

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11170 SENATE JUDICIARY

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
Louisiana	HB 1807	6/25/2001	As passed in 2001, covered Master Settlement Agreement signatories only; broadened in 2003 to include "affiliates"	\$50,000,000	Applies to all money judgments
	HB 1819	7/2/2003			
Michigan	HB 5151	5/8/2002	All litigants	\$25,000,000 plus COLA every 5th year	Applies to all judgments in civil litigation
Mississippi	Rule 8	4/26/2001	All litigants	\$100,000,000	Applies to all litigation subject to court rule
Missouri	SB 242	7/10/03	Master Settlement Agreement signatories, successors, and affiliates	\$50,000,000	Applies to all forms of judgments in civil litigation
Nevada	AB 576	5/29/2001	Master Settlement Agreement signatories	\$50,000,000	Applies to all forms of judgments in civil litigation
New Jersey	SB 2738	11/21/2003	Master Settlement Agreement signatories, successors, and affiliates	\$50,000,000	Applies to all forms of judgments in civil litigation
North Carolina	SB 2	4/5/2000	All litigants	\$25,000,000	As passed in 2002, applied to judgments for non-compensatory damages. Broadened in 2003 to apply to all money judgments under any legal theory
	SB 784	4/23/2003	All litigants		
Ohio	SB 161	3/28/2002	All litigants	\$50,000,000	Applies to all forms of judgments in civil litigation
Oklahoma	SB 372	4/10/2001	Master Settlement Agreement signatories	\$25,000,000	As passed in 2001, applied to all forms of judgments in civil litigation involving MSA signatories

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
Oregon	HB 2368	9/24/2003	Master Settlement Agreement signatories, successors, and affiliates	\$150,000,000	Applies to all judgments in civil litigation regardless of legal theory
Pennsylvania	HB 1718	12/30/2004	Master Settlement Agreement signatories, successors, and affiliates	\$100,000,000	Applies to all judgments in civil litigation regardless of legal theory
South Dakota	Amend. to Sup. Ct. R. 15-26A-26	9/29/2003	All litigants	\$25,000,000	Applies to money judgments
Tennessee	SB 1687	6/5/2003	All litigants	\$75,000,000	Applies to all forms of judgments in civil litigation
Texas	HB 4	6/11/2003	All litigants	The lesser of 50% of the judgment debtor's net worth or \$25,000,000	Applies to money judgments
Virginia	HB 1547	3/10/2000	All litigants	\$25,000,000	Applies to punitive damages portion of a judgment
West Virginia	SB 661	5/2/2001	All Master Settlement Agreement signatories	\$100,000,000 for all portions of a judgment other punitive damages; \$100,000,000 for the punitive damages portion of a judgment	Applies to all civil litigation and provides that consolidated or aggregated cases shall be treated as a single judgment for purposes of the appeal bond limits
Wisconsin	AB 548	12/12/2003	All litigants	\$100,000,000	Applies to all judgments in civil litigation regardless of legal theory

STATES THAT DO NOT REQUIRE BONDS

State	Governing Rule
Connecticut	Proceedings to stay noncriminal judgments shall be stayed automatically until the final determination of the cause. Conn. R. App. P. § 61-11.
Maine	The taking of an appeal operates as a stay of execution upon the judgment, and no supersedeas bond or other security shall be required. Me. R. Civ. P. 62.
Massachusetts	The taking of an appeal from a judgment shall stay execution upon the judgment during the pendency of the appeal. Mass. R. Civ. P. 62(d).
New Hampshire	No execution of a judgment shall issue until the expiration of the appeal period. N.H. Rev. Stat. Ann. § 527:1.
Vermont	The taking of an appeal operates to stay execution of the judgment during the pendency of the appeal; no supersedeas bond or other security is required. Vt. R. Civ. P. 62(d)(1).

MISA Signed NOVEMBER 1998

Annual Payments to Each State

Year	1998	1999	2000	2001	2002	2003	2004 to 2007	2008 to 2017	2018 to 2025	Total
Amount	\$2,400,000,000.00	\$0.00	\$6,411,750,000.00	\$6,923,660,000.00	\$8,313,294,800.00	\$8,391,971,144.00	\$7,004,000,000.00	\$7,143,000,000.00	\$8,003,999,997.00	\$195,918,675,920.00
Alabama	\$38,787,139.87	\$0.00	\$103,622,268.35	\$111,895,403.67	\$134,353,720.06	\$135,625,232.71	\$113,193,803.17	\$115,440,225.02	\$129,355,111.40	\$3,166,302,118.81
Alaska	\$8,194,049.54	\$0.00	\$21,890,915.46	\$23,638,672.09	\$28,383,145.58	\$28,651,761.36	\$23,912,967.90	\$24,387,539.93	\$27,327,155.19	\$668,903,056.50
Arizona	\$35,373,226.92	\$0.00	\$94,501,786.55	\$102,046,748.46	\$122,528,359.76	\$123,687,958.17	\$103,230,867.24	\$105,279,566.63	\$117,969,711.74	\$2,887,614,909.02
Arkansas	\$19,873,586.24	\$0.00	\$53,093,527.74	\$57,332,480.87	\$68,839,575.47	\$69,491,067.60	\$57,997,749.17	\$59,148,761.04	\$66,278,410.08	\$1,622,336,125.69
California	\$306,334,930.78	\$0.00	\$818,392,913.50	\$883,732,877.84	\$1,061,105,244.62	\$1,071,147,458.11	\$893,987,439.65	\$911,729,337.72	\$1,021,626,993.76	\$25,006,972,510.74
Colorado	\$32,900,674.16	\$0.00	\$87,896,207.30	\$94,913,784.01	\$113,963,751.40	\$115,042,295.05	\$96,015,134.08	\$97,920,631.45	\$109,723,748.27	\$2,685,773,548.89
Connecticut	\$44,556,896.25	\$0.00	\$119,036,533.13	\$128,540,333.44	\$154,339,422.45	\$155,800,078.15	\$130,031,875.55	\$132,612,462.45	\$148,597,248.93	\$3,637,303,381.55
Delaware	\$9,491,268.84	\$0.00	\$25,356,517.92	\$27,380,966.02	\$32,876,548.30	\$33,187,689.27	\$27,698,686.24	\$28,248,388.89	\$31,653,381.58	\$774,798,676.89
D.C.	\$14,570,838.84	\$0.00	\$38,926,906.65	\$42,034,805.86	\$50,471,532.83	\$50,949,191.30	\$42,522,564.69	\$43,366,459.11	\$48,593,747.53	\$1,189,458,105.56
Florida	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Georgia	\$58,906,980.41	\$0.00	\$157,373,679.86	\$169,938,293.33	\$204,046,289.14	\$205,977,366.58	\$171,910,204.50	\$175,321,900.45	\$196,454,779.60	\$4,808,740,668.60
Hawaii	\$14,441,759.81	\$0.00	\$38,590,078.62	\$41,671,085.70	\$50,034,811.08	\$50,508,336.45	\$42,154,624.04	\$42,991,216.38	\$48,173,273.94	\$1,179,165,923.07
Idaho	\$8,718,317.14	\$0.00	\$23,291,529.13	\$25,151,109.85	\$30,199,141.89	\$30,484,944.11	\$25,442,955.52	\$25,947,891.39	\$29,075,587.65	\$711,700,479.23
Illinois	\$111,701,933.67	\$0.00	\$298,418,697.16	\$322,244,254.19	\$386,921,293.46	\$390,583,085.03	\$325,983,476.42	\$332,452,880.08	\$373,525,948.64	\$9,118,539,559.10
Indiana	\$48,955,278.39	\$0.00	\$130,787,085.94	\$141,229,042.84	\$169,574,858.88	\$171,179,701.52	\$142,867,820.78	\$145,703,147.32	\$163,265,853.39	\$3,996,355,551.01
Iowa	\$20,872,006.95	\$0.00	\$55,760,871.07	\$60,212,783.18	\$72,297,977.85	\$72,982,200.02	\$60,911,473.61	\$62,120,310.68	\$69,608,143.15	\$1,703,839,985.56
Kansas	\$20,008,109.65	\$0.00	\$53,452,915.44	\$57,720,561.87	\$69,305,547.47	\$69,961,449.52	\$58,390,333.34	\$59,549,136.35	\$66,727,045.67	\$1,633,317,646.19
Kentucky	\$42,267,806.11	\$0.00	\$112,921,085.75	\$121,936,632.68	\$146,410,305.30	\$147,795,920.49	\$123,351,547.49	\$125,799,557.93	\$140,963,133.32	\$3,450,438,586.10
Louisiana	\$54,128,474.21	\$0.00	\$144,607,601.88	\$156,152,979.89	\$187,494,151.32	\$189,268,580.68	\$157,964,930.57	\$161,099,871.36	\$180,518,461.42	\$4,418,657,915.22
Maine	\$18,464,411.55	\$0.00	\$49,328,829.47	\$53,267,211.52	\$63,958,373.54	\$64,563,670.37	\$53,885,307.70	\$54,954,704.87	\$61,578,812.49	\$1,507,301,275.81
Maryland	\$54,250,967.50	\$0.00	\$144,934,850.37	\$156,506,355.69	\$187,918,452.52	\$189,696,897.43	\$158,322,406.83	\$161,464,442.03	\$180,926,976.56	\$4,428,657,383.58
Mass.	\$96,935,496.43	\$0.00	\$258,969,237.19	\$279,645,174.68	\$335,772,232.68	\$338,949,953.70	\$282,890,090.42	\$288,504,271.26	\$323,279,880.48	\$7,913,114,212.77
Michigan	\$104,446,741.41	\$0.00	\$279,035,997.59	\$301,314,052.34	\$361,790,230.09	\$365,214,183.32	\$304,810,407.01	\$310,859,614.11	\$348,329,882.46	\$8,526,278,033.60
Minnesota	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Mississippi	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Missouri	\$54,590,425.53	\$0.00	\$145,841,733.70	\$157,485,644.00	\$189,094,291.94	\$190,883,864.90	\$159,313,058.50	\$162,474,752.97	\$182,059,069.06	\$4,456,368,286.30
Montana	\$10,194,218.72	\$0.00	\$27,234,492.45	\$29,408,876.82	\$35,311,477.28	\$35,645,662.22	\$29,750,128.30	\$30,340,513.46	\$33,997,719.42	\$832,182,430.63
Nebraska	\$14,279,599.86	\$0.00	\$38,148,843.51	\$41,194,622.66	\$49,462,718.04	\$49,930,829.17	\$41,672,632.27	\$42,499,659.09	\$47,622,465.53	\$1,165,683,457.48
Nevada	\$14,638,443.42	\$0.00	\$39,107,516.49	\$42,229,835.47	\$50,705,706.47	\$51,185,581.14	\$42,719,857.37	\$43,567,667.21	\$48,819,208.77	\$1,194,976,854.76
New Hampshire	\$15,982,416.92	\$0.00	\$42,698,025.70	\$46,107,008.63	\$55,361,059.77	\$55,884,992.33	\$46,642,020.04	\$47,567,668.35	\$53,391,360.40	\$1,304,689,150.27
New Jersey	\$92,807,910.83	\$0.00	\$247,942,134.27	\$267,737,674.95	\$321,474,801.04	\$324,517,212.33	\$270,844,419.77	\$276,219,544.60	\$309,514,382.50	\$7,576,167,918.47
New Mexico	\$14,313,352.87	\$0.00	\$38,239,016.77	\$41,291,995.30	\$49,579,634.15	\$50,048,851.76	\$41,771,134.78	\$42,690,116.47	\$47,735,031.79	\$1,168,438,809.05
New York	\$306,288,745.07	\$0.00	\$818,269,525.50	\$883,599,638.62	\$1,060,945,263.21	\$1,070,985,962.65	\$893,852,654.37	\$911,591,877.52	\$1,021,472,964.43	\$25,003,202,243.12
North Carolina	\$55,974,840.09	\$0.00	\$149,540,283.73	\$161,479,483.90	\$193,889,727.95	\$195,724,684.52	\$163,353,241.67	\$165,595,117.83	\$186,676,091.64	\$4,569,381,898.24
North Dakota	\$8,784,330.94	\$0.00	\$23,467,889.12	\$25,341,550.30	\$30,427,805.29	\$30,715,771.56	\$25,635,605.78	\$26,144,364.95	\$29,295,743.66	\$717,089,369.09
Ohio	\$120,900,234.58	\$0.00	\$322,992,532.93	\$348,780,049.22	\$418,783,038.09	\$422,746,366.61	\$352,827,184.57	\$359,829,323.15	\$403,202,282.16	\$9,869,422,418.51
Oklahoma	\$24,867,287.65	\$0.00	\$66,434,513.15	\$71,738,602.00	\$86,137,122.12	\$86,952,316.82	\$72,571,034.45	\$74,011,264.86	\$82,932,404.27	\$2,079,985,862.29
Oregon	\$27,543,797.82	\$0.00	\$73,584,977.37	\$79,459,954.68	\$95,408,213.01	\$96,311,148.56	\$80,381,983.32	\$81,977,228.27	\$91,858,565.71	\$2,248,476,833.11
Penn.	\$137,924,610.41	\$0.00	\$368,474,217.00	\$397,892,961.71	\$477,753,311.05	\$482,274,729.42	\$402,509,988.05	\$410,498,121.73	\$459,978,575.54	\$11,259,169,603.46
Rhode Island	\$17,253,727.23	\$0.00	\$46,094,410.65	\$49,774,558.78	\$59,764,717.02	\$60,330,325.43	\$50,352,127.30	\$51,351,405.67	\$57,541,180.29	\$1,408,469,747.28
South Carolina	\$28,232,446.25	\$0.00	\$75,424,744.69	\$81,446,607.84	\$97,793,603.59	\$98,719,114.28	\$82,391,688.98	\$84,026,818.16	\$94,155,208.21	\$2,304,693,119.82
South Dakota	\$8,374,699.41	\$0.00	\$22,373,532.90	\$24,159,821.39	\$29,008,893.79	\$29,283,431.59	\$24,440,164.46	\$24,925,199.13	\$27,929,622.54	\$683,650,008.54
Tennessee	\$58,581,467.29	\$0.00	\$156,504,051.21	\$168,599,234.09	\$202,918,753.08	\$204,839,159.61	\$170,960,248.71	\$174,353,092.02	\$195,369,193.34	\$4,782,168,127.09
Texas	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Utah	\$10,677,285.47	\$0.00	\$28,525,035.47	\$30,802,455.97	\$36,984,759.08	\$37,334,779.83	\$31,159,878.10	\$31,778,270.89	\$35,608,747.04	\$871,616,513.42
Vermont	\$9,868,441.49	\$0.00	\$26,364,158.22	\$28,469,055.67	\$34,183,026.39	\$34,506,531.76	\$28,799,401.75	\$29,370,948.99	\$32,911,252.36	\$805,588,329.25
Virginia	\$49,073,882.70	\$0.00	\$131,103,944.75	\$141,571,199.45	\$169,985,689.11	\$171,594,419.81	\$143,213,947.68	\$146,056,143.38	\$163,661,398.74	\$4,006,037,550.26
Washington	\$49,278,196.65	\$0.00	\$131,649,782.25	\$142,160,616.27	\$170,693,406.67	\$172,308,835.15	\$143,710,203.90	\$146,664,232.79	\$164,342,785.78	\$4,022,716,266.79
West Virginia	\$21,275,048.98	\$0.00	\$56,837,623.03	\$61,375,502.33	\$73,694,064.18	\$74,391,498.79	\$62,087,684.60	\$63,319,864.52	\$70,952,288.31	\$1,736,741,427.33
Wisconsin	\$49,728,936.59	\$0.00	\$132,853,962.15	\$143,460,937.12	\$172,254,712.48	\$173,884,917.03	\$145,125,613.28	\$148,005,747.52	\$165,846,003.46	\$4,059,511,421.32

