

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11169 SENATE JUDICIARY

1 as otherwise provided in this subsection. At the first hearing under this
2 subsection, regardless of whether a continuance is granted, the court shall make a
3 preliminary determination of whether continued placement in the home of the
4 child's parent or guardian would be contrary to the welfare of the child. If a
5 court determines that continued placement in the home of the child's parent or
6 guardian would not be contrary to the welfare of the child, the court shall return
7 the authority to place the child to the child's parent or guardian pending a
8 temporary custody hearing under (e) of this section [. WHEN THE
9 TEMPORARY CUSTODY HEARING IS HELD, THE COURT SHALL
10 DETERMINE WHETHER PROBABLE CAUSE EXISTS FOR BELIEVING THE
11 CHILD TO BE A CHILD IN NEED OF AID, AS DEFINED IN AS 47.10.990. THE
12 COURT SHALL INFORM THE CHILD, AND THE CHILD'S PARENTS OR
13 GUARDIAN IF THEY CAN BE FOUND, OF THE REASONS GIVEN AS
14 CONSTITUTING PROBABLE CAUSE AND THE REASONS GIVEN AS
15 AUTHORIZING THE CHILD'S TEMPORARY PLACEMENT].

16 * Sec. 2. AS 47.10.142(e) is amended to read:

17 (e) When the temporary custody hearing is held, the court shall
18 determine whether probable cause exists for believing the child to be a child in
19 need of aid, as defined in AS 47.10.990. If the court finds that probable cause exists,
20 it shall order the child [MINOR] committed to the department for temporary
21 placement, or order the child [MINOR] returned to the custody of the child's
22 [MINOR'S] parents or guardian, subject to the department's supervision of the child's
23 [MINOR'S] care and treatment. The court shall inform the child, and the child's
24 parents or guardian if they can be found, of the reasons for finding probable
25 cause, authorizing the child's temporary placement, and, if applicable, finding
26 that continued placement in the home of the child's parents or guardian would be
27 contrary to the welfare of the child. If the court finds no probable cause, it shall
28 order the child [MINOR] returned to the custody of the child's [MINOR'S] parents or
29 guardian.

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

1 APPLICABILITY. The changes made in secs. 1 and 2 of the Act apply to emergency
2 custody and temporary placement hearings under AS 47.10 conducted on or after the effective
3 date of this Act.

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

SB

300

ALASKA STATE LEGISLATURE
SENATOR BERT K. STEDMAN

SESSION

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

INTERIM

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

MEMORANDUM

DATE: February 6, 2004

TO: Senator Ralph Seekins
Chair, Senate Judiciary Committee

FROM: Senator Bert K. Stedman *for*

SUBJECT: Judiciary Hearing SB 300

Thank you for agreeing to hear SB 300 during the Judiciary Committee Meeting on Monday, February 9th. Attached please find my Sponsor Statement and 3 letters of support for this bill.

I have asked the following individuals to be available to testify Monday morning:

- William B. Schendel, Attorney of Winfree Law Office
- Kevin J. Walsh, CPA, CVA of Walsh, Kelliher & Sharp, Certified Public Accountants
- Jo A. Kuchle, Attorney of Cook Schuhmann & Groseclose, Inc.

There may be a few other member of the public that would like to testify as well.

Thank you again for your time and consideration.

DISTRICT A

*Ketchikan • Sitka • Petersburg • Wrangell
Pelican • Elfin Cove • Port Alexander • Saxman • Meyers Chuck • Thorne Bay • Coffman Cove • Hollis*

ALASKA STATE LEGISLATURE
SENATOR BERT K. STEDMAN

SESSION

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


INTERIM

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

MEMORANDUM

DATE: February 5, 2004

TO: Senator Ralph Seekins
Chair, Senate Judiciary Committee

FROM: Senator Bert K. Stedman 

SUBJECT: Request for Judiciary Hearing (Pending Referral)

Tomorrow, the Senate is scheduled to introduce a bill I'm sponsoring for *an act relating to an attorney's lien, to court actions and to other proceedings where attorneys are employed*. The bill will be numbered at that time.

Pending referral of this bill to the Senate Judiciary Committee, I respectfully request a committee hearing at your earliest convenience.

Thank you for time and consideration.

DISTRICT A

Ketchikan • Sitka • Petersburg • Wrangell
Pelican • Elfin Cove • Port Alexander • Saxman • Meyers Chuck • Thorne Bay • Coffman Cove • Hollis

SENATOR BERT STEDMAN

Senate District A



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

SPONSOR STATEMENT

SB 300

SB 300 eliminates a double taxation issue affecting many Alaskan taxpayers.

Because of a peculiarity in Alaskan law, Alaskans who win in court may pay federal income tax on phantom income. When Alaskans file their federal tax return, they must report any litigation recovery allocated to attorney fees as gross income, even though they receive no economic benefit from those fees. As a consequence, the federal government taxes that portion of the prevailing side's award twice; once as income to the client and again as income to the client's attorney. Incredibly, there is no federal tax deduction to offset this inequity.

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

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



DANIEL E. WINFREE
AIMEE ANDERSON ORAVEC
CASSANDRA J. TILLY

WINFREE LAW OFFICE
A Professional Corporation

OF COUNSEL:
WILLIAM B. SCHENDEL
SHELLEY D. EBENAL

301 Cushman Street, Suite 200 • Fairbanks, Alaska 99701-4629 • 907.451.6500 Telephone • 907.451.6510 Facsimile

February 6, 2004

FAX: 907 465-3922

Senate Judiciary Committee
Butrovich 205
State Capitol
Juneau, AK
Attn: Sen. R. Seekins, Chairman

Re: SB 360 – attorney lien amendment

Dear Chairman Seekins and Members,

SB 300 has been favorably reviewed by a broad range of practicing Alaskan attorneys who represent all sides of many different kinds of disputes. Just recently, at the February 4, 2003, regular monthly meeting of the Employment Law Section of the Alaska Bar Association, 22 attorneys from Fairbanks, Anchorage, Juneau, and Kotzebue discussed the draft, after hearing from tax and other experts. While the Section is not permitted to lobby or endorse legislation, I can represent that, of those present, not a single person voiced any objection to the bill;¹ all comments were favorable with regard to passage. A number of participants, in fact, recounted examples of unfair taxation of clients who had received fee awards and who were then obligated to pay over the fees to their attorneys without taking a corresponding deduction from their gross income. Other attorneys commented that the unfair taxation of fee awards drives up the cost of settlement for the opposing party.

This bill, if passed, would eliminate the current double taxation of fee awards, and will make fee awards taxable only to the recipient attorney, and not to the prevailing litigant. The bill makes the Alaska lien statute track the Oregon lien statute, which the federal Court of Appeals has held is effective to eliminate double taxation.² The bill appropriately recognizes that earlier-asserted liens of any origin will prevail over a later-filed attorney lien, and that a later-filed tax lien will even prevail over an earlier attorney

¹ Thus, these comments do not reflect the official position of the Alaska Bar Association. The Association has not taken a position, nor has it been asked to take a position.

² Banaitis v. CIR, 340 F.3d 1074 (9th Cir. 2003).

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska



DANIEL E. WINFREE
AIMEE ANDERSON ORAVEC
CASSANDRA J. TILLY

WINFREE LAW OFFICE
A Professional Corporation

OF COUNSEL:
WILLIAM B. SCHENDEL
SHELLEY D. EBENAL

301 Cushman Street, Suite 200 • Fairbanks, Alaska 99701-4629 • 907.451.6500 Telephone • 907.451.6510 Facsimile

February 6, 2004

FAX: 907 465-3922

Senate Judiciary Committee
Butrovich 205
State Capitol
Juneau, AK
Attn: Sen. R. Seekins, Chairman

Re: SB 300 – attorney lien amendment

Dear Chairman Seekins and Members,

SB 300 has been favorably reviewed by a broad range of practicing Alaskan attorneys who represent all sides of many different kinds of disputes. Just recently, at the February 4, 2003, regular monthly meeting of the Employment Law Section of the Alaska Bar Association, 22 attorneys from Fairbanks, Anchorage, Juneau, and Kotzebue discussed the draft, after hearing from tax and other experts. While the Section is not permitted to lobby or endorse legislation, I can represent that, of those present, not a single person voiced any objection to the bill;¹ all comments were favorable with regard to passage. A number of participants, in fact, recounted examples of unfair taxation of clients who had received fee awards and who were then obligated to pay over the fees to their attorneys without taking a corresponding deduction from their gross income. Other attorneys commented that the unfair taxation of fee awards drives up the cost of settlement for the opposing party.

This bill, if passed, would eliminate the current double taxation of fee awards, and will make fee awards taxable only to the recipient attorney, and not to the prevailing litigant. The bill makes the Alaska lien statute track the Oregon lien statute, which the federal Court of Appeals has held is effective to eliminate double taxation.² The bill appropriately recognizes that earlier-asserted liens of any origin will prevail over a later-filed attorney lien, and that a later-filed tax lien will even prevail over an earlier attorney

¹ Thus, these comments do not reflect the official position of the Alaska Bar Association. The Association has not taken a position, nor has it been asked to take a position.

² Banaitis v. CIR, 340 F.3d 1074 (9th Cir. 2003).

Schendel letter to Sen.Jud. Comm.

February 6, 2004

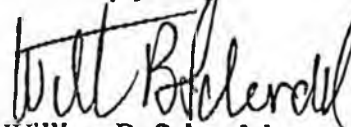
Page two

lien. By eliminating double taxation, this bill, if passed, will result in substantial savings to Alaskan citizens, whether plaintiffs or defendants.

I urge the passage of SB 300.

Thank you.

Sincerely yours,



William B. Schendel
Of Counsel

Walsh Kelliher & Sharp

A Professional
Corporation



Certified Public
Accountants

Advisors
to Business



Post Office Box 73530

330 Barnette Street

Suite 101

Fairbanks, Alaska

907-456-8826

800-478-0826

February 6, 2004

Senator Bert Stedman
Senate Judiciary Committee
State Capitol
Room 30
Juneau, AK 99801

Re: SB 300; Attorney Lien Amendment

Via fax (original in mail): 907-465-3922

Dear Senator Stedman,

I would like to thank you for giving this legislation a hearing. It has the potential to fix what I consider to be grievous miscarriages of justice. Although the proposed legislation is quite simple, the story behind the need for this is a bit more complicated. If you have this information from other sources, please just consider this a message from a citizen speaking in favor of the bill.

If you need to know more about the issue I am happy to be of service. First I would like to give you some background on the Federal income tax consequences of an award to the plaintiff of attorney fees and litigation costs.

Both Alaska and Oregon lie under the jurisdiction of the Ninth Circuit Court of Appeals and the decisions of the Ninth Circuit control the decisions of the United States Tax Court for cases of taxpayers residing in the Alaska and Oregon. I realize you undoubtedly know this but it becomes very relevant to this legislation.

The Ninth Circuit in *Coady vs. Commissioner*, 85 AFTR 2d 2000-2049. (213 F.3d 1187), 06/14/2000 looked at a Federal income tax case, the result of which turned on Alaska law. Nona Coady was an employee of the Alaska Housing Finance Corporation. She lost her job and later prevailed in employment litigation and won an award for back wages and benefits lost as a result of wrongful termination. The issue with respect to their tax return for the year involved whether the Coadys needed to include in income the portion of the award that went to their attorneys. The Ninth Circuit indicated that the plaintiff must include the attorney fees in income.



Businesses that receive damage awards or other lawsuit awards must also include the gross amount in income, but businesses are allowed to deduct all of their legal costs against the award so that they only pay tax on the net proceeds.

If tax law provided that damages in the employment context were taxed only to the extent of net proceeds we would not have a problem and the desperate need for your assistance. Unfortunately, the tax law does not tax the net proceeds of non-business cases, at least in Ninth Circuit cases dealing with Alaska, but rather taxes the entire award to the plaintiff. A limited deduction for attorney fees and litigation costs is allowed for regular tax purposes and no deduction at all is allowed for purposes of the alternative minimum tax. At least one taxpayer has tried to claim, under a reimbursement theory, a direct deduction of legal expenses against the gross award and been rejected by the Ninth Circuit. See *Biehl v. Com*, 92 AFTR 2d 2003-7280, (CA9)12/12/2003.

The alternative minimum tax is a tax computation which parallels the regular tax computation in many respects. All taxpayers are required to compute their tax liability under both systems and pay the government under the computation which produces the highest tax. The courts have repeatedly struck down arguments that the alternative minimum tax is unconstitutional or does not apply on other grounds. See *Banaitis v. Com*, 92 AFTR 2d 2003-5840, 340 F3d1081 (CA9, 8/27/2003)

One important area in which these two systems differ is in the treatment of miscellaneous itemized deductions related to employee business expenses. These deductions, authorized under Internal Revenue Code Section 67, are deductible to as itemized deductions to the extent they exceed 2% of adjusted gross income.

For alternative minimum taxes purposes however, Internal Revenue Code Section 56(b)(1)(A)(i) provides that "No deduction shall be allowed for any miscellaneous itemized deduction."

This means that the payment of attorney fees provides no benefit for purposes of the alternative minimum tax. This can create horrific consequences to a successful plaintiff. We have had situations in our practice where a successful plaintiff, after paying attorney fees and taxes, had paid out more in attorney fees and taxes than they received in gross proceeds.

In addition, we have seen cases where public interest litigants and the disadvantaged have successfully sued to stop illegal behavior. The award often times consists of 90-95% legal fees with a small amount of damages. In these instances the income tax liability greatly exceeds the damages. In some instances the inclusion in income, of money they did not get to keep, ended up causing problems with government programs and scholarships which look at gross income for eligibility. It ends up costing victims in this area more than just the tax bill when they win.

In a good example of this, which is public knowledge, in August 2002, the New York Times reported that a female police officer who was the victim of "reprehensible" sexual

harassment received an award of \$300,000 as well as legal fees of almost \$1 million. According to the story this victim will end up paying all of her \$300,000 award, as well as almost \$100,000 more, to settle income taxes due on the gross award. The defendant surely must have enjoyed reading how the winner in court lost it all plus thousands more to the IRS. See *Spina v. Forest Preserve District of Cook County*, 207 F. Supp. 2nd 764 (2002).

For a published case laying this out see *Alexander v. Com* 77 AFTR 2d 96-301 (72 F3d 938) (Ca1 1995) in which the successful (or more appropriately termed, unsuccessful) litigant received an award of approximately \$250,000 out of which \$245,000 was paid in legal costs. The First Circuit upheld the Tax Court and the Internal Revenue Service in finding that this "successful" plaintiff owed over \$57,000 in taxes on his net award of approximately \$5,000 due to the alternative minimum tax disallowing the entire amount of attorney fees as a deduction.

If the plaintiff in a Alaskan case were to succeed, the Internal Revenue Service would have the backing of the Tax Court and the Ninth Circuit Court of Appeals in finding that the plaintiff would be taxable on the entire gross award. A limited deduction for attorney's fees and litigation costs paid would be available for regular tax purposes and no portion of the attorney's fees or litigation costs would be deductible for alternative tax purposes.

Some other circuit courts of appeal have held for the taxpayer in these types of cases but the majority of circuit courts have held for the government.

In spite of a conflict between the Ninth Circuit opinion and those of other circuits (see *Cotnam and Clarks*), the United States Supreme Court denied a petition for certiorari on April 16, 2001. This means that we will not have a "once-and-for-all" decision settling the matter for the entire country.

The Ninth Circuit eliminated any doubt about the steadfastness with which they held their opinion when they subsequently decided the issue several more times in other cases. *Sinyard v. Com.* [88 AFTR 2d 2001-6037, 268 F3d 759 (CA9, 9/25/2001)] and *Benci-Woodward v. Com.*, [86 AFTR 2d, 2000-5404, 219 F3d 942 (CA9, 7/18/2000)]

Now, (Finally!, Thank you for your patience if you are still reading this at this point) we get to the possible solution to the problem.

