'seaman'' that extended the scope of federal maritime remedies to persons engaged in work outside of a traditional seaman's duties. Having determined he same, the Board believes that the federal courts have broadened the 'seaman'' definition to such an extent that ''the twilight zone of overlapping federal and state jurisdiction'' . . . ''did not diminish the state's workers' compensation jurisdiction.'' The Board determined that the *Sea Alaska*'s processing activities were done at anchor exclusively in Alaska territorial waters, and they used ''Alaska's territorial waters as its business location.'' It, therefore, determined that the vessel's mission ''was essentially industrial in nature, and more akin to a traditional shore-based cannery or processing facility, than to a vessel engaged in traditional maritime navigation or the business of catching fish.'' Thus, based on [sic] Alaska's legitimate interest ''in ensuring all processing workers within its boundaries are protected by the Workers' Compensation Act, is not less for employees who to [sic] work in a factory that floats at anchor on state's water, than it is for employees performing the same work in a building resting on its shore, a short distance away.'' The Board therefore found that it had jurisdiction over Murray's claim under the Act.

In understanding the interaction between state and federal law, it is important to understand the difference between the doctrines of suppression and preemption:

> The general rule of suppression is that in the case of a direct conflict between a rule of substantive federal law and one of state law, the federal rule governs. So the question applies whether the federal rule is statutory or a recognized principle of judge-made law. Preemption, on the other hand, involves two principles
>
> (1) an issue of statutory construction where, by legislating in a certain field, Congress intended to prohibit application of state law in that area; or
>
> (2) due to the requirements of national uniformity in maritime matters, state regulation in the maritime field is prohibited, although there is no congressional legislation on point.''[8]

The Commerce Clause allocates to Congress the power ''to regulate commerce with foreign nations, and among the several states . . .'' The Supremacy Clause makes the constitutional acts of Congress ''the supreme Law of the land'' and prescribes that ''the judges of every state shall be

8. *Federal Suppression of State Workers' Compensation Acts as Applied to Jones Act Seamen*, Charles M. Davis, 8 U.S.F.Mar.L.J. 185 (Spring 1996).

bound thereby, any Thing in the . . . Laws of any State to the Contrary notwithstanding.'' And the Admiralty Clause mandates that ''all Cases of admiralty and maritime Jurisdiction'' extend to the judicial power of the United States.[9] The *Jensen* doctrine concerns the exclusive federal jurisdiction where there is explicit or implicit occupation of that maritime subject by federal law. Suppression and preemption are the basis for the *Jensen* doctrine.[10] As noted by Davis's article, even though ''the *Jensen* doctrine applied to seamen and to longshore workers injured on navigable waters, a number of cases began to chip away at the edges of exclusive federal jurisdiction with respect to other workers who were neither ''seamen'' nor workers engaged in maritime employment, in whole or in part, upon the navigable waters of the United States.''[11] In 1927, when Congress enacted the Longshoremans' and Harborworkers' Compensation Act (LHWCA) it had the ''maritime but local'' doctrine in mind. The ''maritime but local'' doctrine was developed to supplement maritime law, not eradicate it. ''In maritime situations of genuine local concern where there was no existing rule of admiralty law, the LHWCA permitted the absorption of state compensation schemes. But the doctrine never inferred that in a 'maritime but local' matter, where there was no local rule, admiralty would relinquish its jurisdiction. As drafted in the LHWCA, however, it was open exactly to that interpretation.''[12]

As is the case in the present matter on Appeal, the confusion and uncertainty in the language of LHWCA left employers finding that their contributions to one compensation system, through the Jones Act, left them with no protection when the claims through other jurisdictions were made. Similarly, these inconsistencies caused numerous maritime employees to find their compensation barred by the statute of limitations when they chose the wrong scheme to pursue originally. In 1942 the United States Supreme Court[13] developed the ''Twilight Zone'' Doctrine. This case involved a steelworker who was dismantling a bridge over a navigable river who drowned when he fell from a barge. The State Supreme Court denied his widow's state compensation claim on the basis that he was engaged in maritime work upon navigable waters at the time of the accident. The United States Supreme Court reversed, holding that there is some limited

9. Decision at p.3.
10. *Id.* at p.4.
11. *Id.* at p.5.
12. Davis, supra, note 8 at p.198.
13. *Davis v. Department of Labor & Industries*, 317 U.S. 249, 248, 1942 AMC 1653 (1942).

overlap in state and federal law in such cases and that if a claimant was incorrect in the election between federal or state remedies, the same would not foreclose proper recovery. In 1951, the Ninth Circuit[14] held that injury of a deck hand on a tug in Alaska territorial waters was exclusively under federal maritime law. This case involved injury to a deckhand on a small towing launch that was used to tow sailing fishing vessels the short distance into Bristol Bay and then towed them back to shore-based canneries at the end of the fishing day.

In 1972, Congress amended the LHWCA[15] to extend the same to land-based employment activities relating to ship building, loading, unloading and repairing ships that occurred on land or in adjoining navigable waters. Following the same, the United States Supreme Court continued the "twilight zone" doctrine holding that the overlap of state and federal compensation schemes also covered land-based injuries that fell within the new amendment.[16] It also was determined that the "twilight zone" doctrine allows concurrent jurisdiction of state and federal workers' compensation statutes for workers injured while engaged in "maritime but local" employment, within the meaning of the 1972 amendments to the LHWCA concerning employment on navigable waters and ashore. With regard to this entire issue, Davis concludes that courts which have held that the "maritime but local" and "twilight zone" doctrines apply to Jones Act seamen injured or killed in the scope of their employment have erred in three significant ways. First, they have ignored the doctrine of suppression by focusing solely on the preemption prong of *Jensen* dealing with the uniformity and harmony of maritime law. They have neglected to consider that whenever there is a direct conflict between state and federal law, the federal law is supreme and the state law is superseded. Second, the "maritime but local" and "twilight zone" doctrines lie exclusively within LHWCA type cases, because Congress, in enacting the LHWCA, recognized the concurrent jurisdiction of the state and federal compensation schemes with regard to "maritime but local" workers. Conversely, Congress did not recognize the doctrines in enacting the Jones Act; they are irrelevant to seamen's death and injury cases. Federal law, therefore, maintains exclusive jurisdiction over "seamen" and supersedes any state law concerning the subject of injured or killed seamen.

4. *Alaska Industrial Board v. Alaska Packers Association*, 186 F.2d 1015 (9 Cir. 1951).
5. Act of March 4, 1927, Pub.L.No. 92-576, §19, 86 Stat. 1263 (1972) (current version at 33 U.S.C. §§901-950 (1994)).
6. *Sun Ship, Inc. v. Pennsylvania*, 447 U.S. 715, 1980 AMC 1930 (1980).

Referencing the United States Constitution, Article III, §2, the Alaska Supreme Court in its *Anderson*[17] decision, noted that the policy behind the grant of exclusive jurisdiction to the federal government in maritime cases "is to ensure a nationally uniform system of maritime law." The court also acknowledged that the United States Supreme Court began to narrow the *Jensen* doctrine by identifying circumstances in which the subject of litigation might be maritime yet "local in character," and, thus, amenable to relief under state law. The court also acknowledged that difficulties of interpretation led the court to establish a "regime of concurrent jurisdiction,"[18] in the "twilight zone" between federal and state compensation programs.[19] The court in *Anderson*[20] refused to apply the local concern exception to the claim on behalf of a seaman engaged in an effort to board a boat that had broken loose from her mooring less than a mile from shore. Though the decedent was employed only on vessels that operated within five miles of the shore for pleasure fishing, it was held that the state could not constitutionally make a compensation award. The *Anderson* court, in view of the *London Guaranty* holding, stated "We see no way to extend *Estes* to the injury that occurred to Anderson while he was actually engaged in fishing on navigable waters."[21] The court noted that "other cases in which the local concern doctrine was invoked to provide a state remedy for an injury within the admiralty jurisdiction involved facts, like *Estes*, with a closer connection to land-based activity than to traditional maritime work."[22] The *Anderson* court determined that where the facts instead show a claimant engaged wholly in maritime work, "the courts have declined to lengthen the shadow of the twilight zone, and have remitted the claimants to their federal remedies."[23]

As indicated previously, the Board relied in part on its 1962 *Estes*[24] decision. Even though that decision properly identified the issue of whether or not the "twilight zone" doctrine related to both the LHWCA and to seamen's cases, the court did not address fully consideration of the suprem-

17. 635 P.2d at 1183-1185 (Alaska 1981).
18. *Id.* at 1185 (citing *Sun Ship*, 447 U.S. at 719, 1980 AMC at 1932).
19. *Id.* at 1185 (citing *Davis v. Dept. of Labor*, 317 U.S. 249, 1942 AMC 1653 (1942)).
20. *Id.* at 1185 (citing *London Guaranty & Accident Co. v. Indus. Accident Comm'n.*, 279 U.S. 109, 125 (1929)).
21. *Id.* at 1185.
22. *Id.* at 1186 (citing 4 A. Larson, *The Law of Workman's Compensation*, §90.41 (1980)).
23. *Id.* at 1186 (citations omitted).
24. *Supra*, 370 P.2d at 184.

acy of federal law to the extent that state workers' compensation laws conflict with Jones Act remedies, or general maritime law.

In 1990, the United States Supreme Court[25] considered the case where another crewman had killed a seaman aboard a vessel docked in Washington State territorial waters. The Jones Act claim was made by the decedent's mother and the Supreme Court held that even under the general maritime law, which allows for recovery of punitive damages, loss of consortium, and other non-pecuniary damages, the same cannot supplement the intent of Congress to limit seamen's damages to pecuniary losses and compensation under the Jones Act. Specifically, the court held "the Jones Act establishes a uniform system of tort law parallel to that available to employees of interstate railway carriers under FELA,"[26] and general maritime law does not add to it. In a later case,[27] the Supreme Court held that the interests of national uniformity require seamen's remedies must be uniformly applied. Thus, if federal courts cannot apply general maritime law to supplement Jones Act remedies, then it is obvious that a state may not employ state workers' compensation remedies to also interfere with this federal law. Federal law continues to occupy the field of seamen personal injury and death actions, and the state may not regulate the same. This is supported by another recent United States Supreme Court decision[28] wherein a shore-based engineering superintendent, whose duties placed him aboard fleet cruise ships, was a victim of medical malpractice on-board a ship. The injured employee sued under the Jones Act, but the employer argued that he was not a seaman. The Supreme Court stated that the Jones Act provides the cause of action in negligence for "any seaman" injured "in the course of his employment".

Referencing the *Latsis* decision, Davis notes that the court:

> . . . made it clear, however, that whether injury to a seamen [sic] occurred aboard ship or on shore is irrelevant to "seaman status". Jones Act coverage, like the jurisdiction of admiralty over causes of action for maintenance and cure for injuries received in the course of a seaman's employment, depends "not on the place where the injury is inflicted . . . but on the nature of a seaman's service, his status as a member of the vessel, and his relationship as such to the vessel and its operation in navigable waters." Thus, maritime workers who obtain

25. *Miles v. Apex Marine Corp.*, 498 U.S. 19, 1991 AMC 1 (1990).
26. *Id.* 498 U.S. at 29, 1991 AMC at 8.
27. *Yamaha Motors Corp. v. Calhoun*, 516 U.S. 199, 1996 AMC 305 (1996).
28. *Chandris v. Latsis*, 515 U.S. 347, 1995 AMC 1840 (1995).

> seamen status do not lose that protection automatically when on shore, and may recover under the Jones Act whenever they are injured in the service of a vessel, regardless of whether the injury occurs on or off the ship. . .
>
> *Latsis* makes it clear that state workers' compensation statutes cannot provide any remedy for the personal injury or death of a seamen[sic]: it does not matter if the employment activity was "maritime but local", or even if it was performed on land; as long as the worker was a seaman, then his remedy is strictly federal in nature.[29]

V. Summary

Murray was a Jones Act seaman, as recognized by the federal court, and based upon the same he received a substantial judgment. Based on historical precedent, together with recent opinions from the United States Supreme Court and statutory construction, state workers' compensation statutes cannot apply to the injury of a Jones Act seaman when that injury occurs within the workers' scope of employment as a seaman. This is true, even if the vessel is engaged in local trade or, as in the present case, where the vessel is anchored at various locations offshore for the purpose of fish processing. As the court observed in *Latsis*[30] "seamen 'are emphatically the wards of the admiralty' because they 'are by the peculiarity of their lives liable to sudden sickness from change of climate, exposure to perils, and exhausting labor.' " Thus, under the suppression doctrine, the remedies in this matter remain exclusively federal. The Alaska Workers' Compensation Board's determination of jurisdiction over the employee's claim for compensation is reversed.

---

29. 8 U.S.F.Mar.L.J. 185, p.13.
30. 515 U.S. 347, 355, 1995 AMC 1840, 1845 (quoting *Harden v. Gordon*, 11 F.Cas. 480, 485, 483 No.6, 047) (C.C.Me. 1823).

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 31, 2003

SUBJECT: State immunity against civil suits by state employees who are seamen (SB 120)

TO: Senator Con Bunde
Attn: Jane

FROM: Michael F. Ford
Legislative Counsel

You have asked for my opinion on the opinion of Mr. Trueb, regarding potential legal obstacles to the enactment of SB 120. As explained in this memo, I do not believe that the arguments raised by Mr. Trueb would preclude the legislature from changing existing law as contemplated by SB 120.

The issue raised by SB 120 was addressed by the Alaska Supreme Court in State, Dept. of Public Safety v. Brown, 794 P.2d 108 (Alaska 1990). In that case the court held that the legislature had waived its sovereign immunity by adoption of AS 09.50.250, but that the legislature could amend AS 09.50.250 to make workers' compensation the exclusive remedy for an injured state employee who is a seaman. This is precisely what SB 120 does.

Turning to the arguments raised by Mr. Trueb each point will be addressed in turn.

1. The Alaska Constitution abolished sovereign immunity and sovereign immunity may only be reinstated by a constitutional amendment.

Answer: The view is in conflict with the opinion of the Alaska Supreme Court in Brown. In that case the court stated that "the legislature could make the exclusive remedy defense applicable to federal maritime claims by referring to the defense in the sovereign immunity waiver contained in" AS 09.50.250. The court makes no mention of any limitation on the legislature's power to amend the sovereign immunity provisions created by the legislature in AS 09.50.250.

2. Any attempt to institute sovereign immunity solely for Jones Act suits would offend the Alaska Bill of Rights.

Answer: This argument is again not supported by case law. Injured seaman who are state employees will have a remedy, that being the workers' compensation laws (AS

23.30). If anything, SB 120 eliminates disparate treatment by requiring injured seamen who are state employees to be treated the same as all other state employees.

3. As a matter of federal constitutional law Alaska cannot apply its workers' compensation laws to seamen.

Answer: Again Brown, refutes this argument. The court cites to several cases from other states where the workers' compensation statutes are the exclusive remedy of injured workers, when the state has preserved its sovereign immunity.

4. Any amendment to close the door to the Alaska courts will not prohibit Jones Act suits from being filed in Washington Courts.

Answer: Assuming that the Washington Courts have jurisdiction in a particular case, the injured seaman would still be limited to benefits under the Alaska workers' compensation law, which is the intent of SB 120.

5. There is no empirical evidence that coverage under the workers' compensation system would save the State money.

Answer: The premise underlying workers' compensation is that employees trade a potential full recovery for certain partial compensation and avoid the expense and delay of litigation. This point was recognized by the Alaska Supreme Court in Brown v. State & Div. of Marine Highway Systems, 816 P.2d 1368 (Alaska 1991). This would seem to indicate that in general, the State would save money by requiring seamen who are State employees to use the workers' compensation system.

Please contact me if you have further questions.

MFF:mdr
03-051.mdr

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

P.O. BOX 110300
DIMOND COURT HOUSE, 6TH FLOOR
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-6735

April 1, 2003

The Honorable Con Bunde, Chair
The Honorable Ralph Seekins
The Honorable Bettye Davis
The Honorable Hollis French
The Honorable Gary Stevens
Senate Labor & Commerce Committee
Alaska State Legislature
State Capitol, Room 206
Juneau, AK 99801-1182

Re: SB 120

Dear Senators:

Thank you for the opportunity to respond to legal questions raised by Lanning Trueb of the law firm Beard Stacey Trueb & Jacobsen regarding SB 120, relating to the state's withdrawal of consent to suit and provision of workers' compensation instead of maritime law remedies for state-employed seamen. We have reviewed the arguments put forth by Mr. Trueb and do not believe that any of them present insurmountable obstacles to effectuating the purpose of this bill, which is to provide a uniform system of remedy for injury, illness, or death of state employees.

As a preliminary matter, it is important to note that the approach taken by this bill was expressly suggested with approval by the Alaska Supreme Court in its decision in *State, Department of Public Safety v. Robert Brown* (Brown I), 794 P.2d 108 (Alaska 1990). The court found that the 1962 enactment of the state's tort claims act, AS 09.50.250, expanded the waiver of sovereign immunity to cover all tort claims against the state, including admiralty matters, without any limiting language referring to Alaska's workers' compensation law. *Brown I*, 794 P.2d at 109. The court expressly agreed with a 1963 opinion of the Attorney General:

> By this waiver of immunity it must be concluded that the State may be sued for negligent torts which arise under the Jones Act. It is true that under the Alaska Workmen's Compensation Act, employers, including the State (AS 23.30.265), are excluded from admiralty liability.
>
> ...
>
> However, this exclusive liability provision cannot act as a limitation on suits against the State under the Federal Maritime law once the State has unqualifiedly waived its immunity for negligent torts. ... By waiving its immunity, the state stands in the position of a private party and cannot limit its tort liability by a general provision in the workmen's compensation act.
>
> ...
>
> If it is the desire of the State to limit its tort liability to the workmen's compensation act, it may do so by legislative enactment of an exception to the waiver of sovereign immunity section contained in AS 09.50.250.

Brown I, 794 P.2d at 110 (citations omitted, emphasis added). In addition, after reviewing three cases from other states in which the relationship between maritime remedies and sovereign immunity was examined, the court held: "These cases teach that the legislature could make the exclusive remedy defense [of the Alaska Workers' Compensation Act] applicable to federal maritime claims by referring to the defense in the sovereign immunity waiver" contained in AS 09.50.250. *Brown I*, 794 P.2d at 111. That is what SB 120 attempts to do.

The United States Supreme Court has repeatedly upheld the states' sovereign immunity against claims founded in federal law, particularly in the decade since *Brown I* was decided. In *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 72 (1996), the Court held that Congress could not abrogate state sovereign immunity under Article I of the Constitution. Three years later the Court confirmed that Congress could not subject unconsenting states to private suits for damages in state courts pursuant to federal causes of action.[1] *Alden v. Maine*, 527 U.S. 706, 712 (1999) (affirming dismissal of employees' state court suit under Fair Labor Standards Act against State of Maine, without its consent). Most recently, in *Federal Maritime Commission (FMC) v. South Carolina*

---

[1] Years earlier, the Court had found that Congress did not abrogate the states' Eleventh Amendment immunity from suit in federal court in the Jones Act. *Welch v. Texas Dept. of Highways & Public Trans.*, 483 U.S. 468, 475 (1987).

