

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 00/2

0901 HOUSE JUDICIARY

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 8  
 Bill Version: CSSB 276(FIN)  
 (S) Publish Date: 3/26/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title AIGA Assessment RDU Alaska Railroad Corporation  
 Component \_\_\_\_\_  
 Sponsor Rules  
 Requester By Request of the Governor 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

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

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 Railroad Corporation (ARRC) is a public corporation supported by revenues generated through its freight, passenger and real estate services. ARRC does not receive State subsidies for operations or capital improvements from the State.

This legislation has no fiscal impact on the operations of the ARRC.

Prepared by: Wendy Lindskoog, Director of External Affairs Phone 907.269.2498  
 Division Alaska Railroad Corporation Date/Time 3/24/04 4:22 PM  
 Approved by: Edgar Blatchford, Commissioner Date 3/24/2004  
 Agency Department of Community & Economic Development

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 9  
Bill Version: CSSB 276(FIN)  
(S) Publish Date: 3/26/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
Title: AIGA Assessment RDU: Insurance (116)  
Component: Insurance

Sponsor: Rules  
Requester: By Request of the Governor Component No.: 354

**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	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

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 legislation increases the Alaska Insurance Guaranty Association's (AIGA) ability to pay Alaska claims of insurers who become insolvent. It raises the current assessment limit for insurance companies from two percent to four percent of the member insurers net direct written premiums for a calendar year (AS 21.80). Based on 2002 premium activity for workers compensation insurance, an increase to four percent could generate a maximum assessment of approximately \$8 million annually. The legislation also allows all other lines of business to be assessed up to a maximum of two percent and allows AIDEA to provide guarantees for loans to the AIGA up to a maximum of \$30 million.

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

Prepared by: Linda S. Hall, Director Phone (907) 269-7900  
Division: Insurance Date/Time: 3/24/04 2:43 PM  
Approved by: Edgar Blatchford, Commissioner Date: 3/24/2004  
Agency: Community & Economic Development

**SB**

**284**



# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CS SB284(FIN)  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: OOG  
 Title An Act making information on PF Dividend RDU Elections  
application and voter registration records confidential Component Elections  
 Sponsor Senator Guess  
 Requester House Judiciary Committee Component No. 21

**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	0.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

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 Division will accept written requests by voters for who elect to keep their residential address confidential and not open to public inspection.  
  
 Forms will not be changed as a result of this legislation. Programming changes will be minimal.

Prepared by: Lauri Allred Phone 465-4611  
 Division: Division of Elections Date/Time 5/6/04 11:49 AM  
 Approved by: Laura A. Glaiser, Director Date 5/6/2004  
 Agency: Office of the Lt. Governor, Division of Elections

# ALASKA STATE LEGISLATURE

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



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

## House Judiciary Committee

### Memorandum

**To:** Leg. Legal  
**From:** Vanessa Tondini, Committee Aide  
House Judiciary Committee  
**Date:** May 7, 2004  
**Re:** CS Request

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Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1596\VA, SB 284, incorporating the attached two amendments (23-LS1596\VA.1 and A#2). The bill was passed out of committee today.

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

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

AMENDMENT #1 - PASSED

OFFERED IN THE HOUSE

BY REPRESENTATIVE MCGUIRE

TO: CSSB 284(FIN) am

1 Page 3, line 1:

2 Delete "and"

3

4 Page 3, line 2:

5 Delete "."

6 Insert "; and"

7

8 Page 3, following line 2:

9 Insert a new paragraph to read:

10 "(6) to a contractor who has a contract with a person entitled to obtain  
11 the information under (1) - (5) of this section to receive, store, or manage the  
12 information on that person's behalf; a contractor receiving data under this paragraph  
13 may only use the data as directed by and for the purposes of the person entitled to  
14 obtain the information."

Amendment 2

5/7/04  
Gara

Insert at p.2 line 23

~~(c) A voter identification number~~

"(d) Nothing in this section shall prohibit the release of a voter's voter accession number, provided that information may be released under other provisions of law."

Adopted

**Subject: Voter Number vs Ascension Number**  
**Date: Wed, 05 May 2004 16:31:12 -0800**  
**From: Tiffany Ryder <tiffany\_ryder@gov.state.ak.us>**  
**Organization: Office of the Governor**  
**To: Ryan C Peterson <ryan\_peterson@legis.state.ak.us>**

Ryan,

The difference between a voter number and an ascension number is that the voter number is used by the Division of Elections as the Official number voters use to identify themselves with an correspondence and or voting processes.

The voter number is a number assigned as a voter registers to vote. This number is assigned to the voter as long as the voter maintains contact with the Division. If the voter were to be deleted from the Voter Registration system due to the purge process and wished to reregister, a new number would be assigned.

The ascension number is a sequential number assigned to each voter as they register. This number is used only on voter list and is not an official number used for anything to identify the voter.

Call me at 321-5571 if you have any questions.

Thank you,

Tom Godkin

**Ryan Makinster**

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**From:** Tres [tres.lewis@acsalaska.net]  
**Sent:** Friday, May 07, 2004 12:11 PM  
**To:** Rep\_Lesil\_McGuire@legis.state.ak.us  
**Subject:** Senate Bill 284

Rep Lesil McGuire

I am a private investigator in Juneau, Alaska and have been for 19 years.

I have just become aware of Senate Bill 284 which closes access by the public to the address records of the Alaska Permanent Fund. While this bill sounds like a good thing to do it will cause many problems for people with legitimate needs for the information. Examples of legitimate needs are Process Servers attempting to locate witnesses and Defendants, Law Firms locating witnesses and Defendants, Private Investigators locating witnesses and insured parties. The insurance adjusters are another group that has legitimate needs and uses for the PFD file.

The Alaska Permanent Fund file is the most universal address file in the State of Alaska, Alaskans want their PFD so they provide accurate addresses. When I say it is the most universal file many Alaskans do not vote, do not own a car, do not own real estate, do not buy fishing licenses or hunting licenses these files all provide address information to the public they are the least up to date records. Even the Department of Motor Vehicle files on Auto Registrations which has some restrictions is not as up to date as the PFD file and I know that the Driver License file which is a closed file is not as up to date as the PFD file. However the people that most often need to be located all have a PFD and an address to which people like Process Servers and Investigators and Adjusters can and do use to conduct legitimate business.

Please consider having hearings on this bill and slow down the legislative process so that the groups affected by the closure of the records have a chance to provide you with information about how this will effect businesses and professionals in the State of Alaska.

An interesting side effect of the closure of the file will be an increase in costs to consumers who have legitimate business reasons to be able to locate accurate addresses and an increase cost to the State of Alaska because Criminal and Civil cases filed at the court house will take longer to process because summons and complaints will take longer to process.

If I can be of assistance please feel free to call me.

Tres Lewis  
Mendenhall Investigations Inc.  
227 7th Street Juneau, Alaska 99801  
E-mail lewis@ptialaska.net  
lewis@acsalaska.net  
Phone 907-586-3303  
Fax 907-586-2206  
Cell 907-723-8808

\*\*\*\*\*  
\*The World is Small if You Investigate.\*  
\*\*\*\*\*

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**Ryan Makinster**

---

**From:** Richard Norgard [Richard\_Norgard@admin.state.ak.us]  
**Sent:** Friday, May 07, 2004 11:30 AM  
**To:** Rep\_Lesil\_McGuire@legis.state.ak.us  
**Subject:** Senate Bill 284

Re. McGuire:

I have just learned of Senate Bill 284 which as I understand it would close off access to basic name/address information from PFD records which is now currently available to the public. This is an ill-advised move that had ramifications for investigators throughout the state of Alaska and I'm sure other occupations and agencies that may not be aware of it. I strongly urge you to delay action on this bill pending receipt of further public and industry input. I believe there will be unintended consequences to the public and for the conduct of both public and private business resulting from passage of this bill that may not have been part of the decision making process with this bill. Speaking for myself, this will have a direct impact on my ability to conduct investigations for the State of Alaska. Please table this to allow time for further analysis and comment. Thank you.

Rich Norgard  
Investigator III

## Ryan Makinster

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**From:** klamser@starband.net  
**Sent:** Friday, May 07, 2004 11:03 AM  
**To:** Rep\_Lesli\_McGuire@legis.state.ak.us  
**Subject:** Senate Bill 284

Hello,

I am the president of the Alaska Investigator's Association. I found out about Senate Bill 284 within the last thirty minutes and I want to strongly urge the members of the House to delay passage of this bill until the next session so that the Legislature has time to hear meaningful public testimony about the ramifications of the legislation as currently crafted.

Our association represents both private and public sector investigators working for law firms, insurance companies, the Office of Public Advocacy and the Public Defender's Office.

I believe that the net effect of Senate Bill 284 will be to protect the "bad guys" while offering only minimal privacy protection to state consumers. Congress has been dealing with this issue for at least the last six years. So far, the result in Congress has been the Gramm-Leach-Bliley Act. I believe that GLB (as it's commonly known in the industry) does a good job of balancing consumer privacy interests with the legitimate, lawful needs of businesses, plaintiffs and defendants. I would be happy to provide some real life examples of how this legislation restricts access to consumer records while still providing for access by such entities as law firms, insurance company investigators and adjusters, licensed investigators working on behalf of insurance companies or law firms and licensed process servers with court process to serve.

Please slow down, folks, and take the time to consider other impacts of this bill.

Thank you very much for taking the time to read this. I would be happy to talk with anyone interested in further information.

Andy Klamser  
(907) 299-1989  
home (907) 235-6863  
klamser@alaskainvestigations.com  
P.O. Box 4394, Homer, AK 99603

## Ryan Makinster

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**From:** Jeffery D. Blake [jeffb@stewartak.com]  
**Sent:** Friday, May 07, 2004 9:31 AM  
**To:** Representative Lesil McGuire@legis.state.ak.us  
**Cc:** Bryan Merrell (E-mail)  
**Subject:** SB284

Dear Ms. McGuire:

I work for Stewart Title of Alaska in Anchorage, my home address is 14201 Old Seward Highway, Anchorage, Alaska 99515. With regard to SB 284 which would make the address of permanent fund applicants confidential, I would have to object to this procedure since in the title insurance business we need that resource in order to comply with the provisions of the Rosenberg case when we are dealing with notice requirements under a foreclosure (either a summary foreclosure or a judicial foreclosure) without this tool we cannot comply with the dictates of the court in order to give proper notice to parties who are in danger of losing their property.

Feel free to contact me in the event you need to discuss this matter further or would need further information about its impact on the real estate process.

Jeff Blake

## Ryan Makinster

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**From:** Lori Davey [lori@motznik.com]  
**Sent:** Thursday, May 06, 2004 12:06 PM  
**To:** Representative\_Dan\_Ogg@legis.state.ak.us; Representative\_Jim\_Holm@legis.state.ak.us;  
Representative\_Les\_Gara@legis.state.ak.us;  
Representative\_Lesil\_McGuire@legis.state.ak.us;  
Representative\_Max\_Gruenberg@legis.state.ak.us;  
Representative\_Ralph\_Samuels@legis.state.ak.us;  
Representative\_Tom\_Anderson@legis.state.ak.us  
**Subject:** SB 284 Comment

Dear House Judiciary Committee Members,

I understand that SB 284 is now in the House Judiciary Committee. The passing of this bill will significantly impact Motznik Information Services ability to survive as a small business delivering accurate and concise information about voters. The accuracy of our voter lists provided to candidates will suffer due to lack of the residential address and lack of voter number will make it very difficult for us to associate phone numbers with the voter database. This also will mean that campaign costs will increase and the information will be less accurate.