The Ninth Circuit found that these cases turned on local (state) law. If state law provided that the debt (attorney's fees) was a valid debt of the plaintiff then a payment of this debt by the defendant would result in income to the plaintiff. The court stated their reasoning, perhaps most succinctly, in the *Sinyard* case when they stated that "If A owes B a debt, and C pays the debt on A's behalf, it is elementary that C's payment is income to A as well as to B."

The Ninth Circuit, in reviewing the laws of Alaska (Coady), Arizona (Sinyard) and California (Benci-Woodward) held that the laws of the state(s) made the successful plaintiffs the owners of the entire award. The attorneys with whom the plaintiffs had contingent fee agreements were considered debtors of the plaintiffs.


The importance of this distinction was borne out in *Banaitis v. Com.* 92 AFTR 2d 2003-5840, 340 F3d1081 (CA9, 8/27/2003) where the Ninth Circuit held that, under Oregon law, the attorneys in a successful plaintiff case were the lawful owners of their portion of the award. Therefore the payment of the plaintiff attorney by the defendant **did not** result in income to the plaintiff because the plaintiff did not owe the attorney a portion of the award. The plaintiff was considered to have dominion only over the gross award less the attorney fees and costs. The attorney, under Oregon law, had a sufficient bundle of rights to be deemed the owner of the attorney's portion of the award. Thus, the taxpayer in this Oregon case only paid tax on the net proceeds.

We know that much of Alaska law has been modeled on Oregon law. What we are proposing in this legislation is that Alaska law, in the area of attorney liens, be molded to match Oregon. We are not asking for any more than what Oregon law provides, in fact, we want exactly what Oregon has as law in this area. Since the Ninth Circuit has said that Oregon taxpayers are treated favorably because of the wording of their attorney lien law we hope that Alaskan taxpayers can also get favorable treatment if our law matches that of Oregon exactly.

Keep in mind that the attorney, in all cases, must also include the fees received in income. We are not proposing anything that would change the taxation of the attorney. We are trying to eliminate the double taxation of the same money.

I realize that the Supreme Court or Congress should settle this matter and that would really be my preference. Both the high court and Congress have been made aware of this issue and declined to deal with it. Therefore, I implore you to do for Alaskan taxpayers what the Federal government refuses to do for them. Please allow Alaskan taxpayers to pay income taxes only on what they get to keep and help eliminate the tax penalty for fixing injustices.

Respectfully,


Kevin J. Walsh, CPA, CVA

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Cook Schuhmann & Groseclose, Inc.

Attorneys at Law

Dennis E. "Skip" Cook
Dana L. Schuhmann
Robert B. Groseclose
Jo A. Kuchle
Zane D. Wilam
Michael C. Kramer
Craig B. Partyka
Peter M. LaBlanc
Dayle L. Wallien
Miia A. Naubert

Telephone 907.452.1655 • Facsimile 907.452.8154 • Toll Free 800.550.1855
714 Fourth Avenue, Suite 200 • Fairbanks, Alaska 99701-4470

February 5, 2004

Sender's e-mail address:
jkuchle@alaskalaw.com

VIA Facsimile 907-465-3922

Sen. Bert Stedman
State Capital Room 30
Juneau, AK 99801

Re: *Senate Bill 300: Attorney Lien Amendment*

Dear Senator Stedman:

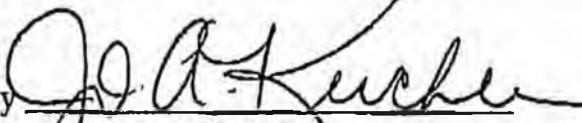
Thank you for introducing this important bill to eliminate the double taxation of fee awards on Alaskan taxpayers. The 9th Circuit Court of Appeals has held that on a recovery in a court proceeding, that portion subject to an attorneys fee award is taxable to the plaintiff/taxpayer. Then when the plaintiff pays the attorney, the income is taxed a second time. The 9th Circuit has recognized an exception in Oregon, where the attorney lien statute makes the portion owed to the attorney a superior lien. Based on that difference, Oregon taxpayers -- who are also in the 9th Circuit -- avoid the double taxation issue. The portion paying the attorney is taxed only to the attorney and not to the plaintiff/taxpayer.

Your legislation will help many Alaskan taxpayers avoid this often disastrous tax result. By amending Alaska's attorney lien statute to match Oregon's, this inequitable tax result should be avoided under the current 9th Circuit rulings. Thank you again.

Should there be any hearings before the Senate Judiciary Committee, please let me know the date and time as I would be willing to testify.

Sincerely,

COOK SCHUHMANN & GROSECLOSE, INC.

By 
Jo A. Kuchle



2/12/04

Tax Report

By Tom Herman

How You Can Lose By Winning a Suit

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

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

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

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

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

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

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

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

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

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

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

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB300-ACS-TC-2-19-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Attorney's Liens BRU Alaska Court System
 Component Trial Courts
 Sponsor Senator Stedman
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: SB300-LIAW-C&FB-2-9-0
 Bill Version: SB300
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to an attorney's lien ... and to RDU CIVIL
other proceedings where attorneys are employed." Component Commercial & Fair Business
 Sponsor Senator Stedman
 Requester Senate Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill amends AS 34.35.430 by allowing an attorney's lien for fees and costs to supersede all other subsequent liens except tax liens.

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

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB300-DNR-REC-02-19-04
() Publish Date: _____

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Vicky Backus Phone 907-269-8882
Division: Recorder's Office Date/Time 2/19/04
Approved by: Thomas Irwin, Commissioner Date 2/19/04
Agency: Natural Resources

SB

302

Lieutenant Governor Loren Leman

MEMO

TO: Brian Hove, Committee Aide
Senate Judiciary Committee

FROM: Annette Kreitzer, Chief of Staff to
Lieutenant Governor Loren Leman

DATE: March 12, 2004

RE: Proposed CS for SB 302: Oaths, affirmations and notaries

When Scott Clark and I met with you yesterday, we advised you that there are changes to the companion legislation to SB 302 (HB 439). After hearing the differences, you suggested that I send you a memo that you could forward to Legislative Legal Services to draft as a Judiciary Committee Substitute for your hearing March 19.

The changes here are a result of conversations with Representative Max Gruenberg following the House State Affairs Committee hearing. We reviewed his previous legislation and former Representative Gene Therriault's (1993). We do not concur with the necessity of mandating journals for notaries, nor with increasing the bond amount. We have come to concurrence on the issue of felons being able to regain the ability to be commissioned a notary 10 years after completing their prison sentence/parole.

Working from the House Work Draft (D) (Bannister 3/6/04) version, please draft a new Senate Judiciary Committee substitute for the March 19 hearing with the following instructions to the drafter:

- 1) With respect to Ms. Bannister's March 6, 2004 memo (attached) which accompanied the House "D" version, please make the following changes:
 - a. Page 3, add a new Section 4: This section applies to not only notaries, but to judges, military officers and others allowed to take oaths, affirmations and acknowledgments. This section is fine with the addition of 44.50.075 (D) from Page 14, Lines 26-29, which will add in the limited liability companies to 09.63.090. Conversely, on Page 14, Lines 9-10 – this section can be shortened considerably and reference AS 09.63.070-090 or whatever the appropriate reference should be. It would read something like: "When a

notary public takes an acknowledgment in accordance with AS 09.63.070 – AS 09.63.090, the individual signing the document shall [AT A SINGLE TIME AND PLACE]

- (1) Appear in person before the notary public and present a document;
and
 - (2) Be personally known to the notary public or identified as required by AS 44.50.061(5)(C) [AND]
 - (3) DELETE the rest of the section (Page 14, Lines 14-31 and Page 15, Lines 1-5)
- 2) We began with a lifetime ban for felons (Page 5, Lines 9-10); however we are willing to compromise on the following language: “may not have been convicted of a felony in this state or another jurisdiction within 10 years of appointment”. We are uncertain of the language necessary to achieve the meaning, which is that a person convicted of a felony may not be appointed as a notary until he/she has completed the sentence/parole. Previous attempts at this language left the ability for the inmate to apply while incarcerated.
- 3) We have no problem adding sections from previous legislation dealing with Disqualifications. We believe the current CS incorporates the spirit of the sections in previous bills which dealt with Impartiality and False Certificates. Please add the following section:
- a) DISQUALIFICATIONS. A notary is disqualified from performing a notarial act if the notary
 - (1) is a signer of or named in the document that is to be notarized; or
 - (2) will receive directly from a transaction connected with the notarial act a commission, fee, advantage, right, title, interest, cash, property, or other consideration exceeding in value the normal fee charged by the notary for the notarial act.
- 4) The following amendment proposed in the House, has already been adopted into the Senate State Affairs version of the bill. If you’ll recall it includes two things:
- a) clarifies that the fee on Page 11, Line 14 is NOT in addition to the fee on Page 4, Lines 13-18 (Section 6). This change would read: Page 11, Line 14: DELETE “a \$5 name change fee”; Insert “the fee under AS 44.19.024”
 - b) We were fact checking and found out from the U.S. Postal Service that postmasters are NOT allowed to charge fees for notarial services. Alaska law is inconsistent with federal law. For this reason, the second change is to add current AS 44.50.180(c) to the list of repealers on Page 15, Line 14.
- 5) Make all other Legislative Affairs style changes to conform the Senate version to the current House State Affairs draft.

Thank you for working with us on the legislation. The 12,000 notaries will appreciate these revised statutes and it will make it easier for the Lt. Governor’s office to continue to work proactively with notaries and their employers.

LEGAL SERVICES

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

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

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

MEMORANDUM

March 6, 2004

SUBJECT: CSHB 439() relating to persons who take oaths, affirmations, and acknowledgments (Work Order No. 23-GH2022\D)

TO: Representative Bruce Weyhrauch
Attn: Ginny

FROM: *TLB*
Theresa L. Bannister
Legislative Counsel

This memo accompanies a draft of the committee substitute described above. At your request, we have made changes throughout the bill to make it consistent with the Legislature's drafting style.

New sec. 44.50.075. This section contains the substance of the definition of "acknowledgment" found in HB 439. Because the definition contained substantive requirements for an acknowledgement, it was not appropriate as a definition. Under the Legislature's drafting style, substantive provisions of the law may not be located in definitions.

This section is very similar to the treatment of an acknowledgment under AS 09.63.090. AS 09.63.090 is the general treatment of acknowledgments in the Uniform Recognition of Acknowledgments Act in AS 09.63.050 - 09.63.130. Although technically harmonized in the bill by our addition of a section amending AS 09.63.090, it may be confusing to have the specific notary provision as well as the general provision. You may want to consider amending the general provision to make whatever changes are needed or wanted (e.g., to add the provision about limited liability companies) and to cross-reference the amended AS 09.63.090 in the new notary provisions.

If I can be of further assistance, please advise.

TLB:lmb
04-064.lmb

Enclosure

page 3

SECTIONAL ANALYSIS
CS SB 302 (JUD) **Version H**

An Act relating to the authority to take oaths, affirmations, and acknowledgments in the state; to notarizations, to verifications, to acknowledgments, to fees for issuing certificates with the seal of the state affixed and to notaries public; and providing for an effective date.

Section 1. Adds presiding officers of each house of the Legislature and the Lieutenant Governor to the list of persons permitted to administer oaths. This permission is limited to the administration of the oath of office to new legislators (AS 24.05.160) and to the presiding officers for the same purpose during second and special sessions (AS 24.05.170).

Sections 2 and 3. Conforms sections of Alaska Civil Procedure concerning notarial acts to the updated language in Sec. 44.50.061 (5). These sections apply to court system employees, U.S. Postmasters, U.S. military personnel and municipal clerks.

Sections 4 and 5. Update 09.63 to include reference to limited liability companies.

Section 6. Increases fee per notarial certificate from \$2/three folios to \$5/certificate. "Folio" is an outdated term not used in current practice. The increase reflects the State's cost to process the certificates.

Section 7. Two categories of notaries:

- a) notary public without limitation
terms are for 4 years
can charge fees for service
- b) limited governmental notary public (state, municipal and federal employees)
conduct only official government business
terms are for the length of government employment
cannot charge fees for service (new Sec. 44.50.039)

Can have concurrent commissions as a notary public without limitation and as a limited governmental notary public, as long as the activities are separated.

Section 8. Changes Qualifications to be commissioned notary public:

- lowers the age from 19 to 18.
- Must have established Alaska residency. The definition of "residency" is updated to a more widely used and more current definition (AS 01.10.055) than current statute (AS 44.50.020).
- notary public must reside legally in the U.S.
- 10 years between felony conviction/incarceration and ability to apply as notary **(S) STA Version H**

Section 9. Sets out the application requirements for notary public commission whether notary public without limitation or limited governmental notary public.

Restates the current \$40 fee per application along with the current requirement that State limited governmental notaries public are exempt from the fee.

Restates current bonding requirement of \$1,000 with term of four years for notaries public without limitation.

Provides opportunities for Lieutenant Governor to deny applications if:

- a) application is incomplete
- b) applicant has been convicted of and incarcerated for a felony less than 10 years previous to application (S) STA Version H
- c) applicant's commission has been revoked

Clarifies current law as to when a new commission begins.

Section 10. Much of AS 44.50.060 is antiquated language. The changes here acknowledge that the duties of a notary public can be encompassed in the broader language of administering oaths and affirmations, taking acknowledgment of or proof of instruments of writing and giving notarial certificates.

Section 11. Sets out what a notary public cannot do, the specifications of the official seal, and its care and keeping, what constitutes a "seal impression", changes in notary status and disciplinary actions. It also specifies at (5) (A) – (C) the elements that must be present for a notary public to notarize a document:

- Person must appear and sign the document before the notary public
- Person must produce identification unless personally known to the notary public
- The notary must sign in his/her own handwriting the name on his/her commission certificate.
- Notary cannot notarize documents which benefit the notary (see Page 12, Lines 16-22) (S) STA Version H

This section reorders and clarifies current law defining the notary's seal, and defining the seal impression. The \$5 name change fee is not in addition to the cost of a new certificate under Sec. 44.19.024. (S) STA Version H

New sections (Secs. 44.50.067-.068) give the Lieutenant Governor the latitude to suspend or revoke a notary public's commission or to reprimand a notary public for good cause. The Lieutenant Governor may delegate his authority. With regard to a complaint, the Lieutenant Governor may find no merit to the complaint or may elevate the complaint to a formal disciplinary hearing which could end with revocation of the notary public's commission.

Section 12. Describes the information gathered from notaries public on the application which will be public information.

Section 13. Defines terms used in this Chapter.

Section 14. Repealers:

- AS 44.50.030 (Term of office, now covered in new 44.50.010)
- AS 44.50.040 (Fees, now covered in new 44.50.033)
- AS 44.50.070 (Presence and ID, now covered in new 44.50.061)
- AS 44.50.080 (Seal, now covered in new 44.50.063)
- AS 44.50.090 (Protest of bill or note. Notaries don't do this, antiquated language, repealed and not replaced)
- AS 44.50.100 (Return of papers. There are no papers to return. Repealed and not replaced)
- AS 44.50.110 (APA procedure for disciplinary actions, replaced by more comprehensive 44.50.067)
- AS 44.50.120 (Bond requirements, now covered in new 44.50.034)
- AS 44.50.130 (Filing oath and bond, now covered in new 44.50.035)
- AS 44.50.140 (Disposition of bond, now covered in new 44.50.034)
- AS 44.50.170 (State employees as notaries, now covered in 44.50.010, 44.50.131 (c) and 44.50.039)
- AS 44.50.180(c) (Federal law prohibits postmasters from charging fees. Alaska law is inconsistent and this subsection must be repealed) ~~(S) STA~~
Version H
- AS 44.50.190 (Savings clause, a transitional measure from 1961 that is no longer necessary and can be repealed).

Section 15. Applicability

- Current commissions continue in effect until term of office expires, except if the commissioned is a felon and 10 years have not elapsed since incarceration. ~~(S) STA~~
Version H
- Bonds, seals, liabilities in effect continue through the notary public's term of office.
- All notaries with current commissions or who are commissioned following the effective date of the legislation must follow the notarial procedures encompassed in the legislation.
- When commissions expire, notaries public will apply for new commissions under the new AS 44.50.031 (Section 9).