Wyoming	\$5,960,276.82	\$0.00	\$15,923,252.04	\$17,194,554.25	\$20,645,640.96	\$20,841,029.62	\$17,394,074.52	\$17,739,273.88	\$19,877,523.19	\$486,553,976.10
American Samoa	\$365,208.62	\$0.00	\$975,677.65	\$1,053,575.12	\$1,265,036.21	\$1,277,008.41	\$1,065,800.48	\$1,086,952.15	\$1,217,970.74	\$29,812,995.31
N. Marianas	\$202,503.22	\$0.00	\$541,000.00	\$584,193.09	\$701,445.39	\$708,083.81	\$590,971.89	\$602,700.20	\$675,348.22	\$16,530,900.80
Guam	\$526,489.51	\$0.00	\$1,406,549.63	\$1,518,847.65	\$1,823,692.71	\$1,840,951.99	\$1,536,471.89	\$1,566,964.41	\$1,755,842.52	\$42,978,803.27
US Virgin Island	\$416,623.09	\$0.00	\$1,113,034.64	\$1,201,896.51	\$1,443,129.42	\$1,456,787.08	\$1,215,845.06	\$1,239,974.49	\$1,389,438.02	\$34,010,102.11
Puerto Rico	\$26,910,657.33	\$0.00	\$71,893,502.96	\$77,633,434.04	\$93,215,094.84	\$94,097,274.89	\$78,534,268.30	\$80,092,843.87	\$89,747,042.15	\$2,196,791,813.07
	\$2,400,000,000.00	\$0.00	\$6,411,750,000.00	\$6,923,660,000.00	\$8,313,294,800.00	\$8,391,971,144.00	\$7,004,000,000.00	\$7,143,000,000.00	\$8,003,999,997.00	\$195,918,675,920.00

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superoneratio

superoneratio (s[y]oo-pär-on-ä-ray-shee-oh). [Law Latin] *Hist.* 1. The act or practice of surcharging a common. 2. The placement of more cattle on a common than is allowed; overstocking.

superoneratione pasturae. See DE SUPERONERATIONE PASTURAE.

superplusagium (s[y]oo-pär-plä-say-jee-äm), *n.* [Law Latin] *Hist.* A surplus; a remainder.

super praerogativa regis (s[y]oo-pär pri-rog-ä-ti-vä ree-jis), *n.* [Law Latin] *Hist.* A writ against the king's tenant's widow for marrying without royal permission.

superpriority. *Bankruptcy*. The special priority status granted by the court to a creditor for extending credit to a debtor or trustee that cannot obtain unsecured credit from a willing lender. • This priority may be either an administrative claim outranking other administrative claims or, if certain statutory requirements are met, a security interest in property. 11 USCA § 364(c)(1).

supersede, *vb.* 1. To annul, make void, or repeal by taking the place of <the 1996 statute supersedes the 1989 act>. 2. To invoke or make applicable the right of supersedeas against (an award of damages) <what is the amount of the bond necessary to supersede the judgment against her?>. — *supersession* (for sense 1), *n.*

supersedeas (soo-pär-seed-ee-äs), *n.* [Latin "you shall desist"] A writ or bond that suspends a judgment creditor's power to levy execution, usu. pending appeal. — Also termed *writ of supersedeas*. Pl. *supersedeases* (soo-pär-see-dee-äs-iz).

supersedeas bond. See BOND (2).

superseding cause. See CAUSE (1).

super statuto (s[y]oo-pär stä-t[y]oo-toh), *n.* [Law Latin] *Hist.* A writ against tenants-in-chief who transferred their land without the king's permission in violation of the Statute of Westminster II, chs. 12 & 13.

super statuto de articulis cleri (s[y]oo-pär stä-t[y]oo-toh dee ähr-tik-yä-lis klee-rī), *n.* [Law Latin] *Hist.* A writ against a sheriff who unlawfully distrains goods.

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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 \$100,000,000, regardless of the
3 value of the judgment.

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

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

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

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

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

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

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

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

SB

308

Senator Hollis French


Capitol Room 504
465-3892
465-6595 fax



MEMORANDUM

Date: March 11, 2004

To: Senator Ralph Seekins, Chair
Senate Judiciary Committee

From: Senator Hollis French 

RE: Request for Hearing on SB 308 – “An Act increasing the duration of certain provisions of domestic violence protective orders from six months to one year”

This is a request that you schedule a Judiciary Committee hearing on SB 308 – “An Act increasing the duration of certain provisions of domestic violence protective orders from six months to one year” at the earliest possible time. The bill passed out of the State Affairs Committee today and has a further referral to the Judiciary Committee.

I have attached a copy of the bill and a sponsor statement for your information. .
Additional materials will be made available to the committee aide prior to the meeting.

Attachments

ALASKA STATE LEGISLATURE

Senate
Judiciary
Committee
•
Senate
Labor & Commerce
Committee
•
Senate
Administrative
Regulation Review
Committee



While in Session
State Capitol
Juneau, Alaska 99801
(907) 465-3892
T (866) 465-3892
Fax: (907) 465-6595

While in Anchorage
716 West 4th Avenue
Anchorage, Alaska 99501
(907) 269-0234
Fax: (907) 269-0238

SENATOR HOLLIS FRENCH

Senator_Hollis_French@legis.state.ak.us
www.akdemocrats.org

SPONSOR STATEMENT

SB 308 – Increasing the duration of certain provisions of domestic violence protective orders from six months to one year

SB 308 addresses the duration of long-term domestic violence protective orders. Currently, six months is the practical limit on a long-term domestic violence protective order – otherwise known as a DVPO. SB 308 doubles the length of DVPOs to one year. Short-term, or *ex parte*, protective orders are not affected by this bill, and they would continue to be granted for a maximum of twenty days under current law.

The two parties to a DVPO are the petitioner, who is the person asking for the court's protection, and the respondent. Long-term DVPOs are only granted by a judge after formal notice to both parties and a hearing. In order to grant a DVPO, the judge must make a finding that the respondent has committed an act of domestic violence against the petitioner.

There are several benefits to this proposal. Of primary importance is that extending the time frame of a DVPO allows the petitioner a longer period of protection without having to go back to court to confront the respondent. A second benefit of extending the term of the protective order is that court system resources will be conserved. In many instances, petitioners are forced to return to court for a second order because the respondent's behavior has not changed. Granting the DVPOs for one year will decrease the need for repeat court proceedings.

Alaska continues to struggle with high rates of domestic violence, and extending the length of the domestic violence protective order is one way to address that problem. Currently, only five states have shorter terms for DVPOs than Alaska's. The vast majority of states, however, give judges the authority to impose DVPOs

of up to a year, or even longer, which has been shown to have a positive effect on the numbers of repeat offenses and requests for additional protective orders.

To look at some comparative statistics -- currently in Anchorage there are some 3,000 annual court filings for DVPOs. By comparison, Miami-Dade County, Florida, with a population of over two million, has only 7,000 filings per year. The lower ratio in Miami-Dade can be explained in part by the fact that in Florida there is no upper time limit on DVPOs.

Please join me in taking another step in our progress toward eliminating the scourge of domestic violence from our community and support SB 308.

March 11, 2004



**Alaska State Legislature
House and Senate
Democrats**

WEB: <http://www.akdemocrats.org>
CONTACT: Jordan Marshall, Press Secretary
PHONE: (907) 465-3842 or 321-3682
FAX: (907) 465-5125
EMAIL: press@akdemocrats.org

FOR IMMEDIATE RELEASE • March 12, 2004

French Bill to Aid Domestic Violence Victims

JUNEAU – Victims of domestic violence would be protected for a longer time if Senate Bill 308 were adopted by the legislature. Introduced by Senator Hollis French (D-Anchorage), SB 308 doubles the duration of a domestic violence protective order from six months to one year. The bill passed out of the Senate State Affairs Committee yesterday and is on its way to Senate Judiciary.

“Domestic violence protective orders, which are issued by a judge after a formal hearing, are seen by many professionals as one of the best ways to help protect victims,” said Senator French, a former prosecutor. “During my career I have prosecuted many cases of domestic violence and assault. I know that protective orders are not the sole answer to the scourge of domestic violence, but anything we can do to provide some extra assurance to victims is valuable.”

Short-term, or *ex parte*, protective orders are not affected by the bill, and they would continue to be granted for a maximum of twenty days under current law.

A recent study of the Anchorage domestic violence system by Emily J. Sack supported the concept proposed by French. “In addition,” says the report, “the length of a final protective order should be extended from six months to one year. A further extension would increase protection for victims, and eliminate the need for frequent reapplication for orders, reducing drain on court and clerk resources.”

Senator French notes that Alaska’s current six-month order is shorter than in most other states: domestic violence protective orders in 41 states are longer by statute. The one-year order proposed in SB 308 is, he said, a reasonable compromise and is the length adopted by 18 other states.

For information, call Senator Hollis French toll-free at (866) 465-3892.

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Putting Alaskans First • Moving Alaska Forward 2004

Sen. Bettye Davis, Sen. Johnny Ellis, Sen. Kim Elton, Sen. Lyman Hofman, Sen. Hollis French, Sen. Gretchen Guess, Sen. Georgianna Lincoln, Sen. Donny Olson, Rep. Einar Berkowitz, Rep. Sharon Cissna, Rep. Harry Crawford, Rep. Eric Croit, Rep. Les Gara, Rep. Max Gruenberg, Rep. David Guttenberg, Rep. Reggie Joule, Rep. Mary Kapsner, Rep. Beth Kerttula, Rep. Albert Kookesh, Rep. Carl Moses

What are the time limits on civil protection orders in each state?*

*Does not include extensions in all instances.

Questions, requests for technical assistance or requests for additional copies of this document should be directed to: BWJP Civil Justice Center @ 1-800-903-0111, ext. 2

Updated as of 4/4/2003

Time Limit	State	State Code Provision
<i>3 months (2 states)</i>	Idaho	IDAHO CODE § 39-6306(5) (2002): Not less than three months; may be renewed for one year terms.
	Wyoming	WYO. STAT. ANN. § 35-21-106(b) (2002): Not to exceed three months; may be extended for good cause for 3 month terms.
<i>90 – 180 days</i>	West Virginia	W. VA. CODE § 48-27-505 (2003): 90 days or 180 days at the discretion of the court.
<i>150 days</i>	Utah	UTAH CODE ANN. § 30-6-4.2(6)(a) (2003): 150 days unless court indicates on the record the reason for setting a date beyond the 150 days.
<i>182 days</i>	Michigan	MICH. COMP. LAWS § 600.2950 (13) (2002): not less than 182 days.

Time Limit	State	State Code Provision
<p data-bbox="389 444 508 515"><i>6 months (4 states)</i></p>	Alaska	ALASKA STAT. § 18.66.100c(2) (2003): 6 months or earlier. An order that prohibits respondent from threatening to commit or committing domestic violence, stalking, or harassment is effective until further order of the court.
	Connecticut	CONN. GEN. STAT. § 46b-15(d) (2003): Not to exceed six months, can be extended by court.
	Georgia	GA. CODE ANN. § 19-13-4(c) (2002): No more than six months, but can be converted to a permanent order upon the motion of a petitioner and notice to the respondent and after a hearing.
	New Mexico	N.M. STAT. ANN. § 40-13-6(B) (2002): Not to exceed six months. <u>May be extended in six month increments upon motion by petitioner.</u>

Time Limit	State	State Code Provision
<i>One year (18 states)</i>	Alabama	ALA. CODE § 30-5-7(e)(1) (2003): One year, unless a shorter or longer period of time is expressly ordered by the court.
	Arizona	ARIZ. REV. STAT. § 13-3602(K) (2003): One year after service on defendant.
	Delaware	DEL. CODE ANN. tit. 10, § 1045 (b) (2002): Not to exceed one year, can be extended for up to 6 month term.
	District of Columbia	D.C. CODE ANN. § 16-1005(d) (2003): One year; can be extended for good cause shown.
	Iowa	IOWA CODE § 236.5-(c) (2003): Not to exceed one year. Extensions are not limited.
	Kansas	KAN. STAT. ANN. § 60-3107(e) (2002): Not to exceed one year; can be extended for one additional year.
	Maryland	MD. CODE ANN., FAM. LAW § 4-506(g) (2002): Not to exceed 12 months.
	Massachusetts	MASS. GEN. LAWS. ch. 209A, § 3(i) (2003): Not to exceed one year. Extensions possible.
	Minnesota	MINN. STAT. § 518B.01(6)(b) (2002): One year, except when the court determines that a longer fixed period is appropriate.
	Missouri	MO. REV. STAT. § 455.040(1) (2003): 180 days to one year. Extensions possible for 180 days to 1 year.
	Nebraska	NEB. REV. STAT. § 42-924(3) (2002): One year.
	Nevada	NEV. REV. STAT. § 33.080(3) (2002): Not to exceed one year.
	New Hampshire	N.H. REV. STAT. ANN. § 173-B:5(VI): Not to exceed one year. Extensions possible.

