

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11161 SENATE JUDICIARY

Sen. Seekins -

I respectfully request  
that you consider putting  
HB 177 (concealed carry reciprocity)  
on the Sen. Judiciary agenda  
at your earliest convenience.

I look forward to working with  
you and your committee

Bill Stoltz

(it passed the House 35-1 today!)

REPRESENTATIVE BILL STOLTZE

[Representative\\_Bill\\_Stoltze.legis.state.ak.us](http://Representative_Bill_Stoltze.legis.state.ak.us)



District 16

Birchwood ♦ Butte ♦ Chugiak ♦ Eklutna

Fairview Loop ♦ Knik River Road ♦ Lazy Mountain ♦ Palmer ♦ Peters Creek

# ALASKA STATE SENATE



Session:  
State Capitol  
Juneau, Alaska 99801-1182  
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Interim:  
119 N. Cushman, Suite 201  
Fairbanks, Alaska 99701  
(907) 456-8161  
Senator\_Ralph\_Seekins@legis.state.ak.us

**Senator Ralph Seekins**  
District D

## SB 152 Sponsor Statement

In 2002 Senate Bill 242 was introduced to simply and clarify the procedures for recognizing concealed handgun permits for other states. As a result of a floor amendment offered late in the session, recognition was limited to those permits held by individuals who had not had a permit denied or revoked.

Although, the amendment appeared reasonable on the surface, an unintended consequence resulted in Texas, the second most populous state in the nation, refusing reciprocity. The refusal is technically bureaucratic in nature, yet presents a barrier to reciprocity. Senate Bill 152 attempts to resolve this issue.

The first section of the Bill recognizes permit holders from other states as valid permit holders in Alaska. The second section of the legislation requires the Alaska Department of Public Safety to enter into reciprocity agreements with other states, when it is necessary to benefit Alaska permit holders.

23-LS0824H  
Luckhaupt  
4/15/03

**CS FOR SENATE BILL NO. 152(JUD)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-THIRD LEGISLATURE - FIRST SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): SENATE JUDICIARY COMMITTEE**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act relating to concealed handguns."**

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

3 **\* Section 1. AS 18.65.748 is amended to read:**

4 **Sec. 18.65.748. Permit holders from other jurisdictions considered Alaska**  
5 **permit holders. A person holding a valid permit to carry a concealed handgun from**  
6 **another state or a political subdivision of another state is a permittee under**  
7 **AS 18.65.700(b) for purposes of AS 18.65.750 - 18.65.765 [IF THE PERSON HAS**  
8 **NOT HAD AN APPLICATION FOR A CONCEALED HANDGUN PERMIT**  
9 **REJECTED IN THIS STATE BECAUSE THE PERSON WAS UNQUALIFIED**  
10 **UNDER AS 18.65.705 OR HAD A CONCEALED HANDGUN PERMIT**  
11 **REVOKED OR SUSPENDED BY THIS STATE].**

12 **\* Sec. 2. AS 18.65.775 is amended by adding a new subsection to read:**

13 **(b) The department shall enter into reciprocity agreements with other states**  
14 **that have the legal authority to enter into such agreements so that permittees may carry**  
15 **concealed handguns in those other states.**

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSSSHB 177(STA)  
(H) Publish Date: 4/2/03

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

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0  
Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
This bill recognizes valid permits to carry a concealed handgun from other jurisdictions. Holders of those permits would automatically be considered Alaska permittees as well. Further, the Department of Public Safety is directed to enter into reciprocity agreements with other states so Alaska permittees can carry concealed handguns in those states.  
  
Passage of this legislation is not anticipated to have a fiscal impact on the Department of Law.

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

# LEGAL SERVICES

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

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Mail Stop 3101


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

## MEMORANDUM

April 7, 2003

**SUBJECT:** Sectional Summary - SB 152 (Work Order No. 23-LS0824\D)

**TO:** Senator Ralph Seekins  
Attn: Brian

**FROM:** Gerald P. Luckhaupt   
Legislative Counsel

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

**Section 1.** Amends AS 18.65.748 by removing language that prohibits a person who (1) is unqualified for an Alaska concealed handgun permit, or (2) had an Alaska concealed handgun permit revoked or suspended, from possessing a concealed handgun in Alaska with a permit from another state or political subdivision of another state.

**Section 2.** Requires the Department of Public Safety to enter into reciprocity agreements with other states so that Alaska permittees may carry concealed handguns in those other states.

GPL:lmb  
03-143.lmb

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# TEXAS DEPARTMENT OF PUBLIC SAFETY

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512/424-2000

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April 4, 2003

Barbara Bitney  
Alaska State Legislature

via fax: 907-465-4928

RE: Concealed Handgun Reciprocity

Dear Ms. Bitney:

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

Sincerely,

Louis Beaty  
Manager, Crime Records Service Legal Staff

916/806-3854(CEL)



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

STATE & LOCAL AFFAIRS DIVISION  
BRIAN JUDY, ALASKA STATE LIAISON

March 25, 2003

Senator Ralph Seekins  
State Capitol  
Juneau, AK 99801-1182

Dear Senator Seekins:

On behalf of the more than 24,000 Alaska members of the National Rifle Association, let me take this opportunity to offer our strong support for Senate Bill 152. SB 152 would help, in two ways, to ensure that other states recognize Alaska concealed handgun permits.

First, Senate Bill 152 would repeal language which was put into the code last session as an amendment to a bill which was introduced to clarify the recognition of concealed handgun permits from other states. Senate Bill 242 (2002) was intended to simplify the recognition process by plainly recognizing all permits issued by other states. Supporters of the bill accepted an amendment late in the legislative process which has caused at least one state to refuse to recognize Alaska permits.

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

Unfortunately, the language has led to a refusal by the State of Texas to recognize Alaska permits because Alaska's law imposes limits on the recognition of Texas permits while Texas would impose no such limitation on the recognition of Alaska permits. The likelihood that, in reality, a Texas permit would not be recognized due to the provision in question is just about as unlikely as an Alaskan traveling to the lower states to circumvent the Alaska permit law. However, the fact remains that the SB 242 amendment has created a barrier to the recognition of Alaska permits. The repeal of this language by Senate Bill 152 will open the door to greater recognition of Alaska permits.

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

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

The second issue addressed by Senate Bill 152 involves reciprocity agreements with other states. Although the State of Alaska now recognizes all other states' permits and is not required to enter into reciprocity agreements, some other states still require agreements for them to be able to recognize Alaska permits. SB 152 would require the Alaska Department of Safety to enter into reciprocity agreements with other states when it is necessary to benefit Alaska permit holders. Such agreements will only be required in rare cases and, thus, the cost to the Department in time and resources should be negligible.

Please let me know how I can be of assistance in the effort to pass Senate Bill 152.

Sincerely,

Brian Judy  
Alaska State Liaison

# TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 NORTH LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001

512/424-2000

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COMMISSIONERS

June 28, 2002

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

Re: Concealed Handgun Reciprocity

Dear Commissioner Smith:

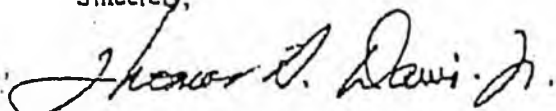
The Department recently received notice of "Senate Bill 242 am H" passed by the Alaska legislature. We have reviewed the bill to determine if it is now possible for Texas and Alaska to enter into a reciprocity agreement concerning concealed handgun licenses. S.B. 242 am H allows the state of Alaska to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

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

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

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

Sincerely,



Thomas A. Davis, Jr.  
Director

TAD:lab

Aug-13-02

~~Aug 13~~ 2002

# STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF ALASKA STATE TROOPERS

TONY KNOWLES, GOVERNOR

Del Smith, Commissioner

Permits and Licensing Unit  
5700 East Tudor Road  
Anchorage, Alaska 99507  
Telephone (907) 289-0392  
Facsimile (907) 289-5609

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

Dear Mr. Davis:

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

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

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

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

Sincerely,



Lieutenant Julia P. Grimes  
Alaska State Troopers

JG:mtf

Cc: Representative Terry Keel

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

*Alaska* - fingerprints required with application

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

*Arizona* - fingerprints required with application

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

*Florida* - fingerprints required with application

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

*Idaho* - fingerprints required with application

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

*Indiana* - fingerprints required with application

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

*Iowa* - fingerprints not mentioned in statute but criminal history check specifically required

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

*Maine* - fingerprints may be required with application

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

*Maryland* - fingerprints required with application

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

*Nevada* - fingerprints required with application

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

*North Dakota* - fingerprints required with application

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

*Utah* - fingerprints required with application

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

*Washington* - fingerprints required with application

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

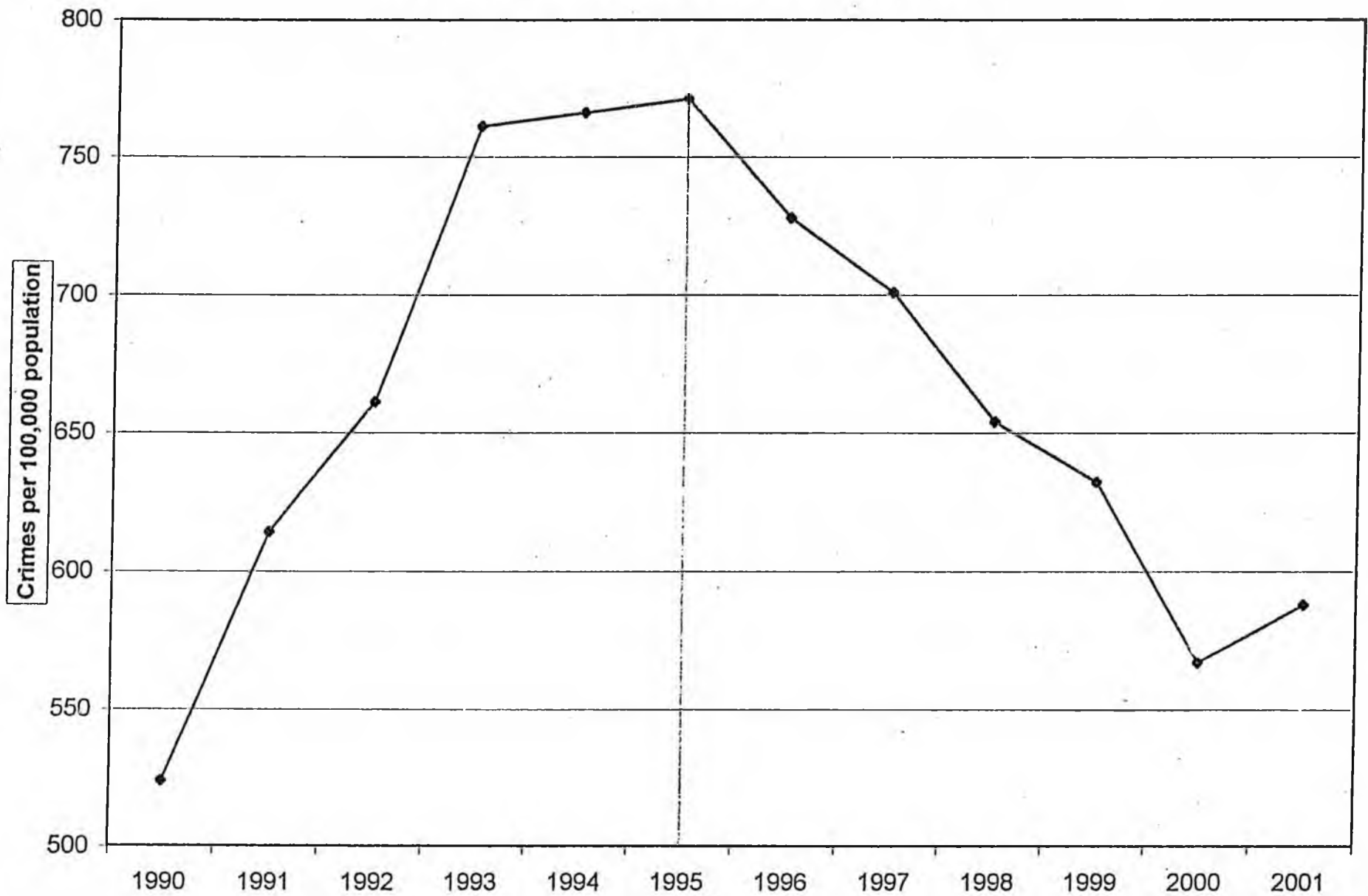
\* *Federal law* (18 U.S.C. §922 (g)) prohibits possession of a firearm by any person:

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

# Alaska Crime Rates

## Violent Crime

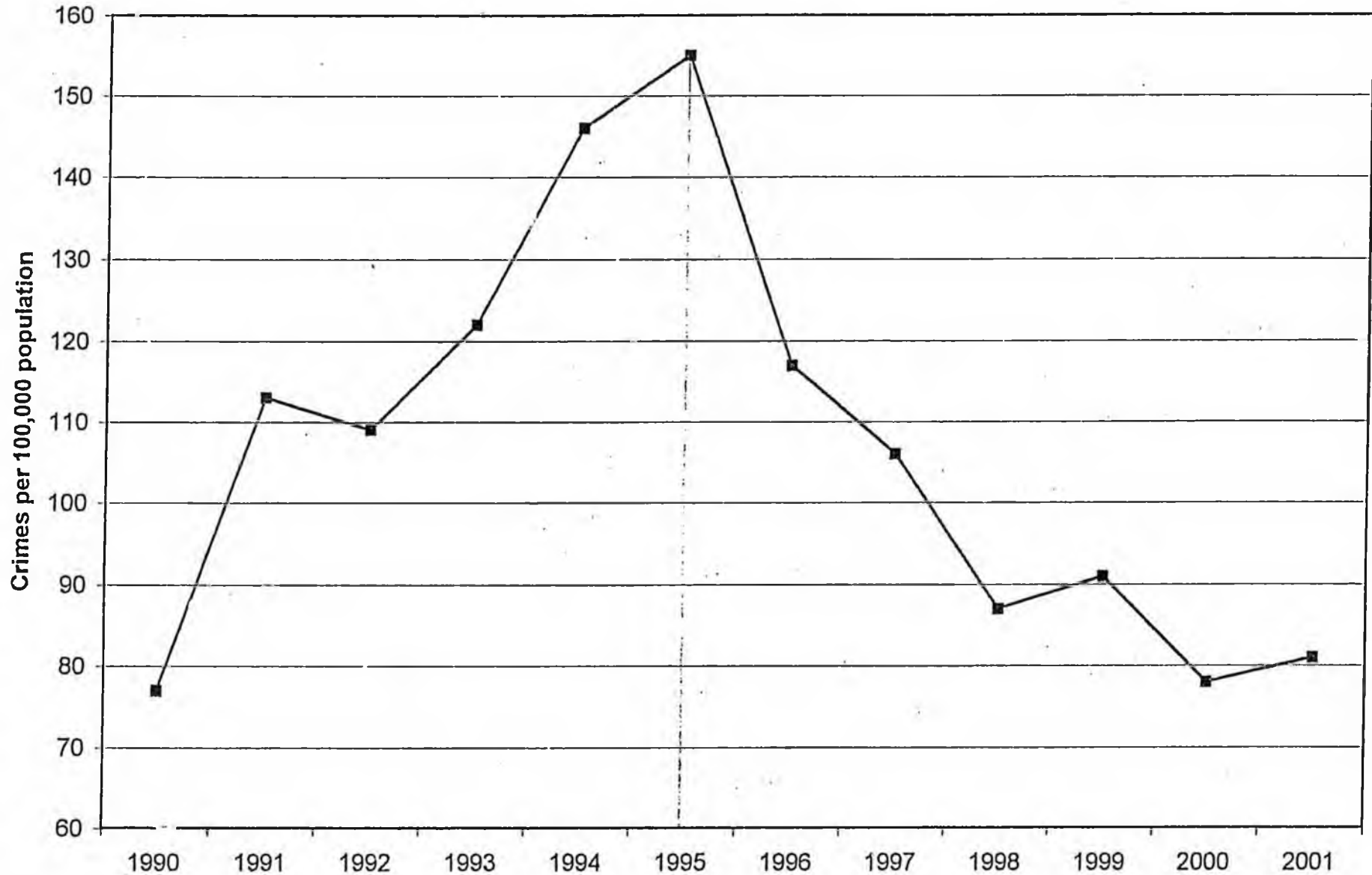
Sources: FBI and Bureau of Justice Statistics



# Alaska Crime Rates

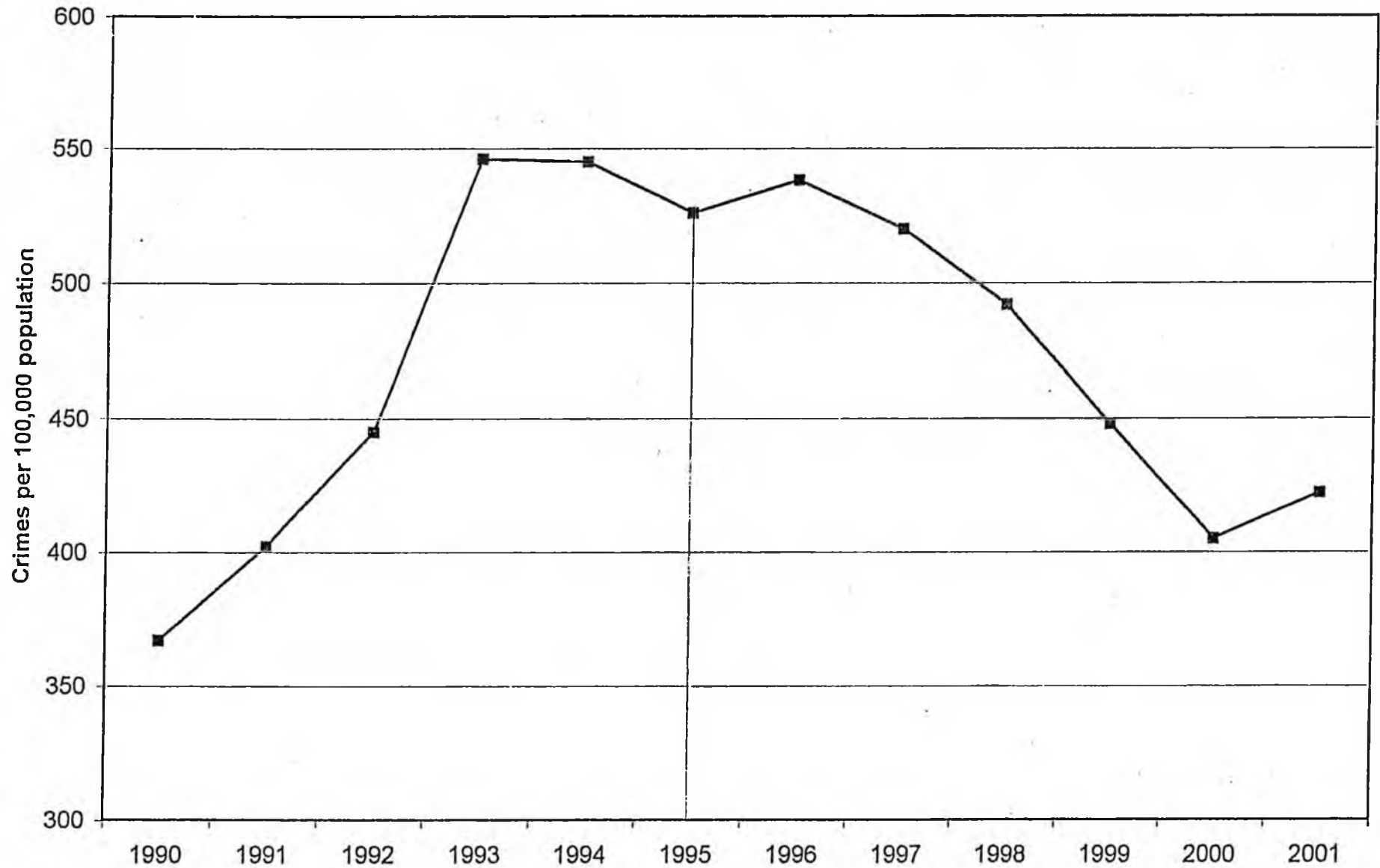
## Robbery

Sources: FBI and Bureau of Justice Statistics



# Alaska Crime Rates

**Aggravated Assault**  
Sources: FBI and Bureau of Justice Statistics



SB

155

# ALASKA STATE SENATE



Session:  
State Capitol  
Juneau, Alaska 99801-1182  
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(907) 456-8161  
Senator\_Ralph\_Seekins@legis.state.ak.us

**Senator Ralph Seekins**  
District D

## SB 155 Sponsor Statement

Senate Bill 155 alters language within Section 16.05.783 of the Alaska Statutes relating to the Regulation of Fish and Game. These alterations provide the Fish and Game Board and Commissioner with necessary tools in the management of game populations throughout the state.

The first alteration clarifies Legislative intent with respect to airborne predator control programs. The second alteration provides for game population objectives to be taken into consideration in determining whether or not a predator control program should be implemented.

As an example, if the minimum game population objective is met, but the harvest level is not, a management decision—under current law—cannot be made even if it is determined that predators are limiting the game population. The second alteration allows the Board to use both prey *and* game population objectives when making a determination with respect to the use of a predator control program.

Senate Bill 155 makes changes that will allow the Fish and Game Board as well as the Commissioner to better manage wildlife by *balancing* predator and game populations based on the best science available.

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MARC LESTER / Anchorage Daily News

rough trees while browsing near Middle Rock Road and Midden Way in the Stuckagain Heights neighborhood Friday. A calf also wandered

## Proposed cuts in education meet House opposition

Are schools priority,  
the alternative?

By ERHAM  
NEWS

Gov. Frank Murkowski's funding for schools is under fire in the state House. Speaker Pete Kott, R-Eagle, Monday that he expects strong support in the Legislature to keep the \$20 million grants and student bus-  
victor wants cut.

"I think there is enough importance put on K-12 education that most of the members I am talking to are going to be supportive of keeping it" in the budget, Kott said.

The House education budget subcommittee, a mix of Democrats and Republicans, recommends that lawmakers reject the proposed cuts, which would hit Learning Opportunity Grants and pupil transportation by about \$10 million each.

The cuts would be devastating to

See Page B-3, CUTS



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## Bill 'a tool' to manage wolves

By JOEL GAY  
Anchorage Daily News

Sen. Ralph Seekins has introduced a bill to make it easier for the state to use aircraft while conducting wolf-kill programs.

The move comes amid renewed proposals to reduce predator numbers in the upper Susitna Valley, in the Nelchina Basin and around McGrath.

Critics called Senate Bill 155 an attempt to override science and popular opinion.

"It's terrible," said Paul Joslin, conservation biologist with the Alaska Wildlife Alliance.

See Page B-2, WOLVES

## Proposers to underwrite a spending spree



maintaining  
costs are paid  
means they  
tax bill.  
ual bond is  
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on 3, the \$7.27  
cost \$4.40 per  
he \$1 million  
cost \$1. But  
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fund, will  
because it will  
a year to op-  
s and Drain-

age Service Area bond, Proposition 4, will cost \$25.60 per \$100,000 almost entirely because of its size: \$39.95 million. Proposition 7, the \$4.99 million parks and recreation bond, will cost only \$3.38.

The same cost differential occurs in the school bonds. Proposition 9, \$41.79 million worth of mainly school repairs, will cost \$9.97 per \$100,000. Proposition 10, \$42 million for a new administration building, will cost \$10.48, the difference being operations and maintenance charges. Proposition 11, \$125.54 million to build and renovate schools, will cost \$33.16. That's because Proposition 11 is larger, and it carries operations and maintenance price tag of \$2.4 million a year.

Okay, that was a blizzard of numbers. What do they all mean?

Simply that city and School District officials are asking us to underwrite a spending spree. Should we?

That depends in part on what you think of the specifics of each bond. Do you think Girdwood needs a new li-

brary? Proposition 3 would build it. The bonds would also buy the land and pay for the of a new library in Eagle River, and remodel the Loussac.