Sections 16 & 17. Transition

Allows the Lieutenant Governor to immediately proceed to adopt regulations with an effective date following the effective date of the legislation.

Section 18. Effective Date

Effective date is July 1, 2004 to allow time for revision of website, online handbook and forms.

Frequently Asked Questions – CS SB 302 (JUD)

Q: Why is this bill necessary?

A: There has not been a comprehensive update to the notary statutes since 1961.

Q: What changes are being proposed?

A: The bill:

- Lowers the minimum age requirement from 19 to 18 years of age.
- Prohibits felons from applying as notaries public until 10 years post incarceration.
- Establishes disciplinary procedures for commission suspensions and revocations.
- Separates publicly available notary information from private notary information.
- Updates and expands the current State Employee notary commission system to include Municipal and Federal government employees.

Q: I'm a notary now, how does this bill affect me?

A: This bill will not impact current notaries unless they are felons.

Q: What is not changing?

A:

- The notary information that is currently publicly available remains publicly available.
- Notary testing remains voluntary.
- The notary bond amount remains unchanged.
- The application fee remains unchanged.

Q: What about fees?

A: The \$40.00 application fee for notary commissions will remain unchanged. The fee for Lieutenant Governor Certificates is being raised from \$2.00 to \$5.00.

Notary Statute Comparison – CS SB 302 (JUD)

	Current	Proposed
Qualifications	<p>Applicants must be a resident of the state at least 19 years of age.</p> <p>Resident defined to mean a person who maintains a permanent place of abode in the state, and is in fact living in the state.</p>	<p>Minimum age lowered to 18 years.</p> <p>Residency requirements made consistent with general residency statute AS 01.10.055, rather than separate definition.</p> <p>Applicant must reside legally in the United States.</p> <p>Applicants may not be convicted/incarcerated felons within 10 years of application.</p>
Term	Current	Proposed
	<p>Four years.</p> <p>Automatic revocation of commissions of State employee notaries who terminate employment prior to the commission expiration date.</p>	<p>Notaries Public will continue to serve a term of four years.</p> <p>Limited Governmental Notaries Public commissions will be open-ended with automatic revocation upon termination of government employment.</p>
Fees	Current	Proposed
	<p>\$40 application fee for non-state employee notaries.</p> <p>\$2 per Lieutenant Governor certificate.</p>	<p>\$40 application fee for non-state employee notaries (No change).</p> <p>\$5 per Lieutenant Governor certificate (\$3 increase).</p>
Bond	Current	Proposed
	<p>\$1,000 Notary Bond is required of all applicants.</p>	<p>\$1,000 Notary Bond required of all applicants except Limited Governmental Notaries.</p>
Commission Types	Current	Proposed
	<p>Notaries Public who serve four year commissions.</p> <p>Limited Governmental Notaries</p>	<p>Notaries Public who serve four year commissions.</p> <p>Limited Governmental Notaries Public</p>

	Public commissions available for State employees only.	commissions – Expanded to include Municipal and Federal employees in addition to State employees.
Commission Revocation	Current	Proposed
	Via Administrative Procedure Act. Act must be invoked to review all complaints against notaries, no matter how trivial.	By Lieutenant Governor for good cause via a formal disciplinary procedure. Appeals via the Administrative Procedure Act.
Notary Data	Current	Proposed
	Each notary's name, mailing address, surety information and commission dates are available to the public.	The notary information currently available remains unchanged. The notary's name, mailing address, surety information and commission dates continue to be publicly available. To facilitate training and communication the Lieutenant Governor may collect additional information from applicants and notaries that will not be available to the public.
Non-Commissioned Notaries	Current	Proposed
	Justices, Judges, Magistrates, Clerks or Deputy Clerks of Court, United States Postmasters, and Commissioned Military Officers are authorized to take oaths, affirmations or acknowledgments.	No change.

23-GS2022VI
Bannister
3/18/04

CS FOR SENATE BILL NO. 302(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

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

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the authority to take oaths, affirmations, and acknowledgments in
2 the state, to notarizations, to verifications, to acknowledgments, to fees for issuing
3 certificates with the seal of the state affixed, and to notaries public; and providing for an
4 effective date."

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

6 * Section 1. AS 09.63.010 is amended to read:

7 **Sec. 09.63.010. Oath, affirmation, and acknowledgment.** The following
8 persons may take an oath, affirmation, or acknowledgment in the state:

- 9 (1) a justice, judge, or magistrate of a court of the State of Alaska or of
- 10 the United States;
- 11 (2) a clerk or deputy clerk of a court of the State of Alaska or of the
- 12 United States;
- 13 (3) a notary public;
- 14 (4) a United States postmaster;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

- (5) a commissioned officer under AS 09.63.050(4); [OR]
- (6) a municipal clerk carrying out the clerk's duties under AS 29.20.380;
- (7) the lieutenant governor when carrying out the lieutenant governor's duties under AS 24.05.160;
- (8) the presiding officer of each legislative house when carrying out the officer's duties under AS 24.05.170.

* Sec. 2. AS 09.63.030(c) is amended to read:

(c) If the document is sworn to or affirmed before a notary public of the state, the notary public shall

- (1) affix [ENDORSE AFTER THE SIGNATURE OF THE NOTARY PUBLIC THE DATE OF EXPIRATION OF THE NOTARY'S COMMISSION;
- (2) PRINT OR EMBOSS THE NOTARY'S SEAL] on the document

the

- (A) notary public's official signature and official seal; and
- (B) date of expiration of the notary public's commission;

and

(2) [; (3)] comply with AS 44.50.060 - 44.50.064 and [AS 44.50.060 - 44.50.080 OR] other applicable law.

* Sec. 3. AS 09.63.040(d) is amended to read:

(d) If the verification is sworn to or affirmed before a notary public of the state, the notary public shall

- (1) affix [ENDORSE AFTER THE SIGNATURE OF THE NOTARY PUBLIC THE DATE OF EXPIRATION OF THE NOTARY'S COMMISSION;
- (2) PRINT OR EMBOSS THE NOTARY'S SEAL] on the document

the

- (A) notary public's official signature and official seal; and
- (B) date of expiration of the notary public's commission;

and

(2) [; (3)] comply with AS 44.50.060 - 44.50.064 and [AS 44.50.060 - 44.50.080 OR] other applicable law.

1 * Sec. 4. AS 09.63.090 is amended to read:

2 **Sec. 09.63.090. Certificate of acknowledgment.** The words "acknowledged
3 before me" mean that

4 (1) the person acknowledging

5 (A) appeared before the person taking the acknowledgment;

6 (B) acknowledged that the person executed the instrument;

7 (C) in the case of

8 (i) a natural person, acknowledged that the person
9 executed the instrument for the purposes stated in it;

10 (ii) an officer or agent of a corporation, acknowledged
11 that the person held the position or title set out in the instrument and
12 certificate, the person signed the instrument on behalf of the
13 corporation by proper authority, and the instrument was the act of the
14 corporation for the purposes stated in it;

15 (iii) a member or manager of a limited liability
16 company, acknowledged that the individual signed the instrument
17 on behalf of the limited liability company by proper authority and
18 executed the instrument as the act of the limited liability company
19 for the purposes stated in it;

20 (iv) a partner or agent of a partnership, acknowledged
21 that the person signed the instrument on behalf of the partnership by
22 proper authority and executed the instrument as the act of the
23 partnership for the purposes stated in it;

24 (v) [(iv)] a person acknowledging as a principal by an
25 attorney in fact, acknowledged that the person executed the instrument
26 by proper authority as the act of the principal for the purposes stated in
27 it;

28 (vi) [(v)] a person acknowledging as a public officer,
29 trustee, administrator, guardian, or other representative, acknowledged
30 that the person signed the instrument in the capacity and for the
31 purposes stated in it; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

(2) the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging is the person named in the instrument or certificate.

* Sec. 5. AS 09.63.100 is amended to read:

Sec. 09.63.100. Forms of acknowledgment. (a) The forms of acknowledgment set out in this subsection may be used and are sufficient for their respective purposes under a law of the state. The authorization of the forms in this section does not preclude the use of other forms.

(1) For an individual acting in the individual's own right:

State of _____ Judicial
District (or County of _____)

The foregoing instrument was acknowledged before me this
(date) by (name of person who acknowledged).

Signature of Person Taking
Acknowledgment

Title or Rank

Serial Number, if any

(2) For a corporation:

State of _____ Judicial
District (or County of _____)

The foregoing instrument was acknowledged before me this
(date) by (name of officer or agent, title of officer or agent) of (name of
corporation acknowledging) a (state or place of incorporation)
corporation, on behalf of the corporation.

Signature of Person Taking
Acknowledgment

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Title or Rank

Serial Number, if any

(3) For a limited liability company:

State of _____ Judicial

District (or County of _____)

The foregoing instrument was acknowledged before me this (date) by (name of member or manager), member (or manager) of (name of limited liability company acknowledging) a (state or place of organization) limited liability company, on behalf of the limited liability company.

Signature of Person Taking

Acknowledgment

Member (or Manager)

Serial Number, if any

(4) For a partnership:

State of _____ Judicial

District (or County of _____)

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership.

Signature of Person Taking

Acknowledgment

Title or Rank

Serial Number, if any

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

(5) [(4)] For an individual acting as principal by an attorney in fact:

State of _____ Judicial

District (or County of _____)

The foregoing instrument was acknowledged before me this
(date) by (name of attorney in fact) as attorney in fact on behalf of
(name of principal).

Signature of Person Taking

Acknowledgment

Title or Rank

Serial Number, if any

(6) [(5)] By a public officer, trustee, or personal representative:

State of _____ Judicial

District (or County of _____)

The foregoing instrument was acknowledged before me this
(date) by (name and title of position).

Signature of Person Taking

Acknowledgment

Title or Rank

Serial Number, if any

(b) If a document is acknowledged before a notary public of the state, the
notary public shall

(1) affix [ENDORSE AFTER THE NOTARY'S SIGNATURE THE
DATE OF EXPIRATION OF THE NOTARY'S COMMISSION;

(2) PRINT OR EMBOSS THE NOTARY'S SEAL.] on the document

the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

(A) notary public's official signature and official seal; and
(B) date of expiration of the notary public's commission;

and

(2) [; (3)] comply with AS 44.50.060 - 44.50.064 and [AS 44.50.060 - 44.50.080 OR] other law.

* Sec. 6. AS 44.19.024 is amended to read:

Sec. 44.19.024. Fees for issuing certificate. For issuing each certificate with the seal of the state affixed, the lieutenant governor shall collect a fee of \$5 for each certificate [\$2 FOR THE FIRST THREE FOLIOS OR LESS AND 20 CENTS PER FOLIO FOR EACH ADDITIONAL FOLIO]. The lieutenant governor shall account for the fees received under this section and shall deposit [PAY] them into the state treasury.

* Sec. 7. AS 44.50.010 is repealed and reenacted to read:

Sec. 44.50.010. Notary public commission; term. (a) The lieutenant governor may commission for the state

(1) notaries public without limitation, who are authorized to use the notary seal for all legal purposes; and

(2) limited governmental notaries public, who are state, municipal, or federal employees authorized to use the notary seal only for official government business.

(b) The term of a notary public commission is four years, except that the term of a limited governmental notary public commission coincides with the term of government employment.

(c) A person who is a state, municipal, or federal employee commissioned as a limited governmental notary public may also be commissioned as a notary public without limitation.

* Sec. 8. AS 44.50.020 is repealed and reenacted to read:

Sec. 44.50.020. Qualifications. To be commissioned as a notary public a person

(1) shall submit an application under AS 44.50.031;

(2) shall be at least 18 years of age;

- 1 (3) shall have established residency in this state under AS 01.10.055;
- 2 (4) shall reside legally in the United States;
- 3 (5) may not have been incarcerated in a correctional facility for a
- 4 felony conviction within 10 years before the commission takes effect;
- 5 (6) may not have had a notary public commission revoked in this state
- 6 or another jurisdiction;
- 7 (7) may not have committed acts for which a notary public
- 8 commission may be denied or revoked under this chapter; and
- 9 (8) shall meet the other requirements in this chapter to be
- 10 commissioned as a notary public.

11 * **Sec. 9.** AS 44.50 is amended by adding new sections to read:

12 **Sec. 44.50.031. Application.** (a) A person applying for a commission as a

13 notary public shall submit a completed application as required by this section, using

14 the forms or format required by the lieutenant governor.

15 (b) A completed application for a commission under AS 44.50.010(a)(1) must

16 include

17 (1) an affirmation that the applicant meets the qualifications set out in

18 AS 44.50.020(2) - (7);

19 (2) the applicant's mailing and physical addresses, the applicant's

20 telephone number, if any, the applicant's employer or business, the physical address

21 and telephone number of the applicant's employer or business at the location where the

22 applicant works, and an electronic mailing address, if any, where the applicant can be

23 contacted;

24 (3) information concerning any denial, suspension, revocation, or

25 restriction of the applicant's commission as a notary public in this state or another

26 jurisdiction; that information must include

27 (A) identification of the jurisdiction;

28 (B) the date the jurisdiction issued the denial, suspension,

29 revocation, or restriction;

30 (C) the reasons for the denial, suspension, revocation, or

31 restriction; and

1 (D) information concerning final resolution of the matter;

2 (4) the applicant's notarized signature on the portion of the application
3 that contains the oath or affirmation required by AS 44.50.035;

4 (5) the fee required by AS 44.50.033; and

5 (6) the bond required by AS 44.50.034.

6 (c) A completed application for a commission under AS 44.50.010(a)(2) must
7 include

8 (1) a signed statement by the applicant's government employer that the
9 commission is needed for the purpose of conducting official government business;

10 (2) the applicant's mailing and physical addresses, the applicant's
11 telephone number, if any, and employer, the name, address, and telephone number for
12 the employer where the applicant works, and an electronic mailing address, if any,
13 where the applicant can be contacted;

14 (3) the affirmation, information, and signature required by (b)(1), (3),
15 and (4) of this section; and

16 (4) the fee required by AS 44.50.033.

17 **Sec. 44.50.033. Application fee.** A person applying for a commission as a
18 notary public shall pay a nonrefundable application fee of \$40. However, an applicant
19 for a limited governmental notary public commission under AS 44.50.010(a)(2) who is
20 employed by the state may not be required to pay an application fee.

21 **Sec. 44.50.034. Bond.** (a) A person applying for a commission as a notary
22 public without limitation under AS 44.50.010(a)(1) shall execute an official bond of
23 \$1,000 and submit the bond with the application under AS 44.50.031. The bond must
24 be for a term of four years beginning with the date of commission as a notary public.

25 (b) The lieutenant governor shall keep a bond submitted under this section for
26 two years after the end of the term of the commission for which the bond was issued.
27 Disposition of the bond after the end of the commission does not affect the time for
28 starting an action on the bond.

29 **Sec. 44.50.035. Oath.** The application required by the lieutenant governor
30 under AS 44.50.031 must contain an oath or affirmation, in the form set out in
31 AS 39.05.045, to be signed by the applicant. A signed oath or affirmation submitted

1 in an application under AS 44.50.031 takes effect on the date of the applicant's
2 commission as a notary public under this chapter.

3 **Sec. 44.50.036. Denial of applications.** The lieutenant governor shall deny
4 an application for a notary public commission if the

5 (1) applicant does not meet the requirements of this chapter;

6 (2) application is not complete or contains a material misstatement or
7 omission of fact relating to the requirements for a commission under this chapter;

8 (3) applicant has been incarcerated in a correctional facility for a
9 felony conviction within 10 years before the commission is to take effect; or

10 (4) applicant's commission as a notary public has been revoked in this
11 state for a reason set out in AS 44.50.067, or in another jurisdiction for a substantially
12 similar reason.

13 **Sec. 44.50.037. Certificate of commission.** Upon commission of a notary
14 public under this chapter, the lieutenant governor shall provide to the notary public a
15 certificate of commission indicating the commission and the dates of the term of the
16 commission.

