state, the authority may acquire by purchase, gift, or exchange privately or publicly
12 owned land or an interest in land for the purpose of exchanging the land for privately
13 or publicly owned land that the authority is authorized by law to acquire for use by the
14 Alaska marine highway system or by the authority.

15 **Sec. 19.55.230. Disposal of land or rights in land.** (a) The authority may
16 vacate land or rights in land acquired for the Alaska marine highway system by
17 executing and filing a deed in the appropriate recording district. Upon vacating, title
18 reverts to the persons, heirs, successors, or assigns in whom it was vested at the time
19 of the taking.

20 (b) The authority may transfer land, not considered necessary for use by the
21 Alaska marine highway system to the Department of Natural Resources for disposal.
22 The proceeds of disposal by the Department of Natural Resources shall be credited to
23 the funds from which the purchase of the land was originally made.

24 **Article 4. Vessels and Ferry Terminal Facilities.**

25 **Sec. 19.55.310. Ferry terminal facilities.** (a) The authority may construct,
26 purchase, or lease ferry terminal facilities at locations the authority selects for the
27 loading and unloading of passengers and vehicles under their own power, on and off
28 ferries. The authority shall repair and maintain those facilities that it owns.
29 Construction and purchasing under this section are governed by AS 36.30 (State
30 Procurement Code), except as otherwise provided by law.

31 (b) The authority may connect ferry terminal facilities with local highway

1 systems.

2 (c) The authority may adopt regulations governing the use of ferry terminal
3 facilities by the public that the authority considers necessary and proper in the public
4 interest. The authority may charge a fee for the use of ferry terminal facilities,
5 whether the use is under a permit or otherwise, and whether the use is by one or more
6 individuals.

7 **Sec. 29.55.320. Naming of vessel or facility.** (a) A vessel or facility
8 constructed or acquired by the authority under this chapter must be named by law.

9 (b) A maritime vessel must bear the name of an Alaska glacier.

10 (c) A vessel used principally on the inland waterways of the state must bear
11 the name of a historical vessel that used the rivers of the state.

12 **Sec. 19.55.330. Annual report.** By the 10th day of each regular legislative
13 session, the board of directors of the authority shall submit to the governor and the
14 legislature a comprehensive report describing the operations, income, and
15 expenditures for the Alaska marine highway system for the preceding fiscal year.

16 **Article 5. General Provisions.**

17 **Sec. 19.55.910. Budget and appropriations.** The authority shall submit an
18 annual budget for the authority to the legislature through the governor as provided for
19 state agencies by AS 37.07 (Executive Budget Act). The authority shall expend
20 money appropriated by the legislature as authorized by the legislature.

21 **Sec. 19.55.990. Definitions.** In this chapter, unless the context requires
22 otherwise,

23 (1) "authority" means the Alaska Marine Highway Authority;

24 (2) "ferry" means a vessel used in the common carriage of passengers
25 and vehicles in intrastate, interstate, or international commerce.

26 **Sec. 19.55.995. Short title.** This chapter may be cited as the Alaska Marine
27 Highway Authority Act.

28 * **Sec. 3.** AS 03.53.010(a) is amended to read:

29 (a) An animal may not be transported into the state aboard a ferry operated by
30 the Alaska Marine Highway Authority [DIVISION OF MARINE
31 TRANSPORTATION OF THE DEPARTMENT OF TRANSPORTATION AND

1 PUBLIC FACILITIES] unless the animal's owner, custodian, or attendant possesses a
2 valid health certificate for the animal. This certificate shall accompany the animal or
3 be in the possession of the animal's owner, custodian, or attendant aboard the ferry and
4 shall be presented when requested by an employee of the state ferry system at the time
5 the owner, custodian, or attendant makes arrangements to transport the animal, boards
6 the ferry with the animal, or at any other time.

7 * Sec. 4. AS 19.65.050(b) is amended to read:

8 (b) It is the purpose of AS 19.65.050 - 19.65.100 to

9 (1) enable the Alaska Marine Highway Authority [ALASKA
10 MARINE HIGHWAY SYSTEM] to manage and operate the Alaska marine
11 highway system in a manner that will enhance performance and accountability by
12 allowing the system to account for and spend its generated revenue;

13 (2) provide the management tools necessary to efficiently operate the
14 Alaska marine highway system;

15 (3) within constitutional constraints, provide for a predictable funding
16 base for system operations; and

17 (4) provide for predictability and stability in the service level furnished
18 to communities served by the system.

19 * Sec. 5. AS 19.65.050(c) is amended to read:

20 (c) It is the intent of AS 19.65.050 - 19.65.100 to

21 (1) encourage prudent administration through cost management and
22 accurate budgeting by the board of directors [MANAGERS] of the authority
23 [ALASKA MARINE HIGHWAY SYSTEM];

24 (2) increase revenue from the operation of the system consistent with
25 the public interest, increase service consistent with sound fiscal policy, and assist the
26 prudent management and operation of the system; and

27 (3) achieve stability in the level of service communities can anticipate
28 through accurate planning and scheduling.

29 * Sec. 6. AS 19.65.060 is amended to read:

30 **Sec. 19.65.060. Alaska marine highway system fund.** (a) There is created,
31 as a special account in the general fund, the Alaska marine highway system fund, into

1 which shall be deposited

2 (1) the gross revenue of the Alaska marine highway system;

3 (2) money that is appropriated to the [ALASKA MARINE
4 HIGHWAY SYSTEM] fund by the legislature in an amount that is consistent from
5 year to year and is the amount necessary, after consideration of gross revenue, to
6 provide stable services to the public consistent with the provisions of
7 AS 19.65.050(b)(4); unless otherwise provided by the legislature, appropriations
8 to the fund under this paragraph [, WHICH APPROPRIATIONS] are not one-year
9 appropriations and [THE BALANCES OF WHICH] do not lapse under AS 37.25.010;
10 and

11 (3) any other money that is appropriated to the [ALASKA MARINE
12 HIGHWAY SYSTEM] fund by the legislature; unless otherwise provided by the
13 legislature, appropriations to the fund under this paragraph [, WHICH
14 APPROPRIATIONS] are not one-year appropriations and [THE BALANCES OF
15 WHICH] do not lapse under AS 37.25.010.

16 (b) Nothing in AS 19.65.050 - 19.65.100 [THIS CHAPTER] exempts money
17 deposited into the [ALASKA MARINE HIGHWAY SYSTEM] fund from the
18 requirements of AS 37.07 (Executive Budget Act) or dedicates that money for a
19 specific purpose.

20 * Sec. 7. AS 19.65.070(a) is amended to read:

21 (a) The authority [ALASKA MARINE HIGHWAY SYSTEM] shall account
22 for and remit to the Department of Revenue in accordance with AS 37.10.050 all gross
23 revenue generated from the operation of the Alaska marine highway system during
24 each fiscal year [ANNUAL OPERATING CYCLE]. The money shall then be
25 deposited in the Alaska marine highway system fund.

26 * Sec. 8. AS 19.65.070(b) is amended to read:

27 (b) The authority [ALASKA MARINE HIGHWAY SYSTEM] shall prepare
28 a written report, not [NO] later than the 10th day of each regular legislative session,
29 regarding the revenues of the Alaska marine highway system [PREVIOUS
30 ANNUAL OPERATING CYCLE] and notify the legislature that the report is
31 available. The report must identify

1 (1) gross revenue generated during the previous fiscal year [ANNUAL
2 OPERATING CYCLE];

3 (2) gross revenue generated during the current fiscal year [ANNUAL
4 OPERATING CYCLE] and an estimate of gross revenue for the remainder of the
5 current fiscal year [ANNUAL OPERATING CYCLE];

6 (3) projections of the gross revenue to be generated during the next
7 fiscal year [ANNUAL OPERATING CYCLE]; and

8 (4) the difference between previous gross revenue estimates prepared
9 under this section and the revenues actually generated.

10 * Sec. 9. AS 19.65.080 is amended to read:

11 **Sec. 19.65.080. Annual appropriation.** (a) Commencing with
12 appropriations for the fiscal year that begins July 1, 1991, on an annual basis and
13 under AS 37.07 (Executive Budget Act), the legislature may appropriate amounts from
14 the [ALASKA MARINE HIGHWAY SYSTEM] fund for management and
15 operation of [TO] the Alaska marine highway system.

16 (b) The authority [DEPARTMENT OF TRANSPORTATION AND PUBLIC
17 FACILITIES] may request the legislature to appropriate money from the [ALASKA
18 MARINE HIGHWAY SYSTEM] fund to the authority [MARINE HIGHWAY
19 SYSTEM] for capital improvements to the Alaska marine highway system [,] if

20 (1) the appropriation under (a) of this section has been made;

21 (2) the amount in the fund, without regard to the appropriation under
22 (a) of this section, exceeds the total of gross revenue deposited in the fund and the
23 general fund appropriations under AS 19.65.060(a)(2) by 10 percent; and

24 (3) the amount requested for appropriation under this subsection does
25 not exceed 50 percent of the balance remaining after the appropriation for annual
26 management and operations is made under (a) of this section.

27 (c) The unexpended and unobligated balance of money appropriated from the
28 [ALASKA MARINE HIGHWAY SYSTEM] fund lapses into the [ALASKA
29 MARINE HIGHWAY SYSTEM] fund at the end of the fiscal year for which it was
30 appropriated.

31 * Sec. 10. AS 19.65.100 is amended to read:

1 **Sec. 19.65.100. Definitions.** In AS 19.65.050 - 19.65.100,

2 (1) "authority" means the Alaska Marine Highway Authority
3 ["ANNUAL OPERATING CYCLE" MEANS THE ANNUAL STATE FISCAL
4 YEAR BEGINNING ON JULY 1 AND ENDING AT MIDNIGHT ON THE
5 FOLLOWING JUNE 30];

6 (2) "fiscal year" has the meaning given in AS 37.07.120;

7 (3) "fund" means the Alaska marine highway system fund;

8 (4) "gross revenue" means all money, except money refunded to ticket
9 holders and others for unused services, that is generated from the operation of the
10 Alaska marine highway system, including that derived from vessel operations and uses
11 of Alaska marine highway system facilities.

12 * **Sec. 11.** AS 23.40.040 is amended to read:

13 **Sec. 23.40.040. Collective bargaining agreement.** The Alaska Marine
14 Highway Authority [COMMISSIONER OF TRANSPORTATION AND PUBLIC
15 FACILITIES] or an authorized representative, in accordance with AS 23.40.020 -
16 23.40.030, may negotiate and enter into collective bargaining agreements concerning
17 wages, hours, working conditions, and other employment benefits with the employees
18 of the authority [DIVISION OF MARINE TRANSPORTATION] engaged in
19 operating the Alaska marine highway [STATE FERRY] system as masters or
20 members of the crews of vessels or their bargaining agent. [A COLLECTIVE
21 BARGAINING AGREEMENT IS NOT FINAL WITHOUT THE CONCURRENCE
22 OF THE COMMISSIONER OF TRANSPORTATION AND PUBLIC FACILITIES.]
23 The authority [COMMISSIONER OF TRANSPORTATION AND PUBLIC
24 FACILITIES] may make provision in the collective bargaining agreement for the
25 settlement of labor disputes by arbitration.

