

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 86/2

10774 HOUSE JUDICIARY

AMENDMENT 1
to HB 23

By Rep. GRUENBERG

Section 1. AS 12.55.045(a)

- 1 Page 1, line 10, delete *volunteer*
- 2 Page 1, line 10, after "value of" insert *voluntarily provided goods or*

AMENDMENT 2
to HB 23

By Rep. GRUENBERG

Section 1. AS 12.55.045(a)

1 Page 1, line 10, after "victim" insert *if the victim is a nonprofit organization*

AMENDMENT 3
to HB 23

By Rep. GRUENBERG

Section 1. AS 12.55.045(a)

- 1 Page 1, line 10, after "incurred" insert *that was necessary*
- 2 Page 2, line 11, after "incurred" insert *that was necessary*

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
FAX (907) 465-2273

MEMORANDUM

DATE: January 28, 2003
TO: Rep. McGuire
FROM: Rep. Bruce Weyhrauch
SUBJECT: HB 23 – Restitution for Volunteer's Damages

Attached are materials in support of HB 23. At this time I respectfully request a hearing before your committee on this very important piece of legislation.

This issue came to my attention last winter, when the Court of Appeals felt they lacked standing in the statutes to allow monetary restitution for the hundreds of hours expended by volunteers of a local folk music organization when faced with reconstructing the crime of embezzlement perpetrated by a trusted volunteer accountant. Since I've been working on this issue, numerous other situations have come to my attention, making HB 23, a simple statement that reaffirms the Legislature's intent to the Judiciary Branch, extremely timely.

If you have any questions or need further information, I invite you to contact myself, or my aide, Linda Sylvester.

Thank you for your kind attention to this matter.

23-LS0134D
Ford
1/29/03

CS FOR HOUSE BILL NO. 23()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES WEYHRAUCH, Gatto

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to court-ordered restitution and compensation following a criminal
2 conviction."

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

4 * Section 1. AS 12.55.045(a) is amended to read:

5 (a) The court may order a defendant convicted of an offense to make
6 restitution as provided in this section, including restitution to the victim or other
7 person injured by the offense, restitution to a public, private, or private nonprofit
8 organization that has provided or is or will be providing counseling, medical, or
9 shelter services to the victim or other person injured by the offense, compensation to
10 the victim for the value of volunteer labor incurred to alleviate or mitigate the
11 effects of the defendant's crime, or as otherwise authorized by law. In determining
12 the amount and method of payment of restitution or compensation, the court shall
13 take into account the

14 (1) public policy that favors requiring criminals to compensate for

1 damages and injury to their victims; and

2 (2) financial burden placed on the victim and those who provide
3 services to the victim and other persons injured by the offense as a result of the
4 criminal conduct of the defendant.

5 * Sec. 2. AS 12.55.100(a) is amended to read:

6 (a) While on probation and among the conditions of probation, the defendant
7 may be required

8 (1) to pay a fine in one or several sums;

9 (2) to make restitution or reparation to aggrieved parties for actual
10 damages or loss caused by the crime for which conviction was had, including
11 compensation to the victim for the value of volunteer labor incurred to alleviate
12 or mitigate the effects of the defendant's crime;

13 (3) to provide for the support of any persons for whose support the
14 defendant is legally responsible;

15 (4) to perform community work in accordance with AS 12.55.055;

16 (5) to participate in or comply with the treatment plan of an inpatient
17 or outpatient rehabilitation program specified by either the court or the defendant's
18 probation officer that is related to the defendant's offense or to the defendant's
19 rehabilitation; and

20 (6) to satisfy the screening, evaluation, referral, and program
21 requirements of an agency authorized by the court to make referrals for rehabilitative
22 treatment or to provide rehabilitative treatment.

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
FAX (907) 465-2273

HB 23

Sponsor Statement

In 1992, the Legislature adopted a statute to allow the court to order a convicted defendant to pay restitution to the victims of their crime. The Legislature also gave the court discretion to require a convicted person to pay restitution as a condition of probation. The Legislature intended that a court would "make full restitution available to all persons who have been injured as a result of criminal behavior to the greatest extent possible."

Flash Forward...

In December of 2000, the former treasurer for the Alaska State Folk Festival was convicted of embezzling \$13,000 over a four-year period and he was ordered to pay restitution. In addition to the actual cash that was robbed, restitution included \$5,400, or an approximate value for the 200-hours of accounting costs expended by the six-member board to reconstruct and audit the books that the defendant had absconded with.

The defendant objected to the restitution award for the volunteer-accountants and appealed. In February, 2002, the Court of Appeals ruled that the victim, a non-profit organization, did not incur any actual damages or loss caused by crimes when its board members volunteered 200 hours of work auditing and reconstructing the organization's records, and thus was not entitled to restitution for that volunteer work. (Demers v. State, 42 P.3d. 1 Alaska App. 2002).

HB 23 clarifies the clear intent of the Legislature that a court may order restitution to a non-profit corporation (or any other victim, for that matter) as a part of a sentence or probation if the facts and the record support the restitution. This is an obvious fact considering that the Legislature intended for the court "to make full restitution available to all persons who have been injured as a result of criminal behavior to the greatest extent possible."

In the real world, HB 23 simply enables the court to consider documented volunteer labor as a factor in the process of determining restitution.

Updated: January 28, 2003

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
FAX (907) 465-2273

HB 23

Sectional Analysis

Section 1. Expands the type of restitution that a court can order a defendant convicted of an offense can be ordered to make. Specifically, the court would have the power to order restitution equal to the value of volunteer labor incurred to alleviate or mitigate the effects of the crime.

Section 2. Expands the type of restitution that a court can order a defendant convicted of an offense can be ordered to make while the defendant is on probation. Specifically, the court would have the power to order restitution equal to the value of volunteer labor incurred to alleviate or mitigate the effects of the crime.

These changes would specifically reverse the view of the Alaska Court of Appeals, expressed in Demers v. State, 42 P.3d 1, (Alaska App. 2002), that Alaska statutes do not specifically allow a court to consider the value of volunteer labor as an element of restitution.

Updated: January 28, 2003



[Click here to return to the original story](#)

Former fire chief sentenced to 2 years

Sunday, February 17, 2002

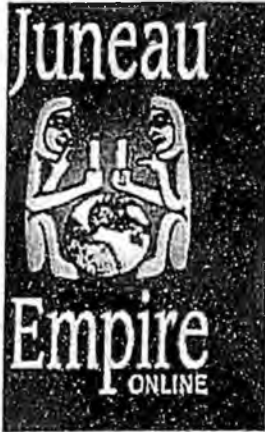
FAIRBANKS - The former chief of the Ester Volunteer Fire Department has been sentenced to two years in prison for embezzling more than \$56,000 from the department.

Mike Oden, 50, also was placed on 10 years probation and ordered to pay \$55,591 in restitution.

Oden was convicted of one count of first-degree theft after a two-week jury trial in September. The charges against Oden date from between March 1996 and June 2000, during which time he also worked as a senior safety management officer for UAF risk management services.

Oden was charged with double-billing the Ester Fire Department for trips that were paid for by UAF; charging other personal travel expenses to the department; using department funds to pay for the maintenance of his own vehicles and those of his family; using Ester department funds to finance a visit to Alaska by a firefighting expert, a trip that was actually sponsored by another organization; and buying a number of personal items with department money.

All contents ©Copyright 1997-2003 Juneau Empire, Morris Digital Works & Morris Communications Corporation
[Contact Us](#) | [About Us](#) | [Privacy Policy](#) | <SCRIPT LANGUAGE="JavaScript" TYPE="text/JavaScript">



Web posted **Wednesday, January 3, 2001**

Demers' bill comes due: \$16,238

Former folk festival treasurer ordered to pay for embezzlement

By ANN CHANDONNET
THE JUNEAU EMPIRE

A judge has ordered the Alaska Folk Festival's former treasurer to pay \$16,283.17 in restitution for falsifying checks, taking gate receipts and other embezzlements during his five years with the nonprofit group.

Juneau resident James Demers, 49, already has repaid \$7,743.14 of the total due.

"This (restitution total) seems fair from our point of view," said festival board member Mike Sakarias. "I hope it puts some finality on this so we can move ahead."

Superior Court Judge Patricia Collins detailed the total to be paid in an order issued Dec. 26. She also told Demers, a former Juneau Assembly candidate, to pay interest on unpaid restitution.

Demers served as volunteer treasurer from 1994 to 1999. After he resigned his position, he failed to return many of the financial records of the festival, board members said. When members looked carefully at the records that were returned, they found many inconsistencies.

Following a confession to police in which he said he might have stolen \$3,000 or \$4,000, Demers was found guilty of two felonies - second-degree theft and falsifying business records. He was sentenced Nov. 3 and began serving his sentence the next day. For the theft charge, he was sentenced to two years in prison with 18 months suspended and five years probation. He was to pay cost of incarceration up to \$2,500 and to perform 100 hours community work service.

For the charge of falsifying records, Collins gave him an identical sentence to be served concurrently.

In November, she capped restitution at \$24,000, to which Demers objected, and asked for more information before making a final determination.

In her 12-page judgment, Collins noted that "restitution awards in criminal

cases are expressly limited to actual damages." She did not honor folk festival requests for future lost income and for printing a letter advising members of Demers' conduct. However, she did allow accounting costs and record duplication costs.

Collins noted that the work of board members to piece together "a five-year pattern of thefts" and their "remarkable volunteer efforts ... saved the membership a great deal of money that would otherwise have been spent on accounting costs associated with an audit."

The festival board "remains free to seek additional civil damages" from Demers, Collins noted.

Ann Chandonnet can be reached at achandonnet@juneauempire.com

[Back to local headlines](#)

Copyright © 2000 *Southeastern Newspaper Corp.*
Comments or questions about our website? Contact the [Webmaster](#).
If you have questions about your password, please contact [Circulation](#).

Friday, March 27, 1998

Judge orders payment in embezzlement case

Last modified at 2:43 p.m. on Friday, March 27, 1998

By SVEND HOLST
THE JUNEAU EMPIRE

Jennifer Bell, former director of AWARE, said at a hearing Thursday that she couldn't find a job because of her bad reputation.

Bell, 45, broke probation for an embezzlement conviction by not making a restitution payment and not getting a job.

Juneau Superior Judge Walter Carpeneti ordered her Thursday to make \$300 per month payments toward paying restitution, but didn't send her to jail for breaking the terms of her probation. The probation was a result of her 1995 conviction for embezzling almost \$70,000 from AWARE - the Aiding Women in Abuse and Rape Emergencies shelter.

Three years ago, Bell pleaded no contest to felony theft in exchange for reduced charges, and was sentenced to serve 20 months in jail, with another 40 months suspended.

Rick Svobodny, Juneau's district attorney, said Bell appeared to think she was too good to work a menial job, and needed supervision to assure she got one, kept one and paid her restitution. After 15 months, he said, she hadn't paid a penny. Her probation called for her to make annual payments of almost \$7,000.

AWARE was insured for the lost money, so Bell's payments are going to an insurance company, according to Kevin Shores, the assistant public defender representing Bell.

"Jennifer Bell is working now after a long and frustrating job search," Shores said. "She never had it in her head that she'd not pay restitution. She is definitely suffering from the reputation that resulted from her offense."

Bell said she didn't take a minimum-wage job because the pay wasn't enough to support her family. She'd tried, she said, applying for administrative assistant openings and clerk positions, but wasn't hired.

Carpeneti revoked Bell's probation, but said he believed she had been trying to get a job. He accepted an agreement reached by Bell's attorney and Svobodny.

Under the agreement, Bell won't be sent back to prison, but must make the restitution payments and will be on supervised probation for five years and on informal probation for another five.

Bell's job, which she's had for two months, involves leading talking groups for Natives For Sobriety. If Bell loses her job, her probation officer can have her spend up to three months at the Glacier Manor Half-Way House to assure she tries to get another one.

Copyright © 1998 *Southeastern Newspaper Corp.*
Comments or questions? Contact the [Webmaster](#).

42 P.3d 1, *; 2002 Alas. App. LEXIS 18, **

JAMES G. DEMERS, Appellant, v. STATE OF ALASKA, Appellee.

Court of Appeals No. A-7916, No. 1788

COURT OF APPEALS OF ALASKA

42 P.3d 1; 2002 Alas. App. LEXIS 18

February 8, 2002, Decided

PRIOR HISTORY: [**1] Appeal from the Superior Court, First Judicial District, Juneau, Patricia A. Collins, Judge. Trial Court No. 1JU-S00-844 CR.

DISPOSITION: Affirmed in part and vacated in part.

CASE SUMMARY

PROCEDURAL POSTURE: The defendant pled no contest to one count each of second-degree theft and falsifying business records. The Superior Court, First Judicial District, Juneau (Alaska) amended the judgment to provide as a condition of probation that the defendant pay restitution in the amount of \$ 16,283, to his former employer, which included \$ 5,400 for "accounting costs." The defendant appealed the amount awarded for awarded for accounting costs.

