

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 86/2

10817 HOUSE JUDICIARY

granted, the authorization will be in writing and describe in detail the handicap and the type of special method authorized. This written authorization shall be carried by the person at all times while hunting.

(B) The person must have the physical disability described in the special authorization and the disability must be to such an extent that hunting by prescribed methods is impossible.

Under this approach, the person with a disability submits an application for an exemption from the requirements of a specific hunting restriction (a typical example might be the general rule against hunting from a motorized vehicle), and includes with the application a physician's verification of the disability. If the exemption is granted, the person with a disability carries written authorization for the exemption while hunting.⁹ A copy of the form developed by the Director of the Missouri Department of Conservation is attached to this memorandum.

The Department of Law believes that the approach adopted by Missouri is essentially sound, and provides a useful starting point for the development of a similar approach by the Boards of Fisheries and Game under the ADA. We would recommend slightly modifying Missouri's approach, as follows:

1. The boards and the department should take all necessary steps to ensure that the regulations and policies they adopt or propose to adopt comply with the ADA. A person with a disability (or personal representative of the person with a disability) who believes a proposed or existing regulation or policy is inconsistent with the ADA should, if possible, submit an alternate proposal (under the normal schedule for

⁹ Under the Missouri regulation, the applicant must carry at all times a "detailed description" of the applicant's disability. We believe such a requirement would raise serious concerns under Alaska's constitutional right of privacy, Alaska Const., art. I, § 22. The written authorization should therefore omit any description of the applicant's disability or should limit the description to the minimum necessary to allow enforcement in the field; the description of the exemption or modification can be as detailed as the circumstances require. The Missouri regulation also refers only to physical disabilities. The ADA applies to both physical and mental disabilities.

submitting proposals or by petition) to the relevant board that (a) explains why the regulation or policy prohibits meaningful access to a program, service, or benefit; and (b) suggests modifications to the regulation or policy that will reasonably accommodate the needs of persons with disabilities. The boards should use the standards set forth in paragraphs 5, 6, and 7, below, to evaluate their regulations, policies and proposals.

2. A person with a disability (or personal representative of the person with a disability) who believes an existing regulation or policy prohibits meaningful access to a program, service, or benefit, should submit an application, on a form developed and made available by the commissioner, that contains:
 - (a) the statement of a physician or other competent documentary evidence sufficient to enable the commissioner to ascertain the nature and extent of the individual's disability;
 - (b) a statement by the person with a disability that identifies the regulation or policy at issue and explains why the individual feels the regulation or policy prohibits meaningful access to a program, service, or benefit; and
 - (c) a statement by the person with a disability requesting an exemption from the regulation or policy, or suggesting one or more modifications to the regulation or policy that the individual feels are necessary to reasonably accommodate the individual's disability.
3. An application requesting an exemption from or modification to an existing regulation or policy should be submitted to the commissioner at least 30 days prior to the date the person with a disability wants to hunt, fish, or participate in the activity that is the subject of the application. This deadline will enable the commissioner to evaluate the application and the effects, if any, that granting the exemption or modification may have upon the conservation, development, or utilization of the fish and game resources of the state. The commissioner should be given the discretion to accept applications that are submitted after the deadline where there is a legitimate reason for not complying. An obvious example would be a hunt that has been modified by an emergency regulation.
4. The commissioner should determine whether to grant an exemption or modification as soon as practicable after

receiving an application, and where possible at least two weeks prior to the date the applicant wishes to hunt, fish, or participate in the activity that is the subject of the application.

5. The commissioner need not grant an exemption or modification where the regulation or policy does not, when viewing the relevant program, service or benefit as a whole, prohibit the person with a disability from obtaining meaningful access to the program, service, or benefit.
6. In deciding whether to grant the relief requested, the commissioner is not limited to the form of the exemption or modification requested by the person with a disability. The commissioner may, when necessary to avoid discrimination, adopt any exemption or modification that provides the person with a disability meaningful access to the program, service, or benefit at issue.
7. If an existing regulation or policy prohibits a person with a disability from meaningful access to a program, service, or benefit, but the commissioner finds that the person cannot be accommodated without (a) fundamentally altering the program, service, or benefit; or (b) incurring undue administrative burdens and expense, the commissioner should set forth, in writing, all facts that support the decision. The decision must be made after considering all resources available for use in the funding and operation of the service, program, or benefit. The commissioner should take any other action that would not result in such an alteration or burdens but that nevertheless provides persons with disabilities the benefits or services at issue.
8. If the commissioner decides to grant all or part of the relief requested in the application, the commissioner should provide a written description of the authorized exemption or modification to the handicapped individual. The written authorization should be carried by the person at all times while hunting or fishing.

The procedure outlined above attempts to incorporate many of the terms and specific requirements of the ADA. The procedure is illustrative only, and we do not suggest this procedure is the only possible means of carrying out the ADA's obligations. Nevertheless, the approach ultimately adopted by the boards should be adopted as regulations and should contain the substance of the procedure described above. Finally, please note that this memorandum, by setting forth the minimum requirements of the ADA,

Hon. Carl L. Rosier, Commissioner
Department of Fish and Game
Our File: 663-93-0088

October 23, 1992
Page 16

should not be construed as discouraging the boards or the department from doing more than the ADA requires to provide persons with disabilities opportunities to hunt and fish in Alaska.

IV. CONCLUSION

The Boards of Fisheries and Game and the Department of Fish and Game must ensure that their regulations and policies do not preclude persons with disabilities from a meaningful opportunity to hunt and fish in Alaska. The boards may delegate to the commissioner the authority to grant reasonable exemptions from or modifications to existing regulations or policies when those exemptions or modifications are necessary to accommodate persons with disabilities and avoid discrimination. No exemptions or modifications are necessary where existing regulations or policies do not impose artificial barriers upon hunters and fishers with disabilities, or where such exemptions would fundamentally alter the program, service, or benefit at issue, or cause undue administrative burdens or expense.

JPG:lae

HB

151

LEGAL SERVICES

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

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


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

MEMORANDUM

April 15, 2003

SUBJECT: CSHB 151(L&C) (Work Order No. 23-LS0499\W)

TO: Representative Lesil McGuire
Chair of the House Judiciary Committee
Attn: Vanessa

FROM: 
Theresa L. Bannister
Legislative Counsel

This memo accompanies the bill described above.

Title of contract notice. For the notice required for a contract under AS 09.45.893, the title, "Notice and Opportunity to Repair," is not quite accurate because the contents of the notice are broader than the title. I suggest that the title be changed to "Notice and Opportunity to Repair or Pay for Defects." Since this has passed out of your committee, you may wish to pass this along to the next committee of referral.

If I may be of further assistance, please advise.

TLB:lmb
03-153.lmb

Enclosure

Amendment _____

Gara

At page 5 line 31

delete "form:"

Insert "Form. This form shall be contained on a separate page, and must be signed by the purchaser or purchaser's authorized representative. The signature of either spouse to a building or remodeling contract shall be deemed the same as authorization of both spouses. The Form must be preceded at the top by the following statement, underlined and conspicuously written, and placed at least one line above the rest of the text: "Notice of Potential Claims Must Be Provided Within One Year." The form shall read:

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. John Coghill
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: Terri Bannister, Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: April 14, 2003
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS0499\V, HB 151, incorporating the attached amendment. We made a few handwritten changes to the amendment that you drafted. The bill was passed out of committee today.

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

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.

23-LS0499V.1
Barrister
4/14/03

AMENDMENT #1 - Passed

OFFERED IN THE HOUSE

TO: CSHB 151(), Draft Version "V"

1 Page 2, following line 2:

2 Insert a new subsection to read:

3 "(b) *A limitation imposed under AS 09.10 for an action under AS 09.45.881 - 09.45.899* is tolled between the

4 time the claimant serves notice under AS 09.45.881 and the time the claimant should
5 reasonably understand that settlement under the procedures in AS 09.45.881 - 09.45.899 will
6 not succeed."

7

8 Reletter the following subsection accordingly.

9

10 Page 5, lines 30 through 31:

11 Delete "may be included as part of the contract, must be conspicuous, and must be in
12 substantially the following form:"

13 Insert "must be included on a separate page attached to the contract and must contain a
14 title at the top of the page that reads "~~Potential Claim~~" *Notice and Opportunity to Repair*"

15 (c) The notice required by (a) of this section must be conspicuous and must be in
16 substantially the following form:"

Gara

Amendment _____

At p. 1 line 13 change "one year" to "two years".

At p. 3 line 21. Insert

Sec. 09.45.884(d). Rules of equitable estoppel tolling the statute of limitations shall apply so that the statute of limitations shall not run between the time the ^{claimant} serves notice under AS 09.45, and the time the plaintiff should reasonably understand settlement under the procedures in AS 09.45 will not succeed.

F. Musson, A.

↓
explain

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MEMORANDUM

March 11, 2003

SUBJECT: Court rule changes in HB 151 (Work Order No. 23-LS0499\H)

TO: Representative Kevin Meyer
Attn: Suzanne

FROM: *TB*
Theresa L. Bannister
Legislative Counsel

You have asked for an explanation why HB 151 changes the court rules.

Bill provision. Proposed sec. 09.45.889(b) allows a court to deny a claimant attorney fees and costs and to award attorney fees and costs to the construction professional under certain circumstances. That subsection reads as follows:

(b) If a claimant unreasonably rejects a construction professional's offer made under AS 09.45.881 - 09.45.899 or does not give the construction professional a reasonable opportunity to repair the defect under an accepted offer of settlement, the court may deny the claimant an award of attorney fees and costs and may award attorney fees and costs to the construction professional.

Attorney fees. Rule 82, Alaska Rules of Civil Procedure awards the prevailing party attorney's fees calculated under the rule, "[e]xcept as otherwise provided by law or agreed to by the parties." The proposed bill subsection has the effect of changing this court rule because it allows the court to deny attorney fees to the claimant even if the claimant is the prevailing party.

The application of the exception "as otherwise provided by law" is not clear. It may be that whenever the legislature passes a law that changes the rule the new law would be considered to be "provided by law." However, "provided by law" may also mean that when passing a law the legislature has complied with the constitutional requirement of the 2/3 majority vote for the court rule change and with Rule 39(e), Uniform Rules of the Alaska State Legislature, that requires that the court rule change be described in the bill and noted in the bill title. To be safe, if a bill has the effect of changing Rule 82, we recommend including it in the title and body of the bill and obtaining the increased majority approval.

I think that would cover this bill, as long as this bill is clear

Representative Kevin Meyer

March 11, 2003

Page 2

Costs. Rule 79, Alaska Rules of Civil Procedure, states that the prevailing party is entitled to recover costs allowable under its provisions unless the court directs otherwise. The proposed bill subsection has the effect of changing this court rule because it sets out a specific situation in which the court may decline to award costs to the claimant, even if the claimant is the prevailing party. Whether this change is a court rule change is not clear since the court rule allows the court to direct otherwise. However, since the bill's change to Rule 82 already triggers the increased majority vote and inclusion in the title and body of the bill, it seems to be worth including this change in order to be on the safe side.

If I may be of further assistance, please advise.

TLB:med

03-290.med

General Liability Insurance
Background Paper – February 20, 2003

Builders are confronting a liability insurance crisis. Due to adverse insurance market conditions, including significant increases in construction defect litigation, liability coverage for builders is less available, more expensive, and more restrictive in terms of the coverage afforded. In February 2002, the NAHB Senior Officers formed the General Liability Insurance Task Force to study the current insurance problem and its impact on the housing industry.

