

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004

10905 HOUSE JUDICIARY

Subject:

Date: Wed, 28 Jan 2004 08:12:15 -0900

From: "Thomas Remaley" <remaley@palmerpolice.com>

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

I live in Wasilla and work in Palmer. In reading AS 28.05.095 reference the use of seatbelts, I see that it is required by law, however, police officers can not stop a vehicle solely to address a seatbelt violation. I would ask that you introduce and support a bill to allow officers to address this issue without having to establish some other probable cause to stop the vehicle. After all, if the wearing of seatbelts makes the motoring public that much more safe, why not make it important enough (or less difficult) to enforce?

Thomas Remaley

Subject: SB 316

Date: Thu, 26 Feb 2004 09:42:21 -0900

From: "PATRICIA HONG" <afpah@uaa.alaska.edu>

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

Dear Senator Bunde --

Thank you for sponsoring SB 316, which would establish a primary seat belt law here in Alaska. As a former Girdwood resident, I know how many lives are either lost or forever changed by automobile crashes on the Seward Highway. A primary seat belt law would have prevented many of those deaths.

As a nurse, I've taken care of far too many car crash victims. Seat belts would have mitigated the severity of many of those injuries!

Please do all you can to pass this bill and put it on the Governor's desk ASAP!

Thanks, Patti Hong, RN

Patricia Hong<?xml:namespace prefix = o ns =
"urn:schemas-microsoft-com:office:office" />

UAA School of Nursing

907-786-4578 (w)

907-786-4559 (f)



Councilman Scott Kawasaki
Fairbanks City Council
2008 Carr Avenue
Fairbanks, Alaska 99709-4211

H: (907)590-0315
F: (907)459-6710
E-mail: scott_kawasaki@yahoo.com



April 11, 2004

The Honorable Representative Jim Holm
Chairman, Alaska State House Transportation Committee
State Capitol #416
Juneau, Alaska 99801

Dear Representative Holm

I am writing to encourage you to support SB 316, the primary seat belt law, and move it out of committee.

The seat belt law recently came to the attention of the Fairbanks City Council as we discussed adopting fines and enforcement of the law as a primary offense. Although the Council rescinded action on the primary offense portion of the local law due to some differing legal opinions, I think that there is a compelling reason to support such a law.

States that enacted similar primary seat belt laws across the nation have a higher track record of seat belt usage. Seat belts have been proven to save lives and reduce injuries related to motor vehicle crashes. The reason to support the primary seat belt law is because it saves lives.

Please feel free to contact me if you have any questions.

Sincerely

Scott Kawasaki

Proudly serving the citizens of the Golden Heart City

This stationary is paid for with personal funds. Not tax dollars or government funds were used in the production of this letterhead.

Subject: HB392

Date: Mon, 12 Apr 2004 22:49:54 -0800

From: Jeanne Molitor <jrjeanne@gci.net>

To: Senator_Con_Bunde@legis.state.ak.us

As an ER nurse I support primary seatbelt laws. Please support this important piece of legislation to help our enforcement agencies prevent injuries! Jeanne Molitor

Subject: HB 392

Date: Wed, 14 Apr 2004 13:22:45 -0800

From: "Ron Perkins" <asc1@alaska.net>

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

CC: <Representative_Beverly_Masek@legis.state.ak.us>,
<Representative_Vic_Kohring@legis.state.ak.us>,
<Representative_Dan_Ogg@legis.state.ak.us>,
<Representative_Nick_Stepovich@legis.state.ak.us>,
<Representative_Mary_Kapsner@legis.state.ak.us>,
<Representative_Albert_Kookesh@legis.state.ak.us>,
<Senator_Con_Bunde@legis.state.ak.us>

Dear Representative Holm and the Transportation Committee,
I am a voting republican from Eagle River but work in the safety research field.
HB 392 - Seatbelt Violation as a Primary Offense has been in the House Transportation
Committee for quite some time and I would like to see it moved on.

I conduct injury research and work with communities on developing prevention programs. Seat belt use is one of the most effective ways to prevent personal injury from drunk drivers, red-light runners, falling asleep, and other crash causes. I've had surveys done in Anchorage and found that 2/3 of the random sample of people were in favor of a primary seat belt law.

Arguments against the bill are usually that people don't want "the government" telling them what to do. Well, nearly half of the hospital costs for unbelted drivers are paid for with public funds such as Medicaid, Medicare, etc. Studies have also shown that most of the drunk drivers, speeders, and red light runners don't wear their seat belts. Many times these traffic stops turn up people with outstanding warrants too. Also, Alaska will receive hundreds of thousands of federal highway dollars with the passage of this bill.

Please don't usurp the wishes of the general public by not allowing this bill to be voted on by the House. Move it out of Committee if you can't support it personally.

Thank you for all your hard work and time,
Ron Perkins, MPH



NSC News Center

[NSC Home](#) > [NSC News Center](#) > [News Release](#)

For Immediate Release, November 17, 2003
Contact: John Chambers at 202.338.8700 or 202.285.0448 (cell)

AS NATIONWIDE SEAT BELT CRACKDOWN BEGINS, NEW DATA UNDERSCORES DEADLY IMPACT OF FAILURE TO ADOPT PRIMARY SEAT BELT LAWS

More than 12,000 Deaths Since 1995 Because States Have Failed To Enact Primary Enforcement Seat Belt Laws Proven To Increase Belt Use

Washington, D.C. - As more than 12,000 law enforcement agencies begin a nationwide crackdown to enforce seat belt and child passenger safety laws this Thanksgiving holiday, a new study shows that more than 12,000 people have needlessly died due to the failure of states to follow a 1995 National Transportation Safety Board recommendation to enact primary enforcement seat belt use laws. Today, the NTSB reissued that call to states.

"A primary seat belt law is likely to save more lives than possibly any single piece of legislation a state will consider," said NTSB Chairman Ellen G. Engleman. "It is why the Safety Board recommended states adopt these laws in 1995, and why we continue to urge enactment of these laws as a safety priority. It is tragic that 30 states have failed to act to implement this safety countermeasure that costs nothing, but could save so many."

Also see:

- [Lost Lives by States'](#) (pdf; 182kb)
- [Participating Law Enforcement Agencies](#) (MS Word; 135kb)

Primary seat belt laws enable law enforcement officers to ticket motorists based solely on an observed seat belt violation, just as they do any other motor vehicle law. Primary laws cover 60 percent of the U.S. population. Currently, 29 states have secondary laws (New Hampshire does not have an adult seat belt law), which means officers can only enforce the seat belt law if the motorist is first stopped for some other violation such as speeding.

According to the study released today by the National Safety Council, states that have enacted primary laws since 1995 on average experienced a 15-percentage point increase in belt use. Seat belts are proven to reduce the risk of serious injury or death in a crash by 45 percent, and the study shows 12,177 lives have been lost since 1995 because 30 states have failed to enact the stronger laws.

"We have a vaccine for the leading cause of death for Americans from ages two through 33 - safety belts. Primary safety belt laws are our most effective public policy tool," said Jeffrey W. Runge, M.D., Administrator for the National Highway Traffic Safety Administration. "If all states moved right now to enact them, 1,400 more lives could be saved next year alone in preventable traffic injury."

On November 13, 2003, Chairman Engleman on behalf of the NTSB sent a letter to the governors and legislative leadership of the 29 states with secondary laws and New Hampshire, reminding them of the Safety Board's recommendation and encouraging them to step-up their efforts to enact a primary law in their state.

The national Click It or Ticket Mobilization, which runs from November 17 - 30, is based on a public health model proven to increase belt use, and places specific emphasis on teens and young adults who are least likely to buckle up and most likely to die in a traffic crash.

According to NHTSA, nearly 4,530 teens and young adults, ages 16-19, died in traffic crashes last year and thousands more were injured. Of the 32,519 people killed in crashes in 2002, nearly 60 percent were not wearing a safety belt.

If the situation remains the same as in 2002, the study, conducted by Neil K. Chaudhary and David F. Preusser of PRG Research Group, Inc., estimated an additional 1,400 motorists will be killed next year alone. (State-by-state results are available online, at www.nsc.org)

"Law enforcement officers all over this country are doing a great job saving lives through seat belt enforcement, but in 30 states they are doing it with one hand tied behind their back," said Chuck Hurley, Executive Director of the National Safety Council's Air Bag & Seat Belt Safety Campaign. "We would be saving far more lives if state legislators in the states with secondary laws would respond to the overwhelming majority of voters who support primary laws."

A national survey of 800 Americans conducted by Public Opinion Strategies for the Air Bag & Seat Belt Safety Campaign in May, 2003, showed people in states with secondary laws support enactment of primary laws in their states by a 2-to-1 margin.

"It's especially tragic that teens and young adults are suffering the most as a result of this government inaction," added Hurley. This year, Illinois and Delaware became the 19th and 20th states to pass a primary law respectively.

"At the Naval Safety Center, our job is to look out for all our Sailors, Marines, and civilians," said RADM Brooks. "It's our priority to ensure as safe a working environment as possible, to identify the hazards we all face in both our professional and personal lives, to educate everyone in the vital importance of risk management in everything we do, and to improve readiness. Across our force it's up to the leaders of every Navy and Marine Corps command to promote awareness and set the example, for traffic safety truly is a matter of life and death."

During the Mobilization, law enforcement officers will intensify enforcement of seat belt and child passenger safety laws by setting up checkpoints or saturation patrols across the country. Seat belt violators and drivers failing to restrain their child passengers will be ticketed.

Thanksgiving is one of the most dangerous holidays for motorists. The National Safety Council predicts that 544 people will die and 28,300 people will suffer disabling injuries resulting from traffic crashes during the Thanksgiving holiday period.

"Thanksgiving is a joyous holiday for many Americans, but it is also traditionally one of the deadliest on the roadways," said Lynne Goughler, Vice President of Public Policy at Mothers Against Drunk Driving. "Impaired driving and lack of safety belt usage are the leading killers in automobile crashes, especially during the holiday season."

Mobilizations are conducted twice yearly by the Air Bag & Seat Belt Safety Campaign of the National Safety Council in conjunction with law enforcement agencies, state highway safety offices, NHTSA, the National Transportation Safety Board and MADD. Following the Mobilization in May, 2003, national belt use reached a record high of 79 percent, according to NHTSA.

The Air Bag & Seat Belt Safety Campaign, a program of the National Safety Council, is a public/private partnership of automotive manufacturers, insurance companies, child safety seat manufacturers, government agencies, health professionals and child health and safety organizations. The goal of the Campaign is to increase the proper use of safety belts and child safety seats and to inform the public about how to maximize the lifesaving capabilities of air bags while minimizing the risks.

For additional information about the National Safety Council, visit www.nsc.org.

The National Safety Council is a nonprofit, nongovernmental, international public service organization dedicated to protecting life and promoting health. Members of NSC include more than 45,000 businesses, labor organizations, schools, public agencies, private groups and individuals. Founded in 1913, and chartered by the U.S. Congress in 1953, the primary focus of the NSC is preventing injuries in workplaces.

in transportation and in homes and communities.

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National Safety Council
A Membership Organization Dedicated to Protecting Life and Promoting Health
1121 Spring Lake Drive, Itasca, IL 60143-3201
Tel: (630) 285-1121; Fax: (630) 285-1315

November 25, 2003

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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

May 4, 2004

SUBJECT: The applicability of the Feres doctrine to the state (HB 359)

TO: Representative Les Gara

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

You asked for a simple summary of the effect of the Feres doctrine on the state.

Q. What is the Feres doctrine?

A. The Feres doctrine is a legal doctrine that bars suits against the federal government for injuries that arise out of or occur in the course of military service.¹

Q. Does Alaska have a law with provisions similar to the Feres doctrine that bars suits against the state?

A. Yes. In 2003, the legislature enacted AS 26.05.145 that bars suits against the state to the same extent the Feres doctrine bars suits against the federal government.²

Q. Without the enactment of AS 26.05.145, would the Feres doctrine bar these type of suits against the state?

A. No. When presented with the issue, the Alaska Supreme Court held that the Feres doctrine is "strictly speaking, a federal doctrine, we are not bound by its holding."³

If I may be of further assistance, please advise.