But voters don't often make up their minds like that. We rarely know the specifics of these bond packages. Instead, some of us cast our votes based on how we feel about the type of spending involved. If you are for libraries, you'll vote for Proposition 3.

There's some sense to this. The fact is, the specifics aren't sure things; money from bonds doesn't have to be spent on the promised projects. It usually is, but it doesn't have to be.

And the city isn't exactly overwhelming voters with information. Take Proposition 4. The information offered is a list of more than 50 projects with a typical entry reading, "Bayshore Drive surface rehab - 100<sup>th</sup> to Marathon Circle — design." How necessary is this project? Unless you drive that section of Bayshore, you'll never know. How much of the \$39.95 million does it cost? No way to tell.

So you're left to vote on whether you think street and drainage improvements are important, or whether you think the public works staff knows what it is doing.

Or you can vote based on your general sense of whether enough public money is being spent on road and drainage projects. My sense is that it is. Trying to build and maintain enough paved streets to handle the traffic in a northern city that relies entirely on the automobile and rests substantially on wetlands is a losing proposition. We'll never have a complete set of nicely paved roads. The question is, what level of cracks and potholes are you willing to live with?

Or you can vote on your reaction to how much money the city already takes out of your pocket, and how much more it wants this time. You've got the numbers. You can do the math.

■ Mike Doogan's opinion column appears each Tuesday, Friday and Sunday. Reach him at 257-4350 or [midoogan@adn.com](mailto:midoogan@adn.com).

## WOLVES: Bill aims to empower wildlife managers

Continued from B-1

"The voters of Alaska passed ballot measures twice that said they didn't want to use aircraft for same-day airborne hunting of wolves. What Ralph Seekins has done is tried to reverse that."

Other people praised Seekins, a Fairbanks Republican, for giving wildlife managers another way to boost moose and caribou stocks. Regardless of how wolf control occurs and who does it, said McGrath resident and Board of Game member Mike Fleagle, "we'd like to see it done."

Many hunters and rural Alaskans blame wolves for reducing moose and caribou populations in some areas, which has limited subsistence and sport harvests. But attempts to establish wolf control programs have met strong resistance.

A successful tourism boycott in the early 1990s killed one. In 1996, voters banned land-and-shoot hunting. After the Alaska Legislature tinkered with the law in early 2000, voters approved another ballot measure that fall that reiterated their opposition to same-day airborne hunting.

Seekins' bill would not allow airborne sport hunting but would make it easier for the Fish and Game Department to pursue wolf control in approved areas.

The Legislature approve a predator control program in the mid-1990s. But the hurdles written into the law, and former-Gov. Tony Knowles' reluctance to approve wolf control, kept the regulations out of public view, said David James, the Department of Fish and Game's regional game supervisor in Fairbanks.

"It's not like somebody's trying to cook up something that's not already on the books," James said. The department has had authority to conduct airborne and land-and-shoot hunting, but only if certain criteria were met.

"If it all fits that template, bingo, the commis-

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*Game Board member Fleagle and the Alaska Outdoor Council would prefer the hunting be left to the public.*

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sioner can approve it."

Seekins said his measure would make it easier for game managers to put "intensive management" into practice by clarifying what he said are gray areas in the law. For example, the new language specifically permits "airborne or same-day airborne shooting." The existing bill authorizes "shooting from the air."

More important, Seekins said, SB 155 allows managers to make a pre-emptive strike against predators.

Under the existing law, the Board of Game can seek predator control only when the prey population — generally moose or caribou — has dropped below previously specified levels. His bill would allow predator control regardless of the prey population.

"It gives you a chance to manage without focusing on just one objective," such as the number of moose around McGrath or caribou around Nelchina, he said.

If the board approves a predator control plan for an area — it already has for all or parts of hunting units 13, 16 and 19 — and can convince the commissioner of Fish and Game that wolf numbers should be trimmed, the commissioner could authorize airborne shooting.

"It's not a philosophical game," Seekins said.

"It's the constitutional responsibility to manage for sustained yield. All we're saying is give managers a tool to let them manage. Don't tie their hands."

Who would do the shooting is still a question. Though the existing legislation requires the shooting be done by a state employee, "it might be smart to make it employee, agent or permittee," Seekins said.

The intent is to kill the predators "efficiently, effectively and professionally," he said. "My intent is not to turn loose a bunch of wild-eyed guys in a Super Cub."

Game Board member Fleagle and the Alaska Outdoor Council would prefer the hunting be left to the public, Fleagle said.

"If private citizens are given authority under the state, that's just fine," he said. "In reality, there's probably a lot of people who would pay to participate."

Opponents of wolf control say there must be better ways to put more moose into Alaskans' freezers than by shooting wolves from the air, Joslin said.

"What's really needed are better solutions than going after high-controversy stuff — like working to improve habitat."

He said he doubts state biologists have accurate population estimates in most areas, which makes any decision to kill wolves premature.

And a recent poll by Dittman Research Corp. of Alaska suggests that state residents still don't approve of airborne or land-and-shoot hunting, Joslin said.

"The Legislature ought to be aware their constituents will be very opposed to what they're doing," he said.

■ Daily News reporter Joel Gay can be reached at jgay@adn.com or at 257-4310.

## STATE IN BRIEF

### SELDOVIA

#### Kit plane crashes; pilot hu

Dennis Pollard, 44, was seriously injured Sunday when the home-built plane he was flying crashed on takeoff in Seldovia, according to the Federal Aviation Administration said.

The engine suddenly lost power about the size of a Super Cub, about 150 feet in the air, according to the Transportation Safety Board. The plane landed back on the runway in front of an investigator Clint Johnson said. The runway hard and the pilot suffered minor injuries, Johnson said.

He said Monday he spoke to Pollard, who had been admitted to Providence Alaska Medical Center.

—Anchora

### JUNEAU

#### Ship passengers might pay

A bill calling for a \$100 head tax on ship passengers was introduced Monday in the Alaska House. Freshman Rep. Carl Gatto said he is sponsoring the bill because he wants to raise funds so the state doesn't have to spend on education.

The Department of Revenue estimates it could raise more than \$70 million a year from a projected 720,000 cruise ship visitors, Gatto said.

Gatto said the state constitution prohibits the state to be reimbursed for use of its resources. He said it's reasonable that tourists pay for the use of the state's resources since hunters and loggers pay to use state land and timber.

House Bill 207 was assigned to the House Committee on Economic Development, Trade and Tourism, and Finance committees.

—The As

## MYSTROM: The former mayor wants to return to the good old days

Continued from B-1

The Wuerch administration has been too cozy with unions and too careless with taxpayers' money, Mystrom said. Under Wuerch's watch, the city

### RICK MYSTROM

Birth date: January 2, 1944

Q. What political figure (current or his-

members in that district."

Mystrom said he thinks he usually tried to consult Assembly members.

"Maybe we didn't always go to the Assembly as diligently as we should

time in clashing with the most powerful and most powerful resenting Anchorage's police and firefighters.

"In the entire time

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 155  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Fish and Game  
 Title Relating to hunting on the same day BRU Wildlife Conservation  
airborne Component Wildlife Conservation  
 Sponsor Senator Seekins  
 Requester Senate Judiciary Component No. 473

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

Estimate of any current year (FY2003) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Prepared by: Matthew H. Robus, Acting Director Phone 465-4190  
 Division: Wildlife Conservation Date/Time 3/30/03 1:23 PM  
 Approved by: Kevin C. Duffy, Commissioner Date 3/30/2003  
 Agency: Department of Fish and Game

23-LS0855\H  
Utermohle  
4/4/03

CS FOR SENATE BILL NO. 155( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATOR SEEKINS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to hunting on the same day airborne; and providing for an effective  
2 date."

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

4 \* Section 1. AS 16.05.783(a) is amended to read:

5 (a) A person may not shoot or assist in shooting a free-ranging wolf [,  
6 WOLVERINE, FOX, OR LYNX] the same day that a person has been airborne.  
7 However, the Board of Game may authorize a predator control program as part of a  
8 game management plan that involves airborne or same day airborne shooting  
9 [INVOLVING SHOOTING FROM THE AIR] if

10 [(1)] the department has testified to the board that the game  
11 management [COMMISSIONER OF FISH AND GAME ACTING UNDER A  
12 REQUEST FROM THE BOARD OF GAME MAKES WRITTEN FINDINGS  
13 BASED ON PREY POPULATION] objectives set by the board have not been  
14 achieved and [UNDER AS 16.05.255(g)] that

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(1) [(A)] predation is a cause for the failure to achieve the objectives set by the board [AN IMPORTANT FACTOR CONTRIBUTING TO A LOW OR DECLINING PREY POPULATION THAT IS INCONSISTENT WITH A GAME MANAGEMENT PROGRAM AUTHORIZED BY THE BOARD OF GAME], and that a reduction of predation can reasonably be expected to aid in the achievement of the objectives [RESULT IN AIDING AN INCREASE IN THE PREY POPULATION OR IN ARRESTING THE DECLINE OF THE PREY POPULATION]; or

(2) [(B)] a disease or parasite of a predator population

(A) [(i)] is threatening the normal biological condition of the predator population; or

(B) [(ii)] if left untreated, would spread to other populations[;

AND

(2) THE COMMISSIONER DETERMINES THAT AIRBORNE OR SAME DAY AIRBORNE SHOOTING IS NECESSARY TO ACCOMPLISH A GAME MANAGEMENT PROGRAM AUTHORIZED BY THE BOARD OF GAME].

\* Sec. 2. AS 16.05.783 is amended by adding a new subsection to read:

(e) When the Board of Game authorizes a predator control program that includes airborne or same day airborne shooting, the board shall establish predator reduction objectives and limits, methods and means to be employed, and who is authorized to participate in the program.

\* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

CS HB 82(L&C)  
Senate Judiciary Committee  
April 4, 2003

1. Name: Ed Sniffen, Jr.  
Affiliation: Assitant Attorney General  
Fair Business Practices Section  
Location: Anchorage Legislative Information Office

SB

160

# Alaska State Legislature

Out of Session:  
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(907) 465-4821 Fax

## SENATOR DONALD C. OLSON

### DISTRICT T

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Buckland  
Chevak  
Deering  
Diomede  
Elim  
Emmonak  
Erbell  
Golovin  
Hooper Bay  
Kaktovik  
Kiana  
Kivalina  
Kobuk  
Kotlik  
Kotzebue  
Koyuk  
Mountain Village  
Noatak  
Nome  
Noorvik  
Nuiqsut  
Nunam Iqua  
Pilot Station  
Pitka's Point  
Point Hope  
Point Lay  
Savoonga  
Scammon Bay  
Selawik  
Shaktolik  
Shishmaref  
Shungnak  
St. Mary's  
St. Michael  
Stebbins  
Teller  
Unalakleet  
Wainwright  
Wales  
White Mountain

April 14, 2003

### MEMORANDUM

To: Senator Ralph Seekins  
Senate Judiciary Committee

From: Senator Donald Olson 

Re: Schedule hearing for SB 160, Civil Liability for Defibrillator Use

I respectfully request a Senate Judiciary Committee hearing of SB 160 at your earliest convenience. I have attached my sponsor statement and support documentation. Please contact me if you need additional information.

Thank you for your attention to this request.

# Alaska State Legislature

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## SENATOR DONALD C. OLSON

### DISTRICT T

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Elim  
Golovin  
Hooper Bay  
Kaktovik  
Kiana  
Kivalina  
Kobuk  
Kotlik  
Kotzebue  
Koyuk  
Mountain Village  
Noatak  
Nome  
Noorvik  
Nuiqsut  
Nunam Iqua  
Pilot Station  
Pitka's Point  
Point Hope  
Point Lay  
Savoonga  
Scammon Bay  
Selawik  
Shaktoolik  
Shishmaref  
Shungnak  
St. Mary's  
Stebbins  
Teller  
Wainwright  
Wales  
White Mountain

### SPONSOR STATEMENT SB 160, Civil Liability for Defibrillator Use

I introduced Senate Bill 160 to save Alaskan lives. This legislation would provide faster treatment to Alaskans who suffer a cardiac arrest by increasing the availability of automated external defibrillators (AEDs).