26 * **Sec. 12.** AS 29.45.030(a) is amended to read:

27 (a) The following property is exempt from general taxation:

28 (1) municipal property, including property held by a public corporation
29 of a municipality, state property, property of the University of Alaska, property of the
30 marine highway transportation fund, or land that is in the trust established by the
31 Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, except that

1 (A) a private leasehold, contract, or other interest in the
2 property is taxable to the extent of the interest; however, an interest created by
3 a nonexclusive use agreement between the Alaska Industrial Development and
4 Export Authority and a user of an integrated transportation and port facility
5 owned by the authority and initially placed in service before January 1, 1999,
6 is taxable only to the extent of, and for the value associated with, those specific
7 improvements used for lodging purposes;

8 (B) notwithstanding any other provision of law, property
9 acquired by an agency, corporation, or other entity of the state through
10 foreclosure or deed in lieu of foreclosure and retained as an investment of a
11 state entity is taxable; this subparagraph does not apply to federal land granted
12 to the University of Alaska under AS 14.40.380 or 14.40.390, to other land
13 granted to the university by the state to replace land that had been granted
14 under AS 14.40.380 or 14.40.390, or to land conveyed by the state to the
15 university under AS 14.40.365, or to land conveyed by the state to the
16 marine highway transportation fund under AS 37.14.575;

17 (C) an ownership interest of a municipality in real property
18 located outside the municipality acquired after December 31, 1990, is taxable
19 by another municipality; however, a borough may not tax an interest in real
20 property located in the borough and owned by a city in that borough;

21 (2) household furniture and personal effects of members of a
22 household;

23 (3) property used exclusively for nonprofit religious, charitable,
24 cemetery, hospital, or educational purposes;

25 (4) property of a nonbusiness organization composed entirely of
26 persons with 90 days or more of active service in the armed forces of the United States
27 whose conditions of service and separation were other than dishonorable, or the
28 property of an auxiliary of that organization;

29 (5) money on deposit;

30 (6) the real property of certain residents of the state to the extent and
31 subject to the conditions provided in (e) of this section;

1 (7) real property or an interest in real property that is exempt from
2 taxation under 43 U.S.C. 1620(d), as amended;

3 (8) property of a political subdivision, agency, corporation, or other
4 entity of the United States to the extent required by federal law; except that a private
5 leasehold, contract, or other interest in the property is taxable to the extent of that
6 interest;

7 (9) natural resources in place including coal, ore bodies, mineral
8 deposits, and other proven and unproven deposits of valuable materials laid down by
9 natural processes, unharvested aquatic plants and animals, and timber.

10 * Sec. 13. AS 35.10.015(c) is amended to read:

11 (c) In this section, "public facilities" includes vessels owned by the state and
12 operated by the Alaska Marine Highway Authority [DIVISION OF MARINE
13 TRANSPORTATION OF THE DEPARTMENT AS A PART OF THE ALASKA
14 MARINE HIGHWAY SYSTEM]. All ferries owned or operated by the state shall be
15 equipped with elevators or other passenger lifting equipment, ramps, or other facilities
16 and devices to ensure that these vessels are accessible to and usable by physically
17 handicapped, aged, or infirm passengers. In this subsection, "accessible to and usable
18 by" means that a physically handicapped, aged, or infirm passenger can board,
19 disembark, and move between decks and about the public areas aboard a state ferry
20 with personal comfort and safety, and with safety to, other passengers and members of
21 the crew.

22 * Sec. 14. AS 35.10.015(d) is amended to read:

23 (d) A [AFTER JUNE 25, 1976, A] ferry may not be constructed, lengthened,
24 completely renovated, or purchased for use or entered into service by the Alaska
25 Marine Highway Authority [DIVISION OF MARINE TRANSPORTATION OF
26 THE DEPARTMENT AS A PART OF THE ALASKA MARINE HIGHWAY
27 SYSTEM] that does not include adequate facilities and devices to ensure that the
28 vessel is accessible to and usable by physically handicapped, aged, or infirm
29 passengers. Some staterooms and all restrooms, indoor passageways, outdoor weather
30 decks, and other public areas aboard the vessel shall be so designed and constructed as
31 to permit access and use by physically handicapped, aged, or infirm passengers,

1 including [BUT NOT LIMITED TO] those persons occupying a wheelchair.

2 * **Sec. 15.** AS 35.27.020(c) is amended to read:

3 (c) At least one percent or, in the case of a rural school facility, at least one-
4 half of one percent of the construction cost of a building or facility approved for
5 construction by the legislature after September 1, 1977, will be reserved for the
6 following purposes: the design, construction, mounting, and administration of works
7 of art in a school, office building, court building, [VESSEL OF THE MARINE
8 HIGHWAY SYSTEM,] or other building or facility that [WHICH] is subject to
9 substantial public use.

10 * **Sec. 16.** AS 35.27 is amended by adding a new section to read:

11 **Sec. 35.27.025. Application to Alaska Marine Highway Authority.** This
12 chapter applies to the Alaska Marine Highway Authority. Compliance with this
13 chapter is the sole responsibility of the authority with respect to the buildings and
14 facilities of the authority, including the Alaska marine highway system.

15 * **Sec. 17.** AS 35.27.030(1) is amended to read:

16 (1) "building" or "facility" means a permanent improvement
17 constructed by the department or authority; the term

18 (A) includes, but is not limited to,

19 (i) schools, office buildings, and court buildings;

20 (ii) other buildings that [WHICH] the commissioner
21 determines are designed for substantial public use;

22 (iii) [BOATS AND VESSELS OF THE MARINE
23 HIGHWAY SYSTEM;

24 (iv)] transportation facilities that [WHICH]
25 accommodate traveling passengers;

26 (B) excludes

27 (i) boats and vessels of the Alaska marine highway
28 system; and

29 (ii) other transportation facilities;

30 * **Sec. 18.** AS 35.27.030 is amended by adding a new paragraph to read:

31 (4) "authority" means the Alaska Marine Highway Authority.

1 * **Sec. 19.** AS 36.30.015(g) is amended to read:

2 (g) The Alaska Marine Highway Authority [DEPARTMENT OF
3 TRANSPORTATION AND PUBLIC FACILITIES] shall adopt regulations to manage
4 the procurement of supplies, services, professional services, and construction for the
5 repair, maintenance, and reconstruction of vessels, docking facilities, and passenger
6 and vehicle transfer facilities of the Alaska marine highway system. The regulations
7 must be based on principles of competitive procurement consistent with this chapter to
8 satisfy the special requirements of the Alaska marine highway system as determined
9 by the Alaska Marine Highway Authority [DEPARTMENT OF
10 TRANSPORTATION AND PUBLIC FACILITIES].

11 * **Sec. 20.** AS 36.30.850(b)(29) is amended to read:

12 (29) construction of new vessels by the Alaska Marine Highway
13 Authority [DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES]
14 for the Alaska marine highway system;

15 * **Sec. 21.** AS 36.30.990(1) is amended to read:

16 (1) "agency"

17 (A) means a department, institution, board, commission,
18 division, authority, public corporation, the Alaska Pioneers' Home, or other
19 administrative unit of the executive branch of state government;

20 (B) does not include

21 (i) the University of Alaska;

22 (ii) the Alaska Railroad Corporation;

23 (iii) the Alaska Housing Finance Corporation;

24 (iv) a regional Native housing authority created under
25 AS 18.55.996 or a regional electrical authority created under
26 AS 18.57.020;

27 (v) the Alaska Marine Highway Authority
28 [DEPARTMENT OF TRANSPORTATION AND PUBLIC
29 FACILITIES], in regard to the repair, maintenance, and reconstruction
30 of vessels, docking facilities, and passenger and vehicle transfer
31 facilities of the Alaska marine highway system;

1 (vi) the Alaska Aerospace Development Corporation;

2 (vii) the Alaska State Pension Investment Board;

3 (viii) the Alaska Seafood Marketing Institute;

4 * Sec. 22. AS 36.90.049(e)(1) is amended to read:

5 (1) "commissioner of the department that operates the marine vessel"
6 includes

7 (A.) the president of the University of Alaska with regard to a
8 vessel operated by the university; and

9 (B) the chief executive officer of the Alaska marine highway
10 system with regard to a vessel operated by the Alaska Marine Highway

11 Authority;

12 * Sec. 23. AS 37.05.550(a) is amended to read:

13 (a) There is in the general fund the Alaska marine highway system vessel
14 replacement fund. The fund consists of money appropriated to it by the legislature.
15 Money appropriated to the fund does not lapse. The Department of Revenue shall
16 manage the fund. Interest received on money in the fund shall be accounted for
17 separately and may be appropriated into the fund annually. The legislature may
18 appropriate money from the fund to the Alaska Marine Highway Authority for
19 refurbishment of existing state ferry vessels, acquisition of additional state ferry
20 vessels, or replacement of retired or outmoded state ferry vessels.

21 * Sec. 24. AS 37.07.120(1) is amended to read:

22 (1) "agency" means a department, officer, institution, board,
23 commission, bureau, division, or other administrative unit forming the state
24 government and includes the Alaska Marine Highway Authority, Alaska Pioneers'
25 Home, and the University of Alaska, but does not include the legislature or the
26 judiciary;

27 * Sec. 25. AS 37.14 is amended by adding new sections to read:

28 **Article 6A. Marine Highway Transportation Fund.**

29 **Sec. 37.14.550. Marine highway transportation fund established. (a)**

30 Under the authority of the Constitution of the State of Alaska, the marine highway
31 transportation fund is established as a separate and dedicated fund of the state.

1 (b) The principal of the fund consists of

2 (1) legislative appropriations to the fund;

3 (2) gifts, bequests, and contributions of cash or other assets from a
4 person; and

5 (3) land conveyed to the fund under AS 37.14.575.

6 (c) The net income of the fund shall be determined by the commissioner of
7 revenue in accordance with investment accounting principles and in a manner that
8 preserves the distinction between principal and income.

9 **Sec. 37.14.555. Powers and duties of the commissioner of revenue.** The
10 commissioner of revenue is the treasurer of the fund and has the power and duty to

11 (1) act as official custodian of the cash and investments belonging to
12 the fund by securing adequate and safe custodial facilities;

13 (2) receive all items of cash and investments belonging to the fund;

14 (3) collect the principal and income from investments owned or
15 acquired by the fund and deposit the amounts in separate principal and income
16 accounts for the fund;

17 (4) invest and reinvest the assets of the fund as provided in this section
18 and as provided for the investment of funds under AS 37.14.170;

19 (5) exercise the powers of an owner with respect to the assets of the
20 fund;

21 (6) maintain accounting records of the fund in accordance with
22 investment accounting principles and with distinction between the principal and
23 income accounts of the fund;

24 (7) engage an independent firm of certified public accountants to
25 annually audit the financial condition of the fund's investments and investment
26 transactions;

27 (8) enter into and enforce contracts or agreements considered
28 necessary for the investment purposes of the fund;

29 (9) report to the board the condition and investment performance of the
30 fund;

31 (10) do all acts, whether or not expressly authorized, that the

1 commissioner of revenue considers necessary or proper in administering the assets of
2 the fund.

3 **Sec. 37.14.560. Administration of the fund; fund board established.** (a)

4 The fund shall be administered by the Marine Highway Transportation Fund Board.

5 (b) The Marine Highway Transportation Fund Board is established in the
6 Department of Transportation and Public Facilities. The board is composed of

7 (1) the governor or a designee of the governor;

8 (2) a member of the board of directors of the Alaska Marine Highway
9 Authority;

10 (3) the commissioner of natural resources or the commissioner's
11 designee;

12 (4) the commissioner of transportation and public facilities or the
13 commissioner's designee; and

14 (5) four public members appointed by the governor; in appointing the
15 public members, the governor shall give a preference to persons who have experience
16 and expertise in

17 (A) marine transportation; or

18 (B) private sector resource development.