State Ports Authority, 535 U.S. 743, 122 S.Ct. 1864 (2002), the Court found that sovereign immunity barred a federal agency from adjudicating a private party's complaint against a state-run port under a federal law. The Court rejected the argument that a "constitutional necessity of uniformity in the regulation of maritime commerce limits the States' sovereignty with respect to the Federal Government's authority to regulate that commerce." *FMC*, 122 S.Ct. at 1878. The Court noted that it had "already held that the States' sovereign immunity extends to cases concerning maritime commerce." *Id.*, citing *Ex parte New York*, 256 U.S. 490 (1921).

Under the rationale of *Brown I* and the last decade of United States Supreme Court jurisprudence, state sovereign immunity is a legitimate defense to claims brought under the Jones Act or maritime law. Amendment of AS 09.50.250 is necessary to withdraw the state's consent to suit, assert sovereign immunity as to claims brought by or on behalf of state-employed seamen regarding injury, illness, or death, and provide workers' compensation benefits as an alternative remedy.[2]

We turn briefly to the legal arguments presented by Mr. Trueb's March 24, 2003, letter. First, the question has been raised whether passage of this bill might violate the equal protection provision in Article I, section 1 of the Alaska Constitution, because state-employed seamen would have different remedies than seamen in the private sector. We believe that the state's goal in providing a uniform system of no-fault workers' compensation benefits to all state employees has a rational basis that would satisfy equal protection. We note that, like other state employees, state-employed seamen have much in common with other state employees. State-employed seamen have many additional benefits, such as sick leave, employer contributions to health insurance, retirement, supplemental benefits, exemption from social security contributions, and other benefits, that private sector seamen do not have.

Furthermore, this would not be the only instance in which a federal remedial system did not apply to state employees. For example, Congress has specifically exempted employees of states from coverage of the Longshoremen's and Harbor Workers' Compensation Act. 33 U.S.C.§ 903(a)(2). In addition, while private sector railroad employees in Alaska are covered by the Federal Employers' Liability Act (FELA), and have the same right to sue their employers for damages as seamen do under the Jones Act, the employees of the Alaska Railroad have been expressly excluded from FELA since the railroad's transfer to state ownership. (Alaska Railroad employees are

---

[2] We note that these seamen include not only those employed aboard AMHS ferries, but also seasonal seamen who work aboard research and law enforcement vessels. This bill would establish one remedy and a degree of certainty of expectations for all seamen who are state employees.

covered by state workers' compensation law.) As far back as 1957, New York law provided that the state did not waive its immunity to suit; workers' compensation was held to be the exclusive remedy for state-employed seamen. *Maloney v. State of New York*, 144 N.E.2d 364, 367 (N.Y. App. 1957). The Texas Court of Appeals found the same true under Texas law in 1977. *Lyons v. Texas A & M University*, 545 S.W.2d 56, 58-59 (Tex. Civ. App. 1977) ("The State, however, is immune from suit without its consent. It could provide any remedy it wished and limit seamen to that remedy exclusively.").[3]

As a general matter, states cannot apply workers' compensation statutes to limit federal maritime law for all seamen. However, as discussed above, a state can withhold its consent to suit under federal law, and its sovereign immunity cannot be abrogated by Congress. *Alden,* 527 U.S. 706. In the maritime arena, the arguable need for uniformity is secondary to the state's sovereign immunity. *FMC*, 122 S.Ct. at 1878. If the state does not agree to subject itself to claims under federal maritime law regarding injuries, illness, or death of its own employees, it can provide workers' compensation as an alternative remedy. *Brown I*, 794 P.2d at 110, 111; *Lyons*, 545 S.W.2d at 58-59; *Maloney*, 144 N.E.2d at 367; *see also Gross v. Washington State Ferries*, 367 P.2d 600, 602-603 (Wash. 1961).

We disagree with Mr. Trueb's contention that the Alaska legislature has no authority to assert sovereign immunity by amending AS 09.50.250. Such an argument flies directly in the face of the Alaska Supreme Court's holding in *Brown I*. No case has determined that the Alaska Constitution's provision in Article II, section 21 that the legislature shall establish procedures for suits against the state is a self-effectuating waiver of all state sovereign immunity. Instead, many Alaska appellate cases have found that waiver of the state's immunity is done by statute, and AS 09.50.250 is the vehicle by which the legislature has carried out its constitutionally delegated duty to "establish procedures for suits against the state." *See, e.g., State v. Haley*, 687 P.2d 305, 318 (Alaska 1984); *Adams v. State*, 555 P.2d 235, 241, 244 (Alaska 1976). Most recently, in *Samissa Anchorage v. DHSS, State of Alaska,* 57 P.3d 676, 678-679 and n. 9 (Alaska 2002), the court reiterated the common understanding that the legislature can waive the state's sovereign immunity, and it has done just that in enacting AS 09.50.250.

Finally, it is conceivable that some state-employed seamen could file suit in Washington to pursue Jones Act or other maritime law remedies if unsatisfied with workers' compensation. Under the holding of *Nevada v. Hall*, 440 U.S. 410 (1979), the

---

[3] As the result of collective bargaining agreements with the unions representing AMHS vessel employees, the state provided workers' compensation to ferry workers from 1983 to 1991.

state does not have sovereign immunity within another state's courts.[4] However, Washington law strictly limits personal jurisdiction to torts arising from the state's business or presence in Washington. *Grange Insurance Assoc. v. State*, 757 P.2d 933, 937 (Wash. 1988). Moreover, even if personal jurisdiction were established, Washington courts could decline to entertain suits against Alaska out of respect for the state, or comity. For example, in two accidents where the State of Oregon was sued in Washington, the Washington state courts declined to hear the cases, on the grounds of comity. *Williams v. State*, 885 P.2d 845, 851 (Wash. App. 1994); *Fernandez v. State*, 741 P.2d 1010, 1017 (Wash. App. 1987). Additional arguments regarding choice of law also favor dismissal of cases filed in Washington unless the plaintiff is a Washington resident and/or the tortious act occurred in Washington State. For these reasons, we would not anticipate many legitimate cases to be filed in Washington state courts.[5]

We recognize that this bill, if passed, may result in a legal challenge. However, we believe the bill has a solid legal foundation.

Please let us know if you have any questions or would like more information.

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL

By: Susan D. Cox
Susan D. Cox
Assistant Attorney General

---

[4] The continued validity of this holding is being challenged in a case currently pending before the United States Supreme Court.

[5] It is well-established that the state cannot be sued by a seaman in federal court in Washington or any other location. *Collins v. State of Alaska*, 823 F.2d 329 (9th Cir. 1987).

Inlandboatmen's Union of the Pacific

MARINE DIVISION — INTERNATIONAL LONGSHORE & WAREHOUSE UNION
NATIONAL OFFICE • 1711 W. NICKERSON ST., STE. D • SEATTLE, WA 98119 • (206) 284-6001 • FAX: (206) 284-5043

FAX TRANSMISSION

TO: Hon Jesse McGuire

FAX No: 907-465-2995

FROM: David Freiboth

DATE: 4/9/03

NUMBER OF PAGES (including cover page) 2

COMMENTS: Please forward
Very important!
Thanks
Dave

NOTE: IF YOU DO NOT RECEIVE ALL PAGES, OR EXPERIENCE PROBLEMS IN TRANSMISSION, PLEASE CALL 1-800-428-4598 or 206-284-5040

REGIONAL OFFICES

PUGET SOUND	REGION 37	COLUMBIA RIVER	SAN FRANCISCO	HAWAII	SOUTHERN CALIFORNIA	ALASKA	JUNEAU
1711 W. Nickerson, Ste. D Seattle, WA 98119 (206) 284-5040 FAX: (206) 284-5043	1711 W. Nickerson, Ste. D Seattle, WA 98119 (206) 281 6321 FAX: (206) 284-5043	2435 NW Front Ave. Portland, OR 97209 (503) 228-6000 FAX: (503) 223-2556	450 Harrison Street San Francisco, CA 94105 (415) 896-1224 FAX: (415) 896-1228	1001 Dillingham Blvd., Rm. 217 Honolulu, HI 96817 (808) 847-0111 FAX: (808) 847-6031	1911 N. Gaffey, Sts. A+B San Pedro, CA 90731 (310) 521-9003 FAX: (310) 521-9004	Post Office Box 6300 Ketchikan, AK 99901 (907) 225-0360 FAX: (907) 225-8656	231 S. Franklin, Ste. 2 Juneau, AK 99801 (907) 586-0200 FAX: (907) 586-8222

Inlandboatmen's Union of the Pacific

MARINE DIVISION -- INTERNATIONAL LONGSHORE & WAREHOUSE UNION
NATIONAL OFFICE • 1711 W. NICKERSON ST., STE. D • SEATTLE, WA 98119 • (206) 284-6001 • FAX: (206) 284-5043

April 8, 2003

Honorable Lesil McGuire
Chairperson
State of Alaska House Judiciary Committee
State Capitol, Room 118
Juneau, AK 99801-1182

Dear Representative McGuire:

Apparently there is some confusion regarding the position of the Inlandboatmen's Union of the Pacific regarding House Bill 164. This bill attempts to deny the injured seaman working on the Alaska Marine Highway System the right to bring claims under federal maritime law and/or the Jones Act. The Inlandboatmen's Union opposes House Bill 164. The employees of the Alaska Marine Highway System are steadfast in their opposition to any proposed legislation that would deny them the protections of federal maritime law. The fundamental rights and remedies of injured seamen have been acquired over centuries of well-reasoned judicial decisions, congressional hearings and of course, struggle by the marine workers themselves. These federal rights and remedies are necessary to protect the workers from the hazards associated with maritime employment. Any effort to remove the protections afforded seamen by the laws of the United States runs afoul of the Inlandboatmen's Union and the history and tradition of marine commerce in our nation and Alaska.

I am available in person or telephone to testify or share my thoughts and comments to your committee on our opposition to House Bill 164. Also, I know that the other maritime unions that represent employees of the Alaska Marine Highway System, the Masters, Mates and Pilots and the Marine Engineers Beneficial Association, join the Inlandboatmen's Union in opposing House Bill 164.

Respectfully yours,

David Carl Freiboth, President
Inlandboatmen's Union of the Pacific
Marine Division I.L.W.U.

REGIONAL OFFICES

PUGET SOUND	REGION 37	COLUMBIA RIVER	SAN FRANCISCO	HAWAII	SOUTHERN CALIFORNIA	KETCHIKAN	JUNEAU
711 W. Nickerson, Ste. D Seattle, WA 98119 (206) 284-5040 FAX: (206) 284-5043	1711 W. Nickerson, Ste. D Seattle, WA 98119 (206) 284-5321 FAX: (206) 284-5043	2435 NW Front Ave. Portland, OR 97209 (503) 228-6000 FAX: (503) 223-2558	450 Harrison Street San Francisco, CA 94105 (415) 896-1224 FAX: (415) 896-1228	1001 Bishop Blvd., Rm 217 Honolulu, HI 96817 (808) 847-0811 FAX: (808) 847-0051	1811 N. Gaffey, Ste. A-R San Pedro, CA 90731 (310) 521-9003 FAX: (310) 521-9094	Post Office Box 6300 Ketchikan, AK 99901 (907) 225-6360 FAX: (907) 225-6858	3017 Clinton Drive, Ste 201 Juneau, AK 99801 (907) 780-9644 FAX: (907) 780-9648

HB

176

ALASKA STATE HOUSE OF REPRESENTATIVES

Interim Address:
3340 Badger Road, Suite 290
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4271

Session Contact:
(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

Date: April 20, 2004

To: Representative Lesil McGuire, Chairman

From: Representative John Coghill

Re: Hearing Request

I am requesting a hearing on HB 176, "An Act providing that certain obligors can receive credit against their child support obligation for certain types of noncash child support; and providing for an effective date."

I have attached the sponsor statement. Last year CSED had said there were problems implementing this, however, we have been working with CSED and the Ag's office and have come up with a workable solution.

Thank you for your consideration.

Representative_John_Coghill@LEGIS.state.ak.us

23-LS0704\H
Mischel
4/13/04

CS FOR HOUSE BILL NO. 176( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES COGHILL, Gruenberg

A BILL

FOR AN ACT ENTITLED

"An Act providing that certain obligors can receive credit against their child support obligation for certain types of noncash child support; and providing for an effective date."

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

* Section 1. AS 25.27.020(b) is amended to read:

(b) In determining the amount of money an obligor must pay to satisfy the obligor's immediate duty of support, the agency shall consider all payments of money made by the obligor directly to the obligee or to the obligee's custodian before the time the obligor is ordered to make payments through the agency. After the obligor is ordered to make payments through the agency, the agency may not consider direct payments of money made to the obligee or the obligee's custodian unless the obligor provides clear and convincing evidence of the payment. Notwithstanding the definition of "support order" in AS 25.27.900, the agency shall reduce the amount of money an obligor must pay to satisfy the obligor's duty of support by

the fair market value, as determined by agreement between ~~the agency and~~ the obligee's parent or custodian ~~from information developed by other state agencies and by agreement with~~ (and) the obligor, of a noncash contribution made by the obligor under the following circumstances:

(1) the obligee's custodian has agreed to allow the agency to give the obligor credit for noncash support and has not withdrawn that agreement;

(2) the noncash contribution is for basic food, housing, or heat; the agency, by regulation, may also give credit for other types of noncash contributions that help to satisfy the basic material needs of the obligee;

(3) the noncash contribution is made directly to the obligee's custodian or to a creditor of the obligee's custodian;

(4) the obligor presents clear and convincing evidence of the noncash contribution and its use by the obligee or the obligee's custodian; and

(5) the obligee's custodian is not receiving assistance for the benefit of the obligee under AS 47.27 or under 42 U.S.C. 612.

* Sec. 2. AS 25.27.060 is amended by adding a new subsection to read:

(e) Notwithstanding the requirements in (a) - (d) of this section and the definition of "support order" in AS 25.27.900, in a court or administrative proceeding where the support of a minor child is at issue, the court or agency, as applicable, shall reduce the amount of money an obligor must pay to satisfy the obligor's duty of support for a child by the fair market value, as determined by the court or ~~agency and~~ ~~in~~ by agreement between ~~with~~ the obligee's parent or custodian and the obligor ~~from information developed by other state agencies~~, of a noncash contribution made by the obligor under the circumstances described under AS 25.27.020(b)(1) - (5).

* Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 25.27.020(b), as amended by sec. 1 of this Act, and 25.27.060(e), added by sec. 2 of this Act, apply to noncash contributions made on or after the effective date of this Act.

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

AMENDMENT #1

OFFERED IN THE HOUSE HESS BY REPRESENTATIVE COGHILL

TO: CSHB 176(EDU)

Page 2, line 1:

Delete "the agency and"

Page 2, line 2-3:

Delete: "from information developed by other state agencies and by an agreement with"

Page 2, line 3, before "the obligor"

Insert **and**

Page 2, line 13:

Delete "and its use by the obligee or the obligee's custodian"

AMENDMENT #2

OFFERED IN THE HOUSE HESS BY REPRESENTATIVE COGHILL

TO: CSHB 176(EDU)

Page 2, line 21:

Delete "agency and in"

Replace deleted language with:

by

Page 2, line 22, after the word "agreement":

Delete:

"with" and replace with the word **between**

Page 2, lines 22-23:

Delete:

"from the information developed by other state agencies,"

Replace language with:

and the obligor

ALASKA STATE HOUSE OF REPRESENTATIVES

Interim Address:
3340 Badger Road, Suite 290
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4721

Session Contact:
(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

Sponsor Statement – Noncash Child Custody

HB 176 is introduced to give credit where credit is due. This legislation recognizes that there are other means of support outside cash payments. I think it is appropriate to count value in noncash contributions that help a person support their family.

This also recognizes the dignity of self-sacrifice in providing even when cash is not available. If a person can provide firewood, fish, labor or game meat that is significant support for family needs, I think that this should be recognized as real child support.

Under current state laws this person received no credit on their child support account with Child Support Enforcement Division (CSED). While a person may be working hard to provide for their children, a cash payment is the only thing we recognize.

HB 176 would provide that a custodial parent could enter into an agreement with the noncustodial parent to provide specific things and in return get credit on their CSED account. I hope we can work out a solution to this issue. Therefore, I commend HB 176 for your discussion and perfecting.

Representative_John_Coghill@LEGIS.state.ak.us

ALASKA STATE HOUSE OF REPRESENTATIVES

Interim Address:
3340 Badger Road, Suite 290
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4271

Session Contact:
(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

Sectional for HB 176 (as amended by HESS CS and Amendments

Section 1. This section amends AS 25.27.020(b), "Duties and responsibilities of the agency", to allow the Child Support Support Division to apply noncash contributions of the noncustodial parent to his or her child support obligation if the following conditions exist:

1. the custodial parent has agreed to the arrangement.
2. outlines that noncash credit can be given for basic needs of the child(ren)
3. the noncash contribution is given directly to the child(ren)'s custodian
4. with the adoption of Amendment No. 1 the obligor would be required to present clear and convincing evidence of the noncash contribution
5. the custodial parent or guardian cannot be receiving assistance under AS 47.27 (Alaska Temporary Assistance Program) or 42 U.S.C. 612 (American Indian Welfare Reform Act)

Section 2. Section 2 amends AS 25.27.060, "Order of support", to add a provision defining support order and to allow the agency or the court to reduce the cash payment of a court or administrative support order to reflect the payment of a noncash contribution.

Section 3. Section 3 places in uncodified law language that only noncash contributions made on or after the effective date of HB 176 will be applied to a child support account.

Section 4. Section 4 is an immediate effective date clause.

Representative_John_Coghill@LEGIS.state.ak.us

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: CSHB 176(HES)
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Revenue
Title: Noncash Child Support
RDU: Revenue Programs & Services
Component: Child Support Enforcement
Sponsor: Representative Coghill
Requester: House Judiciary Committee
Component No.: 111

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	139.8	139.8	139.8	139.8	139.8	139.8
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**139.8**	**139.8**	**139.8**	**139.8**	**139.8**	**139.8**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	92.3	92.3	92.3	92.3	92.3	92.3
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	47.5	47.5	47.5	47.5	47.5	47.5
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	**139.8**	**139.8**	**139.8**	**139.8**	**139.8**	**139.8**

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	3	3	3	3	3	3
Part-time						
Temporary						

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

CSED estimates that in approximately 1,500 cases the parties may elect to participate in the noncash child support program. All case accounting for noncash payments would have to be done manually. If 1,500 cases were approved for noncash payments and each of these cases required an average of 4 adjustments per year, CSED would have to complete an additional 6,000 manual adjustments per year. To complete this number of adjustments, CSED would need three additional Accounting Tech I positions.