Motznik Information Services utilizes the voter identification number and resident address to accurately identify voters when we provide our legislators mailing lists, walking lists, and telephone lists. The voter ID and the resident address are the only way we have to provide local candidates with the assembly district voter lists from the State of Alaska voter file. This bill, as written, will be detrimental to the candidates, legislators and ultimately the voters of Alaska.

I see that it is part of the bill to allow government agencies to have access to the information for their needs, but most government agencies access the information through private third party companies such as Motznik. To restrict the current information from being sold to Motznik, it will negatively impact these government agencies, process servers, and employers from accessing the necessary information.

I have read that the reason for this bill's introduction is an attempt to prevent stalkers from gaining private information from public sources. If that is the requirement, then there is a precedence set for the State of Alaska DMV file to ensure that those who have legitimate reason to access the file have the information necessary. It would also help to take the PFD file off the state web site and ensure that it is provided to those businesses that provide information to those who have legitimate access to it. Please contact me if you have any questions or require

further justification.

*Lori Davey, President*  
Motznik Information Services  
8301 Briarwood Street, Suite 100  
Anchorage, AK 99518  
PH. (907) 344-6254 FAX: (907) 344-1759

[www.motznik.com](http://www.motznik.com)



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## Ryan Makinster

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**From:** Joe Crosson [jcrosson@pubks.com]  
**Sent:** Thursday, May 06, 2004 12:04 PM  
**To:** Jeff Thormodsgaard  
**Cc:** representative\_lesil\_mcguire@legis.state.ak.us; representative\_eric\_croft@legis.state.ak.us;  
representative\_kelly\_wolf@legis.state.ak.us; representative\_peggy\_wilson@legis.state.ak.us;  
representative\_bill\_williams@legis.state.ak.us;  
representative\_jim\_whitaker@legis.state.ak.us;  
representative\_bruce\_veyhrauch@legis.state.ak.us;  
representative\_bill\_stoltze@legis.state.ak.us; representative\_pauli\_seaton@legis.state.ak.us;  
representative\_ralph\_samuels@legis.state.ak.us;  
representative\_norman\_rokeberg@legis.state.ak.us;  
representative\_dan\_ogg@legis.state.ak.us; representative\_carl\_moses@legis.state.ak.us;  
representative\_carl\_morgan@legis.state.ak.us;  
representative\_kevin\_meyer@legis.state.ak.us;  
representative\_beverly\_masek@legis.state.ak.us;  
representative\_bob\_lynn@legis.state.ak.us; representative\_pete\_kott@legis.state.ak.us;  
representative\_albert\_kookesh@legis.state.ak.us;  
representative\_vic\_kohring@legis.state.ak.us;  
representative\_beth\_kerttula@legis.state.ak.us;  
representative\_mary\_kapsner@legis.state.ak.us;  
representative\_reggie\_joule@legis.state.ak.us; representative\_jim\_holm@legis.state.ak.us;  
representative\_cheryll\_heinze@legis.state.ak.us;  
representative\_mike\_hawker@legis.state.ak.us;  
representative\_john\_harris@legis.state.ak.us;  
representative\_david\_guttenberg@legis.state.ak.us;  
representative\_max\_gruenberg@legis.state.ak.us;  
representative\_carl\_gatto@legis.state.ak.us; representative\_les\_gara@legis.state.ak.us;  
representative\_richard\_foster@legis.state.ak.us; representative\_hugh\_fate@legis.state.ak.us;  
representative\_nancy\_dahlstrom@legis.state.ak.us;  
representative\_harry\_crawford@legis.state.ak.us;  
representative\_john\_coghill@legis.state.ak.us;  
representative\_sharon\_cissna@legis.state.ak.us;  
representative\_mike\_chenault@legis.state.ak.us;  
Representative\_Ethan\_Berkowitz@legis.state.ak.us;  
Representative\_Tom\_Anderson@legis.state.ak.us  
**Subject:** RE: Oppose SB 284

Jeff,

Thank you for your prompt response.

I have attempted to discern the intent as set forth in SB 284 and your reference to 15.07.127. While some voter data is part of the public record, much of it is currently not public as reference on lines 9-14 of the first page in SB 284. It is my understanding that SB 284 will add addresses to that list of restricted information, and as I read it, will not be available for purchase. With addresses as an 'Opt out', candidates campaigning for an office will find much of their walking list incomplete.

With regards to PFD, I don't see how its uniqueness and lack of 'precedent' is an argument for protection. There are public records in other States that are not considered public in Alaska and visa versa.

It is important to keep in perspective that application for PFD is an OPTIONAL application where the citizens of the state receive (given) public monies. As I recall, details of the issuance of checks by the SOA Department of Revenue are still of public record.

Further, PFD addresses are used daily by our government and businesses

customers. Eliminating addresses will hamper the search ability of these government agencies and business.

While I can certainly appreciate concerns for keeping this information private due to stalking reasons, there are other ways to accomplish privacy without eliminating access. The DMV data is a successful example of restricting database access to only those "entities" (not individuals) who have a legitimate need to do so.

I again urge the OPPOSITION to SB 284 as it is currently drafted.

Thanks,  
Joe Crosson  
(907) 646-4517

-----Original Message-----

From: Jeff Thormodsgaard [mailto:Jeff\_Thormodsgaard@legis.state.ak.us]  
Sent: Thursday, May 06, 2004 9:40 AM  
To: Joe Crosson  
Subject: SB 284

Dear Sir,

I wanted to write you in regards to SB 284. The PFD application should not be a means to divulge more information about individuals than they want. The Dividend itself is unique to our State only, therefore the information gathered should be protected on the basis that no other State has this sort of information made public so no precedent has been made. You can access the very same information on the Alaska State Legislatures homepage from the voter registration database, which is public information and can be purchased under AS (Alaska Statute) 1507 127. I appreciate your comments, I would like to talk to you further so I may understand your perspective better and be able to relate it to my boss.

Thank you for taking the time to write the legislature.

--  
Jeff Thormodsgaard  
Staff for Representative Guttenberg  
(907)465-4708 Phone  
(907)465-3519 Fax  
Akdemocrats.org

**Ryan Makinster**

---

**From:** M.F. Bailey [akbailey@gci.net]  
**Sent:** Friday, May 07, 2004 1:33 PM  
**To:** Rep\_Lesil\_McGuire@legis.state.ak.us  
**Subject:** Senate Bill 284

Representative Lesil McGuire

I am a private investigator in Anchorage, Alaska and I have just become aware of Senate Bill 284. Please delay action on this bill until it can be studied further.

Thank you for your assistance.

Mary F. Bailey  
On Call Business Services  
PO Box 220725  
Anchorage, AK 99522  
907-929-4394 Office  
907-929-4395 Fax  
907-346-1831 Home



ALASKA STATE LEGISLATURE  
SENATOR GRETCHEN GUESS

Memorandum

Date: May 5, 2004

To: Representative Lesil McGuire, Chair House Judiciary

From: Senator Gretchen Guess

Re: *Hearing Request for CS SB 284: "An Act making information on a permanent fund dividend application, other than the applicant's name, confidential, and relating to disclosure of that confidential information; and relating to confidential information in voter registration records."*

---

Please consider this a formal request to hear CS SB 284 in House Judiciary.

CS SB 284 accomplishes three goals regarding keeping personal information confidential.

- First, it makes all applicant information, other than the name, on the Permanent Fund Dividend (PFD) application confidential.
- Second, it makes private much of the individual information on the voter registration records private.
- Third, it allows an Alaskan to keep their residential address private on voter registration records if they provide a different mailing address.

CS SB 284 has had hearings in the both Senate State Affairs and Senate Finance committees, receiving all Do Passes from all members in both committees, and passed the Senate Floor unanimously.



ALASKA STATE LEGISLATURE  
SENATOR GRETCHEN GUESS

Sponsor Statement

*SB 284: "An Act making information on a permanent fund dividend application, other than the applicant's name, confidential, and relating to disclosure of that confidential information; and relating to confidential information in voter registration records."*

**BACKGROUND**

Currently, the list of Permanent Fund Dividend (PFD) applicants and their address are public information. The information on voter registration records is also public.

**PROBLEM**

Although this issue appears benign on the surface, to victims of violent crimes, disclosing their mailing addresses can be a terrifying and potentially life-threatening mistake. For example, this would apply to survivors of domestic violence who are in hiding or live in an undisclosed location for safety reasons. Making names public when filing for a PFD or registering to vote defeats this purpose, can be potentially lethal, and effectively prevents some people from doing either.

**SOLUTION**

This legislation accomplishes three goals regarding keeping personal information confidential.

- First, it makes all applicant information, other than the name, on the Permanent Fund Dividend (PFD) application confidential.
- Second, it makes private much of the individual information on the voter registration records private.
- Third, it allows an Alaskan to keep their residential address private on voter registration records if they provide a different mailing address.

This solution provides safety for those people who need it, and provides privacy for all Alaskans who want it. CS SB 284 has had hearings in both Senate State Affairs and Senate Finance committees, receiving all Do Passes from all members in both committees.

23-LS1596V.1  
Kurtz  
5/5/04

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 284(FIN)

1 Page 2, line 3, following "address.":

2 Insert "However, notwithstanding an election under this subsection, a voter's  
3 residential address may be disclosed to

4 (1) a watcher appointed under AS 15.10.170 and, in the case of a  
5 watcher appointed by an organization or group sponsoring or opposing an initiative,  
6 referendum, or recall group, authorized by the director;

7 (2) an observer of a recount provided under AS 15.20.440(b) by a  
8 candidate, political party, or organized group having a direct interest in the recount; or

9 (3) the subject of a recall election if the voter voted in the recall  
10 election."

Dear Legislators;

After five years, two domestic violence shelters, one protective order, counsel from seven attorneys, extensive internet research and a name and social change my son and I are free from a man who will kill us if he finds us. Today life is grand. We have a home, a great job, lots of friends and a wealth of information on domestic violence. My son enjoys playing hockey for the Boy's and Girl's Club and we are pretty normal, content tax paying folk. I earned over \$110,000 last year and paid almost 30% in taxes. No problem.

My question is this; will my son or I ever be able to collect our PFD with out endangering our lives? The PFD database is available to anyone. It's cheap and easy for anyone to access. This could mean death for us.

I do lead a very public life, under my new legal name, as a Loan Officer. This allows for me to provide for my son and not rely on social services. I stopped hiding and covering a long time ago but that doesn't mean I need to make it easy for him to find us. I still use prudence and common sense.