17 **Sec. 44.50.038. Subsequent commissions.** A notary public whose term of
18 commission is ending may apply for a new notary public commission by submitting a
19 new application under AS 44.50.031 and complying with the requirements of this
20 chapter. The lieutenant governor's approval of a new application for a commission for
21 a notary public without limitation under AS 44.50.010(a)(1) terminates an applicant's
22 existing commission under that paragraph.

23 **Sec. 44.50.039. Limited governmental notaries public.** A state, municipal,
24 or federal employee commissioned as a notary public under AS 44.50.010(a)(2)

25 (1) is designated a limited governmental notary public;

26 (2) may perform notarial acts only in the conduct of official
27 government business; and

28 (3) may not charge or receive a fee or other consideration for notarial
29 services provided under this chapter.

30 * **Sec. 10.** AS 44.50.060 is amended to read:

31 **Sec. 44.50.060. Duties.** A notary public shall

1 (1) administer oaths and affirmations [WHEN REQUESTED,
 2 DEMAND ACCEPTANCE AND PAYMENT OF FOREIGN AND INLAND BILLS
 3 OF EXCHANGE, OR PROMISSORY NOTES, PROTEST THEM FOR
 4 NONACCEPTANCE AND NONPAYMENT, AND EXERCISE THE OTHER
 5 POWERS AND DUTIES THAT BY THE LAW OF NATIONS AND ACCORDING
 6 TO COMMERCIAL USAGES, OR BY THE LAWS OF ANY OTHER STATE,
 7 GOVERNMENT, OR COUNTRY, MAY BE PERFORMED BY NOTARIES];

8 (2) take the acknowledgment of or proof of execution of [POWERS
 9 OF ATTORNEY, MORTGAGES, DEEDS, GRANTS, TRANSFERS, AND OTHER]
 10 instruments of writing, and give a notarial certificate of the proof or acknowledgment,
 11 included in [ENDORSED ON] or attached to the instrument; the notarial certificate
 12 shall be signed by the notary public in the notary public's [NOTARY'S] own
 13 handwriting [;

14 (3) TAKE DEPOSITIONS AND AFFIDAVITS, AND ADMINISTER
 15 OATHS AND AFFIRMATIONS, IN ALL MATTERS INCIDENT TO THE DUTIES
 16 OF THE OFFICE, OR TO BE USED BEFORE A COURT, JUDGE, OFFICER, OR
 17 BOARD IN THE STATE; A DEPOSITION, AFFIDAVIT, OATH, OR
 18 AFFIRMATION SHALL BE SIGNED BY THE NOTARY IN THE NOTARY'S
 19 OWN HANDWRITING, AND THE NOTARY SHALL ENDORSE AFTER THE
 20 SIGNATURE THE DATE OF EXPIRATION OF THE NOTARY'S COMMISSION].

21 * Sec. 11. AS 44.50 is amended by adding new sections to read:

22 **Sec. 44.50.061. Prohibited acts.** A notary public may not

23 (1) violate state or federal law in the performance of acts authorized by
 24 this chapter;

25 (2) influence a person to enter into or avoid a transaction involving a
 26 notarial act by the notary public;

27 (3) affix the notary public's signature or seal on a notarial certificate
 28 that is incomplete;

29 (4) charge a fee for a notarial act unless a fee schedule has been
 30 provided to the signer before the performance of the notarial act;

31 (5) affix the notary public's official seal to a document, unless the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

person who is to sign the document

(A) appears and signs the document before the notary public or, for an acknowledgment, appears and indicates to the notary public that the person voluntarily affixed the person's signature on the document for the purposes stated within the document;

(B) gives an oath or affirmation if required under law or if the notarial certificate states that the document was signed under oath or affirmation; and

(C) is personally known to the notary public, produces government-issued identification containing the photograph and signature of the person signing, or produces

(i) government-issued identification containing the signature of the person signing, but without a photograph; and

(ii) another valid identification containing the photograph and signature of the person signing;

(6) perform a notarial act if the notary public

(A) is a signer of or named in the document that is to be notarized; or

(B) will receive directly from a transaction connected with the notarial act a commission, fee, advantage, right, title, interest, cash, property, or other consideration exceeding in value the normal fee charged by the notary for the notarial act.

Sec. 44.50.062. Official signature. (a) When performing a notarization, a notary public shall

(1) sign in the notary public's own handwriting, on the notarial certificate, exactly and only the name indicated on the notary public's commission certificate; a notary public may not sign through the use of a facsimile stamp or an electronic or graphic printing method; and

(2) affix the official signature only at the time the notarial act is performed.

(b) A notary public shall comply in a timely manner with a request by the

1 lieutenant governor to supply a current sample of the notary public's official signature.

2 **Sec. 44.50.063. Official seal.** (a) A notary public shall keep an official seal,
3 which is the exclusive property of the notary public, and shall ensure that another
4 person does not possess or use the official seal.

5 (b) A notary public's official seal

6 (1) must contain

7 (A) the notary public's name exactly as indicated on the notary
8 public's commission certificate;

9 (B) the words "Notary Public" and "State of Alaska"; and

10 (2) may be a circular form not over two inches in diameter or may be a
11 rectangular form not more than one inch in width by two and one-half inches in
12 length.

13 (c) When not in use, a notary public's official seal shall be kept in a secure
14 area under the exclusive control of the notary public.

15 (d) Within 10 days after a notary public's official seal is stolen or lost, the
16 notary public shall provide the lieutenant governor with written notification of the
17 theft or loss.

18 (e) In order to avoid misuse, a notary public's official seal shall be destroyed
19 or defaced

20 (1) upon the notary public's resignation or death;

21 (2) upon the revocation or termination by the lieutenant governor of
22 the notary public's commission; or

23 (3) when the notary public's term of commission ends if the notary
24 public has not received a new commission under this chapter.

25 **Sec. 44.50.064. Seal impression or depiction.** (a) A sharp, legible,
26 photographically reproducible impression or depiction of a notary public's official seal
27 shall be affixed

28 (1) on the notarial certificate of each paper document notarized, near
29 the notary public's official signature; and

30 (2) only at the time the notarial act is performed.

31 (b) Illegible information within a seal impression or depiction may be typed or

1 printed legibly by the notary public adjacent to, but not within, the impression or
2 depiction.

3 (c) An embossed seal impression that is not photographically reproducible
4 may be used in addition to, but not in place of, the seal impression or depiction
5 required by (a) of this section.

6 **Sec. 44.50.065. Notary public's status notification.** (a) Within 10 days after
7 change of a notary public's name, mailing address, or physical address, the notary
8 public shall, on a form provided by the lieutenant governor, submit written notification
9 of the change, signed by the notary public.

10 (b) The lieutenant governor may require limited governmental notaries public
11 commissioned under AS 44.50.010(a)(2) who change departmental or agency
12 employers to submit written notification of the change on a form provided by the
13 lieutenant governor.

14 (c) A notary public commissioned under AS 44.50.010(a)(1) reporting a name
15 change shall submit to the lieutenant governor payment of the fee under AS 44.19.024
16 for the issuance of a replacement certificate of commission.

17 (d) A notary public reporting a name change under (a) and (c) of this section
18 shall use the person's former name for the performance of notarial acts until the person
19 has

20 (1) provided written notification of the name change to the surety for
21 any bond required under AS 44.50.034;

22 (2) received a replacement certificate of commission reflecting the
23 name change from the lieutenant governor; and

24 (3) obtained a new seal reflecting the name change.

25 (e) The lieutenant governor may require a notary public to update the
26 information required under AS 44.50.031, including the notary public's current
27 notarized signature.

28 **Sec. 44.50.066. Resignation.** (a) To resign a commission, a notary public
29 shall notify the lieutenant governor in writing of the resignation and the date that it is
30 effective. The notary public shall sign the notification.

31 (b) A notary public who does not any longer meet the requirements of this

1 chapter to be a notary public shall immediately resign the commission.

2 **Sec. 44.50.067. Disciplinary action.** The lieutenant governor may suspend or
3 revoke a notary public's commission or reprimand a notary public for good cause
4 shown, including

5 (1) a ground on which an application for a commission may be denied;

6 (2) failure to comply with this chapter; and

7 (3) incompetence or misfeasance in carrying out the notary public's
8 duties under this chapter.

9 **Sec. 44.50.068. Complaint; hearing; appeal.** (a) A person harmed by the
10 actions of a notary public may file a complaint with the lieutenant governor. The
11 complaint shall be filed on a form prescribed by the lieutenant governor and shall be
12 signed and verified by the person alleging misconduct on the part of the notary public.

13 (b) If the lieutenant governor determines that the allegations in the complaint
14 do not warrant formal disciplinary action, the lieutenant governor may decline to act
15 on the complaint or may advise the notary public of the appropriate conduct and the
16 applicable statutes and regulations governing the conduct. The lieutenant governor
17 shall notify the complainant of the determination.

18 (c) If the lieutenant governor determines that the complaint alleges sufficient
19 facts to constitute good cause for disciplinary action, the lieutenant governor shall
20 notify the notary public of the filing of the complaint and send a copy of the complaint
21 to the notary public. The notary public shall submit a written response to the
22 complaint to the lieutenant governor within 20 days after the lieutenant governor sends
23 the complaint. The lieutenant governor may extend the time for a notary public's
24 response by up to 20 additional days. The lieutenant governor shall provide a copy of
25 the notary public's response to the complainant.

26 (d) The lieutenant governor shall review the complaint and the response to
27 determine whether formal disciplinary action may be warranted. The lieutenant
28 governor may determine that the allegations in the complaint do not warrant formal
29 disciplinary action, in which case the lieutenant governor may determine not to take
30 further action on the complaint or may determine to advise the notary public of the
31 appropriate conduct and the applicable statutes and regulations governing the conduct.

1 If the lieutenant governor determines that formal disciplinary action is not warranted,
2 the lieutenant governor shall provide the complainant and the notary public with a
3 written statement of the basis for the determination.

4 (e) If the lieutenant governor finds that formal disciplinary action may be
5 warranted, the lieutenant governor shall appoint an independent hearing officer to
6 consider the complaint and the response, to provide the complainant and the notary
7 public with an opportunity for a telephonic or in-person hearing before the hearing
8 officer within a reasonable time after a hearing is requested, and to provide to the
9 lieutenant governor a proposed decision, including proposed disciplinary action. The
10 lieutenant governor may

11 (1) adopt the hearing officer's proposed decision in its entirety;

12 (2) adopt portions of the proposed decision and modify the proposed
13 disciplinary action;

14 (3) decide the case upon the record generated from the hearing; or

15 (4) refer the case to the same or another hearing officer to take
16 additional evidence and decide the case upon the record generated from the hearing
17 and the additional evidence.

18 (f) The lieutenant governor may delegate the powers under AS 44.50.067 and
19 this section.

20 (g) An appeal from a decision of the lieutenant governor under this section
21 shall be in accordance with the procedures set out in AS 44.62 (Administrative
22 Procedure Act).

23 **Sec. 44.50.069. Regulations.** The lieutenant governor may adopt regulations
24 under AS 44.62 (Administrative Procedure Act) to carry out the purposes of this
25 chapter.

26 * **Sec. 12.** AS 44.50 is amended by adding a new section to read:

27 **Sec. 44.50.071. Confidentiality.** (a) An address, telephone number, and
28 electronic mail address of a notary public or an applicant that is submitted under
29 AS 44.50.031 or 44.50.038 and that is designated by the notary public or applicant as
30 personal and confidential shall be kept confidential. However, a notary public shall
31 provide a nonconfidential address and telephone number at which the notary public

1 can be contacted.

2 (b) Compilations and data bases of those addresses, telephone numbers, and
3 electronic mail addresses of notaries public that are confidential under (a) of this
4 section shall be kept confidential, except that the lieutenant governor may disclose
5 compilations and data bases if the lieutenant governor determines that disclosure is in
6 the public interest.

7 (c) A complaint filed under AS 44.50.068 shall be kept confidential unless the
8 lieutenant governor determines under AS 44.50.068(c) that the complaint alleges
9 sufficient facts to constitute good cause for disciplinary action.

10 * **Sec. 13.** AS 44.50 is amended by adding a new section to read:

11 **Sec. 44.50.200. Definitions.** In this chapter, unless the context otherwise
12 requires,

13 (1) "notarial act" means any act that a notary public is authorized to
14 perform under AS 09.63.120 or AS 44.50.060;

15 (2) "notary public" means a person commissioned to perform notarial
16 acts under this chapter.

17 * **Sec. 14.** AS 44.50.030, 44.50.040, 44.50.070, 44.50.080, 44.50.090, 44.50.100,
18 44.50.110, 44.50.120, 44.50.130, 44.50.140, 44.50.170, 44.50.180(c), and 44.50.190 are
19 repealed.

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

22 **APPLICABILITY.** (a) AS 44.50.010, repealed and reenacted by sec. 7 of this Act,
23 and AS 44.50.031, 44.50.033, 44.50.035, 44.50.036, 44.50.037, and 44.50.039, enacted by
24 sec. 9 of this Act, do not apply to a notary public whose commission is in effect on the day
25 before the effective date of secs. 1 - 14 of this Act until the notary public's term of office
26 expires under former AS 44.50.030, the notary public resigns under AS 44.50.066, enacted by
27 sec. 11 of this Act, or the notary public's commission is revoked under AS 44.50.067, enacted
28 by sec. 11 of this Act.

29 (b) Notwithstanding (a) of this section, if a notary public whose commission is in
30 effect on the day before the effective date of secs. 1 - 14 of this Act has been incarcerated in a
31 correctional facility for a felony conviction within 10 years before the notary public's term of

1 office expires under former AS 44.50.030, the lieutenant governor may take an action under
2 AS 44.50.067, enacted by sec. 11 of the Act, against the notary public.

3 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 **TRANSITION: REGULATIONS.** The lieutenant governor may proceed to adopt
6 regulations necessary to implement the changes made by this Act. The regulations take effect
7 under AS 44.62 (Administrative Procedure Act), but not before the effective date of the
8 respective statutory change.

9 * **Sec. 17.** Section 16 of this Act takes effect immediately under AS 01.10.070(c).

10 * **Sec. 18.** Except as provided in sec. 17 of this Act, this Act takes effect July 1, 2004.

SB302



FRANK H. MURKOWSKI
GOVERNOR
GOVERNOR@GOV.STATE.AK.US

P.O. Box 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 4, 2004

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 article III, section 18, of the Alaska Constitution, I am transmitting a bill relating to the authority to take oaths, affirmations, and acknowledgements in the state to notaries public, and to fees for issuing certificates with the seal of the state affixed.

The primary purpose of the bill is to comprehensively update AS 44.50, the chapter that governs notaries public, which includes among its provisions qualifications to become a notary public, duties of notaries public, and liability in the event of misconduct or neglect. AS 44.50 has not been comprehensively revised since it was enacted in 1961. Sections 6-13 of the bill would repeal obsolete provisions, update antiquated language, and add new provisions where needed. Similarly, sections 2-4 of the bill would update statutes in AS 09, the Alaska civil code, relating to notaries' responsibilities when notarizing, verifying, and acknowledging signed instruments.

In addition, section 1 of the bill would conform the oath, affirmation, and acknowledgement statute at AS 09.63.010 to existing law. Section 5 of the bill would update a statute authorizing the Lieutenant Governor to collect fees for the issuance of certificates with the seal of the state affixed, increasing the fee to \$5 per certificate. Section 14 of the bill provides applicability provisions.

A more detailed description of the bill is found in a sectional analysis of the bill available from the office of the Lieutenant Governor.

I urge your prompt and favorable action on this measure.

Sincerely yours,

Frank H. Murkowski
Governor

Enclosure

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 302
 (S) Publish Date: 2/6/04

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
 Title An Act relating to oaths, affirmations RDU _____
 and acknowledgments _____ Component Office of the Lt. Governor
 Sponsor Governor _____
 Requester Rules _____ Component No. 11

Expenditures/Revenues (Thousands of Dollars)

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

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

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

CHANGE IN REVENUES ()	8.7	8.7	8.7	8.7	8.7	8.7
-------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 The proposed fee changes for certificates from \$2 to \$5, as set out in Section 5 of the bill, will generate anticipated \$8.7 in additional unrestricted revenues.