The GLI Task Force was charged with studying the insurance crisis and developing a report and recommendations for NAHB policy and actions. The Task Force sponsored a resolution that was adopted by the NAHB Board of Directors at its meeting in Washington, D.C., on June 9, 2002. One element of the resolution includes support for state legislation requiring consumers to give builders and trade contractors notice of alleged construction defects and the opportunity to cure prior to the initiation of litigation. Other elements include support for federal legislation providing secondary insurance coverage for acts of terrorism, and development of education programs for NAHB members on risk management and insurance. The GLI Task Force presented its final report to the NAHB Board of Directors at the 2002 Fall Board meeting in Anchorage, Alaska.

One of the charges under the insurance resolution was to move forward on developing an education program for NAHB members on insurance and risk management. The NAHB University of Housing is developing a joint venture course for NAHB state and local affiliates. The first national program was held on January 19th at the International Builders Show in Las Vegas. There were seven attendees at the Las Vegas program. The University of Housing is finalizing the risk management course and will make it available to state and local home builder associations during 2003.

A background paper discussing the feasibility of developing an industry standard defining what constitutes a construction defect has been prepared and submitted for review by the Senior Officers. NAHB has voluntary guidelines as reflected in Residential Construction Performance Guidelines, produced by the NAHB Remodelers Council and Single Family Small Volume Builders Committee. The proposed NAHB industry standard would cover items not typically covered by building codes and, in the event of a dispute between builders and homeowners over an alleged construction defect, the dispute would be governed by the recognized standards.

State "Notice & Opportunity to Repair" laws would reform the way in which construction defect claims are resolved. Currently, homeowners with construction conditions that they allege are defective often choose to resolve those claims using the costly and time consuming litigation process where they can expect sympathetic judges and juries. This has resulted in a system of exorbitant judgments that builders and their insurance companies are required to satisfy. As a result of these large awards, many providers of construction industry general liability insurance have chosen to stop providing

this insurance to builders. Where insurance is available at all, it is often at significantly higher premiums and reduced levels of coverage (i.e., higher deductibles and multiple exclusions). "Notice & Opportunity to Repair" laws would enact a system that would attempt to resolve construction defect disputes between home builders and consumers without having to resort to the costly and time-consuming litigation process. The laws would require that homeowners provide written notice to home builders of construction conditions that they allege are defective at least 90 days prior to commencing litigation against the home builder. During the 90-day period prior to litigation, the legislation would require that builders and homeowners attempt to resolve the defects that are the subject of the claim. If, after the 90-day period, the homeowner's claim has not been resolved to their satisfaction, they may proceed with litigation against the builder.

State Consideration (as of 2/18/03):

State: Colorado
Bill No.: H.B. 1161
Status: Passed by House, Senate Consideration (2/20/03)
Provisions: Notice & Right to Cure process 90 days before a lawsuit is filed; alter defect list once to report defects that were not originally found; removes code/standard violations from items that are considered to be defects; insurance performance standards; damage definitions & limitations; removes ability for consumers to get damages under Consumer Protection Act; allows non-economic damages in claims with personal injury✓

State: Idaho
Bill No.: H.B. 133
Status: Passed by House (2/11/03)
Provisions: "Notice & Opportunity to Repair Act"; Damage limitations, builder affirmative defenses - unforeseen acts of nature, homeowner failure to minimize damage, failure to maintain, etc

include ?

State: Indiana
Bill No.: S.B. 451
Status: Passed by Senate Committee
Provisions: Notice & Right to Cure process; damage limitations when homeowner unreasonably rejects builder offer to repair

State: Kansas
Bill No.: H.B. 2294
Status: Introduced, hearing scheduled (2/20/03)
Provisions: Notice & Right to Cure process; damage limitations; homeowner maintenance requirements; affirmative defenses; notice of subsequent defects; insurance performance requirements; subcontractor notification requirements; HOA vote requirements

State: Kentucky
Bill No.: H.B. 289
Status: Introduced, Hearing scheduled (2/19/03)
Provisions: Notice & Right to Cure process; contract notification requirements

State: New Mexico
Bill No.: S.B. 445/H.B. 706
Status: Introduced, referred to committees
Provisions: Notice & Right to Cure process; contract notification provisions

State: Oklahoma
Bill No.: H.B. 1334/S.B. 487
Status: Introduced, referred to committees
Provisions: Construction Defect Remediation Act; notice & opportunity to repair procedure; method of contractor response; method of purchaser response; contractor inspection; certain items inadmissible as evidence; limitation of liability; certain limit on damages; recovery of certain fees; extension of time periods; declaring the Construction Defect Remediation Act procedures as an exclusive remedy

State: Oregon
Bill No.: H.B. 2389
Status: Introduced, hearing held (2/12/03)
Provisions: Notice & Right to Cure process; Construction Contractors Board release of contractors or sub-contractors not related to litigation through state certified inspection program

State: Texas
Bill No.: H.B. 730/S.B. 383
Status: Introduced (2/6/03)
Provisions: "Residential Construction Commission Act"; state sponsored inspection and dispute resolution process; statutory warranty and building standards; warranties and building standards; limit non-economic damages; amend Residential Construction Liability Act

State: Washington
Bill No.: S.B. 5536
Status: Introduced (1/31/03)
Provisions: Resolve disputes using arbitration; "focus on defects that actually cause property damage and affect the habitability of the building"; protect associations from liability for failing to comply with time limits for commencing legal proceedings

State: West Virginia
Bill No.: H.B. 2553/S.B. 440
Status: Introduced (2/4/03)
Provisions: Notice & Right to Repair process; HOA notification requirements; code violations are actionable defects; contract notification provisions; insurance performance requirements

As of February 18, 2003, the following nine states were also considering the introduction of "Notice & Opportunity to Repair" legislation during the 2003 session. This legislation could come in the form of "stand-alone" legislation or as the part of more general tort reform efforts: Alabama, Alaska, Florida, Illinois, Louisiana, Missouri, Montana, South Carolina, and Wisconsin. Builders in Texas & Wisconsin are supporting legislation aimed at reducing construction defect litigation through other legislative means.



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: April 11, 2003
TO: House Judiciary Committee Members
FROM: Representative Kevin Meyer *KM*
RE: CS HB 151() LS-0499/V

The following changes have been made to CS HB 151(L&C). These changes are included in a blank committee substitute that is before the committee (23LS-0499\V).

Page 1, line 12:

After: "professional unless the"

Delete: "action is begun"

Insert: "notice of claim under AS 09.45.881 is given"

Reason: Clarifies that the claimant has one year from the discovery of a defect to begin the process outlined in AS 09.45.881-09.45.899.

Page 2, line 6:

After: "the construction"

Insert: "or remodeling"

Reason: Clarifies that the substantial completion date applies to remodeling of a dwelling, as well as the construction of a dwelling.

Page 2, line 8:

After: "the owner to use or occupy the"

Delete: "improvement to the dwelling or to use the dwelling"

Insert: "dwelling or the improvement to the dwelling"

Reason: Cleans up redundant language.

Page 2, line 9:

After: "the manner for which"

Insert: "the dwelling or improvement"

Reason: Clarifies that the substantial completion date applies to remodeling of a dwelling as well as the construction of a dwelling.

Page 2, line 20-21:

Delete: ", if the evidence is discoverable under the state's court rules of evidence,"

Reason: When HB 151 was heard in the House Labor and Commerce Committee, there was significant discussion about whether a person would have to hire an attorney to figure out what was discoverable under the Court Rules of Evidence, before even filing a claim against a construction professional. According to Legal Services, this reference was not necessary and evidence would be considered by the Court at the time the claim was filed.

Page 4, line 11:

After: "does not repair the defect"

Insert: "to the satisfaction of the claimant"

Reason: This clarification was recommended by staff to the House Judiciary Committee. It clarifies further when court actions are allowed. Under the amendment, court actions would be allowed if the construction professional does not respond within the time required by AS 09.45.886, if the construction professional does not repair the defect to the satisfaction of the claimant within the time agreed under AS 09.45.886(1), does not provide an offer to settle by payment of money, or if the construction professional disputes the defect

Page 4, line 31:

After: "offer of money that"

Delete: "is"

Insert: "was"

Reason: Grammatical error.

Page 5, line 19:

Before: "AS 09.45.886(2)"

Insert: "AS 09.45.886(1) or"

Reason: References the statute pertaining to the construction professional's offer to repair.

Page 6, line 7:

Delete: "Ninety days"

Insert: "Within one year of the discovery of a design, construction, or remodeling defect,"

Reason: Cleans up the contract language so that it is clear that the process detailed in AS 09.45.881-09.45.889 must begin within one year of the discovery of the defect, and that there are strict deadlines and procedures that must be followed under state law.

Page 7, line 2:

After: "for personal injury"

Delete: "claims"

Reason: Cleans up redundant language.

Page 7, line 10:

After: "construction professional means a"

Insert: "registered"

23-LS0499\V
Bannister
4/10/03

CS FOR HOUSE BILL NO. 151()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE MEYER

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to claims and court actions for defects in the design, construction, and**
2 **remodeling of certain dwellings; limiting when certain court actions may be brought;**
3 **and amending Rules 79 and 82, Alaska Rules of Civil Procedure."**

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

5 *** Section 1.** AS 08.18.081 is amended by adding a new subsection to read:

6 (c) If the claim for which a person may bring suit under (a) of this section is
7 subject to AS 09.45.881 - 09.45.899, the person may not bring suit unless the person
8 complies with AS 09.45.881 - 09.45.899.

9 *** Sec. 2.** AS 09.10 is amended by adding a new section to read:

10 **Sec. 09.10.054. Limits on when certain design, construction, and**
11 **remodeling actions may be brought.** (a) For actions covered under AS 09.45.881 -
12 09.45.899, a claimant may not begin an action against a construction professional
13 unless the notice of claim under AS 09.45.881 is given within one year after the
14 claimant discovers the defect that is the subject of the action, except that the action

1 may not be begun more than 10 years after substantial completion of the dwelling
2 construction or remodeling that contains or implements the alleged defect.

3 (b) In this section,

4 (1) "action," "claim," "construction professional," and "dwelling" have
5 the meanings given in AS 09.45.899;

6 (2) "substantial completion" means the date when the construction or
7 remodeling is sufficiently completed to allow the owner of the dwelling or a person
8 authorized by the owner to use or occupy the dwelling or the improvement to the
9 dwelling in the manner for which the dwelling or improvement was intended.

10 * **Sec. 3.** AS 09.45 is amended by adding new sections to read:

11 **Article 10A. Action for Dwelling Design, Construction, or Remodeling Claims.**

12 **Sec. 09.45.881. Notice of claim.** (a) In an action brought on a claim against a
13 construction professional, the claimant shall, at least 90 days before filing the action,
14 serve written notice of the claim on the construction professional.

15 (b) The notice of the claim in (a) of this section must state that the claimant
16 asserts a claim against the construction professional for a defect in the design,
17 construction, or remodeling of a dwelling and must describe the claim in reasonable
18 detail sufficient to determine the general nature of the alleged defect and the results of
19 the defect if known.

20 (c) At the request of the construction professional, the claimant shall provide
21 to the construction professional any evidence that the claimant possesses that depicts
22 the nature and cause of the defect and the nature and extent of the repairs necessary to
23 repair the defect, including expert reports, photographs, and videotapes.

24 **Sec. 09.45.882. Written response to notice of claim.** (a) Within 21 days
25 after service of the notice under AS 09.45.881, the construction professional shall
26 serve a written response on the claimant.