Some say I should just be happy to be alive and moving on with my new life. I am. Does this mean I should be so happy that I don't at least try to collect a PFD to start my son's college fund? He will never see a dime in child support. If you say this is how it has to be then I will be ok with that. It just doesn't seem right. Wouldn't it be possible to pass some sort of legislation that can protect domestic violence survivor's names and address' from the public PFD database? I doubt I am the only woman in this situation.

Respectfully submitted,



PS: I have been busy trying to get my court approved name change documents off the State's name index. A very nice lady by the name of Christine Johnson, Deputy Alaska Court System Administrator, was very helpful and I am hopeful she will be successful in permanently removing my records from the site. I know I am not the only one who needs this extra precaution in place to help keep us safe as well.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CS SB284(FIN)  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: OOG  
 Title An Act making information on PF Dividend RDU Elections  
application and voter registration records confidential Component Elections  
 Sponsor Senator Guess  
 Requester House Judiciary Committee Component No. 21

**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	20.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>20.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	20.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>20.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)

In order for voters to elect to keep their residence address confidential and not open to public inspection, the Division will have to revise all related forms and make programming changes to the Voter Registration Election Management System (VREMS).

This figure includes the cost of replacing existing forms used for voter registration (13.5) GF and costs associated with programming changes to VREMS (6.5) GF.

Prepared by: Lauri Allred Phone 465-4611  
 Division: Division of Elections Date/Time 5/5/04 3:50 PM  
 Approved by: Laura A. Glaiser, Director Date 5/5/2004  
 Agency: Office of the Lt. Governor, Division of Elections

SB

288

# ALASKA STATE LEGISLATURE



*Interim:*  
600 East Railroad Avenue  
Wasilla, Alaska 99654  
(907) 376-3370  
(907) 376-3157 Fax

*Session:*  
State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-6600  
(907) 465-3805 Fax

## SENATOR LYDA GREEN SENATE DISTRICT G

### MEMO

DATE: 3/31/2004

To: House Judiciary  
Representative Lesil McGuire  
Attn: Vanessa Tondini

From: Senator Lyda Green  
Jacqueline Tupou

RE: Request for a hearing for Senate Bill 269 and Senate Bill 288

---

I am requesting a hearing for Senate Bills 269 and Senate Bill 288 in House Judiciary. I have attached copies of the bills, sponsor statements, fiscal notes and supporting information. Thank you in advance for your time and attention in this matter.

JT

Questions....please feel free to call x3712

# ALASKA STATE LEGISLATURE



(907) 376-3157 Fax

**SENATOR LYDA GREEN**  
SENATE DISTRICT G

## SPONSOR STATEMENT FOR SENATE BILL 288

**“An Act relating to certain determinations concerning placement of a child in emergency custody and temporary placement hearings in child in need of aid proceedings; and providing for an effective date.”**

Current state law provides for the Court to determine, within 48 hours of removal from the home, whether probable cause exists for believing a child is in need of aid and to authorize a child's temporary placement out of the home. However, the language used by the courts in making determination varies and is often not in compliance with federal requirements. Senate Bill 288 mandates the Court to specifically use the language that continued placement in the home is “contrary to the welfare” of the child when exercising its authority to remove a child in need of aid. This legislation ensures that state law complies with federal requirements.

By requiring Contrary to the Welfare language in the first Court order following removal, the Office of Children's Services has the opportunity to increase federal reimbursement through the Title IV-E program for the care of the child and associated expenditures incurred by OCS for managing the foster care program. The Office of Children's Services estimates that passage of this legislation will result in an increase in federal Title IV-E receipts of \$500,000 in fiscal year 2005.



## Alaska State Legislature

Senate Majority Web: <http://www.akrepublicans.org>

Sponsor: Senator Lyda Green  
Current Version: CSSB 288(JUD)  
Contact: Jacqueline Tupou, 465-6600  
Date: March 15, 2004

### Fact Sheet for: Senate Bill 288

**Short Title:** Emergency Child Custody Placement

**Summary:**

- Conforms to federal requirements the language a judge must use at a temporary custody hearing when determining placement of a child who has previously been removed from home.

**Benefits:**

- Requires a judge to explicitly state whether continued placement in the child's home is "contrary to the welfare" of the child.
- Ensures consistency in court rulings.
- The Office of Children's Services estimates that this bill will allow the department to receive an additional \$500,000 in federal Title IV-E funds in FY05.

**Background:**

Currently, the court must hold a hearing within 48 hours of removing a child from their home to determine placement. However, the language used by the courts in making determinations varies and is often not in compliance with federal requirements.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSSB 288(HES)  
 ( S ) Publish Date: 2/11/04  
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):  
 Title: DETERMINATIONS OF COURT IN CINA  
PROCEEDINGS

RDU: Children's Services  
 Component: Foster Care Base Rate

Sponsor: GREEN  
 Requester: SENATE (HES)

Component No.: 2236

**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	500.0	500.0	500.0	500.0	500.0	500.0
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>500.0</b>	<b>500.0</b>	<b>500.0</b>	<b>500.0</b>	<b>500.0</b>	<b>500.0</b>

CAPITAL EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010

CHANGE IN REVENUES (0)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
	500.0	500.0	500.0	500.0	500.0	500.0

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
1002 Federal Receipts	500.0	500.0	500.0	500.0	500.0	500.0
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
<b>TOTAL</b>	<b>500.0</b>	<b>500.0</b>	<b>500.0</b>	<b>500.0</b>	<b>500.0</b>	<b>500.0</b>

Estimate of any current year (FY2004) cost: \_\_\_\_\_

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

**POSITIONS**

Full-time	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Part-time						
Temporary						

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

This legislation would clarify language regarding the findings that a court is required to make at an initial hearing for a child that is removed emergently from his/her home by the Department of Health and Social Services. Currently, the court hears these cases and determines whether or not the Department has acted prudently in removing the child from his/her home. The court issues findings as to whether or not it is contrary to the welfare of the child to remain in his own home; however, the language in the court order may not reflect the exact wording that includes "contrary to the welfare" language. In order for the Department to receive federal reimbursement for the costs associated with the care of the child, the court must issue findings that specifically state that it is

Prepared by: Sherry Hill, Special Assistant  
 Division: Office of the Commissioner  
 Approved by: Joel S. Gilbertson, Commissioner  
 Agency: Department of Health and Social Services

Phone: 465-1618  
 Date/Time: 02/03/2004  
 Date: 02/03/2004

FISCAL NOTE  
FN # 1

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. SB 288

**ANALYSIS CONTINUATION**

"contrary to the welfare" of the child to remain in his/her current home. These findings must be made at the first court hearing. Including this language in the court's initial findings will enable the Department to increase federal reimbursement for a significant number of children who enter state custody, emergently. The OCS projects it may see an increase of approximately 5% in its Federal Title IVE penetration rate, which may equate to an estimated \$500,000 in federal revenue for costs necessary to care for the child.

The Office of Childrens Services has identified an upward trend in the foster care base rate caseload. In FY2003 there was a 3.2% increase in children who received benefits from the foster care base rate program. The Office of Children's Services anticipates that the foster care caseload will increase another 3% in FY2004 and FY2005. With the additional federal receipts, the OCS intends to continue to cover the basic ongoing costs of raising a child, as well as ensure continuity of foster care base rate payments and the continued success of the foster care program.





SB

299



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SEDROR, MILLS, GIVENS & HEAPHEY**

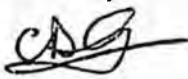
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BRIAN J. STIBITZ  
THOMAS V. WANG, JR.

**MEMORANDUM**

TO: Will Fancher, Manager  
Cornerstone Credit Services, LLC

FROM: Chris D. Gronning 

DATE: March 22, 2004

FILE NO: C-3570-9999

RE: Amendments to AS 09.68.115

---

In my March 9, 2004 memorandum, I made reference to a legal maxim: The greater encompasses the lesser. This is a longstanding common law principle that has been used by state and federal courts in a variety of settings. I used this general principle to illustrate that one who is empowered to impose a fee also has the power to impose a lesser fee, or to waive the fee entirely. In the context of AS 09.68.115(a)(2), this principle recognizes that one who has the legal authority to collect a fee or charge for a bad check, necessarily has the power to waive that fee or charge. No express language need be added to the statute to confirm this right.<sup>1</sup>

The 'greater includes the lesser' maxim has found historical expression in Latin (*In eo quod plus sit, semper inest et minus*: in the greater is always included the lesser

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<sup>1</sup> Indeed, the power to waive a right is itself expressly stated in another maxim: *Quilibet potest renunciare juri pro se introducto*: everyone may renounce or relinquish a right introduced for his own benefit. Black's Law Dictionary. I do not know whether the Alaska Supreme Court has ever quoted this principle, but it certainly recognizes it in the general common law concept of waiver, which the Alaska Supreme Court defines as the "voluntary relinquishment of a known right." *Miscovich v. Tryck*, 875 P.2d 1293, 1301 (Alaska 1994); *Milne v. Anderson*, 576 P.2d 109, 112 (Alaska 1978).

also; Black's Law Dictionary) and French (*Qui peut le plus peut le moins*: he who can do more can do less).

This principle has been recognized and applied by the United States Supreme Court. In 1897, the Court ruled that the legislative authority to ban public use of certain common land contained within itself the power to impose lesser limits on public use of the land: "The right to absolutely exclude all right to use necessarily includes the authority to determine under what circumstances such use may be availed of, as the greater power contains the lesser."<sup>2</sup> This general principle has been applied by the United States Supreme Court at least as recently as 1986, when the Court recognized that: "The greater power to completely ban casino gambling necessarily includes the lesser power to ban advertising of casino gambling...."<sup>3</sup> However, the Supreme Court has also recognized that the exercise of certain powers may be constrained by Constitutional provisions. For example, the principle may not be used by the government to withhold services based on constitutionally impermissible factors such as race and religion.<sup>4</sup>

State courts have also recognized the 'greater includes the lesser' principle. What follows is a short sample of case quotes and citations.

"A greater power may include a lesser power when the lesser power is one of the same character with the greater and is essential to its execution.... The principle that "the lesser is included in the greater," followed in civil proceedings involving the interpretation of contractual instruments, may, nonetheless, be invoked in the construction of a constitutional provision if it be necessary to give effectiveness to such a provision."<sup>5</sup>

"The sovereign power in a state to create, organize and classify cities includes the power to enlarge their limits by annexation. And, because the greater includes the lesser, the state may delegate the power of annexation to the cities and prescribe the mode, method and conditions by and under which the delegated authority may be exercised by

---

<sup>2</sup> *Davis v. Massachusetts*, 167 US 43, 48 (1897).

<sup>3</sup> *Posada D. Puerto Rico Assoc. v. Tourism Co.*, 478 US 328, 345-346 (1986). Although the maxim itself is not disputed, its above quoted application in *Posada* is not unchallenged: "...Although we do not dispute the proposition that greater powers include lesser ones, we fail to see how that syllogism requires the conclusion that the state's power to regulate commercial activity is 'greater' than its power to ban truthful, nonmisleading commercial speech. Contrary to the assumption in *Posada*, we think it quite clear that banning speech may sometimes prove far more intrusive than banning conduct." *44 Liquor Mart, Inc. v. Rhode Island*, 517 US 484, 511 (1996). In effect, the Supreme Court recognizes that in our constitutional scheme, regulating speech is at times a greater power than regulating conduct, and the power to regulate the latter does not therefore always include the power to regulate the former.