19 **Sec. 37.14.565. Powers and duties of the board.** When acting as
20 administrator of the fund, the board shall

21 (1) hold regular and special meetings it considers necessary; the board
22 may hold meetings by teleconference;

23 (2) have the care, control, and management of land selected by and
24 conveyed to the fund by the commissioner of natural resources under AS 37.14.575;

25 (3) keep audio tape recordings of each meeting of the board to be made
26 available on request; and

27 (4) submit to the governor and make available to the legislature by
28 February 1 each year a report describing

29 (A) expenditures made during the preceding fiscal year from
30 the fund that are derived from sales, leases, exchanges, or transfers of the land
31 of the fund or of interests in land of the fund that were selected by and

1 conveyed to the fund under AS 37.14.575; and

2 (B) the annual level of contributions to, income of, and
3 expenses of the fund.

4 **Sec. 37.14.570. Uses of fund principal and net income.** (a) The principal of
5 the fund shall be retained perpetually in the fund for investment as specified in
6 AS 37.14.535.

7 (b) The net income of the fund may be annually appropriated by the
8 legislature only for the support of marine highway transportation systems and for
9 support of the Alaska Marine Highway Authority.

10 **Sec. 37.14.575. Fund and from Statehood Act land selection conveyances.**

11 (a) The board may select and is entitled to receive the conveyance of 500,000 acres of
12 land conveyed to the state under Sec. 6(b) of the Alaska Statehood Act (P.L. 85-508,
13 72 Stat. 339). The board shall annually submit a list of selections to the commissioner
14 of natural resources. If there is disagreement between the board and the commissioner
15 of natural resources about the land selected, the disagreement must be submitted to the
16 governor, who shall make the final decision. The board and the governor shall
17 annually and jointly submit to the legislature, within 30 days of the beginning of a
18 regular legislative session, a list of the selections of land proposed to be conveyed to
19 the fund under this section. Each list must contain not more than 25 percent of the
20 total acres of land to which the fund is entitled after subtracting previous conveyances
21 under this section, but not less than 25,000 acres or the remaining entitlement under
22 this section, whichever is less. The legislature may by law approve or disapprove the
23 list of selections submitted to it. A list of selections submitted shall be considered
24 approved for conveyance to the fund if the legislature does not disapprove the list
25 during the legislative session during which the list was submitted. If the amount of
26 land to be conveyed exceeds the balance due the fund under this section, the fund shall
27 set out the land to be conveyed in priority order. Land may not be selected if, on the
28 date of its selection by the board, it

29 (1) has been reserved by law from the public domain;

30 (2) is land

31 (A) included in a five-year proposed oil and gas leasing

1 program under AS 38.05.180(b); or

2 (B) leased under, or for which a lease application is pending
3 under, AS 38.05.180(d) or 38.05.150;

4 (3) is subject to

5 (A) an oil, gas, or coal lease, or coal prospecting permit;

6 (B) a mining claim, offshore prospecting permit, a prospecting
7 site, an upland mining lease, or a mining leasehold location;

8 (4) is necessary to carry out the purpose of an interagency land
9 management agreement; or

10 (5) is subject to conveyance under a land exchange or land settlement
11 agreement.

12 (b) Notwithstanding AS 38.05.125(a), the transfer of ownership and
13 management of land from the Department of Natural Resources to the fund under this
14 section includes the interest of the state in

15 (1) the coal, ores, minerals, fissionable materials, geothermal
16 resources, and fossils that may be in or on the land; and

17 (2) the oil and gas that may be in or on the land, but only as to land
18 that is selected by the board under this section on and after the date that is the fifth
19 anniversary of the effective date of this section.

20 (c) When the board selects the land to which it is entitled under this section,
21 selections must be made in parcels of 640 acres or larger unless the selection is an
22 isolated tract or the commissioner of natural resources finds it is in the best interest of
23 the state to convey less. When the fund becomes entitled to land under this section,
24 the commissioner of natural resources shall convey a document of interim conveyance
25 under (j) of this section or a patent to land.

26 (d) Notwithstanding any other provision of law, for land selected under (a) of
27 this section but not yet patented to the fund or for which a document of interim
28 conveyance has not been issued to the fund under this section,

29 (1) the commissioner of natural resources is authorized to enter into
30 contracts and grant leases, licenses, prospecting sites, claims, permits, rights-of-way,
31 or easements and any interim conveyance or patent shall be subject to the contract,

1 lease, license, prospecting site, claim, permit, right-of-way, or easement, except that
2 the authority granted the commissioner by this subsection

3 (A) is the authority that the commissioner otherwise would
4 have had under existing laws and regulations had the land not been selected by
5 the fund; and

6 (B) may be exercised only if the fund has concurred before the
7 action is taken by the commissioner;

8 (2) income from and management of the land is subject to
9 AS 37.14.590.

10 (e) Unless the governor provides otherwise under (a) of this section, the
11 governor may not include on a list of selections of land submitted to the legislature a
12 land selection made by the fund under this section if the commissioner of natural
13 resources determines that the proposed selection

14 (1) includes land for which, at the time of its selection under this
15 section,

16 (A) a municipality has made a selection under AS 29.65 unless
17 the land selection is, at a later date, rejected by the commissioner of natural
18 resources or relinquished by the municipality; or

19 (B) the commissioner reasonably believes the land may be
20 selected by a municipality under AS 29.65, but the commissioner may not
21 withhold under this subparagraph the conveyance of title to land selected by
22 the fund longer than three years after the date of the municipality's
23 incorporation; or

24 (2) includes land that, at the time of its selection under this section,

25 (A) is subject to an oil and gas exploration license; or

26 (B) the commissioner reasonably believes will be made part of
27 an oil and gas exploration license issued under AS 38.05.131 - 38.05.134; the
28 commissioner may not refuse to convey title to land to the fund under this
29 subparagraph for more than three years after its first selection by the fund.

30 (f) When land is conveyed to the fund under this section, the fund takes the
31 land subject to any possessory interest held by another person on the effective date of

1 the conveyance.

2 (g) In conveying land to the fund under this section, the commissioner of
3 natural resources shall give public notice that substantially complies with notice
4 requirements under AS 38.05.945(b) and (c) and provide for access under
5 AS 38.05.127, but other provisions of AS 38.04 and AS 38.05 do not apply.

6 (h) Land transferred or conveyed to the fund under this section

7 (1) is subject to

8 (A) Sec. 6(i) of the Alaska Statehood Act (P.L. 85-508, 72 Stat.
9 339);

10 (B) art. IX of the state constitution;

11 (C) AS 19.10.010;

12 (D) the payment requirements to the Alaska permanent fund
13 under AS 37.13.010(a) and (b); and

14 (E) the rights of the state under former 43 U.S.C. 932 (sec. 8,
15 Act of July 26, 1866, 14 Stat. 253);

16 (2) excludes any interest transferred to the state by quitclaim deed
17 dated June 30, 1959, under authority of the Alaska Omnibus Act, P.L. 86-70, 73 Stat.
18 141;

19 (3) based on a land selection filed by the fund on or after the effective
20 date of this section and until the day before the day that is the fifth anniversary of the
21 effective date of this section, is subject to reservation by the Department of Natural
22 Resources in perpetuity of all oil and gas that may be in or on the land, together with
23 the right to explore the land for oil and gas and to remove from the land all oil and gas
24 located in and on it.

25 (i) The fund shall bear all costs of selection, platting, surveying, and, except as
26 provided in (k) of this section, conveyance of the land that it selects under this section
27 and, subject to appropriation, shall reimburse the Department of Natural Resources for
28 the reasonable costs incurred by that department relating to that selection, platting,
29 surveying, and conveyance. As to land due the fund under (c) of this section,

30 (1) if the land has been surveyed, the boundaries of the land conveyed
31 must conform to the public land subdivisions established by the approved survey;

1 (2) if the land is unsurveyed, the commissioner shall survey the
2 exterior boundaries of the land to be conveyed without interior subdivision and shall
3 issue patent in terms of the exterior boundary survey within one year of the later of the
4 effective date of the approval by the legislature of the list containing the land or the
5 adjournment of the legislative session during which the list containing the land was
6 not disapproved by the legislature.

7 (j) For land due the fund under (c) of this section that is unsurveyed, pending
8 the survey of exterior boundaries and issuance of patent, the commissioner of natural
9 resources shall, within one year of the later of the effective date of the approval by the
10 legislature of the list containing the land or the adjournment of the legislative session
11 during which the list containing the land was not disapproved by the legislature,
12 prepare and provide to the fund a document of interim conveyance for the land to be
13 conveyed.

14 (k) Except as provided in AS 37.14.590(2), management of land conveyed to
15 the fund by patent or by a document of interim conveyance vests with the fund from
16 the date of recording of the patent or document of interim conveyance. The
17 Department of Natural Resources shall pay the cost of recording all patents and
18 documents of interim conveyance.

19 (l) The board may not make a land selection under this section after
20 December 31, 2012.

21 **Sec. 37.14.580. Management and disposition of land.** (a) The board shall,
22 by policy, establish procedures for mineral entry or location and mineral leasing on
23 land selections made under AS 37.14.575 that are substantially similar to mineral
24 entry, location, and leasing procedures for state land under AS 38.05.185 - 38.05.275.

25 (b) Notwithstanding other provisions of law, the board shall seek public
26 comment on proposals for development, exchange, or sale of land selections made
27 under AS 37.14.575. The board shall adopt policies that provide that the fund shall
28 prepare an annual plan for management and disposition of fund land under this section
29 and shall, not less than 60 days before scheduled approval by the board of the plan,

30 (1) make copies of the plan available at all legislative information
31 offices and at other locations as the board may designate;

1 (2) publish a notice in newspapers of general circulation in the state
2 that provides the public with information on the locations where the plan is available
3 for public inspection;

4 (3) give notice to all legislators and to local governments with
5 jurisdiction over the land affected by the proposal; and

6 (4) seek public comment on the annual plan before action by the board
7 approving the plan.

8 **Sec. 37.14.585. Confidential records.** Notwithstanding AS 40.25.110 -
9 40.25.125 and 40.25.220, on a determination that it is in the best interest of the fund or
10 on the request of the person who has provided the information, the board may keep the
11 following confidential:

12 (1) the name of a person applying for the sale, lease, or other disposal
13 of land or an interest in land conveyed to the fund under AS 37.14.575;

14 (2) before the announced time of opening of an offer to purchase,
15 lease, or obtain a disposal of land conveyed to the fund under AS 37.14.575, the
16 names of the participants and the terms of their offers;

17 (3) all geological, geophysical, engineering, architectural, sales,
18 appraisal, gross receipts, net receipts, or other financial information relating to land or
19 an interest in land conveyed to the fund under AS 37.14.575 and considered for or
20 offered for disposal or currently subject to a contract;

21 (4) cost data and financial information submitted by an applicant in
22 support of applications for bonds, leases, or other information in offerings and
23 ongoing operations relating to management of land conveyed to the fund under
24 AS 37.14.575;

25 (5) applications for rights-of-way or easements across land conveyed
26 to the fund under AS 37.14.575; and

27 (6) requests for information about or applications by public agencies
28 for land conveyed to the fund under AS 37.14.575 that is being considered for use for
29 a public purpose.