Time Limit	State	State Code Provision
<i>One year continued (18 States)</i>	New York	N.Y. FAM. CT. ACT § 842 (2003): Not to exceed one year. Up to three years if aggravating circumstances exist.
	North Carolina	N.C. GEN. STAT. § 50B-3(b) (2003): Not to exceed one year. Extensions possible for 1 year terms.
	Oregon	OR. REV. STAT. § 107.718- <u>(1)</u> (2001): One year.
	South Carolina	S.C. CODE ANN. § 20-4-70(A) (2002): Not less than 6 months nor more than one year. Extensions possible.
	Tennessee	TENN. CODE ANN. § 36-3-608(a) (2002): Not to exceed one year.

Time Limit	State	State Code Provision
<i>1 year 6 months (2 states)</i>	Louisiana	LA. REV. STAT. ANN. § 46:2136(F) (2003): Not to exceed 18 months. Extensions possible.
	Pennsylvania	PA. STAT. ANN. tit. 23, § 6108(d) (2002): Not to exceed 18 months. Extensions possible.
<i>Two years (6 states)</i>	Arkansas	ARK. CODE ANN. § 9-15-205(b) (2002): not less than 90 days nor more than 2 years. Extensions possible.
	Illinois	725 ILL. COMP. STAT. 5/112A-20(b) (2003): Not to exceed 2 years. Extensions possible.
	Indiana	IND. CODE § 34-26-5-9(e) (2002): Up to 2 years after issuance, unless another date is ordered by the court.
	Maine	ME. REV. STAT. ANN. tit. 19-A, § 4007-(2) (2003): Not to exceed two years. Extensions possible.
	Texas	TEX. FAM. CODE ANN. § 85.025(a) (2002): Not to exceed two years. Extensions possible.
	Virginia	VA. CODE ANN. § 16.1-279.1-(B) (2003): Up to two years.

Time Limit	State	State Code Provision
<i>Three years (6 states)</i>	California	CAL. FAM. CODE § 6345(a) (2003): Personal conduct, stay-away, and residence exclusion orders may have a duration of not more than three years. The duration of orders for custody, visitation, support and disposition of property shall be governed by the law relating to those specific subjects. Orders may be renewed for 3 year term or be permanent.
	Kentucky	KY. REV. STAT. ANN. § 403.750(2) (2002): Not to exceed three years. Renewable for 3 year term unlimited.
	Mississippi	MISS. CODE ANN. § 93-21-17(2) (2003): Not to exceed three years.
	Oklahoma	OKLA. STAT. tit. 22, § 60.4(H) (2003): Not to exceed three years. Extension possible.
	Rhode Island	R.I. GEN. LAWS § 8-8.1-3(d) (2002): Not to exceed three years. Extension possible.
	South Dakota	S.D. CODIFIED LAWS § 25-10-1(3) (2002): 3 years or less.
<i>Four years (1 state)</i>	Wisconsin	WIS. STAT. § 813.12(4)(c)1. (2002): 4 years. <u>Extensions possible for four years if original order was for less than four years.</u>
<i>Five years (1 state)</i>	Ohio	OHIO REV. CODE ANN. § 3113.31(E)(3)(a) (Anderson 2002): No longer than five years.

Time Limit	State	State Code Provision
<i>Permanent (4 states)</i>	Colorado	COLO. REV. STAT. § 13-14-102(5) (2002): Can be permanent. Awards for temporary care and custody of any minor child are for a period of not more than 120 days.
	Montana	MONT. CODE ANN. § 40-15-204(5) (2002): Order may continue for appropriate time period as ordered by the court or be made permanent.
	New Jersey	N.J. STAT. ANN. § 2C:25-28-(p) (2002): Can be permanent.
	Washington	WASH. REV. CODE § 26.50.060(2) (2003): Civil court may grant relief for a period: not to exceed one year if respondent is restrained from contacting minor children, otherwise, with regard to other relief, court may grant relief for a fixed period or enter a permanent order of protection.
<i>No time frame specified (4 states)</i>	Florida	FLA. STAT. ch. 741.50(6)(c) (2002): Terms of order shall remain in effect until modified or dissolved.
	Hawaii	HAW. REV. STAT. § 586-5.5-(a) (2003): Fixed reasonable period as the court deems appropriate. Extensions possible.
	North Dakota	N.D. CENT. CODE § 14-07.1-02 (2002): No limits stipulated.
	Vermont	VT. STAT. ANN. tit. 15, §§ 1103(c)(5),(6), 1103(d) (2003): Orders for child support or spousal support are not to exceed three months. Fixed periods determined by court. Extensions possible.

*MUNICIPALITY OF
ANCHORAGE*

**2004
LEGISLATIVE
PROGRAM**

"Building Anchorage for the New Millennium"



**Mark Begich
Mayor**

**2004 STATE LEGISLATIVE PROGRAM
MUNICIPAL PRIORITY ISSUES
LEGISLATION**

ISSUE/PROJECT NAME: Strengthen Restraining Orders for Domestic Violence and Sexual Assault

ISSUE/IMPROVEMENT TYPE: Legislation

PRIORITY: 6

ISSUE/PROJECT DESCRIPTION:

Under current law a victim of Domestic Violence and Sexual Assault must continuously seek a Protective Order every six months, because of the current jurisdictional limit for Protective Orders. In an average court docket of twelve cases in which a victim seeks a protective order, as many as seven or eight petitioners have one or more prior filings. The impact on APD and court resources is immense. Extending the time of a Protective Order from six months to one year or eighteen months would have a positive impact on the community and public safety resources and increase victim safety.

POLITICAL SUBDIVISIONS:

Community Council: Areawide

Assembly Section: All

Legislative District(s):

House: 16-32

Senate: I-P

CONTACT PERSON: Beverly Wooley, Director, Dept of Health & Human Services,
343-6300

[Fwd: Non Constituent POMS Re:SB 308]

Subject: [Fwd: Non Constituent POMS Re:SB 308]

Date: Sat, 13 Mar 2004 14:31:38 -0900

From: Minta Montalbo <Minta_Montalbo@Legis.state.ak.us>

Organization: Alaska State Legislature

Subject: Non Constituent POMS Re:SB 308

Date: Fri, 12 Mar 2004 17:57:14 -0900

From: <POMS@legis.state.ak.us>

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

Zachary Fansler
Po Box 3287

Bethel AK, 99559

Email:

Non Constituent Supports

BILL#: SB 308 DOMESTIC VIOLENCE PROTECTIVE ORDERS

SUBJECT:

MESSAGE: Please support this bill extending the duration of long term protective orders will give victims a longer period of time to develop strategies to increase their safety and will lessen a perpetrators ability to use court dates as an avenue for further harassment. Thank you.

DISTRIBUTION: Sen. Cowdery, Sen. French, Sen. Guess, Sen. Hoffman, Sen. Stedman,
Sen. Stevens G

[Fwd: Non Constituent POMS Re:SB 308]

Subject: [Fwd: Non Constituent POMS Re:SB 308]
Date: Sat, 13 Mar 2004 14:32:09 -0900
From: Minta Montalbo <Minta_Montalbo@Legis.state.ak.us>
Organization: Alaska State Legislature

Subject: Non Constituent POMS Re:SB 308
Date: Fri, 12 Mar 2004 17:54:31 -0900
From: <POMS@legis.state.ak.us>
To: <Minta_Montalbo@legis.state.ak.us>

Annie E Farmer
Po Box 3063

Bethel AK, 99559

Email:

Non Constituent Supports

BILL#: SB 308 DOMESTIC VIOLENCE PROTECTIVE ORDERS
SUBJECT:

MESSAGE: Please support this bill extending the duration of long term protective orders will give victims a longer period of time to develop strategies to increase their safety and will lessen a perpetrators ability to use court dates as an avenue for further harassment. Thank you.

DISTRIBUTION: Sen. Cowdery, Sen. French, Sen. Guess, Sen. Hoffman, Sen. Stedman,
Sen. Stevens G

[Fwd: Non Constituent POMS Re:SB 308]

Subject: [Fwd: Non Constituent POMS Re:SB 308]
Date: Fri, 12 Mar 2004 15:12:47 -0900
From: Minta Montalbo <Minta_Montalbo@Legis.state.ak.us>
Organization: Alaska State Legislature
To: Chrystal Smith <Chrystal_Smith@legis.state.ak.us>

--

Minta Montalbo
Office of Sen. Hollis French
<http://www.akdemocrats.org>

Subject: Non Constituent POMS Re:SB 308
Date: Fri, 12 Mar 2004 10:15:42 -0900
From: <POMS@legis.state.ak.us>
To: <Minta_Montalbo@legis.state.ak.us>

Joan Adams
717 9th Ave

Fairbanks AK, 99701

Email:

Non Constituent Supports

BILL#: SB 308 DOMESTIC VIOLENCE PROTECTIVE ORDERS
SUBJECT:

MESSAGE: Extension to one year would allow perpetrators to complete a batterer's intervention program prior to reunification with their family thereby increasing victim safety (we hope). It also saves in court expenses.

DISTRIBUTION: Sen. Cowdery, Sen. French, Sen. Guess, Sen. Hoffman, Sen. Stedman,
Sen. Stevens G

[Fwd: Non Constituent POMS Re:SB 308]

Subject: [Fwd: Non Constituent POMS Re:SB 308]
Date: Thu, 11 Mar 2004 14:53:28 -0900
From: Minta Montalbo <Minta_Montalbo@Legis.state.ak.us>
Organization: Alaska State Legislature
To: Chrystal Smith <Chrystal_Smith@legis.state.ak.us>

--

Minta Montalbo
Office of Sen. Hollis French
<http://www.akdemocrats.org>

Subject: Non Constituent POMS Re:SB 308
Date: Thu, 11 Mar 2004 14:27:55 -0900
From: <POMS@legis.state.ak.us>
To: <Minta_Montalbo@legis.state.ak.us>

Sandra C Bond
700 Lathrop St
700 Lathrop St
Fairbanks AK, 99701-4146

Email:

Non Constituent Supports

BILL#: SB 308 DOMESTIC VIOLENCE PROTECTIVE ORDERS
SUBJECT:

MESSAGE: As a legal advoctae, I know that extending the time a TRO is effective from 6 months to 1 year will help them immensely. Going from hearing to hearing almost immediately places a huge burden on the victim in terms of emotional, financial and physical resources.

DISTRIBUTION: Sen. French

[Fwd: Non Constituent POMS Re:SB 308]

Subject: [Fwd: Non Constituent POMS Re:SB 308]
Date: Thu, 11 Mar 2004 16:12:23 -0900
From: Minta Montalbo <Minta_Montalbo@Legis.state.ak.us>
Organization: Alaska State Legislature
To: Chrystal Smith <Chrystal_Smith@legis.state.ak.us>

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Minta Montalbo
Office of Sen. Hollis French
<http://www.akdemocrats.org>

Subject: Non Constituent POMS Re:SB 308
Date: Thu, 11 Mar 2004 15:44:19 -0900
From: <POMS@legis.state.ak.us>
To: <Minta_Montalbo@legis.state.ak.us>

Karla J Bouray
3291 Balika Ln
3291 Balika Ln
Kodiak AK, 99615

Email:

Non Constituent Amends

BILL#: SB 308 DOMESTIC VIOLENCE PROTECTIVE ORDERS
SUBJECT:

MESSAGE: If a woman is given extra time to regain her self-esteem in safety, free from the pressure of an abuser she is less likely to go back into the same abusive situation.

DISTRIBUTION: Sen. Cowdery, Sen. French, Sen. Guess, Sen. Hoffman, Rep. Ogg,
Sen. Stedman, Sen. Stevens G

Subject: Non Constituent POMS Re:SB 308

Date: Thu, 11 Mar 2004 11:03:16 -0900

From: <POMS@legis.state.ak.us>

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

Letitia A Raub
Po Box 3663
Po Box 3663
Kodiak AK, 99615-3663

Email:

Non Constituent Supports

BILL#: SB 308 DOMESTIC VIOLENCE PROTECTIVE ORDERS

SUBJECT:

MESSAGE: Please support extending the duration of regular protective orders from six months to one year. This will give victims more time to develop strategies to increase their safety and lessen perpetrators ability to use court dates to further harass their victims.

DISTRIBUTION: Sen. Cowdery, Sen. French, Sen. Guess, Sen. Hoffman, Sen. Stedman,
Sen. Stevens G

Subject: Non Constituent POMS Re:SB 308

Date: Thu, 11 Mar 2004 11:11:59 -0900

From: <POMS@legis.state.ak.us>

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

Jackie L Adamson
Po Box 3776
Po Box 3776
Kodiak AK, 99615-3776

Email:

Non Constituent Supports

BILL#: SB 308 DOMESTIC VIOLENCE PROTECTIVE ORDERS

SUBJECT:

MESSAGE: I support SB 308. The extension will give victims time to heal, plan and work with professionals before having to face the court system, again which in itself can be devasatating for the victim.

DISTRIBUTION: Sen. Cowdery, Sen. French, Sen. Stevens G

Subject: Non Constituent POMS Re:SB 308

Date: Thu, 11 Mar 2004 11:43:21 -0900

From: <POMS@legis.state.ak.us>

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

Rebecca A Shields
Po Box 651
Po Box 651
Kodiak AK, 99615-0651

Email:

Non Constituent Supports

BILL#: SB 308 DOMESTIC VIOLENCE PROTECTIVE ORDERS

SUBJECT:

MESSAGE: I support this legislation. I think it will save time for the courts and provide a safer situation for ongoing harassment.

DISTRIBUTION: Sen. Cowdery, Sen. French, Sen. Guess, Sen. Hoffman, Rep. Ogg,
Sen. Stedman, Sen. Stevens G

SB

309

ALASKA STATE LEGISLATURE



Official Business

SENATOR THOMAS H. WAGONER

- Co-Chair, Senate Resources Committee
- Co-Chair, Senate Transportation Committee
- Vice-Chair, Senate Community and Regional Affairs Committee
- Member, Legislative Council

Session: January – May

State Capitol, #427

Juneau, AK 99801

Phone: 907-465-2828 Fax: 907-465-4779

Interim: May – December

145 Main Street Loop; Suite 226

Kenai, AK 99611

Phone: 907-283-7996 Fax 907--283-3075

March 9, 2004

Senator Ralph Seekins
Chair, Senate Judiciary Committee
State Capitol, Room 125
Juneau, AK 99801

Re: SB 309 – Bloodborne pathogen testing of prisoners

Dear Senator Seekins:

Senate Bill 309 has been referred to the Judiciary Committee. I request that this bill be scheduled at your earliest convenience. I have enclosed a copy of this bill, the zero fiscal note, sponsors statement, and sectional analysis. Also enclosed is a copy of a recent report by Legislative Research Services.