Prepared by: Linda J. Perez, Director Phone 465-3876
 Division: Administrative Services Date/Time 1/29/04 2:40 PM
 Approved by: Lt. Governor Loren Leinan Date 1/29/2004
 Agency: Office of the Lt. Governor



United States
NOTARY
Association



OFFICE OF THE

MAR 09 2004

LIEUTENANT GOVERNOR

March 5, 2004

The Honorable Loren Leman
Office of the Lieutenant Governor
P.O. Box 110015
Juneau, AK 99811-0015

RE: Alaska Senate Bill 302

Dear Mr. Leman:


On behalf of the members of the United States Notary Association (USNA), I congratulate you and Governor Murkowski on your legislative initiative to comprehensively revise the chapter of the Alaska Statutes that governs Alaska notaries public, Title 44, Chapter 50 [AS 44.50].

USNA is strongly in favor of this notarial regulation in that it gives notaries clear and unambiguous direction for the performance of their official duties. This direction protects both the notary and the public from the serious consequences of unintended error. Since AS 44.50 has not been comprehensively revised since being enacted in 1961, USNA gives its full support to Senate Bill 302 because the bill intends to repeal obsolete provisions, update antiquated language and add new provisions where they are needed.

USNA urges the Alaska Senate to take prompt and favorable action regarding this bill. If I can be of help to you in supporting this bill, please contact me at 800-587-2588 or usna@enotary.org.

I look forward to reporting on the successful passage of Senate Bill 302 in an upcoming issue of *Notary Review*.

For the Association,



Marc L. Aronson
President

About the United States Notary Association

USNA is a membership organization dedicated to the professional development of notaries public in all 50 states and the District of Columbia. USNA's goal is to provide notaries with accurate, reliable information and high quality products and services.

Notaries join USNA to learn about proper notarial procedures and the laws, current events, and common issues affecting notaries in their states and nationwide. Members can call USNA's telephone support or E-mail their questions. Members also receive a subscription to *Notary Review*, our bi-monthly publication, containing news briefs, educational articles and other information of interest to notaries.



14 Wood Street
Pittsburgh, Pennsylvania
15222-1921
ph 800.587.2588
fax 800.707.7075
www.enotary.org

P.O. Box 100600

Alaska Bankers Association
Anchorage, Alaska 99510-0600

OFFICE OF THE
FEB 17 2004
LIEUTENANT GOVERNOR

(907) 265-2920

February 17, 2004

The Honorable Loren Leman
Lieutenant Governor, State of Alaska
State Capitol, Third Floor
Juneau, Alaska 99811

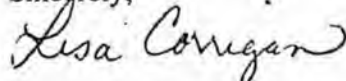
Re: HB 439

Dear Lt. Governor Leman:

The members of the Alaska Bankers Association have had the opportunity to review House Bill 439, which addresses the responsibilities of notaries public in the State of Alaska. We have no opposition to the proposed changes to existing law and are in support of the legislation.

We appreciate the opportunity to review and comment on any proposed legislation that may impact the financial services industry.

Sincerely,



Lisa J. Corrigan
President
Alaska Bankers Association

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

American Society of Notaries



ALL-STATES Notary Public Guide

Respectfully developed by the American Society of Notaries
for the U.S. Secretaries of State, Secretaries of the Commonwealth
and Notary Administrators.

Research and editing by Joanna L. Lilly and Jennifer Workman.
Layout by Laura Pichard-Murphy.

This information was compiled through, and is based on, notary websites and interviews with notary administration staff for each state. Any errors or omissions in data are unintentional. Further information can be obtained by contacting the state notary administrators' office. Contact information for each state is provided on pages 12-13.



For her interest and efforts in developing this resource for the National Association of Secretaries of State, we'd like to offer a special thanks to the Honorable Anne Petera, Virginia Secretary of the Commonwealth and Chairperson of the NASS Standing Committee on Notaries.



Notary Population by State & Electronic Applications

STATE	POPULATION	ACCEPTANCE OF E-APPLICATIONS	UCC FILINGS
ALABAMA	70,000	No	Secretary of State Office
ALASKA	11,800	Not yet	Banking and Corporations Office
ARIZONA	86,000	Not yet	Business Services
ARKANSAS	Over 100,000	No	UCC Division
CALIFORNIA	154,000	No	UCC Division
COLORADO	90,000 - 100,000	Not yet	Division of Bus. Filings UCC Section
CONNECTICUT	52,000 +/-	No	Commercial Recording Division
DELAWARE	10,000	No	Corporations Division
D.C.	12,000 - 15,000	No	—
FLORIDA	350,000	Yes	Department of State, Division of Corporations
GEORGIA	240,000 - 250,000	No	UCC Division
HAWAII	7,000	Not yet	—
IDAHO	—	No	UCC Division
ILLINOIS	184,000	Not yet	Business Services
INDIANA	90,000	Not yet	UCC Division
IOWA	50,000	Not yet	Corporations Division
KANSAS	80,000	Not yet	UCC Division
KENTUCKY	80,000 (records kept 4 years only)	No	UCC Division
LOUISIANA	—	No	UCC Division
MAINE	—	No	UCC Division
MARYLAND	94,000	No	Assessment And Taxation Department
MASSACHUSETTS	100,027	No	Corporations Division
MICHIGAN	150,000	No	Business Licenses
MINNESOTA	83,000	No	—
MISSISSIPPI	50,948	No	UCC Division
MISSOURI	71,122	No	UCC Division
MONTANA	18,300	No	UCC Division
NEBRASKA	22,000	No	Secretary of State Office
NEVADA	27,000	Not yet	UCC Division
NEW HAMPSHIRE	25,000	No	UCC Division
NEW JERSEY	—	Not yet	Division of Revenue
NEW MEXICO	32,000	No	Secretary of State Office
NEW YORK	250,597	No	Division of Corporations UCC Unit
NORTH CAROLINA	196,000	Not yet	UCC Division of SOS Office
NORTH DAKOTA	11,574	No	Central Indexing
OHIO	85,000	No	—
OKLAHOMA	84,000	No	Through each county
OREGON	45,000	Not yet	Corporations Division
PENNSYLVANIA	91,490	Not yet	Corporations Bureau
RHODE ISLAND	47,860	No	UCC Division
SOUTH CAROLINA	150,000 - 200,000	No	UCC Division
SOUTH DAKOTA	17,000	No	UCC Division
TENNESSEE	143,069	No	Secretary of State Office
TEXAS	352,294	Not yet	UCC Division
UTAH	28,000	No	Division of Corporations & Commercial Code
VERMONT	20,000	Not yet	Division of Corporations
VIRGINIA	200,000	Not yet	State Corporation of Commercialization
WASHINGTON	75,000	No	UCC Office in the Department of Licensing at the Business and Profession Division
WEST VIRGINIA	42,000	No	UCC Division
WISCONSIN	20,000	No	Department of Financial Institutions
WYOMING	15,000	Not yet	Corporations Division

— Information not available.

Appointment Process – Qualifications

STATE	APPOINTING OFFICER	REQUIREMENTS FOR COMMISSION
ALABAMA	Individual county judges	Varies by county — 18 years old; resident of AL and county commissioned in; must have notary bond at time of commissioning.
ALASKA	LI Governor	19 years old; resident of AK.
ARIZONA	Secretary of State	18 years old; must be an AZ resident; minimum residency requirement varies.
ARKANSAS	Secretary of State	18 years old; citizen of US and resident of AR; able to read and write English; notary commission hasn't been revoked within the last 10 years.
CALIFORNIA	Secretary of State	18 years old; legal resident of CA; successful completion of an approved notary exam.
COLORADO	Secretary of State	18 years old; citizen of US; qualified elector in CO; able to read and write English.
CONNECTICUT	Secretary of State	18 years old; residence or employment in CT.
DELAWARE	Secretary of State	18 years old; good character and reputation; a reasonable need for a notary commission; legal resident of DE.
DISTRICT of COLUMBIA	Office of the Secretary	18 years old; residence or employment in DC; letter explaining need included with application; three character references included with application.
FLORIDA	Office of the Governor	18 years old; read, write, and understand English; permanent resident of FL; if convicted of a felony must have rights restored; completion of mandatory training class.
GEORGIA	Clerk of Superior Court in each county	18 years old; able to read and write English; resident of GA.
HAWAII	Attorney General	18 years old; US citizen and resident of HI.
IDAHO	Secretary of State	18 years old; residence or employment in ID; able to read and write English; No removal from office for misconduct or no conviction of a serious crime within the last 10 years.
ILLINOIS	Secretary of State	18 years old; resident of IL; able to read and write English; no revocation of commission or felony convictions in the last 10 years.
INDIANA	Secretary of State	18 years old; resident of IN.
IOWA	Secretary of State	18 years old; residence or employment in IA; no revocation of commission or felony convictions in the last 10 years.
KANSAS	Secretary of State	18 years old; resident of KS; or resident of bordering state and employed in KS.
KENTUCKY	Secretary of State	18 years old; resident of county in which application is made; of good moral character; and capable of discharging duties imposed by law.
LOUISIANA	Secretary of State	18 years old; resident of LA, in and for the parish in which applicant lives or works, provided that the notary meets the requirements established by each parish in which the notary applies.
MAINE	Secretary of State	18 years old; resident of ME; and recommended to the office by a registered voter in ME.

Term of Office & Appointment Fees

TERM OF OFFICE	APPOINTMENT FEES	COMMENTS
4 years	\$11-\$15, varies by county	Notaries are appointed by county judges in county of residence.
4 years	\$40	AK specifically requires personal appearance. Postmasters may perform the functions of a notary public.
4 years	\$25 to Secretary of State; \$18 to Clerk of Superior Court in county of residence	Jurisdiction is statewide, though notaries are commissioned in the county of residence.
10 years	\$20	
4 years	\$100	
4 years	\$10 plus \$2 admin fee for change of address, name change, etc.	
5 years	\$60	
2 years (new) or 4 years	\$53 \$78	
5 years	\$50	
4 years	\$39	Notaries in FL are authorized to perform marriage ceremonies.
4 years	\$15	
4 years	\$40	
6 years	\$30	
4 years	\$10	
8 years	\$5	
3 years (resident) 1 year (non-resident)	\$30	
4 years	\$10	Notaries are <u>not</u> considered public officers.
4 years	\$10	There are two types of notaries in KY: notaries state-at-large and notaries under special commission.
Lifetime	Varies from parish to parish - up to \$1,000, includes education and examination, state fees, background checks, bonding, filing with parish, etc. LA notaries are civil law notaries with more involved duties than common law notaries. LA's requirements for notaries reflect this difference.	
7 years	\$25	Each new notary must swear an oath in front of a Dedimus Justice before acting as a notary. Notaries in ME are authorized to perform marriage ceremonies.

Appointment Process – Qualifications

STATE	APPOINTING OFFICER	REQUIREMENTS FOR COMMISSION
MARYLAND	Secretary of State	18 years old; of good character, integrity, and abilities; live or work in MD.
MASSACHUSETTS	Governor	18 years old
MICHIGAN	Secretary of State	18 years old; residence or employment in MI; resident of the county where requesting a commission. In the case of nonresidents, applicants must work in the county in which commission is requested.
MINNESOTA	Governor	18 years old; resident of MN.
MISSISSIPPI	Governor	18 years old; registered voter in MS.
MISSOURI	Secretary of State	18 years old; registered voter of county of residence; able to read and write English; no commission revoked during past 10 years.
MONTANA	Secretary of State	18 years old; minimum residency of 1 year.
NEBRASKA	Governor	19 years old; application is accompanied by petition signed by at least 25 voters in county of residence.
NEVADA	Secretary of State	18 years old; resident of NV; US citizen or resident alien; possession of civil rights.
NEW HAMPSHIRE	Governor and Ex. Council	18 years old; resident of NH; 2 notaries and 1 registered voter must endorse application; must complete State Police Records Check Form; cannot be a convicted felon.
NEW JERSEY	Secretary of State	18 years old; resident of NJ or resident of adjoining state who works in NJ; not convicted of a felony above the second degree.
NEW MEXICO	Governor	18 years old; resident of NM; able to read and write English; no revocation of commission or felony convictions in the past 5 years.
NEW YORK	Secretary of State	18 years old; residence or employment in NY; must pass written exam; and must provide verification of good moral character.
NORTH CAROLINA	Secretary of State	18 years old; resident of NC or employed in NC; recommended by publicly elected official; completion of notary course approved by SOS.
NORTH DAKOTA	Secretary of State	A notary applicant must have the same qualification as an elector with regard to age and residence or must reside in a county that borders ND in a state that extends reciprocity to a notary public in a border county.
OHIO	Governor	18 years old; citizen of OH; or attorney of another state who is admitted to the practice of law in OH.
OKLAHOMA	Secretary of State	18 years old; citizen of the US; legal residence or employment in OK.
OREGON	Secretary of State	18 years old; residence or employment in OR; able to read and write English; be of good moral character; have no notary commission revoked in the preceding 5 years; no felony conviction within the last 10 years.
PENNSYLVANIA	Sec. of the Commonwealth	18 years old; registered voter; resident of PA for at least 1 year prior to commission application; be of known character, integrity, and ability.
RHODE ISLAND	Governor	Any qualified elector/resident of RI.
SOUTH CAROLINA	Governor	18 years old; must be a registered voter in SC; application must be endorsed by county delegates.
SOUTH DAKOTA	Secretary of State	18 years old; citizen of US; no felony convictions.
TENNESSEE	Governor	18 years old; citizen of US and resident of TN; no felony convictions; elected by county legislative body of county of residence.

Term of Office & Appointment Fees

TERM OF OFFICE	APPOINTMENT FEES	COMMENTS
4 years	\$10	
7 years	\$25	
4 years	\$3	
5 years	\$40	Dept of Commerce oversees notary commissions.
4 years	\$25	Notaries are <u>not</u> considered public officers.
4 years	\$25	Non-residents can be notaries in MO if they work in MO.
4 years	\$20	
4 years	\$30	
4 years	\$35	
5 years	\$50	
6 years	\$25	
4 years	\$10	
First commission-2 yrs 4 years after July 18, 2001	\$30 (\$60 after July 18, 2001)	
5 years	\$30	
6 years	\$25	
5 years	\$5-6	Notaries apply in the counties they reside in through the local bar association.
4 years	\$25	
4 years	\$20	
4 years	\$25	
4 years	\$80	
10 years	\$25	SC notaries are authorized to perform marriage ceremonies.
6 years	\$10	
4 years	\$12	\$7 for the County Court Clerk and \$5 for the Secretary of State.

Appointment Process – Qualifications

STATE	APPOINTING OFFICER	REQUIREMENTS FOR COMMISSION
TEXAS	Secretary of State	18 years old; resident of TX.
UTAH	Dir. of the Div. of Corporations and Commercial Code	18 years old; live in the state at least 30 days prior to applying; must be able to read, write, and understand English; must submit a complete application; must be a UT resident; must be endorsed by two state residents who are over 18.
VERMONT	Superior Court Assistant Judges	18 years old; resident of the state or a nonresident who commutes for work.
VIRGINIA	Governor	18 years old; resident of the state or a nonresident who commutes for work; must have the endorsement of two state officials and two voters.
WASHINGTON	Dept. of Licensing Dir.	18 years old; resident of the state or an adjoining state and be regularly employed in or conduct business in Washington; read and write English; submission of complete application; must submit a \$10,000 surety bond and application fee.
WEST VIRGINIA	Governor	18 years old; citizen of the United States; must be able to read and write English; must never have been convicted of a felony, or must have been pardoned. Nonresidents are eligible if they are regularly employed in the state and need the commission for employment.
WISCONSIN	Governor	18 years old; resident of the state.
WYOMING	Secretary of State	18 years old; resident of the state, or nonresident who commutes in the state for work.