30 **Sec. 37.14.590. Land subject to encumbrances and trespasses.** Except as
31 provided in AS 37.14.575(b) and subject to art. IX, sec. 15, Constitution of the State

1 of Alaska, for the land selected by the board under AS 37.14.575 that is subject to a
2 lease, license, contract, prospecting site, claim, sale, permit, right-of-way, or easement,
3 or to trespass,

4 (1) if the lease, license, contract, prospecting site, claim, sale, permit,
5 right-of-way, easement, or trespass

6 (A) existed before the selection of the land by the board, the
7 state is entitled to receive the income obtained from the lease, license, contract,
8 prospecting site, claim, sale, permit, right-of-way, easement, or trespass for the
9 duration of the term of the lease, license, contract, prospecting site, claim, sale,
10 permit, right-of-way, or easement, or of the trespass, and during any renewal
11 of it that is authorized by the lease, license, contract, prospecting site, claim,
12 sale permit, right-of-way, or easement, or by law;

13 (B) did not exist before the selection of the land by the board,

14 (i) the state is entitled to receive the income obtained
15 from the lease, license, contract, prospecting site, claim, sale, permit,
16 right-of-way, or easement, or from trespass before the recording of the
17 conveyance to the fund by the issuance of a document of interim
18 conveyance or a patent;

19 (ii) the fund is entitled to receive the income obtained
20 from the lease, license, contract, prospecting site, claim, sale, permit,
21 right-of-way, or easement, or from trespass on the date of and after the
22 recording of the conveyance to the fund by the issuance of a document
23 of interim conveyance or a patent;

24 (2) the responsibility for the management of the land vests with the
25 fund only upon conclusion of the term of the lease, license, contract, prospecting site,
26 claim, sale, permit, right-of-way, or easement, and any renewal authorized by the
27 lease, license, contract, prospecting site, claim, sale, permit, right-of-way, or easement,
28 or by law, if the lease, license, contract, prospecting site, claim, sale, permit, right-of-
29 way, or easement existed before the land's being selected by the board; if the lease,
30 license, contract, prospecting site, claim, sale, permit, right-of-way, or easement was
31 entered into after selection, then the responsibility for management vests with the fund

1 on the date of recording of the conveyance of the land to the fund by a document of
2 interim conveyance or patent.

3 **Sec. 37.14.595. Customary and traditional uses to be continued.** When
4 land selected by the fund under AS 37.14.575 has been conveyed to it, before
5 conveying or disposing of an interest in land to a third party, the fund shall manage the
6 land in a manner that permits customary and traditional uses of the resources of that
7 land to the maximum extent practicable.

8 **Sec. 37.14.599. Definitions.** In AS 37.14.550 - 37.14.599,

9 (1) "board" means the Marine Highway Transportation Fund Board;

10 (2) "fund" means the marine highway transportation fund established
11 in AS 37.14.550.

12 * **Sec. 26.** AS 39.20.310(8) is amended to read:

13 (8) persons employed [BY THE DIVISION OF MARINE
14 TRANSPORTATION] as masters and members of the crews operating the vessels of
15 the Alaska marine highway [STATE FERRY] system who are covered by collective
16 bargaining agreements as provided in AS 23.40.040, except as expressly provided by
17 law;

18 * **Sec. 27.** AS 39.25.110(11) is amended to read:

19 (11) the officers and employees of the following boards, commissions,
20 and authorities:

21 (A) [REPEALED

22 (B)] Alaska Permanent Fund Corporation;

23 ~~(B)~~ [(C)] Alaska Industrial Development and Export Authority;

24 ~~(C)~~ [(D)] Alaska Commercial Fisheries Entry Commission;

25 ~~(D)~~ [(E)] Alaska Commission on Postsecondary Education;

26 ~~(E)~~ [(F)] Alaska Aerospace Development Corporation;

27 (F) Alaska Marine Highway Authority;

28 * **Sec. 28.** AS 39.30.150(b) is amended to read:

29 (b) Employees of the Alaska Marine Highway Authority [DIVISION OF
30 MARINE TRANSPORTATION] included in the public employees' retirement system
31 through the process of collective bargaining under AS 39.35.680(21)(D) may, under

1 the terms of a collective bargaining agreement, utilize contributions made under (a) of
2 this section on their behalf to offset the costs of inclusion in the public employees'
3 retirement system; however,

4 (1) the state is placed under no obligation to continue making
5 contributions under this section if the state resumes participation in the federal social
6 security system;

7 (2) the bargaining agreement must provide a mechanism for satisfying
8 any residual liabilities that might exist if the state resumes participation in the federal
9 social security system; and

10 (3) funds contributed under (a) of this section on behalf of employees
11 who are not covered by maritime union contracts may not be obligated or expended to
12 pay any costs associated with the inclusion of Alaska marine highway system
13 [TRANSPORTATION] employees in the public employees' retirement system.

14 * Sec. 29. AS 39.35.680(21) is amended to read:

15 (21) "member" or "employee"

16 (A) means a person eligible to participate in the system and
17 who is covered by the system;

18 (B) includes

19 (i) an active member;

20 (ii) an inactive member;

21 (iii) a vested member;

22 (iv) a deferred vested member;

23 (v) a non-vested member;

24 (vi) a disabled member;

25 (vii) a retired member;

26 (viii) an elected public officer under AS 39.35.381;

27 (C) does not include

28 (i) former members;

29 (ii) persons compensated on a contractual or fee basis;

30 (iii) casual or emergency workers or nonpermanent

31 employees as defined in AS 39.25.200;

1 (iv) persons covered by the Alaska Teachers'
2 Retirement System except as provided under AS 39.35.131 and
3 39.35.381, or persons covered by the optional university retirement
4 program;

5 (v) employees of the Alaska Marine Highway
6 Authority [DIVISION OF MARINE TRANSPORTATION] engaged
7 in operating the Alaska marine highway [STATE FERRY] system
8 who are covered by a union or group retirement system to which the
9 state makes contributions;

10 (vi) justices of the supreme court or judges of the court
11 of appeals or of the superior or district courts of Alaska;

12 (vii) the administrative director of courts appointed
13 under art. IV, sec. 16 of the state constitution unless the director
14 becomes a member under AS 39.35.158;

15 (viii) members of the elected public officers' retirement
16 system (former AS 39.37); and

17 (ix) contractual employees of the legislative branch of
18 state government under AS 24.10.060(f);

19 (D) may include employees of the Alaska Marine Highway
20 Authority [DIVISION OF MARINE TRANSPORTATION] excluded under
21 (C)(v) of this paragraph provided that

22 (i) the State of Alaska formally agrees to their inclusion
23 through the process of collective bargaining; and

24 (ii) no collective bargaining agreement has the effect of
25 obligating contributions made by the state under AS 39.30.150 in the
26 event the state resumes participation in the federal social security
27 system;

28 * Sec. 30. AS 39.50.200(b) is amended by adding a new paragraph to read:

29 (57) Alaska Marine Highway Authority (AS 19.55.010).

30 * Sec. 31. AS 39.52.960(2) is amended to read:

31 (2) "agency" means a department, office of the governor, or entity in

1 the executive branch, including but not limited to the University of Alaska, public or
2 quasi-public corporations, boards or commissions, the Alaska Marine Highway
3 Authority, and the Alaska Railroad Corporation;

4 * Sec. 32. AS 39.52.960(4) is amended to read:

5 (4) "board or commission" means a board, commission, authority, or
6 board of directors of a public or quasi-public corporation, established by statute in the
7 executive branch, including the Alaska Marine Highway Authority and the Alaska
8 Railroad, but excluding members of a negotiated regulation making committee under
9 AS 44.62.710 - 44.62.800;

10 * Sec. 33. AS 44.42.020(a)(1) is amended to read:

11 (1) plan, design, construct, and maintain all state modes of
12 transportation and transportation facilities and all docks, floats, breakwaters, buildings,
13 and similar facilities, except that departmental planning, design, construction, or
14 maintenance of transportation modes or facilities under the jurisdiction of the
15 Alaska Marine Highway Authority is subject to direction by the Alaska Marine
16 Highway Authority;

17 * Sec. 34. AS 44.42.020(a)(7) is amended to read:

18 (7) manage, operate, and maintain state transportation facilities and all
19 docks, floats, breakwaters, and buildings, including all state highways, vessels,
20 railroads, pipelines, airports, and aviation facilities, except that the department is
21 not responsible for management or operation of transportation facilities under
22 the jurisdiction of the Alaska Marine Highway Authority or for management,
23 operation, or maintenance of vessels or equipment under the jurisdiction of the
24 Alaska Marine Highway Authority;

25 * Sec. 35. AS 44.99.030(a) is amended by adding a new paragraph to read:

26 (15) Alaska Marine Highway Authority.

27 * Sec. 36. The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 TRANSFER OF CERTAIN APPROPRIATIONS, EMPLOYEES, AND ASSETS TO
30 ALASKA MARINE HIGHWAY AUTHORITY. (a) Employees of the Department of
31 Transportation and Public Facilities assigned to the management, operation, and maintenance

1 of the Alaska marine highway system on the effective date of this section are transferred to
2 the Alaska Marine Highway Authority as state employees of the authority. The commissioner
3 of transportation and public facilities shall determine which employees are transferred to the
4 authority. An employee who is transferred to the authority under this subsection shall
5 continue to participate without interruption in the supplemental employee benefits program
6 under AS 39.30.150 - 39.30.180 and in the public employees' retirement system under
7 AS 39.35 if the employee was a participant in these programs on the day before the employee
8 was transferred to the authority.

9 (b) During the term of a collective bargaining agreement that applies to employees
10 who are transferred to the Alaska Marine Highway Authority under this section and that is in
11 effect on the effective date of this section, nothing in this Act terminates or modifies
12 recognition of the exclusive bargaining representative for those employees or that collective
13 bargaining agreement. The Alaska Marine Highway Authority shall abide by the collective
14 bargaining agreements that are in effect for employees transferred to the authority on the date
15 of transfer. A collective bargaining agreement covering employees transferred under this Act
16 shall remain in effect for the term of the agreement unless the agreement is renegotiated by
17 the Alaska Marine Highway Authority and the exclusive bargaining representative. The
18 legislature finds that the community of interest of shore-based employees of the Alaska
19 marine highway system who are transferred to the Alaska Marine Highway Authority under
20 this section is substantially different from the community of interest of the employees of the
21 executive branch in the classified service. Accordingly, the shore-based employees of the
22 Alaska marine highway system who are transferred to the Alaska Marine Highway Authority
23 are severed from their recognized collective bargaining units in effect on the effective date of
24 this section on expiration of the collective bargaining agreement in effect on the effective date
25 of this section for their unit. The severed units shall continue as units of the Alaska Marine
26 Highway Authority with the exclusive representative in place at the time of the severance
27 until actions under AS 23.40.070 - 23.40.260 (Public Employment Relations Act) change the
28 units or representatives.

29 (c) The unexpended and unobligated balances of operating and capital appropriations
30 for the Department of Transportation and Public Facilities, Alaska marine highway system,
31 shall be transferred to the Alaska Marine Highway Authority.

1 (d) The personal property assets and real property assets, including ferries, equipment,
2 buildings, and associated facilities, of the Department of Transportation and Public Facilities,
3 Alaska marine highway system, shall be transferred to the Alaska Marine Highway Authority.

4 * **Sec. 37.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 INITIAL APPOINTMENT OF MEMBERS OF THE BOARD OF DIRECTORS OF
7 THE ALASKA MARINE HIGHWAY AUTHORITY. Notwithstanding AS 19.55.020(b),
8 added by sec. 2 of this Act, and AS 39.05.055, the initially appointed members of the board of
9 directors of the Alaska Marine Highway Authority shall be appointed by the governor to
10 terms as follows: one member serves for one year, two members serve for two years, one
11 member serves for three years, one member serves for four years, and two members serve for
12 five years. The governor shall appoint the initial members of the board of directors of the
13 Alaska Marine Highway Authority before December 1, 2002.

14 * **Sec. 38.** AS 19.65.011, 19.65.020, 19.65.030, 19.65.035; and AS 39.25.110(16) are
15 repealed.