Should you or your staff have any questions, or need further information, please contact my aide Kurt Olson at 2828.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom Wagoner".

Senator Tom Wagoner

ALASKA STATE LEGISLATURE



Official Business

SENATOR THOMAS H. WAGONER

- Co-Chair, Senate Resources Committee
- Co-Chair, Senate Transportation Committee
- Vice-Chair, Senate Community and Regional Affairs Committee
- Member, Legislative Council

Session: January – May

State Capitol, #427

Juneau, AK 99801

Phone: 907-465-2828 Fax: 907-465-4779

Interim: May – December

145 Main Street Loop; Suite 226

Kenai, AK 99611

Phone: 907-283-7996 Fax 907-283-3075

Sponsor Statement

SB 309 - An Act related to the testing of prisoners for bloodborne pathogens.

During 2003, approximately 40 Alaska correctional officers were potentially exposed to bloodborne pathogens when they came into contact with blood or other bodily fluids from prisoners. In most cases, the contamination was an intentional act.

If blood, bodily fluids or waste from a prisoner or person in custody contaminates a correctional officer, that person cannot be required to submit a blood sample for testing. Most states offer this type of protection to their correctional officers. The 18th Legislature moved in this direction by requiring blood tests for persons charged with sex offenses.

Currently, correctional officers who have been exposed may undergo a two-week treatment with a broad range of preventative medication for hepatitis, HIV, and other potential contagions. Reactions to the medication can lead to lost time on the job and a disruption of home life.

I respectfully request the support of my colleagues in providing our correctional officers with a tool to control their potential exposure to life-threatening contamination in their workplace.

ALASKA STATE LEGISLATURE



Official Business

SENATOR THOMAS H. WAGONER

- Co-Chair, Senate Resources Committee
- Co-Chair, Senate Transportation Committee
- Vice-Chair, Senate Community and Regional Affairs Committee
- Member, Legislative Council

Session: January – May

State Capitol, #427

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Interim: May – December

145 Main Street Loop; Suite 226

Kenai, AK 99611

Phone: 907-283-7996 Fax 907-283-3075

Sectional Analysis – SB 309

Section 1. Amends AS 18.15 by adding five new sections:

Section 18.15.400 – Authorizes bloodborne pathogen testing of prisoners when requested by a correctional officer who has received significant exposure from a prisoner.

Section 18.15.410 – Consent for testing; from the prisoner or the prisoner's representative.

Section 18.15.420 – Provides provisions for testing without consent. A licensed physician has to determine that a significant exposure has occurred and a court order must be obtained.

Section 18.15.440 – Confidentiality provisions apply and results can be disclosed only as needed for treatment.

Section 18.15.450 – Definitions.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 309
 (S) Publish Date: 3/5/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title "Blood Pathogens Testing of Prisoners..." RDU Administration & Operations
 Component: Inmate Health Care
 Sponsor Senator Wagoner, Senator Elton
 Requester State Affairs, Judiciary Component No. 705

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
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	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

At this time the department does not anticipate a fiscal impact with the passage of this legislation.

Provisions of this legislation currently are addressed under the federal Bloodborne Pathogens standards promulgated by OSHA (29 CFR 1910-1030 dated December 1991) and adopted by Alaska OSHA (under 8 AAC 61-1010). The activities outlined and more relating to protection from, documentation of, and response to occupational exposure are essentially in effect under the existing OSHA standards. These tasks currently are addressed by the department and any additional tasks will be accomplished by the existing staff within the Department of Corrections.

Prepared by: Jerry D. Burnett, Director Phone (907) 465-3339
 Division Administrative Services Date/Time 3/3/04 10:47 AM
 Approved by: Portia C. K. Parker, Deputy Commissioner Date 3/3/2004
 Agency Department of Corrections

LEGISLATIVE RESEARCH REPORT

MARCH 4, 2004



REPORT NUMBER 04.145

INVOLUNTARY TESTING OF INMATES FOR BLOODBORNE PATHOGENS

PREPARED FOR SENATOR TOM WAGONER

BY PATRICIA YOUNG, MANAGER

You wished to know the number of states that allow involuntary testing of inmates for bloodborne pathogens and other serious transmissible diseases. You were particularly interested in states that permit testing without consent when an inmate has intentionally or unintentionally exposed a correctional officer to the inmate's blood or other bodily fluids.

Although a number of organizations compile information on state laws requiring testing of inmates for human immunodeficiency virus (HIV) in general, we found no agency having compiled a list of state laws providing for this particular subset of mandatory testing.¹ We searched the statutes of several states that, based on comments in various publications on corrections and testing for transmissible diseases, we thought likely to contain such provisions. By this process, we identified provisions in 15 states.² The attached table provides citations and brief descriptions of pertinent parts of those states' laws.

As you will note, in most of these states, if the prisoner refuses to submit to testing, the officer or the officer's employer or representative is authorized to seek a court order compelling the prisoner to submit. In only one of the states we examined (Michigan), is involuntary testing authorized without a court order:

In order to protect the health, safety, and welfare of department employees, the department may test a prisoner . . . whether or not the prisoner consents to the test. The department is not required to give the prisoner an opportunity for a

¹ We contacted the Association of State Correction Administrators; the American Correctional Association (which publishes *Corrections Compendium*), the American Federation of State, County, and Municipal Employees (an organization that testified in support of the federal Correction Officers Health and Safety Act of 1998, P.L. 105-370); the Law Enforcement Alliance of America; and the National Conference of State Legislatures.

² It is very possible that substantially similar provisions exist in other states.

hearing or to obtain an order from a court of competent jurisdiction before administering the test.³

Among the states we examined, we note that in Colorado, Ohio, and Wisconsin, intentionally exposing a corrections officer to bodily fluids is, in and of itself, a criminal act.

Not surprisingly, many corrections officials and organizations support provisions that allow for expeditious testing of prisoners who have exposed corrections officials and employees to their bodily substances. To that end, the Law Enforcement Alliance of America offers a model law, the Infectious Disease Testing Act.⁴ During the course of our research, we also found that the Council of State Governments included Colorado's "Act to Impose Penalties on Inmates Who Assault Employees of Detention Facilities Through Contact With Substances That May Cause Injury or Disease," in its 1999 volume of *Suggested State Legislation*.⁵

On the federal level, the Correction Officers Health and Safety Act of 1998 (Public Law 105-370), provides for such testing among federal prisoners—both those already sentenced and those detained before trial. Under the provisions of the act, upon "well-founded reason" to believe that a federal prisoner may have intentionally or unintentionally transmitted HIV to any officer or facility employee, the Attorney General "shall cause" that prisoner to be "tested promptly."⁶ The law further calls for the Attorney General, in consultation with the Secretary of the Department of Health and Human Services, to provide to states proposed guidelines for the prevention, detection, and treatment of prisoners and personnel who have or may be exposed to infectious diseases in correctional institutions. Although the act specified that the federal administration would provide these proposed guidelines within one year, officials with the Alaska Departments of Corrections and Law are not aware of any such guidelines.⁷

State and federal Occupational Safety and Health Administration (OSHA) regulations nevertheless pertain to all incidents of exposure in correctional settings. According to representatives of the Department of Corrections and representatives of the Section of Epidemiology in the Division of Public Health, on-the-job exposures are routinely evaluated for the likelihood of transmission of diseases, which generally takes a "fairly significant intrusion." As such, public health officials note that not every exposure is significant enough to warrant prophylactic treatment—which itself is intrusive and unpleasant, and which generally must be started as soon as possible after exposure.⁸ In cases deemed to present a likelihood of disease transmission, prophylactic treatments are begun long before test results would be available. In that regard, the issue is whether or not to continue the treatment after the test results are known.

³ Michigan Compiled Laws § 791.267b.

⁴ We include a copy of the Law Enforcement Alliance of America's Infectious Disease Testing Act as Attachment A.

⁵ We include the Colorado Act as presented in the Council of State Government's Suggested State Legislation, 1999, as Attachment B.

⁶ We include a copy of the Correction Officers Health and Safety Act of 1998, P.L. 105-370, as Attachment C.

⁷ We spoke with Portia Parker, deputy commissioner, Alaska Department of Corrections, and John Bodick, assistant attorney general (dealing with Corrections), Alaska Department of Law.

⁸ Wendy Craytor, HIV-STD program coordinator, Epidemiology Section, Division of Public Health, Department of Health and Social Services, (907) 269-8058. The state adoption of the federal regulations on bloodborne pathogens is 8 AAC 61-1010. The federal regulation adopted is 29 CFR 1910-1030.

As with the majority of the state laws we examined, the OSHA regulations allow for application to a court for an order compelling testing when a source refuses to submit to a blood sample.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

Testing Prisoners After Exposing Corrections Officers to Bodily Substances, Selected States

State	Citation	Brief Description
Colorado	18-3-203	Exposing a correctional officer or employee to bodily fluids or toxic, caustic, or hazardous materials with malicious intention is a crime of second degree assault. The court shall order a prisoner bound over for trial for, indicted for, or convicted of such an offense to supply blood or other bodily substances for testing.
Florida	384.287	If the person will not voluntarily submit to screening for sexually transmissible diseases that can be transmitted through a significant exposure, the employee may seek a court order directing the source to be tested.
Iowa	356.48	An inmate who exposes another person to bodily fluids "shall submit" to testing. If the offender refuses, the sheriff or person in charge of the jail may apply to the court for order compelling the source to submit to the testing.
Kansas	65-6009	If while performing official duties, an employee is exposed to another's bodily fluids and the source refuses to submit to testing for infectious diseases, the head of the agency may apply to the court for an order compelling the source to submit to such testing.
Maryland	18-338	An inmate "shall furnish" a blood sample for HIV testing when the inmate has been found guilty of violating institutional regulations, in connection with which violation, that inmate has exposed a correctional officer to bodily fluids, the exposure is confirmed by a health care provider, and the exposed employee has given written notice of the exposure to the managing official of the facility.
Michigan	791.267b	If the Department of Corrections determines that reasonable cause exists to believe that a prisoner's exposure of an employee to the prisoner's bodily fluids is of sufficient severity, the department "shall test" the prisoner for HIV or HBV, or both. "In order to protect the health, safety, and welfare of department employees, the department may test a prisoner...whether or not the prisoner consents to the test. The department is not required to give the prisoner an opportunity for a hearing or to obtain an order from a court of competent jurisdiction before administering the test."
Minnesota	241.331-338, et seq.	If a licensed physician has determination that a "significant exposure" has occurred, and no blood previously collected is available for testing, and the prisoner refuses to provide a blood sample, the facility or employee may petition the court for an order requiring the prisoner to provide the sample.

Testing Prisoners After Exposing Corrections Officers to Bodily Substances, Selected States

State	Citation	Brief Description
Nevada	441A.195	A law enforcement officer, correctional officer, emergency medical attendant, fireman, or any other criminal justice agency employee who may have been exposed to a contagious disease while performing official duties, or the employer of such a person, may petition the court for an order requiring the testing of the source person for HIV and HBV. The court "shall promptly hear" such a petition.
Ohio	2921.38	The intentional exposure of a law enforcement officer to bodily fluids is harassment—a fifth or third degree felony (third if the person knows he or she is a carrier of HIV, HBV, or TB). "The court, on request of the prosecutor, or the law enforcement authority responsible for the investigation of the violation, shall cause a person who allegedly has committed a violation of this section to submit to one or more appropriate tests..."
Oregon	433.085	Any law enforcement officer, parole and probation officer, corrections officer, emergency medical technician, firefighter or paramedic who in the performance of official duties comes into contact with the bodily fluids of another person may seek a court order compelling the source to submit to testing for HIV and HBV or HCV. The court "shall hold an ex parte in person or by telephone on the day of receipt of the petition, if possible, or within a reasonable period not to exceed three judicial days." Upon a showing that the petitioner has been exposed and the circumstances create probable cause to conclude that a significant possibility exists that the petitioner has been exposed to HIV, HBV, or HCV, the court shall order the testing of the source person.
South Dakota	23A-35B-1	A victim of "sliming" may request that the source person be tested. A health professional licensed or certified to do so shall take the blood sample.
Texas	81.05	A law enforcement or corrections officer, fire fighter, or emergency medical service employee or paramedic may request a department or health authority to order testing of a person who has exposed that person to bodily fluids if the professional believes the exposure places him or her at risk of a reportable disease including HIV. If the source refuses, the prosecuting attorney representing the state shall petition the court for an order requiring the test. The source person has a right to be represented by an attorney at the hearing.

Testing Prisoners After Exposing Corrections Officers to Bodily Substances, Selected States

State	Citation	Brief Description
Washington	70.24.340	A law enforcement officer, fire fighter, health care provider, health care facility staff person, department of corrections staff person, jail staff person, or other category of employment at risk of substantial exposure to another's bodily fluids, may request a state or local public health officer to order HIV testing. If the public health official refuses to order testing, the person may petition the court for a hearing, which must be held within 72 hours (exclusive of Saturdays, Sundays, and holidays). The standard of review is whether substantial exposure occurred and whether that exposure presents a possible risk of transmission of HIV.
Wisconsin	946.43 968.38	Any prisoner who throws or expels blood or other bodily substances at or toward an officer, employee, or visitor of the facility is guilty of a Class I Felony. If probably cause to believe that the exposure carried a potential for transmitting a communicable disease, the district attorney shall apply to the circuit court for an order requiring the source to submit to testing.

Sources: Various state statutes.

Attachment A

Law Enforcement Alliance of America,
Infectious Disease Testing Act



Law Enforcement Alliance of America

Law Enforcement, Crime Victims and Concerned Citizens... United for Justice!



INFECTIOUS DISEASE TESTING ACT

Section 1. This act may be cited as the "Infectious Disease Testing Act."