<sup>4</sup> *Yick Wo v. Hopkins*, 118 US 356 (1886); *Sherbert v. Verner*, 374 US 398 (1963).

<sup>5</sup> *Application of Lamb*, 169 A.2d 822 (Sup. Ct. App. Div., N.J. 1961), internal citations omitted.

the cities. But the ultimate power of annexation, like the power to grant franchises, rests exclusively in the state.”<sup>6</sup>

“[T]he First Amendment is a complete and absolute defense to any prosecution under [Kentucky statute] §KRS 121.310(1). That is, the greater includes the lesser... Since the First Amendment extends so far as to protect hate speech, it likewise protects an employer’s communications which are subject to the inference of coercion or direction.”<sup>7</sup>

“Because it has discretion to decline jurisdiction over a declaratory judgment action in its entirety, it follows that a court may decide some of the issues raised and refused to rule on others. The maxim that the greater includes the lesser applies; if the court may choose to rule on all or none of the issues presented, it may decide only those it finds appropriate for a declaration.”<sup>8</sup>

Alaska courts also recognize the ‘greater includes the lesser’ principle in the context of certain criminal law settings: “A lesser included offense is ‘necessarily included’ in the offense charged when it would be impossible, in the context of the case, to convict of the charged offense without also convicting of the lesser.”<sup>9</sup>

---

<sup>6</sup> *Washington v. State ex rel Bowen v. Kruegel*, 409 P.2d 458 (Wash. 1965).

<sup>7</sup> *Kentucky Registry of Election Finance v. Bevins*, 57 SW3d 289, 292 (Ky. 2001)

<sup>8</sup> *Henglein v. Colt Industries*, 260 F.3d 201 (2001).

<sup>9</sup> *Willet v. State*, 836 P.2d 955, 958 (Alaska App. 1992), internal citations omitted.

# ALASKA STATE LEGISLATURE

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



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

## House Judiciary Committee

### Memorandum

**To:** Leg. Legal  
**From:** Vanessa Tondini, Committee Aide  
House Judiciary Committee  
**Date:** March 26, 2004  
**Re:** CS Request

---

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1603\A, SB 299, incorporating the attached two amendments. The bill was passed out of committee today.

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

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

#1 - PASSED  
Amendment to SB 299 ("17<sup>th</sup> version")  
by Brunberg

page 1 line 9 delete "beginning" and insert "commencing"

page 1 line 10 delete "begins" and insert "commences"

8B 299  
conceptual A # 2 - PASSED  
my Rep. Greenberg

P. L. 11  
Alter "Diva" Insert "a"  
Alter "830" Insert "fe"

Conceptual SB 299  
Amendment #3\*  
by Rep. ~~Anthony~~ Gara - FAILED

P.I. L. ~~CAVANO~~

~~After "plus", Insert "a"~~

After "\$30", Insert "~~fee~~, but the plaintiff  
may waive collection of <sup>the \$30</sup> ~~any~~ fee"

# ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH



ALASKA  
STATE CAPITOL  
JUNEAU, ALASKA  
99801-1182

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

MEMO

March 25, 2004

To: Representative Lesil McGuire

Subject: HB 516

The House State Affairs Committee amended HB 516 in one important respect. The Committee added language allowing a party that received an insufficient fund check to waive the \$30 fee imposed by HB 516. The committee was concerned that a small business not believe that it was legally "required" to assess a fee or else be in violation of law. The Committee believed that if a plaintiff wanted to, they could waive the fee. The way the bill reads as it was introduced did not allow that waiver. I have seen letters that discuss intent of the bill without the amendment but clear language in a bill is always preferable.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Bruce Weyhrauch".

Bruce Weyhrauch

Cc: Rep. Holm  
Rep. Samuels  
Rep. Gara  
Rep. Anderson  
Rep. Ogg  
Rep. Gruenberg

Alaska State Legislature

Senator Con Bunde  
District P

Vice Chair: Senate Finance Committee  
Chair: Senate Labor & Commerce Committee  
Member: Legislative Budget & Audit Committee

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(907) 465-4843

During Interim:  
716 W. Fourth Avenue  
Anchorage, AK 99501-2133  
(907) 269-0181

**MEMORANDUM**

DATE: Tuesday, March 16, 2004  
TO: Rep. Lesil McGuire, Chair, House Judiciary Committee  
FROM: Senator Con Bunde *CBunde*  
RE: Hearing Request for SB 299 Bad Check Penalty

---

I respectfully request a hearing of SB 299 before the House Judiciary Committee.

SB 299 seeks to clarify AS 09.68.115, the statute that pertains to "bounced checks" and to clarify current law that leaves businesses vulnerable to litigation that questions their costs for collecting on insufficient-funds checks.

This bill proposes to impose a flat fee of \$30 for a bounced check, which more accurately reflects the cost of collecting on these bad checks and frees the creditor from the burden of having to document "costs incurred" on each bounced check. Currently this fee can be up to, but no greater than \$25.

Passage of SB 299 will make it less likely for the statute to be challenged and will put Alaska on par with other states that specify a statutory penalty fee for bad checks and lessens the burden currently placed on businesses as they attempt to collect payment for goods they have already provided to their customers.

It is my understanding that you have been provided copies of SB 299, the sponsor statement, fiscal note and letters of support in advance of this request. If you need any additional documents, please don't hesitate to call my staff, Jane Alberts, at 465-3844 and she can assist you.

## Senate Bill 299

The purpose of Senate Bill 299 is to clarify AS 09.68.115, Alaska's "bounced check" statute, in response to recent litigation which seeks to have creditors maintain an account and defend their costs of collecting for bad checks.

The potential problem with AS 09.68.115 is that it does not allow aggrieved creditors, or their agents, to assess a fixed surcharge on bounced checks. Rather, the statute provides, as a prerequisite to suing for statutory penalties, a plaintiff must first give the maker of a bounced check the opportunity to satisfy the obligation by paying the face amount of the check plus "costs incurred by the plaintiff up to a maximum of \$25.00." This is problematic, as the creditor must, in addition to bearing the burden of recovering the bounced check, now maintain an accounting ledger to defend their "costs" in collecting the check.

Many states have enacted bounced check statutes, which explicitly allow creditors to assess a statutory penalty for each bounced check. For example, in California, the payee of a bounced check may add a "service charge" of up to \$25.00; in Oregon, a "reasonable fee representing the cost of handling and collection" up to \$25.00 may be collected; in Washington, a "reasonable handling fee," which is not capped by statute may be collected; and in Wyoming, the "collection fee" can be up to \$30.00.

The Alaska Statute should not be tied to expenses incurred and should be raised to \$30.00 to accurately reflect the cost of collecting bounced checks. Banks are charging creditors up to \$25.00 just to process the bad check on their account. These are direct, out of pocket expenses, and do not include the time required to draft and mail a letter, make phone calls, etc. The creditor should not have an additional burden placed upon it by having to document "costs incurred" on each bounced check.

This change will make it less likely for the statute to be challenged and will put Alaska's statute in the mainstream of other state statutes specifying penalty fees for bad checks. It will also lessen a potential new burden on businesses as they attempt to collect money due for goods and services they have provided to customers.

**BANKSTON, GRONNING, O'HARA,  
SEDROR, MILLS, GIVENS & HEAPHEY**


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MICHAEL R. MILLS

BARBRA Z. NAULT  
STEVEN T. O'HARA  
JOHN M. SEDOR  
BRIAN J. STIBITZ  
THOMAS V. WANG, JR.

**MEMORANDUM**

TO: Will Fancher, Manager  
Cornerstone Credit Services, LLC

FROM: Chris D. Gronning 

DATE: March 9, 2004

FILE NO: C-3570-9999

RE: Amendments to AS 09.68.115

---

I have reviewed Alaska's "bad check" statute, AS 09.68.115, as well as the proposed amendments to it contained in SB 299 and HB 516. Generally, AS 09.68.115 is intended to provide an efficient collection procedure for creditors holding dishonored checks, while also allowing check writers an opportunity to avoid the statutory penalties if they act promptly to make good the checks upon receiving notice from the check holder or the check holder's designee.

In most circumstances the statute works as intended. The defendant is given notice of the dishonored check and of the statutory penalties if the deficiency is not cured, and is given the opportunity to cure by paying the check and the costs, which are capped at \$25. The \$25 cap understates the costs usually incurred in handling and processing dishonored checks, and in sending out the statutorily required notice and demand for payment. However, problems arise when a defendant, after notice, fails to cure, and the plaintiff must file an action to collect the debt. Because a plaintiff is allowed to recover costs up to \$25, courts recognize that if costs are less than \$25, only the lesser amount may be recovered. Defendants may use the Alaska Civil Rules' discovery process to demand that plaintiffs show the exact costs incurred in handling their specific check. Although the

costs, without exception, exceed \$25, much of the additional litigation costs incurred in this process is unrecoverable, which defeats the efficient collection purpose of the statute. Replacing the cost language with a flat \$30 amount will eliminate these problems, and restore the efficient collection of these checks.

SB 299, which passed the Senate on a 17-0 vote on March 4, 2004, amends AS 09.68.115(a)(2) by deleting the phrase, "at least," and the phrase, "costs incurred by the plaintiff up to a maximum of \$25." It replaces the latter phrase with, "\$30." These amendments solve the problem discussed above. HB 516 as originally presented to the House State Affairs Committee, was identical to SB 299. However, the House State Affairs Committee, although accepting the changes described above, added the phrase, "but the plaintiff may waive collection of any fee" at the end of the sentence. I understand Committee members wanted to clarify that the plaintiff had the power to waive the \$30. For the reasons explained below, I believe the additional language will be problematic.

As an initial matter, the plaintiff already has, and always will have, the power to waive any cost or charge. There is a legal maxim stating: "The greater encompasses the lesser." This principle simply means that one who has the power to impose a particular penalty, fee, or charge, always has the power to impose a lesser penalty, fee, or charge, or to impose none at all, *i.e.*, to completely forego or waive any charge. This principle applies to the "bad check" statute. The current language allows a plaintiff to recover certain costs, and does not expressly state the plaintiff may waive those costs. But the plaintiff still has the power to collect less than the costs incurred, or nothing at all. I understand in your own business, you have often waived costs under the current statute. You would have this same ability under the language of SB 299. The plaintiff would always be able to ask for less than \$30, or for nothing, in the demand for payment. Inserting the phrase, "but the plaintiff may waive collection of any fee" adds no rights or powers which the plaintiff does not already have.