16 * **Sec. 39.** Sections 1, 24, and 37 of this Act take effect immediately under
17 AS 01.10.070(c).

18 * **Sec. 40.** Sections 12 and 25 of this Act take effect on the effective date of an amendment
19 to the Constitution of the State of Alaska relating to establishing the marine transportation
20 fund proposed by the Twenty-Second Alaska State Legislature.

21 * **Sec. 41.** Except as provided in secs. 39 and 40 of this Act, this Act takes effect January 1,
22 2003.



SENATOR JERRY WARD

ALASKA STATE LEGISLATURE

SPONSOR STATEMENT

Senate Bill No. 271

“An Act establishing the Alaska Marine and Rail Transportation Authority”

The intent of this Act is to establish a state-owned authority that would be directly responsible for the operation and management of both the Alaska Railroad Corporation and the Alaska Marine Highway.

In 1985 the State of Alaska purchased the Alaska Railroad from the Federal Government for \$20 million dollars. This transaction came with a significant amount of excess land that assists in the operational costs of the railroad. The Alaska Railroad currently has a surplus land base. The Alaska Railroad is not currently under the executive budget act. The Alaska Marine Highway was created under the authority of the Federal Government in 1963 and was not given a land base. For the past several years the Alaska Marine Highway has relied on the general fund for costs because of lack of a capital equity base in order to make it self-sufficient.

Creating an authority and conveying an additional 500,000 acres of land would allow the excess land to generate revenue and provide a stable funding base for the Alaska Marine and Rail Transportation Authority. The idea is to reduce the requirements to fund the Alaska Marine Highway through the general fund. The overall transportation plan in Alaska would benefit from the re-organization and provide for a system to utilize both services and cut the cost of doing so. Currently the Alaska Marine Highway and the Alaska Railroad share the use of facilities in many locations.

The authority will be a public corporation of the state and a division of the Department of Transportation and Public Facilities. The authority will operate the Alaska Marine Highway system and the state-owned Alaska Railroad as separate divisions of the authority.

The authority will make all of its financial records available to the legislature and an appointee of the Governor. The authority shall submit an annual budget for the Alaska Marine Highway system and the Alaska Railroad Corporation to the legislature through the governor.

The primary duties of the authority will be to assist residents, businesses and communities of the state to obtain the highest quality of the marine, rail passenger and freight services. The authority will be responsible to encourage and integrate with other public and private carriers in

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-4940 • FAX (907) 465-3766

ANCHORAGE: 716 W. 4th AVE. • STE. 450 • ANCHORAGE, AK 99501 • (907) 269-0106 • FAX (907) 269-0109

KENAI: 145 MAIN STREET LOOP • KENAI, AK • 99611 • (907) 283-7996 • FAX (907) 283-3075

Vice-Chair, Senate Finance Committee • Vice-Chair, Senate Transportation • Member, Senate Health Education & Social Services
Senator_Jerry_Ward@legis.state.ak.us

and outside the state to provide the highest quality of service within the state. The authority is required to employ Alaskan residents to the highest legal level possible.

The authority will operate under the name "Alaska Marine and Rail Transportation Authority." The authority shall prepare a comprehensive long-range plan for the development and improvement of the Alaska Marine Highway system and the Alaska Railroad.

The authority may acquire by purchase, gift, or exchange land in fee simple easements that it considers necessary and reasonable for either temporary or permanent public use. The authority may transfer land, other than rail land under AS 44.90.240 that is not considered necessary for use by the marine highway system. The authority will have the power to receive additional land grants from the state. The proceeds of disposal by the Department of Natural Resources shall be credited to the funds from which the purchase of the land was originally made.

It is my hope as sponsor of SB 271 that it becomes legislation in order to ensure a long-term transportation network that serves all Alaskans.

SB

320

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 320
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Motor Vehicle Insurance & Repairs BRU Insurance (116)
Component Insurance Operations
Sponsor Senator Cowdery
Requester Senate Transportation Component No. 354

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--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)

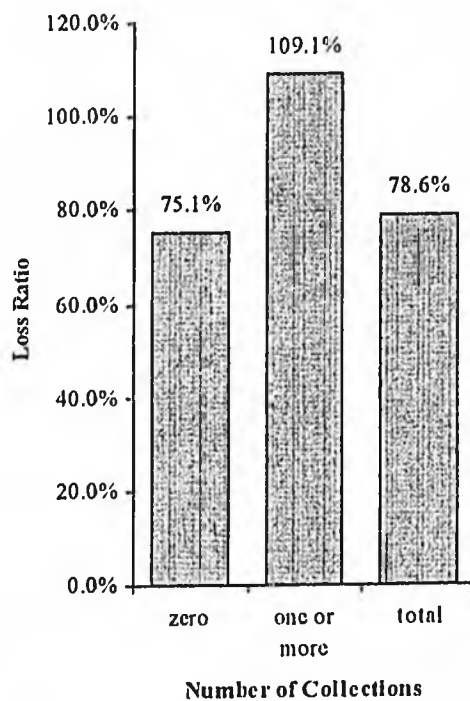
This bill has no fiscal impact on the operations of the department.

Prepared by: Bob Lohr, Director
Division: Insurance
Approved by: Deborah B. Sedwick, Commissioner
Agency: Department of Community & Economic Development

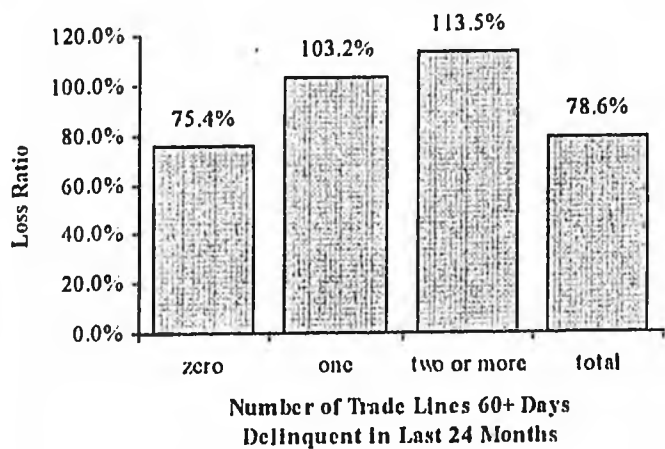
Phone 907-269-7896
Date/Time 2/26/02 10:06 AM
Date 2/26/2002

Relationship of Three Credit Characteristics to Automobile Insurance Loss Ratios

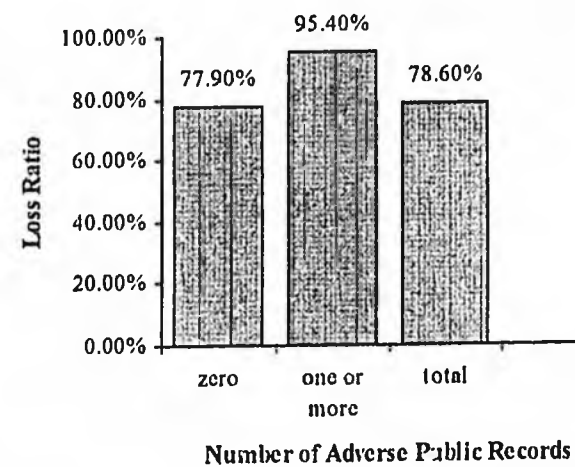
Relationship of Loss Ratio to Number of Collections



Relationship of Loss Ratio to Number of Credit Lines
60+ Days Delinquent in Last 24 Months

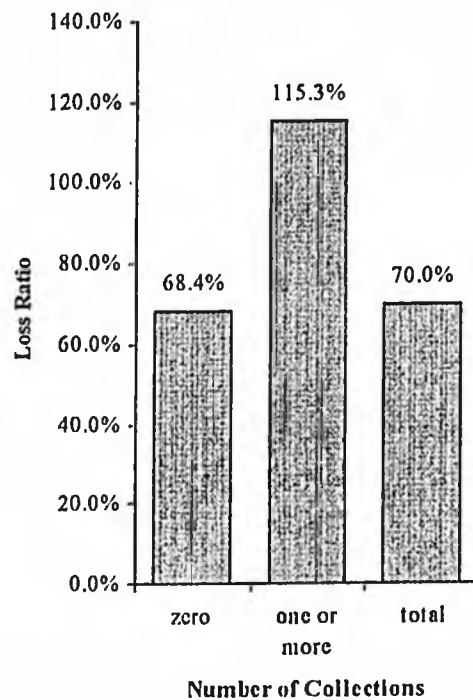


Relationship of Loss Ratio to Number of Adverse
Public Records

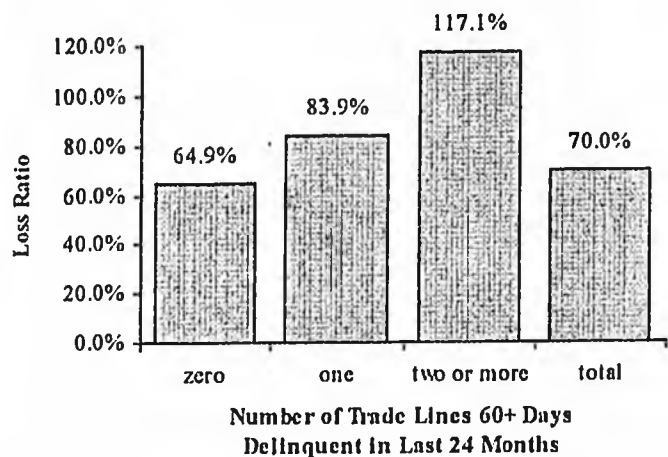


Relationship of Three Credit Characteristics to Homeowners Insurance Loss Ratios

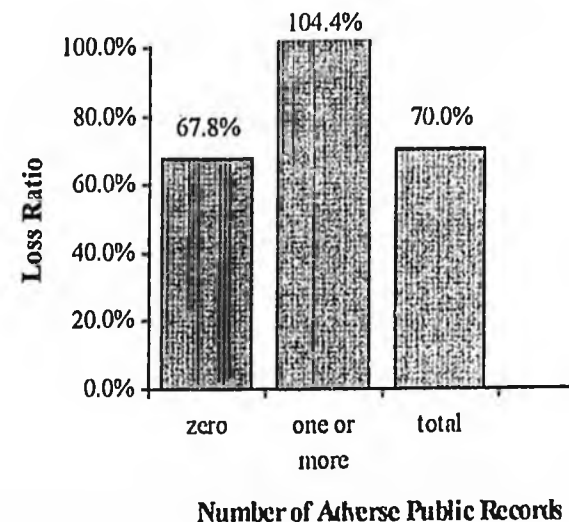
Relationship of Loss Ratio to Number of Collections