27 (b) The written response under (a) of this section must state that the
28 construction professional

29 (1) offers to inspect the dwelling that is the subject of the claim within
30 a specified time to determine if the construction professional will offer to repair the
31 defect, will compromise and settle the claim by payment of money, or will dispute the

1 claim;

2 (2) offers to compromise and settle the claim by a payment of money
3 without inspection; or

4 (3) disputes the claim and will not repair the alleged defect or
5 compromise and settle the claim by a payment of money.

6 **Sec. 09.45.883. Court action allowed if claim disputed or not responded**
7 **to.** If the construction professional disputes the claim in the notice under
8 AS 09.45.882(b)(3) or does not respond to the claimant's notice of claim within the
9 time required by AS 09.45.882(a), the claimant may bring an action against the
10 construction professional for the claim described in the notice of the claim made under
11 AS 09.45.881 without further notice.

12 **Sec. 09.45.884. Consequence of rejecting inspection or settlement offer.**

13 (a) If the claimant rejects the inspection offer under AS 09.45.882(b)(1) or the
14 settlement offer under AS 09.45.882(b)(2), the claimant shall serve written notice of
15 the claimant's rejection on the construction professional.

16 (b) The notice under (a) of this section must include the basis for the
17 claimant's rejection of the construction professional's offer.

18 (c) After service of the rejection notice required by (a) of this section, the
19 claimant may bring an action against the construction professional for the claim
20 described in the notice of claim made under AS 09.45.881 without further notice.

21 **Sec. 09.45.885. Consequence of accepting inspection offer.** If a claimant
22 elects to allow the construction professional to make an inspection under
23 AS 09.45.882(b)(1), the claimant shall provide the construction professional and its
24 contractors or other agents reasonable access to the claimant's dwelling during normal
25 working hours to inspect the dwelling and the alleged defect to determine the nature
26 and cause of the alleged defect and the nature and extent of any repairs necessary to
27 repair the alleged defect.

28 **Sec. 09.45.886. Procedure after inspection.** Within 14 days after completion
29 of an inspection made under AS 09.45.885, the construction professional shall serve
30 on the claimant a written

31 (1) offer to repair the defect without charge to the claimant; the offer

1 must include a report of the scope of the inspection, the findings and results of the
2 inspection, a description of any repairs necessary to repair the defect, and a schedule
3 for the completion of the repairs;

4 (2) offer to compromise and settle the claim by a payment of money
5 under AS 09.45.882(b)(2); or

6 (3) statement that the construction professional will not repair the
7 defect.

8 **Sec. 09.45.887. Court action allowed after failure to repair or to settle.** If
9 the construction professional does not respond within the time required by
10 AS 09.45.886, does not repair the defect to the satisfaction of the claimant within the
11 time agreed under AS 09.45.886(1), does not provide an offer under AS 09.45.886(2),
12 or serves a statement under AS 09.45.886(3), the claimant may bring an action against
13 the construction professional for the claim described in the notice of claim without
14 further notice.

15 **Sec. 09.45.888. Court action allowed if claimant rejects offer.** (a) If the
16 claimant rejects an offer made by the construction professional under AS 09.45.886(1)
17 or (2), the claimant shall serve written notice of the claimant's rejection on the
18 construction professional that includes the basis for the claimant's rejection of the
19 construction professional's offer.

20 (b) After service of the notice under (a) of this section, the claimant may bring
21 an action against the construction professional for the claim described in the notice of
22 claim made under AS 09.45.881 without further notice.

23 **Sec. 09.45.889. Unreasonable rejection of offer.** (a) If a claimant
24 unreasonably rejects an offer made under AS 09.45.881 - 09.45.899 or does not give
25 the construction professional a reasonable opportunity to repair the defect under an
26 accepted offer of settlement, the claimant may not recover an amount that exceeds

27 (1) the reasonable cost of the repairs offered under AS 09.45.886(1)
28 that are necessary to cure the defect and that are the responsibility of the construction
29 professional; or

30 (2) the amount of a reasonable settlement offer of money that was
31 made under AS 09.45.886(2).

1 (b) If a claimant unreasonably rejects a construction professional's offer made
2 under AS 09.45.881 - 09.45.899 or does not give the construction professional a
3 reasonable opportunity to repair the defect under an accepted offer of settlement, the
4 court may deny the claimant an award of attorney fees and costs and may award
5 attorney fees and costs to the construction professional.

6 **Sec. 09.45.890. Acceptance of offer.** (a) To accept an offer of a construction
7 professional to repair a defect under AS 09.45.886(1), a claimant shall serve the
8 construction professional with a written notice of acceptance within a reasonable
9 period of time, not to exceed 30 days, after receiving the offer.

10 (b) A claimant who accepts an offer under (a) of this section shall provide the
11 construction professional and its contractors or other agents reasonable access to the
12 claimant's dwelling during normal working hours to perform the repairs by the time
13 stated in the offer.

14 **Sec. 09.45.891. Presumption of mitigation.** If a claimant fails to allow a
15 construction professional to make a reasonable inspection requested by the
16 construction professional under AS 09.45.882(b)(1), or fails to provide a good faith
17 written response to a construction professional's offer under AS 09.45.882(b)(2) or
18 09.45.886(1) or (2), the failure establishes a rebuttable presumption that the claimant's
19 damages could have been mitigated.

20 **Sec. 09.45.892. Noncompliance assertion prohibited.** Unless there is good
21 cause for the failure, a construction professional may not assert that the claimant did
22 not comply with AS 09.45.881 - 09.45.899 if the construction professional fails to
23 respond in good faith to the claimant's notice of claim made under AS 09.45.881.

24 **Sec. 09.45.893. Notice required in contract.** (a) In order to take advantage
25 of any rights of a construction professional under AS 09.45.881 - 09.45.899, when a
26 construction professional enters into a contract with another person to design,
27 construct, or remodel a dwelling, the construction professional shall give the person a
28 notice of the construction professional's right to offer to cure a defect before the
29 person may file an action in court against the construction professional.

30 (b) The notice required by (a) of this section may be included as part of the
31 contract, must be conspicuous, and must be in substantially the following form:

1 ALASKA LAW AT AS 09.45.881 - 09.45.899 CONTAINS
2 IMPORTANT REQUIREMENTS THAT YOU MUST FOLLOW
3 BEFORE YOU MAY FILE A COURT ACTION FOR DEFECTIVE
4 DESIGN, CONSTRUCTION, OR REMODELING AGAINST THE
5 DESIGNER, BUILDER, OR REMODELER OF YOUR HOME.
6 WITHIN ONE YEAR OF THE DISCOVERY OF A DESIGN,
7 CONSTRUCTION, OR REMODELING DEFECT, BEFORE YOU
8 FILE A COURT ACTION, YOU MUST DELIVER TO THE
9 DESIGNER, BUILDER, OR REMODELER A WRITTEN NOTICE
10 OF ANY DESIGN, CONSTRUCTION, OR REMODELING
11 CONDITIONS YOU ALLEGE ARE DEFECTIVE IN ORDER TO
12 PROVIDE YOUR DESIGNER, BUILDER, OR REMODELER WITH
13 THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY
14 FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT
15 ANY OFFER MADE BY THE DESIGNER, BUILDER, OR
16 REMODELER. THERE ARE STRICT DEADLINES AND
17 PROCEDURES UNDER STATE LAW, AND FAILURE TO
18 FOLLOW THEM MAY AFFECT YOUR RIGHT TO FILE A COURT
19 ACTION.

20 **Sec. 09.45.894. Additional construction defects; additional notice of claim**
21 **required.** A court action for a defect that is discovered after a claimant has provided a
22 construction professional with a notice of claim required in AS 09.45.881 - 09.45.899
23 may not be commenced until the claimant has complied with the provisions of
24 AS 09.45.881 - 09.45.899.

25 **Sec. 09.45.895. Collateral sources.** In an action under AS 09.45.881 -
26 09.45.899, a court shall deduct from the compensation awarded to a claimant any
27 compensation paid to the claimant under a homeowner's warranty contract or a
28 homeowner's insurance policy as compensation for the defects that are the subject of
29 the action. The amount of this deduction does not include any compensation paid by
30 the construction professional to the claimant to satisfy the claim or any compensation
31 paid under an insurance policy issued to the construction professional to satisfy the

1 claim.

2 **Sec. 09.45.896. Exemption.** AS 09.45.881 - 09.45.899 do not apply to claims
3 for personal injury, including death.

4 **Sec. 09.45.899. Definitions.** In AS 09.45.881 - 09.45.899,

5 (1) "action" means a civil action or an arbitration proceeding for
6 damages or indemnification;

7 (2) "claim" means a claim against a construction professional
8 concerning a defect in the design, construction, or remodel of a dwelling;

9 (3) "claimant" means a person who owns or is purchasing a dwelling
10 and who asserts a claim;

11 (4) "construction professional" means a registered contractor, architect,
12 or engineer who is engaged in the business of designing, constructing, or remodeling a
13 dwelling; in this paragraph, "contractor" has the meaning given in AS 08.18.171;

14 (5) "dwelling" means a single-family house, a duplex, or a multi-
15 family housing unit, and the mechanical and other systems, the other components, and
16 all improvements that are part of the house, duplex, or housing unit when the dwelling
17 is constructed or remodeled; for purposes of this paragraph, "multi-family housing
18 unit" means

19 (A) an individual housing unit in a multi-family housing
20 facility; and

21 (B) the interest of the owner of an individual housing unit in
22 the common areas and improvements of a multi-family housing facility;

23 (6) "multi-family housing facility" means a residential horizontal
24 property regime organized under AS 34.07, a residential condominium organized
25 under AS 34.08, and a residential cooperative organized under AS 10.15;

26 (7) "remodel" means a change to a dwelling if the change has a value
27 that is more than 25 percent of the value of the structure being changed;

28 (8) "serve" means to deliver by personal service or by certified mail,
29 return receipt requested, to the last known address of the addressee.

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

1 INDIRECT COURT RULE AMENDMENTS. AS 09.45.889(b), enacted by sec. 3 of
2 this Act, has the effect of changing

3 (1) Rule 82, Alaska Rules of Civil Procedure, by allowing the court to deny
4 attorney fees to a claimant in the situation described by AS 09.45.889(b), even if the claimant
5 is the prevailing party;

6 (2) Rule 79, Alaska Rules of Civil Procedure, by allowing the court to deny
7 costs to a claimant in the situation described in AS 09.45.889(b), even if the claimant is the
8 prevailing party.

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

11 **APPLICABILITY.** This Act applies to a claim if the contract for the work on which
12 the claim is based was entered into on or after the effective date of this Act. In this section,
13 "claim" has the meaning given in AS 09.45.899.

14 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 **CONDITIONAL EFFECT.** AS 09.45.889(b), enacted by sec. 3 of this Act, takes
17 effect only if sec. 4 of this Act receives the two-thirds majority vote of each house required by
18 art. IV, sec. 15, Constitution of the State of Alaska.




REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: April 3, 2003

TO: Representative Lesil McGuire
Chair, House Judiciary Committee

FROM: Representative Kevin Meyer 

RE: CS HB 151(L&C) Dwelling Design/Construction Claims

At your earliest convenience, please schedule CS HB 151 Dwelling Design/Construction Claims for a hearing in the House Judiciary Committee.

CS HB 151(L&C) provides homeowners and construction professionals with a process to solve construction defect issues on new homes or homes that undergo substantial remodeling, before needless litigation ensues.

Thank you for your time and consideration.



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

Sponsor Statement

CS HB 151(L&C)

“An Act relating to claims and court actions for defects in the design, construction, and remodeling of certain dwellings; limiting when certain court actions may be brought; and amending Rules 79 and 82, Alaska Rules of Civil Procedure.”