DMB:med
04-505.med

¹ *Estate of Kenneth W. Himsel v. State of Alaska*, 36 P.3d 35, 38 (Alaska 2001), discussing *Feres v. United States*, 340 U.S. 135, 71 S.Ct. 153, 95 L.Ed. 152 (1950).

² Sec. 4, ch. 43, SLA 2003. The law was enacted to legislatively overrule the *Himsel* decision.

³ 36 P.3d at 39 (notes and citations omitted).

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

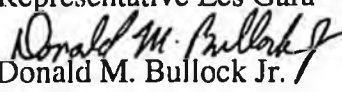
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

May 4, 2004

SUBJECT: Title of CSSB 338(STA) (Work Order No. 23-GS2065H)

TO: Representative Les Gara

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

You asked whether the title of CSSB 338(STA), "An Act relating to actionable claims against state employees; and providing for an effective date," encompasses the contents of the bill. The answer is yes.

Section 1 of the bill adds a new section to AS 09.50 that relates to actionable claims against state employees. Bill sec. 2 makes a conforming amendment to AS 09.50.300 based on the enactment of the new provision in sec. 1. Bill sec. 3 describes the applicability of the Act. Bill sec. 4 contains instructions to the revisor to edit the heading of art. 3 of AS 09.50 to reference the subject of the new statutory section added by sec. 1. Bill sec. 5 is the effective date.

As you can see, the contents of the above-referenced bill are consistent with the bill's title.

If I may be of further assistance, please advise.

DMB:mdr
04-214.mdr

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

Sponsor Statement: HB 359 – Reinstatement of Military Member Rights To Personal Injury and Wrongful Death Recovery

HB 359 reinstates the rights of military members and their families to recover when they are injured or killed by the negligence or recklessness of a state employee. It is only fair to allow military members the same rights as non-military members when injured by the state in civilian settings. Non-military members can recover full damages for injuries caused by state employees.

Last session those rights were lost under HB 245, and the consequence was unintended by many legislators. HB 245 listed a number of circumstances in which people could no longer recover from the state when injured. Those circumstances included search and rescue cases and fire cases in which the state is allegedly negligent. This bill leaves those exemptions in place.

HB 359 reverses the following provision of HB 245. That provision states a claim for negligence or recklessness "may not be brought by or on behalf of a member of the military services against the state . . . for wrongful death, personal injury or other tort claim or injury" if the military member is on active duty. Thus, for example, if a state employee negligently runs a red light and paralyzes or kills a military member who is on his way to pick up supplies, the member cannot sue the state.

There is no good reason to take basic rights away from military members, especially in these times when military members are risking their lives to protect us. Civilians still have a right of recovery if killed or severely injured by the state. The bill provides military members with equal treatment under the law. Former Director of Military and Veterans Affairs Laddie Shaw has joined in support of this bill.

HB 359 doesn't allow military members to sue for combat or training related injuries, as those are matters of national security and internal military conduct. That exemption from liability is recognized in all 50 states.

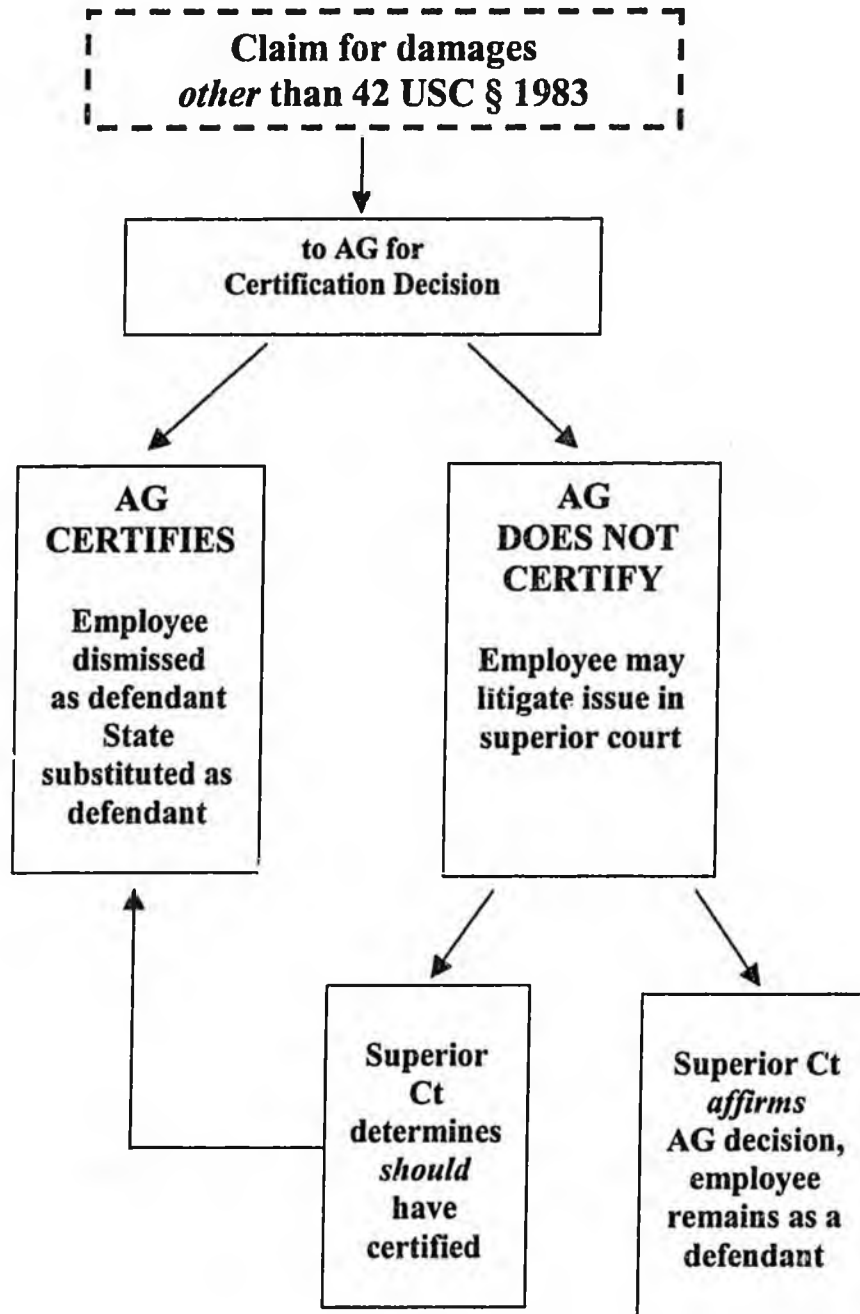
PROPOSED AMENDMENT TO CSSB 338 (STA)

- The proposed amendment would require a title change to the bill: SB 338's title is "claims against state employees"; the amendment would be in effect "Claims by State and Federal employees Against the State". A title change resolution (2/3 vote) would be required, and the bill would have to go back to the Senate for concurrence. This proposed amendment seriously jeopardizes passage of SB 338, a bill that is supported by state employees and their collective bargaining units.
- The proposed amendment would be the first hearing on what was pre-filed during this session (HB 359), referred to the Military and Veterans Affairs Committee, and no hearing to date scheduled on the bill. In stark contrast, SB 338 had hearings in the Senate, was passed out of the Senate on a vote of 19 - 0, and the companion bill has already had hearings on the House side.
- The proposed amendment is directly contrary to the exclusive remedy provision of state workers compensation. This amendment would give a state military member a tort remedy that **no other state employee has** - - to sue the state in tort in addition to his workers compensation benefits. So a military member would be allowed to sue any other state agency other than Military and Veterans Affairs for tort remedies, in addition to the compensation already paid by the state for workers compensation injuries. No other state employee has such a bonus.
- The proposed amendment fails to recognize that state agencies work cooperatively with one another, and with the federal government in operations involving both state and federal military members. For example, exercises at the airport involve State DOT. Other operations (such as wildfire suppression) involve the Department of Natural Resources, and the Department of Public Safety (search and rescue). The amendment would allow both state and federal service members to sue any of these other agencies for tort damages, while still receiving workers compensation benefits from the state or the United States Government. If a federal military member is injured incident to military service, it is fair that the federal, not state, government pay for those injuries that result from the member's deployment.

- The amendment is inconsistent with the immunities provided in AS 18.60.125, AS 41.15.045, and AS 41.17.081. These immunities were thoroughly discussed and debated last session in both the House and the Senate.
- The current law does not take away any longstanding established rights of Alaska military members. The *Feres* Doctrine had been the *status quo* until the Alaska Supreme Court in 2001 deviated from the federal rule and that of sister states. The Legislature's actions in 2003 brought the law back where it had always been.

SB 338 -- HOW IT WORKS

State employee individually sued for damages



CS FOR SENATE BILL NO. 338 (STA)
"AN ACT RELATING TO ACTIONABLE CLAIMS
AGAINST STATE EMPLOYEES"

SECTIONAL ANALYSIS
OFFICE OF THE ATTORNEY GENERAL

Section 1: Creates new sections in Title 9. Proposed 09.50.253 converts lawsuits and claims against individual state employees,¹ when acting within the scope of the employee's office or employment, into a claim against the state. The state is substituted as the defendant in the action. It provides that the Attorney General determines whether the claim arose within the scope of the employee's office or employment. ("acting within the scope of the employee's office or employment" is defined on page 3, following line 12 in (h) of the bill). The Attorney General then certifies the action and the individually sued state employee is dismissed from the lawsuit with the state substituted as the defendant. The attorney general or the attorney general's designee then defends the action. All defenses and limitations applicable to the state are then applicable to the action.

If the Attorney General does not certify that the state employee was acting within the scope of the employee's office or employment, the state employee may petition the superior court for relief. If the superior court finds that the state employee was acting within the scope of office or employment, the state is substituted as the defendant and the state employee is

¹ Excluded from the definition of "state employee" are the University of Alaska, the Alaska Railroad Corporation, and a political subdivision of the state. The Attorney General does not provide representation to these entities and each may sue and be sued pursuant to its own authorizing statutes. (University of Alaska, AS 14.40.040; Alaska Railroad Corporation, AS 42.40.010, AS 42.40.900; and political subdivisions of the state, AS 09.65.070)

entitled to reimbursement by the state for the employee's reasonable costs and attorney fees incurred in filing the successful superior court petition.

The section does not apply to civil actions or proceedings against a state employee for a violation of the United States Constitution or in violation of a state statute expressly authorizing an action.

Subsection (g) provides that the certification process is in addition to and does not supercede legal defense and indemnity terms in state collective bargaining agreements.

Section 2: This is a conforming amendment to AS 09.50.300.

Section 3: This section applies the law prospectively, to causes of action arising after it is enacted.

Section 4: Includes instructions to the Revisor to change the heading of art. 3 of AS 09.50.

Section 5: Provides an immediate effective date.

Public Safety Employees Association, Inc.
"Representing Alaska's Finest"

COPY

March 23, 2004

Senator Con Bunde, Chairman
Senate Judiciary Committee
Alaska Legislature
State Capitol, Room 506
Juneau, AK 99801-1182

Re: Senate Bill 338

Dear Senator Bunde,

The Public Safety Employees Association (PSEA) represents over 1,300 Law Enforcement Officers from 8 different agencies throughout Alaska. We have been following Senate Bill 338 and its counterpart in the House with great interest. As you know, oftentimes a law enforcement officer has to make a life-and-death decision in a split-second. Too often, litigious suspects are able to bring a lawsuit against these public servants with little or no merit hoping for a big settlement.

In the original form, Senate Bill 338 raised concerns for our members, as some protections provided for in the Collective Bargaining Agreement would have been lost. However, after working with representatives of the Attorney General, we were pleased to see amendments which resulted in the adoption of the Committee Substitute. The CS actually increases the level of protection for Law Enforcement Officers from these types of suits.

The Public Safety Employees Association supports the CS for Senate Bill 338 in its current form. If you or any other members of the Judiciary Committee have any questions, please feel free to contact me.