Prepared by: John Mallonee
Phone (907) 269-6802
Division: Child Support Enforcement
Date/Time 4/21/04 10:15 AM
Approved by: Steve Porter, Deputy Commissioner
Date 4/21/2004
Agency: Department of Revenue

(Revised 12/2003 OMB)

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: CS HB 425
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Education & Early Development
Title "An Act relating to funding for school districts operating secondary school boarding programs.....
RDU K-12 Support
Component Boarding Home Grants
Sponsor Representative Coghill
Requester House HESS
Component No. 148

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	1,179.0	1,179.0	1,179.0	1,179.0	1,179.0	
Miscellaneous						
TOTAL OPERATING	**1,179.0**	**1,179.0**	**1,179.0**	**1,179.0**	**1,179.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1,179.0	1,179.0	1,179.0	1,179.0	1,179.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	**1,179.0**	**1,179.0**	**1,179.0**	**1,179.0**	**1,179.0**	**0.0**

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This Act would make a stipend available to districts currently providing a residential boarding home program. The stipend would be used for one round trip ticket per year for any boarding home student to travel within the state to attend the school in the district with the dormatory.

The restrictions on students who come from communities that have daily access to an appropriate grade would be removed until July 1, 2009.

A community with an ADM of less than 10 will still be counted as a school if the decline is due to students enrolling in another district's secondary school boarding program.

Prepared by: Eddy Jeans, School Finance Manager
Phone 465-8679
Division Education and Support Services
Date/Time 3/10/04 9:10 AM
Approved by:
Date 3/10/2004
Agency Education & Early Development

Alaska Department of Education & Early Development
Residential Programs
Prepared 2/27/04 by Elwin Blackwell Updated 3/10/04

District	Community	Capacity	Monthly Stipend	Yearly Cost	Estimated Round trip	Annual Airfair	Estimated Grant	Comments
Galena	Galena*	92	577	477,756	800	73,600	551,356	180 day program
Lower Kuskokwim	Bethel	35	490	154,350	500	17,500	171,850	180 day program
Nenana	Nenana	96	472	407,808	500	48,000	455,808	180 day program
	Totals	223		1,039,914		139,100	1,179,014	

Iditarod	Takotna	40	490	Inactive program
Northwest Arctic	Kotzebue	40	577	Inactive program
Nome - Beltz HS.	Nome	40	577	2 week Voc-Ed program

*Galena's capacity was reduced by the 8 students that they are currently being reimbursed for under the Boarding Home program.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB176-ACS-TC-4-13-04
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected:
Title: Noncash Child Support
BRU: Alaska Court System
Component: Trial Courts
Sponsor: Representative Coghill
Requester:
Component No.:

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
The Alaska Court System does not anticipate any fiscal impact from the passage of HB 176.

Prepared by: Doug Wooliver Administrative Attorney
Phone 463-4750
Division: Alaska Court System
Date/Time 4/13/04 10:58 AM
Approved by: Stephanie Cole Administrative Director by Doug Wooliver
Date 4/13/2004
Agency: Alaska Court System

(Revised 9/2003 OMB)

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: HB176-LAW-C&S-4-13-0
Bill Version: HB176
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: LAW
Title "An Act providing that certain obligors can receive credit against their child support obligation..."
RDU CIVIL
Component Collections and Support
Sponsor Representative Coghill
Requester House Health, Education and Social Services
Component No.

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill allows certain types of noncash child support to reduce the amount of money owed for child support in certain circumstances.

Passage of this legislation will have no significant fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhetee, Director
Phone 465-3673
Division Administrative Services
Date/Time 4/13/04 8:55 AM
Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General
Date 4/13/2004
Agency Department of Law

(Revised 12/2003 OMB)

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 176
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Revenue
Title: Noncash Child Support
RDU: Revenue Programs & Services
Component: Child Support Enforcement
Sponsor: Representative Coghill
Requester: House HESS
Component No. 111

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	72.0	72.0	72.0	72.0	72.0	72.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	72.0	72.0	72.0	72.0	72.0	72.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)						
1002 Federal Receipts	47.5	47.5	47.5	47.5	47.5	47.5
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	24.5	24.5	24.5	24.5	24.5	24.5
1037 GF/Mental Health						
Other (Specify Type–Do not abbreviate)						
TOTAL	72.0	72.0	72.0	72.0	72.0	72.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) If funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

There are approximately 3,600 cases that could qualify for noncash child support. All case accounting for noncash payments would have to be done manually. If 900 cases were approved for noncash payments and each of those cases required an average of 4 adjustments per year, CSED would have to complete an additional 3,600 manual adjustments per year. To complete those adjustments CSED would need two additional Accounting Tech I positions.

Prepared by: John Mallonee
Phone (907) 269-6802
Division: Child Support Enforcement
Date/Time 4/9/04 2:42 PM
Approved by: Steve Porter, Deputy Commissioner
Date 4/9/2004
Agency: Department of Revenue

(Revised 12/2003 OMB)

Dec 3:40pm 4/20/04

23-LS1932\H
Cook
4/20/04

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

"An Act relating to open meetings guidelines applicable to legislators, to the confidentiality of complaints and proceedings involving alleging violations of AS 24.60, and to hearings on formal charges by the Select Committee on Legislative Ethics or its subcommittees."

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

*** Section 1.** AS 24.60.037 is repealed and reenacted to read:

Sec. 24.60.037. Open meetings guidelines. (a) A meeting of a legislative body is open to the public in accordance with the open meetings guidelines established in this section. A legislator may not participate in a meeting held in violation of these open meeting guidelines.

(b) Public notice of the time and place of a meeting of a legislative body that is reasonable under the circumstances shall be provided, except that public notice of a caucus meeting is not required.

(c) Political strategy may be considered in a closed meeting; however, a vote

may not be taken or other agreement reached on support for or opposition to a particular measure in a closed meeting. For purposes of this subsection, "political strategy" includes the scheduling of measures for committee consideration or for calendaring, matters involving scheduling of sessions or relations between the houses, and selection of a procedural course of action to be pursued in an open meeting.

(d) To the extent that the application of this section to a particular situation conflicts with the uniform rules adopted by the legislature, or a parliamentary ruling by a house of the legislature or one of the presiding officers, the rules or the ruling controls.

(e) Notwithstanding AS 24.60.130(h) and (n), if a complaint alleges a violation of this section by a group of legislators that includes a legislative member of the committee and that member's alternate, the complaint shall be treated as two separate complaints with members of the group apportioned between them so that the legislative member is not disqualified from participating in a proceeding involving one of the complaints and the alternate is not disqualified from serving in a proceeding involving the other.

(f) This section does not apply to a meeting of

(1) a committee on committees;

(2) a legislative body or group of legislators considering only matters involving the organization of a committee or a house of the legislature, including selection of legislative officers;

(3) a legislative body or group of legislators and the governor or staff of the Office of the Governor;

(4) officers of the legislature, including committee chairs;

(5) officers of a caucus or officers of more than one caucus.

(g) For purposes of this section,

(1) "caucus" means a group of legislators who share a political philosophy or common goal and who organize as a group, but does not include a committee or other organization formed by appointment, or under statute or the uniform rules;

(2) "legislative body" means

(A) the legislature or a house of the legislature;

(B) a legislative committee, task force, commission, or similar body formed by appointment, or under statute or the uniform rules;

(C) a caucus; and

(D) a subcommittee consisting of more than one of the members of a legislative body listed under (A) - (C) of this paragraph;

(3) "meeting" means a gathering of at least a majority of the members of a legislative body during which the legislative body takes action by voting or otherwise reaching agreement on a course of action.

*** Sec. 2.** AS 24.60.170(j) is amended to read:

(j) If the committee has issued a formal charge under (h) of this section, and if the person charged has not admitted the allegations of the charge, the committee shall schedule a hearing on the charge. **The committee may appoint an individual to present the case against the person charged if that individual does not provide and has not provided legal advice to the committee except in the course of presenting cases under this subsection.** The hearing shall be scheduled for a date more than 20 days after service of the charge on the person charged, unless the person agrees to an earlier hearing date. At the hearing, the person charged shall have the right to appear personally before the committee, to subpoena witnesses and require the production of books or papers relating to the proceedings, to be represented by counsel, and to cross-examine witnesses. A witness shall testify under oath. The committee is not bound by the rules of evidence, but the committee's findings must be based upon clear and convincing evidence. Testimony taken at the hearing shall be recorded, and evidence shall be maintained.

*** Sec. 3.** AS 24.60.170(*l*) is amended to read:

(*l*) Proceedings of the committee relating to complaints before it are confidential until the committee determines that there is probable cause to believe that a violation of this chapter has occurred. The complaint and all documents produced or disclosed as a result of the committee investigation are confidential and not subject to inspection by the public. If in the course of an investigation or probable cause determination the committee finds evidence of probable criminal activity, the

committee shall transmit a statement and factual findings limited to that activity to the appropriate law enforcement agency. If the committee finds evidence of a probable violation of AS 15.13, the committee shall transmit a statement to that effect and factual findings limited to the probable violation to the Alaska Public Offices Commission. All meetings of the committee before the determination of probable cause are closed to the public and to legislators who are not members of the committee. However, the committee may permit the subject of the complaint to attend a meeting other than the deliberations on probable cause. The confidentiality provisions of this subsection may be waived by the subject of the complaint. **Except to the extent that the confidentiality provisions are waived by the subject of the complaint, if a complainant violates any confidentiality provision, the committee shall immediately dismiss the complaint.**

* **Sec. 4.** Section 10, ch. 69, SLA 1994, is repealed.

HB

177

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: April 2, 2003 **FURTHER REFERRALS:**

Date of Committee Action: April 4, 2003

The JUDICIARY Committee considered: **SSHB 177**

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 177 **CONCEALED HANDGUNS**

"An Act relating to concealed handguns."

Recommends it be replaced with [ ] HCS *or* [X] CS *for* SSHB 177 (STA)
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

NEW FISCAL NOTES *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
DPS	1			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	SAMUELS	✓			
	Holm	✓			
	Gara			✓	
	Ogg	✓			
	Gruenberg	–			
Tom Anderson	ANDERSON	X			
Chair: Lesil A McGuire	McGUIRE	X			
Chair:					

ALASKA STATE LEGISLATURE

Chair:
House Finance Subcommittees for:
Department of Public Safety
Department of Law

Member:
House Finance Committee
Legislative Council

Session:
Alaska State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-4958
Fax: (907) 465-4928

Interim:
PO Box 464
Chugiak, AK 99567

REPRESENTATIVE BILL STOLTZE

Representative_Bill_Stoltze@legis.state.ak.us

MEMORANDUM

DATE: March 12, 2003

TO: Representative Weyhrauch
Chairman, State Affairs Committee

FROM: Representative Bill Stoltze

RE: House Bill 177

Please schedule House Bill 177 for a hearing at your earliest convenience.

Thank You

ALASKA STATE LEGISLATURE

Chair:
House Finance Subcommittees for:
Department of Public Safety
Department of Law

Member:
House Finance Committee
Legislative Council

Session:
Alaska State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-4958
Fax: (907) 465-4928
Toll Free (866) 465-4958

Interim:
PO Box 464
Chugiak, AK 99567

REPRESENTATIVE BILL STOLTZE

Representative_Bill_Stoltze@legis.state.ak.us

Sponsor Statement
for
House Bill 177

"*An Act relating to concealed handguns.*"

In 2002, Senate Bill 242 was introduced to simplify and clarify the procedures for recognizing concealed handgun permits for other states. As the result of a floor amendment offered late in the session, recognition was limited to those permits held by individuals who had not had a permit denied or revoked. Although, the amendment appeared reasonable on the surface, an unintended consequence was the result. Texas, the second most populous state in the nation, has refused reciprocity. The refusal is really more technically bureaucratic, and is a barrier to reciprocity. House Bill 177 is an attempt to resolve the existing barrier.

The first section of the bill would recognize permit holders from other states as valid permit holders in Alaska.

The second section of the legislation would require the Alaska Department of Public Safety to enter into reciprocity agreements with other states, when it is necessary to benefit Alaska permit holders.

I appreciate your consideration of this legislation.

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
555 CAPITOL MALL, SUITE 625
SACRAMENTO, CALIFORNIA 95814
(916)446-2455 voice ■ (916)448-7469 fax

STATE & LOCAL AFFAIRS DIVISION
BRIAN JUDY, ALASKA STATE LIAISON

March 7, 2003

Representative Bill Stoltze
State Capitol, Room 421
Juneau, AK 99801-1182

Dear Representative Stoltze:

On behalf of the over 24,000 Alaska members of the National Rifle Association, let me take this opportunity to offer our strong **support for House Bill 177.** HB 177 would help, in two ways, to ensure that other states recognize Alaska concealed handgun permits.

First, HB 177 would repeal language which was put into the code last session as an amendment to a bill which was introduced to clarify the recognition of concealed handgun permits from other states. Senate Bill 242 (2002) was intended to simplify the recognition process by plainly recognizing all permits issued by other states. Supporters of the bill accepted an amendment late in the legislative process which has caused at least one state to refuse to recognize Alaska permits.

A concern was raised last year that Alaska residents who had a permit denied or revoked could travel to another state which issues permits to non-residents, obtain a permit and travel back to Alaska and carry under the out-of-state permit. Although supporters of SB 242 felt such was a highly unlikely scenario, an amendment was accepted to limit recognition of out-of-state permits to those held by individuals who had never had a permit denied or revoked in Alaska. It was thought that this restriction would have no impact on the recognition of permits.

Unfortunately, the language has led to a refusal by the State of Texas to recognize Alaska permits because Alaska's law imposes limits on the recognition of Texas permits while Texas would impose no such limitation on the recognition of Alaska permits. The likelihood that, in reality, a Texas permit would not be recognized due to the provision in question is just about as unlikely as an Alaskan traveling to the lower 48 to circumvent the Alaska permit law. However, the fact remains that the SB 242 amendment has created a barrier to the recognition of Alaska permits. The repeal of this language by HB 177 will open the door to greater recognition of Alaska permits.

I will provide you with a copy of the letter from the Texas Department of Public Safety (DPS) to Alaska DPS which lays out the problem. More importantly, I will also provide you with information on the issuance criteria of the eleven states which issue concealed handgun permits to non-residents. It is obvious, after reviewing this material, that should an Alaskan go to the trouble of traveling to another state, it is highly unlikely that person would be able to obtain an out-of-state permit. The issuance standards are generally at least as strict in each of the other states and fingerprint-based background checks are performed in virtually all cases.

With all due respect to those who raised questions last session, in reality, the evidence suggests that their concerns, while sincere, are not warranted. Further, since any person who can lawfully own and possess a firearm can legally carry *openly* in Alaska, an individual who had a permit denied or revoked in Alaska for a non-prohibiting offense could simply carry openly in Alaska without going to all the trouble and expense of obtaining another state's permit.

The second issue addressed by HB 177 involves reciprocity agreements with other states. Although the State of Alaska now recognizes all other states' permits and is not required to enter into reciprocity agreements, some other states still require agreements for them to be able to recognize Alaska permits. HB 177 would require the Alaska Department of Safety to enter into reciprocity agreements with other states when it is necessary to benefit Alaska permit holders. Such agreements will only be required in rare cases and, thus, the cost to the Department in time and resources should be negligible.

Please let me know how I can be of assistance in the effort to pass House Bill 177.

Sincerely,

Brian Judy

Brian Judy
Alaska State Liaison

TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 NORTH LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001
512/424-2000
www.txdps.state.tx.us

THOMAS A. DAVIS, JR.
DIRECTOR

DAVID McEATHRON
ASST. DIRECTOR

FRANKIE WALLER
ASST. DIRECTOR

COMMISSION
COLLEEN McHUGH
CHAIRMAN

ROBERT B. HOLT
JAMES B. FRANCIS, JR.
COMMISSIONERS

ATTN: BRIAN JUDY
FR: TARA
I'll call you this afternoon

June 28, 2002

Delbert Smith
Deputy Commissioner
Alaska Department of Public Safety
5700 E. Tudor Road
Anchorage, Alaska 99507

Re: Concealed Handgun Reciprocity

Dear Commissioner Smith:

The Department recently received notice of "Senate Bill 242 am H" passed by the Alaska legislature. We have reviewed the bill to determine if it is now possible for Texas and Alaska to enter into a reciprocity agreement concerning concealed handgun licenses. S.B. 242 am H allows the state of Alaska to recognize a concealed handgun license from another state as long as the license holder has not had an application for a handgun permit rejected in Alaska or had a handgun permit revoked or suspended by Alaska. Texas Government Code Section 411.173(b)(2) allows the Department to enter into a reciprocity agreement if the other state recognizes a license issued in Texas.

After reviewing both statutes, we are trying to determine if Alaska will recognize all licenses issued by Texas. For instance, if Texas and Alaska were to enter into a reciprocity agreement, would Alaska recognize the following Texas concealed handgun licenses:

1) if the Texas licensee is currently eligible for a Texas license, but not an Alaska permit and has never applied for an Alaska permit;
2) if the Texas licensee is currently eligible for a Texas license, but not an Alaska permit and has had an application in Alaska rejected or had a permit revoked or suspended by Alaska;
3) if the Texas licensee is currently eligible for a Texas license and an Alaska permit, but applied for an Alaska permit when he was not eligible and was rejected, or had an Alaska permit revoked because he was not eligible at the time.

I will await your response before proceeding any further in regard to an agreement between Alaska and Texas. If you have any questions concerning the Texas concealed handgun statute, please contact Louis Beaty at 512-424-5836.

Sincerely,

Thomas A. Davis, Jr.
Director

TAD:lab

** TOTAL PAGE.03 **

Aug-13-02

1 2 2002

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF ALASKA STATE TROOPERS

TONY KNOWLES, GOVERNOR

Del Smith, Commissioner

Permits and Licensing Unit
5700 East Tudor Road
Anchorage, Alaska 99507
Telephone (907) 269-0392
Facsimile (907) 269-5609

Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
5805 North Lamar Blvd., Box 4087
Austin, Texas 78773-0001

Dear Mr. Davis:

Our Department is in receipt of your letter dated June 28, 2002 revisiting the possibility of a reciprocal agreement in reference to concealed handgun permits. "Senate Bill 242 am H" did amend Alaska Statute 18.65.748 which now authorized the State of Alaska to recognize concealed handgun permits from all other States.

After reviewing your letter and the three proposed conditions, we have determined that we will recognize licenses issued by the State of Texas if a person holds a valid Texas permit and if the person has not had an application for a concealed handgun permit rejected in the State of Alaska because the person was unqualified under AS18.65.705 or had a concealed handgun permit revoked or suspended by this state.