OVERVIEW: After the defendant resigned as treasurer for his employer, a non-profit organization, a \$ 13,000 discrepancy was discover in the employer's business records, which led to the charges against the defendant. The challenged \$ 5,400 of the restitution order included \$ 400 paid to the employer's accountants for reviewing the books and \$ 5,000 for 200 hours of volunteer work performed by two of the employer's board members, who audited and reconstructed the business records. The appellate court affirmed in part and reversed in part. The court found that the employer clearly incurred a loss as a result of the defendant's theft and falsification. The employer not only lost the stolen funds, but also incurred other expenses, such as the \$ 400 expense for accounting services. This evidence supported the trial court's probation condition ordering restitution of \$ 400 for the accounting services. The court, however, reversed the award of \$ 5,000 of restitution for volunteer accounting services. Although injured as a result of the crimes, the employer did not incur any monetary damage or loss when board members volunteered their time to audit and reconstruct the business records.

OUTCOME: The court affirmed the restitution award of \$ 400 as reimbursement to the employer's accountants, and vacated the restitution award of \$ 5,000 for the volunteer time expended by the employer's board members.

CORE TERMS: restitution, sentencing, volunteer, audit, authorize, reimburse, condition of probation, sentence, theft, reconstruct, restitution award, actual damages, accounting, business records, pay restitution, embezzlement, volunteered, accountants, order restitution, ordering, persons injured, person injured, donated, own time, compensated, probationer, reparation, compensate, aggrieved, recipients

LexisNexis(TM) HEADNOTES - Core Concepts - Hide Concepts

Criminal Law & Procedure > Sentencing > Restitution

HN1 Alaska Stat. tit. 12 authorizes courts to award restitution both as a component of the sentence and as a term of probation. Alaska Stat. § 12.55.045(a)(2) provides that when contemplating an order of restitution, a court should consider the financial burden placed on the victim as a result of the criminal conduct of the defendant. The legislature intended that courts should construe § 12.55.045(a) broadly by ordering restitution to all persons who were injured as a result of a defendant's conduct. Alaska Stat. § 12.55.100(a)(2) provides, in part, that a court may order a defendant to make restitution or reparation to a victim for actual damages or loss caused by the crime as a condition of probation.

Criminal Law & Procedure > Sentencing > Restitution

HN2 Alaska Stat. § 12.55.100(a)(2) grants a sentencing court the power to impose restitution as a probation condition when a victim suffers actual damages or loss.

Criminal Law & Procedure > Sentencing > Restitution

HN3 The legislature did not provide a sentencing court with the power to order restitution to a victim who was injured but who did not sustain actual damages or loss because the injury was cured by volunteer efforts.

COUNSEL: James E. Curtain, Juneau, for Appellant.

David Brower, Assistant District Attorney, and Bruce M. Botelho, Attorney General, Juneau, for Appellee.

JUDGES: Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges. MANNHEIMER, Judge, concurring. COATS, Chief Judge, dissenting.

OPINIONBY: STEWART

OPINION: [*1]

STEWART, Judge.

From 1994 until 1999, James G. Demers served as treasurer of the Juneau-based Alaska Folk Festival, a non-profit organization. After Demers resigned his position, the new treasurer discovered discrepancies in the Festival's business records. More than \$ 13,000 was unaccounted for in over forty transactions spanning more than four years. After the police investigated, the State filed an information charging Demers with one count each of second-degree theft and falsifying business records. n1

-----Footnotes-----

n1 AS 11.46.130(a)(1) & AS 11.46.630, respectively.

-----End Footnotes----- [**2]

Demers waived indictment by the grand jury and pleaded no contest to the charges. Superior Court Judge Patricia A. Collins imposed 2 years with 18 months suspended on each count and ran the sentences concurrently. At sentencing, Judge Collins ordered Demers to pay restitution of up to \$ 24,000 (with credit for the \$ 7,743.14 he paid before sentencing) as a condition of probation subject to input from Demers after he had reviewed the Festival's records.

Ultimately, Judge Collins amended the judgment to provide as a condition of probation that Demers pay restitution to the Festival in the total sum of \$ 16,283.17. Included in this sum was

\$ 5,400 for the Festival's "accounting costs." In this appeal, Demers challenges only the \$ 5,400 awarded for accounting costs. Those costs included \$ 400 paid to the Festival's accountants for reviewing the Festival's books after the embezzlement [*2] was discovered and \$ 5,000 for 200 hours of volunteer work performed by two of the Festival's board members who audited and reconstructed the Festival's business records.

For the reasons expressed below, we affirm the award of \$ 400 as reimbursement to the Festival's accountants. However, we vacate the [*3] condition of probation that orders \$ 5,000 restitution for the volunteer time expended by the Board members.

Discussion

HN1 Title 12 of the Alaska Statutes authorizes courts to award restitution both as a component of the sentence and as a term of probation. Alaska Statute 12.55.045(a)(2) provides that when contemplating an order of restitution, the court should consider the "financial burden placed on the victim ... as a result of the criminal conduct of the defendant." The legislature intended that courts should construe AS 12.55.045(a) broadly by ordering restitution to all persons who were injured as a result of a defendant's conduct. n2 Alaska Statute 12.55.100(a)(2) provides, in part, that a court may order a defendant to make restitution or reparation to a victim "for actual damages or loss caused by the crime" as a condition of probation.

-----Footnotes-----

n2 In the Alaska Session Laws, Ch. 71, SLA 1992, the legislature announced the purpose of AS 12.55.045(a):

Section 1. PURPOSE. It is the purpose of this Act ... to make full restitution available to all persons who have been injured as a result of criminal behavior, to the greatest extent possible, by

...

(3) allowing courts to order that restitution be made to all persons who have suffered a loss as a result of a defendant's conduct[.]

-----End Footnotes----- **[**4]**

Clearly, Demers injured the Festival, and the Festival incurred a loss as a result of Demers's theft and falsification. Judge Collins considered the evidence that, in addition to the stolen funds, the Festival incurred other expenses. For example, the State presented evidence that the Festival incurred a \$ 400 expense for accounting services. This evidence supports the court's probation condition ordering restitution of \$ 400 for the accounting services.

A Festival board member also testified that board members volunteered 200 hours of work auditing and reconstructing Festival records. The member valued the volunteer effort at \$ 25 per hour for purposes of seeking restitution.

Judge Collins ordered \$ 5,000 of restitution for accounting services based on the testimony regarding the volunteer efforts of Festival board members. She reasoned that restitution was appropriate because, if she did not order the restitution, Demers would benefit since the Festival "is too poor to afford the costs of a more expensive, but necessary, audit." Judge Collins recognized this was a close issue but reasoned that this amount of restitution was appropriate because a commercial enterprise would have **[**5]** incurred a monetary cost that, in this case, was met by volunteer efforts.

But the Festival did not expend any money nor receive an invoice for this volunteer effort.

Although the Festival was injured as a result of Demers's crimes, it did not incur any monetary damage or loss when the Festival's board members volunteered their time and effort to audit and reconstruct the Festival's business records.

Obviously, the legislature intended to provide the courts with the authority to order defendants to compensate their victims. But ^{HN2} AS 12.55.100(a)(2) grants a sentencing court the power to impose restitution as a probation condition when a victim suffers "actual damages or loss."

We conclude that ^{HN3} the legislature did not provide a sentencing court with the power to order restitution to a victim who was injured but who did not sustain actual damages or loss because the injury was cured by volunteer efforts. Accordingly, we vacate that portion of the court's probation conditions which ordered \$ 5,000 restitution for the volunteer work performed by the board members.

Conclusion

The judgment of the superior court is AFFIRMED in part and VACATED in part. **[**6]**

CONCURBY: [*3] MANNHEIMER

CONCUR:

MANNHEIMER, Judge, concurring.

Demers embezzled money from the Alaska Folk Festival and, as part of his sentence, he was ordered to pay restitution to the Folk Festival for the money he stole. The question in this case is whether the sentencing court was authorized to order Demers to pay an additional \$ 5000 in restitution to the Folk Festival for the value of labor donated by two of its board members who volunteered their time to reconstruct the Folk Festival's financial records, thus allowing the Folk Festival to ascertain the amount of Demers's embezzlement.

A court's sentencing powers are defined by the legislature. n1 The statutes at issue in this case are AS 12.55.045(a) (which authorizes a court to order restitution as a direct component of a sentence) and AS 12.55.100(a)(2) (which authorizes a court to order restitution as a condition of probation). n2 The question is whether the Alaska Legislature intended these statutes to authorize a sentencing court to order a defendant to reimburse a victim for the value of unpaid labor volunteered by other people who wish to assist the victim in coping **[**7]** with the crime.

-----Footnotes-----

n1 See *R.I. v. State*, 894 P.2d 683, 685 (Alaska App. 1995).

n2 Shortly after Demers committed his crime, the legislature amended AS 12.55.045 so that any duty of restitution imposed as a direct component of the defendant's sentence automatically becomes a condition of the defendant's probation. See AS 12.55.045(i), enacted in SLA 2000, ch. 103, § 4.

-----End Footnotes-----

The aim of restitution is to restore victims to their financial condition before the crime. The problem in the present case is that the superior court has ordered "restitution" that makes the Folk Festival \$ 5000 richer than it was before. Demers has been ordered (1) to repay the money he stole and (2) to pay \$ 5000 for the labor donated by the two board members -- labor that the Folk Festival did not have to pay for. Thus, if Demers satisfies both parts of the superior court's restitution order, the Folk Festival will end up with \$ 5000 more than it

possessed before [**8] Demers committed his theft.

If the Folk Festival had been insured against embezzlement, and if the insurance company had paid for an audit, no sentencing judge would order the defendant to "reimburse" the Folk Festival for the money spent by the insurance company. Similarly, if the insurance company had sent its own employees to reconstruct the Folk Festival's records to ascertain the amount of the theft, no sentencing judge would order the defendant to "reimburse" the Folk Festival for the labor performed by the insurance company's employees. The Folk Festival did not pay for this labor; it merely received the benefit of this labor. Ordering the defendant to pay "restitution" to the Folk Festival for the hours of work performed by the insurance company employees would result in the unjust enrichment of the Folk Festival.

The facts of the present case offer another example of the same situation. Two Folk Festival board members reconstructed the Folk Festival's records. The two board members were not employees of the Folk Festival, and they did not charge the Folk Festival for their time. The Folk Festival received the benefit of their labor but incurred no expense. Under these circumstances, [**9] the Folk Festival received a windfall when the superior court ordered Demers to "reimburse" the Folk Festival for the hours of labor donated by the two board members.

If anyone deserves to be compensated for the board members' labor, it is the board members themselves. Arguably, the superior court might simply amend its judgement and name the two board members as the recipients of the restitution. But I conclude that the legislature has not authorized sentencing courts to impose this type of restitution.

AS 12.55.045(a) declares that a sentencing court may order a defendant to pay restitution to three categories of people: (1) "to the victim", (2) to [any] other person injured by the offense", and (3) "to a public, private, or private nonprofit organization that has provided or ... will be providing counseling, medical, or shelter services to the victim or [**4] [any] other person injured by the offense". The Folk Festival board members are not themselves the victims of Demers's embezzlement, nor are they "a public, private, or private nonprofit organization that has provided or ... will be providing counseling, medical, or shelter services to the victim [**10] or [any] other person injured by the offense". So if the board members are to be deemed proper recipients of restitution, they must qualify as "other persons injured by the offense".

The only sense in which the two board members were "injured" by Demers's crime is that they felt duty-bound to conserve the limited financial resources of the Folk Festival by devoting their own time and energy to the reconstruction of the Folk Festival's financial records. And, indeed, this is the "injury" that the sentencing judge ordered Demers to reimburse. But I conclude that the legislature did not intend the phrase "injured by the offense" to be interpreted in so broad a fashion.

AS 12.55.045(a) must be interpreted in light of its companion provision, AS 12.55.100(a)(2), the statute which authorizes a sentencing court to impose restitution as a condition of probation. AS 12.55.100(a)(2) declares that a sentencing court can order a probationer to "make restitution or reparation to aggrieved parties *for actual damages or loss* caused by the [probationer's] crime". Because AS 12.55.045(a) [**11] and AS 12.55.100(a) appear to be designed to give sentencing courts two different methods of achieving the same goal, they should be construed *in pari materia*. That is, we should presume that the legislature intended the phrase "persons injured by the offense" to mean the same thing as the phrase "aggrieved parties [who have suffered] actual damages or loss".

One could argue that volunteers who come to the aid of a victim, and who thereby spare the victim identifiable and measurable financial expense, should be compensated for their time and trouble. Indeed, if I were writing on a clean slate, free to adopt whatever rule I thought best, there is much to commend the position taken by Judge Collins (the sentencing judge) and by

my dissenting colleague, Judge Coats. But I conclude that such an interpretation of AS 12.55.045(a) and AS 12.55.100(a) would expand restitution beyond the scope envisioned by the legislature. It would seemingly authorize a sentencing judge to order a defendant to pay restitution at an hourly rate to relatives, friends, and neighbors of a crime victim who spend time consoling [**12] the victim, or who help clean up the victim's house after a burglary or an assault, or who do the shopping or cooking for a victim who is too distraught to attend to these tasks.