Term of Office & Appointment Fees

TERM OF OFFICE	APPOINTMENT FEES	COMMENTS
4 years	\$21	
4 years	\$20	
4 years	\$20 payable to county	
4 years	\$25	
4 years	\$20	
4 years	\$25	
4 years	\$20	
4 years	\$30	

Notary Exam & Class Requirements

STATE	EXAM REQ'D	CLASS REQ'D	COMMENTS	STATE TRAINING
ALABAMA			No education or exam required.	
ALASKA	X		Exam in Alaska handbook.	
ARIZONA			No education or exam required.	
ARKANSAS			No education or exam required.	
CALIFORNIA	X		Exam required for new and renewing notaries.	
COLORADO			No education or exam required.	X
CONNECTICUT	X		Exam is part of application.	X
DELAWARE			No education or exam required.	
D.C.	X		Exam is oral and open-book test.	X
FLORIDA		X	Class required for new notaries.	X
GEORGIA			No education or exam required.	X
HAWAII	X		Exam is closed-book test.	
IDAHO			No education or exam required.	
ILLINOIS			No education or exam required.	
INDIANA			No education or exam required.	
IOWA			No education or exam required.	X
KANSAS			No education or exam required.	X
KENTUCKY			No education or exam required.	
LOUISIANA	X		Training suggested.	
MAINE	X		Open book exam part of application.	X
MARYLAND			No education or exam required.	
MASSACHUSETTS			No education or exam required.	
MICHIGAN			No education or exam required.	
MINNESOTA			No education or exam required.	
MISSISSIPPI			No education or exam required.	
MISSOURI			No education or exam required.	X
MONTANA			No education or exam required.	
NEBRASKA			No education or exam required.	
NEVADA			No education or exam required.	X
NEW HAMPSHIRE			No education or exam required.	
NEW JERSEY			No education or exam required.	
NEW MEXICO			No education or exam required.	
NEW YORK	X		Exam is closed-book test.	
NORTH CAROLINA	X	X	Training and exam are required prior to commission.	X
NORTH DAKOTA			No education or exam required.	
OHIO	X		Tests are administered by the county. All exams are different and not every county issues an exam.	
OKLAHOMA			No education or exam required.	
OREGON	X		Exam is open-book test and part of application.	X
PENNSYLVANIA			No education or exam required.	
RHODE ISLAND			No education or exam required.	
SOUTH CAROLINA			No education or exam required.	
SOUTH DAKOTA			No education or exam required.	
TENNESSEE			No education or exam required.	
TEXAS			No education or exam required.	
UTAH	X		Training is encouraged, but not required.	X
VERMONT			No education or exam required.	X
VIRGINIA			No education or exam required.	
WASHINGTON			No education or exam required.	
WEST VIRGINIA			No education or exam required.	
WISCONSIN			No education or exam required.	
WYOMING	X		Test in back of WY notary book is not mandatory, but is recommended.	

Stamp/Embossed Requirements & Fees

STATE	STAMP/EMBOSSER	ALLOWABLE FEES NOTARY CAN CHARGE
ALABAMA	Embossed	Maximum fee is \$1.50 depending upon act performed.
ALASKA	Stamp/Embossed	Fees are left to the notary's discretion. State employed notaries cannot charge fees.
ARIZONA	Stamp	\$2 is maximum fee.
ARKANSAS	Stamp/Embossed	\$5 is maximum fee.
CALIFORNIA	Stamp	Maximum fee is \$20 depending upon act performed.
COLORADO	Stamp/Embossed	\$5 is maximum fee.
CONNECTICUT	—	\$5 is maximum fee.
DELAWARE	Stamp/Embossed	\$5 is maximum fee.
D. C.	Embossed	\$2 is maximum fee. Government employed notaries cannot charge fees.
FLORIDA	Stamp	\$10 is maximum fee per signature.
GEORGIA	Stamp/Embossed	\$4 is maximum fee.
HAWAII	Stamp/Embossed	Maximum fee is \$5 depending upon act performed.
IDAHO	Stamp/Embossed	\$2 is maximum fee.
ILLINOIS	Stamp	\$1 is maximum fee.
INDIANA	Stamp/Embossed	\$2 is maximum fee. Public official notaries cannot charge fees.
IOWA	Stamp/Embossed*	The statutory schedule of fees for notarial acts was repealed in 1989.
KANSAS	Stamp/Embossed	Not specified by law.
KENTUCKY	—	Maximum fee is 50 cents depending upon act performed.
LOUISIANA	—	Not specified by law.
MAINE	—	Other than \$1.50 for each protest of a bill or note, fees are left to notary's discretion.
MARYLAND	Stamp/Embossed	\$2 is maximum fee.
MASSACHUSETTS	—	\$2 is maximum fee for protests. All other fees are left to the notary's discretion.
MICHIGAN	—	\$2 is maximum fee.
MINNESOTA	Stamp	\$1 is maximum fee.
MISSISSIPPI	Stamp/Embossed	Fee range is \$2 to \$5.
MISSOURI	Stamp/Embossed	Maximum fee is \$2 depending upon act performed.
MONTANA	Stamp/Embossed	Maximum fee is \$3.50 depending upon act performed.
NEBRASKA	Stamp	Maximum fee is \$5 depending upon act performed. State employed notaries cannot charge fees.
NEVADA	Stamp	Maximum fee is \$5 depending upon act performed.
N. HAMPSHIRE	Stamp/Embossed	\$5 is maximum fee.
N. JERSEY	—	Maximum fee is \$2 depending upon act performed.
NEW MEXICO	Stamp/Embossed	Maximum fee is \$2 depending upon act performed.
NEW YORK	—	Maximum fee is \$2 depending upon act performed.
N. CAROLINA	Stamp/Embossed	\$3 is maximum fee.
N. DAKOTA	Stamp/Embossed	\$5 is maximum fee.
OHIO	Stamp/Embossed	Maximum fee is \$2 depending upon act performed.
OKLAHOMA	Stamp/Embossed	Maximum fee is 50 cents depending upon act performed.
OREGON	Stamp	Maximum fee is \$5 depending upon act performed.
PENNSYLVANIA	Stamp/Embossed	Maximum fee is \$2 depending upon act performed.
RHODE ISLAND	—	Maximum fee is \$1.50 depending upon act performed.
S. CAROLINA	—	Maximum fee is \$1 depending upon act performed.
S. DAKOTA	Stamp/Embossed	\$10 is maximum fee.
TENNESSEE	Stamp/Embossed	Maximum fee is \$1.50 depending upon act performed.
TEXAS	Stamp/Embossed	Maximum fee is \$6 depending upon act performed.
UTAH	Stamp/Embossed	\$5 is maximum fee.
VERMONT	—	Maximum fee is \$2 depending upon act performed.
VIRGINIA	—	Maximum fee is \$2 depending upon act performed.
WASHINGTON	Stamp/Embossed	Maximum fee is \$5 depending upon act performed.
WEST VIRGINIA	Stamp/Embossed	\$2 is maximum fee.
WISCONSIN	Stamp/Embossed	Maximum fee is \$1 depending upon act performed.
WYOMING	Stamp/Embossed	\$2 is maximum fee.

* New legislation enacted requiring use of stamp or seal.

Bond & Recordbook Requirements/Penalties for Wrongdoing

STATE	RECORDBOOK	BOND	PENALTY/ACTION
ALABAMA	X	\$10,000	— Discipline done through probate office/local DA office.
ALASKA	Recommended	\$1,000	X Complaint required in writing and verified by Attorney General. An administrative hearing can be followed by the suspension or revocation of commission.
ARIZONA	X	\$5,000	X Attorney General determines whether commission is revoked or renewal is denied.
ARKANSAS	Recommended	\$7,500*	X The complaint must be in writing to the staff attorney who has the power to revoke the commission if necessary.
CALIFORNIA	X	\$15,000	X Commission can be suspended or revoked, or application for commission can be denied.
COLORADO	X	None	X Secretary of State has the option to revoke commission.
CONNECTICUT	Recommended	None	X A disciplinary hearing is followed by reprimand, suspension, or revocation of commission.
DELAWARE	—	None	X Complaints referred to Attorney General. Commission can be revoked.
D. C.	X	\$2,000	X A written complaint must be filed with the Notary Commission Section Chief who decides what action to take. The most severe action is revocation of commission.
FLORIDA	Recommended	\$7,500	X Notary commissions can be suspended or revoked and the notary can be subject to fines and/or criminal penalties.
GEORGIA	—	None	Each county handles disciplinary action.
HAWAII	X	\$1,000	X Issues are solved verbally. State has the ability to revoke a commission but never has.
IDAHO	—	\$10,000	— —
ILLINOIS	—	\$5,000	— —
INDIANA	—	\$5,000	— There is a complaint form, but no official disciplinary procedure.
IOWA	Recommended	None	X State code encourages informal settling of disciplinary issues. If that is not possible, the commission is revoked.
KANSAS	—	\$7,500	X After review by an attorney, revocation of the commission is the ultimate penalty.
KENTUCKY	Recommended	Varies per county	— —
LOUISIANA	X (Ordinary Parish only)	\$5,000	— Notaries are not governed by the state. No bond required for attorneys.
MAINE	Recommended (Required for marriages only)	None	— Complaints are made to and handled by the Attorney General.
MARYLAND	X	None	— The notary receives a letter of reprimand for the first act of wrongdoing. In the event of a second act of wrongdoing, the commission is revoked.
MASSACHUSETTS	Recommended	None	— Complaints are referred to the Governor's council.
MICHIGAN	Recommended	\$10,000	X There is a hearing and possible revocation of commission.
MINNESOTA	—	None	X The Enforcement Division investigates. Penalties can include warnings, fines, suspension, or revocation of commission.
MISSISSIPPI	X	\$5,000	— Complaints are referred to Governor's office.
MISSOURI	X	\$10,000	— Revocation must be done through Attorney General's office.
MONTANA	Recommended	\$10,000**	— Complaints are referred to county attorney.
NEBRASKA	Recommended	\$10,000	X The commission can be revoked or in extreme cases there are court hearings.
NEVADA	X	\$10,000	X Complaints must be in writing. If wrongdoing is found, penalties are issued.
N. HAMPSHIRE	X	None	X Commission can be revoked.
N. JERSEY	X	None	— The state isn't involved in notary discipline. If a notary case goes through the court system, the state will be notified to revoke the commission.
NEW MEXICO	X (For Notices of Protest only)	\$500	Secretary of State has no authority to discipline notaries.

* Recent legislation passed increasing bond from \$4,000 to \$7,500.

** Recent legislation passed increasing bond from \$5,000 to \$10,000.

Bond & Recordbook Requirements/Penalties for Wrongdoing

STATE	RECORDBOOK	BOND	PENALTIES/ACTION
NEW YORK	—	None	X If a notary is accused of wrongdoing, he/she has the right to an administrative hearing before an administrative law judge.
N. CAROLINA	—	None	X Complaints must be received in writing. If wrongdoing is found, the notary's commission can be suspended or revoked, depending on the severity of the wrongful act.
N. DAKOTA	Recommended	\$7,500	X A letter is written to the Attorney General who can then revoke the commission, reprimand the notary, or assess a fee. <small>(Req'd for holders of Proxies only)</small>
OHIO	X	None	— Discipline/complaints are handled individually by each county.
OKLAHOMA	X	\$1,000	— Complaints go through the court system.
OREGON	X	None	X Discipline alternatives include a letter of advice, a warning, suspension, or revocation of the commission.
PENNSYLVANIA	X	\$3,000	— Complaints are sent to the state prosecution office.
RHODE ISLAND	—	None	— Complaints are referred to the local police.
S. CAROLINA	—	None	— There is no policy unless the notary has done a false certification. In that case, the notary can be tried through the county and the commission can be revoked.
S. DAKOTA	Recommended	\$5,000	— Complaints are kept on file and commissions are revoked with a court order.
TENNESSEE	X	\$10,000	— —
TEXAS	X	\$10,000	— Handled through the legal office.
UTAH	—	\$5,000	X Notary administrator and commissioning office have the authority to revoke, suspend, or deny a commission with cause. There is an administrative hearing process in place if a notary wishes to appeal a decision.
VERMONT	—	None	— Secretary of State has no jurisdiction over notary discipline. Complaints must be made to assistant judge of the superior court.
VIRGINIA	—	None	X Notaries are penalized through reprimand, suspension, and revocation of their commissions.
WASHINGTON	—	\$10,000	X Complaints are investigated and if wrongdoing is found the commission can be revoked.
WEST VIRGINIA	—	None	— Due to change in staff this process is being revised.
WISCONSIN	—	\$500 (none for attorneys)	— Complaints are forwarded to the Governor's office.
WYOMING	Recommended	\$500	— Discipline is handled at the county level.