A. Definitions. For the purposes of this section:

(1) "transmissible disease" shall include the human immunodeficiency virus (HIV) or any of its derivatives; hepatitis and any of its derivatives; tuberculosis; and any other serious illness which an exposed person could have a reasonable expectation of contracting from a subject.

(2) "exposed person" means a police officer, corrections officer, doctor, nurse, emergency medical technician, paramedic, or other health care provider, or a victim of crime, any part of whose body came into contact with the bodily fluids of an incarcerated person.

(3) "subject" means any person who is incarcerated.

B. Notification.

(1) If an exposed person notifies the official in charge of an incarceration facility where a subject is incarcerated, in writing, under penalty of perjury, on a form to be developed by the State Health Department, that any part of the exposed person's body came into contact with the bodily fluids of the subject, such official shall, pursuant to subsection (C), cause the subject's blood to be tested for the presence of a transmissible disease.

C. Duty of Health Official

(1) Notwithstanding any provision of law or regulation, a state, county, or local public health officer designated by the State Health Department shall, upon written request of an official in charge of an incarceration facility, cause a blood test to be administered forthwith to a subject and shall immediately provide to such official a written report specifying the date on which such test was completed and the results thereof.

(2) At the time of communicating the test results to the official in charge of an incarceration facility, such public health officer shall, if the results reveal that the subject has a transmissible disease, also communicate the results to the subject and the exposed person and shall provide the subject and the exposed person with referrals for counseling and appropriate health care and support services. The counseling and services required by this paragraph may be provided by a public health officer associated with the facility where the subject is incarcerated.

Section 2. Requirement for testing arrested person's blood for transmissible diseases.

A. Definitions. For the purposes of this section:

- (1) "transmissible disease" shall have the same meaning as in section I.
- (2) "exposed person" shall have the same meaning as in section I.
- (3) "subject" means any person who has been arrested.

B. Arrest of Released Subject.

If an exposed person notifies a judicial officer, by sworn testimony, after a subject has been released that any part of the exposed person's body came into contact with the bodily fluids of the subject, the judicial officer shall promptly issue an arrest warrant for the subject. Once arrested, the subject shall not be released by a judicial officer until such subject's blood has been tested, pursuant to section I, for the presence of a transmissible disease.

C. Compliance.

Any failure to comply with the provisions of this section shall not impair or affect the validity of any of the proceedings conducted by a court with respect to any offense with which the subject is charged or affect the admissibility of the results of the blood test.

Attachment B

"Inmate Assaults with Body Fluids or Other Hazardous Substances"
Council of State Government's *Suggested State Legislation, 1999*



SUGGESTED STATE LEGISLATION

1999 Volume 58

Developed by the
Committee on Suggested State Legislation

The Council of State Governments
Lexington, Kentucky

Headquarters: (606) 244-8000

Fax: (606) 244-8001

E-mail: info@csq.org

Internet: www.csq.org

Inmate Assaults with Body Fluids or Other Hazardous Substances

This Act directs that inmates commit a crime of assault in the second degree if they throw or expel infected body fluids or other hazardous material at prison employees or others who provide prison services. The law directs that inmates who commit such crimes can be tested for communicable diseases and that the test results can be disclosed to their crime victims.

Submitted as:
Colorado
CH 270 (Laws of 1997)
Enacted into law, 1997.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as "An Act to Impose Penalties on Inmates Who Assault Employees of Detention Facilities Through
2 Contact With Substances That May Cause Injury or Disease."
3

1 Section 2. [*Assault in the Second Degree.*]

2 (1) A person commits the crime of assault in the second degree if:

3 (a) While lawfully confined in a detention facility within this state,
4 a person with intent to infect, injure, harm, harass, annoy, threaten, or alarm
5 a person in a detention facility whom the actor knows or reasonably should
6 know to be an employee of a detention facility, causes such employee to
7 come into contact with blood, seminal fluid, urine, feces, saliva, mucus, vomit,
8 or any toxic, caustic, or hazardous material by any means, including but not
9 limited to throwing, tossing, or expelling such fluid or material.

10 (2) (a) Any adult or juvenile who is bound over for trial for the offense
11 described in subparagraph (1)(a) of this section, subsequent to a prelimi-
12 nary hearing or after having waived the right to a preliminary hearing, any
13 person who is indicted for or is convicted of any such offense, or any person
14 who is determined to have provided blood, seminal fluid, urine, feces, sa-
15 liva, mucus, or vomit to a person bound over for trial for, indicted for, or
16 convicted of such an offense shall be ordered by the court to submit to a
17 medical test for communicable diseases and to supply blood, feces, urine,
18 saliva, or other bodily fluid required for the test. The results of such test
19 shall be reported to the court or the court's designee, who shall then dis-

Attachment C

Correction Officers Health and Safety Act of 1998, P.L. 105-370

CORRECTION

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



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

Inmate Assaults with Body Fluids or Other Hazardous Substances

This Act directs that inmates commit a crime of assault in the second degree if they throw or expel infected body fluids or other hazardous material at prison employees or others who provide prison services. The law directs that inmates who commit such crimes can be tested for communicable diseases and that the test results can be disclosed to their crime victims.

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1 Section 1. [*Short Title.*] This Act may be cited as "An Act to Impose Pen-
2 alties on Inmates Who Assault Employees of Detention Facilities Through
3 Contact With Substances That May Cause Injury or Disease."

1 Section 2. [*Assault in the Second Degree.*]

2 (1) A person commits the crime of assault in the second degree if:

3 (a) While lawfully confined in a detention facility within this state,
4 a person with intent to infect, injure, harm, harass, annoy, threaten, or alarm
5 a person in a detention facility whom the actor knows or reasonably should
6 know to be an employee of a detention facility, causes such employee to
7 come into contact with blood, seminal fluid, urine, feces, saliva, mucus, vomit,
8 or any toxic, caustic, or hazardous material by any means, including but not
9 limited to throwing, tossing, or expelling such fluid or material.

10 (2) (a) Any adult or juvenile who is bound over for trial for the offense
11 described in subparagraph (1)(a) of this section, subsequent to a prelimi-
12 nary hearing or after having waived the right to a preliminary hearing, any
13 person who is indicted for or is convicted of any such offense, or any person
14 who is determined to have provided blood, seminal fluid, urine, feces, sa-
15 liva, mucus, or vomit to a person bound over for trial for, indicted for, or
16 convicted of such an offense shall be ordered by the court to submit to a
17 medical test for communicable diseases and to supply blood, feces, urine,
18 saliva, or other bodily fluid required for the test. The results of such test
19 shall be reported to the court or the court's designee, who shall then dis-

Inmate Assaults with Body Fluids or Other Hazardous Substances

20 close the results to any victim of the offense who requests such disclosure.
21 Review and disclosure of medical test results by the court shall be closed
22 and confidential, and any transaction records relating thereto shall also
23 be closed and confidential. If a person subject to a medical test for
24 communicable diseases pursuant this subparagraph voluntarily submits
25 to a medical test for communicable diseases, the fact of such person's
26 voluntary submission shall be admissible in mitigation of sentence if
27 the person is convicted of the charged offense.

28 (b) In addition to any other penalty provided by law, the court may
29 order any person who is convicted of the offense described in subparagraph
30 (1)(a) of this section to meet all or any portion of the financial obligations of
31 medical tests performed on and treatment prescribed for the victim or vic-
32 tims of the offense.

33 (c) At the time of sentencing, the court may order that an offender
34 described in subparagraph (2)(b) of this section be put on a period of proba-
35 tion for the purpose of paying the testing and treatment costs of the victim
36 or victims; except that the period of probation, when added to any time
37 served, shall not exceed the maximum sentence that can be imposed for the
38 offense.

39 (3) (a) As used in this Act, "detention facility" means any building, struc-
40 ture, enclosure, vehicle, institution, or place, whether permanent or tempo-
41 rary, fixed or mobile, where persons are or may be lawfully held in custody
42 or confinement under the authority of this state or any political subdivision
43 of this state.

44 (b) As used in this Act, "employee of a detention facility" includes
45 employees of the [Department of Corrections,] employees of any agency or
46 person operating a detention facility, law enforcement personnel, and any
47 other persons who are present in or in the vicinity of a detention facility
48 and are performing services for a detention facility. "employee of a deten-
49 tion facility" does not include a person lawfully confined in a detention fa-
50 cility.

1 Section 3. [*Severability.*] [Insert severability clause.]

1 Section 4. [*Repealer.*] [Insert repealer clause.]

1 Section 5. [*Effective Date.*] [Insert effective date.]

Attachment C

Correction Officers Health and Safety Act of 1998, P.L. 105-370

Public Law 105-370
105th Congress

An Act

Nov. 12, 1998
[H.R. 2070]

To amend title 18, United States Code, to provide for the testing of certain persons who are incarcerated or ordered detained before trial, for the presence of the human immunodeficiency virus, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Correction
Officers Health
and Safety Act of
1998.
18 USC 4001
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Correction Officers Health and Safety Act of 1998".

SEC. 2. TESTING FOR HUMAN IMMUNODEFICIENCY VIRUS.

(a) IN GENERAL.—Chapter 301 of title 18, United States Code, is amended by adding at the end the following:

“§ 4014. Testing for human immunodeficiency virus

“(a) The Attorney General shall cause each individual convicted of a Federal offense who is sentenced to incarceration for a period of 6 months or more to be tested for the presence of the human immunodeficiency virus, as appropriate, after the commencement of that incarceration, if such individual is determined to be at risk for infection with such virus in accordance with the guidelines issued by the Bureau of Prisons relating to infectious disease management.

“(b) If the Attorney General has a well-founded reason to believe that a person sentenced to a term of imprisonment for a Federal offense, or ordered detained before trial under section 3142(e), may have intentionally or unintentionally transmitted the human immunodeficiency virus to any officer or employee of the United States, or to any person lawfully present in a correctional facility who is not incarcerated there, the Attorney General shall—

“(1) cause the person who may have transmitted the virus to be tested promptly for the presence of such virus and communicate the test results to the person tested; and

“(2) consistent with the guidelines issued by the Bureau of Prisons relating to infectious disease management, inform any person (in, as appropriate, confidential consultation with the person's physician) who may have been exposed to such virus, of the potential risk involved and, if warranted by the circumstances, that prophylactic or other treatment should be considered.

“(c) If the results of a test under subsection (a) or (b) indicate the presence of the human immunodeficiency virus, the Attorney General shall provide appropriate access for counselling, health

care, and support services to the affected officer, employee, or other person, and to the person tested.

“(d) The results of a test under this section are inadmissible against the person tested in any Federal or State civil or criminal case or proceeding.

“(e) Not later than 1 year after the date of the enactment of this section, the Attorney General shall issue rules to implement this section. Such rules shall require that the results of any test are communicated only to the person tested, and, if the results of the test indicate the presence of the virus, to correctional facility personnel consistent with guidelines issued by the Bureau of Prisons. Such rules shall also provide for procedures designed to protect the privacy of a person requesting that the test be performed and the privacy of the person tested.”

Deadline.
Regulations.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 301 of title 18, United States Code, is amended by adding at the end the following new item:

“4014. Testing for human immunodeficiency virus.”

(c) GUIDELINES FOR STATES.—Not later than 1 year after the date of the enactment of this Act, the Attorney General, in consultation with the Secretary of Health and Human Services, shall provide to the several States proposed guidelines for the prevention, detection, and treatment of incarcerated persons and correctional employees who have, or may be exposed to, infectious diseases in correctional institutions.

Deadline.
18 USC 4042
note.

Approved November 12, 1998.

LEGISLATIVE HISTORY—H.R. 2070:

HOUSE REPORTS: No. 105-665 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 144 (1998):

Aug. 3, considered and passed House.

Oct. 20, considered and passed Senate, amended.

Oct. 21, House concurred in Senate amendment.

SB

311

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

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

April 13, 2004

Senator Ralph Seekins
Chair, Senate Judiciary Committee
Alaska State Legislature
State Capitol, Room 125
Juneau, Alaska 99801

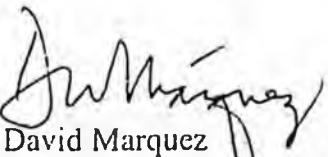
Subject: SB 311 Insurance and Workers' Compensation System

Dear Senator Seekins:

Attached is a document relating to SB 311 and the issue of administrative de novo review. We have addressed the issue in the form of questions and answers. We hope you and the committee find this helpful. Kristin Knudsen of the Department of Law will be available to address this issue at the Senate Judiciary Committee hearing tomorrow morning, if that is the Committee's desire.

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL

By: 
David Marquez
Chief Assistant Attorney General

DWM/lcc

cc: Senate Judiciary Committee Members
Deborah Behr, Legislation and Regulations Attorney, Department of Law
Mike Tibbles, Legislative Liaison, Office of the Governor

Questions and Answers on Administrative *de novo* Review

- What does the law provide now?

1. On the "reviewability" of the board's decisions on credibility of a witness, the law says: "The board has the sole power to determine the credibility of a witness." AS 23.30.122.
2. On the "reviewability" of the board's findings of fact, the law says: "A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action." AS 23.30.122. This means that the reviewing court will uphold the board's findings if there is substantial evidence in light of the whole record to support them, that is, "*such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.*" Conclusions of law and rulings on evidence, etc., are not covered by this statute.
3. AS 23.30.122 does not bar the superior court from *de novo* review. Appellate Rule 609(b) provides: "In an appeal from an administrative agency, the superior court may in its discretion grant a trial *de novo* in whole or in part. . . . The hearing or trial of the action shall be upon the record thus filed and upon such evidence as may be produced in the superior court."

- How would review differ under the new system?

1. The hearing panel would have the **same sole power to determine credibility** of a witness, but the hearing panel would have to explain its determination when credibility was disputed. This is a codification of existing law. Referring to AS 23.30.122, the supreme court stated that it would not assume that lack of credibility was relevant to the board's decision "in the absence of specific findings." *Hoth v. Valley Constr.*, 671 P.2d 871, 874, n.3 (Alaska 1983).
2. The commission could review findings of fact, conclusions of law and exercises of discretion by hearing panels, hearing examiners and the director, but it usually could not disturb the determination of credibility by a hearing panel.
3. The commission would have the discretion to review *de novo* **ON THE RECORD**. There would be **no new evidence, no new hearing, but the Commission would review all the evidence in the record**. This is found in the new AS 23.30.128(b). If the evidence in the record was incomplete, the commission could send the case back to the hearing panel to take more evidence, but it would not take more itself.
4. There would be no intermediate appellate court reviewing an agency decision. There would be two levels of agency adjudication. In supreme court review, the "conclusiveness rule" would apply to the commission's findings and, if not disturbed by the commission, to the hearing panel's findings also.