Each year, 250,000 people die in the United States as a result of sudden cardiac arrest. The most important treatment for more than half of these patients is immediate defibrillation; an electrical shock intended to restore a more normal cardiac rhythm. For each minute a person remains in cardiac arrest, their chances of survival decrease by approximately 7% to 10%.

AEDs have evolved significantly over the past years and the current generation of devices is much safer and easier to use. These new devices have the ability to discern between shockable and nonshockable rhythm; for that reason, it is literally impossible to shock a person who does not require it.

Businesses and municipalities are interested in making AEDs more accessible in the workplace and in locations where large groups gather for the life safety of their employees and the public.

Currently, the Good Samaritan provision in Alaska law (AS 09.65.090) gives immunity from civil liability for any trained individual who uses an AED. However, this immunity does not apply to those individuals and organizations that make the devices accessible in the workplace. As a result, these devices have not been made readily available for emergency use. SB 160 removes this impediment by extending the Good Samaritan immunity to owners and operators of public and private facilities.

With Senate Bill 160, I am encouraging the proliferation of this life saving technology in Alaska.

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SB 160  
(S) Publish Date: 4/14/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
Title "An Act relating to civil liability for use or BRU Civil Division  
attempted use of an automated external defibrillator; . . ." Component Special Litigation  
Sponsor Senator Olson  
Requester Senate HESS Committee Component No. 2213

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
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Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

Estimate of any current year (FY2003) cost: 0.0

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

**POSITIONS**

Full-time	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Part-time						
Temporary						

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

This bill would protect from civil liability persons who use automated external defibrillators (AED), and persons who provide the AED for use, so long as certain specified responsibilities are fulfilled.

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

Prepared by: Joan M. Kasson Phone (907) 465-5370  
Division: Attorney General's Office Date/Time 4/9/03 1:13 PM  
Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General Date 4/9/2003  
Agency: Department of Law

# Alaska State Legislature

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## SENATOR DONALD C. OLSON

### DISTRICT T

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Kiana  
Kivalina  
Kobuk  
Kotlik  
Kotzebue  
Koyuk  
Mountain Village  
Noatak  
Nome  
Noorvik  
Nuiqsut  
Nunam Iqua  
Pilot Station  
Piikha's Point  
Point Hope  
Point Lay  
Savoonga  
Scammon Bay  
Selawik  
Shaktolik  
Shishmaref  
Shungnak  
St. Mary's  
Stebbins  
Teller  
Unalakleet  
Wainwright  
Wales  
White Mountain

### Sectional Analysis SB 160, Civil Liability for Defibrillator Use

#### Section 1

Generally, Section 1 established a new section in regard to civil liability. This section replaces the current civil liability immunity deleted in Section 2.

#### AS 09.65.087(a)

This subsection broadens the civil liability immunity for those who use or attempt to use an automated external defibrillator (AED) device in a perceived medical emergency. However, this immunity requires that an appropriate emergency medical services agency is immediately notified.

#### AS 09.65.087(b)

This subsection also extends immunity to those who acquire or provide the AED under certain conditions.

These conditions are as follows:

- (1) Notification of the local emergency medical response authority within 30 days following placement of the device.
- (2) Proper maintenance and testing of the device.
- (3) Provision of a means of notifying the local emergency medical response authority that an emergency exists.
- (4) Provision of appropriate training to the employee or agent who used the device in a perceived medical emergency.

Further conditions A, B, C, and D in subsection 4 address other situations where the immunity is maintained.

**AS 09.65.087(c)**

This subsection maintains the current definition of "appropriate training" as having completed an AED training course from the American Heart Association, the American Red Cross, or another AED training course approved by the Department of Health and Social Services.

**Section 2**

Deletes AS 09.65.090(e) and (f)

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Every year more than three million volunteers contribute their time and talents to help our organization defeat heart and blood vessel disease- and save lives.

American Heart Association



Fighting Heart Disease and Stroke

Northwest Affiliate  
1057 West Fireweed Lane, Suite 100  
Anchorage, AK 99503  
907.263.2044 888.276.0858  
Fax 907.263.2045  
[www.americanheart.org](http://www.americanheart.org)

## Your American Heart Association Supports Senate Bill 160

The American Heart Association supports Senator Olson and Senator Therriault's Senate Bill 160, a bill that would amend Alaska's Good Samaritan Law to reduce the liability risk associated with both using and providing automated external defibrillators (known as "AEDs").

Each year, 250,000 people die in this country from sudden cardiac arrest. Cardiac arrest is the stopping of the regular heart rhythms, usually because of interference with the electrical signal that regulates the heartbeat. When cardiac arrest occurs, the heart starts to beat chaotically and cannot pump blood. Brain death and permanent death start to occur in just four to six minutes after someone experiences cardiac arrest. This means that when a person goes into cardiac arrest, every second counts. To increase the odds of a victim's survival, the American Heart Association has outlined a four-step plan called the "chain of survival."

Defibrillators play a critical part in this chain of survival. The four links in the chain are (1) early access, which means recognizing that a cardiovascular emergency exists and immediately calling Emergency Medical Services; (2) early CPR, which means giving CPR promptly and properly when necessary; (3) early defibrillation, which means having immediate access to a properly working AED, and; (4) early advanced care, which means having qualified paramedics with up-to-date Advanced Cardiac Life Support Training.

While all four links in the chain are important, early defibrillation is often called the critical link in the chain of survival because it is the only way to successfully treat most cardiac arrests. In fact, for every minute without defibrillation, the odds of survival drop seven to ten percent. A cardiac arrest victim who is not defibrillated within eight to ten minutes has virtually no chance of survival.

Senate Bill 160 will improve the chain of survival in Alaska in several ways. First, by eliminating the threat of civil liability for people and businesses that acquire or provide an AED, the bill will help increase strategic AED placement around Alaska. Because every second counts after a victim suffers cardiac arrest, the more AEDs that are placed in strategic areas in the community, the stronger the chain of survival.

Additionally, by requiring that a person who acquires or provides the AED follow some common sense safety requirements, the bill ensures the responsible placement of AEDs. These requirements include (1) the acquirer or provider of the AED notify the local emergency response agency of the location of the device; (2) that the device

American Heart  
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be properly maintained and tested – just as one would test, for example, a smoke or carbon monoxide detector; (3) that there is a way to notify local EMS within a reasonable proximity to the AED – for example, making sure that there is a phone reasonably close to the device, and; (4) that the acquirer or provider of the AED provide appropriate training for its employees, because trained rescuers can deliver the treatment more quickly than those who are totally unfamiliar with the device.

The bill also eliminates the threat of civil liability for individuals who use or attempt to use the AED on a victim in an emergency. The bill recognizes that while AED training is important, AEDs are easy to use, and the machine discerns between shockable and nonshockable heart rhythms. Because it is virtually impossible to shock a person that does not need it, the bill omits the current requirement that all users of the device be properly trained before they use or attempt to use the device in an emergency situation.

This proposed bill strengthens the American Heart Association's chain of survival by removing liability barriers to AED placement and use, and by ensuring that those persons who provide AEDs have followed basic, common sense protections. The American Heart Association commends these laudable goals, and fully supports Senate Bill 160.



**National Center for  
Early Defibrillation**  
*Community Resources to Help Save Lives*



*Because so many  
more can survive...*

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<a href="#">Calendar</a>
<a href="#">News Stories</a>

## New Virginia law strengthens immunity for AED users and purchasers

April 3, 2003

Virginia has joined a handful of states that specifically provide legal liability protection to purchasers of automated external defibrillators (AEDs) and untrained persons who use AEDs in good faith. The bill also encourages laypersons to seek formal training in cardiopulmonary resuscitation (CPR) and AED use. HB 1860, introduced by John M. O'Bannon, R-Henrico, received unanimous support from the Virginia General Assembly and was signed by Governor Mark Warner. On April 2, the Assembly supported the Governor's recommendation to confirm the law. It will take effect on July 1.

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

All states now have Good Samaritan legislation designed to encourage use of AEDs by the public, and the federal Cardiac Arrest Survival Act provides additional protection, but Virginia's legislation provides an added measure of encouragement by specifically addressing immunity for those who have not received training. Other states with similar legislation include Pennsylvania and Rhode Island.

The Virginia law is designed to reduce barriers to bystander intervention in sudden cardiac emergencies. Sudden cardiac arrest is the leading cause of death among adults in the U.S. Of the 1,000 people who suffer SCA each day, fewer than 10% survive. With more rapid intervention, including the use of AEDs by untrained bystanders, many more lives could be saved.

For more information, click [here](#).

For a copy of the legislation, click [here](#).

For information on liability issues related to AED programs, click [here](#) and [here](#).



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|------------------------------|--|
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| <a href="#">News Stories</a> |  |

### Middle school staff member saved by school's AED

March 15, 2003

When Dexter Grady, a janitor at East Hampton (Long Island) Middle School, volunteered to get trained to use the school's new Automated External Defibrillator (AED), he never imagined that he would be the recipient of the machine's life-saving capabilities.

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

On his dinner break yesterday, Dexter, 37, joined some local men who regularly gather in the school gym for pick-up basketball games. Shortly after playing, Grady collapsed in sudden cardiac arrest. Thanks to the quick action of bystanders who called for help and used the AED to defibrillate his heart, Grady is expected to be released from the hospital sometime next week.

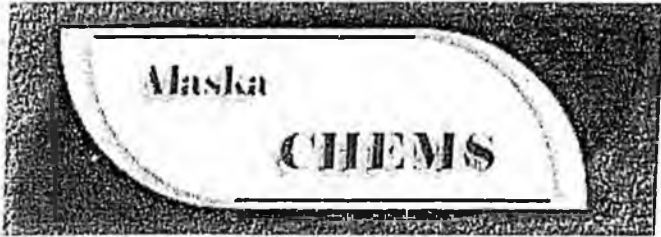
The legislation that prompted the middle school to have an AED on site was inspired by the efforts of Karen and John Acompora, of nearby Northport, parents of Louis Acompora, who died from sudden cardiac arrest three years ago, almost to the day. Louis, then 15, had been hit in the chest by a ball during a lacrosse game and an AED was not immediately available.. To prevent other such tragedies, Governor George Pataki signed "Louis's Law" last year, which mandates the placement of AEDs in New York schools.

Judging from Grady's experience, the law seems to be working.

For more information, click [here](#).



Text Links List || Health Social Services > Public Health > Community Health Emergency Medical Services



**EMS AED**  
**Emergency Medical Services Programs**

**Automated External Defibrillators in Alaska**

- Search CHEMS
- Program Descriptions
- EMS Contacts
- EMS Downloads
- EMS for Children
- Training Schedule
- EMS Links
- CHEMS Home

Revised 02/25/2003

Automated external defibrillators (AEDs) are an essential tool in the treatment of out-of-hospital cardiac arrest. Over the years, the devices have become safer, more reliable and more maintenance free. The new technologies used in these devices make them suitable for use by anyone who has had basic training in their use.

AEDs are most effective when implemented as part of an overall strategy which considers each link in the "Chain of Survival:"

- Early access to the emergency medical system (EMS and 9-1-1 system)
- Early cardiopulmonary resuscitation (CPR)
- Early defibrillation when indicated
- Early advanced emergency treatment

In 1998 legislation was passed that redefined the use of an automated external defibrillator as a basic life support skill and provided, through the Good Samaritan Law, some immunity from civil liability to properly trained personnel who use AEDs in a resuscitation attempt and who activate the EMS system. The text of the statute is available below.

**Files of interest (click to download):**

- [Civil Liability for Emergency Aid \(AS 09.65.090\)](#)
- [Regulations for Approving AED Training Programs \(7 AAC 26.585\)](#)
- [Federal Register - AED Requirements for Federal Buildings](#)
- [Answers to Frequently Asked Questions about the AEDs in Alaska](#)

**Approved Training Programs**

In Alaska's Good Samaritan Law (AS 09.65.090) "properly trained" to use an AED means " that the individual has completed an automated external defibrillator training course from the American Heart Association, the American Red Cross, or another automated external defibrillator training course approved by the Department

of Health and Social Services."