Sincerely,


Joe D'Amico

Business Manager
Public Safety Employees Association

cc: Representative Tom Anderson
Representative Lesil McGuire
Mr. Scott Nordstrand ✓

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2075

April 15, 2004

Representative Lesil McGuire
Chair, House Judiciary Committee
Alaska State Legislature
State Capitol, Room 118
Juneau, Alaska 99801

Subject: CSHB488 (L&C) /CSSB338 (STA), Claims Against State Employees

Dear Representative McGuire:

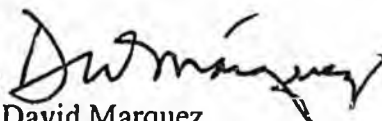
CSHB488 (L&C) passed out of the House Labor and Commerce Committee on April 2 and was referred to your Judiciary Committee on April 13. I have previously requested a hearing before your committee on CSHB 488.

CSSB338 (STA) which is the governor's bill on the same subject as CSHB488 has passed the Senate and has been referred to your Judiciary Committee.

I respectfully request that you have a hearing on CSSB(STA) 388 at your earliest convenience.

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL

By: 
David Marquez
Chief Assistant Attorney General

DWM/lcc

cc: Mike Tibbles, Legislative Director, Office of the Governor
Deborah Behr, Legislation and Regulations Attorney, Department of Law
Gail Voigtlander, Torts & Workers' Compensation Section Chief, Department of Law

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 338
 (S) Publish Date: 2/16/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title An Act relating claims against RDU Civil
state employees and claims arising.... Component Torts & Workers' Compensation
 Sponsor Ruies
 Requester 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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (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 09.50 by converting claims against state employees acting within the scope of their employment into claims against the state."

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

Prepared by: Kathryn Daughhete, Director Phone _____
 Division Administrative Services Date/Time 2/13/04 3:22 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/13/2004
 Agency Department of Law

SB

344

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Hclm
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: Terri Bannister, 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-LS1694\H, SB 344, incorporating the attached amendment. The bill was passed out of committee yesterday.

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.

HCS CSSB 344 (JUD) version "H"
Amendment #1 - PASSED

Page 5, Line 4
After "within"
Delete "12"
Insert "24"

23-LS1694H
Bannister
4/16/04

HOUSE CS FOR CS FOR SENATE BILL NO. 344()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR SEEKINS

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the Uniform Probate Code and trusts, including pleadings, orders,
2 nonprobate assets, estates of decedents, minors, protected persons, incapacitated
3 persons, guardians, conservators, trustees, foreign trusts, principal and income, and
4 transfer restrictions; relating to corporate voting trusts; and providing for an effective
5 date."

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

7 * Section 1. AS 10.06.425(a) is amended to read:

8 (a) Any number of shareholders of a corporation may create a voting trust for
9 the purpose of conferring upon a trustee or trustees the right to vote or otherwise
10 represent their shares [, FOR A PERIOD NOT TO EXCEED 10 YEARS,] by entering
11 into a written voting trust agreement specifying the terms and conditions of the voting
12 trust, by depositing a copy of the agreement with the corporation at its registered
13 office, and by transferring their shares to the trustee or trustees for the purpose of the

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agreement. The trustee or trustees shall keep a record of the holders of voting trust certificates evidencing a beneficial interest in the voting trust, giving the names and addresses of all the holders and the number and class of the shares for which the voting trust certificates are issued, and shall deposit a copy of the record with the corporation at its registered office. The copies of the voting trust agreement and the record deposited with the corporation are subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation under AS 10.06.430, and the copies of the agreement and the record are subject to examination by a holder of record of voting trust certificates, either in person or by agent or attorney, at a reasonable time for a proper purpose. This subsection does not invalidate an irrevocable proxy complying with AS 10.06.418(e).

* Sec. 2. AS 13.06.120 is amended to read:

Sec. 13.06.120. Pleadings; when parties bound by orders; notice. In any [FORMAL] proceedings involving trusts, nonprobate assets, or estates of decedents, minors, protected persons, or incapacitated persons brought under AS 13.06 - AS 13.36 or AS 13.38, including any [AND IN] judicially supervised settlements and any nonjudicial proceedings and settlements, the following apply:

(1) interests to be affected shall be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner;

(2) persons are bound by orders binding others in the following cases:

(A) orders binding the sole holder or all co-holders of a power of revocation or a [PRESENTLY EXERCISABLE] general or nongeneral power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power;

(B) to the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate the conservator controls; orders binding a guardian bind the ward if no conservator of the estate has been appointed; orders binding a trustee bind

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1 beneficiaries of the trust in proceedings to probate a will establishing or adding
2 to a trust, to review the acts or accounts of a prior fiduciary and in proceedings
3 involving creditors or other third parties; [AND] orders binding a personal
4 representative bind persons interested in the undistributed assets of a
5 decedent's estate in actions or proceedings by or against the estate; and orders
6 binding an agent having authority to act with respect to the particular
7 questions or dispute bind the principal; if there is no conflict of interest and
8 no conservator or guardian has been appointed, a parent may represent the
9 minor child;

10 (C) an unborn [OR UNASCERTAINED] person, a minor, an
11 incapacitated person, or a person whose identity or location is unknown or
12 not reasonably ascertainable who is not otherwise represented is bound by an
13 order to the extent the interest is adequately represented by another party
14 having a substantially identical interest in the proceeding;

15 (D) with regard to interests given upon the happening of a
16 certain event to persons who comprise a certain class, orders binding the
17 living persons who would constitute the class, if the event had happened
18 immediately before the commencement of the proceeding, bind all
19 members of the class;

20 (E) with regard to an interest given to a living person when
21 the same interest or a share of the interest is to pass to the surviving
22 spouse or to persons who are or might be the distributees, devisees, heirs,
23 or issue of the living person upon the happening of a future event, orders
24 binding the living person bind the surviving spouse, distributees, devisees,
25 heirs, or issue of the living person;

26 (F) with regard to interests given to a person or a class of
27 persons, or to both, upon the happening of a future event, if the same
28 interest or a share of the interest is to pass to another person or class of
29 persons, or to both, upon the happening of an additional future event,
30 orders binding the living person or class of persons who would take the
31 interest upon the happening of the first event bind the persons and classes

1 of persons who might take on the happening of the additional future
 2 event;

3 (j) notice is required as follows:

4 (A) notice as prescribed by AS 13.06.110 shall be given to
 5 every interested person or to one person who can bind an interested person as
 6 described in (2)(A), (B), or (D) - (F) [(2)(A) OR (B)] of this section; notice
 7 may be given both to a person and to another person who may bind the person;

8 (B) notice is given to unborn [OR UNASCERTAINED]
 9 persons, a minor, an incapacitated person, or a person whose identity or
 10 location is unknown or not reasonably ascertainable, and persons who are
 11 not represented under (2)(A) or (B) of this section, by giving notice to all
 12 known persons whose interests in the proceedings are substantially identical to
 13 those of the unborn [OR UNASCERTAINED] persons, the minor, the
 14 incapacitated person, or the person whose identity or location is unknown
 15 or not reasonably ascertainable;

16 (4) at any point in a proceeding, a court may appoint a guardian ad
 17 litem to represent the interest of an unborn person, a minor, an incapacitated [,
 18 UNBORN, OR UNASCERTAINED] person, or a person whose identity or address is
 19 unknown or not reasonably ascertainable, if the court determines that representation
 20 of the interest otherwise would be inadequate; if not precluded by conflict of interests,
 21 a guardian ad litem may be appointed to represent several persons or interests; the
 22 court shall set out its reasons for appointing a guardian ad litem as a part of the record
 23 of the proceeding.

24 * Sec. 3. AS 13.36.043(a) is amended to read:

25 (a) The situs of a foreign trust is moved to this state when the trust satisfies
 26 the conditions listed in AS 13.36.035(c)(1) - (4) [AS 13.36.035(c)] and a qualified
 27 person serving as trustee registers the trust under AS 13.36.010.

28 * Sec. 4. AS 13.36.100 is repealed and reenacted to read:

29 **Sec. 13.36.100. Limitations on proceedings against trustees.** (a) Unless
 30 resolved or barred under (b) or (c) of this section, and notwithstanding the lack of
 31 adequate disclosure, all claims against a trustee who has issued a final report received

1 by the beneficiary and who has informed the beneficiary of the location and
2 availability of records for examination by the beneficiary are barred unless a
3 proceeding to assert the claims is commenced within three years after the beneficiary's
4 receipt of the final report.

5 (b) If a trustee petitions a court for an order approving a report that adequately
6 discloses the existence of a potential claim, serves the report on all beneficiaries to be
7 bound by the report, and gives the beneficiaries at least 90 days' notice of the court
8 proceeding, all potential claims of the beneficiaries against the trustee are barred
9 unless the claims are served on the trustee and filed with the court within 60 days after
10 the beneficiaries receive the report.

11 (c) If a trustee serves a report on a beneficiary that adequately discloses the
12 existence of a potential claim against the trustee, the trustee informs the beneficiary
13 that a proceeding to assert any claim against the trustee must be commenced by the
14 beneficiary within 12 months after receipt of the report if it is an interim report or
15 within six months after receipt of the report if it is a final report, and the beneficiary
16 fails to assert a claim against the trustee, all claims of the beneficiary are barred.

17 (d) A beneficiary is considered to have received a report if, being an adult, the
18 report is received by the beneficiary personally, or, if the beneficiary is a person who
19 may be represented and bound by another person under AS 13.06.120, the report is
20 received by the person who may represent the person under AS 13.06.120.

21 (e) A report adequately discloses the existence of a potential claim against a
22 trustee if it provides sufficient information for the beneficiary to know of the potential
23 claim or to be expected to reasonably inquire into the existence of a claim with respect
24 to the matter.

25 (f) This section does not apply to claims brought by a beneficiary against a
26 trustee for fraud committed by the trustee.

27 (g) In this section,

28 (1) "final report" is a report that informs the beneficiary that the trust
29 administration is to be ended;

30 (2) "report" means a final report or an interim report for a certain
31 period, and includes an accounting.

1 * Sec. 5. AS 13.38.500 is amended to read:

2 **Sec. 13.38.500. Determination and distribution of net income.** After a
3 decedent dies in the case of an estate, or after an income interest in a trust ends, a
4 fiduciary

5 (1) of an estate or of a terminating income interest shall determine the
6 amount of net income and net principal receipts received from property specifically
7 given to a beneficiary under (5) of this section and the provisions applicable to trustees
8 in AS 13.38.550 - 13.38.860; the fiduciary shall distribute the net income and net
9 principal receipts to the beneficiary who is to receive the specific property;

10 (2) shall distribute to a beneficiary or trust that receives a pecuniary
11 amount a share of net income equal to the beneficiary's or trust's fractional interest in
12 undistributed principal assets as determined under AS 13.38.510(a), (b)(1), (b)(3),
13 and (c) - (e) [AS 13.38.510]; the share accrues from the date of death of a decedent, in
14 the case of an estate, or the date of death of a settlor or specified event, in the case of a
15 revocable or irrevocable trust;

16 (3) shall determine the remaining net income of a decedent's estate or a
17 terminating income interest under the provisions applicable to trustees in
18 AS 13.38.550 - 13.38.860 and by

19 (A) including in net income all income from property used to
20 discharge liabilities; and

21 (B) paying from principal the debts, the funeral expenses, the
22 costs of disposition of remains, the family allowance under AS 13.12.404, fees
23 of personal representatives and their attorneys and accountants, and the taxes,
24 related interest, and penalties described in AS 13.38.810(a)(7) that are
25 apportioned to the estate or terminating income interest by the governing
26 instrument or applicable law;

27 (4) shall distribute the net income remaining after distributions
28 required by (2) of this section in the manner described in AS 13.38.510 to all other
29 beneficiaries;

30 (5) may not reduce principal or income receipts from property
31 described in (1) of this section because of a payment described in AS 13.38.800 or

1 **13.38.810** [AS 13.38.710 OR 13.38.720] to the extent that the governing instrument or
2 applicable law requires the fiduciary to make the payment from assets other than the
3 property or to the extent that the fiduciary recovers or expects to recover the payment
4 from a third party; the net income and principal receipts from the property are
5 determined by

6 (A) including all of the amounts the fiduciary receives or pays
7 with respect to the property, whether those amounts accrued or became due
8 before, on, or after the date of a decedent's death or an income interest's
9 terminating event; and

10 (B) making a reasonable provision for amounts that the
11 fiduciary believes the estate or terminating income interest may become
12 obligated to pay after the property is distributed.