However, this language does raise the prospect of new problems that could undermine the efficiency goal of the statute in the same way that the current language does. A defendant or attorney will look for a way to turn the statutory language to their advantage. They may argue to the court that a plaintiff is not "being fair" in refusing to waive the fee. The defendant may invoke the litigation discovery process to inquire about a plaintiff's prior waivers; the circumstances in which waivers are made or are not made; whether plaintiff has given "appropriate" or "reasonable" consideration to making a waiver; whether plaintiff has considered any "evidence" a defendant has proffered as justifying a waiver (and will this mean a plaintiff must grant some type of hearing to a defendant to present evidence before the plaintiff can decide not to waive a fee?); whether plaintiff has adopted a written policy or developed an internal "practice" governing when waivers are or are not to be given (and perhaps failed to apply it to the defendant in "this" case); whether a plaintiff is showing inappropriate favoritism in

granting waivers to a particular group, class, or category of defendants; or whether the plaintiff is otherwise "misusing the power to grant a waiver."

None of these factors may actually exist, or even be relevant; the statute's efficiency is undermined or completely defeated where a creditor is forced to spend time and money responding to a discovery request detailing its "history of prior waivers," or its "waiver policy." A defendant may argue endlessly about why the Legislature chose to recognize, in this solitary instance, a plaintiff's power of waiver; whether this implies some Legislative intent or policy that plaintiffs "should", or "must", consider granting waivers; or must expressly state they are not waiving the fee; or must state why they are not waiving the fee.

The point is not that a defendant would ever be able to successfully force a plaintiff to waive the fee; the point is that plaintiffs could face the same, or even greater, litigation burdens under the waiver language than they currently face. This language adds nothing to the rights of a plaintiff or a defendant, but raises the potential for question, argument, and expense that would undercut the purpose of the statute. I believe the efficiency goals of the statute would be better served by omitting the proposed language regarding waiver.

RECEIVED  
SEP 9 2003

IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

CORNERSTONE CREDIT )  
SERVICES, LLC, )  
 )  
Plaintiff(s), )  
 )  
vs. )  
 )  
SHELISSA F. REED d/b/a )  
JACK AND JILL CHRISTIAN )  
NURSERY SCHOOL d/b/a )  
CALEB'S CHRISTIAN SCHOOL, )  
 )  
Defendant(s). )  
\_\_\_\_\_ )

Case No. 4FA-03-502 CI

ORDER GRANTING IN PART AND  
DENYING IN PART  
PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT

Cornerstone Credit Services moves for summary judgment on a number of counterclaims asserted by Ms. Reed. Based on the briefing of the parties, the court grants some and denies others.

The court denies the motion as to the \$25 surcharge. The court finds that "costs incurred by the plaintiff up to a maximum of 25" requires actual costs. AS 09.68.115(a)(2).

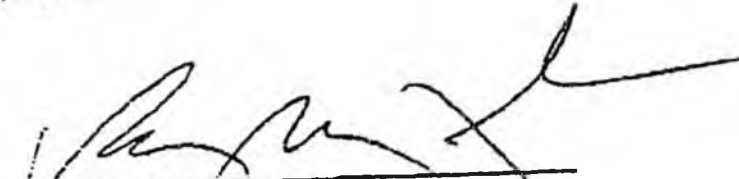
The court grants the motion that claims of FDCPA violations are barred as relating to any communications prior to one year before the filing of the counterclaims filed on March 24, 2003.

The court grants summary judgment as to thirty-day notice requirement in FDCPA.

The court grants summary judgment as to all usury counterclaims except those as to AS 45.45.040.

All other parts of the motion are denied.

Dated this 22<sup>nd</sup> day of December, 2003.

  
RAYMOND M. FUNK  
District Court Judge

Fetz  
 Ballou-SP  
mt 12-23-03  
Clerk

# Service Fees for Returned Checks

Revised for November 2003

## INTERNET & CHECK SERVICES PROGRAM ACA International

Alabama.....\$30 <i>Ala. Code § 8-8-15 (2002).</i>	Idaho.....\$20 or the face amount of the check, whichever is the lesser, plus 12% interest per annum from the date of dishonor <i>Idaho Code § 28-22-105 (2002).</i>
Alaska.....\$25 <i>Alaska Stat. § 09.68.115 (2002).</i>	Illinois.....\$25 or all costs and expenses including reasonable attorney's fees incurred in collection of check, whichever is greater <i>810 Ill. Comp. Stat. 5/3-806 (2002).</i>
Arizona.....\$25, plus any actual charges assessed by the financial institution of the holder, payee or assignee of the holder or payee as a result of the dishonored instrument <i>Ariz. Rev. Stat. § 44-6852 (2003).</i>	Indiana.....An amount not to exceed \$20, plus an amount equal to the actual charge by the depository institution for each returned or dishonored instrument. <i>Ind. Code § 26-1-3.1-502.5 (2002).</i>
Arkansas.....\$25, plus the amount of any fees charged to the holder of the check by any financial institution as a result of the check not being honored <i>Ark. Code Ann. § 4-60-103 (2002).</i>	Iowa.....\$30 <i>Iowa Code § 554.3512 (2003).</i>
California.....\$25 for the first check and a service fee of up to \$35 for each subsequent check to that same payee <i>Cal. Civ. Code § 1719 (2003).</i>	Kansas..... Not to exceed \$30 <i>Kan. Civ. Proc. Code Ann. § 60-2610 (2002).</i>
Colorado.....\$20 posted at point-of-sale and, if the NSF check has been assigned to a licensed collection agency for collection, 20% of the face amount of the check, but not less than \$20 <i>Colo. Rev. Stat. § 13-21-109 (2002).</i>	Kentucky.....\$25 posted at point-of-sale <i>Ky. Rev. Stat. Ann. § 314.040 (2002).</i>
Connecticut.....\$20 <i>Conn. Gen. Stat. § 52-565a (2003).</i>	Louisiana.....\$25 or 5% of face amount, whichever is greater, posted at the point-of-sale <i>La. Rev. Stat. Ann. § 9:2782 (2002).</i>
Delaware.....Undetermined *	Maine.....Undetermined *
District of Columbia...\$15 or fee prescribed by Mayor, but only for dishonored checks in payment of any tax assessment or fees due to the government of the District of Columbia <i>D.C. Code Ann. § 1-333.11 (2002).</i>	Maryland..... Up to \$35. <i>Md. Code Ann., Com. Law § 15-802 (2002).</i>
Florida.....\$25, if the face value does not exceed \$50, \$30, if the face value exceeds \$50 but does not exceed \$300, \$40, if the face value exceeds \$300, or 5% of the face amount of the check, whichever is greater <i>Fla. Stat. ch. 68.065 (2002).</i>	Massachusetts.....Undetermined *
Georgia.....\$30 or 5 percent of the instrument, plus the amount of any fees charged to the holder of the instrument by a bank or financial institution as a result of the instrument not being honored. <i>Ga. Code Ann. § 13-6-15 (2002).</i>	Michigan.....\$25 to be paid within 7 days, excluding weekends & holidays, after notice was mailed. If not paid as requested above, but within 30 days after notice was mailed, the service fee is \$35. <i>Mich. Comp. Laws § 600.2952 (2002).</i>
Hawaii.....\$20. <i>Haw. Rev. Stat. § 490:3-506.5 (2002).</i>	Minnesota.....Not to exceed \$30; posted conspicuously at point-of-sale <i>Minn. Stat. § 604.113 (2002). Renumbered from the former 332.50.</i>
	Mississippi.....\$30 <i>Miss. Code Ann. § 97-19-57 (2002).</i>

THIS INFORMATION IS NOT INTENDED AS LEGAL ADVICE AND MAY NOT BE USED AS LEGAL ADVICE. ANY INFORMATION CONTAINED IN THIS MATERIAL IS SUBJECT TO CHANGE AND INTERPRETATIONS OF THE STATUTES MAY VARY. THIS INFORMATION SHOULD NOT BE USED TO REPLACE THE ADVICE OF YOUR OWN LEGAL COUNSEL. THE ABOVE INFORMATION IS A SUMMARY OF THE APPLICABLE STATUTES. THE STATUTES SHOULD BE REVIEWED IN THEIR ENTIRETY FOR A COMPLETE UNDERSTANDING OF THE LAW REGARDING SERVICE FEES.

Missouri..... A reasonable service charge, not to exceed \$25, plus an amount equal to the actual charge by the depository institution for the return of each unpaid or dishonored instrument.  
*Mo. Rev. Stat. § 570.120 (2003).*

Montana.....Up to \$30  
*Mont. Code Ann. § 27-1-717 (2002).*

Nebraska.....Undetermined \*, but for NSF checks written for the purchase of goods, Neb. Rev. Stat. § 2-710 (2002) provides a seller or a person in the position of the seller, one who has become responsible for the price of the goods on behalf of his principal, may assess a buyer for incidental damages incurred as a result of the buyer's breach. Such incidental damages may include any commercially reasonable charges.  
*See Freyermuth v. Credit Bureau Services, Inc., 248 F.3d 767 (8th Cir. 2001).*

Nevada.....Up to \$25  
*Nev. Rev. Stat. § 597.960 (2002).*

New Hampshire.....Not more than \$25 unless otherwise expressly authorized by written agreement with the consumer  
*N.H. Rev. Stat. Ann. § 358-C:5 (2002).*

New Jersey.....Undetermined \*

New Mexico.....Undetermined \*

New York.....The lesser of the amount agreed upon, if contracted for, or \$20  
*N.Y. Gen. Oblig. Law § 5-328 (2003).*

North Carolina.....\$25  
*N.C. Gen. Stat. § 25-3-506 (2003).*

North Dakota.....\$25  
*N.D. Cent. Code § 6-08-16.2 (2001).*

Ohio.....\$30 or 10% of the face amount of the instrument, whichever is greater, plus the amount of any fees charged to the holder of the check by any financial institution as a result of the check not being honored  
*Ohio Rev. Code Ann. § 1319.16 (2003).*

Oklahoma.....Undetermined \*

Oregon.....\$25  
*Or. Rev. Stat. § 30.701 (2001).*

Pennsylvania.....Undetermined \*

Rhode Island..... \$25  
*R.I. Gen. Laws. § 6-42-3 (2002).*

South Carolina.....\$30  
*S. C. Code Ann. § 34-11-70 (2002).*

South Dakota..... \$30 plus any applicable sales tax, posted conspicuously at point-of-sale  
*S.D. Codified Laws § 57A-3-421 (2001).*

Tennessee.....An amount not to exceed \$20  
*Tenn. Code Ann. § 47-29-102 (2002).*

Texas.....\$30  
*Tex. Bus. & Com. Code Ann. § 3.506 (2001).*

Utah.....\$20  
*Utah Code Ann. § 7-15-1 (2002).*

Vermont.....Undetermined \*

Virginia.....\$35, plus legal interest from the date of the check and the bad check return fee charged to the holder by his bank  
*Va. Code Ann. § 8.01-27.1 (2003).*

Washington.....Reasonable handling fee; when not paid within 15 days, a collection cost not to exceed \$40 or face amount of check, whichever is less and interest at 12% per year from date of dishonor  
*Wash. Rev. Code § 62A.3-515 (2003).*

West Virginia.....\$25  
*W. Va. Code § 61-3-39e (2003).*

Wisconsin.....All reasonable costs and expenses in connection with the collection of the amount for which the check or draft was written  
*Wis. Stat. § 403.414 (2003).*

Wyoming.....\$30  
*Wyo. Stat. Ann. § 1-1-115 (2002).*

\*Undetermined means that a specific service charge has not been set by state statute. See the full state's statutes for remedies by civil action or criminal penalties which may allow a civil penalty assessment.