The following programs have been approved by the Department of Health and Social Services in accordance with 7 AAC 26.588

- BLS for Health Care Providers-American Heart Association
- CPR for the Professional Rescuer-American Red Cross
- The CPR component of Medic First Aid-Advanced
- Basic Life Support for Professionals (BLSPRO)-EMP America
- CPR for the Professional Rescuer-American Safety & Health Institute
- Respond Systems AED/CPR

#### AED Placement

It is important for emergency medical dispatchers to know the locations of AEDs so they can direct rescuers to the device when emergency medical services personnel are en route. The Section of Community Health and EMS has developed a simple form that can be completed and faxed to the Section at 465-4101. The Section will fax copies of the form to the appropriate Regional EMS Office, Emergency Medical Dispatch center, and the nearest emergency medical services agency.

[Model AED Placement Notification. pdf](#)

#### Rural AED Act Grant Program

On July 15<sup>th</sup>, the Section of Community Health and EMS submitted an application to the Health Resources and Services Administration for over \$2,100,000 in automated external defibrillators and related training. The grant was written and submitted in response to the announcement in the May 23<sup>rd</sup> Federal Register that 12.5 million dollars were available nationwide in federal fiscal year 2002 under the Rural Access to Emergency Devices Grant Program.

Following the program's announcement, the Section of Community Health and EMS notified all emergency medical services agencies and other agencies known to be interested, including the Alaska Department of Public Safety and the Alaska Department of Transportation and Public Facilities, that it would be submitting a statewide application on behalf of eligible agencies statewide. Twenty-one "Community Partnerships" encompassing 77 communities and over 175 agencies responded with information about AED needs and provided letters of commitment. The total number of AEDs requested was 637.

In October, the Section of Community Health and EMS received word from the Health Resources and Services Administration (HRSA) that Alaska had been awarded \$237,703 to implement the Rural Automated External Defibrillator (AED) Grant program.

The Section will solicit updated applications for funding from community partnerships included within the funded grant application and will distribute the available funds based on expert reviews of the applications.




### Rural AED List Server

The Section of Community Health and Emergency Medical Services has developed an internet list server to facilitate communications regarding this important issue

[Join Alaska Rural AED List Server](#)

TOP

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Virginia Out To Widen Use Of Life-Saving Devices

By Shirley Adams, Special to Stateline.org

March 31, 2003



About 1,000 Americans die every day from sudden cardiac arrest; they could survive if they immediately received a jolt of electricity from a machine called a defibrillator, to reset their heart.

Special automated defibrillators, designed for use by laypeople with minimal training, have been available since the early 1980s. Over the years, the units have improved to the point where good Samaritans with minimal training at all, have used them successfully to save lives.

Virginia is at the forefront of states that are accelerating efforts to take advantage of technological advances. The national movement envisions that widespread availability of automated external defibrillators, or AEDs, can do for sudden cardiac arrests what fire extinguishers do for fires.

Delegate John M. O'Bannon, R-Henrico, sponsored legislation this year to remove barriers to widespread access to AEDs. His bill will give legal protection to untrained people who use AEDs in good faith.

The legislation earned the unanimous support of the General Assembly and Gov. Warner has signed it. Warner asked lawmakers to make it effective immediately and the Assembly will consider his request when it reconvenes in Richmond on Wednesday during a one-day "veto session."

Without an emergency clause, the legislation would take effect July 1.

"Widespread access to AEDs will be a step in the right direction," said O'Bannon. "Thousands of deaths a day from ventricular fibrillation are way too many. I think we'll go down."

Unlike heart "attacks," which occur when something blocks adequate blood flow to the heart muscle, sudden cardiac arrests are almost always an electrical problem.

Normal pumping is regulated by electrical signals that stimulate each part of the heart at the right time. When those signals suddenly become chaotic (a condition called ventricular fibrillation), the heart quivers unproductively, and no blood is pumped. With little or no blood flow, a person loses consciousness and stops breathing; death follows in minutes.

In the October 2002 issue of The New England Journal of Medicine, a team of researchers underscored the scope of the challenge: "Though highly reversible with the rapid use of a defibrillator, ventricular fibrillation is otherwise fatal within minutes, even when cardiopulmonary resuscitation (CPR) is provided immediately."

AEDs are different in many ways from traditional full-function defibrillators -- the kind used in medical dramas on television and used in real life by highly trained emergency

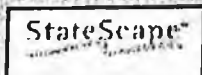
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full-function defibrillators are complicated and can kill if administered improperly.

Currently, state law tightly restricts access to both full-function defibrillators and a bill will lift the restrictions on AEDs, which are specifically designed for public-access

---

"Widespread access to AEDs will be a step in the right direction"  
*Virginia Del John M. O'Bannon (R)*

---

Anyone who can find the big green "ON" button, and follow a few simple instructions can use a public-access AED. A recording in the machines begins providing clear verbal instructions as the power is turned on. They actually sound quite bossy, but the authoritative tone helps rescuers stay focused.

Instead of using bulky paddles, AEDs have self-adhesive, palm-size pads that are attached to the unit by an electrical cord. The person attempting the rescue places the pads on the patient. After the pads are on, the operator does not need to touch the patient unless the machine tells them to do so.

Several scientific studies have tested the safety and effectiveness of AEDs.

A 1999 research project, for example, trained and evaluated two groups -- sixth-graders with no prior training, and emergency medical professionals -- as they used AEDs in simulated emergencies. All of the children understood and followed the instructions successfully.

When the study was published in *Circulation*, a medical journal for heart specialists, researchers made the following conclusion: "During mock cardiac arrest, the speed of untrained children is only modestly slower than that of professionals."

Many people compare modern public-access AEDs to fire extinguishers, which are used to save lives that they are found in almost every public place. In some ways, AEDs are more dangerous than fire extinguishers.

Fire extinguishers are not idiot-proof. If operators point the nozzle at themselves or others, they will be hurt by the blast of chemicals. Fire extinguishers can also be used to cause malicious harm -- by bludgeoning someone, for instance.

AEDs are not idiot-proof, either. Before the unit delivers a shock, it sounds a caution alarm and issues emphatic orders. "Do NOT touch the patient!"

If operators disobey the defibrillator's orders, they can be hurt.

Unlike fire extinguishers, AEDs would be extremely difficult to use to cause malicious harm. Units refuse to even charge up unless their sensors indicate that they are proper for use on a person who is not breathing and whose heart is in fibrillation.

In 1997, Florida became the first state to enact a law encouraging broad public access to AEDs by trained non-medical personnel such as police officers and firefighters. Currently, many states have taken similar steps.

What makes Virginia unusual is that its law will expand legal protection for purchasers of untrained AED users acting in good faith. Only a handful of states, such as Pennsylvania and Rhode Island, provide such protection from liability.

This protection will be important as AEDs become more prevalent in public places. In Pennsylvania, defibrillators were recently installed at all service plazas along the Pennsylvania Turnpike. The Illinois Legislature just passed a law requiring golf courses, school gymnasiums, and government-owned physical fitness facilities to have access to at least one AED.

Under current Virginia laws, public-access AEDs (which do not need trained operators)

Every year more than three million volunteers contribute their time and talents to help our organization defeat heart and blood vessel disease- and save lives.

American Heart Association 

Fighting Heart Disease and Stroke

Northwest Affiliate  
1057 West Fireweed Lane, Suite 100  
Anchorage, AK 99503  
907.263.2044 888.276.0858  
Fax 907.263.2045  
[www.americanheart.org](http://www.americanheart.org)

## Your American Heart Association Supports Senate Bill 160

The American Heart Association supports Senators Olson, Therriault, Wilken, Dyson, Davis, Seekins, Bunde, Cowdery, Green, and Wagoner's Senate Bill 160, a bill that would amend Alaska's Good Samaritan Law to reduce the liability risk associated with both using and providing automated external defibrillators (known as "AEDs").

Each year, 250,000 people die in this country from sudden cardiac arrest. Cardiac arrest is the stopping of the regular heart rhythms, usually because of interference with the electrical signal that regulates the heartbeat. When cardiac arrest occurs, the heart starts to beat chaotically and cannot pump blood. Brain death and permanent death start to occur in just four to six minutes after someone experiences cardiac arrest. This means that when a person goes into cardiac arrest, every second counts. To increase the odds of a victim's survival, the American Heart Association has outlined a four-step plan called the "chain of survival."

Defibrillators play a critical part in this chain of survival. The four links in the chain are (1) early access, which means recognizing that a cardiovascular emergency exists and immediately calling Emergency Medical Services; (2) early CPR, which means giving CPR promptly and properly when necessary; (3) early defibrillation, which means having immediate access to a properly working AED, and; (4) early advanced care, which means having qualified paramedics with up-to-date Advanced Cardiac Life Support Training.

While all four links in the chain are important, early defibrillation is often called the critical link in the chain of survival because it is the only way to successfully treat most cardiac arrests. In fact, for every minute without defibrillation, the odds of survival drop seven to ten percent. A cardiac arrest victim who is not defibrillated within eight to ten minutes has virtually no chance of survival.

Senate Bill 160 will improve the chain of survival in Alaska in several ways. First, by eliminating the threat of civil liability for people and businesses that acquire or provide an AED, the bill will help increase strategic AED placement around Alaska. Because every second counts after a victim suffers cardiac arrest, the more AEDs that are placed in strategic areas in the community, the stronger the chain of survival.

Additionally, by requiring that a person who acquires or provides the AED follow some common sense safety requirements, the bill ensures the responsible placement of AEDs. These requirements include (1) the acquirer or provider of the AED notify



the local emergency response agency of the location of the device; (2) that the device be properly maintained and tested – just as one would test, for example, a smoke or carbon monoxide detector; (3) that there is a way to notify local EMS within a reasonable proximity to the AED – for example, making sure that there is a phone reasonably close to the device, and; (4) that the acquirer or provider of the AED provide appropriate training for its employees, because trained rescuers can deliver the treatment more quickly than those who are totally unfamiliar with the device.

The bill also eliminates the threat of civil liability for individuals who use or attempt to use the AED on a victim in an emergency. The bill recognizes that while AED training is important, AEDs are easy to use, and the machine discerns between shockable and nonshockable heart rhythms. Because it is virtually impossible to shock a person that does not need it, the bill omits the current requirement that all users of the device be properly trained before they use or attempt to use the device in an emergency situation.

This proposed bill strengthens the American Heart Association's chain of survival by removing liability barriers to AED placement and use, and by ensuring that those persons who provide AEDs have followed basic, common sense protections. The American Heart Association commends these laudable goals, and fully supports Senate Bill 160.

SB

161

# STATE OF ALASKA

*Frank H. Murkowski, Governor*

**DEPARTMENT OF LAW**  
*OFFICE OF THE ATTORNEY GENERAL*

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

April 3, 2003

Senator Ralph Seekins  
Senate Judiciary Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801

Re: SB 161 – “An act relating to certain civil actions brought by the attorney general under monopoly and restraint of trade statutes; relating to the award of damages in actions brought under those statutes”

Dear Senator Seekins:

I am writing to request that you schedule SB 161 for a hearing at your earliest convenience.

This bill updates the Alaska antitrust statutes consistent with recent United States Supreme Court precedent to provide a statutory basis for the attorney general to bring a parens patrie action on behalf of state businesses, residents, and governmental entities as indirect purchasers for violations of our antitrust statutes and to recover damages. In contrast to other states, under current Alaska antitrust statutes, indirect purchasers are without any remedy for antitrust injuries.

Parens patrie actions typically involve civil actions on behalf of numerous persons and sometimes on behalf of numerous governmental entities. Accordingly, the bill provides for proof of antitrust damages by way of statistical methods consistent with federal law.

The bill also removes the current requirement in the antitrust statutes that any antitrust plaintiff must prove willful conduct before a court may award treble damages.

Senator Ralph Seekins  
Senate Judiciary Committee

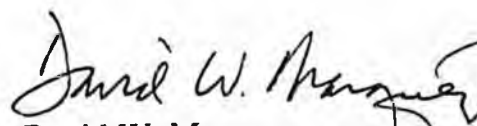
April 3, 2003  
Page 2

If you have any questions about this legislation, please do not hesitate to contact my office.