We would not recognize a Texas permit under the other two circumstances you listed. Based on the language of our new law, no reciprocity agreement is needed.

Please feel free to contact me if you have further questions concerning the concealed handgun permit program.

Sincerely,

Julia P. Grimes

Lieutenant Julia P.Grimes
Alaska State Troopers

JG:mbf

Cc: Representative Terry Keel

PERMIT ISSUANCE CRITERIA
FOR STATES WHICH ISSUE
CONCEALED WEAPON PERMITS TO NON-RESIDENTS
(As compared to Alaska's qualifications)

Alaska - fingerprints required with application
1) 21 years of age
2) Eligible to own/possess under federal law*
3)Not been convicted of two or more Class A misdemeanors within six years
4)Not in last three years ordered to complete alcohol/substance abuse program

---

Arizona - fingerprints required with application
1) 21 years of age
2) No felony indictment or conviction
3) Does not suffer from mental illness nor has been adjudicated mentally incompetent
4) Fingerprints to FBI for national criminal history check

Florida - fingerprints required with application
1) 21 years of age
2) Eligible to own/possess under federal law
3) No misdemeanor crime of violence in last three years
4) Not committed for substance abuse or convicted of a crime relating to controlled substances within three years
5) Does not chronically and habitually use alcohol, as provided by Florida law

Idaho - fingerprints required with application
1) 21 years of age
2) Eligible to own/possess under federal law
3) No misdemeanor crime of violence in last three years
4) Not an unlawful user of or addicted to controlled substance
5) Not currently suffering from mental illness nor has been adjudicated mentally ill
6) Not subject to protection order

Indiana - fingerprints required with application
1) 18 years of age
2) No felony conviction
3) Must be of good character and reputation
4) Applicant must have a "proper reason" to carry a handgun
note: Issuance to non-residents seems to be limited to those who have a regular place of business or employment in Indiana.

Iowa - fingerprints not mentioned in statute but criminal history check specifically required
1) 18 years of age
2) No felony conviction
3) No history of repeated acts of violence
4) Not addicted to the use of alcohol or any controlled substance
5) Issuing officer must reasonably determine the applicant does not constitute a danger to any person
6) Applicant must "reasonably justify" why he needs to carry a handgun

Maine - fingerprints may be required with application
1) 18 years of age
2) No felony conviction nor charges pending
3) Not been convicted of three or more misdemeanors in last five years
4) Not a drug user and not convicted in last five years of marijuana possession nor other drug crimes
5) Not convicted of possession of a firearm in a bar in last five years
5) Not been the subject of an investigation regarding domestic violence
6) Numerous other criteria which essentially mirror federal law

Maryland - fingerprints required with application
1) 18 years of age
2) No felony conviction
3) Has not exhibited a propensity for violence or instability
4) Not convicted of any offense involving possession, use or distribution of controlled substance
5) Not under legitimate medical direction nor an alcoholic
6) Applicant must have "good and substantial reason" to carry a handgun

Nevada - fingerprints required with application
1) 21 years of age
2) Eligible to own/possess under federal law
3) Not convicted of a misdemeanor crime of violence in last three years
4) Not convicted of DUI nor committed for alcohol or drug treatment in last five years
5) Not convicted of a crime involving domestic violence nor subject to a dv restraining order

North Dakota - fingerprints required with application
1) 18 years of age
2) Eligible to own/possess under federal law
3) Not convicted of a Class A misdemeanor crime of violence in last five years
4) Diagnosed and confined or committed as mentally ill or deficient in last three years
5) Non-resident application requires a LOCAL background check and approval from local law enforcement in the applicant's county (or city, borough, etc...) of residence

Utah - fingerprints required with application
1) 21 years of age
2) Eligible to own/possess under federal law
3) No conviction for crime of violence nor offense involving moral turpitude or domestic violence
4) No conviction for offense involving use of alcohol or controlled substances
5) Has not been adjudicated mentally ill
6) Is not a danger to self or others as demonstrated by specific evidence

Washington - fingerprints required with application
1) 21 years of age
2) No felony convictions
3) No domestic violence misdemeanor convictions since July 1, 1993
4) Has been ordered to forfeit a firearm in the last year for, among other reasons, possessing a firearm while under the influence of alcohol or any drug
5) Has not been involuntarily committed for mental health treatment
6) No outstanding felony or misdemeanor arrest warrants
7) Not subject to provisions of protective order

* ***Federal law*** (18 U.S.C. §922 (g)) prohibits possession of a firearm by any person:
1) who has been convicted of a crime punishable by imprisonment for more than one year (generally includes any felony);
2) who is a fugitive from justice;
3) who is an unlawful user of or addicted to any controlled substance;
4) who has been adjudicated as a mental defective or who has been committed to a mental institution;
5) who is an illegal alien or who has been admitted under a nonimmigrant visa;
6) who has been dishonorably discharged from the Armed Forces;
7) who has renounced his US citizenship; or
8) who has been convicted of a misdemeanor crime of domestic violence.

Crime Rates by State: 2001
(Reported Offenses per 100,000 Population)

State	Total Crime Index	State Rank	Violent Crime	State Rank	Property Crime	State Rank
Alabama	4,319.4	33	438.6	29	3,880.8	32
→ Alaska	4,236.2	30	588.3	41	3,647.9	26
Arizona	6,077.4	50	540.3	36	5,537.1	50
Arkansas	4,134.2	26	452.8	30	3,681.4	28
California	3,902.9	22	617.0	43	3,286.0	18
Colorado	4,218.9	29	350.7	21	3,868.2	31
Connecticut	3,117.9	11	335.5	19	2,782.4	11
Delaware	4,052.8	23	611.4	42	3,441.4	22
District of Columbia	7,709.6	51	1,736.7	51	5,972.8	51
Florida	5,569.7	49	797.2	50	4,772.5	47
Georgia	4,646.3	37	497.0	33	4,149.3	39
Hawaii	5,386.1	48	254.6	9	5,131.5	49
Idaho	3,133.4	12	243.1	8	2,890.3	14
Illinois	4,097.8	25	636.9	44	3,460.8	24
Indiana	3,831.4	21	371.8	25	3,459.6	23
Iowa	3,301.2	15	269.1	13	3,032.1	15
Kansas	4,321.4	34	404.8	27	3,916.6	33
Kentucky	2,938.1	8	257.0	10	2,681.1	10
Louisiana	5,338.1	47	687.0	45	4,651.1	45
Maine	2,688.2	5	111.5	3	2,576.7	7
Maryland	4,866.8	40	783.0	49	4,083.8	37
Massachusetts	3,098.6	10	479.5	31	2,619.1	8
Michigan	4,081.5	24	554.7	38	3,526.8	25
Minnesota	3,583.7	18	264.4	12	3,319.3	19
Mississippi	4,185.2	28	350.1	20	3,835.1	30
Missouri	4,776.1	39	541.3	37	4,234.9	40
Montana	3,688.7	20	352.4	23	3,336.3	20
Nebraska	4,329.6	35	304.3	16	4,025.3	35
Nevada	4,266.0	32	586.8	40	3,679.2	27
New Hampshire	2,321.6	1	170.3	5	2,151.3	1
New Jersey	3,225.3	14	390.1	26	2,835.2	12
New Mexico	5,324.0	46	781.1	48	4,542.8	43
New York	2,925.1	7	516.0	35	2,409.1	5
North Carolina	4,938.0	41	494.3	32	4,443.7	42
North Dakota	2,417.7	3	79.6	1	2,338.1	4
Ohio	4,177.6	27	351.9	22	3,825.7	29
Oklahoma	4,607.0	36	512.3	34	4,094.7	38
Oregon	5,044.1	42	306.7	17	4,737.4	46
Pennsylvania	2,961.1	9	410.4	28	2,550.7	6
Rhode Island	3,684.9	19	309.6	18	3,375.3	21
South Carolina	4,752.7	38	720.3	46	4,032.4	36

State	Total Crime Index	State Rank	Violent Crime	State Rank	Property Crime	State Rank
South Dakota	2,332.0	2	154.8	4	2,177.2	2
Tennessee	5,152.8	45	745.3	47	4,407.5	41
Texas	5,152.7	44	572.8	39	4,579.9	44
Utah	4,243.0	31	234.1	7	4,008.9	34
→ Vermont	2,769.3	6	105.0	2	2,664.2	9
Virginia	3,178.3	13	291.3	15	2,886.9	13
Washington	5,151.9	43	355.0	24	4,796.8	48
West Virginia	2,559.5	4	279.4	14	2,280.1	3
Wisconsin	3,321.2	16	231.1	6	3,090.1	16
Wyoming	3,517.6	17	257.3	11	3,260.4	17

Source: Federal Bureau of Investigation, Uniform Crime Reports, http://www.fbi.gov/ucr/ucr.htm

Crime Ranks.xls

	Total violent crime		Murder and non-negl. mansl.		Forcible rape		Robbery		Aggravated assault
2001		2001		2001		2001		2001	
District of Columbia	1,736.7	District of Columbia	40.6	1 Alaska	78.9	District of Columbia	689.6	District of Columbia	973.7
1 Florida	797.2	1 Louisiana	11.2	2 Delaware	52.8	1 Maryland	251.6	1 New Mexico	501.9
2 Maryland	783.0	2 Mississippi	9.9	3 Michigan	52.7	2 Nevada	234.2	2 Florida	550.9
3 New Mexico	781.1	3 Nevada	8.5	4 New Mexico	46.5	3 Florida	200.5	3 South Carolina	549.3
4 Tennessee	745.3	4 Alabama	8.5	5 South Dakota	46.4	4 Illinois	199.2	4 Tennessee	521.6
5 South Carolina	720.3	5 Maryland	8.3	6 Minnesota	45.0	5 New York	192.3	5 Maryland	496.1
6 Louisiana	687.0	6 Illinois	7.9	7 Colorado	43.7	6 California	187.1	6 Louisiana	468.3
7 Illinois	636.9	7 Arizona	7.5	8 Washington	43.4	7 Tennessee	178.0	7 Alaska	422.3
8 California	617.0	8 Tennessee	7.4	9 Oklahoma	42.9	8 Louisiana	176.1	8 Delaware	410.6
9 Delaware	611.4	9 Georgia	7.1	10 Nevada	41.9	9 Georgia	171.8	9 Illinois	398.3
10 Alaska	588.3	10 Indiana	6.8	11 Florida	40.5	10 Arizona	167.1	10 California	394.8
11 Nevada	586.8	11 Michigan	6.7	12 Mississippi	40.1	11 New Jersey	166.3	11 Oklahoma	384.6
12 Texas	572.8	12 Missouri	6.6	13 Utah	39.5	12 Texas	165.8	12 Missouri	372.1
13 Michigan	554.7	13 California	6.4	14 Rhode Island	39.3	13 North Carolina	162.5	13 Michigan	365.8
14 Missouri	541.3	14 South Carolina	6.3	15 Ohio	39.3	14 Ohio	151.2	14 Texas	362.5
15 Arizona	540.3	15 Texas	6.2	16 Texas	38.3	United States	148.5	15 Massachusetts	346.6
16 New York	516.0	16 North Carolina	6.2	17 Tennessee	38.3	15 New Mexico	147.3	16 Arizona	337.1
17 Oklahoma	512.3	17 Alaska	6.1	18 New Hampshire	36.4	16 Delaware	145.2	17 Arkansas	333.2
United States	504.4	United States	5.6	19 Kansas	35.1	17 Pennsylvania	142.4	United States	318.5
18 Georgia	497.0	18 Arkansas	5.5	20 South Carolina	34.0	18 Missouri	136.0	18 Montana	302.4
19 North Carolina	494.3	19 New Mexico	5.4	21 Oregon	33.8	19 South Carolina	130.7	19 Nevada	302.2
20 Massachusetts	479.5	20 Oklahoma	5.3	22 Hawaii	33.4	20 Michigan	129.6	20 North Carolina	300.2
21 Arkansas	452.8	21 Florida	5.3	23 Arkansas	33.1	21 Alabama	125.1	21 New York	300.0
22 Alabama	438.6	22 Pennsylvania	5.3	District of Columbia	32.9	22 Connecticut	122.1	22 Georgia	292.1
23 Pennsylvania	410.4	23 Virginia	5.1	24 Idaho	32.2	23 Indiana	117.3	23 Kansas	276.4
24 Kansas	404.8	24 New York	5.0	United States	31.8	24 Mississippi	115.3	24 Alabama	274.4
25 New Jersey	390.1	25 Kentucky	4.7	25 Illinois	31.5	25 Massachusetts	101.5	25 Pennsylvania	234.5
26 Indiana	371.8	26 Ohio	4.0	26 Louisiana	31.4	26 Washington	99.1	26 Colorado	222.9
27 Washington	355.0	27 New Jersey	4.0	27 Wyoming	30.9	27 Virginia	95.4	27 West Virginia	220.2
28 Montana	352.4	28 Montana	3.8	28 Alabama	30.7	28 Hawaii	93.3	28 Indiana	219.7
29 Ohio	351.9	29 Rhode Island	3.7	29 Massachusetts	29.1	29 Rhode Island	93.1	29 Nebraska	210.8
30 Colorado	350.7	30 Colorado	3.6	30 California	28.9	30 Kansas	89.9	30 Washington	209.5
31 Mississippi	350.1	31 Wisconsin	3.6	31 Arizona	28.6	31 Wisconsin	82.3	31 Wyoming	207.5
32 Connecticut	335.5	32 Kansas	3.4	32 Pennsylvania	28.2	32 Arkansas	81.0	32 Iowa	205.7
33 Rhode Island	309.6	33 Connecticut	3.1	33 Indiana	28.1	33 Alaska	81.0	33 New Jersey	204.7
34 Oregon	306.7	34 Washington	3.0	34 Kentucky	27.8	34 Kentucky	80.7	34 Connecticut	191.7
35 Nebraska	304.3	35 Utah	3.0	35 Maryland	27.0	35 Colorado	80.5	35 Oregon	191.3
36 Virginia	291.3	36 Delaware	2.9	36 Georgia	26.0	36 Oklahoma	79.4	36 Idaho	190.1
37 West Virginia	279.4	37 Hawaii	2.6	37 North Dakota	25.8	37 Oregon	79.2	37 Mississippi	184.8
38 Iowa	269.1	38 Nebraska	2.5	38 North Carolina	25.4	38 Minnesota	75.6	38 Rhode Island	173.5
39 Minnesota	264.4	39 Oregon	2.4	39 Maine	25.3	39 Nebraska	65.8	39 Virginia	166.2
40 Wyoming	257.3	40 Minnesota	2.4	40 Nebraska	25.2	40 Utah	52.7	40 Ohio	157.4
41 Kentucky	257.0	41 Massachusetts	2.3	41 Virginia	24.6	41 Iowa	39.5	41 Kentucky	143.8
42 Hawaii	254.6	42 Idaho	2.3	42 Missouri	24.6	42 West Virginia	39.2	42 Minnesota	141.4
43 Idaho	243.1	43 West Virginia	2.2	43 Iowa	22.2	43 New Hampshire	35.3	43 Utah	139.0
44 Utah	234.1	44 Wyoming	1.8	44 Wisconsin	21.1	44 Montana	25.4	44 Hawaii	125.3
45 Wisconsin	231.1	45 Iowa	1.7	45 Montana	20.8	45 Maine	20.5	45 Wisconsin	124.2
46 New Hampshire	170.3	46 Maine	1.4	46 Connecticut	18.7	46 Idaho	18.5	46 New Hampshire	97.2
47 South Dakota	154.8	47 New Hampshire	1.4	47 New York	18.7	47 Vermont	17.5	47 South Dakota	93.8
48 Maine	111.5	48 Vermont	1.1	48 West Virginia	17.8	48 Wyoming	17.0	48 Vermont	69.0
49 Vermont	105.0	49 North Dakota	1.1	49 Vermont	17.5	49 South Dakota	13.8	49 Maine	64.2
50 North Dakota	79.8	50 South Dakota	0.9	50 New Jersey	15.1	50 North Dakota	9.5	50 North Dakota	43.2

Handgun Epidemic Lowering Plan (HELP) Network Firearm Injury Prevention State Status Report

Vermont

Updated 2/6/2002

Pediatric and Young Adult, and all Firearm Deaths and Rate per 100,000 Population (1999) [2]

		Suicide		Homicide		Unintentional		Undetermined		Total Firearm [3]	
	Population	Deaths	Rate	Deaths	Rate	Death	Rate	Death	Rate	Death	Rate
All ages	593,740	46	7.7	8	1.3	2	0.3	1	0.2	57	9.6
0-14	112,801	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
15-19	43,814	2	4.6	0	0.0	1	2.3	0	0.0	3	6.8
15-24	79,740	7	8.8	0	0.0	2	2.5	1	1.3	10	12.5
25-44	187,907	17	9.0	4	2.1	0	0.0	0	0.0	21	11.2
45-64	140,376	11	7.8	3	2.1	0	0.0	0	0.0	14	10.0
64+	72,916	11	15.1	1	1.4	0	0.0	0	0.0	12	16.5

Vermont Compared With Other States (and D.C.)

		Ranking (1-highest, 51-lowest)
Rate of firearm deaths/100,000 pop. (1999)	9.6	34 of 51
Number of firearm deaths (1999)	57	48 of 51
Number of Federal Firearm Licensees (FFLs) (1999) [4]	595	47 of 51
Rate of FFLs per 100,000 pop. (1999)	100.2	5 of 51
Number of Federal Firearm Licensees (2001) [4]	*570*	*47 of 51*

For Available State Data, Contact:

Vermont Department of Health, Division of Health Surveillance: Public Health Statistics Unit
http://www.state.vt.us/health/healthsu.htm

HELP Organizational Members Based in State: none

[1] Compiled by HELP Network; (773) 880-8122, email: contact@helpnetwork.org. Children's Mem. Hosp., 2300 Children's Plaza, #88, Chicago, IL 6
State Status Reports can be viewed at www.helpnetwork.org

[2] Data are from National Center for Health Statistics, National Vital Statistics System

[3] Includes firearm deaths from all causes.

[4] Bureau of Alcohol, Tobacco and Firearms (ATF). FFLs are those with a federal firearm license which is required to sell firearms.