CS HB 151(L&C) will assist construction professionals and homeowners resolve construction defect issues quickly and effectively, before needless litigation ensues.

CS HB 151(L&C) establishes a formal process for a homeowner to notify a construction professional of construction defects prior to filing a lawsuit. CS HB 151(L&C) establishes a time frame for the construction professional to address the defect. The homeowner's right to sue remains intact if they're not satisfied with the construction professional's efforts to repair the defect or settle by payment of money.

There are several provisions in this legislation that pertain to the amount that homeowners can receive in construction defect suits. An unreasonable rejection of a construction professional's offer limits the damages that may be recovered by the homeowner. A collateral source provision has been added that prohibits homeowners from “double dipping” and receiving a large settlement from the construction professional that does not take into consideration money paid by the homeowners' insurance or warranty.

There are several consequences that homebuyers and homebuilders face without a timely process in place. Lengthy and expensive litigation significantly delays the repair of legitimate problems, decreases the value of homes stigmatized by litigation, and creates difficulties in refinancing or selling homes. New home prices rise due to the increased insurance premiums on homebuilders and contractors. Builders in nearly every state in the country are reporting enormous increases in general liability insurance premiums. In some cases, insurance isn't available at any price. And for states such as Alaska, liability insurance is a requirement, and this is detrimental to construction professionals statewide.

The bottom line is that lawsuits would be a last resort, not the only way to resolve a problem. CS HB 151(L&C) puts into place a very simple and logical process for homeowners and homebuilders to follow. Both parties' interests would be guarded to ensure that timely repair occurred and not frivolous lawsuits.

Last Updated: April 3, 2003

Email: Representative_Kevin_Meyer@legis.state.ak.us • Toll Free: (866) 465-4945
Session: State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-4945 Fax: (907) 465-3476
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REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

Sectional Analysis

CS HB 151(L&C)

“An Act relating to claims and court actions for defects in the design, construction, and remodeling of certain dwellings; limiting when certain court actions may be brought; and amending Rules 79 and 82, Alaska Rules of Civil Procedure.”

Section 1: Provides that a person may only bring suit against a contractor after following the procedures set forth in the new sections AS 09.45.881-09.45.899.

Section 2: Provides a one-year statute of limitations for claims covered under AS 09.45.881-09.45.899, not to exceed ten years after the substantial completion of the dwelling.

Section 3: Provides the process that homeowners must follow prior to filing an action against a construction professional.

09.45.881: Written notice of claim served on a construction professional 90 days prior to filing the action.

09.45.882: Written response from the construction professional, providing for inspection, settlement, or dispute of claim, is due 21 days after the initial notice of claim is served to the professional.

09.45.883: Homeowner may bring an action against the construction professional if the construction professional disputes the claim in the notice.

09.45.884: If the homeowner rejects the construction professional's offers made under 09.45.882, it must be in writing.

09.45.885: If the offer to inspect is accepted by the homeowner, the homeowner must provide reasonable access to the dwelling.

09.45.886: Within 14 days of the inspection, the construction professional must serve, in writing, an offer to repair, an offer to settle by payment of money, or state that the construction professional will not repair.

09.45.887: Court action is allowed after the construction professional fails to repair or to settle within the 14 days after the inspection.

09.45.888: Court action is allowed if the homeowner rejects the construction professional's offer to repair.

09.45.889: If a homeowner unreasonably rejects the construction professional's offer or does not give the professional reasonable opportunity to repair, the homeowner

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may not recover more than the cost of the repairs or the amount of a reasonable settlement offered by the construction professional.

09.45.890: To accept the construction professional's offer to repair, the homeowner must submit a written notice to the professional within 30 days after receiving the offer.

09.45.891: If a homeowner fails to accept an inspection, or fails to provide a written response to the professional, the failure establishes a rebuttable presumption that the damages could have been mitigated.

09.45.892: A construction professional may not assert that the homeowner did not comply with AS 09.45.881-09.45.899, if the professional failed to respond to the homeowner's written notices.

09.45.893: Construction professionals are required to include notification of this process when the professional enters into a contract with another person to design, construct, or remodel a dwelling.

09.45.894: Additional notice of claims and additional defects are to be handled separately from the initial notice of claim under AS 09.45.881.

09.45.895: The courts shall deduct the amount a homeowner receives from personal homeowner's insurance from the total settlement reached.

09.45.896: Exemptions.

09.45.899: Definitions.

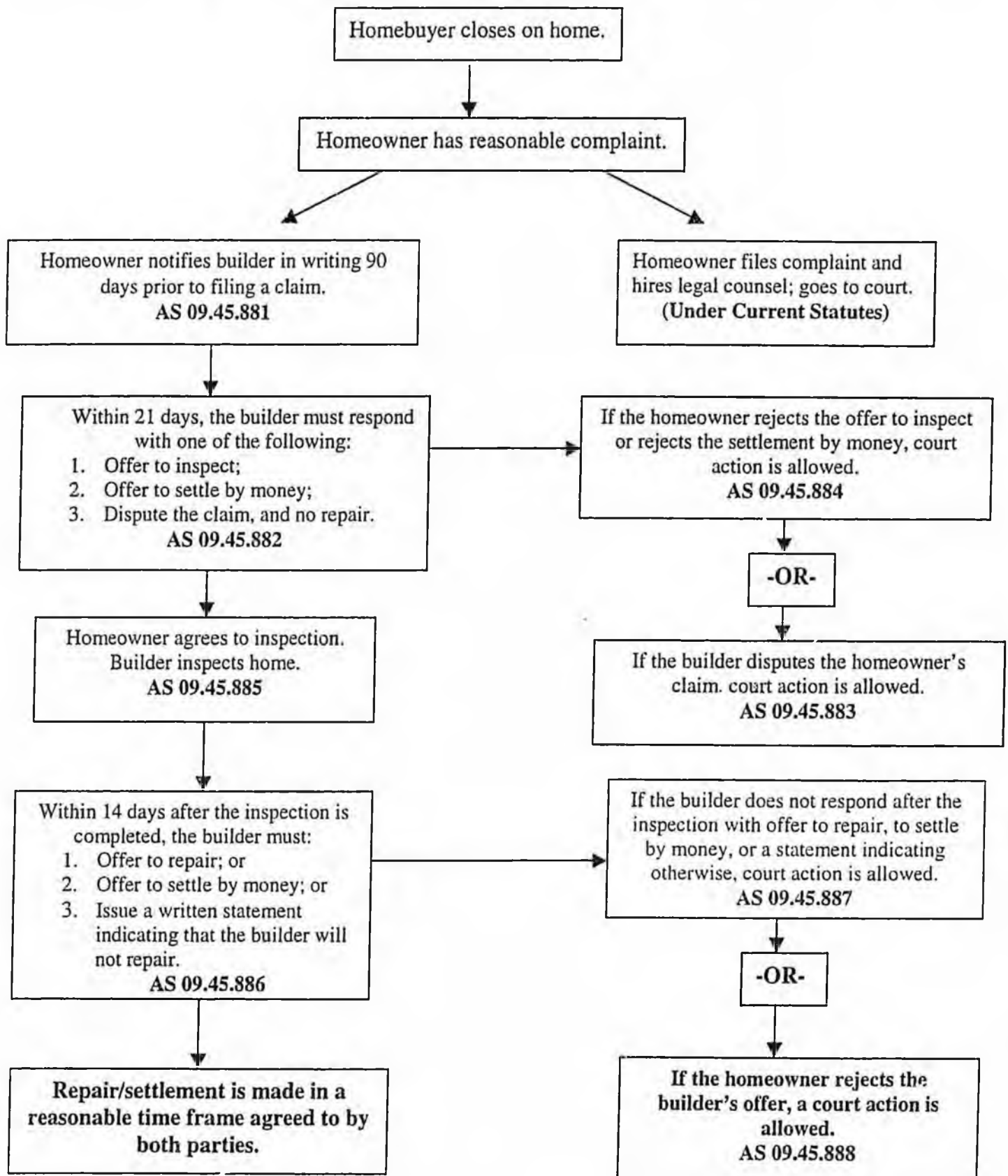
Section 4: Indirect Court Rule Amendments, Rule 79 and Rule 82, Alaska Rules of Civil Procedure.

Section 5: Applicability.

Section 6: Conditional effect.

CS HB 151(L&C) Dwelling Designs/Construction Claims

Litigate or Communicate: Which Path to Justice?



LEGAL SERVICES

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

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

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

MEMORANDUM

March 11, 2003

SUBJECT: Court rule changes in HB 151 (Work Order No. 23-LS0499\H)

TO: Representative Kevin Meyer
Attn: Suzanne

FROM: ^{TB} Theresa L. Bannister
Legislative Counsel

You have asked for an explanation why HB 151 changes the court rules.

Bill provision. Proposed sec. 09.45.889(b) allows a court to deny a claimant attorney fees and costs and to award attorney fees and costs to the construction professional under certain circumstances. That subsection reads as follows:

(b) If a claimant unreasonably rejects a construction professional's offer made under AS 09.45.881 - 09.45.899 or does not give the construction professional a reasonable opportunity to repair the defect under an accepted offer of settlement, the court may deny the claimant an award of attorney fees and costs and may award attorney fees and costs to the construction professional.

Attorney fees. Rule 82, Alaska Rules of Civil Procedure awards the prevailing party attorney's fees calculated under the rule, "[e]xcept as otherwise provided by law or agreed to by the parties." The proposed bill subsection has the effect of changing this court rule because it allows the court to deny attorney fees to the claimant even if the claimant is the prevailing party.

The application of the exception "as otherwise provided by law" is not clear. It may be that whenever the legislature passes a law that changes the rule the new law would be considered to be "provided by law." However, "provided by law" may also mean that when passing a law the legislature has complied with the constitutional requirement of the 2/3 majority vote for the court rule change and with Rule 39(e), Uniform Rules of the Alaska State Legislature, that requires that the court rule change be described in the bill and noted in the bill title. To be safe, if a bill has the effect of changing Rule 82, we recommend including it in the title and body of the bill and obtaining the increased majority approval.

Representative Kevin Meyer

March 11, 2003

Page 2

Costs. Rule 79, Alaska Rules of Civil Procedure, states that the prevailing party is entitled to recover costs allowable under its provisions unless the court directs otherwise. The proposed bill subsection has the effect of changing this court rule because it sets out a specific situation in which the court may decline to award costs to the claimant, even if the claimant is the prevailing party. Whether this change is a court rule change is not clear since the court rule allows the court to direct otherwise. However, since the bill's change to Rule 82 already triggers the increased majority vote and inclusion in the title and body of the bill, it seems to be worth including this change in order to be on the safe side.

If I may be of further assistance, please advise.

TLB:med

03-290.med

General Liability Insurance
Background Paper – February 20, 2003

Builders are confronting a liability insurance crisis. Due to adverse insurance market conditions, including significant increases in construction defect litigation, liability coverage for builders is less available, more expensive, and more restrictive in terms of the coverage afforded. In February 2002, the NAHB Senior Officers formed the General Liability Insurance Task Force to study the current insurance problem and its impact on the housing industry.

The GLI Task Force was charged with studying the insurance crisis and developing a report and recommendations for NAHB policy and actions. The Task Force sponsored a resolution that was adopted by the NAHB Board of Directors at its meeting in Washington, D.C., on June 9, 2002. One element of the resolution includes support for state legislation requiring consumers to give builders and trade contractors notice of alleged construction defects and the opportunity to cure prior to the initiation of litigation. Other elements include support for federal legislation providing secondary insurance coverage for acts of terrorism, and development of education programs for NAHB members on risk management and insurance. The GLI Task Force presented its final report to the NAHB Board of Directors at the 2002 Fall Board meeting in Anchorage, Alaska.