Sincerely,

GREGG D. RENKES  
Attorney General

By:

  
David W. Marquez  
Assistant Attorney General

DWM:lb

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

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SB 161  
(S) Publish Date: 3/28/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title: "An Act relating to certain civil actions . . . monopoly and restraint of trade statutes; . . . damages . . ." BRU Civil Division  
Sponsor Rules Committee Component Fair Business Practices  
Requester Governor Component No. 2206

**Expenditures/Revenues** (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2004      | FY 2005      | FY 2006      | FY 2007      | FY 2008      | FY 2009      |
|------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Personal Services      |              |              |              |              |              |              |
| Travel                 |              |              |              |              |              |              |
| Contractual            |              |              |              |              |              |              |
| Supplies               |              |              |              |              |              |              |
| Equipment              |              |              |              |              |              |              |
| Land & Structures      |              |              |              |              |              |              |
| Grants & Claims        |              |              |              |              |              |              |
| Miscellaneous          |              |              |              |              |              |              |
| <b>TOTAL OPERATING</b> | <b>*****</b> | <b>*****</b> | <b>*****</b> | <b>*****</b> | <b>*****</b> | <b>*****</b> |

|                             |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|
| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |
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|                               |  |  |  |  |  |  |
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| <b>CHANGE IN REVENUES ( )</b> |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|

**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0  
Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

**ANALYSIS:** *(Attach a separate page if necessary)*  
This bill updates Alaska antitrust statutes consistent with a recent United States Supreme Court precedent to allow the attorney general to bring a cause of action on behalf of both direct and indirect purchasers. Current Alaska statutes allow a cause of action only for purchasers who buy directly from the person or manufacturer that violated antitrust statutes. Because these type of actions typically involve civil actions on behalf of numerous persons and sometimes on behalf of numerous governmental entities, the bill provides for proof of antitrust damages by way of statistical methods consistent with federal law. The bill also removes the current requirement in the antitrust statutes that any antitrust plaintiff must prove willful conduct before a court may award treble damages. Federal law does not have this requirement, encouraging plaintiffs to resolve issues important to Alaska businesses and consumers in federal court, rather than state court.  
  
Costs associated with passage of this bill will depend on the number and complexity of actions brought by the attorney general in any given year, and are too speculative to quantify at this time.

Prepared by: Joan M. Kasson Phone (907) 465-5370  
Division Attorney General's Office Date/Time 1/27/03 8:29 AM  
Approved by: Kathryn Daughhettee for Gregg D. Renkes, Attorney General Date 1/27/2003  
Agency Department of Law

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March 26, 2003

The Honorable Gene Therriault  
President of the Senate  
Alaska State Legislature  
State Capitol, Room 107  
Juneau, AK 99801-1182

Dear President Therriault:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to legal action brought by the attorney general on behalf of direct and indirect purchasers under the statutes on monopolies and restraint of trade (antitrust statutes).

This bill updates the Alaska antitrust statutes consistent with recent United States Supreme Court precedent to provide a statutory basis for the attorney general to bring a parens patrie action on behalf of state businesses, residents, and governmental entities as indirect purchasers for violations of our antitrust statutes and to recover damages. In contrast to other states, under current Alaska antitrust statutes, indirect purchasers are without any remedy for antitrust injuries. Indirect purchasers are usually consumers, governmental entities, and small businesses in the wholesale and retail distribution chain of goods and services. Alaska antitrust statutes currently allow a cause of action only for purchasers who buy directly from the person or manufacturer that violated the antitrust statutes. By allowing only the attorney general a cause of action on behalf of both direct and indirect purchasers, Alaska consumers, businesses, and governmental entities will have a remedy for redress of antitrust violations without clogging the courts with multiple lawsuits individually brought by those purchasers.

Parens patrie actions typically involve civil actions on behalf of numerous persons and sometimes on behalf of numerous governmental entities. Accordingly, the bill provides for proof of antitrust damages by way of statistical methods consistent with federal law.

The Honorable Gene Therriault

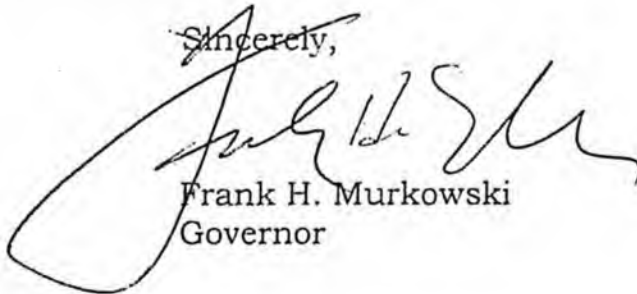
March 26, 2003

Page 2

The bill also removes the current requirement in the antitrust statutes that any antitrust plaintiff must prove willful conduct before a court may award treble damages. Under federal law, a plaintiff does not have to prove willful conduct to receive treble damages. The current law has the effect of chilling plaintiffs from bringing antitrust cases in Alaska courts, in favor of resolving issues important to Alaska businesses and consumers in the federal courts.

I urge your support of this important legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank H. Murkowski", is written over the typed name and title.

Frank H. Murkowski  
Governor

SB

162

# STATE OF ALASKA

*Frank H. Murkowski, Governor*

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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FAX: (907)465-2075

April 30, 2003

Senator Ralph Seekins  
Senate Judiciary Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801

Re: SB 162 – “An act relating to a tobacco product manufacturer's compliance with certain statutory requirements regarding cigarette sales”

Dear Senator Seekins:

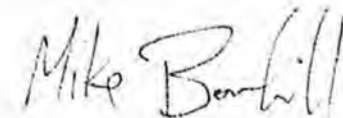
I am writing this letter to request that you schedule the above bill for a hearing at your earliest convenience.

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

Sincerely,

GREGG D. RENKES  
Attorney General

By:



Michael Barnhill  
Assistant Attorney General

MB:lb

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

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

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FAX: (907)465-2539

### SB 162

#### Background and Sectional Analysis

#### I. BACKGROUND

On November 23, 1998, Alaska and 45 other states (plus the District of Columbia and 5 territories) entered into the Tobacco Master Settlement Agreement ("MSA") with certain Tobacco Product Manufacturers (known as "Participating Manufacturers" or "PMs"). The MSA provides that in exchange for the PMs' agreement to make specified payments to the Settling States -- estimated to exceed \$200 billion through 2025 -- and their agreement to abide by extensive public health restrictions on the advertising, promotion and marketing of cigarettes, the Settling States agreed to release the PMs from claims by the States.<sup>1</sup>

Those non-participating Tobacco Product Manufacturers that did not sign the MSA ("Non-Participating Manufacturers" or "NPMs") were not released from potential State claims and did not undertake any of the payment obligations or agree to abide by the public health restrictions. In order to ensure that Settling States that successfully sue NPMs in the future will have a fund against which they can recover any judgment or settlement moneys, the MSA includes a proposed "Model Statute" that, if enacted by a Settling State, requires NPMs to make annual payments into a qualified escrow fund based on the number of that NPM's cigarettes sold in the State.<sup>2</sup> The Model Statute is also intended to prevent NPMs from reaping a windfall benefit by selling cigarettes in a Settling State without bearing the costs that cigarette smoking imposes on the State.

The Model Statute declares:

It would be contrary to the policy of the state if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise

<sup>1</sup> The released claims generally include claims arising out of or in any way related to (a) the use, sale, distribution, manufacture, development, advertising, marketing or health effects of, (b) the exposure to, or (c) research, statements, or warnings regarding, tobacco products. MSA §II(m).

<sup>2</sup> Alaska's "model statute" was enacted in 1999 (ch. 46, SLA 1999) and is found at AS 45.53.

without ensuring that the state will have an eventual source of recovery from them if they are proven to have acted culpably; it is thus in the interests of the state to require that such manufacturers establish an escrow fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

§ 1, ch. 46, SLA 1999.

The MSA encouraged States to enact the Model Statute by creating a significant financial incentive: Settling States that enact and 'diligently enforce' a Model Statute are not subject to certain potential downward adjustments in receiving their annual MSA payments. All Settling States have enacted Model Statutes.

A Settling State through its attorney general or other official may bring a civil action on behalf of the State against any Tobacco Product Manufacturer that fails to place into escrow the funds required by the Model Statute. While the Settling States have been aggressively enforcing the provisions of the Model Statutes, enforcement has proved costly and cumbersome. Among other things, the Model Statute enables NPMs to sell cigarettes for up to 16 months in a State before the State can bring an action to enforce the Model Statute. In addition, many NPMs are located in foreign countries and it has proved difficult and expensive to obtain service of process or to effect judgments. And, as the Settling States have moved forward with numerous actions against non-compliant NPMs, many NPMs have devised ingenious schemes to evade compliance. The purpose of this "complementary legislation" is to make State enforcement of Model Statutes more effective and thereby promote the purposes for which the Model Statutes were enacted.

Approximately fifteen states, including Alaska, have enacted complementary legislation. Alaska's existing complimentary legislation is AS 43.50.145, which simply provides that NPM cigarettes for which escrow payments have not been made are contraband and subject to confiscation. Other states' complimentary legislation have taken different forms but is largely similar from state to state. Generally, these statutes: prohibit tax-stamping of tobacco products that are not in compliance with a Settling State's Model Statute; require certification that a Tobacco Product Manufacturer is either a Participating Manufacturer under the MSA or, if an NPM, is in full compliance with a State's Model Statute; require an attorney general or revenue department to maintain a list of Tobacco Product Manufacturers that are in compliance with a Settling State's laws; and subject violators to civil and criminal penalties and license revocation/suspension.

Complementary legislation has been effective in promoting compliance with the Model Statutes. This positive experience led the Tobacco Committee to create a Complementary Legislation Working Group, a multi-State staff-level group coordinated by the NAAG Tobacco Project. The Working Group was charged with developing draft complementary legislation that could be recommended as a model to all of the Settling

States. After extensive deliberations, the Working Group has now recommended model legislation to the Tobacco Committee, and the Committee has recommended that the Attorneys General of the Settling States give serious consideration to the legislation and designate its enactment a priority. The Committee believes that enactment of such legislation by all Settling States will promote the purposes the Model Statutes were designed to serve and safeguard payments to the Settling States that might otherwise be imperiled.

## II. COMPLEMENTARY LEGISLATION SUMMARY

The proposed model complementary legislation would require a state to maintain a directory of cigarette products that are permitted to be sold instate. The proposed legislation would prohibit the sale of products that are not listed in the directory. While all Tobacco Product Manufacturers would be required to make specific certifications *before* a brand could be listed in the directory, a Non-Participating Manufacturer would be further required to certify that: a) it is registered to do business in the state or has appointed an agent for service of process; b) it maintains a Qualified Escrow Fund with an executed qualified escrow agreement that has been reviewed and approved by the State; c) it is in full compliance with the escrow statute; and d) it identifies the financial institution where it has established such Qualified Escrow Fund and identifies all deposits and withdrawals to/from said fund. In addition, neither an NPM nor its brands will be listed in the directory unless all escrow payments for any period have been fully paid and all outstanding final judgments for violations of the Model Statutes fully satisfied.

The proposed model complementary legislation will also allow the Settling State through its attorney general or other official to request information to verify the accuracy of reported information and will further permit disclosure of information to other state agencies to facilitate investigation. Civil penalties, including injunctive relief and designation of product as contraband subject to seizure, forfeiture and destruction are among the penalties imposed.

The proposed requirements will ensure that a Tobacco Product Manufacturer has met certain obligations before being permitted to sell its products instate. This will help prevent significant periods of non-compliance and will reduce the expense and difficulty of enforcement actions against NPMs.

The proposed model complementary legislation is intended to complement Alaska's Model Statute (AS 45.53), but it does not replace or amend Alaska's Model Statute.

### III. SECTION REVIEW

#### *Section 1. Findings and Purpose*

Several Settling States emphasized that in order to assist with passage of a proposed model bill, it would be helpful, and in some cases, necessary to have a legislative declaration regarding the relationship between complementary legislation, fiscal soundness of the State and advancement of public health issues.