Handgun Epidemic Lowering Plan (HELP) Network Firearm Injury Prevention State Status Report

Alaska

Updated 2/6/2002

Pediatric and Young Adult, and all Firearm Deaths and Rate per 100,000 Population (1999) [2]

		Suicide		Homicide		Unintentional		Undetermined		Total Firearm [3]	
	Population	Deaths	Rate	Deaths	Rate	Death	Rate	Death	Rate	Death	Rate
All ages	619,500	55	8.9	27	4.4	3	0.5	2	0.3	88	14.2
0-14	163,094	1	0.6	5	3.1	0	0.0	0	0.0	6	3.7
15-19	56,192	10	17.8	4	7.1	1	1.8	2	3.6	17	30.3
15-24	104,654	17	16.2	6	5.7	1	1.0	2	1.9	26	24.8
25-44	178,632	20	11.2	13	7.3	2	1.1	0	0.0	35	19.6
45-64	138,370	10	7.2	1	0.7	0	0.0	0	0.0	12	8.7
64+	34,750	7	20.1	2	5.8	0	0.0	0	0.0	9	25.9

Alaska Compared With Other States (and D.C.)

		Ranking (1-highest, 51-lowest)
Rate of firearm deaths/100,000 pop. (1999)	14.2	12 of 51
Number of firearm deaths (1999)	88	43 of 51
Number of Federal Firearm Licensees (FFLs) (1999) [4]	1,274	33 of 51
Rate of FFLs per 100,000 pop. (1999)	205.6	1 of 51
Number of Federal Firearm Licensees (2001) [4]	*1,211*	*35 of 51*

For Available State Data, Contact:

Alaska Department of Health and Social Services, Bureau of Vital Statistics
http://health.hss.state.ak.us/

HELP Organizational Members Based in State: none

[1] Compiled by HELP Network; (773) 880-8122, email: contact@helpnetwork.org. Children's Mem. Hosp., 2300 Children's Plaza, #88, Chicago, IL 6
State Status Reports can be viewed at www.helpnetwork.org

[2] Data are from National Center for Health Statistics, National Vital Statistics System

[3] In 1999, the 1 death due to legal intervention (not shown separately) is included in Total Firearm deaths.

[4] Bureau of Alcohol, Tobacco and Firearms (ATF). FFLs are those with a federal firearm license which is required to sell firearms.

Common Sense ABOUT KIDS AND GUNS

30% of handguns are stored unlocked and loaded.

NIJ

YOUR DONATION CAN HELP

Study

Go directly to:
Entry Hall

A comprehensive database of relevant resources on the web.

Relevant current newspaper articles.

Significant facts on the subject, with links to sources.

State-specific headlines, statistics, and resources.

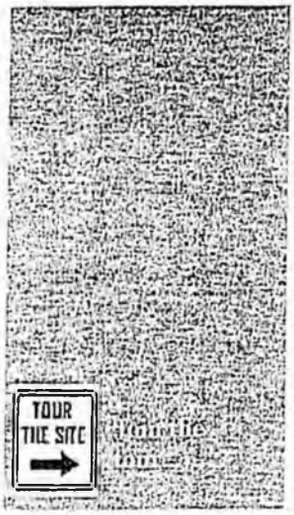
Radio and TV coverage, plus Common Sense advertisements.

Share Your Thoughts: See what others have to say and post messages of your own.

Vermont Firearm Deaths

Vermont Firearm Deaths
Ages 0 to 19, 1995-2000
All Races, Both Sexes

		2000	1999	1998	1997	1996	1995
Accidental							
	0-4	0	0	0	0	0	0
	5-9	0	0	0	0	0	0
	10-14	0	0	0	0	0	0
	15-19	0	1	0	0	1	1
	Subtotal	0	1	0	0	1	1
Suicide							
	0-4	0	0	0	0	0	0
	5-9	0	0	0	0	0	0
	10-14	0	0	0	1	0	0
	15-19	4	2	5	0	2	5
	Subtotal	4	2	5	1	2	5
Homicide							
	0-4	0	0	0	1	0	0
	5-9	0	0	0	1	0	0
	10-14	0	0	0	0	0	0
	15-19	0	0	0	0	1	0
	Subtotal	0	0	0	2	1	0
Undetermined/Other							
	0-4	0	0	0	0	0	0
	5-9	0	0	0	0	0	0
	10-14	0	0	0	0	1	0
	15-19	0	0	0	2	0	0
	Subtotal	0	0	0	2	1	0
All Intents/TOTAL							
	0-4	0	0	0	1	0	0
	5-9	0	0	0	1	0	0
	10-14	0	0	0	1	1	0



	10-14	0	0	0	1	1	0
	15-19	4	3	5	2	4	6
	TOTAL	4	3	5	5	5	6

NOTE: Rates based on 20 or fewer deaths may be unstable. Use with caution.
ABOUT 1999-2000 DATA: The coding of mortality data changed significantly in 1999 from ICD-9 to ICD-10, so you may not be able to compare number of deaths and death rates from 1998 and before with data from 1999 and after. Though there were no apparent changes in the coding of firearm deaths, the National Center for Health Statistics does not recommend combining 1999-2000 data with previous years to obtain average annual numbers of death and death rates.
TABLE: Statistics compiled by *Common Sense about Kids and Guns* using WISQARS. WISQARS is produced by the Office of Statistics and Programming, NCIPC, CDC.
DATA SOURCE: NCHS National Vital Statistics System.

Return to Vermont page

View another State Statistics page:
Select:

Common Sense
ABOUT KIDS AND GUNS

the child you save may be your own.

- Make a Donation
- Take Action
- Welcome
- About Us
- Tour Our Home
- Resources
- In the News
- Fact File
- State Info
- Bulletin Board
- Parent Quiz
- Stories

Safety Tips | Take Action | News | Resources | Facts | About Us

Email a friend about this website.

The HELP Network

HELP Network
(773) 880-8122
contact@helpnetwork.org

Children's Memorial Hospita
2300 Children's Plaza,
Box #88,
Chicago, IL 60614

www.helpnetwork.org

Legislative Update for the State of Alaska

State Gun Laws[1]

Anti-Trafficking: Is there a one-handgun-per-month limit on gun sales?	no
Assault Weapons: Are there limitations on assault weapons and magazines?	no
Attorney General Regulations: May Attorney General regulate guns?	yes
Background Check at State Level: Do state police perform a background check in addition to federal NICS check?	no
Ballistic Fingerprinting: Must handguns be ballistic fingerprinted prior to sale?	no
CCW Limits: May police limit carrying concealed handguns?	no
Child Access Prevention -CAP: Are gun owners held accountable for leaving guns accessible to kids?	no
Child-Safety Locks: Must locking devices be sold with guns?	no
Gun Manufacturer Accountability: Do cities have authority to hold gun makers legally liable?	no
Gun Show Checks: Are background checks required at gun shows?	no
Juvenile Possession: Are minors restricted from possessing guns?	yes
Juvenile Sale: Is it illegal to sell guns to kids?	yes
Licensing: Is a license/permit required to buy handguns?	no
Local Gun Laws -Preemption: May cities enact laws stronger than the state's?	partial
Record Keeping: May police maintain gun sale records?	no
Registration: Are all guns registered with law enforcement?	no
Safety Standards: are there consumer safety standards on guns?	no
Safety Training: Is safety training required for handgun buyers?	no
Saturday Night Specials: Are there limitations on "junk" handguns?	no
School Zones: Is it illegal to have a gun in or around schools?	yes
Secondary Sales: Are background checks required on "private" gun sales?	no
Waiting Period: Is there a waiting period on gun sales?	no

[1] Source: Brady Campaign - www.bradycampaign.org as of February 2002

Updated: 02/2002

The HELP Network

HELP Network
(773) 880-8122
contact@helpnetwork.org

Children's Memorial Hospita
2300 Children's Plaza,
Box #88,
Chicago, IL 60614

www.helpnetwork.org

Legislative Update for the State of Vermont

State Gun Laws[1]

Anti-Trafficking: Is there a one-handgun-per-month limit on gun sales?	no
Assault Weapons: Are there limitations on assault weapons and magazines?	no
Attorney General Regulations: May Attorney General regulate guns?	yes
Background Check at State Level: Do state police perform a background check in addition to federal NICS check?	yes
Ballistic Fingerprinting: Must handguns be ballistic fingerprinted prior to sale?	no
CCW Limits: May police limit carrying concealed handguns?	no
Child Access Prevention -CAP: Are gun owners held accountable for leaving guns accessible to kids?	no
Child-Safety Locks: Must locking devices be sold with guns?	no
Gun Manufacturer Accountability: Do cities have authority to hold gun makers legally liable?	yes
Gun Show Checks: Are background checks required at gun shows?	no
Juvenile Possession: Are minors restricted from possessing guns?	partial
Juvenile Sale: Is it illegal to sell guns to kids?	partial
Licensing: Is a license/permit required to buy handguns?	no
Local Gun Laws -Preemption: May cities enact laws stronger than the state's?	no
Record Keeping: May police maintain gun sale records?	no
Registration: Are all guns registered with law enforcement?	no
Safety Standards: are there consumer safety standards on guns?	no
Safety Training: Is safety training required for handgun buyers?	no
Saturday Night Specials: Are there limitations on "junk" handguns?	no
School Zones: Is it illegal to have a gun in or around schools?	partial
Secondary Sales: Are background checks required on "private" gun sales?	no
Waiting Period: Is there a waiting period on gun sales?	no

[1] Source: Brady Campaign - www.bradycampaign.org as of February 2002

Updated: 02/2002

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SSHB 177
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Law
Title "An Act relating to concealed handguns."
BRU Criminal Division
Component All
Sponsor Representative Stoltze
Requester House State Affairs Committee
Component No.

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0
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)*

This bill recognizes valid permits to carry a concealed handgun from other jurisdictions. Holders of those permits would automatically be considered Alaska permittees as well. Further, the Department of Public Safety is directed to enter into reciprocity agreements with other states so Alaska permittees can carry concealed handguns in those states.

Passage of this legislation is not anticipated to have a fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson
Phone (907) 465-5370
Division Attorney General's Office
Date/Time 3/24/03 1:46 PM
Approved by: Joan M. Kasson for Gregg D. Renkes, Attorney General
Date 3/24/2003
Agency Department of Law

(Revised 9/2002 OMB)

TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 NORTH LAMAR BLVD •BOX 4087 •AUSTIN, TEXAS 78773-0001
512/424-2000
www.txdps.state.tx.us

THOMAS A. DAVIS, JR.
DIRECTOR

DAVID McEATHRON
ASST. DIRECTOR

COMMISSION
COLLEEN MCHUGH
CHAIRMAN

ROBERT B. HOLT
JAMES B. FRANCIS, JR.
COMMISSIONERS

April 4, 2003

Barbara Bitney
Alaska State Legislature via fax: 907-465-4928

RE: Concealed Handgun Reciprocity

Dear Ms. Bitney:

The Department will negotiate reciprocity agreements with states that provide for the issuance of concealed handgun licenses, provided the background investigation meets or exceeds that required by federal law as a condition of receiving a handgun and the state recognizes a license issued in Texas. According to correspondence from Lieutenant Julia P. Grimes of the Alaska Department of Public Safety, Alaska will not recognize a Texas license if the license holder has had an application in Alaska rejected or had a permit revoked or suspended by Alaska. Based on the fact Alaska does not recognize all Texas licenses, the requirement of Texas Government Code 411.173(b)(2) cannot be fulfilled, and the Department cannot enter into a reciprocity agreement with the state of Alaska.

Sincerely,

Louis Beaty

Louis Beaty
Manager, Crime Records Service Legal Staff

PERMIT ISSUANCE CRITERIA
FOR STATES WHICH ISSUE
CONCEALED WEAPON PERMITS TO NON-RESIDENTS
(As compared to Alaska's qualifications)

Alaska - fingerprints required with application
1) 21 years of age
2) Eligible to own/possess under federal law*
3)Not been convicted of two or more Class A misdemeanors within six years
4)Not in last three years ordered to complete alcohol/substance abuse program

---

Arizona - fingerprints required with application
1) 21 years of age
2) No felony indictment or conviction
3) Does not suffer from mental illness nor has been adjudicated mentally incompetent
4) Fingerprints to FBI for national criminal history check

Florida - fingerprints required with application
1) 21 years of age
2) Eligible to own/possess under federal law
3) No misdemeanor crime of violence in last three years
4) Not committed for substance abuse or convicted of a crime relating to controlled substances within three years
5) Does not chronically and habitually use alcohol, as provided by Florida law

Idaho - fingerprints required with application
1) 21 years of age
2) Eligible to own/possess under federal law
3) No misdemeanor crime of violence in last three years
4) Not an unlawful user of or addicted to controlled substance
5) Not currently suffering from mental illness nor has been adjudicated mentally ill
6) Not subject to protection order

Indiana - fingerprints required with application
1) 18 years of age
2) No felony conviction
3) Must be of good character and reputation
4) Applicant must have a "proper reason" to carry a handgun
note: Issuance to non-residents seems to be limited to those who have a regular place of business or employment in Indiana.

Iowa - fingerprints not mentioned in statute but criminal history check specifically required
1) 18 years of age
2) No felony conviction
3) No history of repeated acts of violence
4) Not addicted to the use of alcohol or any controlled substance
5) Issuing officer must reasonably determine the applicant does not constitute a danger to any person
6) Applicant must "reasonably justify" why he needs to carry a handgun

Maine - fingerprints may be required with application
1) 18 years of age
2) No felony conviction nor charges pending
3) Not been convicted of three or more misdemeanors in last five years
4) Not a drug user and not convicted in last five years of marijuana possession nor other drug crimes
5) Not convicted of possession of a firearm in a bar in last five years
5) Not been the subject of an investigation regarding domestic violence
6) Numerous other criteria which essentially mirror federal law

Maryland - fingerprints required with application
1) 18 years of age
2) No felony conviction
3) Has not exhibited a propensity for violence or instability
4) Not convicted of any offense involving possession, use or distribution of controlled substance
5) Not under legitimate medical direction nor an alcoholic
6) Applicant must have "good and substantial reason" to carry a handgun

Nevada - fingerprints required with application
1) 21 years of age
2) Eligible to own/possess under federal law
3) Not convicted of a misdemeanor crime of violence in last three years
4) Not convicted of DUI nor committed for alcohol or drug treatment in last five years
5) Not convicted of a crime involving domestic violence nor subject to a dv restraining order

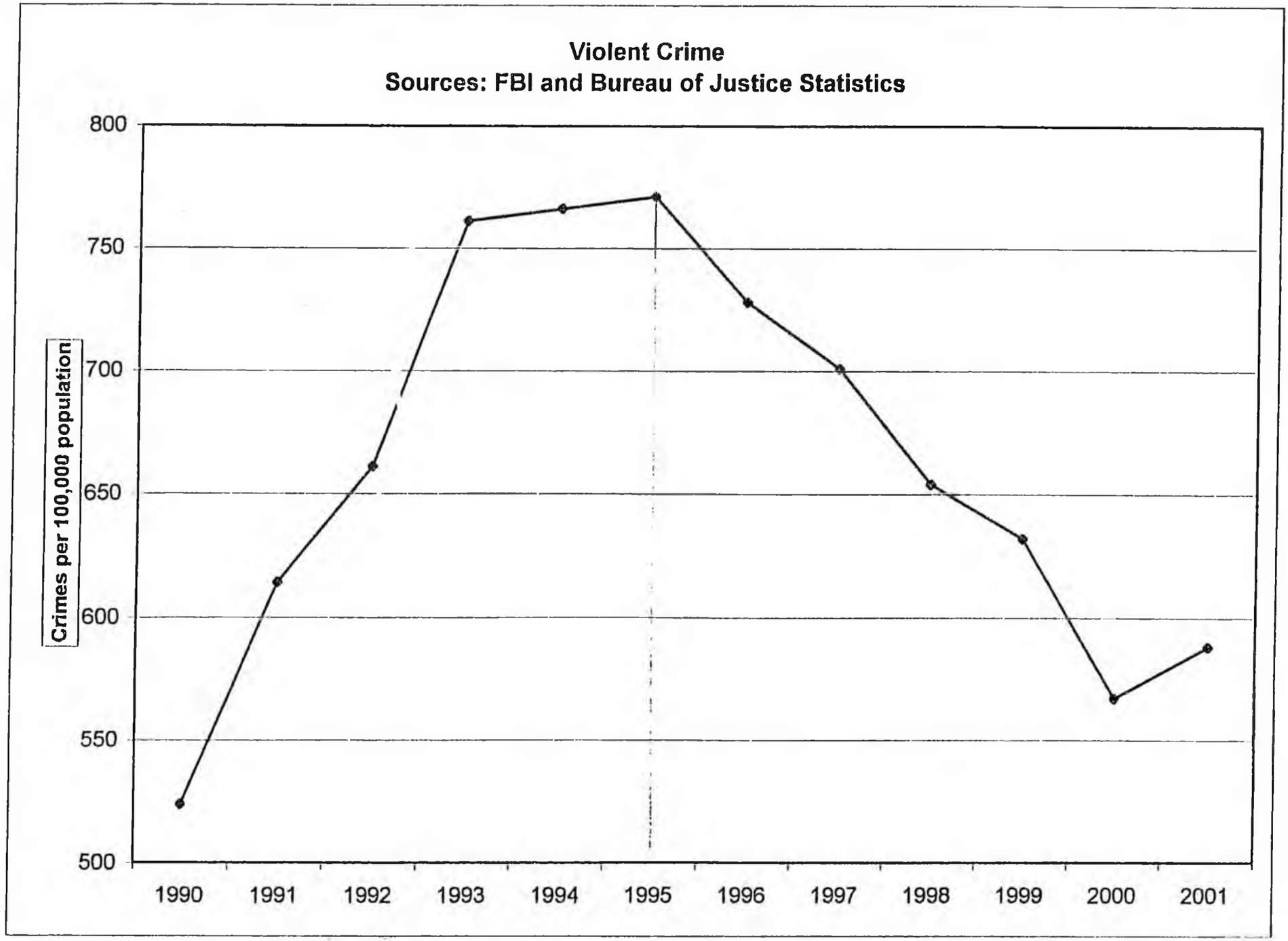
North Dakota - fingerprints required with application
1) 18 years of age
2) Eligible to own/possess under federal law
3) Not convicted of a Class A misdemeanor crime of violence in last five years
4) Diagnosed and confined or committed as mentally ill or deficient in last three years
5) Non-resident application requires a LOCAL background check and approval from local law enforcement in the applicant's county (or city, borough, etc...) of residence

Utah - fingerprints required with application
1) 21 years of age
2) Eligible to own/possess under federal law
3) No conviction for crime of violence nor offense involving moral turpitude or domestic violence
4) No conviction for offense involving use of alcohol or controlled substances
5) Has not been adjudicated mentally ill
6) Is not a danger to self or others as demonstrated by specific evidence