One of the charges under the insurance resolution was to move forward on developing an education program for NAHB members on insurance and risk management. The NAHB University of Housing is developing a joint venture course for NAHB state and local affiliates. The first national program was held on January 19th at the International Builders Show in Las Vegas. There were seven attendees at the Las Vegas program. The University of Housing is finalizing the risk management course and will make it available to state and local home builder associations during 2003.

A background paper discussing the feasibility of developing an industry standard defining what constitutes a construction defect has been prepared and submitted for review by the Senior Officers. NAHB has voluntary guidelines as reflected in Residential Construction Performance Guidelines, produced by the NAHB Remodelers Council and Single Family Small Volume Builders Committee. The proposed NAHB industry standard would cover items not typically covered by building codes and, in the event of a dispute between builders and homeowners over an alleged construction defect, the dispute would be governed by the recognized standards.

State "Notice & Opportunity to Repair" laws would reform the way in which construction defect claims are resolved. Currently, homeowners with construction conditions that they allege are defective often choose to resolve those claims using the costly and time consuming litigation process where they can expect sympathetic judges and juries. This has resulted in a system of exorbitant judgments that builders and their insurance companies are required to satisfy. As a result of these large awards, many providers of construction industry general liability insurance have chosen to stop providing

this insurance to builders. Where insurance is available at all, it is often at significantly higher premiums and reduced levels of coverage (i.e., higher deductibles and multiple exclusions). "Notice & Opportunity to Repair" laws would enact a system that would attempt to resolve construction defect disputes between home builders and consumers without having to resort to the costly and time-consuming litigation process. The laws would require that homeowners provide written notice to home builders of construction conditions that they allege are defective at least 90 days prior to commencing litigation against the home builder. During the 90-day period prior to litigation, the legislation would require that builders and homeowners attempt to resolve the defects that are the subject of the claim. If, after the 90-day period, the homeowner's claim has not been resolved to their satisfaction, they may proceed with litigation against the builder.

State Consideration (as of 2/18/03):

State: Colorado
Bill No.: H.B. 1161
Status: Passed by House, Senate Consideration (2/20/03)
Provisions: Notice & Right to Cure process 90 days before a lawsuit is filed; alter defect list once to report defects that were not originally found; removes code/standard violations from items that are considered to be defects; insurance performance standards; damage definitions & limitations; removes ability for consumers to get damages under Consumer Protection Act; allows non-economic damages in claims with personal injury

State: Idaho
Bill No.: H.B. 133
Status: Passed by House (2/11/03)
Provisions: "Notice & Opportunity to Repair Act"; Damage limitations; builder affirmative defenses – unforeseen acts of nature, homeowner failure to minimize damage, failure to maintain, etc

State: Indiana
Bill No.: S.B. 451
Status: Passed by Senate Committee
Provisions: Notice & Right to Cure process; damage limitations when homeowner unreasonably rejects builder offer to repair

State: Kansas
Bill No.: H.B. 2294
Status: Introduced, hearing scheduled (2/20/03)
Provisions: Notice & Right to Cure process; damage limitations; homeowner maintenance requirements; affirmative defenses; notice of subsequent defects; insurance performance requirements; subcontractor notification requirements; HOA vote requirements

State: Kentucky
Bill No.: H.B. 289
Status: Introduced, Hearing scheduled (2/19/03)
Provisions: Notice & Right to Cure process; contract notification requirements

State: New Mexico
Bill No.: S.B. 445/H.B. 706
Status: Introduced, referred to committees
Provisions: Notice & Right to Cure process; contract notification provisions

State: Oklahoma
Bill No.: H.B. 1334/S.B. 487
Status: Introduced, referred to committees
Provisions: Construction Defect Remediation Act; notice & opportunity to repair procedure; method of contractor response; method of purchaser response; contractor inspection; certain items inadmissible as evidence; limitation of liability; certain limit on damages; recovery of certain fees; extension of time periods; declaring the Construction Defect Remediation Act procedures as an exclusive remedy

State: Oregon
Bill No.: H.B. 2389
Status: Introduced, hearing held (2/12/03)
Provisions: Notice & Right to Cure process; Construction Contractors Board release of contractors or sub-contractors not related to litigation through state certified inspection program

State: Texas
Bill No.: H.B. 730/S.B. 383
Status: Introduced (2/6/03)
Provisions: "Residential Construction Commission Act"; state sponsored inspection and dispute resolution process; statutory warranty and building standards; warranties and building standards; limit non-economic damages; amend Residential Construction Liability Act

State: Washington
Bill No.: S.B. 5536
Status: Introduced (1/31/03)
Provisions: Resolve disputes using arbitration; "focus on defects that actually cause property damage and affect the habitability of the building"; protect associations from liability for failing to comply with time limits for commencing legal proceedings

State: West Virginia
Bill No.: H.B. 2553/S.B. 440
Status: Introduced (2/4/03)
Provisions: Notice & Right to Repair process; HOA notification requirements; code violations are actionable defects; contract notification provisions; insurance performance requirements

As of February 18, 2003, the following nine states were also considering the introduction of "Notice & Opportunity to Repair" legislation during the 2003 session. This legislation could come in the form of "stand-alone" legislation or as the part of more general tort reform efforts: Alabama, Alaska, Florida, Illinois, Louisiana, Missouri, Montana, South Carolina, and Wisconsin. Builders in Texas & Wisconsin are supporting legislation aimed at reducing construction defect litigation through other legislative means.



JESS HALL

Area 15 National Vice President
Hall Quality Homes
P.O. Box 1987
Palmer, AK 99645
907-746-2757
907-746-2759 (Fax)
buiid@hallqualityhomes.com

March 17, 2003

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

Dear Rep. Meyer:

Thank you for sponsoring HB151, the right to repair legislation. This letter is to express my support for the bill.

Across the entire nation – and especially in Alaska right now – liability insurance rates are dramatically increasing. The cost to my business is increasing and in fact it is becoming very difficult to find carriers who will provide coverage.

This legislation is a win-win situation. A conscientious builder who wants to do a good job will have the opportunity to repair any defects in a home. Also, the homeowner will have the defect repaired. A long and costly lawsuit only makes the problem worse for both sides. Many times a builder is not contacted by a homebuyer about a problem before a summons is issued. My company has been using a warranty program for the last ten years and it has worked quite well. It is very similar to HB151.

In the event that the notification process in HB151 does not solve the issue – both sides will retain their right to pursue claims in court if absolutely necessary. The idea here is that lawsuits should be the last thing that should be done to fix a problem.

A home is indeed a person's castle, and in most cases is the single largest investment that a family will make. Legitimate defects in a home should be repaired before the problem becomes worse for both the homeowner and the builder. Letting a problem fester while disputes wind their way through the court system only creates more potential cost for the builder and a potentially unsafe living situation for the homeowner. HB151 tries to avoid this mess by simply saying, "let the builder fix the problem".

Thank you again for sponsoring this bill and your efforts. Please let me know how I can help you get this legislation passed this session.

Sincerely,

A handwritten signature in black ink that reads "Jess Hall". The signature is written in a cursive style.

Jess Hall

JH:lfb

The logo for ahba (Anchorage Home Builders Association) features the lowercase letters 'ahba' in a bold, sans-serif font. To the right of the text is a stylized line drawing of a house with a chimney and a gabled roof.

Affiliated with NAHB

March 17, 2003

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

In Re: House Bill 151, Right to Repair

Dear Rep. Meyer:

Thank you for sponsoring HB151, the right to repair legislation. This letter is to express my support for the bill.

Across the entire nation - and especially in Alaska right now - liability insurance rates are dramatically increasing. The cost to my business has increased, and in fact it is becoming even more difficult to find carriers who will provide coverage.

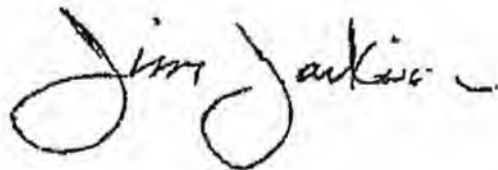
This legislation is a win-win situation. A conscientious builder who wants to do a good job will have the opportunity to repair any defects in a home. Also, the homeowner will have the defect repaired. A long and costly lawsuit only makes the problem worse for both sides.

In the event that the notification process in HB151 does not solve the issue - both sides will retain their right to pursue claims in court if absolutely necessary. The idea here is that lawsuits should be the last thing that should be done to fix a problem.

A home is indeed a person's castle, and in most cases is the single largest investment that a family will make. Legitimate defects in a home should be repaired before the problem becomes worse for both the homeowner and the builder. Letting a problem fester while disputes wind their way through the court system only creates more potential cost for the builder and a potentially unsafe living situation for the homeowner. HB151 tries to avoid this mess by simply saying "let the builder fix the problem".

Thank you again for sponsoring this bill and your efforts. Please let me know how I can help you get this legislation passed this session.

Sincerely,

A handwritten signature in black ink that reads "Jim Jenkins". The signature is written in a cursive, flowing style.

"Building Better Places to Live, Work and Play"

ANCHORAGE HOME BUILDERS ASSOCIATION, INC.

8301 Schoon Street, Suite 200 • Anchorage, AK 99518 • (907) 522-3605 • Fax (907) 522-3757





a home renovation and building provisions company

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

Re: House Bill 151, "Right to Repair"

Dear Rep. Meyers,

This letter is to express my support of HB-151.

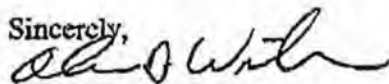
Homebuilders across Alaska are facing a liability insurance crisis. Home Builders have found their insurance premiums have doubled in cost. A greater fear is that insurance brokers and agents are telling us that there are only two companies in the state that are writing general liability insurance policies. With these types of increases many of the small companies are opting not to play by the rules, i.e.: no license, no workers compensation or general liability insurance.

This legislation is a common sense approach to resolving the majority of builder, homeowner disputes. Why is it common sense? Because many issues can be avoided when communication takes place. I believe that most builders want to do the right thing and fix any problems that arise with their products. This legislation forces the builder and the homeowner to communicate and as a last resort they can still go to court.

The cost of housing is always a concern. According to insurance industry professionals this type of legislation provides a level of certainty and stability in the construction industry. We live in a time when our clients would rather file law suits than have the problem fixed. When the cost of defending builders is reduced our premiums should reflect the reduced cost of providing coverage.

Thank you for sponsoring this bill. Your efforts on behalf of the home building industry are appreciated. I'm looking forward to testifying on this bill.

Sincerely,


Alan Wilson, President

Building satisfaction one room at a time.

907-780-3627 907-780-4327

5434 Shaune Dr. B-4 Juneau, Alaska 99801

Spinelli
HOMES, Inc.

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, AK 99801

In Re: House Bill 151, Right to Repair

Dear Rep. Meyer:

I am a homebuilder in Alaska and would like to take this opportunity to express my appreciation for your support towards HB151, the right to repair legislation.

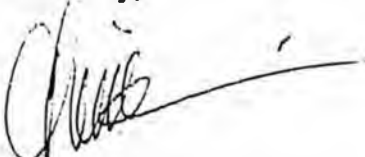
It is becoming more and more complicated to find low liability insurance rates, which makes it more expensive to run my business.