Based on the wording of AS 12.55.045(a) and AS 12.55.100(a), I conclude that our legislature did not intend to authorize a sentencing court to order a defendant to reimburse people who volunteer their labor to alleviate or mitigate the effects of the defendant's crime. Accordingly, I join Judge Stewart in reversing the award of \$ 5000 restitution for the labor of the two Folk Festival board members.

DISSENTBY: COATS

DISSENT:

COATS, Chief Judge, dissenting.

In a detailed order, Judge Collins made several factual findings to support her restitution award, and Demers does not contest these findings. Judge Collins found that the \$ 5,000 restitution award was to reimburse the Folk Festival for the efforts of two of its board members to audit and reconstruct the financial records. The audit was required to reconstruct the books after Demers's theft. The audit would have been unnecessary but for the theft. Had the Folk Festival hired accountants to audit the books [**13] and reconstruct the records, it would have been far more expensive for the board. By conducting the audit with volunteers, the Folk Festival saved itself (and Demers if he pays the restitution award) a substantial amount of money. Judge Collins reasoned that if the Folk Festival could recover restitution for money it paid to accountants to conduct an audit, it was reasonable to allow it to recover for the value of the time spent by the volunteers. Judge Collins's reasoning appears to me to be sound.

Alaska Statute 12.55.045 and AS 12.55.100 authorize a sentencing court to make restitution awards, either as part of the defendant's sentence or as a condition of probation. The [*5] Alaska legislature clearly intended courts to construe AS 12.55.045 and AS 12.55.100 broadly to allow courts to order restitution to all persons injured by the defendant's conduct. n1 Alaska Statute 12.55.045 directs a sentencing court that orders restitution to take into account the "public policy that favors requiring criminals to compensate for damages and injury to their [**14] victims." n2 One of the purposes of AS 12.55.045(a) is "to make full restitution available to all persons who have been injured as a result of criminal behavior, to the greatest extent possible." n3 This expressed legislative intent seems to me to support the conclusion that the legislature favors restitution awards as part of criminal sentences.

-----Footnotes-----

n1 See *Lonis v. State*, 998 P.2d 441, 447 (Alaska App. 2000).

n2 AS 12.55.045(a)(1).

n3 Ch. 71, § 1, SLA 1992 (emphasis added).

-----End Footnotes-----

Judge Collins's restitution award in this case appears to me to be consistent with this legislative policy. The Folk Festival was clearly injured by Demers's thefts. But for the volunteer efforts of the board of directors, the cost of reconstructing the financial records of the Folk Festival would have been much greater. To say that a victim can recover restitution only when he hires

someone else to undo the damage caused by a criminal act appears to violate **[**15]** the policy set by the legislature. Moreover, as a separate policy consideration, if we only allow a victim to recover restitution if he hires a third party to undo the damage, we actually encourage victims to increase the amount of their actual loss.

On the other hand, if the victim of a crime, rather than hiring someone else, spends his own time and effort to fix damages caused by a criminal act and can clearly establish the value of his efforts, I see no reason to preclude a court from awarding restitution. Such a rule seems to me to be consistent with the legislative policy of these statutes and the past interpretations by this court. Accordingly, I would uphold the restitution award. I therefore dissent.

Service: Get by LEXSEE®

Citation: 42 p.3d 1

View: Full

Date/Time: Thursday, February 13, 2003 - 1:55 PM EST

[About LexisNexis](#) | [Terms and Conditions](#)

Copyright © 2003 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

P.O. Box 21748, Juneau, Alaska 99802

alaska folk
festival inc.

February 12, 2003

Representative Bruce Weyrauch
Alaska State Capitol
Juneau, AK 99801-1182

Re: HB 23

Representative Weyrauch,

I am writing to you on behalf of the Alaska Folk Festival in support of House Bill 23.

As you know, our organization has experienced first hand the trauma caused by embezzlement. When a former treasurer of the Board of Directors absconded with thousands of dollars over a several year period, it was only due to the tireless efforts of dedicated volunteers that the extent of the damage was determined. These volunteers donated hundreds of hours of their time to rectify a terrible situation. Unfortunately, those hours were not counted towards the restitution the organization was entitled to receive.

The Alaska Folk Festival recovered from the crime committed by the former treasurer because of excellent volunteers who were committed to maintaining the integrity of the organization. We are pleased to know you are working to make it easier for other organizations that may be faced with this unfortunate situation in the future. We support your efforts to clarify the intent of the Legislature, that the courts may consider the time and efforts of volunteers as a factor in the process of determining restitution.

Thank you,



Maridon Boario
Board President, Alaska Folk Festival

cc: Representative Leslie McGuire, Chair House Judiciary Committee

HB

24

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 24(RES)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
 Title Agreements on management of fish and game BRU Commissioners Office
 Component Commissioners Office
 Sponsor Reps Weyhrauch, Whitaker
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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 (FY2003) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Gordy Williams, Legislative Liaison Phone 465-6143
 Division: Commissioners Office Date/Time 4/9/03 12:30 PM
 Approved by: Kevin C. Duffy, Commissioner Date 4/9/2003
 Agency: Department of Fish and Game

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
FAX (907) 465-2273

MEMORANDUM

DATE: March 7, 2003
TO: Rep. Lesil McGuire
FROM: Rep. Bruce Weyhrauch
SUBJECT: CS for HB 24 (RES) – Co-Management Agreements RE: Glacier Bay

Attached are materials in support of HB 24. At this time I respectfully request a hearing before your committee on this piece of legislation that is very important to the State of Alaska. This bill passed out of the Resources committee on Thursday, March 6, 2003.

If you have any questions or need further information, I invite you to contact myself, or my aide, Linda Sylvester.

Thank you for your kind attention to this matter.

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
FAX (907) 465-2273

CS FOR HB 24 (RES)

CO-MANAGEMENT AGREEMENTS GLACIER BAY NATIONAL PARK AND PRESERVE

The committee substitute, adopted by the Resources Committee, requires the legislature to approve co-management agreements concerning Glacier Bay National Park and Preserve. Once passed, HB 24 would require that intergovernmental agreements with the National Park Service regarding management of the navigable waters within or adjoining Glacier Bay to be approved by law before they become effective. The form of approval would be a regular bill, requiring committee referrals, public hearings and the signature of the governor.

HB 24 includes transitional language that allows the legislature to review any current intergovernmental agreements and if an existing agreement is not approved before July 1, 2004, that agreement or relevant portion is voided.

The intent is to prevent government officials from ceding the state's management jurisdiction over fish and game resources by means of a contract without a full airing of the public policy implications through the legislature.

Rep. Bruce Weyhrauch
Contact: 465-3744

Updated: February 27, 2003

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
FAX (907) 465-2273

CS for HB 24 (RES)

Co-Management Agreements Regarding
Glacier Bay National Park & Preserve

Sectional Analysis

Section 1 of the bill amends AS 16.20.010 by adding a new subsection providing that no provision of AS 16 grants authority to the Department of Fish and Game, the Board of Fisheries, or the Board of Game to enter into agreements with the National Park Service regarding management of fish or game in the navigable waters within or adjoining Glacier Bay National Park and Preserve unless the legislature has approved the agreement by law. This subsection does not prevent the department or a board from entering into agreements with other federal agencies involving the Migratory Bird Treaty Act, Northern Pacific Halibut Act, Marine Mammal Protection Act, Magnuson-Stevens Fishery Conservation and Management Act, Endangered Species Act, or the Pacific Salmon Treaty Act.

Section 2 of the bill is a transitional provisor, providing for legislative review of current intergovernmental agreements with the National Park Service relating to the management of Glacier Bay National Park and Preserve. If an agreement that is in effect on the effective date of this Act is not approved by the legislature before July 1, 2004, that agreement or the pertinent portion of the agreement is void.

Updated: February 27, 2003

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 24(RES)
(H) Publish Date: 3/10/03

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Agreements on management of fish ar BRU _____
Sponsor Representative Weyhrauch Component _____
Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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 (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Jim Pound Phone 465-2338
Division: Resources Committee Date/Time 3/7/03 4:32 PM
Approved by: Representative Fate Date 3/7/2003
Agency: Co-Chair House Resources Committee

S 501

One Hundred Sixth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday,
the twenty-fourth day of January, two thousand*

An Act

To address resource management issues in Glacier Bay National Park, Alaska.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Glacier Bay National Park Resource Management Act of 2000".

SEC. 2. DEFINITIONS.

As used in this Act—

(1) the term "local residents" means those persons living within the vicinity of Glacier Bay National Park and Preserve, including but not limited to the residents of Hoonah, Alaska, who are descendants of those who had an historic and cultural tradition of sea gull egg gathering within the boundary of what is now Glacier Bay National Park and Preserve;

(2) the term "outer waters" means all of the marine waters within the park outside of Glacier Bay proper;

(3) the term "park" means Glacier Bay National Park;

(4) the term "Secretary" means the Secretary of the Interior; and

(5) the term "State" means the State of Alaska.

SEC. 3. COMMERCIAL FISHING.

(a) IN GENERAL.—The Secretary shall allow for commercial fishing in the outer waters of the park in accordance with the management plan referred to in subsection (b) in a manner that provides for the protection of park resources and values.

~~MANAGEMENT PLAN.—The Secretary and the State shall cooperate in the development of a management plan for the regulation of commercial fisheries in the outer waters of the park in accordance with existing Federal and State laws and any applicable international conservation and management treaties.~~

(c) SAVINGS.—(1) Nothing in this Act shall alter or affect the provisions of section 123 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1999 (Public Law 105-277), as amended by section 501 of the 1999 Emergency Supplemental Appropriations Act (Public Law 106-31).

(2) Nothing in this Act shall enlarge or diminish Federal or State title, jurisdiction, or authority with respect to the waters of the State of Alaska, the waters within Glacier Bay National Park and Preserve, or tidal or submerged lands.

(d) STUDY.—(1) Not later than one year after the date funds are made available, the Secretary, in consultation with the State,

the National Marine Fisheries Service, the International Pacific Halibut Commission, and other affected agencies shall develop a plan for a comprehensive multi-agency research and monitoring program to evaluate the health of fisheries resources in the park's marine waters, to determine the effect, if any, of commercial fishing on—

(A) the productivity, diversity, and sustainability of fishery resources in such waters; and

(B) park resources and values.

(2) The Secretary shall promptly notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives upon the completion of the plan.

(3) The Secretary shall complete the program set forth in the plan not later than seven years after the date the congressional committees are notified pursuant to paragraph (2), and shall transmit the results of the program to such committees on a biennial basis.

SEC. 4. SEA GULL EGG COLLECTION STUDY.

(a) ~~STUDY.—The Secretary, in consultation with local residents,~~ shall undertake a study of sea gulls living within the park to assess whether sea gull eggs can be collected on a limited basis without impairing the biological sustainability of the sea gull population in the park. The study shall be completed no later than two years after the date funds are made available.

(b) RECOMMENDATIONS.—If the study referred to in subsection (a) determines that the limited collection of sea gull eggs can occur without impairing the biological sustainability of the sea gull population in the park, the Secretary shall submit recommendations for legislation to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as are necessary to carry out this Act.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 24(RES)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
 Title Agreements on management of fish BRU Commissioners Office
and game Component Commissioners Office
 Sponsor Reps Weyhrauch, Whitaker
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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 (FY2003) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Gordy Williams, Legislative Liaison Phone 465-6143
 Division: Commissioners Office Date/Time 4/9/03 12:30 PM
 Approved by: Kevin C. Duffy, Commissioner Date 4/9/2003
 Agency: Department of Fish and Game

LAW OFFICE OF
BRUCE B. WEYHRAUCH, LLC

whyrock@ptialaska.net

114 S. FRANKLIN ST.

SUITE 200

JUNEAU, ALASKA 99801

TELEPHONE: (907) 463-5566

FAX: (907) 463-5858

January 15, 2001

Honorable Bill Hudson
State Capitol
Juneau, Alaska 99801-1182

- Re: *Legislative Guidelines and Development of Policies to Guide
Comanagement Agreements Entered into by the State of Alaska*

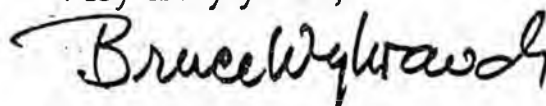
Dear Representative Hudson:

Last year I wrote you about the advisability of the Legislature setting policy guidelines for the State of Alaska when it enters comanagement agreements with the federal government. After I wrote you that letter, Congress passed S. 501, which requires the State and Secretary of the Interior to develop a cooperative management plan for commercial fisheries in the "outer waters" of Glacier Bay. (See enclosed copy, section 3.b.)

There are still no policy guidelines that govern what ADF&G will do in this planning process. It is the state agency that will most likely develop the cooperative management plan with the Park Service. This may be an opportune time to address this matter through State legislation.

Please let me know if you would like to discuss this in any more detail.