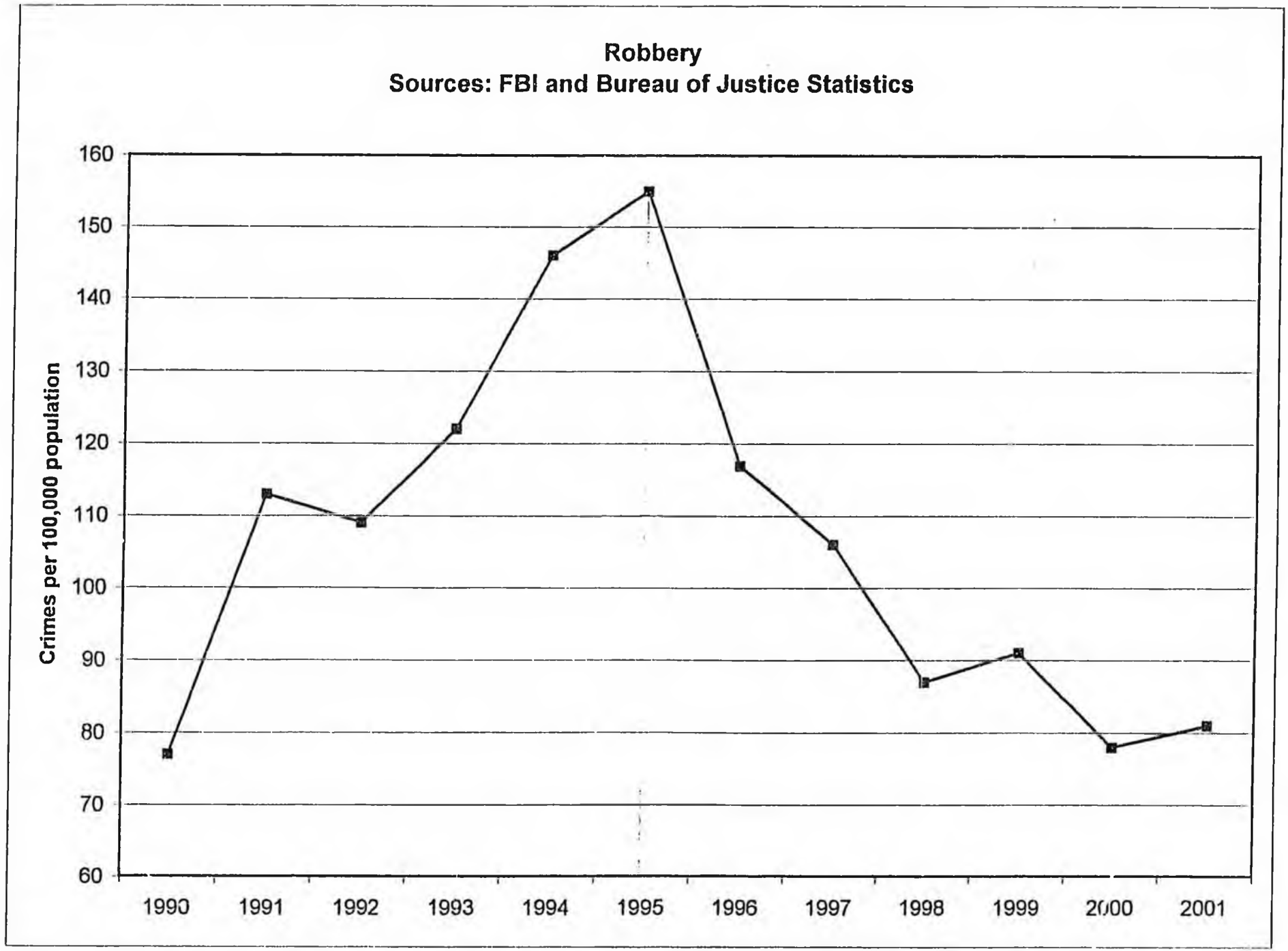
Washington - fingerprints required with application
1) 21 years of age
2) No felony convictions
3) No domestic violence misdemeanor convictions since July 1, 1993
4) Has been ordered to forfeit a firearm in the last year for, among other reasons, possessing a firearm while under the influence of alcohol or any drug
5) Has not been involuntarily committed for mental health treatment
6) No outstanding felony or misdemeanor arrest warrants
7) Not subject to provisions of protective order

* ***Federal law*** (18 U.S.C. §922 (g)) prohibits possession of a firearm by any person:
1) who has been convicted of a crime punishable by imprisonment for more than one year (generally includes any felony);
2) who is a fugitive from justice;
3) who is an unlawful user of or addicted to any controlled substance;
4) who has been adjudicated as a mental defective or who has been committed to a mental institution;
5) who is an illegal alien or who has been admitted under a nonimmigrant visa;
6) who has been dishonorably discharged from the Armed Forces;
7) who has renounced his US citizenship; or
8) who has been convicted of a misdemeanor crime of domestic violence.

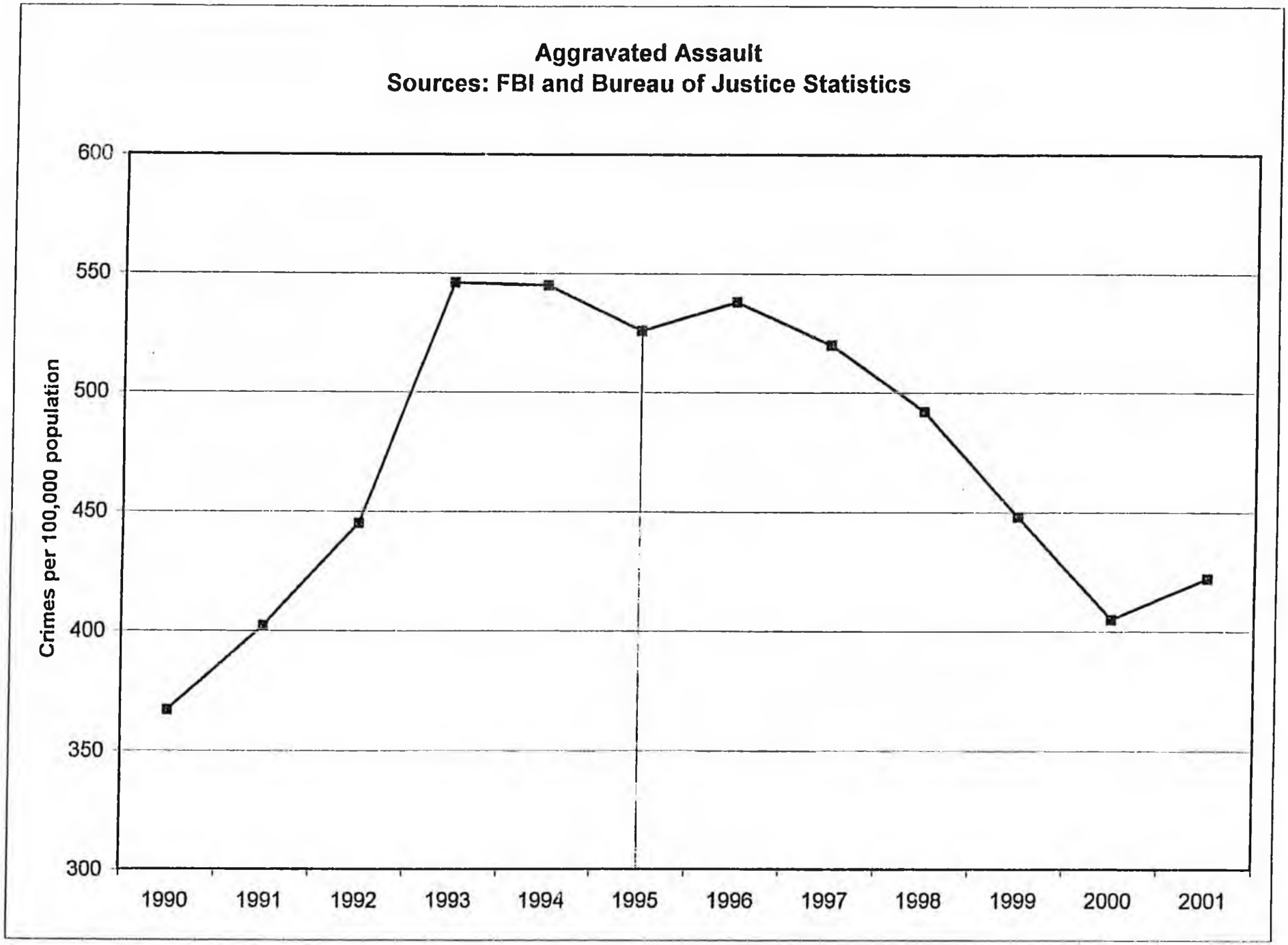
Alaska Crime Rates



Alaska Crime Rates



Alaska Crime Rates



HB

212

HOMPESCH & EVANS
ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION
DENALI FINANCIAL CENTER
119 N. CUSHMAN STREET, SUITE 400
FAIRBANKS, ALASKA 99701

FACSIMILE TRANSMITTAL

WARNING:

Date: February 18, 2003 Time:
Sent By: Karon Our File No.:

FROM:	TO:
Name: Susan L. Evans	Name: Representative McGuire
Company: HOMPESCH & EVANS A PROFESSIONAL CORPORATION	Company:
Phone: (907) 452-1700	Re: Trust Bill
Fax: (907) 456-5693	Fax: (907) 465-6592

Total Number of Pages: 2 (including this page)

Special Instructions or Additional Message:

Original Documents to Follow via:

(_____) Mail (_____) Other:_____

(_____) No Documents to Follow This Transaction.

HOMPESCH & EVANS
ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION
119 N. CUSHMAN STREET, SUITE 400
FAIRBANKS, ALASKA 99701-2879

TELEPHONE
(907)452-1700
FACSIMILE
(907)456-5693
EMAIL:
hompesch@hompesch.com

RICHARD W. HOMPESCH II
SUSAN L. EVANS

PROFESSIONAL STAFF
BARBARA CORY-HOMPESCH
ENROLLED AGENT (IRS)

February 18, 2003

VIA E-MAIL AND FAX

Representative Lesil McGuire
Juneau, Alaska

Re: The Trust Bill

Dear Representative McGuire:

I am writing with regard to the Trust Bill. As you know, the bill amends both AS 13.36 and AS 34.40. I am in favor of both amendments. My reasons are as follows:

Amendment to AS 13.36. I favor codifying the positions and listed powers of trust protectors and trust advisors because of the flexibility they add to trusts. If there is no built-in flexibility the beneficiaries and trustees inevitably end up in court grappling with issues unforeseen at the time the trust was created. I also favor the default rule that neither the trust protector nor trust advisor have fiduciary duty. Clients often name close family friends and advisors as trust protectors and trust advisors, recognizing that they would not be able to serve if they were held to the highest (fiduciary) standard of care.

Amendment to AS 34.40. I favor the amendments to AS 34.40 because they bring much-needed clarification to the section.

I am grateful for your attention to this matter.

Sincerely yours,

HOMPESCH & EVANS
A Professional Corporation

Susan L. Evans

SLE/

HOMPESCH & EVANS
ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION
119 N. CUSHMAN STREET, SUITE 400
FAIRBANKS, ALASKA 99701-2879

TELEPHONE
(907)452-1700
FACSIMILE
(907)456-5693
EMAIL:
hompesch@hompesch.com

RICHARD W. HOMPESCH II
SUSAN L. EVANS

PROFESSIONAL STAFF
BARBARA CORY-HOMPESCH
ENROLLED AGENT (IRS)

Vanessa

February 20, 2003

VIA E-MAIL AND FAX

Representative Lesil McGuire
Juneau, Alaska

Re: The Trust Bill

Dear Representative McGuire:

I am writing with regard to the Trust Bill. As you know, the bill amends both AS 13.36 and AS 34.40. I am in favor of both amendments. My reasons are as follows:

Amendment to AS 13.36. I favor codifying the positions and listed powers of trust protectors and trust advisors because of the flexibility they add to trusts. If there is no built-in flexibility the beneficiaries and trustees inevitably end up in court grappling with issues unforeseen at the time the trust was created. I also favor the default rule that neither the trust protector nor trust advisor have fiduciary duty. Clients often name close family friends and advisors as trust protectors and trust advisors, recognizing that they would not be able to serve if they were held to the highest (fiduciary) standard of care.

Amendment to AS 34.40. I favor the amendments to AS 34.40 because they bring much-needed clarification to the section.

I am grateful for your attention to this matter.

Sincerely yours,

HOMPESCH & EVANS
A Professional Corporation

Susan L. Evans

SLE/

V-
I see not the trustee, but the advisor held to lower standard

Alaska State Legislature

Session
State Capitol Building, Room 118
Juneau, Alaska 99801-1182
Phone (907) 465-2995
Fax (907) 465-6592

Interim
716 West Fourth Avenue, Suite 430
Anchorage, Alaska 99501
Phone (907) 269-0250
Fax 9907) 269-0249

Chair, Judiciary Committee

Vice-Chair, House Committee on
Economic Development,
Trade and Tourism

Member
Oil & Gas Committee

Representative Lesil McGuire

House District 28

Sponsor Statement
HB 212

"An Act relating to trusts, including trust protectors, trustee advisors, transfers of property in trust, and transfers of trust interests, and to creditor' claims against, property subject to a power of appointment."

Alaska was once in the lead in development of trust law. However, since that time other states have not only enacted similar legislation but have improved on it. Delaware has amended in statute six times since the date of enactment. The last time we amended our trust statutes and in particular our spendthrift statute was in 1998 and as a result, our laws are viewed as being deficient in many respects. This not only places our trust companies in an uncompetitive position but also places Alaska residents at a disadvantage when compared to the citizens of our competitor states. This bill rectifies many of these shortcomings.

This bill provides statutory authority to provisions commonly found in trust instruments. For instance, Section 1 of the bill specifically provides for the position of a trust advisor and trust protector and clarifies the manner in which these positions relate to the administrations of a trust. Delaware, South Dakota, and Idaho has similar legislation. Many trust instruments allow a trustee to make trust assets available for the use of a beneficiary. Section 2 allows trusts assets consisting of real property and tangible personal property to be used by a beneficiary without the use being considered a distribution which could in turn be subjected to the claims of a beneficiary's creditors. For example, a trustee could exercise its discretion and permit a beneficiary to reside in a family home. Were it not for this provision, the settlor's intention that a family homestead be made available for future generations might be defeated.

Other sections contained in the bill codify a number of matters which have always been accepted by Alaska trust practitioners as being the common law of this state, but for which there has been no statutory counterpart. Section 4 provides that trust assets can not be attached by a beneficiary's creditor until such time that trust assets are actually distributed to a beneficiary, no can there be a continuing order against the trustee with respect to future distributions that a trustee would choose to make. Section 6 adds a new subsection (i) to AS 34.30.110, which clarifies that the statute affording spendthrift protection for beneficial interests applies not only to trusts in which a settlor may have a

retained interest, but also to the very common third party settled trust where a beneficiary might be serving as sole trustee.

Sections 3, 5, and 6 make amendments or add subsections to AS 34.40.110, which will assist a future court in the interpretation of our spendthrift statute, something an Alaska court has yet to do. Section 3 clarifies that a trust can be set aside only if a creditor is able to successfully assert by a preponderance of the evidence that the settlor's transfer of property in trust was made with the primary intent to defraud that creditor. In so doing, the finder of fact must weight all the circumstances surrounding the transfer before making that determination. Section 5 clarifies that a fraudulent conveyance action may only be brought against a settlor of a trust and then only as to a specific transfer of assets that are determined to be fraudulent as to that creditor. Section 5 also clarifies the definition of preexisting creditors who can avail themselves during the time period found in AS 34.40.110(d)(1) by bringing a fraudulent conveyance action against the settlor of a self-settled trust. Subsection (h) as found in Section 6 provides a transfer restriction will be valid with respect to a beneficial interest retained by a settlor even though the settlor serves as a co-trustee, provided the settlor doesn't have control over the manner in which distributions may be make to the settlor. Subsection (k) invalidates any unwritten agreement or understanding between a settlor who is a beneficiary and a trustee that gives the settlor rights greater than those that are permitted to be expressed in the trust instrument.

Lastly, there are several provisions contained in this bill that have their counterpart in the laws of other states. Section 3 provides the circumstances in which a transfer restriction will continue to be valid even though a settlor retains a unitrust or annuity interest in the trust. These provisions presently exist in Delaware. Section 7 of the bill clarifies when property subject to a power of appointment can be subjected to the claims of a donee's creditors and codifies the common law as enunciated in the Restatement 2nd of Property and has its genesis in a comparable Rhode Island statute. All the provisions found in this bill are necessary additions not only if Alaska expects our trust industry to remain competitive with other states, but also if Alaska residents are to have the benefits comparable to those of citizens in other states.

Alaska State Legislature

Session
State Capitol Building, Room 118
Juneau, Alaska 99801-1182
Phone (907) 465-2995
Fax (907) 465-6592

Interim
716 West Fourth Avenue, Suite 430
Anchorage, Alaska 99501
Phone (907) 269-0250
Fax 9907) 269-0249

Chair, Judiciary Committee

Vice-Chair, House Committee on
Economic Development,
Trade and Tourism

Member
Oil & Gas Committee

Representative Lesil McGuire

House District 28

Sectional Analysis
HB 212

"An Act relating to trusts, including trust protectors, trustee advisors, transfers of property in trust, and transfers of trust interests, and to creditor' claims against, property subject to a power of appointment."

Section 1:

AS 13.36.370 adds a new provision commonly found in trust instruments concerning the role of the disinterested trust protector. South Dakota, Delaware, and Idaho also have a statutory framework delineating a trust protector's authority. It is fully within the settlor's discretion as to whether or not there will be a trust protector. If a settlor does not want a trust protector there will be no trust protector. Furthermore, a trust protector will only have those powers that the settlor grants the trust protector. An irrevocable trust containing a trust protector provision provides flexibility to take into account changed circumstances.

For instance, suppose a settlor creates a trust for the benefit of a child and names a friend to act as trustee. Subsequently it is discovered that the trustee is not using the trust assets for the benefit of the beneficiary in the manner in which the settlor had originally intended. Unless the trustee voluntarily resigns, it could require an expensive court proceeding to remove and replace the trustee. However, if there is a trust protector who has the authority to remove and replace an existing trustee, the trustee could be replaced without the necessity of a court proceeding. Another example of where a trust protector might be valuable is when there is an unforeseen change in tax laws. For instance, if the estate tax is permanently repealed, certain provisions of existing trusts might be unnecessary or undesirable. If the settlor so provided, a trust protector could amen the trust and eliminate an otherwise undesirable provision in the trust.

Notwithstanding the foregoing, a trust protector is not permitted to change the beneficial interest of the State in a Miller trust.

In addition, AS 13.36.375 adds a new provision commonly found in trust instruments concerning the role of a trustee advisor. This provision is commonly found where a settlor appoints an institution as the trustee to handle the investing and administrative functions but wants to appoint a family friend, who is aware of the beneficiary's needs, to advise the trustee when trust distributions may or may not be appropriate. This section states the advisor will not be held accountable as a trustee for rendering or failing to render advice to the trustee.

