

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11187 SENATE JUDICIARY

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JAMES B. FRANCIS, JR.
COMMISSIONERS

June 28, 2002

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

Re: Concealed Handgun Reciprocity

Dear Commissioner Smith:


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

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

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

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

Sincerely,



Thomas A. Davis, Jr.
Director

TAD:lab

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** TOTAL PAGE.03 **

Aug-13-02

18 2002

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF ALASKA STATE TROOPERS

TONY KNOWLES, GOVERNOR

Del Smith, Commissioner

Permits and Licensing Unit
5700 East Tudor Road
Anchorage, Alaska 99507
Telephone (907) 269-0392
Facsimile (907) 269-5609

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

Dear Mr. Davis:

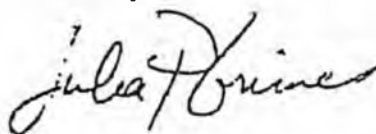
Our Department is in receipt of your letter dated June 28, 2002 revisiting the possibility of a reciprocal agreement in reference to concealed handgun permits. "Senate Bill 242 am H" did amend Alaska Statute 18.65.748 which now authorized the State of Alaska to recognize concealed handgun permits from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

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

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

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

Sincerely,



Lieutenant Julia P. Grimes
Alaska State Troopers

JG:mbf

Cc: Representative Terry Keel

TEXAS DEPARTMENT OF PUBLIC SAFETY

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

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www.txdps.state.tx.usTHOMAS A. DAVIS, JR.
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JAMES B. FRANCIS, JR.
COMMISSIONERS

April 4, 2003

Barbara Bitney
Alaska State Legislature

via fax: 907-465-4928

RE: Concealed Handgun Reciprocity

Dear Ms. Bitney:

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

Sincerely,

Louis Beaty
Manager, Crime Records Service Legal Staff

916/806-3854(CEL)



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

STATE & LOCAL AFFAIRS DIVISION
BRIAN JUDY, ALASKA STATE LIAISON

March 25, 2003

Senator Ralph Seekins
State Capitol
Juneau, AK 99801-1182

Dear Senator Seekins:

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

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

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

Unfortunately, the language has led to a refusal by the State of Texas to recognize Alaska permits because Alaska's law imposes limits on the recognition of Texas permits while Texas would impose no such limitation on the recognition of Alaska permits. The likelihood that, in reality, a Texas permit would not be recognized due to the provision in question is just about as unlikely as an Alaskan traveling to the lower 48 to circumvent the Alaska permit law. However, the fact remains that the SB 242 amendment has created a barrier to the recognition of Alaska permits. The repeal of this language by **Senate Bill 152** will open the door to greater recognition of Alaska permits.