It is suggested that service fees be posted at the point-of-sale in all states. ACA cannot be responsible for recent changes in the law regarding service charges and civil penalties. Remember to check with your attorney before establishing any procedures based upon this information.

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For more information on each state's check laws, including criminal penalties, contact ACA Member Services for purchase and update information on the *ICSP Statutory Penalties Guide*.

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# **Letters of Support for SB 299**



ALASKA

## **National Federation of Independent Business**

### **Statement of Support for SB 299**

#### **Bad Check Fee**

**February 16, 2004**

The Alaska Chapter of the National Federation of Independent Business has 2,500 members, making it the largest small-business advocacy group in the state.

NFIB supports SB299 to remove language from the current law that has been interpreted to require a business to document the costs of collecting bad checks. The proposed legislation simply states that the amount of the check plus \$30 can be collected for bad checks. The language referring to "costs incurred" has been removed.

Bad checks are a real problem for many businesses and they should not be burdened with additional paperwork in order to charge a fee for these checks. We encourage your quick action in passing this legislation.

**Vote YES on SB 299**

Submitted by Thyes Shaub on behalf of NFIB/Alaska.

Randy L. Weaver, CPA  
Controller  
Phone: (907) 474-7711  
Fax: (907) 474-5921  
randy.weaver@alaska.edu

209 Butrovich Building  
910 Yukon Drive, Suite 209  
PO Box 755120  
Fairbanks, AK 99775-5120



UNIVERSITY  
of ALASKA  
*Many Traditions One Alaska*

February 17, 2004

RE: Senate Bill 299

Senator Con Bunde, Chairman  
Senate Labor and Commerce Committee  
Alaska State Capitol, Rm. 506  
Juneau, AK 99801

Dear Senator Bunde:

I am writing on behalf of the University of Alaska to request your support for the passage of Senate Bill 299. The current bad check statute allows us to collect up to \$25 to cover "costs incurred" for collecting a bad check. This creates an accounting burden on businesses to track and record costs of collection, instead of assigning a fixed penalty to the person writing the bad check. The proposed change in the statute would set a reasonable handling fee that is not subject to challenge.

Please help Alaska businesses by eliminating the requirement to document the costs of collecting bad checks. Many other states have removed this administrative burden by simply assigning a fixed penalty.

On behalf of university business officers, I strongly urge you to support SB299 to make this simple change.

Sincerely,

A handwritten signature in cursive script that reads "Randy L. Weaver".

Randy L. Weaver, CPA  
Controller

Sent via fax (907-465-3871)

02/18/04

17:22

9072619141

SBS CREDIT DEPT

0001

**FAXED**  
02/18/04

February 16, 2004

Senator Con Bunde  
Alaska State Capitol Room 508  
Juneau, AK 99801  
VIA FACSIMILE: 907-465-3871

RE: Senate Bill 299

Senator Bunde,

I would like to go on record supporting the passage of Senate Bill 299. Our current bad check statute allows us to collect up to \$25.00 to cover "costs incurred" for collecting the bad check. The problem is that this creates an accounting burden for businesses to track and record all costs instead of assigning a fixed penalty. The proposed change in the statute would set a reasonable handling fee that is not subject to challenge. That's the way many other states deal with the same problem.

Alaska's businesses should not have additional burdens placed upon them by having to document costs incurred while trying to collect their bad checks.

We strongly urge you to support SB 299 to make this simple change.

Respectfully Submitted,

Spenard Builders Supply, Inc.

Jill Jaeckel  
Legal Assistant  
907-261-9165  
FAX 907-261-9141

e-mail: [jjaeckel@sbsalaska.com](mailto:jjaeckel@sbsalaska.com)

FROM : D OF AKINC

FAX NO. : 9073382690

Feb. 16 2004 04:21PM P3

# D.of Alaska Inc

1345 RUDAKOF CIRCLE SUITE 102 ANCHORAGE, ALASKA 99508  
PHONE: 333-6776 FAX: 338-2690

February 16, 2004

Senator Con Bunde  
Alaska State Capitol, Rm 506  
Juneau, AK 99801

RE: Senate Bill 299

Senator Bunde:

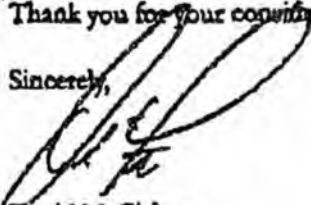
As the owner of Denny's Restaurant in the State of Alaska, I want to go on record supporting the passage of Senate Bill 299. Our current bad check statute allows us to collect up to \$25 to cover "costs incurred" for collecting the bad check. The problem is that this creates an accounting burden for businesses to track and record all costs instead of assigning a fixed penalty. The proposed change in the statute would set a reasonable handling fee that is not subject to challenge. That's the way many other states deal with the same problem.

Alaska's businesses should not have additional burdens placed upon them by having to document costs incurred to collect their bad checks.

We strongly urge you to support SB 299 to make this simple change.

Thank you for your consideration in this matter.

Sincerely,



David M. Fiches,  
President

cc: Shelly Ryan  
Corner Stone Credit Services



*Copy to: Shelly Ryan  
Comptroller Credit & Sec*

February 16, 2004

Senator Con Bunde  
Alaska State Capitol, Room 506  
Juneau, AK 99801

RE: SENATE BILL 299

Dear Senator Bunde:

I want to go on record as supporting the passage of Senate Bill 299. Our current bad check statute allows us to collect up to \$25 to cover "costs incurred" for collecting the bad check. The problem is that this creates an accounting burden for businesses to track and record all costs incurred instead of assigning a fixed penalty. The proposed change in the statute would set a reasonable handling fee that is not subject to challenge. That's the way many other states deal with the same problem.

Alaska's businesses should not have additional burdens placed upon them by having to document costs incurred to collect their bad checks.

We strongly urge you to support SB 299 to make this simple change.

Very truly yours,

Ada P. Bower  
Comptroller



**WILLIAMS EXPRESS INC.**

February 12, 2004

Senator Con Bunde  
Alaska State Capitol, Rm 506  
Juneau, Ak 99801

Re: Senate Bill 299

Dear Senator Bunde,

It is time for us to make a change in the way our statutes address handling fees for bad checks. Alaska statute allows businesses to charge up to \$25.00 to cover "costs incurred" vs. other states assigning a reasonable handling fee that is not up to challenge. Our system creates the unnecessary accounting burden of tracking, recording and documenting costs incurred in order to collect on bad checks.

I want to go on record supporting the passage of Senate Bill 299 and I strongly urge you to support this change.

Respectfully

A handwritten signature in black ink, appearing to read "Ernest B. Madsen", with a long horizontal flourish extending to the right.

Ernest B. Madsen  
Director - Williams Express - Alaska  
3201 C. Street, #700  
Anchorage, Alaska 99503  
(907) 273-3300

Feb 16 04 01:45p

Michael R. Davidson

907-561-6075

P. 1



Davidson Enterprises  
P.O. Box 241528  
Anchorage, Alaska 99524  
907-561-8036  
Fax 907-561-6075

**Senator Burdick:**

I want to go on record supporting the passage of Senate Bill 299. Our current bad check statute allows us to collect up to \$25 to cover "costs incurred" for collecting the bad check. The problem is that this creates an accounting burden for businesses to track and record all costs instead of assigning a fixed penalty. The proposed change in the statute would set a reasonable handling fee that is not subject to challenge. That's the way many other states deal with the same problem.

Alaska's businesses should not have additional burdens placed upon them by having to document costs incurred to collect their bad checks.

We strongly urge you to support SB 299 to make this simple change.

Sincerely, Michael Davidson

**L & J ENTERPRISES INC. dba/THREE BEARS**

10575 Kenai Spur Hwy. Kenai, AK. 99611 Ph. (907) 283-6577 Fax (907) 283-6576

February 16, 2004

Senator Bonds:

I would like to go on record supporting the passage of Senate Bill 299. Our current bad check statute allows us to collect up to \$25 to cover "costs incurred" for collecting the bad check. The problem is that this creates an accounting burden for businesses to track and record all costs instead of assigning a fixed penalty. The proposed change in the statute would set a reasonable handling fee that is not subject to challenge. That's the way many other states deal with the same problem.

Alaska's businesses should not have the additional burdens placed upon them by having to document costs incurred to collect their bad checks.

We strongly urge you to support SB 299 to make this simple change.

Sincerely,

David A. Weisz  
Senior VP

FEB-12-2004 THU 11:20 AM

FAX NO. 00000000000000000000

P. 01/01



## Anchorage Fracture & Orthopedic Clinic

3260 PROVIDENCE DR., SUITE 200  
ANCHORAGE, ALASKA 99508  
(907) 562-3145 • FAX 561-3967

- DECLAN R. NOLAN, M.D.
- RICHARD W. GARNER, M.D.
- THOMAS R. VASILEFF, M.D.
- RICHARD D. MICEVOY, M.D.
- ADRIAN B. RYAN, M.D.
- DAVIS C. PETERSON, M.D.
- STEPHEN S. TOWER, M.D.
- LESLIE P. DEAN, M.D.
- GEORGE D. RHYNEER, M.D.
- URSULA M. SPENCER, M.D.

- Diplomate American Board of Orthopaedic Surgery
- Fellow American Academy of Orthopaedic Surgeons

February 12, 2004

Senator Con Bunde  
Alaska State Capitol, Rm 506  
Juneau, AK 99801

FAXED 907-465-3871

RE: Senate Bill 299

Dear Senator Bunde:

Our clinic would like to go on record in support of Senate Bill 299. Alaska's current bad check statute allows us to collect up to \$25 to cover "costs incurred" for collecting the bad check. The problem is that this creates an accounting burden for businesses to track and record all costs instead of assigning a fixed penalty. The proposed change in the statute would set a reasonable handling fee that is not subject to challenge. That is the way many other states deal with the same problem.

Due to regulatory and compliance issues medical offices have dramatically increasing costs that are combined with steadily diminishing reimbursements. It is growing more and more difficult to collect payment for our services, and we feel that we, as well as other Alaska businesses, should not have additional burdens placed upon us by having to document costs incurred to collect bad checks.

We strongly urge you to support SB 299 to make this simple change.

Sincerely,

Beth A. Balca, FACMPE  
Administrator  
907-261-7135

Attn: Shelley  
Ryan



**THE ALASKA CLUB**

February 12, 2004

Senator Con Bunde  
Alaska State Capitol, Room 506  
Juneau, Alaska 99801

Re: Senate Bill 289

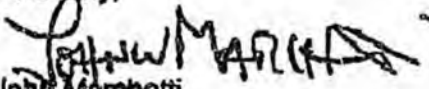
Dear Senator Bunde:

I want to go on record supporting the passage of Senate Bill 289. Our current bad check statute allows us to collect up to \$25.00 to cover "costs incurred" for collecting the bad check. The problem is that this creates an accounting burden for businesses to track and record all costs instead of assigning a fixed penalty. The proposed change in statute would set a reasonable handling fee that is not subject to challenge. That's the way many other states deal with the same problem.