Very truly yours,



Bruce B. Weyhrauch

Enclosure

LAW OFFICE OF
BRUCE B. WEYHRAUCH, LLC

whyrock@ptialaska.net

114 S. FRANKLIN ST.

SUITE 200

JUNEAU, ALASKA 99801

TELEPHONE: (907) 463-5566

FAX: (907) 463-5858

January 28, 2000

Honorable Bill Hudson
State Capitol, Room 108
Juneau, Alaska 99801-1182

**Re: *Legislative Oversight of Comanagement Agreements Entered into by
the State of Alaska***

Dear Representative Hudson:

The State of Alaska will enter into an increasing number of comanagement agreements with the federal government and entities seeking sovereignty. These agreements will affect the development and use of Alaska's resources. The trend to comanagement agreements will probably lead to increased confusion over which government or entity has jurisdiction over the State's resources. This will potentially lead to impediments to the use and development of the State's resources by business. Therefore, the Legislature should consider implementing policies to guide State agency officials before they commit the State to these comanagement agreements.

In general, in the fish and game context, "comanagement" refers to the sharing of management responsibilities of fish and game resources according to express agreements with state or federal governments. Specific areas of comanagement are research, regulation, allocation, enforcement, and finance. Calls for comanagement often times arise in rural areas because of frustrations with, or distrust of, historic management institutions.

If comanagement involves the use of information and decentralized data management, or the use information on social, economic, political, and biologic impacts of past, present, or future harvest policies, then comanagement has a

Representative Hudson
January 28, 2000
Page 2

legitimate role in (for example) the state's management authority over fish and game resources. However, if comanagement means the voluntary or forced usurpation of the state's sole jurisdiction to manage fish and game resources by allowing other governments, unresponsive to the electorate, to dictate fish and game harvest, enforcement, or financing policies -- then comanagement is probably unacceptable to the business community. Comanagement based upon the latter would be of particular concern if comanagement ventures are voluntarily allowed by the state. That is because such a regime could have broad, negative policy implications statewide on all kinds of resource users.

I offer two specific examples of the trend towards comanagement in Alaska. In March 1997, at an Anchorage seminar on Comanagement in Alaska, an ADF&G spokesman indicated that there would be comanagement of fish and game resources in Alaska. However, this representative did not give precise definitions, or discuss implementation.

In 1999, the National Park Service promulgated regulations closing commercial fishing in Glacier Bay. In allowing commercial fishing to continue temporarily in some portions of Glacier Bay proper, and in the outside waters that are included in the park's boundaries (outside to three miles), the Park Service dictates as follows: "Commercial fishing shall be administered pursuant to a cooperatively developed State/federal park fisheries management plan, international conservation and management treaties, and existing federal and Non-conflicting State law. The management plan shall provide for the protection of park values and purposes, the prohibition on any new or expanded fisheries, and the opportunity to study marine resources." 64 Fed. Reg. 56463 (Oct. 20, 1999).

One of the easier political decisions to make when conflicts arise over which entity should have the ability to manage resources, who should pay for the management, and who should have enforcement authority, is to compromise and enter into mutually agreed upon cooperative agreements that share resource management responsibilities. The result often concedes state jurisdiction by contract.

Resource dependant organizations and businesses have some general

Representative Hudson

January 28, 2000

Page 3

understandings of the trend towards comanagement, and an ability to carry out business plans in light of the cooperative management by agencies other than the state. In the best situation, a business owner would deal with one sovereign, and know with certainty that the resource under development is being managed under the authority and jurisdiction of the State of Alaska. Despite some disputes between business and the State, the State has generally been the preferred resource manager because it has, when appropriately financed and staffed, been better to deal with than, for example, the federal government. And, if given a choice, for a variety of reasons, most businesses would rather deal with State regulators than regulators from non-state entities.

However, resource dependant industries will eventually be faced with management and legal issues that arise from the terms of the comanagement agreements. Therefore, it may be an appropriate time for the Alaska Legislature to address a policy framework to guide the State's comanagement agreements with non-State entities, and make policy decisions on factors the state should consider before it enters these agreements.

Without such policies in place, there may not be a consistent state interest articulated in the agreements. There may be little understanding or concern about the precedential impact of cooperative management agreements entered into by State bureaucrats. Expediency to reach a "feel good" conclusion may override the need to carefully articulate and assess the long-term impacts of cooperative agreements on business, and on other State agencies, on a State-wide basis. Finally, policy guidelines on State comanagement agreements will be in the best interests of resource development businesses so they can continue to operate with some additional certainty on how government will manage resources, and continue to maintain profitable business plans.

Given the statement by the administration that there would be comanagement of fisheries, and the federal regulation requiring cooperative management of the State's resources in Glacier Bay, the businesses that will be subject to these agreements should have various policy concerns addressed before the State signs any agreements, or delegates its management authority.

Representative Hudson

January 28, 2000

Page 4

Using historic political and legal trends in Alaska and the United States, it is likely that there will be continued, and increasing, use of comanagement agreements by the State of Alaska. Executive branch agencies will probably use comanagement as a power sharing tool to bring the various constituencies "under the tent" to insure consensus of majority interests. In addition, negotiations leading to possible comanagement agreements would necessarily require significant discussions, compromise, and some mediation.

Because the State has not defined its policy guidelines on comanagement, it may be a fertile area for the Legislature's involvement, and a reasonable issue to discuss with the Administration. The Legislature may want to address limiting, or placing policy bounds upon, Executive Branch agencies' use of comanagement arrangements.

Legislation addressing comanagement could require, for example, that before any comanagement agreements are entered into by State agencies, that they be publicly noticed like a regulation, require retention of state jurisdiction, and establish a biologic, social, and/or administrative basis of necessity.

Whether the legislature does enter the comanagement fray, private organizations and businesses involved with resource extraction must carefully monitor any comanagement agreements involving the state and natural resources. Activities or discussions between the State's resource managers and any other political, social, or government entity must be monitored to determine the effect that these discussions, and any resulting agreements, will have on a private entities' ability to continue to harvest and develop the State's resources.

Action on comanagement by the Legislature seems timely. Once a constituency develops that supports comanagement agreements without legislative guidelines, the political/legislative arena will be a difficult forum achieve potential legislative goals and consensus. Thus, it is probably advisable to assess the politics of implementing comanagement policies now, while there is time to still carry on a rational and reasoned legislative debate on this matter.

I would be happy to assist you in formulating a draft policy framework or

Representative Hudson

January 28, 2000

Page 5

concepts for your consideration. I suggest using the State's proposed comanagement plan with the Park Service over commercial fisheries in the Park as a starting point. Please give me a call to discuss this at your convenience.

Very truly yours,

A handwritten signature in cursive script that reads "Bruce B. Weyhrauch". The signature is written in dark ink and is positioned above the printed name.

Bruce B. Weyhrauch

HB

25

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 25(HES)
 (H) Publish Date: 3/10/03
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title: HEALTH CARE DECISIONS/DO NOT RESUSCITATE ORDERS/DONATION OF BODY PARTS BRU State Health Services
 Component: Community Health/EMS Services

Sponsor: WEYRAUCH

Requester: HOUSE (HES) Component No. 2078

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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 (0)						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Currently, various end-of-life provisions are located in different statutes which are narrowly drafted, create confusion for the public, and make it difficult for people to direct their end-of-life care and treatment. The bill establishes a new chapter called the Health Care Decisions Act. The intent of this bill is to provide a tool for end-of-life planning and recording of health care decisions, in one easy to understand chapter of state statute. The Division of Public Health supports the goals of this act. There will be no fiscal impact to the Division by passage of this bill.

Prepared by: Karen E. Pearson, M.S., Director

Division: Public Health

Approved by: Joel S. Gilbertson, Commissioner

Agency: Department of Health and Social Services

Phone: 465-3090

Date/Time: 02/13/2003

Date: 02/13/2003

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Dan Ogg
Rep. Jim Holm
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: March 31, 2003
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS0137I, CSHB 25 (HES): Health Care Services Directives, incorporating the attached seven amendments. The bill was passed out of committee today.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

AMENDMENT NO. 1 - Adopted

OFFERED BY: Weyhnauch

1. At page ~~2~~⁴. Insert (b)(1) Except in the case of mental illness, an individual.....

(2) In the case of mental illness, a declaration may be revoked in whole or in part at any time by the principal if the principal is neither incapable nor incompetent. A revocation is effective when a capable, competent principal communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the principal's medical record. The authority of a named agent and an alternative agent named in the declaration continues in effect as long as the declaration appointing the agent is in effect or until the agent has withdrawn.

RATIONALE: The whole intent of an advance directive for an individual with mental illness is to provide rational decision-making while capable because the individual knows s/he may not be able to do so upon becoming incapable. To allow revocation while incapable negates the whole purpose for the individual with mental illness. The language above is drawn almost verbatim from the current mental health treatment statute. See, AS 47.30.950 and 47.30.966.

By request of Disability Law Ctr

AMENDMENT NO. 2 - Adopted

OFFERED BY: Weyhrauch

- 1 At page 28, line 4, delete "guardian or conservator" and insert "person"

RATIONALE: the current definition in CSHB 25 (HES) of "guardian" is circular, and inclusion of the reference to "conservator" may cause confusion. In an individual case it may overstate the authority of a conservator. For example, a conservator may be appointed for financial matters, but not have authority under the court order to deal with health matters.

By request of the Disability Law Ctr

AMENDMENT NO 3 - *Adopted*.
OFFERED BY Weyhrauch

1. At page 29, lines 3-4, insert after line 3, (20) "Incompetent" means that, in the opinion of the court in a guardianship proceeding under AS 13.26, in the opinion of two physicians that include a psychiatrist, or in the opinion of a physician and a professional mental health clinician, a person's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health treatment decisions.

At page 29, line 9, insert after line 9, (23) "mental health treatment" means electroconvulsive treatment, treatment with psychotropic medication, and admission to and retention in a facility for a period not to exceed 17 days.

Rationale: Both definitions are in the current mental health treatment statute, and both comport with the intent of the current bill. Inclusion of the definitions will clarify exactly when an individual with a mental illness loses the ability to effectively communicate decisions for her/himself and yields the decision-making authority to the wishes expressed in the advance directive, or the agent or surrogate.

& renumber accordingly.

By request of the Disability Law Ctr

AMENDMENT NO. 4 - Adopted.

OFFERED BY: Weyhrauch

1 At page 4, delete lines 20-29, and insert:

2 Sec. 13.52.030. Decisions by surrogate. (a) Except in the case of mental health
3 treatment, a surrogate may make a health care decision for a patient who is an adult or
4 emancipated minor if an agent or guardian has not been appointed, or the agent or
5 guardian is not reasonably available, if the patient has been determined to lack capacity
6 by the primary physician;

7 (b) A surrogate may make a decision regarding mental health treatment for a
8 patient who is an adult or emancipated minor if an agent or guardian has not been
9 appointed, or the agent or guardian is not reasonably available, the mental health
10 treatment is needed on an emergency basis, and the patient has been determined to lack
11 capacity by

ignore
line

12 (1) two physicians that include a psychiatrist; or

13 (2) one physician and a professional mental health clinician"

14 Reletter accordingly subsections beginning on page 4, lines 30 and following.

RATIONALE: this language is proposed to more clearly define the limits of authority for one to act as a surrogate when the matter involves mental health treatment, and limits surrogate power in that case to emergency care to sustain life. The proposed revision also preserves the criterion existing in current law with regard to who must determine incapacity for mental health treatment purposes.

AMENDMENT #5 - Adopted

OFFERED BY: REP. WEYHRAUCH

Page 2, line 13, after "execute a"
Insert "durable"

Page 16, line 22, after "form is a"
Insert "durable"

Page 26, line 21,
Insert "durable" before "power of attorney"

AMENDMENT #6 - Adopted

OFFERED BY: REP. WEYHRAUCH

Page 17, line 11, after, after "disapprove"
Insert "proposed"

Page 28, line 13, after "disapproval of"
Insert "proposed"

AMENDMENT #7 - Adopted

OFFERED BY: REP. WEYHRAUCH

Page 25, line 26, after "facility"
Strike lines 26b, 27, 28, 29 "I am not related..."

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
FAX (907) 465-2273

MEMORANDUM

DATE: March 28, 2003
TO: Vanessa Tondini
Rep. Lesil McGuire
FROM: Linda Sylvester
Rep. Bruce Weyhrauch
SUBJECT: HB 25 – Healthcare Directives Witness List

In advance of this afternoon's hearing, I would like to inform you about the witnesses we've asked to speak on HB 25.

After the bill has been introduced, Paul Malley, the Executive Director of Aging With Dignity will speak about the background of the Five Wishes movement. Mr. Malley will call in from Florida. Following Mr. Malley, I expect these people to speak in support:

Edie Zaukauskas, Attorney for the Disability Law Center, will call in from Anchorage (mental health),
Richard Rainery, from the Mental Health Board will be in attendance,
Bob Briggs, from the Disability Law Center,
Dick Block, from the Christian Science Church, will call in from Anchorage (the 5 Wishes),
Shelley Owens, from the Comfort One Program with the State of Alaska will be in attendance (DNR orders),
Jens Saakvitne (Saw-quit-ney), from Life Alaska, will be on-line from Anchorage (anatomical gifts),
Sioux Douglas, from Hospice will be in attendance,
Marie Darlin, from AARP will be in attendance.