X Is required or applicable

— Information not available or on record

Contact Information

STATE	CONTACT PERSON	OFFICE/ADDRESS
ALABAMA	Jane Ryals, Notary Registrar	Office of the Secretary of State, PO Box 5616, Montgomery, AL 36103-5616
ALASKA	Scott Clark, Notary Administrator	Office of the Lieutenant Governor, PO Box 110015, Juneau, AK 99811-00015
ARIZONA	Connie Copeland, Director	Notary Section, 700 West Washington, 7th Floor, State Capitol Executive Tower, Phoenix, AZ 85007
ARKANSAS	Claudia Counts, Business Services Manager	Office of the Secretary of State, Corporations Division, State Capitol, Little Rock, AR 72201-1094
CALIFORNIA	Alicia Stewart, Manager	Notary Public Section, PO Box 942877, Sacramento, CA 94277-0001
COLORADO	Geri Andrews, Notary Public Clerk	Office of the Secretary of State, 1560 Broadway, Suite 200, Denver, CO 80202
CONNECTICUT	Peter J. Barturca	Notary Public Unit, 30 Trinity Street, Hartford, CT 06106
DELAWARE	Veronica Holmes, Notary Administrator	Office of the Secretary of State, 401 Federal Street, Suite 3, Dover, DE 19901
D. C.	Roslyn Brown, Section Chief	Notary Commission & Authentication Section, 441 4th St., Room 1C-090, Washington, DC 20001
FLORIDA	Jennifer Bertsch, Notary Education Coordinator Charles Canady	Office of the Governor, Notary Section, The Capitol, Rm 2009, Tallahassee, FL 32399-0001 Notary Commissions and Certifications Section, Dept. of State, State Capitol, Rm 1801, Tallahassee, FL 32399-0001
GEORGIA	Mike Smith, Communications Director	Georgia Superior Court, Clerks' Cooperative Authority, 1875 Century Blvd., Suite 100, Atlanta, GA 30345
HAWAII	Ann Yuuki, Legal Assistant	Department of Attorney General, 425 Queen Street, Honolulu, HI 96813
IDAHO	Debbie Farnsworth, Administrative Secretary	Office of the Secretary of State, Box 83720, Boise, ID 83720-0080
ILLINOIS	Christine Works, Notary Division Supervisor	Index Department, 111 East Monroe Street, Springfield, IL 62756
INDIANA	Pam Neff, Notary Public Deputy	Notary Department, State House, Rm 201, Indianapolis, IN 46204
IOWA	Rob Bernsen, Director of Business Services	Corporations Division, Lucas Office Building, 1st Floor, Des Moines, IA 50319
KANSAS	Georgia Lott, Notary Administrator	Office of the Secretary of State, First Floor Memorial Hall, 120 SW 10th Ave., Topeka, KS 66612-1594
KENTUCKY	Kim Bagwell, Administrative Specialist Principal	The Notary Public Division, Office of the Secretary of State, PO Box 821, Frankfort, KY 40602-0821
LOUISIANA	Cynthia Cotten, Administrative Specialist	Notary Division, PO Box 94124, Baton Rouge, LA 70804
MAINE	Timothy R. Poulin, Notary Public Officer	Bureau of Corporations, Elections & Commissions, 101 State House Station, Augusta, ME 04333-0101
MARYLAND	Debbie Elliott, Notary Public Officer	Notary Division, Office of the Secretary of State, State House, Annapolis, MD 21401
MASSACHUSETTS	Frances Gould, Director	Notary Section, Office of the Secretary of the Commonwealth, One Ashburton Place, Rm 1719, Boston, MA 02108
MICHIGAN	Elena Beasley, Manager	Office of the Great Seal, 717 West Allegan St., Lansing, MI 48918
MINNESOTA	Julie Leithauser, Licensing Analyst	Licensing Division, 85 7th Place East, Suite 600, St. Paul, MN 55101-3165
MISSISSIPPI	Nan Ainsworth, Records Analyst	Enforcement/Regulation Notaries, PO Box 136, Jackson, MS 39205 or 202 N. Congress St., Jackson, MS 39201
MISSOURI	Brenda Rieke, Division Director	Commissions Division, PO Box 784, Jefferson City, MO 65102-0784
MONTANA	Lisa Thompson, Notary Compliance Specialist	Office of the Secretary of State, State Capitol, PO Box 20281, Helena, MT 59620
NEBRASKA	Debbie Pester, UCC/Notary Administrator	Notary Division, PO Box 95104, Lincoln, NE 68509
NEVADA	Laura "Bru" Ehrldge, Notary Division Officer	Office of the Secretary of State, 101 N. Carson Street, Suite 3, Carson City, NV 89701
N. HAMPSHIRE	Notary Division	Office of the Secretary of State, State House, Rm 204, 107 North Main Street, Concord, NH 03301
N. JERSEY	Monica Jakovitz, Notary Supervisor	Division of Revenue, Notary Public Unit, PO Box 452, Trenton, NJ 08625
NEW MEXICO	Peter C. Garcia, Director	Office of the Sec. of State, State Capitol, Suite 420, Santa Fe, NM 87503
NEW YORK	Daniel E. Shapiro, Assistant Director	Licensing and Services Division, Department of State, 84 Holland Ave., Albany, NY 12208-3490
N. CAROLINA	Jayle P. Holder, Administrator	The Notary Public Section, Dept. of the Sec. of State, PO Box 29622, Raleigh, NC 27626-0622
N. DAKOTA	Mary Feist, Supervisor	Admin. & Lic. Div., Office of the Secretary of State, 600 East Boulevard Ave., Dept. 108, Bismark, ND 58505-0500
OHIO	Sandra Costa, Commission Clerk	Office of the Governor, 77 S. High Street, 19th Floor, Columbus, OH 43215
OKLAHOMA	Mary Anne Watts, Notary Supervisor	Notary Public Department, 2300 N. Lincoln Blvd., Suite 101, Oklahoma City, OK 73105
OREGON	Tom Wrosch, Notary Public Supervisor	Office of the Secretary of State, 255 Capitol St. NE, Suite 151, Salem, OR 97310-1327
PENNSYLVANIA	Robin Cole, Notary Administrator	Bureau of Commissions, Elections & Legislation, 303 N. Office Building, Harrisburg, PA 17120
RHODE ISLAND	Justine Santoro Almeida, Notary Supervisor	Notary Division, 100 North Main Street, Providence, RI 02903-1335
S. CAROLINA	J. Spencer Hewitt, Notary Clerk	Notary Public Division, PO Box 11350, Columbia, SC 29211
S. DAKOTA	Kea Warne, Notary Clerk	Notary Public Division, 500 East Capitol Rm 204, Pierre, SD 57501-5077
TENNESSEE	Darlene Lawrence, Notary Supervisor	Office of the Secretary of State, 312 Eighth Ave. North, 6th Floor, William R. Snodgrass Tower, Nashville, TN 37243
TEXAS	Charlene Kramer, Supervisor	Notary Public Unit, Secretary of State, PO Box 13315, Austin, TX 78711-3375
UTAH	Fran Fish, Notary Public Administrator	Div. of Corporations and Commercial Code, 160 E. 300 South, Salt Lake City, UT 84114
VERMONT	Kathren Walters, Notary Supervisor	Office of the Secretary of State, 26 Terrace Street, Drawer 09, Montpelier, VT 05609-1101
VIRGINIA	Michelle Ford, Notary Specialist	Notary Public Division, PO Box 1795, Richmond, VA 23218-1795
WASHINGTON	Jon Donnellan, Management Service Manager Linda Mead, Program Manager	Dept. of Licensing, PO Box 9027, Olympia, WA 98507
WEST VIRGINIA	Catherine Frerotte, Executive Assistant	Office of the Secretary of State, State Capitol, Suite 157-K, Charleston, WV 25305-0775
WISCONSIN	Marjorie Ulman, Administrator	Gov't Records Division, Office of Sec. of State, Notary Records, PO Box 7848, Madison, WI 53707
WYOMING	Jeri Melsness, Documents Registrar	Office of the Secretary of State, State Capitol, Cheyenne, WY 82002

PHONE NUMBER	E-MAIL	WEBSITE
(334) 242-7205	—	www.sos.state.al.us/notary/index.htm
(907) 465-3509	notary@gov.state.ak.us	www.gov.state.ak.us/lgov/notarynews/Index2.html
(602) 542-4758	notary@mail.sosaz.com www.sosaz.com/notary/	www.sosaz.com/notary/
(501) 682-3409	business@sosmail.state.ar.us	www.sosweb.state.ar.us/business.html
(916) 653-3595	notaries@ss.ca.gov	www.ss.ca.gov/business/notary/notary.htm
(303) 894-2680	—	www.sos.state.co.us/pubs/info_center/contact.html
(860) 509-6230	peter.bartucca@po.state.ct.us	www.sols.state.ct.us/RecordsLegislativeServices/RLSIndex.html#Notary
(302) 739-4111	—	www.state.de.us/sos/nphome.htm
(202) 727-3117	—	os.dc.gov/info/notary/notary.shtml
(850) 922-6400	fl_gov_notary@eog.state.fl.us	www.myflorida.com/myflorida/government/learn/notary/index.html
(850) 488-7521	—	—
(404) 327-6023	mike.smith@gsecca.org	www.gsecca.org
(808) 586-1218	—	www.state.hi.us/ag/notary/content.htm
(208) 332-2810	dlarswo@idsos.state.id.us	www.idsos.state.id.us/notary/npindex.htm
(217) 782-7017	—	www.sos.state.il.us/departments/index/division.html
(317) 232-6542	—	www.state.in.us/sos/bus_service/notary/
(515) 281-5204	rbemisen@sos.state.ia.us	www.sos.state.ia.us/
(785) 296-2239	kssos@kssos.org	www.kssos.org/
(502) 564-3490 ext. 413	kbagwell@mail.state.sos.ky.us	www.sos.state.ky.us/ADMIN/NOTARY/NOTARY.HTM
(225) 342-4981	notaries@sec.state.la.us	www.notaries@sec.state.la.us.htm
(207) 287-4181	cec_notaries@state.me.us	www.state.me.us/sos/cec/rcn/notary/nol.htm
(410) 974-5520	notaries@sos.state.md.us	www.sos.state.md.us/sos/admin2/html/notary.html
(617) 727-2836	pre@sec.state.ma.us	www.state.ma.us/sec/pre/prenot/nothow.htm
(517) 373-2531	notary@sos.state.mi.us	www.sos.state.mi.us/grease/notaries/notaries.html
(651) 296-6319	Licensing.Commerce@state.mn.us	www.commerce.state.mn.us/pages/NotaryMain.htm
(601) 359-1615	notarymail@sos.state.ms.us or nainsworth@sos.state.ms.us	www.sos.state.ms.us/busser/notaries/notaries.html
(573) 751-4756	riekeb@sosmail.state.mo.us	mosl.sos.state.mo.us/bus-ser/soscom.html
(406) 444-5379	sos@state.mt.us	www.state.mt.us/sos/Notaries/Instructions/instructions.html
(402) 471-2558	sos07@nol.org	www.nol.org/'80/home/SOS/Notary/notary-r.htm
(775) 684-5708	mynotary@govmail.state.nv.us or bethrid@govmail.state.nv.us	www.sos.state.nv.us/notary/notary_info.htm
(603) 271-3242	elections@sos.state.nh.us	www.state.nh.us/scs/notary.htm
(609) 633-8257	—	www.state.nj.us/treasury/revenue/dcr/programs/notary.html
(505) 827-3600/800-477-3632	stpeterg@state.nm.us	www.sos.state.nm.us/notary-open.htm
(518) 473-2728	licensing@dos.state.ny.us	www.dos.state.ny.us/cns/notary1.html
(919) 807-2131	notaries@mail.secstate.state.nc.us	www.secretary.state.nc.us/notary
(701) 328-2000	sosadlic@state.nd.us	www.state.nd.us/sec/Notary/notarymnu.htm
(614) 644-4559	—	—
(405) 521-2516	mary.a.watts@sos.state.ok.us	www.sos.state.ok.us/notary/notary_welcome.htm
(503) 986-2200	oregon.notary@state.or.us	www.sos.state.or.us/corporation/notary/notary.htm
(717) 787-5280	—	www.dos.state.pa.us/bcc/notaries/
(401) 222-1487	notaries@sec.state.ri.us	www.corps.state.ri.us/notaries/notaries.htm
(803) 734-2119	—	www.scscs.com/notaryduties.htm
(605) 773-5666	ke.a.warne@state.sd.us	www.state.sd.us/sos/Notaries/notarycover.htm
(615) 741-3699	—	www.state.tn.us/sos/service.htm#notary
(512) 463-5705	ckramer@sos.state.tx.us	www.sos.state.tx.us/staldoc/index.shtml
(801) 530-4849	ffish@br.state.ut.us	www.commerce.state.ut.us/corpora/notarypublic.htm
(802) 828-2308	kwalters@sec.state.vt.us	vermont-archives.org/notaryinfo.html
(804) 786-2441	mford@gov.state.va.us	www.soc.state.va.us/notary.htm
(360) 664-1550	intnotarie@dol.wa.gov	www.wa.gov/dol/bpd/notfront.htm
—	—	—
(304) 558-6000	cfrcrotte@secretary.state.wv.us	www.state.wv.us/sos/notary/Default.htm
(608) 266-5594	—	badger.state.wi.us/agencies/sos/notary.htm
(307) 777-5407	jmelns@state.wy.us	soswy.state.wy.us/notary/notary.htm

SB

307



SENATE JUDICIARY COMMITTEE

STATE CAPITOL, BUTROVICH ROOM 205

MEMORANDUM

COMMITTEE MEMBERS

Senator Seekins,
Chairman
Room 125
465-2227

Senator Therriault
Room 107
465-4797

Senator Ogan
Room 103
465-3878

Senator Ellis
Room 9
465-3704

Senator French
Room 504
465-3892

Date: February 19, 2004

To: Members of Senate Judiciary Committee

From: Senator Ralph Seekins, Chairman
Judiciary Committee

Re: SB 307

AS for RS

In your packet you will find a "D" version of the bill and a Judiciary CS notated as version "H". The only difference between the two versions can be found on page one, line seven where "AS 43.53.050" has been changed to correctly read "AS 45.53.050".

2/17/04

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
(907) 456-8161
Senator_Ralph_Seekins@legis.state.ak.us

Senator Ralph Seekins
District D

Senate Bill 307

An Act Relating to the amount of bond required to stay execution of a judgment involving a signatory to the tobacco product Master Settlement Agreement

Senate Bill 307 would impose a \$25 million limit on the supersedeas bond that MSA signatories, successors, and affiliates must post to stay the execution of a judgment in Alaska.

3 Facts

1. The schedule of MSA payments has the state of Alaska receiving \$24,912,967 in 2004.
2. Total payments accruing to the state of Alaska from 1998 to the end of the MSA schedule in 2025 amount to \$668,903,056.
3. Total payments nationwide amount to \$195,918,675,920.

3 Statements

1. The MSA requires annual payments be made to all 50 states as well as U.S. possessions and territories.
2. Twenty-six states have enacted limits on the size of appeal bonds in recognition of the threat these bonds place on the revenue streams required by the MSA.
3. The proposed legislation will not affect a plaintiff's right to recover damages upheld on appeal.

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
(907) 456-8161
Senator_Ralph_Seekins@legis.state.ak.us

SENATE JUDICIARY COMMITTEE

Senator Ralph Seekins, Chairman

Senate Bill 307 Sponsor Statement

An Act Relating to the amount of bond required to stay execution of a judgment involving a signatory to the tobacco product Master Settlement Agreement

The Tobacco Master Settlement Agreement ("MSA") delivers millions of dollars in revenues annually to Alaska and 45 other participatory states. However, the continued receipt of these funds is threatened by the huge judgments that have been awarded against the tobacco companies that are funding the settlement. Defendants facing large judgments almost always have a right to appeal them. And in many cases their appeals are successful, either in terms of obtaining a reduced judgment or in overturning the judgment entirely.

But in order to stay the execution of a money judgment on appeal, a defendant must post a supersedeas (appeal) bond which, in the diminishing number of states that do not have limits on appeal bonds, usually equals the amount of the judgment. In Alaska, the bond required is ordinarily the amount of the judgment remaining unsatisfied, plus appeal costs and interest.

Senate Bill 307 would impose a \$25 million limit on the supersedeas bond that MSA signatories, successors, and affiliates must post to stay the execution of a judgment in Alaska. This bond limit would not change any other aspect of the law. It does not change the rules by which the trial is conducted. It does not affect who ultimately wins or loses the lawsuit. And it does not affect the rights of plaintiffs to recover fully the damages to which they are entitled if the judgment is upheld on appeal.

Plaintiffs are also protected by the provision in the proposed legislation that allows the court to require a bond amount up to the value of the judgment *if the appellant is dissipating its assets to avoid paying a judgment*. SB 307 thus would not injure plaintiffs in any way, and it would protect the state by ensuring that it will continue to receive its MSA payments while the tobacco companies fully appeal an adverse judgment.

In this instance Alaska will join 26 other states which have passed legislation or amended court rules to limit the size of the required appeal bond in cases involving large judgments. By joining these states we promote our collective interest with respect to preserving the revenue stream mandated by the Master Settlement Agreement.

23-LS1609\H
Bullock
2/17/04

CS FOR SENATE BILL NO. 307(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the amount of the bond required to stay execution of a judgment in
2 civil litigation involving a signatory, a successor of a signatory, or an affiliate of a
3 signatory to the tobacco product Master Settlement Agreement during an appeal;
4 amending Rules 204 and 205, Alaska Rules of Appellate Procedure; and providing for
5 an effective date."

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

7 * **Section 1.** AS 45.53 is amended by adding a new section to read:

8 **Sec. 45.53.050. Stays pending appeal in civil cases.** (a) Except as provided
9 in (b) of this section, in order to secure and protect the money to be received as a result
10 of the Master Settlement Agreement, in civil litigation under any legal theory
11 involving a signatory, a successor of a signatory, or an affiliate of a signatory to the
12 Master Settlement Agreement, the supersedeas bond to be furnished in order to stay
13 the execution of the judgment during the entire course of appellate review shall be set

1 in accordance with applicable laws or court rules, except that the total bond that is
2 required of all appellants collectively may not exceed \$25,000,000, regardless of the
3 value of the judgment.

4 (b) If an appellee proves by a preponderance of the evidence that an appellant
5 is dissipating assets outside the ordinary course of business to avoid the payment of a
6 judgment, a court may require the appellant to post a bond in an amount up to the full
7 amount of the judgment.

8 * Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 INDIRECT COURT RULE AMENDMENT. AS 45.53.050, added by sec. 1 of this
11 Act, has the effect of changing Rules 204 and 205, Alaska Rules of Appellate Procedure, by
12 limiting the court's discretion to determine the amount of a supersedeas bond in certain cases.

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

15 APPLICABILITY. This Act applies to all cases pending on or filed on or after the
16 effective date of this Act.

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

19 CONDITIONAL EFFECT. AS 45.53.050, added by sec. 1 of this Act, takes effect
20 only if sec. 2 of this Act receives the two-thirds majority vote of each house required by art.
21 IV, sec. 15, Constitution of the State of Alaska.