Alaska's businesses should not have additional burdens placed upon them by having to document costs incurred to collect their bad checks.

We strongly urge you to support SB 289 to make this simple change.

Sincerely,

  
John Marchetti  
Vice President of Administration & Finance  
The Alaska Club

North • 700 S. Bragaw Anchorage, AK 99508 • (907) 278-3621    South • 10931 O'Malley Centre Dr. Anchorage, AK 99515 • (907) 344-4547  
East • 5201 E. Tudor Rd. Anchorage, AK 99507 • (907) 317-9550    West • 1400 W. Northern Lights Blvd. Anchorage, AK 99503 • (907) 264-2721  
Midtown • 630 E. Tudor Rd. Anchorage, AK 99503 • (907) 582-2460    Dewatons • 745 W. 4th Ave. Anchorage, AK 99501 • (907) 274-4232  
Eagle River • 12001 Business Blvd. Eagle River, AK 99577 • (907) 694-6677    Valley • 1720 E. Parks Hwy, Wasilla, AK 99654 • (907) 376-3300  
Por Woman • 1450 W. Northern Lights Blvd. Anchorage, AK 99503 • (907) 264-2700  
[www.thealaskacub.com](http://www.thealaskacub.com)



February 12, 2004

Senator Con Bunde  
Alaska State Capitol, Room 506  
Juneau, AK 99801  
Re: Senate Bill 299

Dear Senator Bundy,

We would like to go on record supporting the passage of Senate Bill 299.

The current bad check statute allows us to collect up to \$25 to cover "costs incurred" for collecting a bad check. The problem is that this creates an accounting burden for businesses to track and record all costs instead of assigning a fixed penalty. The proposed change in the statute would set a reasonable handling fee that is not subject to challenge. This is the same way that many other states deal with this problem.

Alaska's businesses should not have additional burdens placed upon them by having to document costs incurred to collect their bad checks.

We strongly urge you to support SB 299 to make this simple change.

Sincerely,

Ted M. Wells, Controller  
Sagaya Corporation



GOLDEN VALLEY ELECTRIC ASSOCIATION INC. PO Box 71249 • Fairbanks, Alaska 99707-1249 • 907-452-1151 • www.gvea.com

February 12, 2004

Senator Gary Wilkin  
Alaska State Capital  
Juneau, AK 99801  
Fax: 907-465-4714

Re: Senate Bill 299

Dear Senator Bunde:

I want to go on record supporting the passage of Senate Bill 299. Our current bad check statute allows us to collect up to \$25 to cover "costs incurred" for collecting the bad check. The problem is that this creates an accounting burden for businesses to track and record all costs instead of assigning a fixed penalty. The proposed change in the statute would set a reasonable handling fee that is not subject to challenge. That's the way many other states deal with the same problem.

Golden Valley Electric Association has been in business in Alaska since 1947 and we don't feel the vast majority of our member's should have to shoulder the burden of costs incurred to collect on bad checks written by the very few.

We strongly urge you to support SB 299 to make the simple change.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott Peters', is written over a horizontal line.

Scott Peters  
Consumer Accounting Manager  
Golden Valley Electric Association



**TESORO**

Tesoro Northshore  
P.O. Box 199970  
Anchorage, Alaska 99519-3970  
907 563 2711 Phone  
907 261 7283 Fax

February 17, 2004

Senator Con Bunde  
Alaska State Capitol, Rm 506  
Juneau, AK 99801

Re: Senate Bill 299

Senator Bunde:

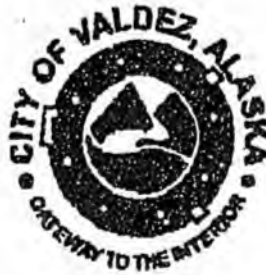
I want to go on record supporting the passage of Senate Bill 299. Our current bad check statute allows our check processing contractor to collect up to \$25 to cover "costs incurred" for collecting a bad check. This creates an accounting burden for businesses to track and record all costs involved in check collection instead of assigning a fixed amount. The proposed change in the statute would set a reasonable handling fee, in the same manner in which many other states deal with the same situation.

Alaska's businesses should not have additional burdens placed upon them by having to document every cost incurred to collect bad checks, costs which we will have to pass along to the consumer.

I strongly urge you to support SB 299 to make this change.

Sincerely,

Richard T. Bucy  
Regional Manager



February 13, 2004

Senator Gene Theriault  
Alaska State Capitol  
Juneau, AK 99801  
VIA Fax: 907-465-3884

RE: Senate Bill 299: Relating to a charge for a bad check

Senator Theriault:

As Finance Director of the City of Valdez, I support the passage of Senate Bill 299. The current bad check statute requires that to collect up to \$25 to cover "costs incurred" for collecting bad checks, we must account for our time and expenses for every bad check. There is a considerable burden and expense just in the accounting for the costs of a bad check collection, much less the indirect costs of lost cash flow. For a municipality which is undergoing fiscal stress, this is a waste of taxpayers resources.

The proposed change in the statute would set a reasonable handling fee that is fixed, and requires a much simpler approach to the problem.

I urge you to support SB 299 to make this change.

Christine A. Sasse  
Finance Director

cc: Dave Dengel, City Manager

Post-it® Fax Note	7871	Date	2/13/04
To	Shelly Ruan	From	Christine Sasse
Co	Copperstone	Co.	City of Valdez
Phone #		Phone #	
Fax #	907-770-8150	Fax #	

*I sent an identical letter to Com Bundy*



Go Home Happy

Border Entertainment, LLC  
dba Blockbuster Video

206 E. Northern Lights Blvd.  
Anchorage, Alaska 99503

Phone (907) 277-8525  
Facsimile (907) 277-8532

February 12, 2004

Senator Johnny Ellis  
Alaska State Capitol, Room 9  
Juneau, Alaska 99801

Re: Senate Bill 299

Dear Senator Ellis:

I want to go on record supporting the passage of Senate Bill 299. Our current bad check statute allows us to collect up to \$25 to cover "costs incurred" for collecting bad checks. The problem is that this creates an accounting burden for businesses to track and record all costs instead of assigning a fixed penalty. The proposed change in the statute would set a reasonable handling fee that is not subject to challenge. That's the way many other states deal with the same problem.

Alaska's businesses should not have additional burdens placed upon them by having to document costs incurred to collect their bad checks.

We strongly urge you to support SB 299 to make this simple change.

Respectfully yours,

Craig Cobb  
Vice President

- Anchorage
- Fairbanks
- Juneau
- Kenai
- Wasilla
- Soldotna
- Eagle River
- Kodiak
- North Pole

SB

300



# ALASKA STATE LEGISLATURE

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



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

## House Judiciary Committee

### Memorandum

**To:** Leg. Legal  
**From:** Vanessa Tondini, Committee Aide  
House Judiciary Committee  
**Date:** April 17, 2004  
**Re:** CS Request

---

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1576M, SB 300, incorporating the amendment described below. The bill was passed out of committee yesterday.

Amendment #1 by Rep. Gruenberg:

Page 1, Line 9:

After "action"

Insert "; provided that, nothing herein precludes a party from contesting an attorney's lien under applicable law"

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

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

**Subject: Possible Amendment to SB300**

**Date:** Fri, 16 Apr 2004 12:49:29 -0800

**From:** Miles Baker <Miles\_Baker@Legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Vanessa Tondini <Vanessa\_Tondini@legis.state.ak.us>

Vanessa,

I understand that David Case may call in today to testify and suggest an amendment to SB 300 (see below). We aren't opposed if it is brought up, but aren't going to bring it up ourselves.

Thanks.

----- Original Message -----

**Subject:** RE: SB300

**Date:** Fri, 16 Apr 2004 11:25:18 -0800

**From:** "David S. Case" <dcase@lbblawyers.com>

**Reply-To:** dcase@lbblawyers.com

**To:** will.schendel@winfreelaw.com, 'Jo Kuchle' <jkuchle@alaskalaw.com>, 'Kevin Walsh' <kwalsh@wksca.com>, Miles Baker' <Miles\_Baker@Legis.state.ak.us>

**CC:** Representative\_Max\_Gruenberg@legis.state.ak.us

All--Here's what we suggest. Add a semi-colon and the following clause at the end of proposed AS 34.35.430(b): "provided that, nothing herein precludes a party from contesting an attorney's lien under applicable law" Dave Case

-----Original Message-----

**From:** Will Schendel [<mailto:will.schendel@winfreelaw.com>]

**Sent:** Friday, April 16, 2004 11:25 AM

**To:** Jo Kuchle; Kevin Walsh; 'Miles Baker'

**Cc:** dcase@lbblawyers.com

**Subject:** SB300

All,

A heads-up on more testimony expected this afternoon before the House Committee:

The Bar Ass'n has apparently sent out some information on this bill (maybe including the WSJ article, my little legal summary, etc.). As a result, attorney Dave Case (from Landye Bennett in Anchorage) plans on testifying this afternoon about the need for a technical amendment that addresses a non-tax issue with the bill. He's concerned to preserve a client's right to challenge a lien where the attorney has somehow acted unfairly. Dave has read me some proposed language to tack on to AS 34.35.430(b) that sounds OK to me, but, by copy of this e-mail to Dave, I'll ask Dave to get the exact language to you ASAP.

I told Dave that that kind of clean-up language sounds fine, so long as it doesn't threaten the core issue of avoidance of double taxation.

William B. Schendel  
Of Counsel  
Winfree Law Office

# 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

January 27, 2004

**SUBJECT:** Bill relating to attorney liens (Work Order No. 23-LS1595\A)

**TO:** Representative Lesil McGuire  
Attn: Vanessa

**FROM:**  Theresa L. Bannister  
Legislative Counsel

This memo accompanies a draft of the bill described above.

1. Possible issue. The amendment of the provisions relating to attorneys liens may raise a separation of powers issue under the state constitution. This would occur if the judicial branch were considered to have the exclusive power over this aspect of the practice of law in this state. There is little guidance in the case law from our state courts on this issue, so I do not know what they would do with this issue. But I wanted to bring it to your attention.
2. Possible conflict. The new language prohibits parties from extinguishing or affecting an attorney's lien, including by settlement. However, AS 34.35.430(a)(4) allows a special agreement to change the amount of costs that constitute a lien. Is AS 34.35.430(a)(4) consistent with your intent? If not, do you want to delete the special agreement language from AS 34.35.430(a)(4)?

If I may be of further assistance, please advise.

TLB:med  
04-094.med

Enclosure



April 8, 2004

The Honorable Lesil McGulre, Chair  
House Judiciary Committee  
Alaska Capitol, Room 118  
Juneau, AK 99801-1182

RE: SB 300 (Stedman) - Support

Dear Chair McGulre:

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the House Judiciary Committee to support SB 300, authored by Senator Bert Stedman. We believe SB 300 is a significant effort to help Alaska citizens who win civil damages in a court case.