13 * Sec. 6. AS 13.38.730(a) is amended to read:

14 (a) If a federal estate or gift tax marital deduction is allowed for all or part of a
15 trust whose income is required to be paid to the settlor's or testator's spouse and whose
16 assets consist substantially of property that does not provide the spouse with sufficient
17 income from or use of the trust assets, and if the amounts that the trustee transfers
18 from principal to income under AS 13.38.210 and that the trustee distributes to the
19 spouse from principal under the governing instrument are insufficient to provide the
20 spouse with the beneficial enjoyment required to obtain the marital deduction, the
21 spouse may require the trustee to make property productive of income, convert
22 property within a reasonable time, or exercise the power conferred by
23 AS 13.38.210(a). The trustee may decide which action or combination of actions to
24 take. The income interest for a marital deduction trust described in this
25 subsection shall be paid at least annually.

26 * Sec. 7. AS 13.38.730 is amended by adding a new subsection to read:

27 (c) Unless otherwise provided by the trust instrument, a power or authority
28 granted to a trustee, except for the authority to refrain from electing qualified terminal
29 interest property treatment under 26 U.S.C. 2056 or 2523 (Internal Revenue Code),
30 does not prevent a qualifying trust from being eligible for the marital deduction. All
31 powers granted to a trustee shall be construed consistently with this subsection. In this

1 subsection, "qualifying trust" means a trust

2 (1) that is designated in the trust instrument as a trust eligible for the
3 federal estate or gift tax marital deduction; or

4 (2) if it can be inferred from the trust instrument that the grantor
5 intended the trust to be eligible for the federal estate or gift tax marital deduction.

6 * Sec. 8. AS 34.40.110(a) is amended to read:

7 (a) A person who in writing transfers property in trust may provide that the
8 interest of a beneficiary of the trust, including a beneficiary who is the settlor of the
9 trust, may not be either voluntarily or involuntarily transferred before payment or
10 delivery of the interest to the beneficiary by the trustee. Payment or delivery of the
11 interest to the beneficiary does not include a beneficiary's use or occupancy of real
12 property or tangible personal property owned by the trust if the use or occupancy is in
13 accordance with the trustee's discretionary authority under the trust instrument. A
14 provision in a trust instrument that provides the restrictions described in this
15 subsection is considered to be a restriction that is a restriction on the transfer of
16 the transferor's beneficial interest in the trust and that is enforceable under
17 applicable nonbankruptcy law within the meaning of 11 U.S.C. 541(c)(2)
18 (Bankruptcy Code), as that paragraph reads on the effective date of this bill
19 section or as it may be amended in the future. In this subsection,

20 (1) "property" includes real property, personal property, and interests
21 in real or personal property;

22 (2) "transfer" means any form of transfer, including deed, conveyance,
23 or assignment.

24 * Sec. 9. AS 34.40.110(b) is amended to read:

25 (b) If a trust contains a transfer restriction allowed under (a) of this section,
26 the transfer restriction prevents a creditor existing when the trust is created or a person
27 who subsequently becomes a creditor from satisfying a claim out of the beneficiary's
28 interest in the trust, unless the creditor is a creditor of the settlor and

29 (1) the settlor's transfer of property in trust was made with the intent to
30 defraud that creditor, and a cause of action or claim for relief with respect to the
31 fraudulent transfer complies with the requirements of (d) of this section:

1 (2) the trust provides that the settlor may revoke or terminate all or part
2 of the trust without the consent of a person who has a substantial beneficial interest in
3 the trust and the interest would be adversely affected by the exercise of the power held
4 by the settlor to revoke or terminate all or part of the trust; in this paragraph, "revoke
5 or terminate" does not include a power to veto a distribution from the trust, a
6 testamentary nongeneral power of appointment or similar power, or the right to
7 receive a distribution of income, principal, or both in the discretion of a person,
8 including a trustee, other than the settlor, or a right to receive a distribution of income
9 or principal under (3)(A) or (B) of this subsection;

10 (3) the trust requires that all or a part of the trust's income or principal,
11 or both, must be distributed to the settlor; however, this paragraph does not apply to a
12 settlor's right to receive the following types of distributions, which remain subject
13 to the restriction provided by (a) of this section until the distributions occur:

14 (A) income or principal from a charitable remainder annuity
15 trust or charitable remainder unitrust; in this subparagraph, "charitable
16 remainder annuity trust" and "charitable remainder unitrust" have the meanings
17 given in 26 U.S.C. 664 (Internal Revenue Code) as that section reads on the
18 effective date of this bill section and as it may be amended;

19 (B) a percentage of the value of the trust each year as
20 determined from time to time under the trust instrument, but not exceeding the
21 amount that may be defined as income under AS 13.38 or under 26 U.S.C.
22 643(b) (Internal Revenue Code) as that subsection reads on the effective date
23 of this bill section and as it may be amended;

24 (C) the transferor's potential or actual use of real property
25 held under a qualified personal residence trust within the meaning of 26
26 U.S.C. 2702(c) (Internal Revenue Code) as that subsection reads on the
27 effective date of this bill section or as it may be amended in the future; or

28 (D) income or principal from a grantor retained annuity
29 trust or grantor retained unitrust that is allowed under 26 U.S.C. 2702
30 (Internal Revenue Code) as that section reads on the effective date of this
31 bill section or as it may be amended in the future; or

1 (4) at the time of the transfer, the settlor is in default by 30 or more
2 days of making a payment due under a child support judgment or order.

3 * Sec. 10. AS 34.40.110(e) is amended to read:

4 (e) If a trust contains a transfer restriction allowed under (a) of this section, the
5 transfer restriction prevents a creditor existing when the trust is created, a person who
6 subsequently becomes a creditor, or another person from asserting any cause of action
7 or claim for relief against a trustee of the trust or against others involved in the
8 preparation or funding of the trust for conspiracy to commit fraudulent conveyance,
9 aiding and abetting a fraudulent conveyance, or participation in the trust transaction.
10 Preparation or funding of the trust includes the preparation and funding of a
11 limited partnership or a limited liability company if interests in the limited
12 partnership or limited liability company are subsequently transferred to the
13 trust. The creditor and other person prevented from asserting a cause of action or
14 claim for relief are limited to recourse against the trust assets and the settlor to the
15 extent allowed under AS 34.40.010.

16 * Sec. 11. AS 34.40.110 is amended by adding a new subsection to read:

17 (f) Notwithstanding another provision of the law of this state, an action,
18 including an action to enforce a judgment entered by a court or other body having
19 adjudicative authority, may not be brought at law or in equity for an attachment or
20 other provisional remedy against property of a trust subject to this section or to avoid a
21 transfer of property to a trust that is the subject of this section unless the action is
22 brought under (b)(1) of this section and within the limitations period of (d) of this
23 section. A court of this state has exclusive jurisdiction over an action brought under a
24 cause of action or claim for relief that is based on a transfer of property to a trust that
25 is the subject of this section.

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

28 APPLICATION OF SECTIONS. (a) AS 13.06.120, as amended by sec. 2 of this Act,
29 applies to a proceeding begun on or after the effective date of sec. 2 of this Act.

30 (b) AS 13.36.100, as enacted by sec. 4 of this Act, applies to a report, final account, or
31 statement received by a beneficiary on or after the effective date of sec. 4 of this Act.

1 (c) The amendments to AS 34.40.110 made by secs. 8 - 11 of this Act apply to a trust
2 created before, on, or after the effective date of this Act.

3 * Sec. 13. Sections 2, 4, and 5 of this Act, take effect immediately under AS 01.10.070(c).

ALASKA STATE SENATE



Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-2327
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Interim:
119 N. Cushman, Suite 201
Fairbanks, Alaska 99701
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Senator_Ralph_Seekins@legis.state.ak.us

Senator Ralph Seekins
District D

MEMORANDUM

Date: March 18, 2004

To: Office of Representative McGuire

From: Senator Ralph Seekins

Re: Request for Hearing of SB 344

*As for R.S.
(pending review)*

Attached please find Senate Bill 344 along with a concomitant sponsor statement and other related information.

Senate Bill 344 revises current statutes related to the manner in which trust and estate services are rendered in the state of Alaska.

I respectfully request a hearing before your committee on this Bill at your earliest convenience. Thank you.

ALASKA STATE SENATE

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Senator Ralph Seekins
District D

Senate Bill 344 Sponsor Statement

“An Act relating to the Uniform Probate Code and trusts, including pleadings, orders, nonprobate assets, estates of decedents, minors, protected persons, incapacitated persons, guardians, conservators, trustees, foreign trusts, principal and income, and transfer restrictions; relating to corporate voting trusts.”

A vital characteristic of any highly developed economy is the ease with which financial resources flow from one market to another. In fact, the magnet-like attraction between money and the market that offers the most advantageous terms at a particular moment in time is, perhaps, best demonstrated within the financial services industry itself.

Over the years, the Alaskan banking industry has attracted funds to our state as a result of a particular niche we have successfully developed in an obscure corner of the industry known as trust and estate services. Much of this success can be attributed to the prescience demonstrated by the Alaska State Legislature.

Since 1997 this body has passed numerous bills effectively making Alaska a premier jurisdiction for this financial specialty. Just last year Senate Bill 87 adopted a more recent version of the Uniform Principal & Income Act. And House Bill 212 updated other portions of Alaska's trust laws. Both were signed into law last summer.

While Senate Bill 344 may not be as far reaching, it accomplishes much the same purpose. It does this by making a host of small technical revisions to current statutes. It updates provisions relating to virtual representation. It clarifies when a trustee can be relieved of liability. And it adds provisions which other jurisdictions have already adopted.

Keeping our trust statutes current has had a direct positive impact on our state's economy. Over the years, these periodic revisions have helped to bring hundreds of millions of dollars of trust assets into the state and added tens of millions of dollars to local bank deposits. Furthermore, it has increased business activity for attorneys, accountants, life insurance agents and brokerage firms. This, in turn, creates jobs.

Necessity, ingenuity and routine advances in technology collaborate on a daily basis to reinvent the world of financial products and services. To date, Alaska has successfully staked out a place in this world through our contemporary set of trust and estate laws. Senate Bill 344 seeks to preserve our position in what amounts to a highly fluid marketplace unrestricted by geographical boundaries. It seems reasonable to keep that money flowing this direction.

LEGAL SERVICES

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

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
State Capitol
Juneau, Alaska 99801-1192
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 26, 2004

SUBJECT: Sectional summary of SB 344 relating to the Uniform Probate Code and to trusts (Work Order No. 23-LS1694\A)

TO: Senator Ralph Seekins
Attn: Brian

FROM:  Theresa L. Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Deletes the ten-year limit on the duration of a voting trust under the state's for-profit corporations code.

Section 2. Amends the Uniform Probate Code section that establishes rules on pleadings, on when a person is bound by an order, on notice, and on representation. Adds to the general coverage of the section proceedings that involve non-probate assets and non-judicial proceedings and settlements. Adds language stating that the coverage of the section applies to proceedings brought under the Uniform Probate Code and the chapter on the principal and income of trusts.

Changes the description of powers of appointments to general or non-general powers of appointment. States that orders binding an agent having authority to act with respect to the particular question or dispute bind the principal. Expands the category covering unborn or unascertained persons to unborn persons, minors, incapacitated persons, and persons with unknown or not reasonably ascertainable identities or locations. Adds three situations where orders binding certain persons bind others as well.

Makes some related changes to the notice provisions of the section and the guardian ad litem appointment authority provisions.

Section 3. Makes more specific a cross-reference that establishes part of the criteria for determining when the situs of a trust is considered to be moved to this state.

Section 4. Changes the event that triggers a six-month time period within which a claim may be brought against a trustee for breach of trust; the event must provide adequate

disclosure of the claim and the time allowed to begin the proceeding. Requires that all claims against a trustee who has issued a certain final account or statement, even if there is not adequate disclosure, be brought within three years after the beneficiary's receipt of the final account or statement. With regard to receipt of a report, final account, or statement, includes references to the representation and binding effect of other persons under AS 13.06.120.

Section 5. Adds a provision that indicates when a report is considered to adequately disclose to a beneficiary a potential claim for a breach of trust by a trustee.