- Was this a change added into the proposed CS?

No. The original SB311, which did not have hearing panels, had the same provisions regarding Commission review. The standards of commission review are substantively unchanged between the bill introduced as SB311 and the proposed CS for SB311. The only change was to include the hearing panel in place of the single hearing officer who made decisions on cases.

- Why does the new system make this change from the current system?

1. The commission is not a court. It is the highest level of an administrative agency with a subordinate layer of decision-making. **Basic, long-established principles of administrative law require that the findings by the highest body of the agency, not the hearing referee or panel, are due deference on judicial review.** See, Davis & Pierce, Administrative Law Treatise vol. II, § 11.2 at 178 (3rd Ed.1994); Pierce, Administrative Law Treatise, vol. II, § 11.2 at 783 (4th Ed. 2002) ["The nature of the substantial evidence test routinely creates situations in which either of two inconsistent findings are supported by substantial evidence. In such circumstance, it is the agency's finding, rather than the ALJ's finding, that must be upheld."]
2. **It is the rule in the majority of states that the "rule of conclusiveness of administrative findings of fact applies to the final action of the agency (i.e., director, commission, full board, etc.).** Larson's Workers Compensation Law treatise reports that in its most orthodox form, no exception is made for credibility determinations. Larson, Workers Compensation Law, § 130.03[3] p. 130-12 (2000); (e.g., *Stiger v. State Line Tire Serv.*, 35 S.W. 3d 355 (Ark. App. 2000); *Erck v. Brown Oldsmobile*, 815 P.2d 1251 (Or. 1991); *Norton v. Waste Mgt.*, 552 S.E.2d 702 (N.C. Ct. App. 2001); *Dillon v. Industrial Comm'n*, 552 N.E.2d 1082 (Ill. 1990); *Lewis v. Cambridge Filter Corp.*, 517 N.Y.S.2d 342 (N.Y. App. Div. 1987). Alaska would join the "modified majority rule", where the reviewing agency defers to the trier of fact's decision on credibility, to a degree that varies among the states. Larson, Workers Compensation Law § 130.03[5] pp. 130-12- 130-26 (2000). (e.g., *Adams v. Industrial Comm'n*, 710 P.2d 1073 (Ariz. App. 1985)).
3. **It promotes consistency and mirrors the recommendations of the National Commission on State Workmen's Compensation Laws Report (1972) that the appeals board be able to overrule the hearing examiner on questions of fact and law.** The National Commission said "There is some merit to a review of the facts in workmen's compensation cases to insure that basically similar situations are evaluated consistently. This review should, however, be performed by the appeals board within the workmen's compensation system. . . . where there is an appellate level within the workmen's compensation agency, the decisions of the workmen's compensation agency [should] be reviewed by the courts only on questions of law."
4. **It provides a check on error by experts in the law regarding the due process provided in the hearing, the opportunity allowed for the parties to be heard and for their arguments and evidence to be fairly considered; and the hearing panel's careful and rational examination of the evidence, while preserving the right of a witness to face the determiner of his credibility.**

- Won't this kind of review take more time?

No, it should not. Currently the whole record is given to the appellate court. The whole record will go to the commission without the need to make copies. If a court must look for "substantial evidence in light of the whole record", the whole record is produced to and reviewed by the reviewing court already.

- What about stays pending appeal?

SB 311 assigns conclusiveness to review by the highest level of the adjudicatory agency, but does not alter the standards for grant of a stay pending review by the Commission. There is no intent to repeal *Olsen Logging Co. v. Lawson*, 832 P.2d 174 (Alaska 1992).

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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Juneau, Alaska 99801-1182
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MEMORANDUM

April 7, 2004

SUBJECT: CSSB 311(JUD) (Work Order No. 23-GS2023\D)

TO: Senator Ralph Seekins
Attn: Brian Hove

FROM: Barbara R. Craver 
Legislative Counsel

Enclosed is the bill draft you requested. This version is based upon a document provided to us yesterday, which was apparently drafted by the administration, named file "23-G2." Unfortunately, rather than indicating the changes to the 50+ page SB 311 (23-GS2023\A), a completely new, 60+ page document was created. We are not able to promise that the enclosed bill incorporates all the changes that may have been made by 23-G2 to SB 311. That would require a word by word comparison of the two documents, which is not possible given the 26 hours between our discovery of the new version, and your meeting deadline. If you find something that needs to be changed in this version, please write the changes needed on this version on each page and line where the change is requested.

The changes found in this version were based on a review of the bill changes with assistant attorney general Kristin Knudsen. Generally the terms "hearing officer" were changed to "hearing examiner" or "hearing panel" as indicated in the 23-G2 draft. If other changes were made to text in the bill not pointed out by Ms. Knudsen, or not in the immediate vicinity of "hearing officer," we probably did not catch the changes.

If I may be of further assistance, please advise.

BRC:mdr
04-143.mdr

Enclosure

23-GS2023\D
Craver
4/8/04

CS FOR SENATE BILL NO. 311(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 providing for a special deposit for workers' compensation insurers; relating to
2 the board of governors of the Alaska Insurance Guaranty Association; stating the intent
3 of the legislature, and setting out limitations, concerning the interpretation,
4 construction, and implementation of workers' compensation laws; relating to
5 restructuring the Alaska workers' compensation system; eliminating the Alaska
6 Workers' Compensation Board; establishing a division of workers' compensation within
7 the Department of Labor and Workforce Development and assigning certain Alaska
8 Workers' Compensation Board functions to the division and the Department of Labor
9 and Workforce Development; establishing a Workers' Compensation Appeals
10 Commission; assigning certain functions of the Alaska Workers' Compensation Board
11 to the Workers' Compensation Appeals Commission and the Workers' Compensation
12 Hearings Board; relating to agreements that discharge workers' compensation liability;

1 providing for hearing examiners and hearing panels in workers' compensation
2 proceedings; relating to workers' compensation awards; relating to an employer's
3 failure to insure and keep insured or provide security; providing for appeals from
4 compensation orders; relating to workers' compensation proceedings; providing for
5 supreme court jurisdiction of appeals from the Workers' Compensation Appeals
6 Commission; providing for a maximum amount for the cost-of-living adjustment for
7 workers' compensation benefits; providing for administrative penalties for employers
8 uninsured or without adequate security for workers' compensation; relating to assigned
9 risk pools and insurers; and providing for an effective date."

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

11 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
12 to read:

13 **LEGISLATIVE INTENT.** It is the intent of the legislature by secs. 3 - 6 of this Act

14 (1) to reform the workers' compensation system in Alaska to ensure the
15 continued payment of benefits in the event of an insurer insolvency;

16 (2) to give parties affected by the insolvency of a workers' compensation
17 insurer a voice on the board of governors of the Alaska Insurance Guaranty Association; and

18 (3) to reduce the overall costs of workers' compensation premiums to
19 employers.

20 * **Sec. 2.** AS 08.18.101(1) is amended to read:

21 (1) to the extent required under AS 23.30, workers' compensation
22 insurance that is purchased from a private insurer who is admitted to do business in the
23 state and that shows coverage in this state, appropriate employee classifications, and
24 rates applicable in this state, or a valid workers' compensation self-insurance
25 certificate issued by the director of the division of workers' compensation
26 [ALASKA WORKERS' COMPENSATION BOARD]; and

27 * **Sec. 3.** AS 21.09.090 is amended by adding a new subsection to read:

28 (e) In addition to any other deposit required under this section, an insurer who

1 transacts workers' compensation insurance in this state shall maintain in the state a
2 special deposit of cash or securities eligible for deposit under AS 21.24.030 in an
3 amount not less than the basic capital or surplus required of an insurer under
4 AS 21.09.070 for the protection of persons in this state covered under workers'
5 compensation insurance. The insurer shall maintain the deposit under this subsection
6 in this state as long as there is any outstanding liability of the insurer for workers'
7 compensation in this state. If the insurer is unable to pay workers' compensation
8 claims due under AS 23.30 because the insurer is an insolvent insurer, upon the
9 director's request, the deposit is immediately available to the Alaska Insurance
10 Guaranty Association (AS 21.80) for continuation of claims benefits to eligible
11 workers. In this subsection, "insolvent insurer" has the meaning given in
12 AS 21.80.180.

13 * **Sec. 4.** AS 21.24.130(d) is amended to read:

14 (d) Except as provided in AS 21.09.090(e), if [IF] the insurer is subject to
15 delinquency proceedings as defined in AS 21.78, upon the order of a court of
16 competent jurisdiction, the director shall yield the assets and securities held on deposit
17 to the receiver, conservator, rehabilitator, or liquidator of the insurer, or to any other
18 properly designated official or officials who succeed to the management and control of
19 the insurer's assets.

20 * **Sec. 5.** AS 21.80.050 is repealed and reenacted to read:

21 **Sec. 21.80.050. Board of governors.** (a) The board of governors of the
22 association consists of nine members appointed by the director. Terms are established
23 in the plan of operation of the association. Membership of the board of governors
24 consists of

- 25 (1) four members who represent member insurers;
- 26 (2) two members who represent employers;
- 27 (3) two members who represent labor;
- 28 (4) one member who represents licensees.

29 (b) Members appointed shall serve staggered three-year terms and may be
30 removed for cause by the director.

31 (c) Within 90 days after a vacancy occurs on the board, the director shall fill

1 the vacancy for the remaining period of the term of the vacating member.

2 (d) In appointing a member insurer to the board, the director shall consider,
3 among other things, whether all member insurers are fairly represented.

4 (e) Members of the board may be reimbursed from the assets of the
5 association for expenses incurred by them as members of the board of governors.

6 * Sec. 6. AS 23.05.067(a) is amended to read:

7 (a) Each insurer providing workers' compensation insurance and each
8 employer who is self-insured or uninsured for purposes of AS 23.30 in this state shall
9 pay an annual service fee to the department for the administrative expenses of the state
10 for workers' safety programs under AS 18.60 and the workers' compensation program
11 under AS 23.30 as follows:

12 (1) for each employer,

13 (A) except as provided in (b) of this section, the service fee
14 shall be paid each year to the department at the time that the annual report is
15 required to be filed under AS 23.30.155(m) or (n); and

16 (B) the service fee is 2.9 percent of all payments reported to the
17 director of the divisions of workers' compensation [ALASKA WORKERS'
18 COMPENSATION BOARD] under AS 23.30.155(m) or (n), except second
19 injury fund payments; and

20 (2) for each insurer, the director of the division of insurance shall,
21 under (e) of this section, deposit from funds received from the insurer under
22 AS 21.09.210 a service fee of 1.82 percent of the direct premium income for workers'
23 compensation insurance received by the insurer during the year ending on the
24 preceding December 31, subject to all the deductions specified in AS 21.09.210(b).

25 * Sec. 7. AS 23.05.067(e) is amended to read:

26 (e) Annual service fees and civil penalties collected under this section and
27 fees collected by the Workers' Compensation Appeals Commission shall be
28 deposited in the workers' safety and compensation administration account in the state
29 treasury. Under AS 37.05.146(c), the Workers' Compensation Appeals
30 Commission fees, service fees, and civil penalties shall be accounted for separately,
31 and appropriations from the account are not made from the unrestricted general fund.

1 The legislature may appropriate money from the account for expenditures by the
2 department for necessary costs incurred by the department in the administration of the
3 workers' safety programs contained in AS 18.60 and of the Alaska Workers'
4 Compensation Act contained in AS 23.30. The legislature may appropriate money
5 from the account for expenditures by the department for necessary costs
6 incurred by the Workers' Compensation Appeals Commission and for the
7 administration of adjudication of claims and petitions arising under AS 23.30.

8 Nothing in this subsection creates a dedicated fund or dedicates the money in the
9 account for a specific purpose. Money deposited in the account does not lapse at the
10 end of a fiscal year unless otherwise provided by an appropriation.

11 * **Sec. 8.** AS 23.30 is amended by adding a new section to read:

12 **Sec. 23.30.001. Intent of the legislature and construction of chapter.** It is
13 the intent of the legislature that

14 (1) this chapter be interpreted so as to ensure the quick, efficient, fair,
15 and predictable delivery of indemnity and medical benefits to injured workers at a
16 reasonable cost to the employers who are subject to the provisions of this chapter;

17 (2) workers' compensation cases shall be decided on their merits
18 except where otherwise provided by law;

19 (3) this chapter may not be construed by the courts in favor of a party;

20 (4) hearings in workers' compensation cases shall be impartial and fair
21 to all parties and that all parties shall be afforded due process and an opportunity to be
22 heard and for their arguments and evidence to be fairly considered;

23 (5) evidence shall be carefully and rationally examined and, except in
24 the application of the presumption in AS 23.30.120(a), doubt as to the substance of
25 evidence may not be interpreted in favor of one party or the other.

26 * **Sec. 9.** AS 23.30.005 is repealed and reenacted to read:

27 **Sec. 23.30.005. Alaska workers' compensation division; duties of**
28 **department; regulations; notice of revocation of self-insurance.** (a) There is
29 established in the Department of Labor and Workforce Development a division of
30 workers' compensation. The commissioner shall appoint the director of the division.
31 The director shall have at least three years' experience in the field of workers'

1 compensation.

2 (b) The director is responsible to the commissioner for the execution of the
3 duties and responsibilities imposed by this chapter and the regulations adopted under
4 this chapter. The director shall

5 (1) direct and supervise the administrative, technical, investigative, and
6 enforcement activities of the division of workers' compensation;

7 (2) develop, in cooperation with others, programs for the improvement
8 of the workers' compensation system;

9 (3) prepare regulations, consistent with the responsibilities of the
10 division under this chapter, that are required to implement and administer this chapter
11 for adoption by the department;

12 (4) notify employees, employers, physicians, and rehabilitation
13 specialists of their rights and obligations under this chapter;

14 (5) perform other lawful acts necessary to carry out the purposes of
15 this chapter.

16 (c) The department shall adopt rules for the periodic selection, retention, and
17 removal of rehabilitation specialists and physicians under AS 23.30.041 and
18 23.30.095.