Currently an individual who wins a civil suit and is awarded damages must pay taxes on the damages, before his/her attorney fees are paid. In effect, someone who "wins" a lawsuit suffers a tax liability for money that will go to his/her attorney, not to the individual.

Since some AARP members fall into this category, eg., individuals who might win a lawsuit and damages based on age discrimination in employment, AARP believes they should not be responsible for taxes on income that will be going to their legal counsel. The lawyers also have to pay taxes on the income and, as Senator Stedman correctly points out, it creates a system of inequitable double taxation.

AARP urges an "AYE" vote on SB 300.

Should you have any questions about our position, please feel free to contact Marie Darlin (907.586.3637), Coordinator of the AARP Capital City Task Force; Patrick Luby (907.762.3314), AARP Legislative Representative; or me (907.245.5259).

Thank you for your consideration.

Sincerely,

*Marguerite Stetson*

Marguerite Stetson  
AARP Alaska  
Executive Council Member for Advocacy  
3009 Northwood Street  
Anchorage, AK 99517-1871  
907.245.5259 voice  
907.245.5279 fax  
[ffmas@aurora.uaf.edu](mailto:ffmas@aurora.uaf.edu)

CC: Vice-Chair Anderson  
Representative Holm  
Representative Ogg  
Representative Samuels  
Representative Gara  
Representative Gruenberg  
Senator Stedman  
Marie Dairln  
Patrick Luby

# ALASKA STATE LEGISLATURE

SESSION

State Capitol, Rm 30  
Juneau, Alaska 99801-1182  
(907) 465-3873 Phone  
(907) 465-3922 Fax  
(877) 463-3873 Toll Free  
Senator\_Bert\_Stedman@legis.state.ak.us



INTERIM

50 Front Street  
Ketchikan, AK 99901-6442  
Phone (907) 225-8088  
Fax (907) 225-0713

**SENATOR BERT K. STEDMAN**

---

## MEMORANDUM

**DATE:** April 2, 2004

**TO:** Representative Lesil McGuire  
Chair, House Judiciary Committee

**FROM:** Senator Bert K. Stedman *B.K.S.*

**SUBJECT:** Request for Committee Hearing CSSB 300 (FIN)

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I respectfully request a House Judiciary hearing on CSSB 300 (FIN) at your earliest convenience. SB 300 is *an act relating to an attorney's lien, to court actions and to other proceedings where attorneys are employed.*

SB 300 will eliminate an unfair federal income tax issue affecting many Alaskan taxpayers. Currently, Alaskans who win in civil court are taxed on the gross award, including fees that pass through to their attorney. This bill conforms Alaska lien law to Oregon law, which the Ninth Circuit Court has determined is effective in eliminating double taxation of court awarded fees.

Thank you for time and consideration.

DISTRICT A

Ketchikan • Sitka • Petersburg • Wrangell

Pelican • Elfin Cove • Port Alexander • Saxman • Meyers Chuck • Thorne Bay • Coffman Cove • Hollis

# SENATOR BERT STEDMAN

Senate District A



*State Capitol, Room 30, Juneau, Alaska 99801-1182 Phone (907) 465-3873 Fax (907) 465-3922*

---

## SPONSOR STATEMENT

### SB 300

SB 300 eliminates an unfair and potentially disastrous federal income tax issue affecting Alaskan taxpayers and prevents the IRS from taxing two Alaskans on the same income. SB 300 corrects this unjust treatment of Alaskans under current 9<sup>th</sup> Circuit rulings.

Because of a peculiarity in Alaskan law, Alaskans who win in court may pay federal income tax on phantom income. When Alaskans file their federal tax return, they must report any litigation recovery allocated to attorney fees as gross income, even though they receive no economic benefit from those fees. The federal government taxes that portion of the prevailing side's award twice; once as income to the client and again as income to the client's attorney. Incredibly, there is no federal tax deduction to offset this inequity. It's even possible for someone to win in court but come out with a net loss after paying legal bills and taxes.

Under current Alaska lien law <AS 34.35.430>, attorneys have a "subordinate lien" or ownership interest in the "cause of action". Other states, including Oregon, use different language to specify that as long as an attorney has filed an appropriate lien and is owed money by the winning client, all fee awards or payments made to the client belong exclusively to the attorney. In so vesting the attorney with the property interests of the award, those states avoid the unfair tax burden currently imposed on Alaskans. Instead, any portion of an award retained to pay attorney costs, is not income to the client.

SB 300 changes Alaskan law to prevent the IRS from taxing Alaskans on income they don't receive. This bill recognizes that court awarded fees which pass through to one's attorney is income to the attorney. And as such, the attorney is responsible for paying federal income tax on that portion of their income.

# SENATOR BERT STEDMAN

Senate District A



*State Capitol, Room 30, Juneau, Alaska 99801-1182 Phone (907) 465-3873 Fax (907) 465-3922*

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## CSSB 300(FIN) SUMMARY FACT SHEET

**Short Title:** Attorney's Liens

**Summary:**

- Brings Alaska lien law into line with the Oregon law, which the 9<sup>th</sup> Circuit has held is effective in eliminating double taxation of attorney's fees.
- Vests a client's attorney with the property interests of court awarded fees so that the federal tax on that income becomes the responsibility of the attorney – not the prevailing client.
- The Senate Fin Comm CS added an immediate effective date to the original bill

**Benefits:**

- Prevents the IRS from taxing two Alaskans on the same income
- Ensures Alaskan taxpayers receive favorable federal tax treatment with regard to court awarded attorney's fees – until such time as the US Congress addresses the issue.
- Solves the tax injustice that currently exists in Alaska which discourages victims of discrimination from taking regress through the courts
- Recognizes that court awarded fees which pass through to one's attorney is income to the attorney. The attorney is therefore responsible for paying federal tax on that income.

**Background:**

SB 300 evolved not from the legal profession, but from the advocacy work of the accounting profession on behalf of Alaskan taxpayers. Certified Public Accountants recognized the injustice of the current law and sought a legislative solution. SB 300 has been favorably reviewed by a broad range of practicing Alaskan attorneys who represent all side of many kinds of disputes. However, SB 300 does not change the tax status of attorneys or gives them additional leverage over their clients.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: SB 300  
 (S) Publish Date: 2/20/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Natural Resources  
 Title: Attorney's Lien RDU: Resource Development  
 Component: Recorder's Office  
 Sponsor: Sen. Stedman  
 Requester: Seri JUD Component No. 423

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

Check 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 is no fiscal impact to DNR associated with implementation of this legislation.

Prepared by: Vicky Backus  
 Division: Recorder's Office  
 Approved by: Thomas Irwin, Commissioner  
 Agency: Natural Resources

Phone 907-269-8882  
 Date/Time 2/19/04  
 Date 2/19/04

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: SB 300  
 (S) Publish Date: 2/20/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title Attorney's Liens BRU Alaska Court System  
 Component Trial Courts  
 Sponsor Senator Stedman  
 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

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 court system does not anticipate any fiscal impact from the passage of SB 300.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750  
 Division: Alaska Court System Date/Time 2/19/04 8:23 AM  
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/19/2004  
 Agency: Alaska Court System

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 3  
 Bill Version: SB 300  
 (S) Publish Date: 2/20/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title "An Act relating to an attorney's lien ... and to RDU CIVIL  
other proceedings where attorneys are employed." Component Commercial & Fair Business  
 Sponsor Senator Stedman  
 Requester Senate Judiciary 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

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 amends AS 34.35.430 by allowing an attorney's lien for fees and costs to supersede all other subsequent liens except tax liens.  
  
 Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673  
 Division: Administrative Services Date/Time 2/9/04 1:42 PM  
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/9/2004  
 Agency: Department of Law



2/12/04

*Tax Report*

*By Tom Herman*

### **How You Can Lose By Winning a Suit**

How much you owe Uncle Sam sometimes can depend on where you live. And sometimes you can get slapped with a hefty tax bill on money you didn't pocket. How so? The answer lies in a string of differing federal appeals-court decisions affecting people who have won awards or received settlements in cases involving charges of racial, sexual or age discrimination, wrongful job termination or other nonphysical personal-injury battles.

This long-simmering subject is back in the news again because of a recent ruling by the U.S. Appeals Court for the Second Circuit. The case involves David Raymond, a Vermont man who sued International Business Machines Corp. alleging wrongful termination. A jury awarded him nearly \$900,000 in the late 1990s. The law firm handling his case received about one-third as a contingency fee.

A federal district-court judge later said Mr. Raymond could exclude the contingency fee when calculating taxable income. But now the second circuit appeals court has overturned that decision. It said Mr. Raymond had to include the entire award in his taxable income — even the portion that went to his lawyers. James W. Runcie, a Vergennes, Vt., lawyer who handled the case, said he and his client "are likely to ask the Supreme Court to review the case."

Many people in such situations are out of luck because of the vagaries of the alternative minimum tax, which is hitting growing numbers of unsuspecting Americans. Under the AMT, certain miscellaneous itemized deductions such as legal fees aren't deductible. Another problem is known as the "2% haircut": You can only deduct the amount of certain miscellaneous deductions to the extent they exceed 2% of your adjusted gross income.

Numerous other federal appeals courts have issued similar rulings, forcing victims to pay large amounts of taxes on money they didn't actually get. But a few other federal appeals courts have decided that taxpayers can exclude those fees from gross income. Thus, your tax tab can depend on where you live.

It is even possible for someone to win a big court award and come out with a net loss after paying legal bills and taxes, says Nina Olson, the Internal Revenue Service National Taxpayer Advocate.

The Supreme Court hasn't weighed in, but there is a chance taxpayers could get some congressional relief.

Among lawmakers who favor speedy action is Senate Finance Committee Chairman Chuck Grassley, an Iowa Republican. "It remains a high priority for me that we end this terrible policy where individuals are subject basically to double taxation when they receive a settlement payment," Sen. Grassley said in an e-mail. "We passed legislation in the Senate last year to address this, and I hope we can get the bill to the president's desk this year."

The Raymond case and the split among appeals courts drew attention at a recent tax conference in Los Angeles. "This issue really struck me," says Ruth Madrigal, a lawyer at Irell & Manella LLP in Los Angeles. She points to "the complete lunacy of the vast difference in results depending on which state you reside in when the issue goes to court."

This issue has been discussed at length in tax publications such as Tax Notes, an influential weekly from Tax Analysts, based in Arlington, Va. The subject also was analyzed in the IRS National Taxpayer Advocate's report to Congress for fiscal 2002.

"Legislation is needed to resolve the split among the circuit courts of appeal regarding the taxation of attorney fees," the IRS National Taxpayer Advocate's report said. The report outlined several suggestions and recommended this one: Include legal fees in your gross income but allow those fees to be deducted when calculating adjusted gross income, or AGI. That's known as an "above-the-line" deduction since it would appear on your return above the line for AGI.

Such a change "would effect uniform treatment" for all people who receive these awards and settlements, "irrespective of their place of residence," Ms. Olson's report concluded.