Section 6. Changes the rules to be used from AS 13.38.510 to determine the share to be distributed to certain beneficiaries or trusts. Makes a reference correction to AS 13.38.800 or 13.38.810.

Section 7. Requires that the income interest for a marital deduction trust described in the section be paid at least annually.

Section 8. States that a trust provision that provides the transfer restrictions described in this subsection is to be considered a restriction on the transfer of the transferor's beneficial trust interest and enforceable under applicable non-bankruptcy law.

Section 9. Makes changes to two of the categories under which certain creditors may satisfy claims out of a beneficiary's interest in a trust when there is a transfer restriction.

Section 10. Explains that within the subsection the preparation or funding of a trust is considered to include the preparation and funding of a limited partnership or a limited liability company if interests in the entities are transferred to the trust.

Section 11. States that an action for attachment or other provisional remedy against property of a trust subject to this section, or an action to avoid a property transfer to a trust that is the subject of this section, may not be brought unless it meets certain criteria identified in the subsection. Gives this state's superior court exclusive jurisdiction over a cause of action or a claim for relief that is based on a property transfer to a trust that is the subject of this section.

Section 12. Provides guidance on which proceedings, and which reports, final accounts, and statements received by a beneficiary, will be affected by two of the sections in this Act.

Section 13. Provides that three of the bill sections take effect immediately.

If I may be of further assistance, please advise.

TLB:med
04-239.med

Sectional Analysis of Proposed Trust & Estate Law Amendments

AS 13.38.500(2) is a technical amendment.

AS 13.38.500(5) is a technical amendment.

AS 13.38.730 clarifies that a trust will qualify for the federal estate or gift tax marital deduction.

AS 13.06.120 makes amendments to Alaska's current virtual representation statutes. The amendments are to modernize Alaska's statutes by incorporating provisions Washington State, New York state have adopted and provisions of the Uniform Trust Code.

AS 13.36.100 is amended to limit when a beneficiary may assert a claim against a trustee. The current limitation is inadequate in that it does not limit when a beneficiary may assert a claim against a trustee which may be evident from a yearly or other account or report provided by the trustee. This could lead to costly and lengthy litigation. The proposed amendment will limit the time in which a beneficiary may assert a claim for breach of trust so long as the beneficiary receives a report from the trustee that adequately discloses the existence of a potential claim for breach of trust and informs the beneficiary of the time allowed for commencing a proceeding.

This change is necessary because under current statute a trustee can only be relieved of liability by a final account or at the termination of a relationship. Since Alaska has perpetual trusts there may never be a final accounting.

AS 13.36.035(c) This change is to clarify what needs to be done to transfer a trust to Alaska.

AS 34.40.110(a) this provision clarifies that the spendthrift provisions provided by AS 34.40.110 are intended to come under the exceptions for spendthrift trusts contained in the bankrupts code (11U.S.C. §541(c)). Similar provisions exist in Delaware and Utah.

AS 34.40.110 these changes add spendthrift protection for two commonly used types of Estate planning approaches, residence trusts and GRATs. Additional language has been added to the introductory language of paragraph (3) to make it clear that a beneficiary's interest in such distributions is protected until the distributions occur. Similar statutes exist in the Delaware.

AS 34.40.110(e) Subsection (e) was intended to protect professionals who assist in the planning and formation of self-settled discretionary spendthrift trusts. Subsequent experience with the formation of these trusts indicates that frequently assets are first placed into a limited partnership or limited liability company and then interests in such companies are transferred to the trust. The purpose of the additional language is to protect professionals with respect to the formation of these entities as well as the formation of the trusts.

AS 34.40.110(b)(1) this provision is similar to provisions which have been added to the Delaware and Rhode Island statutes. This provision clarifies that if a cause of action or claim is asserted that a transfer to a trust is a fraudulent transfer, then the claim must be made under and processed pursuant to Alaska law.

AS 10.06.425 Voting trusts are often used in closely held family situations for control of the business for a period of time. Often, it is desired that such voting trusts last longer than the existing ten-year limitation. The existing statute places a ten-year limitation on the duration of voting trusts but does not place any time duration on voting agreements. This is inconsistent.

DETAILED SECTIONAL ANALYSIS OF

PROPOSED TRUST AND ESTATE LAW AMENDMENTS

Technical Amendments to Recently Enacted Uniform Principal and Income Act. Senate Bill 87, passed in 2003, enacted a version of the Uniform Principal and Income Act. Two drafting technical errors exist in the enacted version. They are as follows:

Alaska Statute 13.38.500(2)

Subsection .500(2) provides that a beneficiary or trust that receives a pecuniary amount shall also receive a proportionate share of the net income. This subsection refers to subsection .510 for various rules used in that section for determining such net income. However, one of the provisions in subsection .510 is inconsistent with this reference and should therefore be excluded.

Alaska Statute 13.38.500(5), in the second and third lines, references are made to AS 13.38.710 or 13.38.720. These references are incorrect. The references should be to AS 13.38.800 or 13.38.810.

Alaska Statute 13.38.730,

Existing subsection .730 is a statutory savings clause to ensure that trusts designed to qualify for the federal estate or gift tax marital deduction do so qualify. The payment of income at least annually is one of the qualifications required for the federal estate or gift tax marital deduction.

Virtual Representation Amendment.

Explanation. The proposed amendment to AS 13.06.120 expands both the types of proceedings in which notice to one person who may represent another person may bind another person and the circumstances under which substitute notice may be given. Expanding the scope of the proceedings to include non-judicial settlements and informal proceedings under this chapter will streamline the process for resolving issues relating to trusts and estates and minimize the costs associated with formal court proceedings. The proposed amendments incorporate the doctrine of "virtual representation" in which representation by one person having a substantially identical interest with respect to a particular issue may bind another person. Representation is not permitted, however, if there is a conflict of interest. See Uniform Trust Act § 304.

Limitations on Proceedings against Trustees

As 13.36.100 expands the reach of the limitations period for claims of breach of trust against a trustee. Under current law, a claim against a trustee for breach of trust is barred as to any beneficiary who receives a final account that terminates the trust relationship if a proceeding to assert the claim is not commenced within six months after receipt of the final account. Trusts now may continue in perpetuity under Alaska law; therefore there may never be a final account.

The current limitation is inadequate in that it does not limit when a beneficiary may assert a claim against a trustee which may be evident from a yearly or other account or report provided by the trustee. This could lead to costly and lengthy litigation. The proposed amendment will limit the time in which a beneficiary may assert a claim for

breach of trust so long as the beneficiary receives a report from the trustee that adequately discloses the existence of a potential claim for breach of trust and informs the beneficiary of the time allowed for commencing a proceeding.

Change of Trust Situs to Alaska.

At present, reference to only AS 13.36.035(c) is ambiguous and creates the possible argument that the original trust instrument must state that the laws of the State of Alaska govern the validity, construction, and administration of the trust before the trust could be moved to Alaska. This is not the intent of AS 13.36.043. Rather, if the requirements of AS 13.36.035(c)(1)-(4) are met then the trust can be moved to the State of Alaska. At that time, if the trust instrument allows or is modified then a governing law provision may be added which states that Alaska's laws will apply to the trust.

Intention Regarding Spendthrift Restriction. AS 34.40.110(a)(3)

This new provision clarifies the Legislature's intent that the spendthrift provisions provided by AS 34.40.110 are intended to come under the exception for spendthrift trusts contained in § 541(c)(2). Similar provisions exist in the Delaware and Utah statutes.

Protection for Interests in Qualified Personal Residence Trusts, Grantor Retained Annuity Trusts, and Grantor Retained Unitrusts.

AS 34.40.110(b)(3)

These changes add spendthrift protection for two commonly used types of estate planning approaches, residence trusts and GRATs. Additional language has been added to the introductory language of paragraph (3) to make it clear that a beneficiary's interest in such distributions is protected until the distributions occur. Similar protections for residence trusts exist in the Delaware statute.

Protection for Persons Assisting With Creation of Trusts

AS 34.40.110(e)

Subsection (e) was intended to protect professionals who assist in the planning and formation of self-settled discretionary spendthrift trusts. Subsequent experience with the formation of these trusts indicates that frequently assets are first placed into a limited partnership or limited liability company and then interests in such companies are transferred to the trust. The purpose of the additional language is to protect professionals with respect to the formation of these entities as well as the formation of the trusts.

Procedure for Asserting Fraudulent Transfer Claim.

AS 34.40.110(b)(1),

This provision is similar to provisions which have been added to the Delaware and Rhode Island statutes. This provision clarifies that if a cause of action or claim is asserted that a transfer to a trust is a fraudulent transfer, then the claim must be made under and processed pursuant to Alaska law.

Elimination of Duration Restriction for Voting Trusts. AS 10.06.425

Voting trusts are often used in closely held family situations for control of the business for a period of time. Often, it is desired that such voting trusts last longer than the existing ten-year limitation. The existing statute places a ten-year limitation on the duration of voting trusts but does not place any time duration on voting agreements. This is inconsistent.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 344
(S) Publish Date: 3/12/04

Revision Date/Time (Note if correction): _____ Dept Affected: DCED
Title Trusts/Estates/Property RDU Banking, Securities & Corp (115)
Component Banking, Securities & Corp
Sponsor Senator Seekins
Requester Senate Labor & Commerce Component No. 1233

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation applies to the Uniform Probate Code. It codifies new federal tax provisions and applies informal probate proceedings to all parties. This legislation has no impact on the operations of the division.

Prepared by: Mark Davis, Director Phone (907) 465-2521
Division Banking, Securities & Corporations Date/Time 3/4/04 4:19 PM
Approved by: Edgar Blatchford, Commissioner Date 3/4/2004
Agency Department of Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SB 344
(S) Publish Date: 3/12/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title: "An Act relating to the Uniform Probate Cor RDU: CIVIL
trusts, including pleasings, order, nonprobate assets, estates..." Component: Commercial & Fair Business
Sponsor: Senator Seekins
Requester: Senate Labor & Commerce Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Robert Meiners, Administrative Services Manager Phone 465-3673
Division: Administrative Services Date/Time 3/8/04 11:33 AM
Approved by: Robert Meiners for Gregg D. Renkes, Attorney General Date 3/8/2004
Agency: Department of Law

SB

354

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2075

May 3, 2004

Representative Lesil McGuire
Chair, House Judiciary Committee
Alaska State Legislature
State Capitol, Room 118
Juneau, AK 99801

Re: SB 354 - "An Act relating to complaints filed with, and investigations, hearings, and orders of, the State Commission for Human Rights; and making conforming amendments."

Dear Representative McGuire:

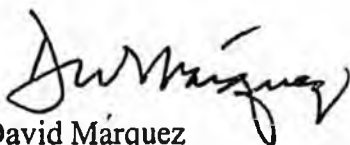
I am writing this letter to request that you schedule the above bill for a hearing, pending referral, at your earliest convenience.

If you have any questions, please feel free to contact me.

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL

By:



David Márquez
Chief Assistant Attorney General

DWM/lcc

cc: Mike Tibbles, Legislative Director, Office of the Governor
Deborah Behr, Legislation and Regulations Attorney, Department of Law

CSSB 354 (STA)

THIS BILL IS INTENDED TO IMPROVE THE EFFECTIVENESS OF THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS AND MAKE ITS PROCEDURES MORE BALANCED AND FAIR.

1. The commission does not have the discretion to choose which complaints to prosecute.
 - A court case -- *Department of Fish and Game v. Meyer*, 906 P.2d 1365 (Alaska 1995) -- requires the commission to prosecute every claim of unlawful discrimination that is supported by substantial evidence of unlawful discrimination. Substantial evidence is any evidence that supports the complaint. The commission cannot weigh the evidence or look at the strength of an employer's (or other respondent's) defenses to the complaint when it applies this test so the commission is forced to take even a weak case to hearing.
 - The bill authorizes commission staff to choose the complaints of unlawful discrimination that merit pursuit, based on such factors as strength of evidence, severity of alleged violation, employer's history of discrimination, or complaint's value in establishing precedent. (Sec. 4)
 - By allowing the commission to evaluate complaints of unlawful discrimination and to allocate its resources to prosecuting those complaints that will best serve the commission's goal of eliminating unlawful discrimination, the commission will be able to use its resources more effectively.
 - The bill avoids conflicts between (1) staff's exercise of its expanded discretion to compromise, dismiss, or pursue complaint and (2) victims' interests, by allowing complainant to opt out of commission procedures, and after opting out, to pursue claim independently of commission in another forum (e.g. Alaska Superior Court). (Sec. 1)

2. There is a question whether current law allows the commission to compromise a claim of discrimination during the conciliation phase that follows the investigation of a complaint of unlawful discrimination.
 - The bill permits agreements during the conciliation phase to compromise damage claims. (Sec. 3)
 - The bill requires that agreements be reduced to writing, and provides that agreements are enforceable as commission orders. (Sec. 3)

3. Commission hearing procedures are cumbersome and antiquated. Once there is a finding of "substantial evidence", persons appearing before the commission cannot obtain a decision without incurring the expense of a hearing, even when facts are undisputed.