Section 2:
A "use" provision is commonly found in trust instruments and allows a trustee to make trust assets available for the use of a beneficiary. This section amends AS 34.40.110(a) by stating that property may be made available for the use of a beneficiary without the use being considered a distribution that could possibly expose the trust assets to the claims of a beneficiary's creditors. Furthermore, the original owner can be assured that important family assets such as heirlooms and a vacation home may be maintained by the family and that their use can be made available for future generations.

Section 3:
AS 34.30.110(b)(1) is amended to provide that a transfer restriction can be disregarded only if a creditor proves by a preponderance of the evidence that the settlor's primary intent in making the transfer was to defraud the settlor's creditors. This section eliminates ambiguous language such as "hinder and delay." It also eliminates meaningless language such as "other persons," which is meaningless in the sense that the only class of persons who could possibly be defrauded by a settlor transferring property into trust is creditors of that settlor.

This section was also amended to clarify that it must be first determined that the primary intent of the settlor in creating a trust was to defraud a creditor before the transfer in trust can be set aside as a fraudulent conveyance. Adding the word "primary" to this section provides judicial guidance heretofore missing. Because a settlor will rarely admit to actually intending to defraud a creditor, courts typically consider factual circumstances constituting "badges of fraud" to infer fraud. For instance, a transfer to an insider (as would be the case of any gift to a family member) is considered a badge of fraud under Section 4(b) of the Uniform Fraudulent Transfer Act. Unfortunately, this might be enough for a court to infer fraud. This lack of statutory guidance could lead to a very arbitrary and capricious finding that the mere existence of a singular "badge of fraud" renders the entire transfer fraudulent. The use of the word "primary" make it necessary for the finder of fact to weight all the circumstances surround the transfer. Only if a creditor is able to prove by a preponderance of the evidence that the primary intent of the settlor was to defraud that creditor can the transfer in trust be set aside.

AS 34.40.110(b)(3) is amended to provide a transfer restriction will continue to be valid with respect to an annuity or unitrust interest retained by a settlor provided the remainder interest is given to a public charity. In addition, a settlor may also retain an annuity or unitrust interest irrespective of whether the remainder interest is designated to charity provided the annuity or unitrust interest does not exceed the amount set forth as "income" under the Alaska Principal and Income Act or under the Internal Revenue Code. A similar statute is found in Delaware.

Section 4:
AS 34.40.110(c) is amended to provide that a creditor of a beneficiary may not attach trust assets while the assets remain in trust if the beneficial interest is subject to a valid transfer restriction. In addition, this provision is meant to assure the settlor that trust assets can not be subjected to the claims of a beneficiary's creditor until such time that trust assets have actually been distributed to the beneficiary. Furthermore, this section provides that no attachment or other order may be made against a trustee by a creditor with respect to a beneficial interest which

might compel the trustee to make a future distribution to a creditor in lieu of making a distribution directly to the beneficiary.

Section 5:
This section clarifies that only a creditor of a settlor can bring a fraudulent conveyance action with regard to a transfer of assets to a trust and only in regard to a specific transfer of assets by a settlor to the trust. A third party beneficiary's creditor can not set aside a transfer when the property was originally that of a settlor and not that of the third party beneficiary. On the other hand, where the settlor is retained as a beneficiary under the terms of the trust, a creditor can bring a fraudulent conveyance action because in this case the settlor is also a beneficiary.

AS 34.40.110(d) sets forth a prescribed period of time in which a fraudulent conveyance action must be brought depending on whether the creditor is a preexisting creditor or a subsequent creditor.

A preexisting creditor (i.e., a creditor who was in existence prior to the settlor transferring property in trust) must bring the fraudulent conveyance action within the later of four years after the transfer of a settlor's assets is made or one year after the transfer is or reasonably could have been discovered by the creditor. A subsequent creditor must bring the fraudulent conveyance within four years after the transfer of a settlor's assets is made.

A preexisting creditor has what is essentially an unlimited statute of limitations period to bring a fraudulent conveyance action because it can be brought within one year after the transfer is or reasonably could have been discovered. A creditor might not reasonable discover the transfer in trust until such time that the creditor has first reduced the action to judgment and conducted a judgment debtor examination. The problem with the statute as it now stands is that the term "preexisting creditor" is not defined. Consider a doctor who performs an operation and thinks all went well with the operation, engages in estate planning and transfers property in trust. At a later point in time the patient has complications and asserts that the doctor was negligent. Should this patient be considered a "preexisting creditor" even thought the patient never asserted a claim against the doctor prior to the doctor transferring assets to the trust? What about the engineer or architect who builds a bridge which falls down 20 years later. Is the plaintiff to be considered a "preexisting creditor"? If so, then no one who has been in business for any length of time could ever safely create a trust or otherwise engage in estate planning without risking the possibility that a transfer in trust might later be set aside, even though the "preexisting creditor" might be unknown to the settlor. Nonetheless, there comes a point in time when every doctor and every engineer should be able to arrange their estate planning affairs like anyone else and have the assurance that at some point in time it will not be undone. This bill attempts to provide that assurance but does so in a manner that balances the legitimate rights of the settlor's creditors.

Thus, it is important that the statute define a "preexisting creditor." A "preexisting creditor" is defined as one who either

(1) demonstrates, by a preponderance of the evidence, that they asserted a specific claim against the settlor before the settlor transferred assets to the trust; or

(2) within four years after the settlor transferred assets to the trust, files an action in court against the settlor which asserts a specific cause of action based on an act or omission of the settlor that occurred before the transfer of assets to the trust.

Section 6:
This section adds a number of sections to existing law that clarify that an otherwise valid transfer restriction will not be invalidated even though:

(h) a settlor who is also a beneficiary is serving as a co-trustee or advisor to the trustee provided the settlor does not have a trustee power over discretionary distributions;

(i) a beneficiary of a third party settled trust is serving as sole trustee of the trust, a co-trustee or as an advisor to the trustee; or

(j) a settlor is given the authority to appoint a trust protector or a trust advisor.

Subsection (k) invalidates any unwritten agreement or understanding between a settlor, who is being retained as a beneficiary, and the trustee, which attempts to give the settlor rights greater than those that are permitted to be expressed in the trust instrument.

Section 7:
This section codifies the common law as now found and enunciated in the Restatement 2nd of Property, by adding a new section AS 34.40.115. This section states that assets subject to a power of appointment, whether a non-general power of appointment or a presently exercisable or testamentary general power of appointment, cannot be subjected to the claims of the donee's (holder's) creditors. The legal theory behind this statute is that until the donee exercises the power, the donee has not accepted control over the appointive assets that give the donee the equivalent of ownership. This statute provides that only until a testamentary or a presently exercisable general power of appointment is actually exercised, can the appointive assets be subjected to the payment of claims which a creditor might have against the donee of the power of appointment. This statute is taken from a similar statute in Rhode Island.

Section 8:
This section contains the effective dates.

HOMPESCH & EVANS
ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION
119 N. CUSHMAN STREET, SUITE 400
FAIRBANKS, ALASKA 99701-2879

TELEPHONE
(907)452-1700
FACSIMILE
(907)456-5693
EMAIL:
hompesch@hompesch.com

RICHARD W. HOMPESCH II
SUSAN L. EVANS

PROFESSIONAL STAFF
BARBARA CORY-HOMPESCH
ENROLLED AGENT (IRS)

March 30, 2003

VIA E-MAIL AND FAX

Representative Lesil McGuire
Juneau, Alaska

Re: The Trust Bill

Dear Representative McGuire:

I am writing with regard to the Trust Bill. As you know, the bill amends both AS 13.36 and AS 34.40. I am in favor of both amendments. My reasons are as follows:

Amendment to AS 13.36. I favor codifying the positions and listed powers of trust protectors and trust advisors because of the flexibility they add to trusts. If there is no built-in flexibility the beneficiaries and trustees inevitably end up in court grappling with issues unforeseen at the time the trust was created. I also favor the default rule that neither the trust protector nor trust advisor have fiduciary duty. Clients often name close family friends and advisors as trust protectors and trust advisors, recognizing that they would not be able to serve if they were held to the highest (fiduciary) standard of care.

Amendment to AS 34.40. I favor the amendments to AS 34.40 because they bring much-needed clarification to the section.

I am grateful for your attention to this matter.

Sincerely yours,

HOMPESCH & EVANS
A Professional Corporation

Susan L. Evans

SLE/

Patrick Rumley
3312 Purdue Street
Anchorage, Alaska 99508

February 28, 2003

Honorable Representative Lesil McGuire
State Capitol, Room 118
Juneau, AK 99801-1182

RE: New Trust Bill

Dear Representative McGuire:

I am writing to express my support and to encourage your serious consideration and support of a new trust bill soon to be proposed by Mr. Stephen Greer, a leading estate planning practitioner in Alaska. He has been instrumental in the passage of landmark legislation in this area for Alaska. He is also one of a small group of knowledgeable and competent specialists in the trust area who care enough to give freely of their time in furtherance of good public policy for our state. I have worked professionally with Mr. Greer and know that he approaches his practice and his contributions in the area of trust law with the highest integrity and professionalism.

I have worked in the estate planning area as a practicing lawyer and now am a financial consultant at a major brokerage firm in Anchorage. I have read the proposed legislation and supporting annotation from both a legal and financial perspective. My opinion is that the draft legislation is worthy of passage for several reasons: 1) it clarifies several important points left unaddressed by existing trust statute and not definitively resolved by common law 2) it provides for an unbiased "trust protector" to facilitate the intent of the trust in a cost effective way 3) it keeps Alaska competitive with its sister states in the area of trust administration to help attract more trust dollars.

You are in a position within the legislature to ensure that this bill receives serious attention and ultimate passage. I urge you to support the bill and pass it through your committee to the House for full consideration.

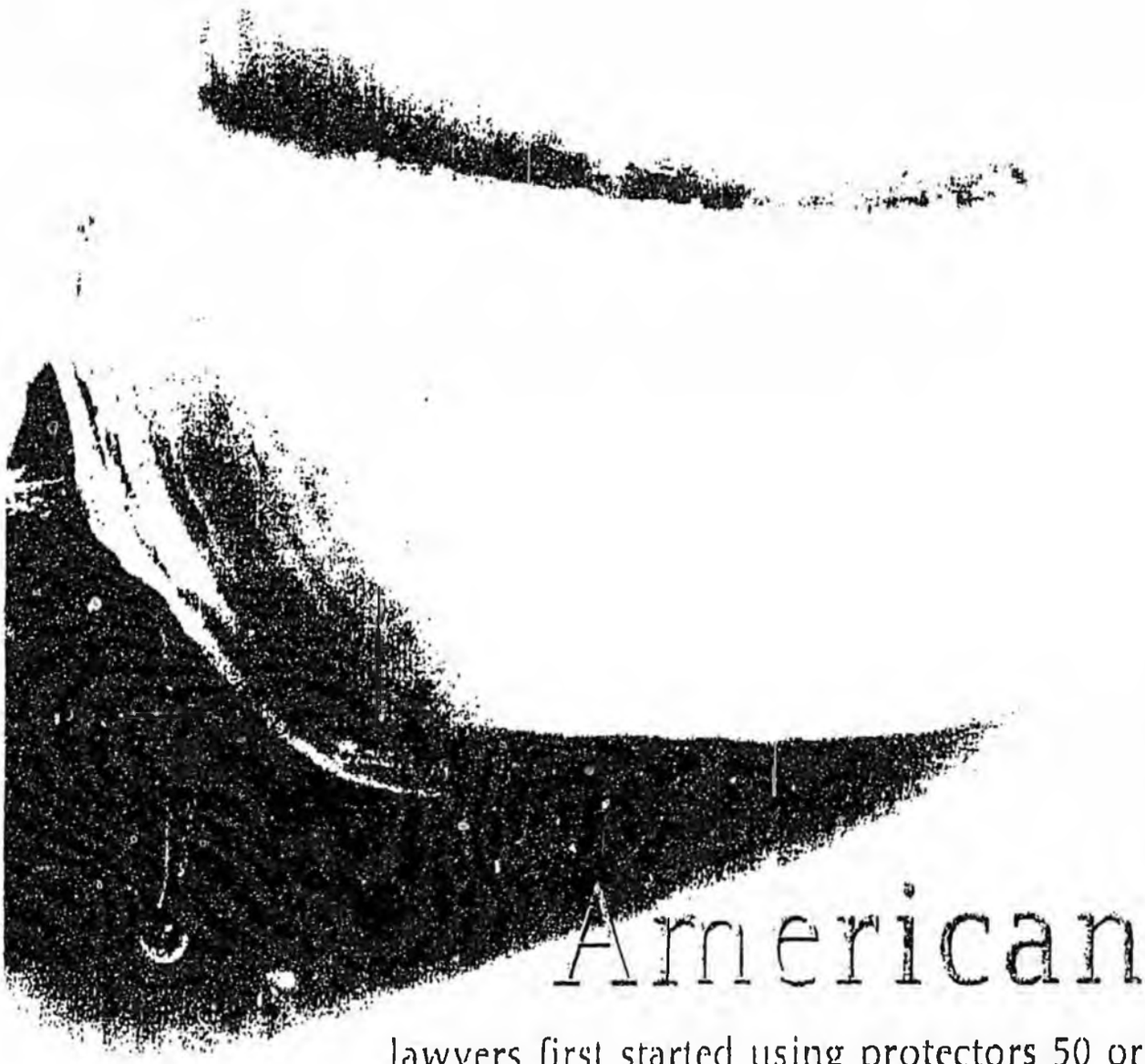
Sincerely,

Patrick Rumley

One of the challenges for lawyers drafting long-term irrevocable trusts is to come up with a framework that will achieve the client's goals for many years—in some cases for generations. Problem is, neither a family's needs nor the laws on estate tax are constants. The possibility that angelic toddlers will grow up to be family black sheep is always an issue. But the most immediate concern is the uncertainty surrounding federal estate-tax repeal: if the estate tax is permanently repealed, the wealth-transfer strategies most appropriate for clients could completely change. In fact, repeal could make certain provisions of existing trusts unnecessary or undesirable. The best that advisers can do for their clients right now is provide flexibility. To do that, they're adding a feature to domestic trusts that until recently was more familiar in the context of foreign ones. Planners are recommending that in addition to naming a trustee, clients also designate a trust protector, someone who can adapt various trust terms to accommodate changing circumstances.

This device recently came in handy with a trust Skip Fox, a lawyer at Schiff Hardin & Waite in Chicago, had prepared eight years ago for an elderly couple. Their estate plans indicated that when the second of them died, all of their assets would be divided into two trusts—one for each of their children. The trusts, funded with about $5 million apiece, were designed to terminate when the beneficiaries reached age 30, at which point they would receive the funds outright. The clients named a bank as trustee and a family friend as the trust protector. In that role, the friend had the power to add or delete beneficiaries within the family and to change the terms or the ages for distributing the money.

Several years after the second parent died, the corporate trustee found out that one of the beneficiaries, then 28, had a drug problem and was involved with a religious cult. If she received the trust principal two years later, as initially planned, it was likely to be spent on drugs or wind up in the hands of the religious group. The trustee notified the trust protector, who decided that the beneficiary shouldn't receive the outright distribution. Exercising his power, the protector directed that the funds be kept in trust for the rest of the beneficiary's life and that she receive discretionary distributions



American lawyers first started using protectors 50 or more years ago in offshore trusts aimed at asset protection. Ten years ago they showed up on domestic shores

of income and principal. The parents had no inkling of their daughter's problem when they prepared their estate plans, Fox says. Providing for a trust protector just seemed like a good way to address possible changes in the family situation.

Flexibility may be even more important in the growing number of states that have abolished the rule against perpetuities, opening the door for dynasty trusts that can continue forever, says Denis Kleinfeld, a lawyer with his own firm in Miami (see "Saving More Than Memories," April 2002). Plus with estate-tax repeal in flux, Kleinfeld notes, advisers need to keep open as many options as possible. Lately he and other lawyers have been urging clients to consider using trust protectors, sometimes called special trustees or trust advisers, in irrevocable and, in some cases, revocable trusts.

Although trust protectors have been prevalent in other countries for decades, they're something of a recent phenomenon in the United States, says Gideon Rothschild, a lawyer with Moses & Singer in New York. American lawyers first

Protectors were initially given limited powers. But lately the menu of options has expanded to look like the list of entrées available at a Red Lobster

started using protectors 50 or more years ago in offshore trusts aimed at asset protection, Rothschild says. Suspicious of foreign trustees, clients designated a friend, family member, or trusted adviser as a watchdog. About 10 years ago, U.S. lawyers began to use protectors in domestic trusts as well.

Protectors are most helpful in two kinds of trusts, says Mark Edwards, a lawyer at Poyner & Spruill in Charlotte, N.C. One is a trust that won't be funded until the person who sets it up, known as the grantor or the settlor, dies. With the grantor gone, someone must be entrusted to make tough personal decisions. And professional trustees don't want to make judgment calls about when to accelerate payments of principal, for instance. They prefer to deal with matters such as managing money, keeping records, and preparing taxes. So Edwards likes to leave such technical issues to the trustee and put personal decisions in the hands of a trust protector.

As trustee of a $6 million trust one of her clients created, Clare Springs, a lawyer at Titchell, Maltzman, Mark & Ohleyer in San Francisco, welcomed the participation of the client's son-in-law, who was given limited powers and responsibilities as protector. The trust beneficiaries included the protector's wife, daughter, and his wife's siblings. The protector made crucial decisions about how to divide the assets based on need, Springs says. For example, one sibling, who had a drug problem, needed cash right away to attend a detox program. The trust protector decided how to arrange for that without reducing the other beneficiaries' shares.

Trust protectors can also perform a key function with irrevocable trusts funded during life in order to get property out of the grantor's estate, Edwards says. Much as the grantor might like to be able to add beneficiaries, for instance, doing so would cause the trust property to be included in his estate for federal-tax purposes. But let's say the grantor has named his brother as protector. The brother could take that action instead, Edwards says. In this example, appointing a protector is a "transfer of judgment from the grantor to someone else to permit them to do what the grantor would have done if taxes hadn't interfered," Edwards says.

In drafting these provisions, lawyers don't have much legal authority to guide them. Very few U.S. court cases address the subject, and only three states—Delaware, Idaho, and South Dakota—have a statutory framework for trust protectors. The Delaware law, which refers to them as trust advisers, distinguishes between consent advisers, who approve or veto the trustee's initiatives, and direction advisers, who tell the trustee affirmatively what to do, says Don Sparks, a lawyer at Richards, Layton & Finger in Wilmington. Consent advisers are often sufficient to meet a client's needs, but direction advisers play a significant role with trusts that contain closely held business interests, Sparks says. That's because most families don't want a corporate fiduciary voting those shares. Therefore, Sparks drafts a trust document so whoever has the power to appoint subsequent protectors can switch from one type of adviser to the other.