Both parties benefit when a builder gets a chance to fix the problems that occur, and the homeowner is at ease knowing that his/her requests have been fulfilled. A lawsuit will only create more work and effort from both the builder and the homeowner, and should only be used to solve a problem if absolutely necessary. HB151 reserves the right, if appropriate, to create a claim in court if the process does not resolve the issue at hand.

Usually, purchasing a new home is the largest investment a family will make in a lifetime. This is significant when taking into consideration the problems that occur, and the result when the problems sit while questions/complaints are dealt with in a court process. HB151 attempts to counter this problem by simply "letting the builder fix the problem."

If there is anything I can do to assist you in getting this bill passed, please do not hesitate to let me know.

Sincerely,



Chuck Spinelli
Spinell Homes, Inc.



DECADES OF EXCELLENCE

George Moore, Owner

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

In Re: House Bill 151, Right To Repair

Dear Rep. Mayor:

Thank you for sponsoring HB151, the right to repair legislation. This letter is to express my support for the bill.

Across the entire nation -- and especially in Alaska right now -- liability insurance rates are dramatically increasing. The cost to my business has increased, and in fact it is becoming even more difficult to find carriers who will provide coverage.

The legislation is a win-win situation. A conscientious builder who wants to do a good job will have the opportunity to repair any defect in a home. Also, the homeowner will have the defect repaired. A long and costly lawsuit only makes the problem worse for both sides.

In the event that the notification process in HB151 does not solve the issue -- both sides will retain their right to pursue claims in court in absolutely necessary. The idea here is that lawsuits should be the last thing that should be done to fix a problem.

A home is indeed a person's castle, and in most cases is the single largest investment that a family will make. Legitimate defects in a home should be repaired before the problem becomes worse for both the homeowner and the builder. Letting a problem fester while disputes wind their way through the court system only creates more potential cost for the builder and potentially unsafe living situation for the home owner. HB151 tries to avoid this mess by simply saying "let the builder fix the problem".

Thank you again for sponsoring this bill and your efforts. Please let me know how I can help you get this legislation passed this session.

Sincerely,

George Moore

LEO OLESEN 6580 Johnson Rd
CONSTRUCTION, Inc. Salcha, AK 99714

Phone: 907-489-3080 Cell: 907-388-3435
Fax: 488-3075 E-mail: olesen5@mosquiconet.com

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

March 14, 2003

In Re: House Bill 151, Right to Repair

Dear Rep. Meyer:

Thank you for sponsoring HB151, the right to repair legislation. I am writing to express my support for the bill.

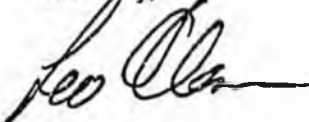
Contractor liability insurance rates have dramatically increased this past year; in fact I had to find a new carrier to provide coverage as my former insurer stopped selling this policy. My company has been in business in the Fairbanks/ North Pole area since 1983.

This is good legislation as it lets a conscientious builder who wants to do a good job have the opportunity to repair defects in a home that may be his responsibility. Letting the homeowner have the opportunity to work with the contractor to have the defect repaired is a common-sense approach that best serves most projects.

In the event that the notification process in HB151 does not solve the issue – both sides retain their right to pursue claims in court if absolutely necessary. The idea here is that lawsuits should be the last thing that should be done to fix a problem.

When we "let the builder fix the problem" we give people the chance to make good faith efforts. It is my opinion that this is the way the world should run.

Sincerely,



Leo Olesen

Owner, Leo Olesen Construction, Inc.
Member, Interior Alaska Building Association

ISLAND TILE & MARBLE
832 BUREN #99
KETCHIKAN, AK 99901
(907)225-5444

March 18, 2003

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

In Re: House Bill 151, Right to Repair

Dear Rep. Meyer:

Thank you for sponsoring HB151, the right to repair legislation. This letter is to express my support for the bill.

Across the entire nation - and especially in Alaska right now - liability insurance rates are dramatically increasing. The cost to my business has increased, and in fact it is becoming even more difficult to find carriers who will provide coverage.

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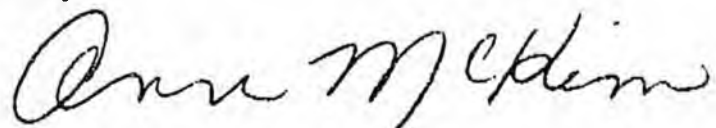
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unsafe living situation for the homeowner. HB151 tries to avoid this mess by simply saying "let the builder fix the problem".

Thank you again for sponsoring this bill and your efforts. Please let me know how I can help you get this legislation passed this session.

Sincerely,

A handwritten signature in cursive script that reads "Anne McKeim". The signature is written in dark ink and is positioned below the typed name "Anne McKeim".



TILLY & COMPANY, Ltd.

Tanana Builders

P.O. Box 72080

Fairbanks, AK 99707

Phone (907) 456-5565 Fax (907) 452-3175

Contractors License #AA24415 / Endorsement #178

Email: tillyco@gci.net

March 15, 2003

**The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801**

Re: House Bill 151, Right to Repair legislation

Dear Representative Meyer,

I wish to thank you for sponsoring HB151, the right to repair legislation. This letter serves as my expression of support for this bill.

All across the nation, as well as here in Alaska, liability insurance costs have increased dramatically. The costs to my firm have increased again this year and it is becoming more difficult to find insurance carriers to offer coverage for our industry. The increases in costs eventually are passed along in our final products so the consumer ultimately shares in this increase of expenses. The insurance dilemma will just make affordable housing that much harder to create here in Alaska.

HB151 is a good effort towards positive legislation. A good builder who works to maintain his reputation will have the opportunity to repair any defects in one of his products. Also, the homeowner can rest assured that any problems will be addressed. The involvement of legal action and costly lawsuits only make the problem worse for all parties involved.

As stated in the bill, in the event that the notification process does not solve the issue, both sides will retain the right to pursue claims within the judicial system if absolutely necessary. The whole premise here is that lawsuits should be the last thing that should be pursued to resolve a problem.

A home purchase is most likely the largest investment many families make. Legitimate defects in a home should be repaired prior to the defect becoming a larger problem for the homeowner or the construction contractor. Leaving a problem unresolved during a protracted legal action only creates more hard feelings, costly litigation for both parties as well as possibly a potentially unsafe living condition for the homeowner. HB151 is anticipated to relieve this situation by saying, give the builder the opportunity to correct the problem at hand.

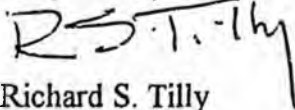
RECEIVED

MAR 19 2003

Page 2.

Again, I thank you for sponsoring this bill. Please feel free to contact me if there is anything I can do to help get this legislation passed during this session. As a professional contractor and builder, I welcome common sense legislation that is in the best interests of all parties involved. As a member of the Alaska State Homebuilding Association, the National Association of Homebuilders and as the current president of the Interior Alaska Homebuilding Association, I appreciate your involvement in issues of concern to the homebuilding industry.

Respectfully submitted,

A handwritten signature in black ink that reads "R.S. Tilly". The signature is written in a cursive, slightly slanted style.

Richard S. Tilly
President
Tilly & Company, Ltd.

Cc: file, Interior Alaska Building Association, Alaska State Homebuilding Association

NCP

DESIGN/BUILD, LTD.

March 17, 2003

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

In Re: House Bill 151, Right to Repair

Dear Rep. Meyer:

Thank you for supporting HB151, the right to repair legislation. This letter is to express my support for the bill HB151.

Across the entire nation - and especially in Alaska right now - liability insurance rates are dramatically increasing. The cost to my business has increased, and in fact it is becoming even more difficult to find carriers who will provide coverage.

This legislation is a win-win situation. A conscientious builder who wants to do a good job will have the opportunity to repair any defects in a home. Also, the homeowner will have the defect repaired. A long and costly lawsuit only makes the problem worse for both sides.

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Thank you again for sponsoring this bill and your efforts. Please let me know how I can help you get this legislation passed this session.

Sincerely,


N. Calborne Porter, Jr.
NCP Design/Build Ltd.

RECEIVED

MAR 20 2003

WHITE SPRUCE ENTERPRISES, INC.

10298 Old Valdez Trail - Selma, AK 99714

Telephone 907-488-3004

Fax 907-488-2551

whitespruce@moosequilt.com

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, AK 99801

Re: House Bill 151, Right to Repair

Dear Representative Meyer:

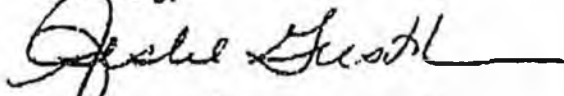
Thank you for sponsoring HB151, the right to repair legislation. This letter is to express my support for the bill.

Liability insurance rates are sharply increasing for contractors across the nation—as well as Alaska. Rates have increased significantly to my business this year. A company that I dealt with last year has pulled out of Alaska, and it is increasingly harder to find a company who has been in Alaska for a period of time or who will continue to cover liability coverage here in our state in the future.

The opportunity for the builder to be able to repair any defects in a home will provide a solution to the buyer and, hopefully, prevent costly lawsuits. Which in turn, raise the cost of insurance. If the repair does not solve the issue, both parties still retain their right to claims in court. Homeowners and builders do not want to pay costly legal fees and spend significant time in court before the repair is done.

HB151 is a way allowing the builder to fix the problem. Thank you for sponsoring this bill.

Sincerely,



Leif Gustafson, Vice President
White Spruce Enterprises, Inc.



03/17/03

The Honorable Kevin Meyer
 Alaska House of Representatives
 State Capitol Building, Suite 513
 Juneau, Alaska 99801

In Re: House Bill 151, Right to Repair

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Thank you again for sponsoring this bill and your efforts. Please let me know how I can help you get this legislation passed this session.

Sincerely,

Leonard D. Cooney
 GENERAL MANAGER



Kitchens & Baths
BY DESIGN

March 15, 2003

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

In Re: House Bill 151, Right to Repair

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Thank you again for sponsoring this bill and your efforts. Please let me know how I can help you get this legislation passed this session.

Sincerely,

Carolyn M. Foelsch, CKD, CBD



FROM :

MAR-18-03 11:17 AM AMERICAN ARCTIC COMPANY

PHONE NO. :

907 451 4336

Mar. 21 2003 03:15PM P2

AURORA DRILLING

A DIVISION OF AMERICAN ARCTIC COMPANY
P.O. BOX 81818 • FAIRBANKS, ALASKA 99708 • PHONE (907) 456-8712 • FAX (907) 451-4336

3/18/03

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

In Re: House Bill 151, Right to Repair

Dear Rep. Meyer:

Thank you for sponsoring HB151, the right to repair legislation. This letter is to express my support for the bill.

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Thank you again for sponsoring this bill and your efforts. Please let me know how I can help you get this legislation passed this session.

Sincerely,


Rocky MacDonald, President

Alaska Interior Construction, Inc.

GENERAL CONTRACTOR #28086

March 17, 2003

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

In Re: House Bill 151, Right to Repair

Dear Rep. Meyer:

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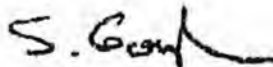
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Thank you again for sponsoring this bill and your efforts. Please let me know how I can help you get this legislation passed this session.

Sincerely,



Stephen Gough, President

P.O. BOX 81191 FAIRBANKS, AK 99708-1191 PH. (907) 468-0208 FAX (907) 488-2077

FROM :

PHONE NO. :

Mar. 21 2003 03:21PM P11

03/20/03 THU 22:59 FAX 9074785528
From: To: Larry Fogleson

LARRY FOGLESON
Date: 3/17/2003 Time: 1:13:38 PM

001
Page 2 of 2

LARRY J. FOGLESON
DENALI CONSTRUCTORS
2531 LINDA LANE
FAIRBANK AK 99709
479 6828

~~XXXXXXXXXX~~
The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

In Re: House Bill 151, Right to Repair

Dear Rep. Meyer:

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Thank you again for sponsoring this bill and your efforts. Please let me know how I can help you get this legislation passed this session.