#### *Section 2.*

##### **AS 43.50.500**

- (a) Requires PMs to annually certify that they are a participating manufacturer. Requires NPMs to annually certify that they are in compliance with the model statute, AS 45.43.
- (b) Requires PMs to attach a list of its brands to its certification.
- (c) Requires NPMs to attach a list of its brands to its certification and provide information about its instate sales.
- (d) Requires NPMs to register to do business instate or appoint an instate agent for service of process. Requires NPMs to set up a "qualified escrow fund."
- (e) Requires NPMs to provide information about its qualified escrow fund.
- (f) Requires tobacco product manufacturers to affirm the identity of the brands it manufactures. This provision is intended to prevent a manufacturer from identifying a particular brand and then attempting to assert that another party, such as an importer or distributor, is responsible for escrow, other payment or certification obligations.
- (g) Requires tobacco product manufacturers to maintain sales records for five years.

##### **AS 43.50.510**

This section establishes the requirements for the directory to be maintained by the Department of Revenue for brands of tobacco products that may be sold in the state. The provisions of this section provide a means by which a cigarette seller will be able to ascertain if a particular brand of tobacco product may be permissibly sold in the State. In addition, this section requires that the Department of Revenue shall update the directory as necessary to keep it current. Notices provided by this section may be provided by electronic mail in order to reduce the cost and expense for disseminating any notices.

##### **AS 43.50.520**

- (a) This subsection establishes that it is unlawful to sell a product that is not included in the directory.

(b) This subsection provides for a cigarette tax credit for licensees that permissibly import directory-listed cigarettes that are later de-listed prior to retail sale.

#### **AS 43.50.530**

This section requires any non-resident or foreign NPM to establish an agent for service of process before its brands may be included on the directory established in AS 43.50.510. The appointment of such an agent would be limited to actions arising out of the enforcement of the complementary legislation or the Model Statute, AS 45.53. Subsection (c) provides for service on the commissioner of the Department of Commerce and Economic Development for failure to appoint an agent.

#### **AS 43.50.540**

This section establishes the reporting requirements for licensees. This provision will allow monitoring of the sales activity of NPM product and provides an ongoing method to evaluate compliance. This section also provides the authority to share information obtained pursuant to the complementary legislation or Model Statute with the attorney general or other state agencies. The section also grants authority to request additional information as may be necessary to verify the accuracy of information reported and to provide actual product or label samples as may be necessary to effect the purpose of the statute. Finally, subsection (e) permits the adoption of regulations to require escrow deposits on a quarterly basis.

#### **AS 43.50.550**

This section provides for penalties for noncompliance. Penalties include:

- Revocation or suspension of a licensee's license and civil penalty.
- Designation of non-compliant NPM tobacco products as contraband, seizure and forfeiture of unlawful product.
- Injunctive relief against a licensee

#### **AS 43.50.560**

Subsection (a) establishes review procedures in accordance with a AS 44.62 (Administrative Procedure Act) for determinations regarding removal or non-listing of a tobacco product brand. Subsection (b) requires licensees to certify compliance with this law. Subsection (c) provides authority to promulgate regulations. Subsection (d) provides for disgorgement of any profits upon a finding of a violation by a court.

#### **AS 43.50.590**

Most of the definitions mirror those from the MSA or the Model Statute, AS 45.53.

*Brand Family* is intended to cover all variations of a brand of tobacco products that are sold instate. It is further intended to include the brand names of tobacco products that undergo slight modification as a means of evading liability under a Settling State's Model Statute. For example, in order to avoid an ongoing violation or potential injunction against a particular brand, some manufacturers have attempted to modify the name of a brand while maintaining the product the same, i.e., changing the brand name from Distinction to Distinctive or from Bloomberg to Blumburg.

**Section 3.** Conforming amendment to Administrative Procedures Act, AS 44.62.

**Section 4.** Repeal of existing complimentary legislation.

**Section 5.** Transition—initial compliance deadlines.

**Section 6.** Effective date.

#### **IV. ASSURANCES BY PARTICIPATING MANUFACTURERS**

After constructive deliberation with several Participating Manufacturers, Settling States and the PMs agreed upon certain assurances that the PMs would provide to the States. The assurances are intended to facilitate introduction and passage of Complementary Legislation in those States where there may be concerns that the proposed.

Complementary Legislation may be construed as amending the Model Statute or MSA. The language agreed upon States in relevant part that:

the Settling States shall have no duty or obligation to enact the proposed Complementary Legislation or any similar bill, and failure to enact such legislation shall not be used against any State in any proceeding to determine whether that State has diligently enforced its escrow statute.... Additionally, enactment of the proposed Model Complementary Legislation (or similar bill containing no deviation of substance from the Model Complementary Legislation) shall not be construed as an amendment to the Model Statute or to the MSA and shall not constitute any breach of the MSA....

The NAAG Tobacco Project has secured assurances from the following Participating Manufacturers: Philip Morris, RJ Reynolds, Brown & Williamson, Lorillard, Caribbean-America Tobacco, Dharanj Imports, Japan Tobacco Int'l, King Maker, Konci G&D, Liggett, Lignum-2, Nat Sherman, Planta, PT Djarum, Santa Fe Natural Tobacco, Top Tobacco, Vector Tobacco, Virginia Carolina, and Wind River.

## V. CONCLUSION

The enactment of Complementary Legislation will streamline enforcement of the NPM Model Escrow Statutes, safeguard annual MSA payments and help combat the proliferation of youth smoking. The Attorneys General regard this legislation as extremely important and recommend that the proposed model Complementary Legislation be given legislative priority. Attorneys from the Alaska Department of Law as well as the NAAG Tobacco Project and the Complementary Legislation Working Group are available to answer additional questions on this issue of critical importance.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

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SB 162

Senate State Affairs Committee

April 15, 2003

9:00am

Testimony of Michael A. Barnhill, Asst. Attorney General

Thank you Mr. Chair. My name is Mike Barnhill. I am employed by the Alaska Dep't of Law as an Assist. Attorney General in the Commercial Section. I am pleased to testify on behalf of the administration in support of SB 162, the bill before you.

In your bill packets you should have a copy of the background and sectional analysis I prepared. I don't intend to read the entire document for you, but I will touch the salient points for your consideration.

By way of background, as you all know, the State of Alaska, along with 45 other states settled its tobacco litigation with the major tobacco manufacturers in 1998, in exchange for a stream of payments that would last indefinitely. One of the terms of this "Master Settlement Agreement" is that the payments can be reduced by what's called a "non-participating manufacturer adjustment" or "NPM adjustment." The MSA provides, however, that states can avoid an NPM adjustment by doing two things: (1) enact the model NPM statute and (2) diligently enforce that statute.

The model NPM statute is basically a statute that levels the playing field between tobacco manufacturers that participated in the settlement agreement and those that did not—it requires the non-participating manufacturers to deposit certain amounts of money into an escrow account for every cigarette sold in the state. In 2001, for instance, an NPM was required to deposit approximately 1.5 cents into escrow for every cigarette sold.

Alaska enacted the model NPM statute in 1999 (AS 45.53) and has been diligently enforcing it since its enactment.

Since the enactment of the NPM statute, however, Alaska and many other states have found that enforcing the NPM statute is unnecessarily difficult in some situations. Usually these situations involve cases where the tobacco manufacturer is located in a far-flung jurisdiction like India or the Phillipines. While it is possible to seek enforcement of Alaska laws on companies in foreign countries it is not necessarily easy.

As a solution, states began looking for ways to enhance their ability to enforce the NPM statutes. In 2001, Alaska and Maine became the first states to enact "complimentary legislation". Alaska's complimentary legislation is found at AS 43.50.145 and basically creates a list of companies that have failed to comply with our NPM laws and declares their cigarettes to be contraband and subject to seizure.

Other states followed suit and enacted their own versions of complimentary legislation. By 2002, there were various versions of complimentary legislation around the country and it became clear that there was a need for uniformity.

The National Association of Attorneys General formed a working group in 2002 with the goal of drafting a model complimentary legislation statute. SB 162 is the product of that working group and NAAG has urged all states to enact this legislation as a high priority.

Simply put, SB 162 enhances our ability to enforce Alaska's NPM statute by creating a "directory" of cigarettes that are permitted to be sold in Alaska. A company can be added to the directory simply by annually certifying to the Dep't of Revenue that they are either (a) a participating manufacturer under the MSA or (b) a non-participating manufacturer that has complied with AS 45.53 by depositing all required amounts into escrow.

SB 162 requires tobacco manufacturers to provide information about their products to the Dep't of Revenue to aid in enforcement efforts. It provides penalties for failure to comply. It provides for service of process upon the Dep't of Community and Econ. Development for companies that refuse to comply with our law and fail to appoint an in-state agent for service of process. Lastly, it provides a tax credit for cigarette distributors that import cigarettes that are listed on the directory and that are subsequently de-listed—this ensures that distributors will not be left "holding the bag" on cigarette taxes for a tobacco manufacturer that fails to comply with Alaska law.

I'm delighted that the administration supports this bill and I urge your support of it. I'd be happy to answer any questions the committee might have.

SB

163

# ALASKA STATE SENATE



Session:  
State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-2327  
(907) 465-5241 Fax

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

## SB 163 Sponsor Statement

In 1997 legislation was passed making Alaska one of the best trust jurisdictions nationwide. This legislation made two significant changes to existing law:

1. Provided that an individual could set up a trust and have the trust last as long as the family wanted. This is known as a Perpetual Trust; and,
2. Provided that an individual could set up a trust where he or she could be a beneficiary and have the trust's assets protected from future creditors. This is known as a Self Settled Spendthrift Trust.

Over the last six years the states of Delaware, Rhode Island and Nevada have not only adopted similar legislation but also incorporated improvements to certain provisions. States such as Idaho and South Dakota have also added features to their general trust laws that now make them comparatively advantageous. Senate Bill 163 places Alaska Trust legislation back on an equal footing with these states.

Additionally, Senate Bill 163 codifies a number of matters that have been accepted by Alaska trust practitioners as being the common law of this state but for which there has been no statutory counterpart. The Bill essentially updates and clarifies provisions of prior legislation.

Overall, these changes are designed to keep Alaska as the premier trust jurisdiction thereby not only retaining financial resources in-state, but also continuing to attract non-resident trust assets to Alaska.

23-LS0774V  
Bannister  
4/10/03

**CS FOR SENATE BILL NO. 163(JUD)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-THIRD LEGISLATURE - FIRST SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

Offered:  
Referred:

Sponsor(s): SENATOR SEEKINS

**A BILL**  
**FOR AN ACT ENTITLED**

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

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

5 \* Section 1. AS 13.36 is amended by adding new sections to read:

6 **Sec. 13.36.370. Trust protector.** (a) A trust instrument may provide for the  
7 appointment of a disinterested third party to act as a trust protector.

8 (b) A trust protector appointed under (a) of this section has the powers,  
9 delegations, and functions conferred on the protector by the trust instrument, which  
10 may include the power to

11 (1) remove and appoint a trustee;

12 (2) modify or amend the trust instrument to achieve favorable tax  
13 status or to respond to changes in 26 U.S.C. (Internal Revenue Code) or state law, or  
14 the rulings and regulations under those laws;

1 (3) increase or decrease the interests of any beneficiary to the trust; and

2 (4) modify the terms of a power of appointment granted by the trust.

3 (c) A modification authorized under (b) of this section may not

4 (1) grant a beneficial interest to an individual or a class of individuals  
5 unless the individual or class of individuals is specifically provided for under the trust  
6 instrument;

7 (2) modify the beneficial interest of a governmental unit in a trust  
8 created under AS 47.07.020(f).

9 (d) Subject to the terms of the trust instrument, a trust protector is not liable or  
10 accountable as a trustee or fiduciary because of an act or omission of the trust  
11 protector taken when performing the function of a trust protector under the trust  
12 instrument.

13 **Sec. 13.36.375. Trustee advisor.** (a) A trust instrument may provide for the  
14 appointment of a person to act as an advisor to the trustee with regard to all or some of  
15 the matters relating to the property of the trust.

16 (b) Unless the terms of the trust instrument provide otherwise, if an advisor is  
17 appointed under (a) of this section, the property and management of the trust and the  
18 exercise of all powers and discretionary acts exercisable by the trustee remain vested  
19 in the trustee as fully and effectively as if an advisor were not appointed, the trustee is  
20 not required to follow the advice of the advisor, and the advisor is not liable as or  
21 considered to be a trustee of the trust or a fiduciary when acting as an advisor to the  
22 trust.