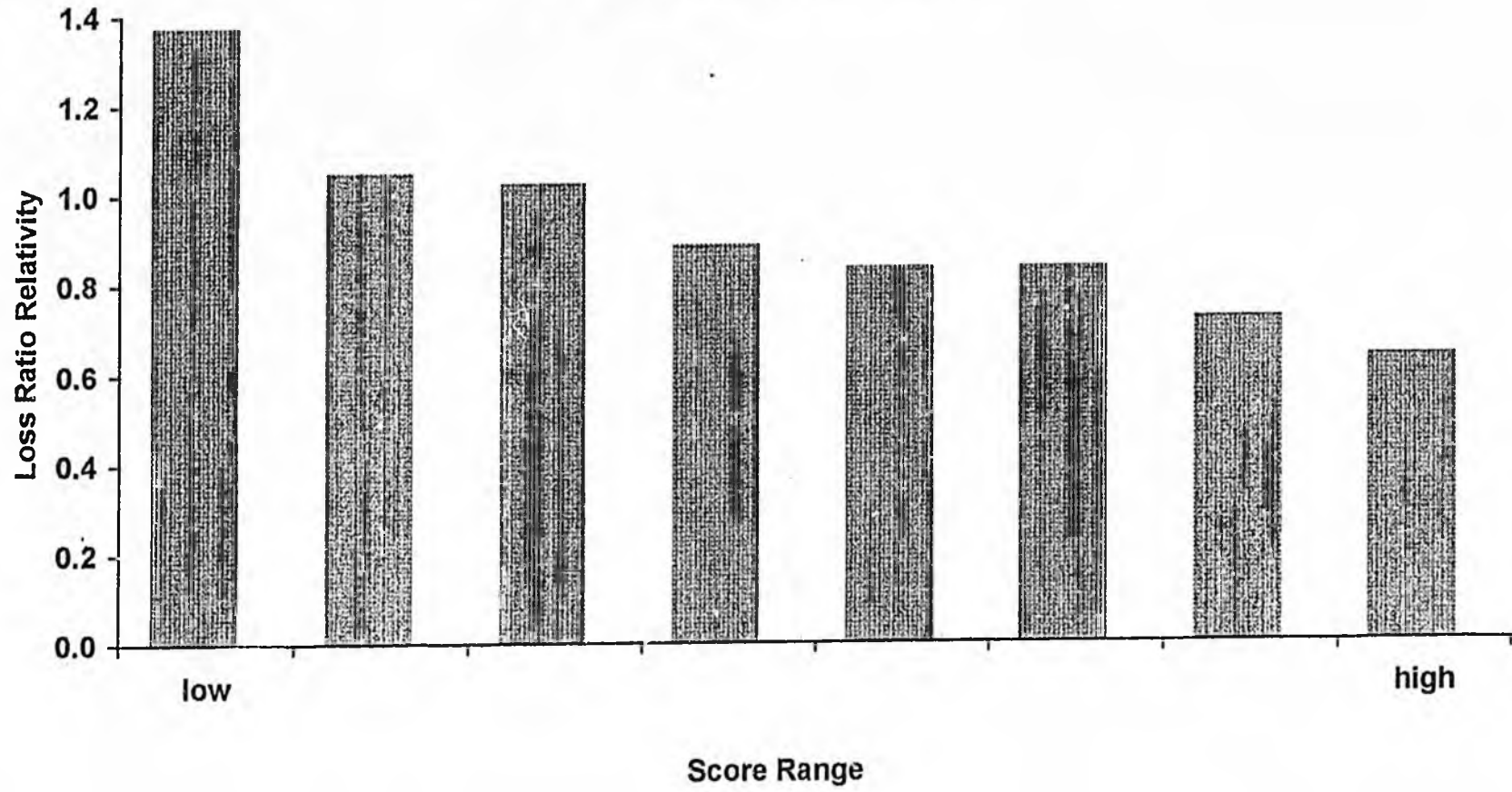
Relationship of Loss Ratio to Number of Credit Lines
60+ Days Delinquent in Last 24 Months



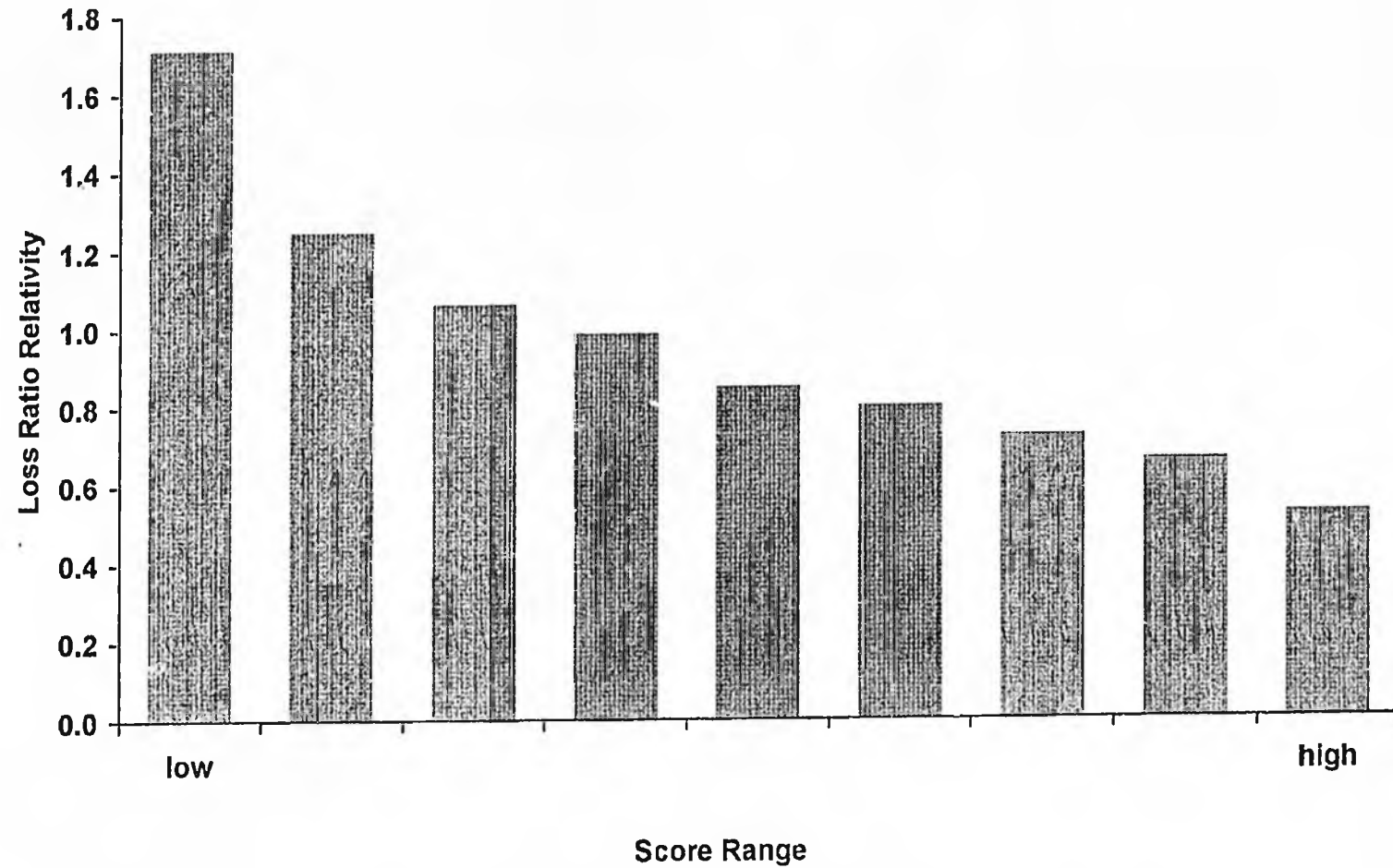
Relationship of Loss Ratio to Number of Adverse Public Records



Personal Auto Insurance



Homeowners Insurance



Michael Harrold
Northwest Regional Manager

**Statement of the
National Association of Independent Insurers
to the
Alaska Senate Transportation Committee
Regarding Senate Bill 320**

February 28, 2002

The use of credit reports by auto and homeowners insurance companies is not a new idea. The federal Fair Credit Reporting Act was enacted in 1970. The Act specifies purposes for which credit reports may be used. The underwriting of personal insurance is expressly listed as one of the permitted uses of credit reports.

Thus, auto and homeowners insurers have been using credit reports for the past thirty years. However, until about eight years ago, credit reports were not widely used by insurers. About eight years ago the Fair, Isaac company made insurance scores based on credit available to insurers. Since then other companies, including some insurance companies themselves, have developed scoring systems.

There is a significant difference between an insurance score based on credit information and a credit score. Insurance scores are different than credit scores. Financial institutions, credit card companies, department stores, and other businesses use credit scores to evaluate the likelihood that a person will repay a loan or make payments on a credit purchase. Personal lines insurance companies use insurance scores to evaluate the likelihood that a person will have an insured loss.

A credit score measures the likelihood that a person will make his or her loan payments. The insurance score measures the likelihood of future insurance losses.

Credit scores and insurance scores may consider some of the same items in a credit report, but the analysis is completely different. A credit score helps a bank predict whether a person will pay back a loan. An insurance score helps an insurance company predict whether or not a person will have a loss that is covered by an auto or homeowners insurance policy.

During the past decade, Fair, Isaac and some insurance companies have developed systems which analyze how certain credit characteristics relate to automobile and homeowners insurance losses. Credit-based insurance scores are the products of these systems.

The insurance scoring systems are based on analyses of the credit reports and loss ratios of millions of automobile and homeowners insurance policyholders. These analyses have shown that some credit characteristics are related to the risk of loss.

For example, Graphs A and B, which are based on Fair, Isaac's initial research, show the relationship between delinquent accounts, adverse public records, and collections and the loss ratios for nearly one-half million insurance policies. Loss ratio is the ratio of losses to premiums. Loss ratio is generally expressed in terms of percentages – so if an insurance company paid \$70 in claims on a policyholder who paid \$100 in premiums, the loss ratio for the policyholder would be 70%.

The analyses of credit reports and loss ratios of millions of automobile and homeowners insurance policyholders have produced mathematical models that weigh various credit characteristics based on how each characteristic relates to loss ratios. The models are used to generate credit-based insurance scores. An insurance score combines the predictive power of a number of particular credit characteristics to produce an evaluation of risk of loss that is more accurate and fairer than the predictive power of any one credit characteristic.

The credit information that goes into the development of insurance scores includes the following credit characteristics:

- amounts past due at least thirty days
- public records (bankruptcies, tax liens, civil judgments and foreclosures)
- collection records transferred to a collection agency
- outstanding debt
- age of oldest credit line
- new applications for credit
- types of credit in use (home loan, car loan, credit card)

Each of these factors is given a weight based on how well the factor relates to the likelihood of an insured loss. The factors are combined to produce an insurance score.

Those are some of the factors that go into an insurance score. Here are factors that are not included in an insurance score:

- | | |
|----------------|-------------------|
| • Income | • Familial Status |
| • Address | • Handicap |
| • Race | • Nationality |
| • Ethnic group | • Age |
| • Religion | • Marital Status |
| • Gender | • Occupation |

A person's insurance score is based on the application of the insurance scoring model to that person's individual credit report.

Each person's insurance score correlates to a level of loss ratio relativity. The general relationship between insurance scores and loss ratios is depicted in graphs C and D.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska

The credit information that goes into the development of insurance scores includes the following credit characteristics:

- amounts past due at least thirty days
- public records (bankruptcies, tax liens, civil judgments and foreclosures)
- collection records transferred to a collection agency
- outstanding debt
- age of oldest credit line
- new applications for credit
- types of credit in use (home loan, car loan, credit card)

Each of these factors is given a weight based on how well the factor relates to the likelihood of an insured loss. The factors are combined to produce an insurance score.

Those are some of the factors that go into an insurance score. Here are factors that are not included in an insurance score:

- | | |
|----------------|-------------------|
| • Income | • Familial Status |
| • Address | • Handicap |
| • Race | • Nationality |
| • Ethnic group | • Age |
| • Religion | • Marital Status |
| • Gender | • Occupation |

A person's insurance score is based on the application of the insurance scoring model to that person's individual credit report.

Each person's insurance score correlates to a level of loss ratio relativity. The general relationship between insurance scores and loss ratios is depicted in graphs C and D.

The existence of the correlation between insurance scores and risk of loss has been verified in numerous studies. A paper published one year ago by the Casualty Actuarial Society examined a database of nearly 200,000 automobile and homeowners insurance policies. The paper concluded that each of the three credit characteristics in graphs A and B showed "a systematic predictive power" on loss ratio relativities.