- The bill requires the commission to follow the Administrative Procedure Act, unless AS 18.80 provides a different procedure. (Secs. 5, 12)
- The bill ties rate of interest awarded by commission to the legal rate in AS 09.30.070, bringing commission into conformity with other administrative agencies and the courts. (Sec. 8)
- The bill empowers the commission to issue summary decisions similar to the summary judgments that courts issue. That is, if the facts are not disputed, the commission can rule without providing a full hearing. (Sec. 5)

4. Commission procedures now allow a complaint to be amended to add new charges of unlawful discrimination for which no finding of "substantial evidence" was made. Bypassing informal proceedings (investigation and conciliation) removes an opportunity to resolve a complaint before a hearing.

- The bill requires staff to base the charges in the accusation (which is issued before a hearing) on the investigator's determination of "substantial evidence." (Sec. 5)
- The bill requires that "substantial evidence" support any new charges of unlawful discrimination added when an accusation is amended. (Sec. 5)
- The bill requires that respondent have an opportunity to address all charges informally (even charges added by amendment) before being required to defend them at a hearing. (Sec. 5)

5. The remedies that the commission may award are not clearly listed in statute.

- The bill prohibits noneconomic or punitive damages, which is consistent with Alaska courts' interpretation of existing law. (Sec. 6)
- The bill limits remedies (normally) to restoration of actual benefits lost. For employers this means payment of back pay and hiring, promoting, or reinstating an employee to a position. This is also consistent with Alaska case law. (Sec. 6)
- But the bill allows an award of front pay for a period of up to one year if returning to work is impossible because no vacancy exists, the employer's

unlawful discrimination made the employee incapable of work, or the working environment deteriorated intolerably. The courts have not definitively ruled that the commission has the current authority to award front pay at all, although the commission takes the position that it does. (Sec. 6)

- The bill requires any award of wages (front pay or back pay) to be reduced by the amount the employee should be able to earn with a "reasonably diligent" effort. (Sec. 6)
- Other remedies remain available to employees who bring an action in the Alaska Superior Court (e.g., punitive damages, non-economic damages, unlimited front pay, medical expenses incurred).

6. The Alaska State Commission for Human Rights supports all of the changes, with the exception of the specified remedy provisions.

- The commission is uncomfortable with specifying the remedies available, although it has offered no alternative language.
- The commission prefers the ambiguous "any appropriate relief, including but not limited to" language.
- The commission does not support a one (or even two year) cap on front pay; it prefers unlimited front pay authority.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 354
 (S) Publish Date: 2/27/04

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
 Title "An Act relating to complaints filed RDU Executive Operations
with the State Commission for Human Rights.." Component Human Rights
 Sponsor Rules Committee
 Requester Governor Component No. 1

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (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 has no fiscal impact on the Alaska Human Rights Commission.

Prepared by: Gail Fenumiai, Asst. Admin. Director LP Phone 465-3885
 Division Office of the Governor, Administrative Services Date/Time 2/24/04 9:17 AM
 Approved by: Paula Haley, Executive Director Date 2/24/2004
 Agency Alaska Human Rights Commission

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 354
(S) Publish Date: 2/27/04

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
Title "An Act relating to complaints filed RDU Executive Operations
with the State Commission for Human Rights.." Component Human Rights
Sponsor Rules Committee
Requester Governor Component No. 1

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						
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Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

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Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation has no fiscal impact on the Alaska Human Rights Commission.

Prepared by: Gail Fenumiai, Asst. Admin. Director LP Phone 465-3885
Division: Office of the Governor, Administrative Services Date/Time 2/24/04 9:17 AM
Approved by: Paula Haley, Executive Director Date 2/24/2004
Agency: Alaska Human Rights Commission



DISABILITY
LAW CENTER
OF ALASKA

May 7, 2004

By hand delivery and e-mail

Rep. Bruce Weyhrauch
Chairman, House State Affairs Committee
Alaska Legislature
State Capitol, Room 102
Juneau, Alaska
E-mail: <ginny.austerman@legis.state.ak.us>

JUNEAU

230 South Franklin #206
Juneau, AK 99801
(907) 586-1627
FAX (907) 586-1066

Re: **Opposition to SB 354 re: Human Rights Commission**

Dear Representative Weyhrauch:

Please accept these comments on CSSB 354 (STA)am(efd fld), the currently available form of this bill.¹ CSSB 354, if passed, will greatly weaken the ability of the Commission to provide this valuable protection for Alaskans with disabilities, not to mention Alaskans protected from discrimination based on gender, marital status, pregnancy, parenthood, race, religion, color or national origin. While CSSB 354 does not purport to directly abrogate or weaken the anti-discrimination rights of AS 18.80.210, the bill will in several ways weaken the protection and enforcement of these important civil rights by limiting the way the Commission enforces those rights. Even to the extent the bill is limited in its impact to employment and housing discrimination claims, it sets a bad precedent in its limitation on the Commission's ability to respond to and prevent discrimination. We oppose the bill in the strongest terms.

A. Statute of limitations of 180 days / process of filing a complaint:

Currently, a discrimination claim is presented to the Commission, is informally investigated by Commission personnel, and if substantial evidence is found to support the claim, a formal "complaint" is drafted by a Commission staff (sometimes an attorney, sometimes an investigator) and formally "filed" by the Commission.

Under current regulation, discrimination complaints thus prepared must be filed within 180 days of discriminatory conduct (or, if the conduct is continuing, within 180 days of the last date of the continuing conduct). 6 Alaska Administrative Code ("AAC") 30.230 (b), (c). Thus, it is currently possible that a complaint may be

¹ Please accept our apology for not submitting comment earlier on this bill, or on its companion bill, HB 525. I have been away from work due to personal and familial health problems since mid-February, and our agency has been short-staffed in the interim.

MEMBER OF THE
NATIONAL
ASSOCIATION OF
PROTECTION &
ADVOCACY
SYSTEMS

dismissed for being untimely, when the delay was not caused by the complainant, but instead by the investigator or staff involved in informal investigation, by delays in communication between the Commission staff and the complainant, or due to disagreement between the complainant and the Commission staff as to how the complaint should be worded.

It is unusual to have a legal process where the timely filing of an administrative complaint depends upon the conduct of a third party (other than a retained attorney) who is employed as personnel of the tribunal. I believe that there is a very strong due process defect in a process where the complainant is not in control of whether a complaint is timely filed.

It is unclear whether SB 354 is intended to ratify the current system that allows the filing only of Commission-drafted complaints. The distinction drawn in the current bill between an "accusation" and a "complaint" suggests that the Commission will not in the future insist upon the drafting and filing of a formal complaint, and may not provide assistance to unrepresented lay persons in preparation of a formal complaint. If this is the case, then we suggest deletion of the phrase "verified" in existing AS 18.80.100. There is little purpose served by requiring a "verified" complaint, when a formal "accusation" will be issued later before any administrative action. I have drafted a proposed amended for this purpose. See *DLC Proposed Amendment 1*.

The current draft of the bill also codifies the 180-day time limitation. See Section 2, at page 2, line 4 (adding new AS 18.80.100(c)). I have drafted a proposed amendment that would clarify that a complainant has met this codified statute of limitations by submission of a document signed by the complainant setting forth the claim, without having to depend upon the conduct of Commission staff and without requiring unreasonable procedural formality in the drafting of the complaint. See also *DLC Proposed Amendment 1*. These amendments will prevent unreasonable dismissal of otherwise valid claims.

B. Discretion to dismiss claims having substantial cause:

CSSB 354 purports to grant discretion to the executive director of the Commission to dismiss a complaint even though it has been filed on a finding of *substantial cause*. CSSB 354 (STA)am(efd fld), Section 4, at page 2, line 23 (adding new AS 18.80.112). There is no time limitation on this power. It appears to authorize the executive director to summarily dismiss cases in which the Commission has already issued a substantial cause finding and issued a complaint, but has not adjudicated the case. This may help erase backlogs within the Commission, but it is not good public policy.

For claims based on Alaska anti-discrimination law, it has been held that a claimant has two options: (1) file an administrative claim of discrimination before the ASCHR; or (2) file a complaint directly in Alaska superior court. No "right to sue" letter is required to pursue state claims and remedies, as is required to pursue federal employment discrimination claims under Title I of the federal ADA.

However, practical obstacles prevent superior court from being a meaningful forum for Alaskan claimants of modest means with employment discrimination claims. Litigants in superior court face the potential of paying a portion of the defense attorneys fees if they lose. A claimant discriminated against by a large employer, represented by an expensive law firm, hazards his or her house and other life assets under current rules of Alaska Civil Procedure. A claimant often cannot afford to pay an attorney, because they have just lost their job -- due to the discriminatory conduct.

Many attorneys will not take an employment case on a contingent-fee basis, since many discrimination cases depend upon the differing versions of events by percipient witnesses. So as a result, it can be very difficult for an employment discrimination claimant to pursue a claim in superior court. They can't afford a for-fee attorney, and few attorneys are willing to take these cases on a contingent fee basis.

The Legislature and past administrations have recognized the inherent unfairness of these practical obstacles presented to honest claimants of modest means, and wisely decided to create a system where the Commission "shall" hold a hearing on a claim found supported by substantial evidence if it is not successfully settled after investigation and conciliation. Current AS 18.80.110, 18.80.120. Current law provides a fairer, more level playing field between claimants and defendants by providing a low-cost meaningful administrative forum for complainants, but protecting defendants by permitting only cases found to have "substantial evidence" to go forward to a hearing.

CSSB 354 would permit dismissal of meritorious cases on the thinnest of rationales, that the case "is not in the interest of the State." Basing the protection of an average Alaskans' right against discrimination on the slender reed of one public official's view of "the interest of the State" is bad policy. It cheapens the significance of the right. It is no answer to say dismissal is "without prejudice." Dismissal of an administrative discrimination complaint that is supported by "substantial evidence" likely will, as a practical matter, preclude Alaskans of modest means any forum for their case, since in most cases the claimant cannot find or afford an attorney usually needed for successful prosecution in superior court.

CSSB 354 retreats from the wisdom of current law, and skews the playing field in favor of discrimination. Knowing that the courthouse doors are as a practical matter not open to many claimants, it gives the signal that Alaska is an open field for discrimination, especially if you have the ear of the executive director. It is unwise public policy.

I have drafted an amendment (see *DLC Proposed Amendment 2*) to delete Section 4 and to modify other sections of the bill to preserve the current state of the law that an unresolved complaint found to have substantial cause must proceed to a formal hearing if conciliation efforts are unsuccessful.

C. Representation of the claimant by attorney of choice in accusation proceedings:

One effect of the bill, if passed, would be to change the methods of procedure for employment and housing discrimination adjudicatory hearings – but apparently not other types of discrimination hearings. See CSSB 354, §§ 4, 5, 6, 7, and 12 (referring to “accusation” and making proceedings subject to AS 44.62.330(a)).

The bill affords a respondent (“the person charged in an accusation”) the right to representation by an attorney of the respondent’s choosing, but a similar and parallel right is not afforded to a claimant. See CSSB 354, § 5, at page 3, lines 22-26 (proposed AS 18.80.120(a)).