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

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

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

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

Sincerely,

Brian Judy
Alaska State Liaison

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

Alaska - fingerprints required with application

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

Arizona - fingerprints required with application

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

Florida - fingerprints required with application

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

Idaho - fingerprints required with application

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

Indiana - fingerprints required with application

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

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

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

Maine - fingerprints may be required with application

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

Maryland - fingerprints required with application

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

Nevada - fingerprints required with application

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

North Dakota - fingerprints required with application

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

Utah - fingerprints required with application

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

Washington - fingerprints required with application

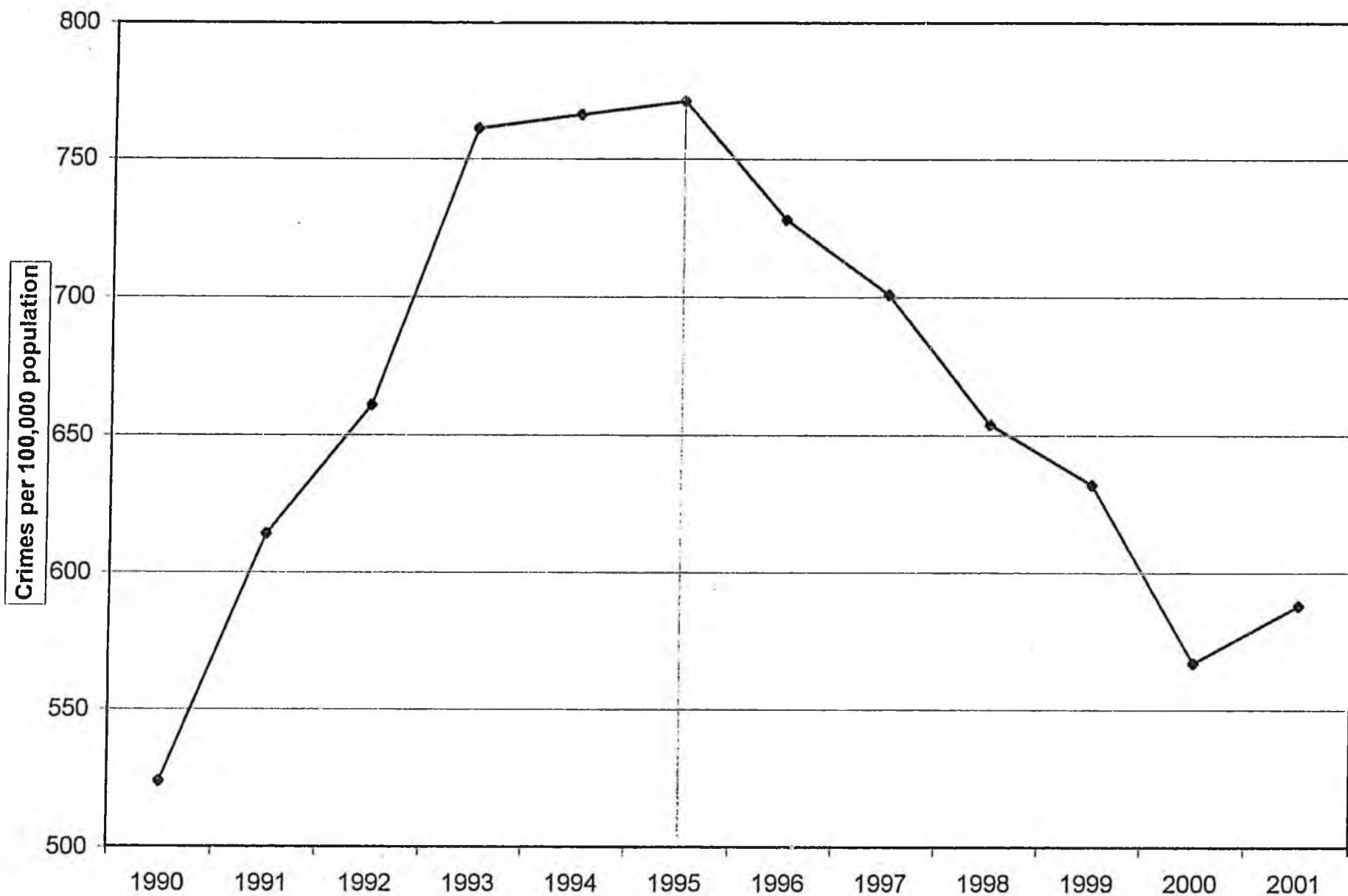
- 1) 21 years of age
- 2) No felony convictions
- 3) No domestic violence misdemeanor convictions since July 1, 1993
- 4) Has not been ordered to forfeit a firearm in the last year for, among other reasons, possessing a firearm while under the influence of alcohol or any drug
- 5) Has not been involuntarily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