As well, there may be many others from Hospice and AARP.

Please let me know, in advance of the hearing if you have specific recommendations.

Representative_Bruce_Weyhrauch@legis.state.ak.us
www.akrepublicans.org/weyhrauch/

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

National group criticizes Alaska for poor end-of-life care

By ANN POTEMLA
Anchorage Daily News

Last year, for the first time, the national organization Last Acts rated the states on their treatment of dying patients and gave Alaska a failing grade in several areas.

Last Acts is a coalition of organizations, including the American Medical Association and American Association of Retired Persons, now called AARP, funded by the Robert Wood Johnson Foundation. Last Acts' goal is to improve care for people nearing the end of life.

The coalition's report card for Alaska cited several areas for improvement.

- A low percentage of Alaskans 65 and older died with the help of hospice programs. Hospice emphasizes comfort care for people with terminal illness.
- The state lacks physicians and nurses trained in palliative care, which controls pain and other symptoms and improves quality of life for dying patients.
- The state's hospitals don't have enough pain and palliative care services.
- Alaska laws don't support good care planning, such as living wills and powers of attorney. A medical power of attorney makes health care decisions for patients when they

can no longer communicate for themselves.

Local Hospice directors say the grade from Last Acts doesn't tell the whole story.

"Part of me feels like yeah, I agree, we have a long ways to go," said Julia Thorsness, executive director for Hospice of Anchorage. "There's so much to be done."

Even so, Thorsness said the grading system didn't acknowledge the good work being done in Alaska by nontraditional programs. For example, Thorsness said Last Acts focused on hospice programs certified by the Medicare program. In Alaska, only the hospice program in the Mat-Su Borough has such certification, allowing it to bill Medicare for health care services.

But volunteer programs from Juneau to Kenai to Anchorage to Fairbanks offer similar end-of-life care, Thorsness said. In recent years, a group worked with the Bristol Bay Area Health Corp. to start Helping Hands, a unique program that helps terminally ill Bush residents return to their home villages to die.

And now Alaska has Karen Gilley, a nurse trained to offer harp music for people facing death.

"It's a wonderful resource

for the community to have," Thorsness said.

"There are a variety of ways of offering that comfort and support. Sometimes it's massage. Sometimes it's music. Sometimes it's pets," she said. "We really strongly support everyone who's willing to offer whatever their gifts are."

Local hospice directors addressed some of Last Acts' concerns. The national coalition cited a lack of participation in hospice programs. In 2001, Hospice of Anchorage served 144 patients, most of whom had cancer, Thorsness said. During the same time period, the hospice in Mat-Su worked with 66 patients, said Babetta Daddino, the program's manager.

Hospice programs also are certifying more caregivers in hospice and palliative care.


Daddino said Hospice of Mat-Su didn't have any certified nurses before last fall, now it has five. Thorsness said two nurses working with the Anchorage program are certified for hospice care.

State legislators are addressing Last Acts' concern that Alaska's laws don't support good care planning. Rep. Bruce Weyhrauch, a Republican from Juneau, is sponsoring House Bill 25 this session. The bill attempts to create a comprehensive approach to making health care directives, such as picking powers of attorney.

Thorsness and Daddino stressed the importance of continuing education for professionals providing end-of-life care and for the community so residents understand what options they have. In May, Dr. Ira

Block, author of "Dying Well: The Prospect for Growth at the End of Life," will spend two days in Alaska visiting hospitals and consulting with Providence Alaska Medical Center about its palliative care team. Block also will speak at a free public session in Providence's auditorium on May 8.

"I think it's such a new field," Thorsness said. "I think we're in a big group of states that are trying to figure out what's the best way to meet this need, especially with the aging population. There's going to be more people wanting more services."



Hospice and Home Care of Juneau

419. 1 Street, Juneau, AK 99801
(907) 463-3113 • fax (907) 463-3835

March 5, 2003

Re: HB25

Dear Rep. Bruce Weyhrauch and members of the HESS Committee:

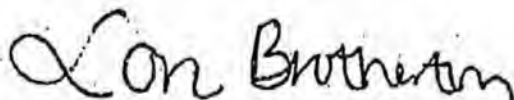
Last year, the Hospice and Home Care Board of Directors reviewed and unanimously endorsed HB25's previous incarnation, HB197. Hospice and Home Care continues its support by endorsing HB25.

The State of Alaska already has regulations and guidelines in place regarding Advanced Directives. These statutes have been revisited and amended many times since they were first adopted. The value of HB25 is that it would provide all Alaskans with a comprehensive, user-friendly resource for addressing their end of life needs. Many people find legal documents to be confusing and intimidating, particularly when they are under the kind of stress one might experience when facing a serious illness or the end of life. Having one easy-to-understand document would greatly encourage people to address those issues before they find themselves in a crisis situation.

HB25 would empower all Alaskans, both healthy and terminally-ill, to:

1. appoint the person they want to make care decisions for them if they are unable to;
2. convey the specific kinds of medical treatment they want and/or don't want;
3. indicate their specific preferences for personal comfort and pain management;
4. convey how they want to be treated with regard to their physical and mental needs; and
5. determine what they want loved ones to know about their end of life decisions.

HB25 really represents a gift to one's family and friends, so they are not left with the burden of having to guess at a loved one's wishes at the end of life. Hospice and Home Care urges you to approve HB25.



Lori Brotherton, Program Coordinator
Hospice and Home Care of Juneau

February 27, 2003

Representative Bruce Weyhrauch
House of Representatives
State Capitol, Room 102
Juneau, Alaska 99801

VIA FAX 465-2273

Dear Representative Weyhrauch,

I am writing in support of CS HB 25, an act relating to advance directives for personal health care services, and end-of-life medical treatment, as well as do not resuscitate orders, body part donations, mental health treatment decisions, and powers of attorney relating to health care.

I appreciated the opportunity to testify before the House HESS committee and respectfully request that you pass on these written comments to the full committee for their further consideration.

Your legislation is becoming far more comprehensive than was originally intended when the Juneau End of Life Task Force first asked two years ago for it to be introduced. I believe this is a good thing, and that a thoughtful and thorough review and consolidation of various existing statutes will help to make the statutory language more "user-friendly" about difficult subjects. The law should not be too complicated to find, to understand and to share with others, especially in end-of-life situations.

With the latest amendments, I believe the intent of the legislation is still very good public policy. It is an opportunity for the legislature to legitimately aid Alaskans by improving state laws so that patients and families can have greater choice and quality of life during the dying process. Nowhere in this legislation does it suggest how a person should die; it simply and clearly defines legally available choices.

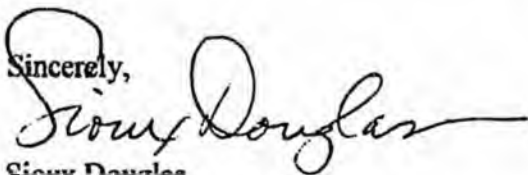
My husband, brother, mother, father, son and mother-in-law all died in the past four years. I personally know the pain of lingering death and have become quite aware of how last-minute decisions, lack of communication, absence of advance directives, and lack of knowledge and/or experience by health-care professionals can aggravate the difficult and emotional time of dying. Death is indeed part of living, but because it is final, Americans generally have a difficult time talking about it and dealing with it. The fact is, all the circumstances surrounding death *need not be bad*. Your legislation will help to *improve* how Alaskans die.

The original intent of this legislation is based upon a document called *The Five Wishes*, which makes it easier for patients to let family, friends and doctors know in advance how they wish to be treated if they become seriously ill and cannot tell them. Over 35 states

Page 2

have laws similar to the language in your proposed legislation. *The Five Wishes* originates from the Commission on Aging with Dignity, a non-profit organization in Florida formed to affirm and safeguard human dignity, and to promote better care of the dying in America. With your bill, Alaska now has the opportunity to join with those states in a common-sense, humane effort of compassion.

I urge the HESS Committee to pass out HB 25 and I deeply appreciate your sponsoring it.

Sincerely,


Sioux Douglas
5050 Thane Road
Juneau, Alaska 99801
463-3042

cc: Rep. Peggy Wilson, Chair
and Members, House HESS Committee

Renée Guerin

P. O. Box 20886 Juneau, Alaska. 99802

(907) 586 - 2274

February 25, 2003

Representative Bruce Weyhrauch
Alaska State House

Dear Rep. Weyhrauch:

I write in support of HB25. This is such an important piece of legislation for all Alaskans for people everywhere.

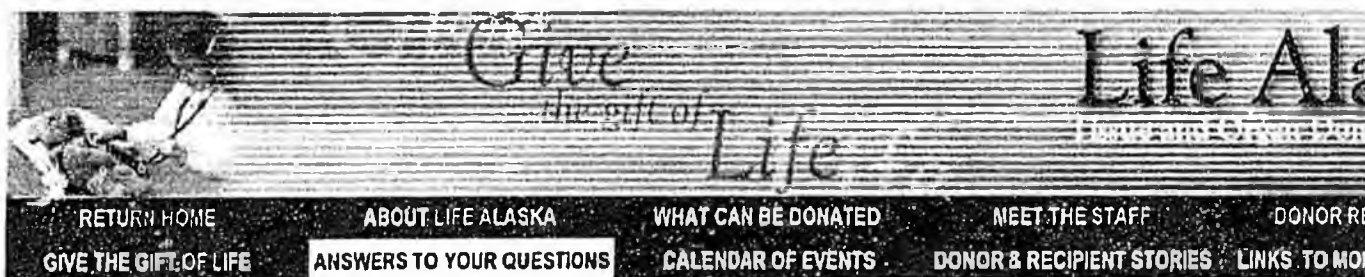
As medicine makes it possible for us to live longer, the way in which we approach our finality becomes even more meaningful. The Five Wishes addresses critical aspects of what we, as individuals, have a right to expect from those in charge of our care when we are incapacitated.

Not everyone is the same. There are believers and non-believers, there are stubborn old coots and helpless weepers, there are those surrounded by caring families, and those who are heartbreakingly alone. We all deserve the dignity of making our own choices while we are able.

Thank you for introducing this bill, and please put all of your effort into helping it become law.

Respectfully,





click icon to view a public service ad from the Coalition on Donation.



download an "executable" file of the same ad that you can send to a friend.

Who can become a donor?

You should consider yourself a potential tissue and organ donor. Your medical condition at the time of determine what organs and tissues can be donated.

What organs and tissues can I donate?

Needed organs include the heart, kidneys, pancreas, lungs, liver and intestines. Tissues that can be donated others include the eyes, skin, bone, heart valves and tendons.

Will my decision to become an organ and tissue donor affect the quality of my medical care?

No. Organ and tissue recovery takes place only after all efforts to save your life have been exhausted and has been declared. The doctors working to save your life are entirely separate from the medical team in recovering your organs and tissues.

Will donation disfigure my body? Can there be an open casket funeral?

Donation neither disfigures the body nor changes the way it looks in a casket.

Are there any costs to my family for donation?

No. Donation costs nothing to the donor's family or estate.

Does my religion approve of donation?

All major religions approve of tissue and organ donation and consider it a gift, an act of charity. If you have questions, contact your religious advisor.

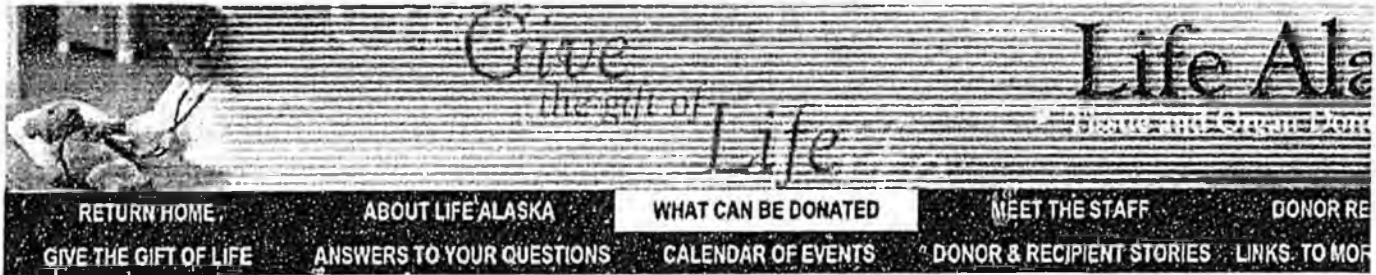
What will happen to my donated organs and tissue?

A national organ sharing system with federal oversight ensures the fair distribution of organs in the United States. Organs are first offered to patients from the Northwest including Alaska. Recipient choice is based upon

type, length of time on the waiting list, location, severity of illness and other medical criteria.

All tissues donated to Life Alaska are first offered to Alaskan patients, then to the person in the greatest need across the United States. For organs and tissues that must be transplanted within hours or days, if no suitable recipient is found in the United States, then the organs or tissues may be offered for transplant on an international basis.

[Click here](#) to request more information from Life Alaska.



What Tissues/Organs Can Be Donated For Transplantation?

TISSUES

Corneas/Eyes
To restore or improve sight.

Humerus
To prevent amputation.