Sincerely,

MAR-14-2003 FRI 06:24 PM

P. 01

**BEE CONSTRUCTION, INC.**

Licensed & Bonded

3/14/2003

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 511
Juneau, Alaska 99801

In Re: House Bill 151, Right to Repair

Dear Rep. Meyer:

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Thank you again for sponsoring this bill and your efforts. Please let me know how I can help you get this legislation passed this session.

Sincerely,
Stephen E. Bee, Pres.

2289 Richardson Hwy
North Pole, AK 99705

.....

Graham Builders, Inc.

March 17, 2003

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

Dear Rep. Meyer:

Thank you for sponsoring HB151, the right to repair legislation. This letter is to express my support for the bill.

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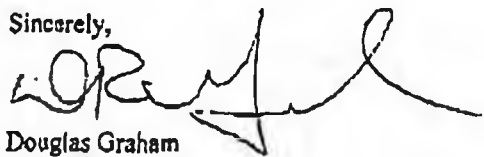
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Thank you again for sponsoring this bill and your efforts. Please let me know how I can help you get this legislation passed this session.

Sincerely,



Douglas Graham
Owner/President

Phone: 907-488-5235
Fax: 907-488-8532

.....

FROM :
Mar 17 03 01:40p

PHONE NO. :
Doug Graham

Mar. 21 2003 03:19PM PB
907-488-8532
P. 2

2289 Richardson Hwy
North Pole, AK 99705

.....

Alaska Painting Contractors, Inc.

March 17, 2003

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

Dear Rep. Meyer:

Thank you for sponsoring HB151, the right to repair legislation. This letter is to express my support for the bill.

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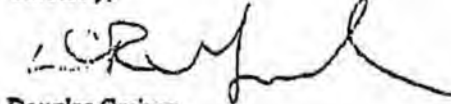
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Sincerely,



Douglas Graham
Owner/President

Phone: 907-488-5235
Fax: 907-488-8532

.....



Rick Kroczyk & Connie Page,
Owners

A FAMILY OWNED AND OPERATED BUSINESS
SUPERIOR HARDWOODS
Specializing in Hardwood Lumber & Custom Millwork

600 Old Steese Highway North, Fairbanks, AK 99712
907/457-8351 or Fax 907/457-8352

SERVING THE INTERIOR FOR OVER 20 YEARS

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

In Re: House Bill 151, Right to Repair

Dear Rep. Meyer:

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Thank you again for sponsoring this bill and your efforts. Please let me know how I can help you get this legislation passed this session.

Sincerely,



KING FIRE PROTECTION, Inc.

P.O. Box 74200
Fairbanks, Alaska 99707-4200
(907) 452-FIRE • Fax (907) 456-3817

3-12-03

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

In Re: House Bill 151, Right to Repair

Dear Rep. Meyer:

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Thank you again for sponsoring this bill and your efforts. Please let me know how I can help you get this legislation passed this session.

Sincerely,

Rich King

March 18, 2003

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

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Thank you again for sponsoring this bill and your efforts. Please let me know how I can help you get this legislation passed this session.

Sincerely,
Andy Rauwolf
Tongass Construction
Ketchikan, Alaska 99901



RECEIVED
MAR 24 2003

March 19, 2003

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

In Re: House Bill 151, Right to Repair

Dear Rep. Meyer:

Thank you for sponsoring HB151, the right to repair legislation. This letter is to express my support for the bill.

Across the entire nation - and especially in Alaska right now - liability insurance rates are dramatically increasing. The cost to my business has increased, and in fact it is becoming even more difficult to find carriers who will provide coverage.

This legislation is a win-win situation. A conscientious builder who wants to do a good job will have the opportunity to repair any defects in a home. Also, the homeowner will have the defect repaired. A long and costly lawsuit only makes the problem worse for both sides.

In the event that the notification process in HB151 does not solve the issue - both sides will retain their right to pursue claims in court if absolutely necessary. The idea here is that lawsuits should be the last thing that should be done to fix a problem.

A home is indeed a person's castle, and in most cases is the single largest investment that a family will make. Legitimate defects in a home should be repaired before the problem becomes worse for both the homeowner and the builder. Letting a problem fester while disputes wind their way through the court system only creates more potential cost for the builder and a potentially unsafe living situation for the homeowner. HB151 tries to avoid this mess by simply saying "let the builder fix the problem".

Thank you again for sponsoring this bill and your efforts. Please let me know how I can help you get this legislation passed this session.

Sincerely,

Julie Powers
PO Box 7702
KTN AK 99901



North Country Builders of AK, LLC

PO Box 871902
Wasilla, AK 99687

Phone: 907 746-7034
Fax: 907 373-7061
Cell 907 232-3751
Email: tpsmith@mtaonline.net

03/16/03

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

In Re: House Bill 151, Right to Repair

Dear Rep. Meyer:

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Thank you again for sponsoring this bill and your efforts. Please let me know how I can help you get this legislation passed this session.

Sincerely,

Thomas H Smith
North Country Builders of AK, LLC



RealEstateJournal

THE WALL STREET JOURNAL *Guide to Property*

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Home Builders Seek Help From Lawmakers

By **EVAN PEREZ**
Staff Reporter of The Wall Street Journal

From [The Wall Street Journal Online](#)

Jan. 27, 2003 -- If your new dream home turns out to have serious flaws, you may have to give your builder a chance to fix the problems before taking him to court.

The nation's home builders, fighting what they say is a surge in construction-defect lawsuits, are appealing to state legislatures to help slow consumer lawsuits.

Builders are behind "right-to-cure" laws that have passed in recent months in California, Washington, Arizona and Nevada, and builders are aiming for at least 13 more states in coming months. The National Association of Home Builders, a Washington, D.C., residential-builders lobby, recently announced its national push for such legislation at its national convention in Las Vegas.

The laws generally set up a procedure for homeowners to give builders a chance to repair their homes before they can file a lawsuit. But, while the requirement sounds logical, some consumer advocates fear builders will gain an advantage over unsophisticated home buyers, who may sign away their rights to sue later if the problem isn't fixed properly.

Tom Miller, a Newport Beach, Calif., lawyer who has built a national specialty of suing home builders, says "right-to-cure" laws benefit builders more than consumers.

He predicts that the laws will get rid of roughly half of home-defect lawsuits. "It will do away with a lot of small to medium construction-defect cases, those under \$500,000," he says. But the many, bigger multimillion-dollar cases involving hundreds of homeowners, he says, will continue to plague builders who make mistakes. "I'm not going out of business because of this new law," Mr. Miller says.

The law passed in Washington state, which is being used as a model for proposed legislation in other states, calls for homeowners to alert a builder, at least 45 days before a suit is filed, that they believe there is a defect. Builders then have 21 days to respond by either doing an inspection, disputing the claim and refusing to fix it, or proposing a settlement.

Builders this year are targeting legislatures in Alaska, Florida, Idaho, Kansas, Kentucky, Louisiana, Missouri, Montana, New Mexico, Oklahoma, Oregon, South Carolina and Wisconsin.

The U.S. Commerce Department reported this week that housing starts surged to an estimated 1.7

million in 2002, the highest since 1986. With it has come a boom in construction-defect claims, builders say. There are few national statistics, but one indicator of the surge in claims is the effect on the builders' general-liability insurance market, with rising premiums and insurers curtailing coverage. "The construction-defect problem is considered one of the most serious problems in the insurance market today," says Bob Hartwig, chief economist for the Insurance Information Institute in New York.

Karen Reutter, a senior vice president of Willis Group, a London-based insurance broker, says some of her large U.S. residential-construction clients have faced premium increases of 400% to 600% over the past year. Builders will eventually pass along the costs to consumers, she predicts.

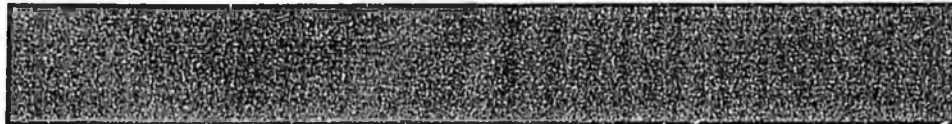
Plaintiffs lawyers and consumer advocates complain that builders are largely to blame for the spate of lawsuits because many have come to rely on cheaper labor. They often cite builders' own complaints about the scarcity of skilled labor in the booming housing industry.

The Council of Better Business Bureaus, Arlington, Va., says it recorded 4,323 complaints against home builders in 2001, the No. 23 spot on a list of more than 1,000 types of businesses. (Car dealers were No. 1, with 19,404 complaints.) The builder complaints were up 8% from 3,996 in 1999.

The lawsuit problems for builders have exacerbated an already difficult insurance market. The Sept. 11, 2001, attacks in the U.S. and the depressed stock market have hurt insurers. In many states, many insurance carriers have simply stopped writing certain policies. Those that have remained have raised premiums or narrowed the coverage.

Harry Elliott, president of Elliott Homes, a builder in Sacramento, Calif., and an architect of the legislation in that state, says California builders just a few years ago had a choice of 35 insurance companies for liability coverage but now have only six.

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Builders push for added protection from lawsuits

Residential construction firms struggling to get insurance coverage because of rising claims and litigation

By Brian Johnson/F&c Staff Writer
March 28, 2003

Hoping to bring down insurance costs for homebuilders, the Builders Association of Minnesota (BAM) and residential contractors are pushing a House bill that would make it more difficult for builders to be sued over construction defects.

The bill, House file 730, requires homeowners to give builders a chance to fix any construction defects before taking the matter to court. BAM says the legislation helps both consumers and builders by ensuring that defects are dealt with "in a timely and cost-effective manner."

Specifically, the legislation requires homeowners to notify the contractor, in writing, of any problem at least 90 days before filing a lawsuit. After receiving the notice, the contractor would be allowed to inspect the home and would be given a chance to repair the defect or offer monetary compensation.

The legislation also stipulates that, unless fraud is involved, no action may be taken against a builder for defects discovered after the warranty expires.

Builders say the legislation is important because construction defect lawsuits are driving up the cost of business insurance for residential contractors. Premium increases have ranged from 200 to 600 percent, according to BAM officials.

Many residential contractors are struggling to find general liability coverage, BAM adds, and some insurance companies no longer offer coverage for builders because of the rise in construction-related claims and litigation.

Construction defects related to water intrusion, for example, have led to mold problems in homes and multimillion-dollar judgments against builders and other defendants.

Steve Noble, president of St. Cloud-based Noble Custom Homes, told

lawmakers Thursday that the proposed legislation makes it clear that a two-year warranty really means two years.

Speaking before the House Commerce Committee, Noble said his insurance carrier recently stopped providing coverage for his business even though he has never been the target of a construction defect claim.

Noble added that his insurance premiums went up by \$30,000 after he finally obtained coverage from another company.

"If I had one lawsuit against me, it could wipe my whole company out," Noble said.

No one spoke against the measure during the hearing.

Builders say the legislation would close a loophole in Minnesota's existing home warranty law, which was passed in the 1970s. According to BAM, the loophole enables homeowners to sue their builder even after the warranty period has expired.

The existing law requires builders to provide a one-year warranty for defects related to faulty workmanship and defective materials, a two-year warranty for defects caused by the faulty installation of plumbing, electrical and cooling systems, and a 10-year warranty for "major construction defects" related to a home's foundation.