19 (d) The department may adopt regulations concerning the medical care
20 provided for in this chapter and, except as committed to the authority of the Workers'
21 Compensation Appeals Commission, may adopt regulations to carry out the provisions
22 of this chapter.

23 (e) The director shall notify the contracting agency of the state or of a political
24 subdivision of the state when it revokes the self-insurance certificate of an employer
25 holding a contract with the state or a political subdivision of the state.

26 * **Sec. 10.** AS 23.30 is amended by adding new sections to read:

27 **Sec. 23.30.006. Workers' Compensation Hearings Board.** (a) There is
28 established in the Department of Labor and Workforce Development a Workers'
29 Compensation Hearings Board. The board consists of 14 members. Seven members
30 shall be representative of labor and seven members shall be representative of industry.
31 Two members shall sit for the second and fourth judicial districts; two members shall

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sit for the first judicial district; and 10 members shall sit for the third judicial district. A member may serve in another judicial district when necessary.

(b) Members of the board shall be appointed by the governor. Members shall be citizens of the United States and a resident of this state for three years preceding appointment. Members shall be appointed for a term of three years. The term of a member sitting for a two-member judicial district may not expire in the same year as the other member of the same judicial district. A vacancy arising in the board shall be filled by appointment of the governor. Except as provided in AS 39.05.080(4), an appointee selected to fill a vacancy shall hold office for the unexpired term of the member whose vacancy is filled.

(c) Members are entitled to compensation in the amount of \$50 a day for each day or portion of a day spent in actual hearing or on authorized official business incidental to their duties and to transportation and per diem as provided by law.

(d) The chair of the commission shall serve as the administrative and executive officer of the board and shall have authority in all administrative matters relating to the members, including the assignment and distribution of cases and assignment of members to hearing panels.

(e) A member of the board may be removed from office by the governor for good cause. A member of the board, to be removed for cause, shall be given a copy of the charges and afforded an opportunity to be heard in person or by counsel in the member's own defense upon not less than 10 days' notice. If the member is removed for cause, the governor shall file with the lieutenant governor a complete statement of all charges made against the member, the governor's findings on the charges, and the record of any proceedings. In this subsection, "good cause" includes

- (1) misconduct in office or violation of AS 39.52;
- (2) conviction of a felony;
- (3) conviction of a misdemeanor related to workers' compensation;
- (4) inability to serve, neglect of duty, incompetence, or unavailability to perform the duties of the member's office.

(f) A member of the board may not hear a claim or petition under this chapter if

1 (1) a party is an employee or was, in the past seven years, an employee
2 of the board member or of a business that employs the board member;

3 (2) a party is a member or was, in the past seven years, a member of
4 the same union or employee association as the board member;

5 (3) a party has a contractual relationship with the board member, a
6 business that employs the board member, or a union or employee association of which
7 the board member is a member;

8 (4) the member is unable to be fair, impartial, and unbiased toward the
9 hearing participants; or

10 (5) participation in the hearing is a violation of AS 39.52.

11 (g) For purposes of holding hearings under this chapter, the members of the
12 board shall sit in panels of three members. Each panel must include a board member
13 representative of labor, a board member representative of industry, and a hearing
14 examiner employed under AS 23.30.112. A hearing may not proceed in the absence
15 of a board member.

16 **Sec. 23.30.007. Workers' Compensation Appeals Commission.** (a) There
17 is established in the Department of Labor and Workforce Development a Workers'
18 Compensation Appeals Commission. The commission has jurisdiction to hear appeals
19 from decisions and orders of hearing examiners, hearing panels, and the director.
20 Jurisdiction of the office is limited to administrative appeals arising under this chapter.

21 (b) The commission consists of three members appointed by the governor and
22 confirmed by a majority of the members of the legislature in joint session. Members
23 shall be appointed for a term of five years. At least one member shall be an individual
24 who, because of the individual's previous employment, practice, or affiliations, may be
25 classified as a representative of employers and at least one shall be an individual who,
26 because of the individual's previous employment, practice, or affiliations, may be
27 classified as a representative of employees. A member may act and receive
28 compensation from the date of appointment until confirmation or rejection by the
29 legislature.

30 (c) A member of the commission shall, at the time of appointment,

31 (1) be a citizen of the United States, a resident of this state for five

1 years preceding appointment, licensed to practice law in this state, and a member in
2 good standing of the Alaska Bar Association; and

3 (2) have been in the active practice of law for least five years with
4 experience of workers' compensation law in this state.

5 (d) The governor shall appoint one member of the commission to serve as
6 chair of the commission. The chair of the commission shall serve a term of three years
7 or the remainder of the chair's term as a member of the commission if less than three
8 years remains of the unexpired term as a member, unless the chair is appointed to a
9 successive term as a member of the commission before the expiration of the chair's
10 term as a member of the commission. A member of the commission may not be
11 appointed for successive terms as chair of the commission.

12 (e) A vacancy arising in the commission shall be filled by appointment of the
13 governor and confirmed by a majority of the members of the legislature in joint
14 session. Except as provided in AS 39.05.080(4), an appointee selected to fill a
15 vacancy shall hold office for the unexpired term of the member whose vacancy is
16 filled. A vacancy in the commission does not impair the authority of a quorum of
17 members to exercise all the powers and perform all the duties of the commission. A
18 majority of the members of the commission constitutes a quorum.

19 (f) A member of the commission may be removed from office by the governor
20 for good cause. A member of the commission, to be removed for cause, shall be given
21 a copy of the charges and afforded an opportunity to be heard in person or by counsel
22 in the member's own defense upon not less than 10 days' notice. If the member is
23 removed for cause, the governor shall file with the lieutenant governor a complete
24 statement of all charges made against the member, the governor's findings on the
25 charges, and the record of any proceedings. In this subsection, "good cause" includes

- 26 (1) misconduct in office or violation of AS 39.52;
27 (2) conviction of a felony;
28 (3) conviction of a misdemeanor related to workers' compensation;
29 (4) inability to serve, neglect of duty, incompetence, unjustified failure
30 to handle the caseload assigned, or similar nonfeasance of office; and
31 (5) failure to meet the requirements of this section relating to

1 qualification for office.

2 (g) The monthly base salary for a member of the commission shall be equal to
3 Step C, Range 29, of the salary schedule in AS 39.27.011(a) for Juneau, Alaska. The
4 chair of the commission shall receive a monthly salary equal to Step F, Range 30 of
5 the salary schedule in AS 39.27.011(a) for Juneau, Alaska. Members of the
6 commission are in the exempt service under AS 39.25.110.

7 (h) Each member of the commission, before entering upon the duties of office,
8 shall take and subscribe to the oath prescribed for principal officers of the state.

9 (i) The office and staff of the commission shall be physically separate from
10 office and staff of the division.

11 **Sec. 23.30.008. Powers and duties of the commission.** (a) The commission
12 shall be the exclusive and final authority for the hearing and determination of all
13 questions of law and fact arising under this chapter in those matters that have been
14 appealed to the commission, except for an appeal to the Alaska Supreme Court. The
15 commission may not have jurisdiction in any case that does not arise under this
16 chapter or in any criminal case. On any matter taken to the commission, the decision
17 of the commission is final and conclusive, unless appealed to the Alaska Supreme
18 Court, and shall stand in lieu of the order of the director or the hearing panel from
19 which the appeal was taken. Unless reversed by the Alaska Supreme Court, decisions
20 of the commission shall have the force of legal precedent.

21 (b) The commission, in its administrative capacity, shall maintain, index, and
22 make available for public inspection the final administrative decisions and orders of
23 the commission and of hearing examiners and hearing panels. To promote consistency
24 among legal determinations, the chair of the commission may review and circulate
25 among the other members of the commission the drafts of the commission's formal
26 decisions and decisions upon reconsideration, and other legal opinions of the other
27 members of the commission. The drafts are confidential documents and are not
28 subject to disclosure.

29 (c) The commission, in its administrative capacity, may adopt regulations
30 implementing its authority and duties under this chapter, including rules of procedure
31 and evidence for proceedings before the commission and before hearing panels, and

1 hearing examiners and in workers' compensation proceedings under AS 23.30.090 and
2 23.30.110, and for the adjudication of all claims and petitions and appeals under this
3 chapter. The provisions of AS 44.62 (Administrative Procedure Act) apply to the
4 adoption of regulations by the commission.

5 (d) The commission shall award a successful party reasonable costs and, if the
6 party is represented by an attorney, attorney fees that the commission determines to be
7 fully compensatory and reasonable. However, the commission may not make an
8 award of attorney fees against an injured worker unless the commission finds that the
9 worker's position on appeal was frivolous or unreasonable or the appeal was taken in
10 bad faith.

11 (e) The commission, in its administrative capacity, may adopt and alter an
12 official seal and do all things necessary, convenient, or desirable to carry out the
13 powers expressly granted or necessarily implied in this chapter.

14 **Sec. 23.30.009. Powers and duties of the chair of the commission.** (a) The
15 chair of the commission shall exercise general supervision of the office of the
16 commission, appeals, and workers' compensation hearings and direct the
17 administrative functions of the commission. The chair may

18 (1) employ and supervise commission staff and hearing examiners and
19 appoint a commission clerk;

20 (2) establish and implement a time management system for the
21 commission, staff, and hearing examiners and manage the calendar of hearings and
22 appeals;

23 (3) assign the work of the commission members, hearing examiners
24 and staff so that hearings and appeals are resolved as expeditiously and competently as
25 possible, including designating hearing examiners to hear preliminary matters; and

26 (4) prepare an annual budget of the commission.

27 (b) The chair of the commission shall, not later than March 15 of each year,
28 make available to the public and file with the lieutenant governor, a report regarding
29 the commission, including data regarding time periods between initial receipt and final
30 decisions on appeals.

31 * **Sec. 11.** AS 23.30.011(c) is amended to read:

1 (c) If an employee is entitled to the benefits of this chapter by reason of an
2 injury sustained in this state in employment by an employer who is domiciled in
3 another state and who has not secured the payment of compensation as required by
4 this chapter, the employer or the employer's carrier may file with the division
5 [BOARD] a certificate, issued by the commission or agency of the other state having
6 jurisdiction over workers' compensation claims, certifying that the employer has
7 secured the payment of compensation under the workers' compensation law of the
8 other state and that, with respect to that injury, the employee is entitled to the benefits
9 provided under that law. In that event,

10 (1) the filing of the certificate shall constitute an appointment by the
11 employer or the employer's carrier of the director [BOARD] as the employer's agent
12 for acceptance of the service of process in a proceeding brought by the employee or
13 the employee's dependents to enforce the employee's or their rights under this chapter
14 on account of the injury;

15 (2) the director [BOARD] shall send to the employer or carrier, by
16 registered or certified mail to the address shown on the certificate, a true copy of any
17 notice of claim or other process served on the director by the employee or the
18 employee's dependents in any proceeding brought to enforce the employee's or their
19 rights under this chapter;

20 (3) if the employer is a qualified self-insurer under the workers'
21 compensation law of the other state, the employer, upon submission of evidence
22 satisfactory to the director [BOARD] of the employer's ability to meet the employer's
23 liability to the employee under this chapter, shall be considered to be a qualified self-
24 insurer under this chapter;

25 (4) if the employer's liability under the workers' compensation law of
26 another state is insured, the employer's carrier, as to the employee or the employee's
27 dependents only, shall be considered to be an insurer authorized to write insurance
28 under and be subject to this chapter; however, unless its contract with the employer
29 requires it to pay an amount equivalent to the compensation benefits provided by this
30 chapter, its liability for income benefits or medical and related benefits may not
31 exceed the amounts of the benefits for which the insurer would have been liable under

1 the workers' compensation law of the other state;

2 (5) if the amount for which the employer's insurance is liable under (3)
3 and (4) of this subsection is less than the total of the compensation benefits to which
4 the employee is entitled under this chapter, the director [BOARD] may, if the
5 director [IT] considers it necessary, require the employer to file security satisfactory
6 to the director [BOARD] to secure the payment of benefits due the employee or the
7 employee's dependents under this chapter; and

8 (6) upon compliance with the preceding requirements of this
9 subsection, the employer, as to the employee only, shall be considered to have secured
10 the payment of compensation under this chapter.

11 * Sec. 12. AS 23.30.012 is amended to read:

12 **Sec. 23.30.012. Agreements in regard to claims. (a)** At any time after
13 death, or after 30 days subsequent to the date of the injury, the employer and the
14 employee or the beneficiary or beneficiaries, as the case may be, have the right to
15 reach an agreement in regard to a claim for injury or death under this chapter [IN
16 ACCORDANCE WITH THE APPLICABLE SCHEDULE IN THIS CHAPTER], but
17 a memorandum of the agreement in a form prescribed by the director [BOARD] shall
18 be filed with the division [BOARD]. Otherwise, the agreement is void for any
19 purpose. An agreement filed with the division discharges the liability of the
20 employer for the compensation, notwithstanding the provisions of AS 23.30.130,
21 23.30.160, and 23.30.245, and is enforceable as a compensation order.

22 (b) If the claimant or beneficiary is not represented by an attorney
23 licensed to practice in this state, or the beneficiary is a minor, the division shall
24 request review of the agreement by a hearing panel. If approved by a hearing
25 panel [THE BOARD], the agreement is enforceable the same as an order or award of
26 a hearing panel [THE BOARD] and discharges the liability of the employer for the
27 compensation notwithstanding the provisions of AS 23.30.130, 23.30.160, and
28 23.30.245. The agreement shall be approved by a hearing panel [THE BOARD] only
29 when the terms conform to the provisions of this chapter and, if it involves or is likely
30 to involve permanent disability, a hearing panel [THE BOARD] may require an
31 impartial medical examination and a hearing in order to determine whether or not to

1 approve the agreement. A [THE BOARD MAY APPROVE] lump-sum settlement
2 may be approved [SETTLEMENTS] when it appears to be to the best interest of the
3 employee or beneficiary or beneficiaries.

4 * **Sec. 13.** AS 23.30.015(b) is amended to read:

5 (b) Acceptance of compensation under [AN AWARD IN] a compensation
6 order filed with the office of the commission [BY THE BOARD] operates as an
7 assignment to the employer of all rights of the person entitled to compensation and the
8 personal representative of a deceased employee to recover damages from the third
9 person unless the person or representative entitled to compensation commences an
10 action against the third person within one year after an order [AWARD].