In 1996, at the request of the NAIC, Fair, Isaac retained Tillinghast-Towers Perrin to perform a regression analysis of Fair, Isaac's insurance bureau scores and loss ratio relativities. The analysis considered data from nine companies (three auto carriers, five homeowners carriers and one personal property insurer). Tillinghast-Towers Perrin concluded:

"From the data and P-Values, we conclude that the indication of a relationship between Insurance Bureau Scores and loss ratio relativities is highly statistically significant. In a more technical sense, the conclusion is that it is very unlikely that Insurance Bureau Scores and loss ratio relativities are not correlated based on this data.

The data for all companies included in this study except Company 2 indicates at least a 99% probability that a relationship exists. The data for Company 2 indicate a 92% probability that there is a relationship. A layman's interpretation of this result could be that it is very likely there is a correlation between Insurance Bureau Scores and loss ratio relativities."

In December 1999, the Virginia Bureau of Insurance issued a report to the Virginia General Assembly on insurers' use of credit information. The Bureau examined the development and application of Fair, Isaac's scoring system and reached the following conclusion:

"Based on the Bureau's findings, there appears to be concrete data indicating that a correlation exists between credit scores and losses. From this purely statistical perspective, therefore, the Bureau is unable to make a recommendation prohibiting the use of credit scores in the underwriting process."

The Casualty Actuarial Society paper, Tillinghast, and the Virginia Bureau of Insurance confirm the correlation between credit information and loss ratios. But perhaps the most convincing

evidence of the correlation is the real world experience of insurance companies. Insurance companies are rational, economic entities. It would make no sense for companies to base their underwriting and rating decisions and their economic futures on information which fails to predict the likelihood of loss. The owners of an insurance company would not stand for the company's continued use of information which does not correlate to loss ratios.

The fact that an insurance score based on credit information correlates to a person's risk of loss does not completely explain why car and homeowners insurance companies are using insurance scores. In fact, credit based insurance scores are not a departure from the fundamental goals of insurance underwriting and rating. Personal lines insurance companies are using insurance scores to better achieve the goals of objectivity, completeness, equity, efficiency, and insurance availability.

Objectivity

Leaving the evaluation of credit report information to the judgment of individual underwriters can potentially produce inconsistent and unfair results. Insurance scores are based on objective, unbiased analyses of credit information. Insurance scores eliminate individual biases from underwriting and rating. Credit-based insurance scores have nothing to do with "gut feeling" and insurance scores have no "good days" and "bad days." Instead, insurance scores are based on solid statistical data.

Completeness

Insurance scores supplement other underwriting and rating information. They help to give a more complete picture of a risk of loss.

Some information which insurers use to make underwriting and rating decisions has limitations. Insurance application information is subject to concealment, misrepresentation and

negligence. Actuarial studies have found that as many as 75% of past claims are not disclosed on insurance applications. It is estimated that incorrect information results in an overall 10% premium inadequacy. Motor vehicle records provide insurers with important information but they have some shortcomings. An Insurance Research Council study found that only 40% of the accidents which should have been in MVR's were actually there.

Insurance applications, MVRs, and other reports remain critical elements in insurance underwriting and rating. But that does not mean that these sources of information are complete. Insurance scores help insurers gain a more complete understanding of the risk of loss.

Efficiency

Insurance scores make underwriting and rating more efficient. The availability of credit-based insurance scores streamlines the underwriting process and reduces costs. Ready access to credit-based insurance scores allows a company to decide that it will not order motor vehicle records or claim reports on new business applications above a certain insurance score, thereby saving underwriting costs. Or, an insurer may determine that it needs to focus more careful underwriting review and collect additional information on applicants who fall below a certain score.

By using insurance scores, insurers are able to make underwriting and pricing decisions quickly. This gives consumers immediate information for comparison shopping.

The efficiency and cost-saving which insurance scores provide allow insurers to hold down administrative expenses. Lower expenses result in lower premiums for consumers.

Equity

A fundamental principle of insurance is that the premium charged to a person should reflect that person's risk of loss. Insurers have a responsibility to continually refine their risk classifications and their rating procedures so that premiums reflect loss potential. When rates do not reflect loss costs, some consumers must pay higher premiums to subsidize higher risk individuals.

There is an established relationship between credit-based insurance scores and loss ratios. The reality is that aspects of a person's credit history correlate to the likelihood that the person will have an insured loss covered by his or her automobile or homeowners insurance policy. If insurers are forced to ignore this reality, the result will be pricing inequity. Many consumers will have to pay more than they should be paying because insurers are prevented from considering the consumers' true risk of loss.

Availability

The NAII recently surveyed some of our personal lines insurers on their use of credit information. We asked companies if credit information helps them to write more business.

Our survey results indicate that there are companies that currently use credit information to accept applicants, who probably would otherwise not be accepted, for personal auto or homeowners insurance coverage. In addition, insurance companies are now renewing policies that probably would not be renewed, were it not for the use of credit information. Certain insurers have even stated that, as a result of using credit information, they are now more likely to write some cars and homes more aggressively, including cars and homes in urban areas.

Many policyholders are paying lower premiums because their insurers consider credit information. Some respondents to our survey said that more than half of their policyholders are in this category. Their estimated percentages of policyholders paying lower premiums as a result of their good credit histories range from 50% to 98% of total auto or homeowners policyholders. If credit information could no longer be used, then this majority of policyholders – in some cases, an overwhelming majority – would have to pay higher premiums.

The insurers responding to our survey are only a sampling of companies. We are confident that there are other NAII members and certainly other insurers outside of the NAII membership that have found credit information as a way to make insurance coverage more available at lower premiums to more consumers. Clearly, policyholders have benefited from companies' use of credit information, whether it be obtaining insurance, keeping insurance, or paying lower premiums for insurance.

Too often the debate over insurers' use of credit information has focused on the notion that insurance companies use insurance scores to reject people. But insurance companies are not in the business of not writing business. Insurance companies are in the business of writing policies covering cars and homes. Credit information gives insurers a tool to underwrite and fairly price personal lines coverages.

In insurance markets today, drivers with less than perfect driving records and homeowners whose houses may fall short of so-called "traditional" underwriting factors are being accepted and renewed by insurance companies because they have good credit histories.

Most people have good credit histories. The use of insurance scores by personal lines insurance companies gives people with favorable insurance scores a better chance to find insurance, and often find it at prices that save them money. On the other hand, restricting the use of credit information presents a real danger that consumers who are able to find fairly priced insurance protection today will not be able to find that insurance tomorrow.

In 1996, the NAIC issued a white paper on the use of credit information. In the paper several regulators cautioned against restricting insurers' use of credit information. The white paper observed:

“Other regulators believe that if an insurer is deciding whether it will write in a certain geographic area, removing an underwriting tool may create a disincentive for it to enter the market. Insurers will enter a market only when they are comfortable they can underwrite, make a profit, and exit the market if the results are poor. Underwriting restrictions are not conducive to expanding the market. These regulators believe that the premise that credit reports are used not to write in certain areas may be flawed. They believe that regulators should consider the potential harm that may be caused to the market they are trying to assist. before imposing restriction.” *(emphasis added)*

The wisdom of these regulators should be heeded. The use of insurance scores for underwriting and rating has helped to make insurance coverage more available for drivers and homeowners. Restrictions on the use of insurance scores should be approached with great caution.

Respectfully submitted by:

Michael Harrold
Northwest Regional Manager

Subject: SB 320

Date: Wed, 27 Feb 2002 19:32:08 -0600

From: "Larry Kibbee" <LKibbee@allianceai.org>

To: <Senator_John_Cowdery@legis.state.ak.us>

February 27, 2002

Sen. John Cowdery
Chairman, Senate Transportation Committee
State Capitol, Room 101
Juneau. AK 99801-1182

Dear Senator Cowdery:

The Alliance of American Insurers is an insurance trade association representing over 325 property/casualty insurers, some of whom do business in Alaska. I am the Vice President and Northwest Regional Manager for the association, with offices in LaConner, Washington.

The Senate Transportation Committee is scheduled to hear testimony on SB 320 on February 28. I can not be in Juneau to testify personally, but I would like to provide Alliance observations on the bill that I hope will be offered for the hearing record.

Section 1 deals with the process of providing a warranty to, and gaining the consent of, an insured if an aftermarket part is used to repair an automobile. I can't comment specifically on the warranty issue at this time because it is under review by our staff, but I can say that the Alliance does support the use of aftermarket parts that have been certified by the Certified Automobile Parts Association (CAPA). I read the bill to allow the use of certified aftermarket parts, and we would agree with that point.

Our major concern with the bill is in Section 2. By eliminating the right of an insurer to consider a person's credit history, or credit score, when determining rates for automobile insurance, the bill would penalize many good drivers in Alaska who currently pay lower premiums because of good credit histories. The bill would also create a system of subsidation, where good drivers would pay more to support the bad driving habits of those who are higher risks.

Alliance member companies, and other major companies that write auto insurance for your constituents, have learned by experience that a direct correlation exists between credit scores and insurance losses. In addition, the actuarial firm of Tillinghast-Towers Perrin completed an independent study on credit scores that has been included in a report by the National Association of Insurance Commissioners (NAIC). The study reviewed the automobile policies of several large insurers and found, with a better than 99 percent confidence level, that there is a clear relationship between credit scores and the likelihood of insurance claims. Credit scores have been compared to a measurement of care and responsibility. How one manages debt and financial obligation is actually a very good predictor of how one manages risk of loss.

The majority of people have good credit and resulting high credit scores. Those people will receive better rates overall than those drivers with a statistically higher chance of loss. One Alliance member company has used credit scores as a rating factor in over 20 states during the past four years.

It is their experience that fewer than 10 percent of policyholders get premium surcharges due to credit scores. The majority of policyholders

get premium reductions because of their good credit records.

Our experience also shows that credit scores do not discriminate against low income drivers or minorities. First of all, federal law is very specific about what factors may not be considered in an insurance credit score. They include: ethnicity, gender, religion, gender, marital status, nationality, age, income and address.

Some people have expressed concern that they will be unfairly discriminated against based on their income. Actually, people of all economic levels have good and bad credit records. A credit score is not a measure of wealth...it is a measure of responsible habits.

I would also like to point out that a lot of regulatory oversight and authority currently exists where the use of credit scoring is concerned. The federal Fair Credit Reporting Act includes specific procedural elements that insurers must follow in obtaining credit scores, and in notifying policyholders if an adverse action is taken because of credit histories. In your state, the Insurance Director has authority to deny the use of any rate, or rating plan, that is deemed excessive or unfairly discriminatory.

Finally, I would like to call your attention to the current legislative experience as sessions progress in states like Washington and Idaho. In Washington, legislators have rejected an initial legislative proposal that would have placed an arbitrary percentage cap on rates due to consideration of credit scores. In place of the rating cap, insurers and lawmakers have reached a compromise on certain elements of personal credit history that can not be used to develop the score used in the rating process.

In Idaho, the legislation has always allowed the use of credit scores in the rating process, but seeks only to determine the manner in which credit scores must be used in association with other variables to determine the auto rates for certain classes of business.

I urge you and other members of the Transportation Committee to look closely at the insurance credit scoring process before moving forward with legislation that would ban the use of a highly predictive factor in automobile insurance rate making. I offer you the experience of our member companies in examining the issue, and I am sending by FAX to your office an Alliance publication that discusses in detail the credit scoring factors that I have addressed in this letter.

Please be in touch if I can provide additional information on SB 320. I look forward to visiting with you soon on this issue in Juneau as the legislative session moves forward.