We do not think it was the intent of the drafters of this bill to imply that the staff of the Commission, having decided to prosecute an accusation, has agreed to provide legal representation to the complainant. Yet we also do not believe it was the intent of the drafters that complainants would be unrepresented by counsel at the formal hearing, since it is a fundamental right of due process of law to be represented by counsel of one’s choosing during a formal hearing at which one’s significant rights are adjudicated, to advise the client and otherwise participate in the proceeding.

To resolve this potential due process defect in the bill, I have drafted an amendment that would insert a phrase in Section 5 that says “The complainant may be represented by counsel of the complainant’s choice.” See *DLC Proposed Amendment 3*.

D. Limitation of Commission remedies violates due process of law:

CSSB 354 removes important teeth from the Commission’s enforcement powers, without any valid policy justification.

The bill at page 4, lines 17-18, would prohibit the Commission from issuing an award of non-economic or punitive damages “in any case” of discrimination. Thus a wealthy entity or individual will be free to engage in discriminatory conduct in Alaska knowing that the Commission cannot impose a meaningful remedy. There is no disincentive against discrimination.

Current employment law allows for a “make whole” remedy in employment and housing claims that is appropriately flexible to each individual case, permitting “any appropriate relief, including but not limited to,” a list of potential remedies for employment claims, and “actual damages, which shall include but not be limited to” specified potential remedies for housing claims. This bill deletes the “any appropriate relief” clause of the employment discrimination remedial section and lists specific relief, raising the potential argument by a losing defendant that only specific listed remedies are permitted. Section 6, at page 4, lines 22-23. The bill eliminates the phrase “but not limited to” in the remedial section for housing discrimination claims, raising the

Rep. Bruce Weyhrauch, chairman, House State Affairs Committee, Alaska Legislature
Re: CSSB 354: Alaska State Commission on Human Rights; Suggested amendments
May 7, 2004
Page 5 of 5

same potential argument in housing claims that the enumerated remedies are exclusive. CSSB 354, at page 5, page 11. This is not only unwise, we believe it violates due process of law.

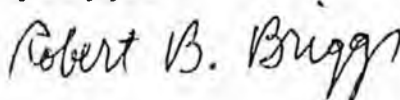
We believe due process of law requires that the remedies available to a claimant must be meaningful, including in appropriate cases the right to seek and be awarded punitive damages commensurate with the defendant's resources and sufficient to present a disincentive to future discrimination. I have already discussed why, as a practical matter, an unemployed claimant with modest assets may find it difficult if not impossible to pursue an employment discrimination claim in superior court. Remedies provided in an administrative proceeding must be meaningful to prevent future discrimination and to make the claimants whole.

The bill limits payment of "front pay" in employment claims to one year. CSSB 354, page 4, lines 24-29 and page 5, lines 1-3. There is no justification for this limitation, particularly in light of the Commission's own testimony objecting to the limitation, stating "[t]here has been no indication that there are problems with the law or the Commission's awards which would warrant the proposed limits on relief." Testimony of Lisa Fitzpatrick, Alaska State Commission on Human Rights, at page 3 (May 4, 2004). For the Legislature to restrict the Commission's powers without a compelling government interest runs afoul of its mandate to implement the anti-discrimination clauses of Alaska's constitution with due process of law. Art. I, §§ 1, 3, 4, and 7.

I have drafted an amendment to the bill that would eliminate the language limiting the Commission's remedial powers. See DLC Proposed Amendment 4 (eliminating language that would prevent the Commission from assessing non-economic or punitive damages) and DLC Proposed Amendment 5 (deleting language limiting the remedies in employment and housing claims).

Alaskans with disabilities depend upon the Commission to fulfill the important role of protecting the rights of average Alaskans. The bill threatens the well-being of Alaskans with disabilities, exposing them to discrimination in employment, housing, places of public accommodation, rental or sale of real property, in obtaining credit or financing, and in other aspects of life. A right without a meaningful remedy, without powerful enforcement, is no right at all. We urge that CSSB 354 not be passed. Thank you for consideration of these comments.

Very truly yours,



Robert B. Briggs, staff attorney

Encl.

Cc: (w/ encl.)

Members, House State Affairs Committee

Dave Fleurant, executive director, DLC-Anchorage

AMENDMENT NO. _____

OFFERED BY: _____

1 At page 1, line 7, delete the phrase:

2 “, verified”

3 At page 2, line 8, after “. . . alleged discriminatory practice stopped.” insert:

4 “A written document signed or made by the claimant in substantial compliance
5 with AS 18.80.100 that is received by the commission or post-marked within the
6 time limit of this subsection shall be deemed timely under this subsection.”

AMENDMENT NO. _____

OFFERED BY: _____

- 1 At page 2, line 22, delete Section 4 and renumber remaining sections accordingly.
- 2 At page 3, line 15, delete the phrase "and the executive director determines, in the
3 executive director's discretion, to refer the complaint for hearing"
- 4 At page 3, line 20, delete the sentence "The executive director's decision to refer the
5 complaint to hearing is not reviewable by the commission under this chapter."

AMENDMENT NO. _____

OFFERED BY: _____

- 1 At page 3, line 24, after the phrase “. . . the commission.” insert sentence:
- 2 “The complainant may be represented by counsel of the complainant’s choice.”

AMENDMENT NO. _____

OFFERED BY: _____

1 At page 4, line 17, delete the phrase:

2 “discriminatory practice. The commission may not order an award of
3 noneconomic or punitive damages in any case [DISCRIMINATION]”

4 At page 4, lines 16-17, after the phrase “. . . type of” insert:

5 “discrimination.”

AMENDMENT NO. _____

OFFERED BY: _____

1 At page 4, line 20, after the phrase “. . . may order” insert the phrase:

2 “any appropriate relief, including but not limited to”

3 At page 4, line 20, delete the phrase:

4 “one or more of the following:”

5 At page 4, line 25, delete the phrase:

6 “for a period of not more than one year if hiring, reinstatement, or
7 upgrading of an employee is inappropriate because no vacancy exists, the
8 employer’s discriminatory practice rendered the employee incapable of
9 returning to work, or the relationship between the employer and the
10 employee has so deteriorated as to make working conditions intolerable”

11 At page 5, line 1, delete “must” and insert “may”

12 At page 5, line 11, delete “[, BUT NOT LIMITED TO,]”

CSSB 354
TESTIMONY SUBMITTED TO THE
HOUSE STATE AFFAIRS COMMITTEE
May 3, 2004

The Human Rights Commission submits the following comments to the House State Affairs Committee on CSSB 354, a bill that would significantly affect the Commission's authority and procedures. These comments are being submitted by the Commission's Chairperson, Lisa Fitzpatrick, on behalf of the entire Commission.

The Commissioners support the provisions of the bill that provide discretion to the staff to focus agency resources on cases of greater merit. The Commissioners have serious concerns, however, about the limitations on available relief that would be imposed by this legislation.

BACKGROUND

The Human Rights Commission was created over forty years ago to enforce Alaska's strong public policy against discrimination, and provide an alternative forum to bringing a lawsuit in court. The Commission's purpose is to make whole those persons who are found to be victims of illegal discrimination. When an Alaskan alleges a harm because of discrimination in employment, housing, or a practice by the State because of their race, sex, disability, age, or other prohibited reason, they may file with the Commission. Thousands of Alaskans contact the Commission each year for assistance, but the Commission only accepts complaints that it determines are jurisdictional with the agency. Over the past ten years the Commission accepted an annual average of 453 complaints for filing.

A large percentage of cases are resolved short of a full investigation. Immediately after a complaint is filed, the parties are offered an opportunity to participate in a voluntary mediation program. The Commission's success rate in the program is over 80%. Between one quarter and one third of cases filed with the Commission are resolved through mediation.

If cases don't resolve in voluntary mediation, the Commission staff investigates the allegations, impartially and informally. Investigations are not adversarial, and the informal nature of investigations means that it is not necessary for respondents to hire attorneys to represent them in this process. In fact, only about 20% of respondents, most of whom are large employers, engage legal counsel for this purpose.

After reviewing all of the evidence gathered, the Commission staff makes a threshold determination as to whether there is substantial evidence to support the allegations. If there is not substantial evidence, the Commission closes the matter and takes no further action. If there is substantial evidence to support the claims, the

Commission tries to informally resolve the matter through a process known as conciliation. At this point, the Commission attempts to secure "make whole" relief for the complainant. Nothing prevents the complainant from accepting less than make whole relief, and the Commission often resolves cases at this stage for much less than the complainant would be entitled if they pursued the claim. The Commission will close the case if the complainant refuses to accept relief that the Commission believes is reasonable.

If the matter cannot be resolved through conciliation, the Commission holds a hearing to determine whether unlawful discrimination occurred. Respondents often do hire attorneys at this point in the process, although the Commission encourages the parties to proceed as informally as possible. It is important to recognize, however, that contrary to many common perceptions, neither the Commission nor the Commission's attorney represent the complainant at such hearings. The complainant is the beneficiary of a successful case, but the Commission seeks to enforce the State's important public policy against discrimination when it prosecutes a violation of the law. In this manner, the Commission acts much like a public prosecutor who seeks to enforce the laws of the State. As the United States Supreme Court has said, civil rights enforcement agencies like the Human Rights Commission seek to vindicate the public's interest when seeking remedies that will benefit victims of discrimination.

If, at the conclusion of a hearing, the Commission finds that illegal discrimination has occurred, the Commission can award "make whole" relief—relief that would put the victim in the same position they would have been in absent the illegal discrimination—and no more. In practice, if someone has a case where they want to recover a large damage award, and can find an attorney, they go to court.

Commission cases often don't involve the types of large damages available in court. **The average amount of awards where the Commission has found substantial evidence of discrimination in employment cases is less than forty-eight hundred dollars (\$4800).** In most of these cases, people come to the Commission, not the courts, because lawyers cannot afford to take their cases for such small awards. In these situations, the Commission really is the only place a person can come to get relief.

PROVISIONS OF HB 525

Discretion to Dismiss Complaints

The Commissioners support Section 4, which adds a new provision giving the executive director discretion to dismiss complaints before an accusation is issued. This would mean that a hearing would no longer be required by law in every case where substantial evidence is found. This provision allows the Commission to take forward only those cases that will promote the public policy of the State. Complainants would be free to file a timely case in court after a case is dismissed under this section regardless of

the reasons for the dismissal. This section also allows the executive director to dismiss a case prior to a finding of no substantial evidence and promotes efficiency in processing complaints.

Limits on the Type of Relief the Commission Can Award

The Commission believes that this bill goes too far in limiting the amounts and types of remedies that can be awarded. There has been no indication that there are problems with the law or the Commission's awards which would warrant the proposed limits on relief. The Commission discussed some of the limits on relief with the Department of Law, but did not ultimately come to an agreement on all issues. After having these discussions with the Department of Law, and as a result of its ongoing analysis, other problems with the limitations on relief have become more apparent to the Commission.

Currently, the statute now provides for the award of "any appropriate relief." The provisions of Section 6 of the bill remove that authority and limit relief to only those specifically enumerated listed remedies. **This would preclude many types of remedies that are basic, common sense, make whole remedies—ones that do not seek to punish or in any way give a windfall to complainants, but simply to put them in the position they would have been in but for the illegal discrimination.** For example, under current provisions of the bill, the Commission is concerned that it could **NOT:**

Require a reasonable accommodation for a person with a disability— something that can be an integral part of making the workplace accessible to all persons who can otherwise do the job.

Require the payment of retirement benefits where the employer's contributions to a plan are no longer made because a person has been fired due to age discrimination.

Make a person whole for lost benefits that weren't included in their pay check, such as housing, which was part of a compensation package – e.g., in rural Alaska, employees may be paid \$10/hour instead of \$15, but given a place to live to make up for the difference.

Provide an employee health benefits lost— e.g., where an employer drops a pregnant employee from its insurance upon learning the employee is pregnant, she would be faced with the unexpected cost of having the baby, even though that action was illegal discrimination based on pregnancy.

It would also not allow the Commission to require an employer to remove records of discipline that was discriminatory—e.g., counseling and probationary documents which were created because of a person's race. Such a record can follow a person and prevent them from getting another job.

Other types of compensation that the Commission is concerned it could **NOT** provide would include:

Vesting in a retirement plan – e.g., in an age discrimination case, an employer fired an employee 6 months before they would vest.