The current legislation stems from a court case involving a homeowner who sued his builder over a construction-related water problem. Although the warranty had expired, the owner won a \$7,000 judgment in conciliation court.

The builder appealed, claiming he was covered under the state's home warranty law. The Minnesota Appellate Court ruled that the law does not require homeowners to discover construction defects within the warranty periods in order to have a cause for action.

The case was appealed to the Minnesota Supreme Court, which denied a hearing. The court indicated that it was the Legislature's responsibility to clarify the law.

Sponsors of the legislation include Rep. Larry Howes (R-Hackensack), Ray Cox (R-Northfield), Ray Vandever (R-Forest Lake), Mark Buesgens (R-Jordan), and Mary Liz Holberg (R-Lakeville). Another hearing before the House Commerce Committee is scheduled for next week.

A companion bill, Senate file 289, has been referred to the Senate's Commerce and Utilities Committee.



Liability rates rising faster than homes

Feb. 12, 2002

By JR Ball,

Business Report staff

Residential developers, builders say 'frivolous lawsuits' spike insurance costs, limit coverage

Don Joffrion knows lawsuits.

A residential developer and builder for 22 years, Joffrion has been sued numerous times by irate homeowners and their lawyers. Remembering the exact number of lawsuits is difficult, but he is certain of one fact:

"There was only one time that I was found to be liable," said Joffrion, matter-of-factly. "I knew about the problem and offered to fix it without going to court, but the homeowner was a lawyer who was out for blood."

He's not alone. Area home builders are being hauled into court with increasing frequency to defend themselves against construction-defect lawsuits.

Builders say most of the suits are frivolous. Construction-defect attorneys counter that contractors have cut corners while trying to cash in on the housing boom of the 1990s.

Either way, it's up to the builders' general liability insurer to pick up the legal tab.

Tired of the increased risk and mounting legal fees, a number of liability insurance companies have pulled out or are in the process of leaving the Baton Rouge residential construction market. Included in that group is the leading insurer of area builders—Zurich North America, the third largest property and casualty company in the United States.

Those that remain are not only raising rates—between 15 percent and 100 percent, depending on builder experience and volume of business—but are including a greater number of coverage restrictions and exemptions in policies.

Because many builders are in the process of renewing their insurance coverage—or scrambling to find a new carrier—they say it's impossible to predict the impact on home prices. But most agree any increases will be minimal since insurance costs are but a small percentage of the construction budget.

General liability rates last year ranged from \$1,000 to \$1,800 per home, depending on the size and difficulty of the project.

But area insurance agents warn that simply finding a company to carry a builder or developer is the problem, not rate increases.

"I could probably insure somebody who does asbestos abatement on a nuclear submarine faster than I can insure a home builder right now," said Al Scallan, an agent with Bynum, Grace & Joffrion, a company that represents some 100 builders in the area.



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"I have subcontractors that are going into plants and welding pipe next to petroleum cracking facilities and the only question I get from the insurance company is if they're also working on residential home construction."

General liability policies provide broad protection against claims stemming from injuries, building defects or property damage associated with construction.

Developers and general contractors are required to carry general liability and workers' comp insurance to do business in Baton Rouge. That regulation does not extend to most subcontractors, and many do not carry insurance. If that's the case, the contractor must carry them.

Baton Rouge builders are hardly alone in this problem. In fact, the situation is far worse in California, Texas and New York where rates have jumped by as much as 300 percent.

Regardless of where you're at on the map the problem is the same—insurance companies say developers and builders are risky business.

"Plain and simple, it's the increased cost of litigation," said Bill Bateman, an agent for Baton Rouge Agency. "It doesn't matter if the lawsuit has merit. Once it's filed, the insurance agency is obligated to defend it."

The surge in lawsuits began nearly a decade ago when problems associated with the installation of an exterior surface known as EIFS caused the wooden frames in homes to rot.

"Zurich got absolutely pounded on EIFS claims," said Scallan, once a member of the company's advisory board. Company officials declined to reveal how much money was paid out in EIFS-related claims, but industry newsletters project the amount in excess of \$500 million.

A bigger problem in Baton Rouge is subsidence, where the ground is actually sinking beneath homes. Several homeowners in the Country Club of Louisiana have recently filed subsidence-related lawsuits.

Claims stemming from mold appearing in homes has proved to be the third strike for numerous insurance carriers. The exact cause of mold intrusion isn't known, but experts believe the problem is tied to newly constructed homes being increasingly airtight. Consequently, in areas of high humidity, trapped moisture inside a home becomes a breeding ground for mold spores.

While there have been few mold-related lawsuits filed in Louisiana, more than 1,000 such claims have been filed in both California and Texas in the past year.

"None of these problems were contemplated when many of these insurance companies got into residential construction," said Scallan. "There's just not enough money to pay off all the claims."

Zurich isn't the first company to ease its way out of the residential business, but its decision to stop carrying developers and limit general contractor policies has hit the Baton Rouge market hard. "They probably covered 80 percent of the market in this town," said Bateman.

Zurich officials said the move is a simple business decision. "The claims that we're seeing far exceed the fees generated," said Keith Owens, the company's public relations manager. "We're in the business of assuming risk, but we also want to make a profit."

Scottsdale Insurance, owned by Nationwide Mutual, has already pulled out of the residential market and CNA has stopped writing general liability policies in Louisiana until it gets state approval for a mold exclusion clause. Essex Insurance Co. won't cover contractors who build more than six homes in an individual subdivision.

"These companies just assume the developer or builder is going to get sued," said Bateman. "An attorney can go into any large subdivision and find three or four people dissatisfied for some reason, including they can't pay their note and they're looking for a way to get out."

Rising litigation costs have come at a particularly hard time for the insurance industry. After a 10-year boom, the market has tightened, prompting significant rate increases. And losses resulting from the Sept. 11 terrorist attacks have forced insurers to reassess their commitment to less profitable insurance lines, said American Insurance Association spokeswoman Julie Rochman. The result? Insurers are walking away "from certain types of risk."

When liability insurance providers leave the marketplace, there is less competition among those who remain. The result is a quasi-monopoly, said Nick Xiros, an insurance consultant for AON Risk Services, an international brokerage and consulting firm. "Carriers can then charge whatever they want."

"I'm not worried about cost increases. I'll take whatever I can get right now," said Ken Jones of St. Francisville-based Jones Design/Builders LLC. "The bigger issue is even finding coverage. There will be some builders who can't and they'll be forced to go out of business."

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FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 151(L&C)
(H) Publish Date: 3/31/2003

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Dwelling Design/Construction Claims BRU _____
Sponsor Meyer Component _____
Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2002) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation has no fiscal impact on state spending.

Prepared by: Representative Tom Anderson, Chairman Phone _____
Division House Labor & Commerce Date/Time 3/31/03 10:58 AM
Approved by: Representative Tom Anderson Date 3/31/2003
Agency House Labor & Commerce

HB

164

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 2, 2003

FURTHER REFERRALS: Finance

Date of Committee Action: April 9, 2003

The JUDICIARY Committee considered:

HB 164

HOUSE BILL NO. 164

CLAIMS BY STATE-EMPLOYED SEAMEN

"An Act relating to the state's sovereign immunity for certain actions regarding injury, illness, or death of state-employed seamen and to workers' compensation coverage for those seamen; and providing for an effective date."

Recommends it be replaced with HCS or CS for _____ (_____)
 For Senate Bills with new title: Technical Title New Title: HCR_____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of
Abbrev
for
Depts.:

- ADM
- CED
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- HSS
- LEG
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
<u>CRT</u>				✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
<u>ADM</u>	1			✓
<u>LWF</u>	2	✓		

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
_____	<u>SAMUELS</u>	✓			
_____	<u>HOLM</u>	✓			
<u>Gara</u>	<u>Coale</u>		✓		
<u>Almunder</u>	<u>Greenberg</u>			✓	
<u>R. S. ...</u>	<u>Ogg</u>			✓	
<u>Tom ...</u>	<u>ANDERSON</u>	X			
<u>Chair: _____</u>	<u>McQuire</u>	✓			
<u>Chair: _____</u>					

HOUSE COMMITTEE REPORT

(7)

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FURTHER REFERRALS: Finance

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Recommends it be replaced with HCS or CS for _____ (_____)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LEG
 LAW
 LWF
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
<u>CRT</u>				✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
<u>ADM</u>	1			✓
<u>LWF</u>	2	✓		

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	SAMUELS	✓			
	HOLM	✓			
<u>Gara</u>	<u>Coale</u>		✓		
	<u>Mumby</u>			✓	
<u>R. Stou</u>	<u>Ogg</u>			✓	
<u>Tom Anderson</u>	ANDERSON	X			
Chair:	McGuire	✓			
Chair:					

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 164
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Claims by state-employed seamen BRU Alaska Court System
 Component Trial Courts
 Sponsor Rules by request of the governor
 Requester House Judiciary Component No. 768

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)
 The court system does not anticipate any fiscal impact from the passage of HB 164.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750
 Division: Alaska Court System Date/Time 3/28/03 10:46 AM
 Approved by: Stephanie Cole, Administrative Director Date 3/28/2003
 Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 164
(H) Publish Date: 3/5/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title An Act relating to state immunity for certain BRU Risk Management
actions by state employed seaman.... Component Risk Management
Sponsor _____
Requester _____ Component No. 71

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

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

Estimate of any current year (FY2003) cost: 0.0

Check 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)

Very significant cost savings will be realized in future years as the AMHS and the few other maritime employees injury claims transition into the state average employee injury rate and cost.

The state funds its claim costs on a "cash flow" basis (appropriating only the amounts expected to be paid the next fiscal year) collected solely through interagency receipts (cost of risk allocations) assessed each agency.

If Risk Management (RM) was provided continuing funds for each FY (held in reserve until all outstanding liabilities from that period are paid - as an insurance carrier operates), then RM could immediately reduce premium assessments — reflecting the cost savings anticipated.

Future year premium assessments will reflect the cost reductions actually realized by this legislation as premiums are developed from actual claims expenses incurred.

Prepared by: J. Brad Thompson, Director Phone _____
Division Risk Management Date/Time 3/6/03 10:57 AM
Approved by: _____ Date 3/6/2003
Agency Administration

#B164

Conceptual Amendment #1 - failed

- Allow parties to negotiate

~~to~~ to be covered by WOS

comp law. But Don't
mandate it.

With No agreement, the Jones
Act will apply.

An analysis of AMHS crew claims costs compared to those provided under the Alaska Workers Comp Act (AWCA) for all other state employees.

The enclosed Excel workbook contains detailed breakouts of the actual incurred loss (cost to date plus anticipated expense) by each individual AMHS vessel for the past six fiscal years.

To objectively analyze the AMHS employee's injury experience to the state's overall employee injury rate, both frequency (number of claims) and severity (loss cost) are averaged and compared on a per 100 FTE (full time equivalent) basis.

Additional analysis was performed between AMHS and the five state agencies with the highest workers' compensation loss experience - to provide comparison to similar physically demanding jobs.

AMHS shows a five year average loss rate of 41 claims per 100 FTE's in comparison the state overall workers' compensation injury rate of 8, with the highest five agencies showing average loss experience of 10 claims per 100 FTE's.

On a cost per 100 FTE's analysis; AMHS actual claims experience during the last five years shows an average cost of \$197,065 compared to the top five state agencies averaged cost of \$64,145 during the same period.

The most significant difference is the award for the non-economic damages, not provided under workers compensation remedies and that life illnesses that are alleged to manifest during a voyage are covered under the Jones Act.