Iliac Crest
Made into several blocks; for spinal fusion and stabilization.

Long Bones
For whole or partial replacement. Sectioned into smaller pieces or made into powder to fill in bone defects.

Patellar Tendon
For knee repair and stabilization surgery

Achilles Tendon
For knee, ankle, and shoulder repairs.

Ear Ossicles
(Incus, Malleus, Stapes) To restore hearing loss.

Heart Valves
To replace defective or diseased valves.

Skin
Life-saving, temporary skin replacement for severely burned patients; also used for dental reconstruction.

Saphenous Veins
To replace blocked arteries in heart bypass surgery; also used for limb saving reconstruction surgeries.

ORGANS

Heart
A heart transplant can return the person to a near normal life. (A heart recipient completed the Boston Marathon.)

Lungs
Single & double lung transplant along with heart lung transplant is a second chance at life.

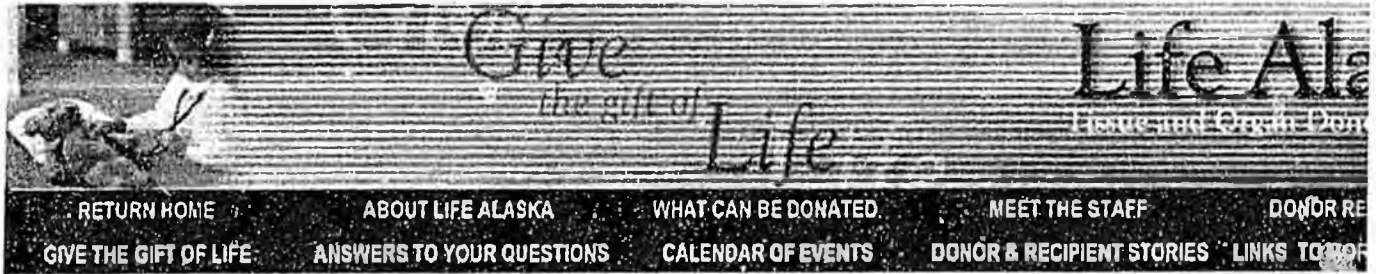
Liver
Infants and adults need this life-saving transplant.

Pancreas
Can dramatically improve or cure diabetes.

Kidneys
From each organ donor, two people can be free from dialysis.

For more information call Life Alaska
562-5433 or 1 (800) 719-5433
www.lifealaska.org

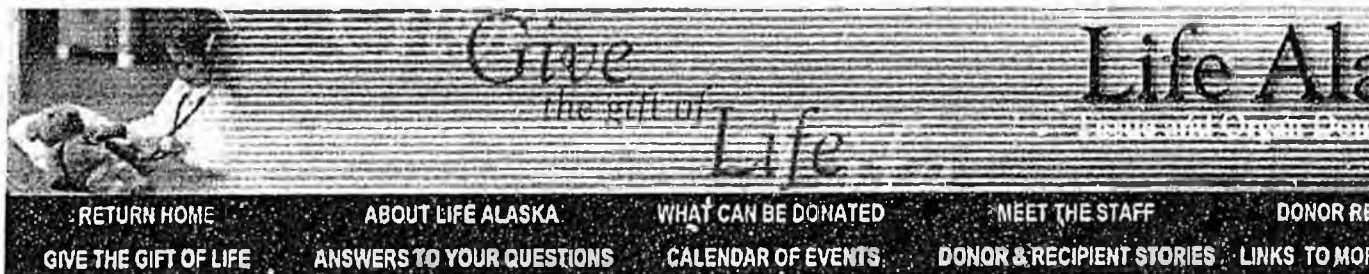
[Click here](#) to request more information from Life Alaska.



Zachary Denali Hansen
9 Mar 1983 – 18 Dec 2001

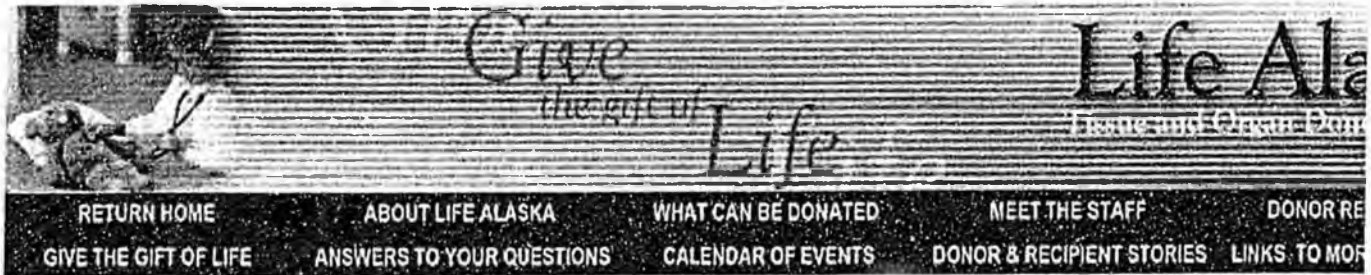
Zach was truly a good young man who brought us so much in the short time he was with us. He walked with a quiet dignity and confidence. He showed us how to be positive and in good humor no matter what circumstances. He showed a caring, respect and willingness to help others while still living his life in a way that was right for him. His passion for snowboarding was a joy to see; the perfect day was to make the perfect video and set it to the perfect music for others to see and hear. We will miss him deeply, always remembering the easy-going attitude and large smile.

Zach's quilt piece was made by many caring friends. The patch was designed by Tyson Hansen, Zach's brother, for the Zach Hansen Memorial Helmet Fund. This is a fund to provide helmets to the skiers and snowboarders in the area so that they may enjoy their winter fun safely. The colors represent Lathrop High School in Fairbanks. Zach was to graduate from Lathrop High School the spring of 2001. He loved Lathrop and was excited about being a part of that school. Many of the teachers and students at Lathrop have been a wonderful support for our family since we lost Zach.



Monica Messick
4 May 1906 – 10 Oct 200.

Monica Messick was born May 4, 1906 in Lebanon, Pennsylvania and died peacefully October 10, 2000 Anchorage, Alaska. She was an extremely loving mother always thinking of others by giving of herself time, love and energy. On many occasions she spoke of organ donations but felt she was "too" old. She to contribute a small part of her love to others who could benefit. Due to her age, her corneas could not but our family was informed that Life Alaska could take samples from her brain, pancreas, liver and he used in research purposes. Her dream of helping others did come through after all and we know that thi important to her.



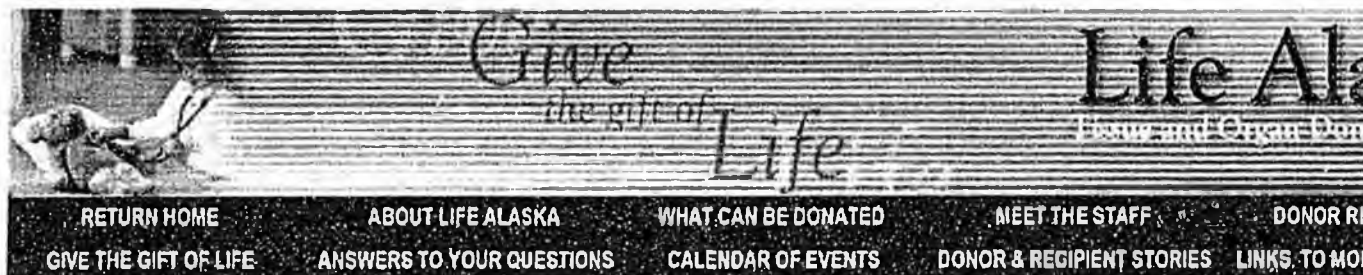
Dr. David Neal Emerson
6 Apr 1935 – 12 Jul 2001

Dr. David Neal Emerson was born April 6, 1935 in Wisconsin. He earned an associate of arts degree from Modesto Junior College in 1954; a BS degree in Zoology from the University of California in 1956; a M degree in Zoology from the University of South Dakota in 1965, and a PhD in Zoology from the University of South Dakota in 1966. His last job, which he loved, was at the Jonathan County Community College in Park, KS.

Our Dad enjoyed walking, hiking, swimming, visiting national parks and studying the Civil War era. He was someone who loved to travel, loved life, and loved history. His goal with Volkswalking, a club he'd been involved in for over five years, was to walk all 50 capitols in all 50 states. His last state was Alaska, and he'd only been in Alaska for only 12 hours when he dropped dead of a massive heart attack. So, he died doing what he loved to do, and in a place he had looked forward to revisiting. Per his final wishes, what organs could be salvaged went to those people who needed them the most. In death, as in life, he continued to help people.

He enjoyed music, playing piano at almost a concert level. He enjoyed teaching and cared a lot about his students. He was an excellent teacher, and was always looking for ways to improve his teaching style. His family and family alike will miss him.

David Emerson is survived by his daughters, Karen Emerson, Susan Wilson, Judith Emerson, Deidra Emerson and Deisa Emerson; his grandsons Shae Emerson, Joshua Wilson, Daniel VanNatter, Adam VanNatter, unborn child (as of August 2002). All of us surround my father in the picture that was sent for the quilt. My brother, Crague, also survives him.



*Bill Thornton
Heart Recipient*

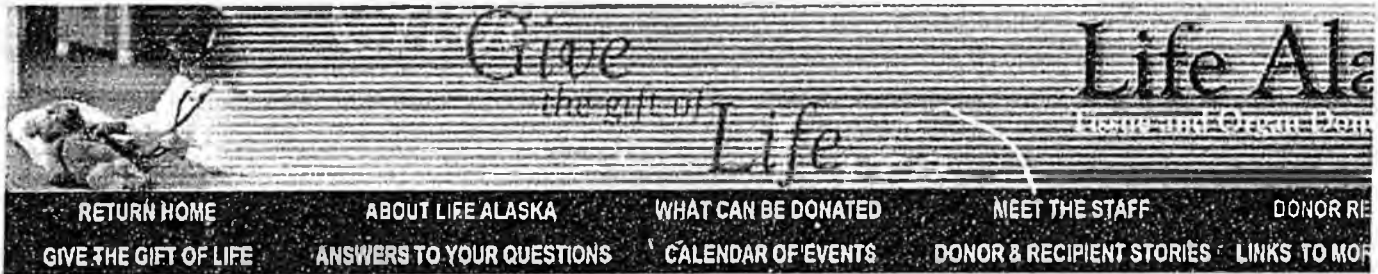
In December of 1994, after going through weeks of being short of breath and having dizzy spells, I finally in and went to see a doctor. After several weeks of guessing and wondering, they performed an EKG at the request of my wife. I was then hospitalized immediately and after many tests, I was diagnosed with heart failure. I later found that this was due to a virus that I caught somewhere earlier that year. This virus proceeded to destroy the left ventricle of my heart and caused fluid to build up in my lungs. In December of 1994, being diagnosed as being in heart failure, I was told that somewhere down the road I might need a heart transplant. My immediate response was "NO WAY." During this time in my life I was having what I thought was a great time, a great job, money, fun, and partying. Besides, there was no reason for me to be in heart failure. I had just had a perfect physical. There were no signs of anything wrong with my heart, no clogged arteries, no shortness of breath, no history of heart attacks, and no sign of irregular heart rhythms.

In July of 1995, we moved to Alaska from Pennsylvania. We drove all the way on one of the most exciting journeys of my life. Prior to my leaving Pennsylvania, my condition took a turn for the better and my irregular heart rhythms became normal again and my shortness of breath disappeared. All was normal again. By the time we reached Alaska, my condition worsened and once again I was short of breath with irregular heart rhythms. Over the next two years, my health and heart condition deteriorated. During the months before my transplant, I spent several days in the hospital solving one problem after another. Finally, on the 11th of July 1997 I was flown to the University of Washington Medical Center to be evaluated and hopefully be placed on the transplant list. On the 20th of July 1997, I had a heart transplant.

It was like starting life over again. I remember thinking about the donor. I still find it somewhat hard to think that this young man, at some point in his life, decided to become a donor. When he passed away at the time I received his heart. I do not think I will ever be able to express my feelings for his act. I just hope that if he looks down from heaven, he smiles at me. I think he knows just how truly thankful I am. My life is now completely absorbed in helping others to learn how much this gift is needed and how to pass this gift to others in need.

is the only way I know how to say THANK YOU to this young man and our God who I believe is holdi
young man's hand.

There are several sayings that relate to how I feel. Some are, "No greater love hath as man than to lay d
life for a friend", "He ain't heavy, he's my brother", and the 11th commandment, "Love ye one another
loved you, love ye also". These quotes mean much more to me than ever. I feel that if God did this for
gave me another chance, than I can live these sayings for him and help my fellow humans.



Dennis Morgan Heart Recipient

In the spring of 1998, I was on a flight from Portland, Oregon to Anchorage, Alaska with two kids behind me who sneezed all the way. As a result, I caught the flu - the type that takes everything out of you. Having no resistance, the virus got into my heart and started to weaken it. This continued until July when I asked my cardiologist if I would get any better. He informed me that I would not, and that it was time to get a new heart. I asked him what the procedure was, and he set me up with a September 23 appointment at the Stanford Medical Center-the earliest time I could get.