Bonuses – these are not specifically back-pay – e.g. holiday bonuses, profit sharing that would have been available to the employee had the employer not terminated her because of sex discrimination.

Posting of signs and distribution of policies—e.g., regarding sexual harassment or disability. These remedial measures help assure the workplace is free from future problems with discrimination.

Vacation – e.g., what would have accrued if not terminated.

Restoration of Seniority – e.g., lost seniority impacts future bumping and layoffs.

Reimbursed medical costs – e.g. where an employer has provided compensation to offset deductibles or employee co-pay amounts.

Other out of pocket expenses – e.g. those related to seeking other employment after being illegally fired.

The Commissioners are concerned about the limit on front pay to a period of two years and restrictions on when it can be awarded in Section 6. Where appropriate, reinstatement is the preferred remedy for an illegal firing. Front pay is awarded in cases where reinstatement is not feasible, and compensates the victim for the future effects of discrimination when a person has been denied continued employment. Although infrequently used, front pay is an important make whole remedy when needed. Courts have upheld front pay awards for periods of longer than two years where it is justified to make the victim of discrimination whole, and Commission front pay awards have been consistent with judicial precedent.

FORCING THE COMMISSION TO PAY ATTORNEY'S FEES WOULD UNDULY HARM THE MISSION OF ELIMINATING DISCRIMINATION

At the House State Affairs Committee hearing on April 21 on HB 525, suggestions were made to require the Commission to pay attorney's fees to respondents in the event the Commission is unsuccessful in proving discrimination at a hearing. **Requiring the Commission to pay attorney's fees would substantially harm the Commission's ability to enforce the Human Rights Law and pursue the State's public policy of preventing and eliminating discrimination.** A mandate similar to Civil Rule 82 would

require the Commission to pay 30% of a respondent's attorney's fees when the respondent prevails. In other cases, the Commission could be liable for up to 75% of the fees under the rules governing offers of judgments. These amounts could be up to and exceed \$25,000.

In contrast, a rule similar to Civil Rule 82 would limit the fees the Commission could collect when it prevails to 20% of the damages awarded. Since, as noted above, the average Commission award is below \$5000, the Commission would receive less than \$1000 in fees when it successfully prosecuted a case.

The Commission is a small agency with a very limited budget. In the past two years the Commission lost 20% of its staff and now operates with just 15 employees where it had 22 just four years ago. Requiring the Commission to pay such large amounts for unsuccessful attempts to prosecute violations of the Human Rights Law would most likely mean further reductions in staff and a crippling of the agency's ability to pursue the public's interest in preventing and eliminating discrimination. Such a scheme would be similar to forcing a public prosecutor to pay a criminal defendant when the defendant is found not guilty.

The Commissioners are also extremely concerned that this section would undermine the public's confidence in the agency's diligent enforcement of the law. This could also create an appearance of conflict in the decision making process as the public might view the staff and Commissioner's decisions to be influenced by the concern that fees would be awarded against the agency.

CONCLUSION

The Commission appreciates the opportunity to comment on this bill. The Commissioners recognize the positive aspects of the legislation, but do not believe further limits on the Commission's ability to remedy discrimination are warranted. Again, it is important to note that the vast majority of discrimination claims in Alaska are brought to the Commission. Alaska has a strong and noble public policy against discrimination, and has had a long history of trying to remedy the unfairness that comes with treating people differently for no reason but prejudice or stereotype. This bill would undermine that policy by eliminating full make whole remedies for most acts of discrimination.

SB

364

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

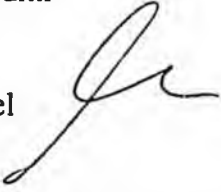
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

May 9, 2004

SUBJECT: Mental Health Treatment Assistance (HCS CSSB 364(JUD))

TO: Representative Lesil McGuire
Attn: Vanessa Tondini

FROM: Jean M. Mischel
Legislative Counsel 

Enclosed is the House Judiciary CS you requested incorporating a conceptual amendment to substitute the phrase "unemancipated minor" for "under 18 years of age." We have added bill secs. 2 and 3 and added amendments to AS 47.31.015(c) and (d) in bill sec. 7 in order to conform related provisions to the conceptual amendment. We also note that the use of "18 years of age," both for under and over that limit, occurs several times in existing laws that are outside of the reach of this bill title but that are related to mental health treatment, affected by this bill. The sections affected appear to be AS 47.30.670, 47.30.685, 47.30.690, 47.30.693, 47.30.695.

Let me know if you would like me to add a title change to incorporate these sections and to prepare a title change resolution for this change.

JMM:med
04-522.med

Enclosure

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: Jean Mischel, Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: May 8, 2004
Re: CS Request

Please create a ^{final} draft House Judiciary Committee Substitute for work order # 23-GH2080I, SB 364, incorporating the following amendment:

Conceptual Amendment #1 by Rep. Gruenberg:
Page 1, Lines 6-7, Page 1, Line 11, Page 2, Line 4, and Page 4, Line 12, and any other applicable place in the bill, delete "under 18 years of age" and insert "an emancipated minor."

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.

23-GS2080V
Mischel
5/7/04

HOUSE CS FOR CS FOR SENATE BILL NO. 364(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to liability for expenses of placement in certain mental health facilities;**
2 **and relating to the mental health treatment assistance program; and providing for an**
3 **effective date."**

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

5 *** Section 1. AS 47.30.910(a) is amended to read:**

6 (a) A patient, the patient's spouse, or the patient's parent if the patient is ~~under~~ ^{an unem.} ~~18~~ ^{minor}
7 ~~years of age~~ shall pay the charges for the care, transportation, and treatment of the
8 patient ^{is an emancipated minor} when the patient is hospitalized under AS 47.30.670 - 47.30.915 at a state-
9 operated facility, an evaluation facility, or a designated treatment facility providing
10 services under AS 47.30.670 - 47.30.915. The patient, the patient's spouse, or the
11 patient's parent if the patient is under 18 years of age shall make arrangements with a
12 state-operated facility, an evaluation facility, or a designated treatment facility for
13 payment of charges, including providing income information necessary to determine
14 eligibility for benefits under AS 47.31. Charges assessed for services provided under

1 AS 47.30.670 - 47.30.915 when a patient is hospitalized at a state-operated facility
2 may not exceed the actual cost of care and treatment. The department may, when
3 assessing charges for services provided at a state-operated facility, consider the ability
4 to pay of a patient, a patient's spouse, or a patient's parent if the patient is under 18
5 years of age. In order to impose liability for a patient's cost of care at a state-operated
6 facility, the department shall issue an order for payment within six months after the
7 date on which the charge was incurred. The order remains in effect unless modified
8 by subsequent court order or department order. The department may not impose
9 liability for a patient's cost of care at a state-operated facility if the patient would be
10 eligible for financial assistance under [OTHERWISE MEET THE ELIGIBILITY
11 CRITERIA, OTHER THAN LOCATION OF SERVICE, IN] AS 47.31.010 if the
12 care were provided by an evaluation facility or a designated treatment facility.

13 * Sec. 2. AS 47.31 is amended by adding a new section to read:

14 **Sec. 47.31.007. Notification concerning lack of appropriations.** If the
15 department projects, based on registrations, that the need for financial assistance under
16 this chapter will exceed the amount of appropriations made for financial assistance
17 under this chapter, the department shall post notification of the projection on the
18 department's Internet website and provide electronic notice to evaluation facilities and
19 designated treatment facilities that have previously served patients who received
20 assistance under this chapter.

21 * Sec. 3. AS 47.31.010 is amended to read:

22 **Sec. 47.31.010. Eligibility for assistance.** (a) The department shall provide
23 financial assistance under this chapter to a patient who

24 (1) does not have the available means to pay or substantially contribute
25 to the payment of charges assessed by a facility;

26 (2) has no insurance or other third-party resources, including
27 Medicaid or Medicare, [THIRD PARTY] to pay for the evaluation or treatment
28 provided under AS 47.30; [AND]

29 (3) has been registered under AS 47.37.012; and

30 (4) meets the criteria in this chapter.

31 (b) To be eligible for assistance under this chapter, a patient must have

1 * Sec. 5. AS 47.31.015(a) is amended to read:

2 (a) To receive assistance under this chapter, a patient or a patient's legal
3 representative must apply in writing on a form provided by the department. A patient
4 must apply for assistance within 90 [180] days after the date of admission to
5 [DISCHARGE FROM] the facility.

6 * Sec. 6. AS 47.31.015(b) is amended to read:

7 (b) A patient is considered to have applied for assistance under (a) of this
8 section if the evaluation facility or designated treatment facility notifies the
9 department on a form provided by the department that there is good cause to believe
10 that the patient would be eligible for assistance under this chapter and

11 (1) the patient, the patient's spouse, or the patient's parent if the patient
12 is under 18 years of age failed, within 60 [150] days after the date of admission to
13 [DISCHARGE FROM] the facility, to make arrangements to pay the evaluation
14 facility or designated treatment facility; or

15 (2) the patient lacks the mental capacity to apply for benefits under this
16 chapter.

17 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 APPLICABILITY. The provisions of this Act do not apply to applications for
20 assistance under AS 47.31 for admissions occurring on or before the effective date of secs. 1 -
21 6 of this Act.

22 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

24 TRANSITION: REGULATIONS. The Department of Health and Social Services
25 may proceed to adopt regulations necessary to implement the changes made by this Act. The
26 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
27 effective date of the respective statutory change.

28 * Sec. 9. Section 8 of this Act takes effect immediately under AS 01.10.070(c).

29 * Sec. 10. Except as provided in sec. 9 of this Act, this Act takes effect July 1, 2004.



Health, Education, and Social Services Committee Alaska State Senate

SB 364—Letter of Intent

It is the intent of the legislature that the Department of Health and Social Services continue to develop and support a continuum of mental health care that includes community-based outpatient and supportive services, community hospital-based inpatient evaluation and treatment services, and tertiary mental health care through the Alaska Psychiatric Institute. In developing this system the Department of Health and Social Services shall be guided by the principles that mental health services should be clinically appropriate, cost effective, offered in the least restrictive setting available, and provided as close to the client's home as possible.

It is further the intent of the legislature that in the event of a shortfall in appropriations for mental health evaluation and treatment at community hospitals to stabilize persons experiencing a psychiatric emergency or crisis, and who meet the criteria for involuntary commitment under AS 47.30.700 – AS 47.30.915, the Department of Health and Social Services shall make every effort to identify additional financing sources or reallocate appropriations available for the purpose from lesser priorities to continue these important services for the remainder of the fiscal year.

Adopted by the Senate

Date: May 5, 2004

COMMITTEE COPY

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

Please create a work draft House Judiciary Committee Substitute for work order # 23-GH2080\D.A, SB 364, that is exactly the same as # 23-GH2080/Q, HB 535. The bill is scheduled to be heard in committee tomorrow at 11 a.m..

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.

Legislative Questions HB 535 / SB 364
Draft 5/3/04

- 1) If a person has been sent to a DET facility on a court order, would the DBH have any authority to question or overthrow the court order.

Attn Gen – the DBH would be obligated to follow that order

However, the treating physician can discharge a person who does not meet admission criteria.

- 2) How many youth are treated in DET facilities?

Seven (under 3%) admissions occurred in FY 03 out of a total 244 admissions; one youth entered the hospital twice. None exceeded the evaluation phase of up to 7 days.

- 3) What is the explanation for the increased length of stay at Bartlett?

See attached list of reasons for extended stays as explained by Bartlett justified by clinical reasons in the best interests of the patient

- 4) Why is cost of care at Mt. Edgecumbe so high compared to Bethel for example?

All IHS hospitals have a nationally determined rate that is the same for all hospitals

General answer is full cost studies are conducted every four years which include facility depreciation and are used to collect Medicaid funds.

- 5) What would happen if API were full?

- See # 3 – We can ask a DET facility to keep someone longer
- API is being more assertively managed to avoid being full – Current CEO has not turned anyone away

- 6) Could we send anyone to a correctional facility if API is full?

Attn Gen. -- DHSS will pay for another placement – we will not send to correctional facility (notwithstanding hold in jail while transportation being arranged for combative patients – leads to discussions about developing more assertive local DET and other medication options including Dr. to Dr. discussions with local physicians and API physicians.