11 * **Sec. 14.** AS 23.30.015(e) is amended to read:

12 (e) An amount recovered by the employer under an assignment, whether by
13 action or compromise, shall be distributed as follows:

14 (1) the employer shall retain an amount equal to

15 (A) the expenses incurred by the employer with respect to the
16 action or compromise, including [A] reasonable attorney fees [FEE]
17 determined by a hearing panel [THE BOARD];

18 (B) the cost of all benefits actually furnished by the employer
19 under this chapter;

20 (C) all amounts paid as compensation and second injury
21 [SECOND-INJURY] fund payments, and, if the employer is self-insured or
22 uninsured, all service fees paid under AS 23.05.067;

23 (D) the present value of all amounts payable later as
24 compensation, computed from a schedule prepared by the director [BOARD];
25 and the present value of the estimated cost of all benefits to be furnished later
26 under AS 23.30.095 [AS ESTIMATED BY THE BOARD]; the amounts so
27 computed and estimated shall [TO] be retained by the employer as a trust fund
28 to pay compensation and the cost of benefits as they become due and to pay
29 any finally remaining excess sum to the person entitled to compensation or to
30 the representative; and

31 (2) the employer shall pay any excess to the person entitled to

1 compensation or to the representative of that person.

2 * Sec. 15. AS 23.30.015(j) is amended to read:

3 (j) Notice of the commencement of an action against a third party shall be
4 given to the division [BOARD] and to all interested parties within 30 days. If a
5 request for a hearing under AS 23.30.110 has been filed, notice of the
6 commencement of the action shall also be filed with the commission.

7 * Sec. 16. AS 23.30.025(a) is amended to read:

8 (a) An insurer may not enter into or issue a policy of insurance under this
9 chapter until its policy form has been submitted to and approved by the director of the
10 division of insurance. The director of the division of insurance may not approve the
11 policy form of an insurance company until the company files with it the certificate of
12 the director of the division of insurance showing that the company is authorized to
13 transact the business of workers' compensation insurance in the state. The filing of a
14 policy form by an insurance company with the division of workers' compensation
15 [BOARD] for approval constitutes, on the part of the company, a conclusive and
16 unqualified acceptance of the provisions of this chapter [,] and an agreement by it to
17 be bound by them.

18 * Sec. 17. AS 23.30.030(5) is amended to read:

19 (5) A termination of the policy by cancellation is not effective as to the
20 employees of the insured employer covered by it until 20 days after written notice of
21 the termination has been received by the division [BOARD]. If the employer has a
22 contract with the state or a home rule or other political subdivision of the state, and the
23 employer's policy is cancelled due to nonpayment of a premium, the termination of the
24 policy is not effective as to the employees of the insured employer covered by it until
25 20 days after written notice of the termination has been received by the contracting
26 agency, and the agency has the option of continuing the payments on behalf of the
27 employer in order to keep the policy in force. If, however, the employer has secured
28 insurance with another insurance carrier, cancellation is effective as of the date of the
29 new coverage.

30 * Sec. 18. AS 23.30.030(6) is amended to read:

31 (6) All claims for compensation, death benefits, physician's fees,

1 nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices,
2 transportation charges to the nearest point where adequate medical facilities are
3 available, and burial expenses [,] may be made directly against either the employer or
4 the insurer, or both, and the order or award of a hearing panel [THE BOARD] may
5 be made against either the employer or the insurer or both.

6 * **Sec. 19.** AS 23.30.040(a) is amended to read:

7 (a) There is created a second injury fund, administered by the director
8 [COMMISSIONER]. Money in the second injury fund may only be paid for the
9 benefit of those persons entitled to payment of benefits from the second injury fund
10 under this chapter. Payments from the second injury fund must be made by the
11 director [COMMISSIONER] in accordance with the orders [AND AWARDS] of a
12 hearing panel [THE BOARD].

13 * **Sec. 20.** AS 23.30.040(d) is amended to read:

14 (d) The director [BOARD] may refund a payment made into the second
15 injury fund if the employer or insurance carrier shows that it made the payment by
16 mistake or inadvertence, or if it shows there existed at the time of the death of the
17 employee a beneficiary entitled to benefits under AS 23.30.215.

18 * **Sec. 21.** AS 23.30.041(a) is amended to read:

19 (a) The director [BOARD] shall select and employ a reemployment benefits
20 administrator. The director [BOARD] may authorize the administrator to select and
21 employ additional staff. The administrator is in the partially exempt service under
22 AS 39.25.120.

23 * **Sec. 22.** AS 23.30.041(b) is amended to read:

24 (b) The administrator shall
25 (1) enforce regulations adopted by the department [BOARD] to
26 implement this section;
27 (2) recommend regulations for adoption by the department [BOARD]
28 that establish performance and reporting criteria for rehabilitation specialists;
29 (3) enforce the quality and effectiveness of reemployment benefits
30 provided for under this section;
31 (4) review on an annual basis the performance of rehabilitation

1 specialists to determine continued eligibility for delivery of rehabilitation services;

2 (5) submit to the department, on or before May 1 of each year, a report
3 of reemployment benefits provided under this section for the previous calendar year;
4 the report must include a general section, sections related to each rehabilitation
5 specialist employed under this section, and a statistical summary of all rehabilitation
6 cases, including

7 (A) the estimated and actual cost of each active rehabilitation
8 plan;

9 (B) the estimated and actual time of each rehabilitation plan;

10 (C) a status report on all individuals completing or terminating
11 a reemployment benefits program including a return to work date;

12 (D) the cost of reemployment benefits;

13 (6) maintain a list of rehabilitation specialists who meet the
14 qualifications established under this section;

15 (7) promote awareness among physicians, adjusters, injured workers,
16 employers, employees, attorneys, training providers, and rehabilitation specialists of
17 the reemployment program established in this subsection.

18 * **Sec. 23.** AS 23.30.041(d) is amended to read:

19 (d) Within 30 days after the referral by the administrator, the rehabilitation
20 specialist shall perform the eligibility evaluation and issue a report of findings. The
21 administrator may grant up to an additional 30 days for performance of the eligibility
22 evaluation upon notification of unusual and extenuating circumstances and the
23 rehabilitation specialist's request. Within 14 days after receipt of the report from the
24 rehabilitation specialist, the administrator shall notify the parties of the employee's
25 eligibility for reemployment preparation benefits. Within 10 days after the decision,
26 either party may seek review of the decision by requesting a hearing under
27 AS 23.30.110. The hearing shall be held within 30 days after it is requested. The
28 hearing panel [BOARD] shall uphold the decision of the administrator except for
29 abuse of discretion on the administrator's part.

30 * **Sec. 24.** AS 23.30.041(h) is amended to read:

31 (h) Within 90 days after the rehabilitation specialist's selection under (g) of

1 this section, the reemployment plan must be formulated and approved. The
2 reemployment plan must require continuous participation by the employee and must
3 maximize the usage of the employee's transferable skills. The reemployment plan
4 must include at least the following:

- 5 (1) a determination of the occupational goal in the labor market;
- 6 (2) an inventory of the employee's technical skills, transferable skills,
7 physical and intellectual capacities, academic achievement, emotional condition, and
8 family support;
- 9 (3) a plan to acquire the occupational skills to be employable;
- 10 (4) the cost estimate of the reemployment plan, including provider
11 fees; and the cost of tuition, books, tools [,] and supplies, transportation, temporary
12 lodging, or job modification devices;
- 13 (5) the estimated length of time that the plan will take;
- 14 (6) the date that the plan will commence;
- 15 (7) the estimated time of medical stability as predicted by a treating
16 physician or by a physician who has examined the employee at the request of the
17 employer or the director [BOARD], or by referral of the treating physician;
- 18 (8) a detailed description and plan schedule;
- 19 (9) a finding by the rehabilitation specialist that the inventory under (2)
20 of this subsection indicates that the employee can be reasonably expected to
21 satisfactorily complete the plan and perform in a new occupation within the time and
22 cost limitations of the plan; and
- 23 (10) a provision requiring that, after a person has been assigned to
24 perform medical management services for an injured employee, the person shall send
25 written notice to the employee, the employer, and the employee's physician explaining
26 in what capacity the person is employed, whom the person represents, and the scope of
27 the services to be provided.

28 * Sec. 25. AS 23.30.041(j) is amended to read:

29 (j) The employee, rehabilitation specialist, and the employer shall sign the
30 reemployment benefits plan. If the employer and employee fail to agree on a
31 reemployment plan, either party may submit a reemployment plan for approval to the

1 administrator; the administrator shall approve or deny a plan within 14 days after the
2 plan is submitted; within 10 days after [OF] the decision, either party may seek
3 review of the decision by requesting a hearing under AS 23.30.110; a hearing panel
4 [THE BOARD] shall uphold the decision of the administrator unless evidence is
5 submitted supporting an allegation of abuse of discretion on the part of the
6 administrator; a hearing panel [THE BOARD] shall render a decision within 30 days
7 after completion of the hearing.

8 * Sec. 26. AS 23.30.041(o) is amended to read:

9 (o) Upon the request of either party, the administrator shall decide whether the
10 employee has not cooperated as provided under (n) of this section. A hearing before
11 the administrator shall be held within 30 days after it is requested. The administrator
12 shall issue a decision within 14 days after the hearing. Within 10 days after the
13 administrator files the decision, either party may seek review of the decision by
14 requesting a hearing under AS 23.30.110; a hearing panel [THE BOARD] shall
15 uphold the decision of the administrator unless evidence is submitted supporting an
16 allegation of abuse of discretion on the part of the administrator; a hearing panel
17 [THE BOARD] shall render a decision within 30 days after completion of the hearing.

18 * Sec. 27. AS 23.30.041(p) is amended to read:

19 (p) When the United States Department of Labor publishes a new edition,
20 revision, or replacement for the "Selected Characteristics of Occupations Defined in
21 the Revised Dictionary of Occupational Titles" referred to in (e) of this section, the
22 director [BOARD] shall, not later than 90 days after the last day of the month in
23 which the new edition, revision, or replacement standard is published, hold an open
24 meeting under AS 44.62.310 to select the proposed date on which the new edition,
25 revision, or replacement standard will be implemented to make all eligibility
26 determinations required under (e) of this section. The date selected by the
27 department [BOARD] for implementing the new edition, revision, or replacement
28 standard may not be later than 90 days after the last day of the month in which the new
29 edition, revision, or replacement standard is published. After the meeting, the
30 director [BOARD] shall issue a public notice announcing the date selected by the
31 department. The requirements of AS 44.62.010 - 44.62.300 do not apply to the

1 selection or announcement of the date under this subsection.

2 * **Sec. 28.** AS 23.30.041(q) is amended to read:

3 (q) Notwithstanding AS 23.30.012, after medical stability has been determined
4 and a physician has predicted that the employee may have a permanent impairment
5 that may cause the employee to have permanent physical capacities that are less than
6 the physical demands of the employee's job at the time of injury, an employee may
7 waive any benefits or rights under this section, including an eligibility evaluation and
8 benefits related to a reemployment plan. To waive any benefits or rights under this
9 section, an employee must file a statement under oath with the division [BOARD] to
10 notify the parties of the waiver and to specify the scope of benefits or rights that the
11 employee seeks to waive. The statement must be on a form prescribed or approved by
12 the director [BOARD]. The division [BOARD] shall serve the notice of waiver on
13 all parties to the claim within 10 days after filing. The waiver is effective upon service
14 to the party. A waiver effective under this subsection discharges the liability of the
15 employer for the benefits or rights contained in this section. The waiver may not be
16 modified under AS 23.30.130.

17 * **Sec. 29.** AS 23.30.045(d) is amended to read:

18 (d) A contract may not be awarded by the state or a home rule or other
19 political subdivision of the state unless the person to whom the contract is to be
20 awarded has submitted to the contracting agency proof, furnished by the insurance
21 carrier, of current coverage by workers' compensation insurance from an insurance
22 company or association authorized to transact the business of workers' compensation
23 insurance in this state or proof, furnished by the division [BOARD], of a current
24 certificate of self-insurance from the director [BOARD]. The person to whom the
25 contract is awarded shall keep the workers' compensation insurance policy in effect
26 during the life of the contract with the state or political subdivision. If the state or the
27 political subdivision of the state fails to obtain proof of coverage or self-insurance or
28 to protect itself under (e) of this section, and an employee of the contractor is injured
29 during the term of the contract, the state or the political subdivision is liable for
30 workers' compensation to the employee if the employee is unable to recover from the
31 employer because of the employer's lack of financial assets. The state or the political

1 subdivision is not liable, however, to the employee for workers' compensation if the
2 employee can recover from the employer under (a) and (b) of this section.

3 * **Sec. 30.** AS 23.30.045(e) is amended to read:

4 (e) When a contracting agency of the state or a political subdivision receives
5 notice that the workers' compensation insurance policy of an employer to whom the
6 agency has awarded a contract has been cancelled due to nonpayment of a premium,
7 without being replaced by a comparable policy, the agency may either terminate the
8 contract with the employer or continue the premium payments on behalf of the
9 employer in order to keep the policy in force during the life of the agency's contract.
10 If the agency chooses to keep the policy in force, it may deduct its payments from the
11 contract price or bring an action against the employer to recover the amount of the
12 payments. When the contracting agency receives notice that the director [BOARD]
13 has revoked a certificate of self-insurance held by a person to whom a contract has
14 been awarded, the agency may terminate the contract. This subsection does not limit
15 the causes of action or remedies that the state or political subdivision may have against
16 the employer.

17 * **Sec. 31.** AS 23.30.065 is amended to read:

18 **Sec. 23.30.065. Employer's record of injuries.** An employer shall keep a
19 record in respect of an injury to an employee. The record must contain the
20 information of disease, other disability, or death with [IN] respect to an injury that the
21 division [BOARD] requires, and must be available to inspection by the division
22 [BOARD] or by a state authority at the times and under the conditions that the
23 department [BOARD] prescribes by regulation.

24 * **Sec. 32.** AS 23.30.070(a) is amended to read:

25 (a) Within 10 days from the date the employer has knowledge of an injury or
26 death or from the date the employer has knowledge of a disease or infection, alleged
27 by the employee or on behalf of the employee to have arisen out of and in the course
28 of the employment, the employer shall send to the division [BOARD] a report setting
29 out

- 30 (1) the name, address, and business of the employer;
31 (2) the name, address, and occupation of the employee;