The flexibility a protector provides can be useful for other reasons. Given all the recent bank mergers and changes at trust companies, for example, clients may want the freedom to switch trustees after their familiar trust officers have been replaced. Sparks says he almost always includes a provision enabling the protector to remove and replace a corporate trustee, no matter how long the trust is intended to last. Without such a provision, the parties may need to go to court.

A trust can make the protector's powers broad or limited, says Alexander Bove, a lawyer with his own practice in Boston. Initially grantors just gave protectors the power to remove or replace trustees or to veto distributions—for instance, in a trust authorizing fiduciaries to make discretionary payouts to beneficiaries. But lately the menu of options has expanded to the size of the list of available entrées at a Red Lobster, Bove says. Some trusts authorize the protector to add or delete beneficiaries within a family, to change distributions, to alter the manner in which beneficiaries receive property—either outright or in trust—to veto or direct investment decisions, and even to terminate the arrangement entirely.

Increasingly, lawyers recommend that protectors be able to change the trust to implement various tax strategies. Kleinfeld, for example, advises they be given the power when appropriate to change the situs, or location, for the trust to a jurisdiction that's more favorable for asset protection

or permits dynasty trusts. Likewise, given the continuing uncertainty about estate-tax repeal, it may also be a good idea to give protectors the ability to modify the trust to achieve the most favorable tax result, Kleinfeld says. That way, for example, if the estate tax is repealed, the protector could terminate the trust, and if the estate tax survives he could keep the trust going indefinitely.

Rothschild says he also uses protectors in revocable, or living, trusts, which are likely to become more popular during the next few years. As the applicable exclusion amount—what people can give away at death without triggering estate tax—rises incrementally from $1 million to $3.5 million by 2009, clients with bypass and marital trusts may need to rethink the formulas used to divide their estates between the two, he says. For the most part, the client can make the necessary adjustments himself as the tax law changes. But a client who's no longer competent can't modify his or her will. In such a case, a trust protector could make the necessary amendments to achieve the best tax solution. Another possibility is to set up a system of checks and balances, authorizing the trustee to make necessary amendments, but only with the protector's consent.

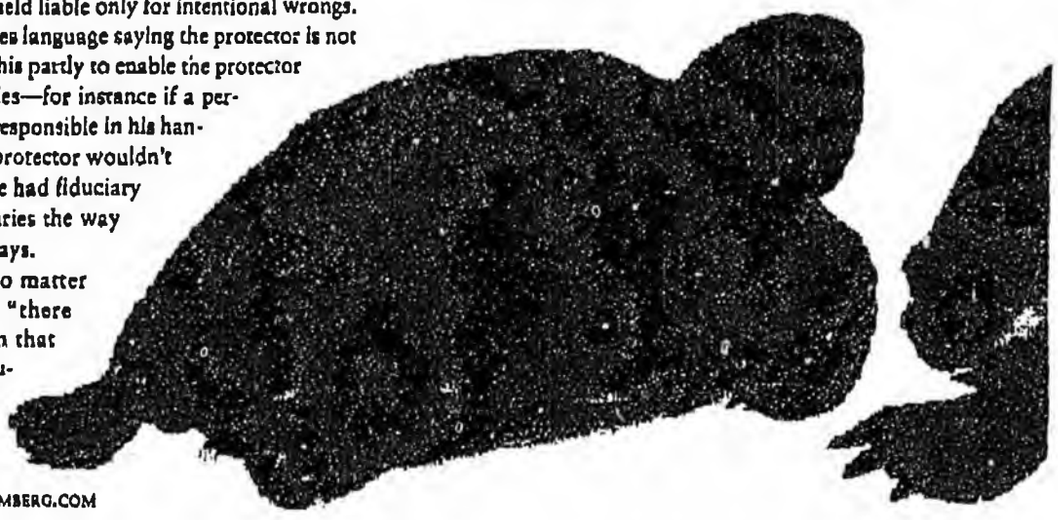
A word of caution: The more expansive a protector's list of powers gets, the greater the potential for problems. For example, if, through the protector, the grantor controls the disposition of trust assets, there's a risk that they'll be included in his or her estate, says Richard Dees, a partner at the Chicago law firm of McDermott, Will & Emery.

Another complication you'll need to address is the amount of discretion, and potential liability, the client wants the protector to have. There's some debate over whether, like a trustee, a trust protector is a fiduciary who's obliged to disregard any personal interest and put the welfare of the trust and its beneficiaries first. A fiduciary, who's held to the highest standard of care, can be found liable for negligence as well as intentional misdeeds. Without a fiduciary duty, the protector can be held liable only for intentional wrongs. Dees generally includes language saying the protector is not a fiduciary. He does this partly to enable the protector to remove beneficiaries—for instance if a person was extremely irresponsible in his handling of money. The protector wouldn't be free to do that if he had fiduciary duties to all beneficiaries the way a trustee does, Dees says.

But Bove thinks no matter what the trust says, "there is simply no question that the protector is a fiduciary." By operation of law, there's generally an implied duty to act as a fiduciary, he says. About the only exception is the rare case in which the protector is a beneficiary who could benefit personally from decisions he makes as trust protector.

A related question involves the potential liability of a trustee who acts on the protector's direction. By statute, Delaware, Idaho, and South Dakota all limit that liability. Elsewhere, some lawyers include language in the trust absolving the trustee of liability for taking orders from the

"Adding a third party, with his own lawyer, might make any conflict more likely, more complicated, and more expensive to resolve instead of easier and cheaper to resolve"

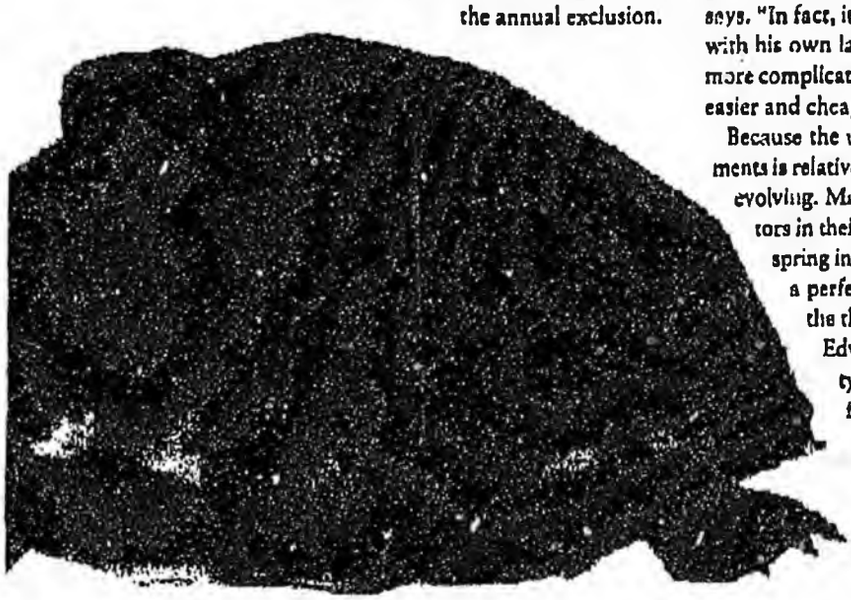


protector. But Bove believes that regardless of what state laws and trust documents say, "the trustee is under an absolute duty not to carry out any act that the trustee believes is against the interest of the trust or the beneficiaries." Any other result would be against public policy, he adds.

Given the potential liability of protectors, finding someone who's willing to take on these responsibilities can be a problem, lawyers say. Many corporate fiduciaries don't want the responsibility, especially when the powers are broad. With the power to terminate the trust and distribute the assets, for instance, there are no standards about right and wrong, says Steve Akers, managing director at Bessemer Trust in Dallas, who says there's "no way" he would accept that role. "If you [exercise the power] you could be sued. If you don't you could be sued," he says.

Of course, an equally important issue is determining whom the client can trust to serve as protector. Most people choose friends, personal advisers who know the family, close business associates, or family members who aren't beneficiaries. Depending on the specifics of their role and the time they spend fulfilling their obligations, they may serve for free or for minimal compensation.

It's important that the protector have some understanding of how a trust works and the pitfalls to avoid, lawyers say. For certain kinds of trusts, the protector needs to be careful that exercising his or her power doesn't ruin the tax advantages that go with that trust, Fox says. For example, with a marital trust, taking away income from the surviving spouse would deprive the client of the marital deduction. With a Crummey trust, denying the holder of a Crummey power the right to make withdrawals during the specified period each year could result in certain gifts to the trust being taxable, rather than eligible for the annual exclusion.



Another issue to raise with clients is whether they want to provide for successor protectors. Lawyers vary widely in their approach to this issue. At one end of the spectrum is Dees, who might give the protector the power to appoint his or her successor but limits the protector to acting while the grantor or the grantor's spouse is still alive. Dees, who drafts trusts to say that the protector doesn't have a fiduciary duty, worries that there will be no one to oversee the protector's significant powers after the grantor dies.

At the other end of the spectrum is Edwards, who writes the protector powers to survive the life of the grantor but doesn't generally provide for a method of succession. The powers given the protector reflect the grantor's confidence in that particular individual, he explains, and the client might not have that confidence in anybody else. Edwards did make an exception for one client who set up a trust for his mentally disabled child. The trust protector in that case was a psychologist involved in the child's care, and the client thought that person should be able to appoint a similarly qualified individual.

If a client decides to provide for successors, he'll also need to establish a mechanism for choosing them. Sparks, who deals regularly with dynasty trusts, lays out various options for clients. One possibility is to allow an income beneficiary to designate a successor. Often clients prefer to have a committee—say of three—who can take action by majority rule, he says.

Advisers should keep in mind that trust protectors are not a panacea, says Stephan Leimberg, president of Leimberg Information Services, a tax-law commentary service in Bryn Mawr, Pa. "If the beneficiaries should disagree with the trust protector, the beneficiaries may simply end up in litigation with the trust protector instead of the trustee," he says. "In fact, it's possible that the addition of a third party, with his own lawyer, might make any conflict more likely, more complicated, and more expensive to resolve instead of easier and cheaper to resolve."

Because the use of trust protectors in domestic arrangements is relatively new, lawyers' experience with them is still evolving. Many of the professionals who include protectors in their trust documents have only rarely seen them spring into action. And inevitably most efforts to draft a perfect clause for a particular client are based on the theoretical rather than the practical. Still, says Edwards, for clients who want or need flexibility, the trust protector is "one of the most useful tools in the estate planner's arsenal."

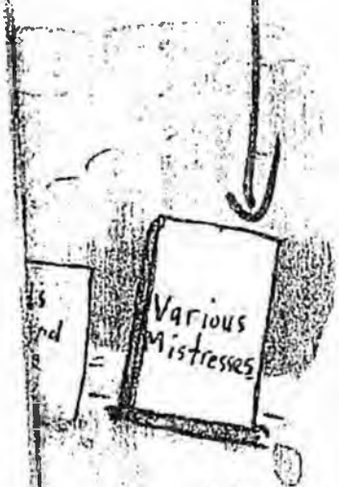
Deborah L. Jacobs, J.D., a business writer specializing in legal issues, often covers estate planning.

vel ■ Health & Family ■ Leisure & Arts

AL JOURNAL.

LL STREET JOURNAL.

THURSDAY, FEBRUARY 20, 2003 D1



Graham Roumieu

The Tax Shelter Next Door

To Avoid Higher Taxes at Home, Some Stash Cash in Out-of-State Trusts; the Case for Delaware

By Ruth Simon
And Rachel Emma Silverman

LOOKING FOR A place to set up a tax shelter? You don't have to go to some tropical island.

In an effort to shave state tax bills, attorneys and trust companies are encouraging clients to set up trusts, not out of the country, but merely out of state. The aim is to let your investments grow free of state taxes by setting up a trust account in a place with favorable tax laws. Someone in New York, for example, where state taxes are high, could set up a trust account in South Dakota, which has no state income tax.

The incentive to duck state taxes is likely to grow. Locked in their worst budget crisis in decades, close to half the states are considering raising taxes of various kinds, and California and Connecticut have proposals for income-tax increases on the table. At the same time, federal tax rates are being rolled back. Bottom line: A greater share of your total tax bill is likely to go to the state where you live.

Banks and trust departments are touting these trusts in newsletters, seminars and in meetings with clients, attorneys and financial advisers.

"Clients wishing to establish irrevocable trusts often assume those trusts should be located in their state of residence," J.P. Morgan Chase & Co. advises its upscale private bank clients in a newsletter. As state laws change, advisers "will need to be especially attentive in their search to find the best jurisdiction for establishing and administering trusts."

Delaware attracts a lot of money, partly because it has changed its laws to make them extremely friendly to out-of-state trusts. As long as the beneficiaries of a trust live out of state, it imposes no state income tax. "The national banks that do business in Delaware are pushing it very hard," says Joshua S. Rubenstein, a trust and estate lawyer in New York. Other states with favorable laws include Washington and Alaska. (See chart on page D2 for a list of state policies.)

How does an out-of-state trust work? Suppose you live in New York, which has a top tax rate of almost 7%, and have $1 million in stocks you want to sock away for a few years. If you keep the money in New York trust, you have to pay state tax on any capital gains or dividend income.

But the picture changes if you set up a trust in Delaware and stick the $1 million there. In that case, there is no state tax imposed on income and capital gains retained by the trust.

"With very wealthy clients, I feel I'm not doing my job if I don't mention there are states that ma. be attractive to them," says Dennis Belcher, a

Please Turn to Page D2, Column 1

How to Set One Up

If you're planning an out-of-state trust:

- **Find a lawyer** familiar with tax laws in the state where you live as well as the one where the trust actually will be located.
- **Hire a reputable trustee** in the target state.
- Remember: Beneficiaries may have to pay **state tax** on income the trust distributes.

Your state taxes may be rising soon; see page D2

emarry, hickens

in her family's plot. Michigan spouses make burial decisions. d with Mr. Techner: "Is there nts can be together?" The fu- lled. "Your stepmother gets to now. But upon her death, you. immediate next of kin. If you im and move him next to your your right."

o his stepmother and told her ther in her family's plot, "but one moment buried beside d carry out that threat, she sband be buried with his first attend the graveside service. ff these postmortem battles, ng California, Texas, Wash- pshire—have begun accept-

o Page D4, Column 5

In many other states, the odds of | About half of the estimated 1.9 | E-mail me at tom.herman@wsj.com.

The Tax Shelter Next Door: an Out-of-State Trust

Continued From Page D1

trust and estates lawyer in Richmond, Va.

The trust will still be subject to federal income taxes. And beneficiaries of the trust must pay state income taxes on any income paid out by the trust.

Setting up an out-of-state trust isn't cheap. For starters, you'll need to hire an attorney who understands the quirks of your home state's laws and the laws of the state you'd like to move your trust to. In California, for instance, an out-of-state trust may still be subject to some state tax if one or more of the beneficiaries live in the state.

It's also wise to have the trust documents reviewed by a lawyer in the state where the trust will be located. That can cost anywhere from a few hundred dollars to a few thousand dollars, depending on how complex the trust is.

Finally, you'll have to pay for the services of an out-of-state trustee, with the fees you pay determined by the amount of money under management. At Delaware's Wilmington Trust Co., for instance, fees start at 1% on the first $2 million in the trust with a $10,000 minimum fee.

Dealing with an out-of-state trustee can also be more complicated than what many people are used to. "People like being able to walk into the bank," notes Michael Fredlender, a partner with the accounting firm Grant Thornton LLP.

Where to Go

Here are five states that are particularly attractive for individuals to set up out-of state trusts. Trustees in these states generally charge an annual fee ranging from 0.5% to 1.25% of the assets in the trust.

STATE	TRUST SCREENING
Alaska	No state income tax.* Trusts may be subject to a 1,000-year limit. Asset protection laws against future claimants in cases like a divorce or a lawsuit.
Delaware	Delaware imposes no state income tax on trusts set up by non-residents if beneficiaries also reside out of state. A 110-year limit for real estate but no limits on other assets. Asset protection laws against future claimants.
Florida	No state income tax. Trust limit of 360 years.
South Dakota	No state income tax. Trusts can last forever.
Washington	No state income tax. Trust limit of 150 years.

*Some states, such as Alaska, have corporate income tax.

Such hassles make moving a trust not worth the bother for someone who has $500,000 or even $1 million in a trust, Mr. Fredlender says. But for multimillion dollar trusts, it could be worth the time and expense, he adds.

The tax beneficiaries face depends on where they live. If it's New York, they will be subject to that state's regular income tax. But if they've moved in the meantime to a state with no income taxes, such as Florida, they're avoid paying state taxes on the income.

Setting up an out-of-state trust correctly takes some work. To qualify for favorable treatment, the trust must be irrevocable, meaning you can't undo it later. At least one trustee must reside in the state where the trust is located. Many people choose to use a trust company set up in that location. South Dakota's tax laws are so attractive that Citigroup, which has a large credit-card processing operation there, has also set up a major trust outfit in the state.

Avoiding capital-gains taxes isn't the only attraction of going out of state. In many states a trust can last for a fixed period that's normally less than 100 years. But Delaware and more than a dozen other states allow trusts to go on for centuries or, in some cases, indefinitely.

"The trust can go on forever without any state taxes and with no federal death taxes," explains Max Gutierrez Jr., a trust and estates lawyer in San Francisco. An out-of-state trust may also provide better protection against creditors' claims in cases like a divorce or a lawsuit, trust lawyers say.

In some cases, it can make sense to situate your trust in a state that's not known as a tax haven. That's because each state has different rules that define whether the trust's income is taxable. For New York state to tax a trust, for example, the trust must be created by someone who lives in the state. "If you live in New Jersey, you can create a trust in New York with no New York or New Jersey income tax," says Gail Cohen, senior vice president and general trust counsel for Fiduciary Trust Co. International.

of their own: It's ... sic in western New York. Laura ... the defending champ. The sports world should care, but will it?

... runs Mac ... vately owned fish houses.

Mrs. McQuoid was directing operations from Mac's lakeside office, a 10-by-20 fish house that she said is indica-

April 20. (0... fristcenter.org.

—Stuart Ferguso

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 212
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Law
Title "An Act relating to trusts, including trust protectors, trustee advisors, transfers of property in trust, . . ."
BRU Civil Division
Component Commercial
Sponsor Representative McGuire
Requester House Labor and Commerce Committee
Component No. 2211

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
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)*

HB 212 provides for the appointment of a trust protector and a trust advisor. The bill also prevents creditors of beneficiaries from attaching assets transferred into a trust unless certain conditions are met by all parties, and establishes a statute of limitations regarding when creditors must bring an action for a fraudulent transfer claim.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson
Phone (907) 465-5370
Division Attorney General's Office
Date/Time 3/28/03 2:45 PM
Approved by: Joan M. Kasson for Gregg D. Renkes, Attorney General
Date 3/28/2003
Agency Department of Law

(Revised 9/2002 OMB)