22 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB307-ACS-TC-2-17-04
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Appeal Bonds in Tobacco Product BRU Alaska Court System
Master Settlement Litigation Component Trial Court
Sponsor Senate Judiciary Committee
Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
The court system does not anticipate any fiscal impact from the passage of SB 307.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
Division: Alaska Court System Date/Time 2/17/04 9:01 AM
Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/17/2004
Agency: Alaska Court System

Alaska Should Join Other States To Limit The Size Of Appeal Bonds and Protect Its Tobacco Settlement Revenues

The Tobacco Master Settlement Agreement ("MSA") is vitally important to Alaska and to the 45 other states who are parties to the settlement. It delivers millions of dollars in revenues to Alaska annually, and it will continue to do so for years to come. It also delivers real benefits to the state through its non-monetary provisions, which restrict advertising by participating (but not by non-participating) manufacturers and are designed to help reduce youth smoking.

Yet the continued receipt of these funds is threatened by litigation against the tobacco companies that are funding the settlement. The ability of the tobacco companies to meet their obligations under the MSA ultimately depends upon their financial viability. It may seem far-fetched to worry about the financial viability of tobacco companies, but the litigation onslaught they are currently facing presents a real risk to their ability to make MSA payments.

This memorandum explains what Alaska can do to minimize that risk and protect the state's ongoing receipt of MSA money.

A. The Enormous Litigation Risks Confronting The MSA Signatories Threaten Alaska's Master Settlement Agreement Revenues

Within the last several years, the tobacco companies have faced gargantuan judgments. In 2000, the Engle class action in Florida resulted in a verdict of \$145 billion, which was reversed on appeal in May 2003. In California, two individual suits resulted in verdicts of \$28 billion and \$3 billion respectively, although both of these verdicts were reduced by the trial judge. In March 2003, a judge in the case of Price v. Philip Morris in Illinois ordered one tobacco company to pay compensatory damages of \$7.1 billion and punitive damages of \$3 billion in a class action. This decision is currently being appealed.

As the Engle case demonstrates, many extraordinarily large verdicts are reduced or overturned on appeal. In order for a verdict to be overturned, however, a defendant must be able to appeal and do so while remaining in business. The problem is that in most states, a defendant must post an appeal bond at least equal to the size of the judgment in order to stay the execution of the judgment during the appeal. In Alaska, the bond required to stay the execution of a money judgment is ordinarily the amount of the judgment remaining unsatisfied, plus appeal costs and interest.¹ But Alaska courts are permitted to set the bond in a different amount or to order alternate security for good cause shown -- meaning that judges may theoretically set the bond at any amount they deem appropriate, even if that amount exceeds the total judgment.²

¹ Alaska R. App. P. 204(d).

² Id.

If a defendant cannot afford to post an appeal bond in the amount set by the court, a plaintiff could potentially seize the defendant's bank accounts, or its manufacturing facilities, or any property located anywhere that the plaintiff can find, even though the defendant may be in the middle of an appeal. In order to stop the plaintiff from taking its assets during the appeal, the defendant may have no alternative other than to file for bankruptcy, which carries with it an automatic stay of the debtor's obligation to pay its creditors.

However, a stay in bankruptcy is indiscriminate: while it would allow tobacco companies subject to huge judgments to appeal while the stay is in place without fear that plaintiffs could seize their assets, it would also prevent the companies from making their payments to Alaska and the other states under the MSA. This potential problem has been most vividly demonstrated by the ongoing Price case in Illinois. In March 2003, the judge in that case set the appeal bond at \$12 billion -- an amount that the company could not possibly have posted.³ If the company had been forced to post such a large bond, it most likely would not have been able to continue to make the billions of dollars in payments that it owes under the MSA. Because of concern about this disastrous result, 37 state attorneys general (including Alaska's) and the National Conference of State Legislatures petitioned the Price court to allow a lower bond to be posted so that MSA payments would not be jeopardized. The bond was eventually lowered to \$6.8 billion, but even this reduced amount would bankrupt many companies.

As the Price case demonstrates, the state has a vital interest in ensuring tobacco companies can appeal massive judgments in Alaska by posting a bond under state law, rather than being forced into bankruptcy.

B. Other States Have Recognized The Risks That Litigation Against MSA Signatories Pose To Their Continued Receipt Of Tobacco Settlement Funds, And They Have Enacted Appeal Bond Caps

Increasingly, states have become aware of the potential consequences of high appeal bonds and have imposed reasonable limits on the size of these bonds. In 2000, legislators in Florida became concerned because the Engle class action against the tobacco companies was proceeding in that state. It was estimated that the punitive damages awarded in the case could be so large that these companies could not afford to post a bond, thereby forcing the companies to seek a stay from the bankruptcy court. While legislators had no particular sympathy for tobacco companies, they recognized that these companies, like every defendant, are at least entitled to a full and fair appeal, and they also recognized that Florida and every other state might lose an important income stream from the MSA payments if the companies were driven out of business. Thus, the legislature enacted a cap on the size of the appeal bond that would have to be posted with regard to the punitive damages aspect of any judgment. The cap limited appeal bonds to the

³ "Confidential Talks Continue on \$12 Billion Bond Issue in Light Cigarette Class Action," Mealey's Litigation Report: Tobacco (Apr. 14, 2003).

lower of the punitive damages judgment plus twice the statutory rate of interest, ten percent of a defendant's net worth, or \$100 million.⁴

As noted above, the jury in Engle eventually awarded the plaintiffs \$145 billion in punitive damages. Under Florida's previous appeal bond rules, the defendants would have had to post an \$181 billion bond to appeal this judgment, which would have bankrupted any company or group of companies. But because the legislature had passed the appeal bond cap, the tobacco companies were able to post a much lower bond and appeal the verdict. Their appeal was ultimately successful: on May 21, 2003, a Florida appeals court decertified the Engle class and set aside the jury's decision in the case. In an emphatic opinion, the court ruled that the class action approach for Engle was completely improper. But if the legislature had not acted to limit the appeal bond prior to the trial court's judgment in Engle, the previous bonding requirement would have bankrupted the entire industry, thrown thousands of people out of work, and deprived each state of its tobacco settlement revenues.

Florida did not act alone. Twenty-five other states have also enacted limits on the size of appeal bonds, two of them by court rule and the rest through legislation. Five other states (Connecticut, Maine, Massachusetts, New Hampshire and Vermont) automatically stay a judgment upon the filing of a notice of appeal. As a result, over half of the states currently limit the appeal bond requirement. The approaches taken by the states have differed somewhat, as summarized below.

In the year 2000, along with Florida, four other states enacted limits on the size of appeal bonds.⁵ These states were Kentucky (\$100 million limit) and Georgia, North Carolina and Virginia (\$25 million limits). In each of these states, the limit applied only to the bond for the punitive damages portion of a judgment. Each of these states was concerned that if the Florida legislature did not act, the Florida plaintiffs might seek to seize tobacco company assets in these other states. Thus, these states limited the size of bonds for judgments entered by courts within their states, and further provided that if a plaintiff with an out-of-state judgment came to their state to collect on that judgment, the defendant could stop the plaintiff until the appeal was completed by posting the bond required in that state. These states were worried that the tobacco settlement proceeds might be threatened before an appeal could ever be completed, and they were also worried about the jobs that could be lost in their states if the tobacco companies were put out of business before they could appeal.

In 2001 Louisiana, Nevada, Oklahoma and West Virginia passed legislation that limited the size of the appeal bond that signatories of the Master Settlement Agreement would have to post to appeal a damages verdict of any kind, be it compensatory or punitive damages.⁶ Again,

⁴ Fla. Stat. § 768.733 (2002).

⁵ Florida (Fla. Stat. § 768.733), Georgia (Ga. Code Ann. § 5-6-46), Kentucky (Ky. Rev. Stat. Ann. § 205.1), North Carolina (N.C. Gen. Stat. § 1-289), and Virginia (Va. Code Ann. § 8.01-676.1 J.) each passed legislation in 2000.

⁶ Louisiana (La. Rev. Stat. Ann. § 98.6), Nevada (Nev. Rev. Stat. § 20.035.1); Oklahoma (Okla. Stat. Ann. tit. 12 § 990.4 B.5); and West Virginia (W. Va. Code § 4-11A-4).

a primary motivating factor for these states was their financial interest in ensuring that settlement proceeds under the state tobacco settlement were not threatened because of an inability of the tobacco companies to appeal a judgment. The Oklahoma appeal bond cap was \$25 million; the caps in Nevada and Louisiana were \$50 million; and West Virginia's cap was \$100 million for punitive damages and \$100 million for compensatory damages.

As these states were doing their work, the Mississippi Supreme Court amended its court rules, which govern appeal bonds in that state, to limit the bond that a defendant of any kind would have to post to stay a punitive damages judgment while it appeals.⁷ The amount of the limit in Mississippi was the lower of \$100 million, 125 percent of the punitive damages award, or 10 percent of the defendant's net worth.

In 2002 three states enacted limits on the size of appeal bonds. Ohio adopted a \$50 million limit,⁸ while Indiana and Michigan⁹ adopted a \$25 million limit. These bond limitations were not tied in any way to tobacco companies or to the MSA. Rather, in each state, the limit that was adopted applies to damages of all kinds, including the costs a defendant might incur to pay for equitable relief, and it applies to any kind of defendant.

In 2003 Arkansas, California, Colorado, Idaho, Kansas, Missouri, New Jersey, Oregon, Pennsylvania, South Dakota, Tennessee, Texas and Wisconsin adopted appeal bond caps.¹⁰ The Arkansas, Colorado, Tennessee, Texas and Wisconsin statutes apply to all litigants in civil litigation regardless of legal theory. The other states' laws are more limited in scope. Idaho's \$1 million cap, for example, applies to all litigants in civil litigation but covers only the punitive damages portion of the appeal. The Kansas cap applies to appellants who are signatories or successors of signatories to the tobacco Master Settlement Agreement; California, Missouri, New Jersey, Oregon and Pennsylvania extend this application to also include affiliates of signatories to the tobacco Master Settlement Agreement. The amounts of the caps enacted in these states range from \$25 million to \$100 million.¹¹ In addition, the South Dakota Supreme Court amended its court rules to limit the bond required to stay the execution of a judgment during an appeal to \$25 million.¹² Lastly, North Carolina and Florida broadened their existing

⁷ Mississippi Rule of Appellate Procedure 8.

⁸ Ohio Rev. Code Ann. § 2505.09 (2002).

⁹ Ind. Code Ann. § 34-49-5-3 (2002); Mich. Comp. Laws. Ann. § 600.2607(1) (2002).

¹⁰ Ark. Code § 16-55-214 (2003); Cal. Health & Safety Code § 104558 (2003); Colo. Rev. Stat. 13-16-125 (2003); Idaho Comp. Stat. Ann. § 13-202 (2003); 2003 Kan. Sess. Laws 110 (not yet codified); Mo. Rev. Stat. § 512.085 (2003); 2003 N.J. Laws 195 (not yet codified); 2003 Or. Laws 804 (not yet codified); 2003 Penn. Laws 55 (not yet codified); Tenn. Code § 27-1-124 (2003); Tex. Civ. Proc. & Rem. Code § 52.006(b) (2003); 2003 Wis. Laws 105 (not yet codified).

¹¹ Arkansas, Colorado, Kansas and Texas agreed to cap their appeal bonds at \$25 million, while Missouri and New Jersey set their caps at \$50 million. Tennessee set its cap at \$75 million. The Pennsylvania and Wisconsin bills capped bonds at \$100 million, and California and Oregon each set a cap of \$150 million.

¹² S.D.C.L. 15-26A-26.

statutes in 2003 to limit the appeal bond for money judgments under any legal theory, not just punitive damages.

Like these other states, the Alaska legislature should act to solve the problems caused by high appeal bonds immediately. While some states have passed broader measures that apply to any defendant in any kind of litigation, a bill limiting the appeal bond in cases involving signatories, successors of signatories, or affiliates of signatories to the MSA would be sufficient to solve the most problematic aspects of Alaska's current law. The legislature, in its role as the protector of the state's finances, has the authority to adopt such a measure,¹³ which is important not only for Alaska, but also for all other states who are relying on the continued stream of tobacco revenues for vital public projects.

C. The Appeal Bond Limitation Laws Provide No Substantive Legal Protections To A Tobacco Company In Litigation, But They Do Protect Plaintiffs

A key point for each of the states discussed above is that, in limiting the bond, none of them changed their substantive law in any way. Bond limitation laws only ensure that defendants can fully exercise their right to an appeal without going into bankruptcy or being forced to settle with the plaintiffs. So, for example, had the tobacco companies lost their appeal in the Engle case in Florida, they would have had to pay the full amount of the judgment. Nothing in the bond limitation statute passed in Florida would have prevented that. In addition, virtually all of the laws passed in each state allow a judge to require a much larger bond if it is shown that a defendant is dissipating its assets to avoid a judgment. Thus, plaintiffs are protected under these bills in two ways: because the amount of the appeal bond even as limited is large in and of itself, and because in a case where the defendant is misbehaving, the court may require a larger bond.

Alaska should adopt legislation limiting the size of appeal bonds that MSA signatories, successors and affiliates must post to \$25 million, regardless of the value of the judgment. Plaintiffs would be protected by the large but limited bond that is required and by the provision in the bill allowing a judge to require a higher bond if a defendant is improperly dissipating assets. A defendant's right to appeal would also be fully protected, by mandating a large but not impossibly high appeal bond. And Alaska and the other states would be protected, by ensuring

¹³ Although Article IV, section 15 of the Alaska constitution gives the Supreme Court primary authority over rules that affect court procedure, the Court upholds legislative enactments if the main subject of the statute is substantive with only an incidental effect on procedure. See, e.g., Ware v. City of Anchorage, 439 P.2d 793, 794 (Alaska 1968) (upholding statute requiring a non-resident plaintiff to provide security for the costs of litigation). An important part of the inquiry into whether the statute is substantive or procedural is "whether the rule or statute under scrutiny is more closely related to the concerns that led to the establishment of judicial rule making power, or to matters of public policy properly within the sphere of elected representatives." Nolan v. Sea Airmotive, 627 P.2d 1035, 1042-43 (Alaska 1987). Since the purpose of the appeal bond cap is to "secure and protect the monies to be received as a result of the Master Settlement Agreement," which is a substantive goal clearly within the purview of elected representatives, the legislature has the power to enact this statute.

that the MSA signatories can fully appeal an adverse judgment, thereby avoiding the necessity of seeking a stay in the bankruptcy court. This, in turn, will benefit Alaska and its citizens by preserving the uninterrupted flow of tobacco settlement revenues.

ENACTED APPEAL BOND LEGISLATION

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
California	A 1752	8/9/2003	Master Settlement Agreement signatories, successors, and affiliates	The lesser of 100% of the judgment or \$150,000,000	Applies to all judgments in civil litigation regardless of legal theory
Colorado	HB 1366	5/20/2003	All litigants	\$25,000,000	Applies to all judgments in civil litigation regardless of legal theory
Florida	HB 1721	5/9/2000	All litigants in class actions	\$100,000,000	As passed in 2000, applied to judgments for non-compensatory damages. Broadened in 2003 to apply to all money judgments under any legal theory
	SB 2826	6/10/2003	Master Settlement Agreement signatories, successors, and affiliates	\$100,000,000	
Georgia	HB 1346	3/30/2000	All litigants	\$25,000,000	Applies to punitive damages only
Idaho	HB 92	3/26/2003	All litigants	\$1,000,000	Applies to punitive damages only
Indiana	HB 1204	3/14/2002	All litigants	\$25,000,000	Applies to all judgments in civil litigation regardless of legal theory
Kansas	SB 64	4/21/2003	Master Settlement Agreement signatories and their successors	\$25,000,000	Applies to all judgments in civil litigation regardless of legal theory
Kentucky	SB 316	3/29/2000	All litigants	\$100,000,000	Applies to punitive damages portion of a judgment

Notes

* Created by court rule rather than legislation.