23 \* Sec. 2. AS 34.40.110(a) is amended to read:

24 (a) A person who in writing transfers property in trust may provide that the  
25 interest of a beneficiary of the trust, including a beneficiary who is the settlor of the  
26 trust, may not be either voluntarily or involuntarily transferred before payment or  
27 delivery of the interest to the beneficiary by the trustee. Payment or delivery of the  
28 interest to the beneficiary does not include a beneficiary's use or occupancy of  
29 real property or tangible personal property owned by the trust if the use or  
30 occupancy is in accordance with the trustee's discretionary authority under the  
31 trust instrument. In this subsection,

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

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

5 \* Sec. 3. AS 34.40.110(b) is amended to read:

6 (b) If a trust contains a transfer restriction allowed under (a) of this section,  
7 the transfer restriction prevents a creditor existing when the trust is created or [,] a  
8 person who subsequently becomes a creditor [, OR ANOTHER PERSON] from  
9 satisfying a claim out of the beneficiary's interest in the trust, unless the creditor is a  
10 creditor of the settlor and

11 (1) the settlor's transfer of property in trust was made with the  
12 intent [INTENDED IN WHOLE OR IN PART] to [HINDER, DELAY, OR] defraud  
13 that creditor [CREDITORS OR OTHER PERSONS UNDER AS 34.40.010];

14 (2) the trust provides that the settlor may revoke or terminate all or  
15 part of the trust without the consent of a person who has a substantial beneficial  
16 interest in the trust and the interest would be adversely affected by the exercise of the  
17 power held by the settlor to revoke or terminate all or part of the trust; in this  
18 paragraph, "revoke or terminate" does not include a power to veto a distribution from  
19 the trust, a testamentary nongeneral [SPECIAL] power of appointment or similar  
20 power, or the right to receive a distribution of income, principal [CORPUS], or both  
21 in the discretion of a person, including a trustee, other than the settlor, or a right to  
22 receive a distribution of income or principal under (3)(A) or (B) of this  
23 subsection;

24 (3) the trust requires that all or a part of the trust's income or principal,  
25 or both, must be distributed to the settlor; however, this paragraph does not apply  
26 to a settlor's right to receive

27 (A) income or principal from a charitable remainder  
28 annuity trust or charitable remainder unitrust; in this subparagraph,  
29 "charitable remainder annuity trust" and "charitable remainder  
30 unitrust" have the meanings given in 26 U.S.C. 664 (Internal Revenue  
31 Code) as that section reads on the effective date of this bill section and as

1           it may be amended;

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

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

9   \* Sec. 4. AS 34.40.110(c) is amended to read:

10                   (c) The satisfaction of a claim under (b)(1) - (4) of this section is limited to  
11           that part of the trust for [TO] which a transfer restriction is not allowed under  
12           (b)(1) - (4) of this section, and an attachment or other order may not be made  
13           against the trustee with respect to a beneficiary's interest in the trust or against  
14           property that is subject to a transfer restriction, except to the extent that a  
15           transfer restriction is determined not to be allowed under (b)(1) - (4) of this  
16           section [APPLIES].

17   \* Sec. 5. AS 34.40.110(d) is amended to read:

18                   (d) A cause of action or claim for relief with respect to a fraudulent transfer of  
19           a settlor's assets under (b)(1) of this section [, OR UNDER OTHER LAW,] is  
20           extinguished unless the action under (b)(1) of this section is brought by a creditor of  
21           the settlor [AS TO A PERSON] who

22                           (1) is a creditor of the settlor before the settlor's assets are  
23           transferred to the trust, and the action under (b)(1) of this section is brought  
24           [WHEN THE TRUST IS CREATED,] within the later of

25                                   (A) four years after the transfer is made; or

26                                   (B) one year after the transfer is or reasonably could have been  
27           discovered by the creditor if the creditor

28   (i) can demonstrate, by a preponderance of the  
29           evidence, that the creditor asserted a specific claim against the  
30           settlor before the transfer; or

31   (ii) files another action, other than an action under

1                   (b)(1) of this section, against the settlor that asserts a claim based  
2                   on an act or omission of the settlor that occurred before the  
3                   transfer, and the action described in this sub-subparagraph is filed  
4                   within four years after the transfer [PERSON]; or

5                   (2) becomes a creditor subsequent to the transfer into trust, and the  
6                   action under (b.1) of this section is brought within four years after the transfer is  
7                   made.

8       \* Sec. 6. AS 34.40.110 is amended by adding new subsections to read:

9                   (g) A transfer restriction allowed under (a) of this section and enforceable  
10                  under (b) of this section applies to a settlor who is also a beneficiary of the trust even  
11                  if the settlor serves as a co-trustee or as an advisor to the trustee under AS 13.36.375 if  
12                  the settlor does not have a trustee power over discretionary distributions.

13                  (h) A transfer restriction allowed under (a) of this section and enforceable  
14                  under (b) of this section applies to a beneficiary who is not the settlor of the trust,  
15                  whether or not the beneficiary serves as a sole trustee, a co-trustee, or an advisor to the  
16                  trustee under AS 13.36.375.

17                  (i) A transfer restriction is allowed under (a) of this section and is enforceable  
18                  under (b) of this section even if a settlor has the authority under the terms of the trust  
19                  instrument to appoint a trust protector under AS 13.36.370 or an advisor to the trustee  
20                  under AS 13.36.375.

21                  (j) A settlor whose beneficial interest in a trust is subject to a transfer  
22                  restriction that is allowed under (a) of this section may not benefit from, direct a  
23                  distribution of, or use trust property except as may be stated in the trust instrument.  
24                  An agreement or understanding, express or implied, between the settlor and the trustee  
25                  that attempts to grant or permit the retention of greater rights or authority than is stated  
26                  in the trust instrument is void.

27                  (k) A settlor who creates a trust that names the settlor as a beneficiary and  
28                  whose beneficial interest is subject to a transfer restriction allowed under (a) of this  
29                  section shall sign a sworn affidavit before the settlor transfers assets to the trust. The  
30                  affidavit must state that

31                         (1) the settlor has full right, title, and authority to transfer the assets to

1 the trust;

2 (2) the transfer of the assets to the trust will not render the settlor  
3 insolvent;

4 (3) the settlor does not intend to defraud a creditor by transferring the  
5 assets to the trust;

6 (4) the settlor does not have any pending or threatened court actions  
7 against the settlor, except for those court actions identified by the settlor on an  
8 attachment to the affidavit;

9 (5) the settlor is not involved in any administrative proceedings, except  
10 for those administrative proceedings identified on an attachment to the affidavit;

11 (6) at the time of the transfer of the assets to the trust, the settlor is not  
12 currently in default of a child support obligation by more than 30 days;

13 (7) the settlor does not contemplate filing for relief under the  
14 provisions of 11 U.S.C. (Bankruptcy Code); and

15 (8) the assets being transferred to the trust were not derived from  
16 unlawful activities.

17 \* Sec. 7. AS 34.40 is amended by adding a new section to read:

18 **Sec. 34.40.115. Subjecting appointed property to claims of donee's**  
19 **creditor.** The property that a donee of a power of appointment is authorized to  
20 appoint is not subject to the claims of the creditors of the donee except to the extent  
21 that a donee of an inter vivos or testamentary power of appointment

22 (1) is permitted by the donor of the power to appoint the property to  
23 the donee, the creditors of the donee, the donee's estate, or the creditors of the donee's  
24 estate; and

25 (2) effectively exercises the power of appointment in favor of the  
26 donee, the creditors of the donee, the donee's estate, or the creditors of the donee's  
27 estate.

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

30 **APPLICABILITY.** (a) Except as provided by (b) of this section, this Act applies to a  
31 trust regardless of whether the trust was created before, on, or after the effective date of the

1 applicable section of this Act.

2 (b) AS 34.40.110(k), enacted by sec. 6 of this Act, applies to a trust only if the trust is  
3 created on or after the effective date of this Act.

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SB 163  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
Title "An Act relating to trusts, including trust BRU Civil Division  
protectors, trustee advisors, transfers of property in trust, . . ." Component Commercial  
Sponsor Senator Seekins  
Requester Senate Judiciary Committee Component No. 2211

**Expenditures/Revenues** (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2004    | FY 2005    | FY 2006    | FY 2007    | FY 2008    | FY 2009    |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services      |            |            |            |            |            |            |
| Travel                 |            |            |            |            |            |            |
| Contractual            |            |            |            |            |            |            |
| Supplies               |            |            |            |            |            |            |
| Equipment              |            |            |            |            |            |            |
| Land & Structures      |            |            |            |            |            |            |
| Grants & Claims        |            |            |            |            |            |            |
| Miscellaneous          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

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

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

**FUND SOURCE** (Thousands of Dollars)

| FUND SOURCE                             | FY 2004    | FY 2005    | FY 2006    | FY 2007    | FY 2008    | FY 2009    |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts                   |            |            |            |            |            |            |
| 1003 GF Match                           |            |            |            |            |            |            |
| 1004 GF                                 |            |            |            |            |            |            |
| 1005 GF/Program Receipts                |            |            |            |            |            |            |
| 1037 GF/Mental Health                   |            |            |            |            |            |            |
| Other (Specify Type--Do not abbreviate) |            |            |            |            |            |            |
| <b>TOTAL</b>                            | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2003) cost: 0.0  
Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

| POSITIONS | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 |
|-----------|---------|---------|---------|---------|---------|---------|
| Full-time |         |         |         |         |         |         |
| Part-time |         |         |         |         |         |         |
| Temporary |         |         |         |         |         |         |

**ANALYSIS:** (Attach a separate page if necessary)  
SB 163 provides for the appointment of a trust protector and a trust advisor. The bill also prevents creditors of beneficiaries from attaching assets transferred into a trust unless certain conditions are met by all parties, and establishes a statute of limitations regarding when creditors must bring an action for a fraudulent transfer claim.  
  
Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone (907) 465-5370  
Division: Attorney General's Office Date/Time 4/14/03 10:37 AM  
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 4/14/2003  
Agency: Department of Law

**Subject: SB 163**

**Date:** Wed, 09 Apr 2003 17:56:08 -0800

**From:** "Stephen E. Greer" <greer@ak.net>

**To:** Brian Hove <Brian\_Hove@legis.state.ak.us>

Brian- this should be easy. Looking at the Senate Bill, delete "primary" on p. 3 line 12.

Section 6 adds a new subsection (k), as indicated in the House bill. I have faxed this to you.

Section 8 of should be changed as indicated in the House bill. I have faxed this to you.

--  
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## Sectional Analysis

Section 1: AS 13.36.370 adds a new provision commonly found in trust instruments concerning the role of the disinterested trust protector. South Dakota, Delaware and Idaho also have a statutory framework delineating a trust protector's authority. It is fully within the settlor's discretion as to whether or not there will be a trust protector. If a settlor does not want a trust protector there will be no trust protector. Furthermore a trust protector will only have those powers which the settlor grants the trust protector. A irrevocable trust containing a trust protector provision provides flexibility to take into account changed circumstances.

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

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

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

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

Section 3. AS 34.40.110(b)(1) is amended to eliminate ambiguous language such as ~~Ahinder and delay~~. It also eliminates meaningless language such as ~~Aother persons~~. Meaningless in the sense that the only class of persons who could possibly be defrauded by a settlor transferring property

into trust are creditors of that settlor.

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

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

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

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

A preexisting creditor (i.e., a creditor who was in existence prior to the settlor transferring property in trust) must bring the fraudulent conveyance action must be brought within the later of

- (A) four years after the transfer of a settlor=s assets is made; or
- (B) one year after the transfer is or reasonably could have been discovered by the creditor.

A subsequent creditor must bring the fraudulent conveyance action within four years after the transfer of a settlor=s assets is made.

A preexisting creditor has what is essentially an unlimited statute of limitations period to bring a fraudulent conveyance action because it can be brought within one year after the transfer is or

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

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

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

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

Section 6 adds a number of sections which clarify that an otherwise valid transfer restriction will not be invalidated even though:

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

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

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

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

(k) a settlor of a self settled trust must sign an affidavit stating those items mentioned in the bill before transferring assets to the trust.

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

Sections 8 contains effective dates.