Larry E. Kibbee
Vice President - Northwest Region
Alliance of American Insurers
tel: 360.466.4709
mobile: 360.708.8794
email: lkibbee@allianceai.org

SOLUTIONS

Giving Credit Where Credit Is Due

Credit scoring is a valuable underwriting and rating tool, but as controversy mounts, questions arise over what exactly it is, how insurance companies should use it, and how companies can address concerns regarding this tool.

Underwriting is the systematic process by which insurers evaluate new applicants for insurance, as well as their current policyholders. Insurance companies and their policyholders both benefit when insurers make sound underwriting decisions since underwriting is the key ingredient to company solvency and fair pricing.

The underwriting process involves evaluating the applicant or policyholder (the "risk") by using objective information about the risk, selecting those risks eligible for coverage, classifying risks so that policyholders are grouped with those having similar characteristics and likelihood of loss, and rating the risk. Underwriters can never know with certainty which applicants will have numerous future claims, and which will have very few, or even no, claims. However, good underwriters are able to rely on their professional experience along with objective underwriting tools to predict the likelihood, and expected frequency with which, applicants or current policyholders will have claims. Those tools may include motor vehicle records, prior loss history reports, home inspections, and credit history or credit scores.

What is Credit Scoring?

The terms "credit reports," "credit scores" and "insurance scores" are used interchangeably when referring to the concept of considering an applicant or policyholder's credit history as an indication of the likelihood of future loss. But actually, the terms are distinct.

Credit reports are detailed histories of an individual or firm's current and past credit-related transactions. Credit reports include detailed information on revolving credit, mortgages, collections and bankruptcies. There are three major credit bureaus in the United States, Equifax, Experian and Trans Union, which collect this credit information on individuals and businesses.

Credit scores are numerical indicators of risk. Credit scores are derived by selecting specific information from an individual's credit history provided by the credit bureaus, and entering that information into a computer model designed to produce a score. The score represents an objective "snapshot" of the credit habits of an individual.

Banks and lending institutions use credit scores to determine an applicant's ability to repay a loan. Although we use the term "credit scoring" when referring to insurer use of credit, insurance companies actually use scores differently than lending institutions. Rather than using a score to determine the likelihood of repaying a loan, insurers use "insurance scores" to predict the likelihood of future losses. Insurers may rely on their own proprietary computer models to determine one's score, or may rely on the models of an independent data vendor such as Choicepoint or Fair Isaac. The models will then produce a numerical score for use in underwriting and/or rating. The score does *not* include specific details from one's credit

report, but represents a composite "picture" of an insurance risk. Although many insurers may use scoring information from the same vendor, each company has its own underwriting rules and may consider those scores differently.

How Does it Work?

Insurers have relied upon credit reports and Dun and Bradstreet reports to determine the financial well-being of commercial risks for many years. But the application of credit information to automobile and homeowners underwriting and rating is still a comparatively new practice. There have been several studies documenting a clear correlation between credit score and chance of loss. Statistically, the higher the credit score, the lower the risk of loss. In fact, the statistical studies on the relationship between score and loss frequency are so convincing that opponents of insurer use of credit scores rarely contest their statistical validity.

Despite the statistical evidence, it may still be difficult to understand what credit has to do with risk of loss. What does credit have to do with driving habits or home maintenance? Credit scores reveal a picture of the individual's ability to handle and manage credit — they objectively measure such subjective concepts as responsibility and stability, allowing insurers to gain a more accurate picture of subsequent risk and potential losses. The use of credit reports, then, adds another level of sophistication to the underwriting process that allows insurers to underwrite their business with a higher degree of certainty.

Why Is Insurer Use of Credit Scoring So Controversial?

Credit histories and credit scores have been available to insurers for use in their underwriting and rating decisions for many years. The Federal Fair Credit Reporting Act expressly granted insurers access to their customers credit information as far back as 1971.

However, since 1998, the number of insurers using credit scoring has more than doubled as evidence of its value as an underwriting and rating tool — that is, as an accurate predictor of future loss — continues to mount. A recent study by Conning and Co. found that 92

percent of the largest personal lines insurers are using credit scoring in underwriting and/or rating decisions.

But if the statistical validity of credit scores is widely accepted, and if so many insurers use credit scores, why has this become such an emotional issue? There have been several common concerns voiced by policyholders, insurance agents, consumer advocacy groups, legislators and regulators.

Some opponents of insurer use of credit information have charged that insurers use credit information for the purpose of refusing business or to charge higher rates. This just isn't so. Insurers are in the business of writing policies. Any insurer who would attempt to disqualify as much business as possible, or to unfairly rate their policies, would not remain in business very long. On the contrary, credit information has proven to be an effective tool for insurers, allowing them to underwrite or rate business with a greater degree of certainty and accuracy. In short, use of credit information allows an insurer to write more business — not less, leading to a more competitive marketplace with more choices for the consumer.

Insurers have also been charged by consumer advocates, policyholders, and even their own agents, with failing to be open and honest about how credit scoring is used. Until recently, consumers could not easily review their own credit scores and did not have much information on the process. Fortunately, insurers and independent scoring "modelers" have now gone to great lengths to "demystify" the process by better explaining to consumers how credit information is used in insurance, how credit scores are determined, and how consumers can take control of, and improve, their credit scores. Consumers may now easily obtain their scores from various vendors, along with complete explanations of the factors considered in the score.

Some people have objected to the use of credit information in underwriting by claiming that it is discriminatory toward lower income individuals. In actuality, people of all economic levels have good and bad credit records, and insurers may use credit reports as a tool that increases fairness through the use of another objective standard. Further,

federal law prohibits the factors of ethnicity, religion, gender, marital status, nationality, age, income and address from being considered in a credit score.

Some people have also voiced concern over possible inaccuracies or errors in their credit records. While errors obviously occur, their impact on insurance underwriting has been negligible. Often errors found on credit reports are not relevant to the information considered by insurers. One large insurer recently confirmed that out of more than one million records processed, only four records were found to have errors that resulted in an incorrect rating decision – far less than the number of relevant errors revealed on motor vehicle records! For those records found to be in error, the Federal Fair Credit Reporting Act already clearly protects consumers by prohibiting insurers from considering information known to be in error.

Privacy is another issue that has been raised in opposition to the use of credit reports. Today, more than ever, consumers are concerned with privacy and confidentiality of personal records. Fortunately, credit scoring actually allows an underwriter to carefully evaluate a risk *without* the disclosure of sensitive or private information. The use of scoring allows the underwriter to objectively consider credit information and credit management habits without having to scrutinize all the details of one's credit history. Likewise, an applicant or policyholder will not have to fear that every detail of his private credit information will become known to his agent – who may be a family friend or neighbor. Consumers should be assured that their insurer's use of a credit history will not jeopardize their privacy.

Should Insurer Use of Credit Information be Prohibited?

Legislators and/or regulators in numerous states are currently evaluating insurer use of credit information. Many people have called for a prohibition on the use of credit information in the interest of "fairness" to all consumers. Actually, a prohibition on the use of credit information or credit scores would not be fair at all!

Several large companies have now tracked their experience with credit scores long enough to prove that more insureds benefit from the use of

credit scores than not. This means that if credit scores could not be used as an underwriting tool, a majority of policyholders would pay *more* than their fair share for insurance.

Further, the use of credit scoring does *not* make it difficult for people to buy insurance. Credit scoring allows insurers to more accurately underwrite and rate their business. And when insurers can evaluate applicants with greater confidence, they are able to accept many applicants they might not have accepted in the past. In short, the use of credit scoring may improve insurance availability.

Finally, it is important to remember that not all insurers will choose to use credit information in their underwriting and rating decisions. Consumers who strongly object to the use of credit information may seek insurers who do not use credit scoring.

Future Political and Regulatory Outlook

Currently, legislators and/or regulators in at least half of the states are reviewing insurer use of credit scoring in personal lines underwriting. Even in some states where legislation was only recently enacted or regulation adopted, the practice is again under review. Despite all the evidence on the value of credit scoring, including evidence supporting improved rating treatment or product availability for the majority of policyholders, allegations still persist that use of credit is "bad public policy." But real company evidence that insureds directly *benefit* from the use of credit scoring may be more compelling to legislators or regulators than any of the currently available statistical studies. ■

President
Rodger S. Lawson, Ph.D.

Editorial Staff
John Lobert Jean Demas
Charlie Schmidt Deborah Shemo

tel: 630.724.2100

fax: 630.724.2190

www.allianceai.org



3025 Highland Parkway, Suite 800
Downers Grove, Illinois 60515

©2001 Alliance of American Insurers

Frequently Asked Questions

What is an insurance credit score and how is it calculated?

An insurance credit score, typically just referred to as a "credit score," is a number that is used to predict the likelihood of future insurance losses. The score is generated by entering specific information from one's financial history, including information related to outstanding debt, the length of one's credit history, late payments, bankruptcies or collections, and types of credit used, into a computer model designed to calculate a score for use in underwriting and/or rating. The score does not include specific details from one's credit report, but represents a composite "picture" of an insurance risk.

How does a credit score relate to driving record?

There is a proven statistical relationship between credit scores and insurance losses. The actuarial firm of Tillinghast-Towers Perrin completed an independent study on credit scores that has been accepted by the National Association of Insurance Commissioners. The study reviewed both the automobile and homeowners policies of several large insurers and found (with a better than 99 percent confidence level) that there is a clear relationship between credit score and likelihood of insurance claims.

Credit scores have been compared to a measurement of care and "responsibility." How one manages debt and financial obligation is actually a very good predictor of how one manages his or her risk of loss.

How can policyholders benefit if insurers use credit scoring?

The majority of people have good credit and resulting high credit scores. Those people will receive better rates overall than those drivers with a statistically higher chance of loss.

Aren't credit scores just an excuse for insurance companies to cancel policies or charge higher rates to their policyholders?

In fact, just the opposite is true. The use of credit scores adds another level of sophistication to the underwriting process that allows insurers to accept business with a higher degree of certainty. This means that credit information, when used as an underwriting tool, provides insurance companies with a greater opportunity to write business in all markets.

Insurers are looking to write more business, not less. Insurance is a very competitive business, and any company that would seek to cancel business or charge high rates wouldn't stay in business very long.

Can consumers see their credit score?

Yes. Several credit bureaus and vendors now make credit scores available to individuals for a small charge. In fact, some credit bureaus recommend that individuals review their own credit information at least yearly to check for any errors or incorrect information.

Don't insurance credit scores allow insurance companies to discriminate against low-income drivers or minorities?

Absolutely not. Federal law is very specific about what factors may not be considered in an insurance credit score. Ethnicity, religion, gender, marital status, nationality, age, income and address may not be included within an insurance credit score.

Many people have expressed concern that they will be unfairly discriminated against based on their income. Actually, people of all economic levels have good and bad credit records. A credit score is not a measure of wealth – it's a measure of responsible habits. Further, because credit scoring relies on real data and statistics, it provides an objective method of evaluating a risk – free from either intentional or unintentional subjective or judgmental bias.

Doesn't the use of credit scores make it very difficult for people to buy insurance?

No. Several large companies have now tracked their experience with credit scores long enough to prove that more insureds benefit from the use of credit scores than not. Credit scores allow insurers to more accurately underwrite and rate their business. And when insurers can evaluate applicants with greater confidence, they are able to accept many applicants that they might not have accepted in the past. In short, the use of credit scoring has improved insurance availability.

Isn't insurer use of credit scores an invasion of consumer privacy?

Credit scores provide the insurer only with a predictive numerical score – not with specific details as to credit history. Neither the underwriter nor the agent will know the details of the applicant or policyholder's credit history.