By September my heart had a 55 percent output and I had to be put on a special battery pack IV drug to keep my heart an extra boost (sort of like nitro in the gas tank). When I checked into the Stanford Medical Center transplant clinic, the chief physician could not believe I had survived the flight. He told me I was the most fragile person who had ever walked into his office. This meant I was too weak to go through an operation unless even considered for a heart transplant.

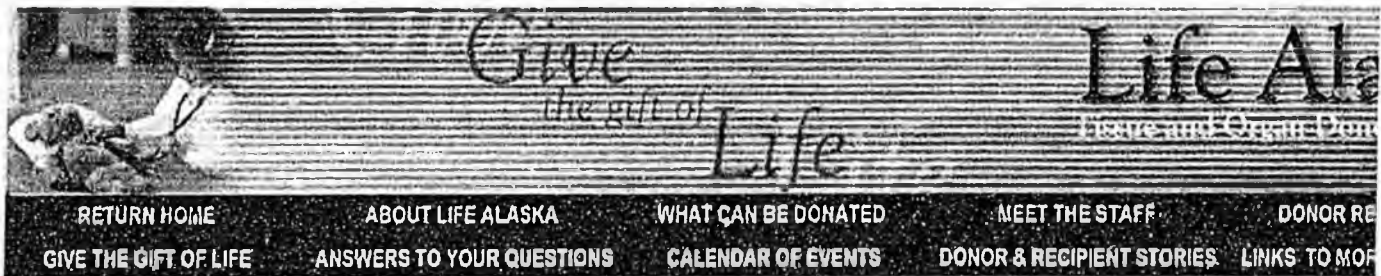
Well, I set up house in a room in the cardiac unit to get stronger. After a week, I had improved so much that the transplant committee considered me for a transplant and put me on the 1A list. This meant I was kept in the hospital until the first match was available.

Two months went by and still I waited for the right heart. With a common blood type and body size (the main points for a match), I was still there. November 24 was my birthday and I thought I might get a great present. I also had an after thought - that it would be nice to be 56 years old and have a heart half my age.

November 24 arrived and all the nurses and doctors kept coming into my room to wish me a Happy Birthday. The festivities lasted until dinner when a nurse came and took my meal away. I told her she knows better - I tended to get a little cranky if I don't get something to eat! She happily told me I had another present as I was informed of a heart that was a match.

The transplant operation only took 2.5 hours and all went well. I woke up on Thanksgiving Day with a heart to be thankful. My greatest thanks go out to the family of the donor for the gift of life. This 28-year-old donor also gave this gift to others in the forms of other needed organs.

I hope all of you would make this choice, and you need to discuss it with your family so they will honor your request. For more information in Anchorage, contact [Life Alaska](#). Their phone number is (907) 562-5433, toll-free (800) 719-5433.



Erin Hall Meade Tissue Recipient

In August 2001 I was in a small plane crash here in Alaska. I sustained serious injuries, including a shattered leg, a crushed left ankle, a badly broken right ankle, and two broken arms. I was airlifted to Providence by a Life Guard helicopter, where I underwent several surgeries. My lower left leg was broken into so many pieces that it needed some sort of scaffolding to show the new bone where to grow. I was very lucky - I had my first bone tissue transplant the day after I arrived. Pieces of donated bone were placed in my left leg, and a made of donated bone tissue was used to repair my right ankle. There is a high probability that all this bone tissue came from Alaskan donors.

Even with these transplants, my doctors thought it was likely I'd never walk again. I had no ankle joint in my left leg, and a badly damaged one in my right leg. I left the hospital a few weeks later, with casts on both ankles. Despite the doctors' opinions, I knew I was not going to spend the rest of my life in a wheelchair. There was any way I could get out. I could get both ankles fused, but that would subject me to a life of painful awkward walking, and potentially several more surgeries in the future.

I heard about an experimental ankle transplant program at the University of California San Diego's Orthopedic Clinic; donated ankle joints were being transplanted into people with damaged or ruined ankle joints. I contacted the head of the transplant team, and one year after my accident I flew down to San Diego to see if I could qualify for the program.

I was lucky again - I was accepted into the program. I flew back to Anchorage and waited for the phone call telling me they had found a matching donor. The call came in early October of 2002. I flew down and my donated ankle was transplanted into my left leg. I was the 41st ankle transplant done in the U.S. Three months later I stood up on it for the first time.

I am now walking again, and I am hoping to qualify for another transplant - this time, for my right ankle. I am grateful to the people who gave me this gift; the people who donated bone tissue so my surgeon could repair me.

leg and ankle well enough that I qualified for an ankle transplant, and the person who donated the ankle itself a year later. Without all of them, I would spend the rest of my life in a wheelchair.

When I get my second ankle transplant, I will know that it's because some wonderful person somewhere gave their organ and tissue donor card and told their family of their wishes; they gave the final, greatest gift a person can give - the gift of giving other people a second chance.



Life Alaska Summary

Life Alaska is the tissue and organ donation agency serving Alaska, offering the option of organ and tissue donation to families who have suffered a death in Alaska. Life Alaska was established in 1992 as the state's tissue donor program. Beginning in the year 2000, Life Alaska assumed responsibility for organ procurement under the direction of LifeCenter Northwest Donor Network, the federally designated organ procurement agency based in Washington. Since 1992, Life Alaska has had more than 1,800 donors and has supplied more than 4,800 tissues for transplantation to Alaskan patients. These include corneal, bone, tendon, and heart valve transplants throughout the state. Organ and tissue donations have taken place across the state from Barrow to Ketchikan.

Life Alaska has a multi-year donor family support program including an annual remembrance service with family participation in creating donor quilts, a memory wall, and memory albums. The family support program interacts with families through phone calls, personal contact, letters, and access to our bereavement library. The family support program is available to all families who have suffered a death and is independent of consent for donation.

Life Alaska offers statewide training to hospital personnel for the referral, donation and family care process. Approximately 75% of Alaskan families have accepted the donation option when given the choice by Life Alaska. The State Medical Examiner's Office supports families' wishes for donation and if possible works closely with Life Alaska to honor a family's wish for donation. The recovery procedure is performed under sterile conditions with full restoration taking place immediately following donor surgery. The donor maintains a normal appearance with no restrictions in funeral arrangements. The donor family is never charged for any donation related costs. All donation information is kept confidential.

Organ donation occurs when a patient has died from an irreversible brain injury resulting in brain death. These patients are kept on mechanical support until organ donor surgery. Tissue donation can take place up to 24 hours after the heart has stopped. The age criteria for transplantable organs and tissues are generally from birth to the mid 70's with patients of any age being candidates for research. All tissues donated to Life Alaska are first offered to Alaskan patients and physicians before being made available outside the state. Organs are shared using a Federally mandated national sharing system.

Life Alaska is committed to Alaskan donor families while striving to meet the transplant needs for all Alaskans. The need for transplantable organs and tissues continues to grow and we need your continued help and support. Please call Life Alaska with any questions, comments, or to sign up on the donor registry. We are available 24 hours a day to discuss donor suitability, bereavement support, critical incident stress debriefing, and tissue transplantation in Alaska. Together, we are making a difference.

Life Alaska
Tissue and Organ Donation
P.O. Box 231809
Anchorage, Alaska 99523-1809
(907) 562-5433 (800) 719-5433
Fax (907) 562-5333

Life Alaska, Inc.

Tissue Procurement Service
P. O. Box 230785
Anchorage, AK 99523
1-907-562-5433 • 1-800-719-5433
Fax 1-907-562-5333



TISSUE TRANSPLANT FACTS

DEFINITION

Allograft: Tissue graft transplanted from another person after their death, to you.

Autograft: Tissue graft from one part of your body to another.

HISTORY

Tissue (including bone, tendon, skin, cornea, heart-valve and vein) transplant have been performed for over 40 years with great success. Bone and tendon transplants are the most common transplants today, with over 1,000,000 having been performed during the last 5 years.

RISK

While the risk is exceedingly small, no surgical procedure or transplant is without any risk. Risk factors include graft failure, and the small chance of infection (from bacteria or virus, such as AIDS or hepatitis). The risk of bacterial infection is considered the same with an autograft or an allograft. The following steps are taken with *every transplant donor* to help insure your safety:

- 1) Extensive evaluation of the donor's medical and social history to rule out infectious disease, cancer, IV drug abuse and any other high risk factors per the National Center for Disease Control.
- 2) A thorough exam of the donor body and tissue is conducted to rule out any disease process.
- 3) Laboratory tests are conducted with much greater sensitivity than for blood donation, to rule out any infection with HIV (AIDS), hepatitis, and syphilis. Donor blood and every piece of tissue is cultured at the time of removal and after final processing to screen for infection.
- 4) Tissue processing removes nearly all blood and extra tissue. Anti-bacterial and viral washes take place. Freeze dried tissue has never transmitted AIDS or hepatitis.
- 5) All donation is altruistic and voluntary. There is no donor family compensation.

The extensive screening, testing and processing helps to make tissue transplant even safer than blood transfusion. You may discuss the options with your physical and nurse, but the final decision is up to you.

What You Need To Know About **ORGAN AND TISSUE DONATION**

Signing your organ donor card is not enough.

Even if you have signed a donor card or indicated your wish to donate on your driver's license, you need to tell your family since they will be consulted before donation can take place.

COMMON QUESTIONS

Will my decision to become a donor affect the quality of my medical care?

No. A transplant team does not become involved until other physicians involved in the patient's care have determined that all possible efforts to save the patient's life have failed.

Do celebrities and VIPs get special treatment in receiving organs?

Absolutely not. The United Network for Organ Sharing was created to ensure the equitable allocation of organs for transplantation. Patients on the waiting list are matched with organs anonymously, using medical criteria such as severity of illness, blood type, body size and weight.

Will donation disfigure my body? Can there be an open casket funeral?

Donation does not disfigure the body nor change the way it looks in the casket. Donation does not interfere with funeral arrangements.

Does my religion approve of donation?

Most major religious groups in the U.S. approve and support organ and tissue donation.

Is it permissible to sell human organs?

No. The National Organ Transplant Act (Public Law 98-507) prohibits the sale of human organs.

Is my family responsible for any of the costs of donation?

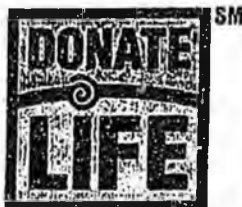
No. The donor's family is responsible only for hospital charges not involved with the donation and the funeral arrangements.

NATIONAL FACTS

- As of August 2002, there were 80,294 people on the national waiting list for an organ transplant.
- Approximately 15 men, women and children die *each day* on the waiting list because there are not enough organs donated.
- It is possible for one person to donate their heart, liver, lungs, kidneys, pancreas, heart valves, skin, corneas, bone, as well as cartilage and other tissues in order to save or greatly improve the lives of over 50 people.
- In 2001 there were 24,076 organ transplants.
- In 2001 there were 46,532 cornea transplants.
- In 2001 nearly 900,000 tissues transplants were performed.
- The one year survival rate for heart transplants is over 82%.
- Most people who have become organ donors died from an unexpected accident or medical problem. This is why it is important to discuss your wishes with your family.

ALASKA FACTS

- Life Alaska has the highest consent rate in the nation.
- Since 1992, Life Alaska has had over 1,800 donors.
- Life Alaska has supplied more than 4,100 tissue transplants to Alaskan patients.



Life Alaska
Tissue and Organ Donation
P.O. Box 231809
Anchorage, Alaska 99523-1809
(907) 562-5433 (800) 719-5433
Fax (907) 562-5333
www.lifealaska.org



Source: www.unos.org
www.shareyourlife.org

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4

ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
FAX (907) 465-2273

MEMORANDUM

DATE: March 7, 2003
TO: Rep. Lesil McGuire
FROM: Rep. Bruce Weyhrauch *BW*
SUBJECT: HB 25 – Healthcare Directives, or “The 5 Wishes Bill”

Attached are materials in support of HB 25. At this time I respectfully request a hearing before your committee on this very important piece of legislation. This bill passed out of the HESS committee on Thursday, March 6, 2003.

My predecessor, the Honorable Representative Bill Hudson requested that I take over this piece of unfinished work from his career. Rep. Hudson felt so strongly that his Alaskan AARP constituent's top priority be carried out to completion. For your information, HB 25 passed the House during the 22nd Legislature as HB 197.

If you have any questions or need further information, I invite you to contact myself, or my aide, Linda Sylvester.

Thank you for your kind attention to this matter.

ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
FAX (907) 465-2273

HB 25

HB 25 offers a "comprehensive simplified" alternative to the power of attorney enacted in Alaska in 1996 relating to health care services and directives for the terminally ill patient. That was not an oxymoron. The legislation is comprehensive because it speaks to the details and instructions that patients put in place regarding their care should they become incapacitated. It is simple in that the directives speak simply to the patient's wishes (the legislation is known nationally as the Five-Wishes) as follows:

My Wish for:

1. The person I want to make care decisions for me when I can't
2. The kind of medical treatment I want or don't want
3. How comfortable I want to be
4. How I want other people to treat me
5. What I want my loved ones to know

The Five Wishes contained in this bill, will produce a document that helps you express how you want to be treated if you are seriously ill and unable to speak for yourself. It is unique among all other living will and health agent forms because it looks to all of a person's needs: medical, personal, emotional and spiritual. Five Wishes also encourages discussing your wishes with your family and physician.

Five Wishes is changing the way America talks about and plans for care at the end of life. Nearly one million copies of the document are circulating throughout the nation, and more than 1,400 organizations are distributing this revolutionary document, including churches, synagogues, hospices, hospitals, doctor and law offices, and social service agencies.

Five Wishes speaks to people in their own language, helping families talk with their physician about a subject that is often avoided as being too hard to face.

Last updated: January 19, 2003

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
FAX (907) 465-2273

Sectional Analysis

HB 25

"The Five Wishes Bill"

Section 1. States a principal purpose of the bill.

Section 2. Makes technical changes to conform this section to other changes in the bill.

Section 3. Establishes a new chapter called the Health Care Decisions Act.

Sec. 13.52.010(a). Allows a person to give an oral or written individual instruction. The instruction may be limited.

Sec. 13.52.010(b). Allows a person to make written power of attorney for health care. Power of attorney remains effective notwithstanding later incapacity of maker. Power of attorney may include individual instructions. Establishes the technical requirements for the power of attorney.

Sec. 13.52.010(c). Prohibits certain health care institution persons from being agents under a power of attorney for health care, unless related to the principal.

Sec. 13.52.010(d). Prohibits certain persons from acting as witnesses for a power of attorney for health care.

Sec. 13.52.010(e). Requires that at least one witness for a power of attorney for health care meet certain described criteria.

Sec. 13.52.010(f). Establishes the general rule as to when an agent's authority under a power of attorney for health care becomes effective and when the agent's authority ceases.

Sec. 13.52.010(g). Requires that certain determinations be made by a person's primary physician, unless otherwise specified in a written advance health care directive.

Sec. 13.52.010(h). Requires an agent to make health care decisions in accordance with the principal's individual instructions and other wishes to the extent known. Otherwise, directs the agent to make decisions in accordance with the agent's determination of the principal's best interest.

Sec. 13.52.010(i). Establishes that an agent's health care decision does not need judicial approval to be effective.

Sec. 13.52.010(j). Allows a written advance health care directive to nominate a guardian.

Sec. 13.52.010(k). Establishes when an advance health care directive is valid under this chapter.

Sec. 13.52.020(a). Allows an individual to revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

Sec. 13.52.020(b). Allows an individual to revoke an advance health care directive, except for agent designation, at any time and in any manner that communicates the intent to revoke.

Sec. 13.52.020(c). Requires health care providers, agents, guardians, and surrogates to promptly communicate a revocation to the supervising health care provider and the health care institution.

Sec. 13.52.020(d). Establishes that a decree of annulment, divorce, dissolution, or legal separation revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or power of attorney.

Sec. 13.52.020(e). Provides that a conflicting advance health care directive revokes an earlier directive to the extent of the conflict.

Sec. 13.52.030(a). Allows a surrogate to make a health care decision for a patient who has been determined to lack capacity if an agent or guardian has not been appointed or is not reasonably available.

Sec. 13.52.030(b). Allows an individual to designate an individual as a surrogate by personally informing the supervising health care provider. If there is no designation, or the designation is not reasonably available, establishes the priority of persons who may act as a surrogate.

Sec. 13.52.030(c). Allows an adult who meets certain described criteria to act as a surrogate if no individual who is eligible under (b) is reasonably available to act as a surrogate.

Sec. 13.52.030(d). Requires a surrogate to communicate the surrogate's assumption of authority as promptly as practicable to the patient's family listed in (b).

Sec. 13.52.030(e). Establishes how to handle certain disagreements about health care decisions.

Sec. 13.52.030(f). Establishes guidelines for surrogates when making health care decisions.

Sec. 13.52.030(g). Establishes that a health care decision by a surrogate is effective without judicial approval.

Sec. 13.52.030(h). Allows an individual to disqualify another person from acting as the individual's surrogate by using a signed writing or by personally informing the supervising health care provider.

Sec. 13.52.030(i). Prohibits, except when related to the patient, a surrogate from being an owner, operator, or employer of the patient's residential long-term health care institution.

Sec. 13.52.030(j). Allows a supervising health care provider to require from an individual claiming to be a surrogate a written declaration to establish the claimed authority.

Sec. 13.52.040(a). Requires a guardian to comply with the ward's individual instructions, and prohibits a guardian from revoking a ward's advance health care directive executed before incapacity, unless a court authorizes it.

Sec. 13.52.040(b). Establishes that a health care decision of an agent takes precedence over that of a guardian, unless a court orders otherwise.

Sec. 13.52.040(c). Provides that a health care decision made by a guardian for the ward is effective without judicial approval, except as provided in (a).

Sec. 13.52.050(a). Requires a supervising health care provider, if possible and before implementing the order, to promptly communicate a health care decision to the patient and identify the person making the decision.

Sec. 13.52.050(b). Requires a supervising health care provider who knows of an advance health care directive, the revocation of a directive, or a surrogate designation or disqualification, to promptly record the item in the patient's record, request a copy if written, and arrange to keep any furnished copy in the record.

Sec. 13.52.050(c). Requires a supervising health care provider who makes or is informed of a determination of a patient's condition that affects an individual instruction or an agent's, a guardian's or a surrogate's authority to promptly record the determination in the patient's record and communicate the determination to the patient, if possible, and to any person then authorized to make the health care decisions for the patient.

Sec. 13.52.050(d). Requires, with certain exceptions, that a health care provider or institution comply with qualifying individual instructions, reasonable instruction interpretations, and health care decisions.

Sec. 13.52.050(e). Permits a health care provider to decline, for reasons of conscience, to comply with individual instructions or health care decisions. Permits a health care institution to decline to comply with individual instructions or health care decisions if contrary to a policy of the institution's that is based on reasons of conscience.

Sec. 13.52.050(f). Permits a health care provider or institution to decline to comply with individual instructions or health care decisions that require medically ineffective health care or care contrary to generally accepted health care standards.

Sec. 13.52.050(g). Establishes the steps that a health care provider or institution must take if declining to comply with an individual instruction or health care decision.

Sec. 13.52.050(h). Prohibits health care providers and institutions from requiring or prohibiting the execution or revocation of advance health care directives as a condition for providing care.

Sec. 13.52.060. Directs the Department of Health and Social Services to adopt a do not resuscitate protocol for health care providers and health care institutions.

Sec. 13.52.070. Provides that, unless otherwise provided in a directive, an authorized person has the same rights as the patient regarding access to and consent to the disclosure of health care information.

Sec. 13.52.080(a). States that a health care provider or institution acting in good faith and under generally accepted health care standards is not subject to civil or criminal liability or to disciplinary actions for complying with qualified health care decisions, declining to comply with what appears to be an unauthorized decision, and complying with a directive and assuming the directive was valid when made and has not been revoked or terminated.

Sec. 13.52.080(b). States that agents, guardians, and surrogates are not subject to civil or criminal liability or to discipline for health care decisions made in good faith.

Sec. 13.52.090(a). Makes health care provider or institution liable to an aggrieved individual or the individual's estate for damages if the provider or institution intentionally violates this chapter.

Sec. 13.52.090(b). Holds a person engaging in certain described acts relating to an existing directive, to the making of a directive, or to the revocation of a directive liable to the individual concerned for damages.

Sec. 13.52.100(a). Establishes that this chapter does not affect the right of an individual to make health care decisions while having the capacity to make the decisions.

Sec. 13.52.100(b). Establishes a rebuttable presumption that an individual has the capacity to make health care decisions, to give or revoke a directive, and to designate or disqualify a surrogate.

Sec. 13.52.110. Provides that a copy of a directive, revocation of a directive, or a designation or disqualification of a surrogate is as effective as the original.

Sec. 13.52.120(a). States that this chapter does not create a presumption about the intention of an individual who has not made or who has revoked a directive.

Sec. 13.52.120(b). Provides that death resulting from the withholding or withdrawal of health care of health care under this chapter who does not constitute a suicide or homicide or impair or invalidate an insurance policy or certain annuities.

Sec. 13.52.120(c). States that this chapter does not authorize

Sec. 13.52.120(d). States that this chapter does not authorize or require a health care provider or institution to provide health care contrary to generally accepted health care standards applicable to the provider or institution.

Sec. 13.52.120(e). States that this chapter does not authorize an agent or a surrogate to consent to the admission of an individual to a mental health facility unless a written directive expressly allows it.

Sec. 13.52.120(f). States that this chapter does affect other statutes governing treatment for mental illness of involuntary committed individuals.

Sec. 13.52.120(g). States that this chapter does not apply to a pregnant woman.

Sec. 13.52.120(h). Defines "mental health facility" for the section.

Sec. 13.52.130. Allows the superior court, on petition by certain listed persons, to enjoin or direct health care decision or to order other equitable relief.

Sec. 13.52.140. Directs that this chapter is to be applied and construed to carry out the purpose of making the law uniform among states enacting this law.

Sec. 13.52.150. Provides a sample optional form for an advance health care directive. Provides that the form may be modified or a different form used that contains the substance of this sample form.

Sec. 13.52.190. Defines terms for the new chapter.

Sec. 13.52.195. Calls the chapter the Health Care Decisions Act.

Section 4. Makes changes to conform the section to other parts of the bill and removes the references to living wills and former will chapters.

Section 5. Makes changes to conform the section to other parts of the bill and removes the references to living wills.

Section 6. Makes changes to conform the subsection to other parts of the bill and removes the references to living wills.

Section 7. Makes changes to conform the subsection to other parts of the bill and removes the references to living wills and to the former chapter on living wills.

Section 8. Makes changes to conform the subsection to other parts of the bill.

Section 9. Makes changes to conform the subsection to other parts of the bill.

Section 10. Makes changes to conform the section to other parts of the bill.

Section 11. Makes changes to conform the subsection to other parts of the bill.

Section 12. Adds advance health care directives to the list of items that must be documented when providing the court with information under the subsection.

Section 13. Adds advance health care directives to the list of items that an assisted living home is required to maintain in a patient's file.

Section 14. Repeals certain statutes.

Section 15. Provides that certain existing documents continue until they are revoked.

Section 16. Provides that AS 13.52.120(b) does not apply to certain existing insurance policies and annuities.

Section 17. Directs the Department of Health and Social Services to adopt implementing regulations.

Section 18. Gives bill Sec. 17 an immediate effective date.

Section 19. Gives the rest of the bill an effective date.

~~CS-ESOTS-APP~~
Barrister
3/6/03

Version H
3/6/03

CS FOR HOUSE BILL NO. 25()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE WEYHRAUCH

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to health care decisions, including do not resuscitate orders,
2 anatomical gifts, and mental health treatment decisions, and to powers of attorney
3 relating to health care, including anatomical gifts and mental health treatment
4 decisions; and providing for an effective date."

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

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

8 PURPOSE. A principal purpose of this Act is to provide a comprehensive coordinated
9 approach to the making of health care decisions, including anatomical gifts. To achieve this
10 purpose, this Act repeals the current statutory devices that cover health care decisions and
11 consolidates the subject into one chapter.

12 * Sec. 2. AS 12.65.100 is amended to read:

13 Sec. 12.65.100. Unclaimed bodies. When a person dies and no person
14 appears to claim the body for burial, and no provision is made for the body under

1 (1) related to the principal by blood, marriage, or adoption; or

2 (2) entitled to a portion of the estate of the principal upon the
3 principal's death under a will or codicil of the principal existing at the time of
4 execution of the power of attorney for health care or by operation of law then existing.

5 (f) Unless otherwise specified in the power of attorney for health care, the
6 authority of an agent becomes effective only upon a determination that the principal
7 lacks capacity and ceases to be effective upon a determination that the principal has
8 recovered capacity.

9 (g) Unless otherwise specified in a written advance health care directive, a
10 determination that an individual lacks or has recovered capacity, or that another
11 condition exists that affects an individual instruction or the authority of an agent, shall
12 be made by

13 (1) the primary physician, except in the case of mental illness;

14 (2) a court in the case of mental illness, unless the situation is an
15 emergency; or

16 (3) the primary physician or another health care provider in the case of
17 mental illness where the situation is an emergency.

18 (h) An agent shall make a health care decision in accordance with the
19 principal's individual instructions, if any, and other wishes to the extent known to the
20 agent. Otherwise, the agent shall make the decision in accordance with the agent's
21 determination of the principal's best interest. In determining the principal's best
22 interest, the agent shall consider the principal's personal values to the extent known to
23 the agent.

24 (i) A health care decision made by an agent for a principal is effective without
25 judicial approval.

26 (j) A written advance health care directive may include the individual's
27 nomination of a guardian of the person.

28 (k) An advance health care directive is valid for purposes of this chapter if it
29 complies with this chapter or if it was executed in compliance with the laws of the
30 state where it was executed.

31 **Sec. 13.52.020. Revocation of advance health care directive.** (a) An