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

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

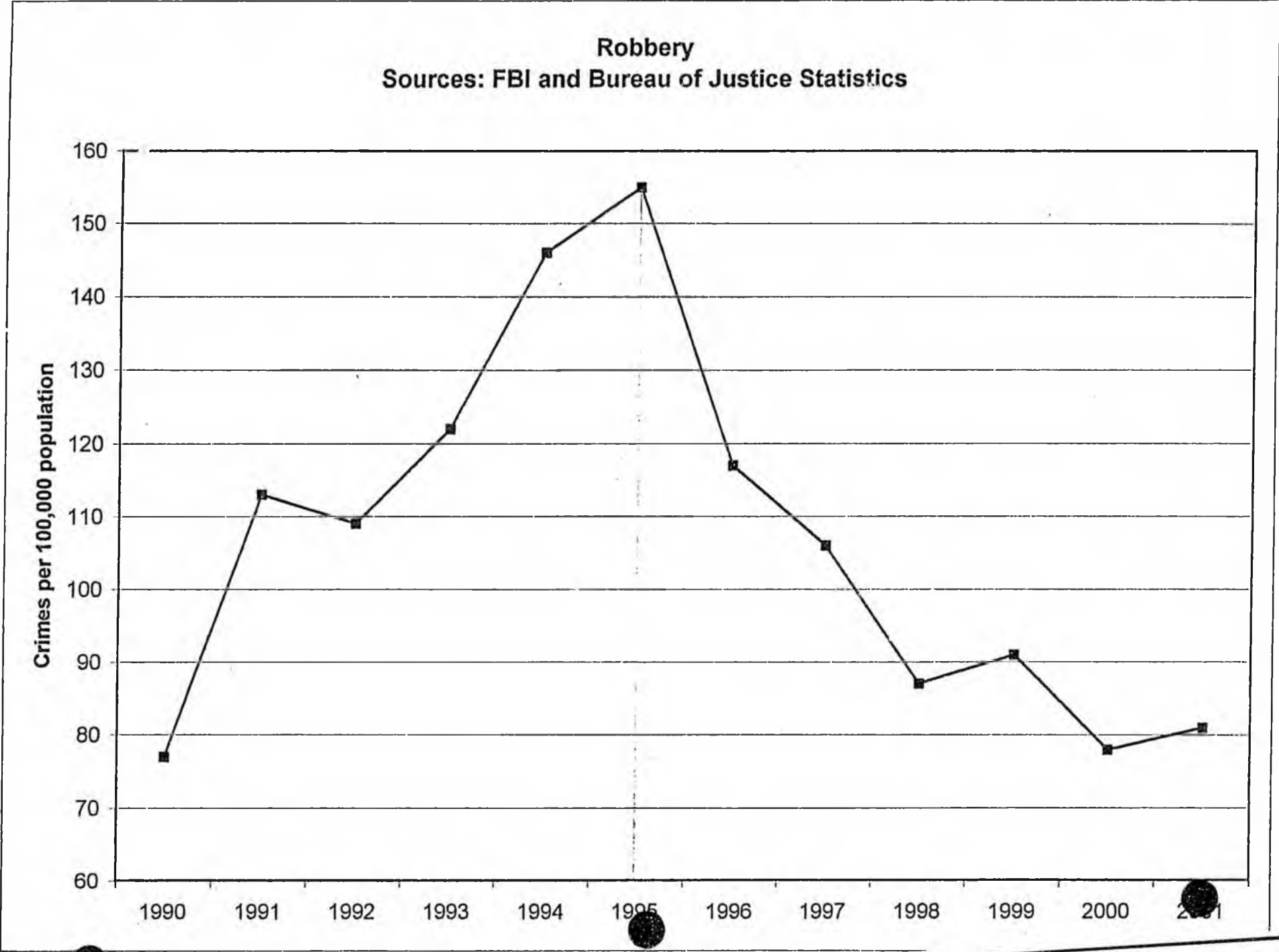
Alaska Crime Rates

Violent Crime
Sources: FBI and Bureau of Justice Statistics



Alaska Crime Rates

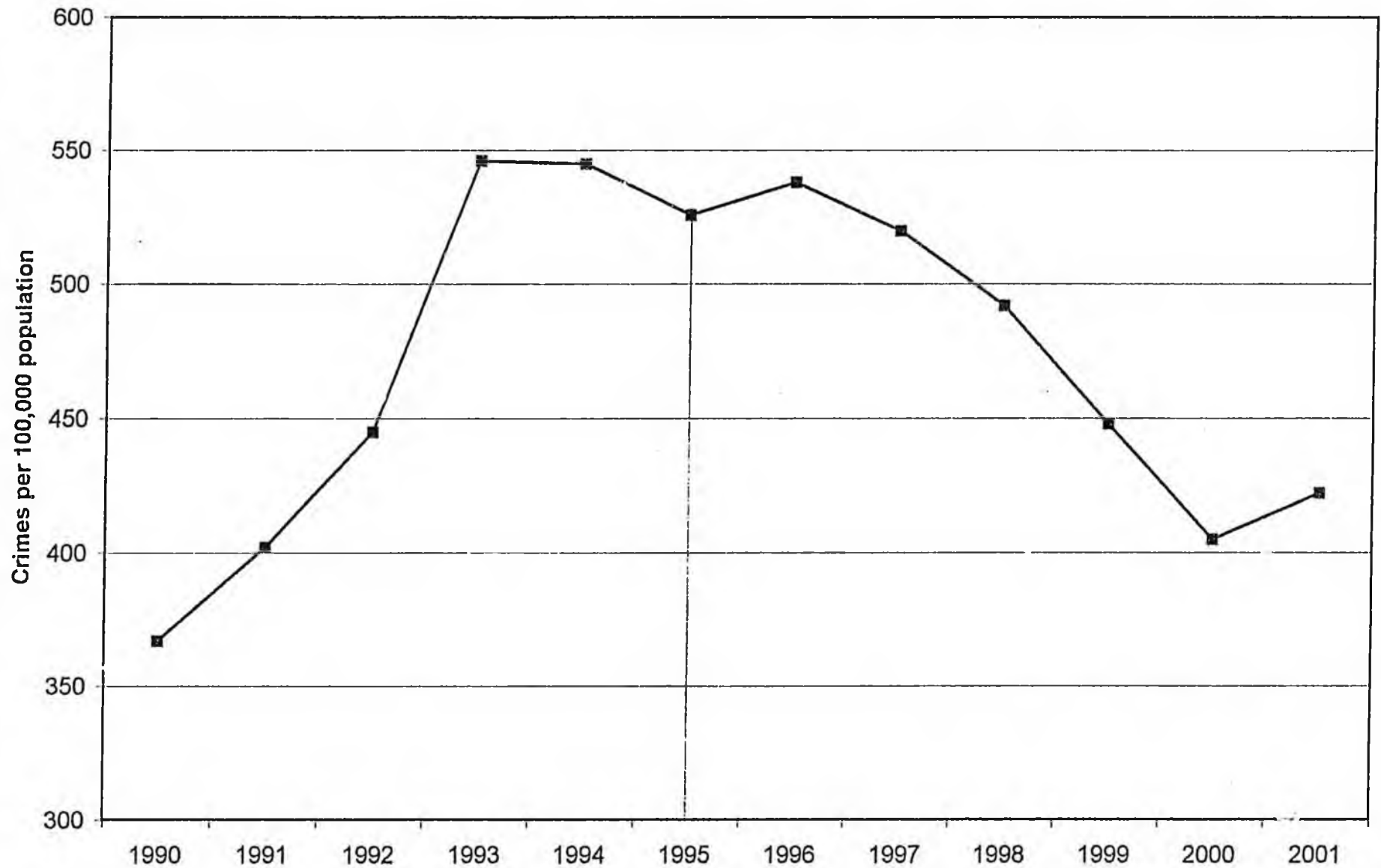
Robbery
Sources: FBI and Bureau of Justice Statistics



Alaska Crime Rates

Aggravated Assault

Sources: FBI and Bureau of Justice Statistics



HB

184

ALASKA STATE HOUSE OF REPRESENTATIVES

Interim Address:


3044 Badger Road, Suite 290
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4721



Session Contact:
(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

Memorandum

Date: Thursday, May 1, 2003
To: Senator Ralph Seekins, Chairman
Senate Judiciary Committee
From: Representative John Coghill 
Re: Hearing Request for HB 184

I respectfully request that HB 184 ("An Act relating to individual deferred annuities; and providing for an effective date") be scheduled for a committee hearing at your earliest convenience.

Charlie Miller

Government Relations

P.O. Box 102286 • Anchorage, Alaska 99510
Phone: (907) 563-2686 • Fax: (907) 266-9252
Email: charliem@alaska.net

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ALASKA STATE HOUSE OF REPRESENTATIVES

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Room 204

REPRESENTATIVE JOHN COGHILL MAJORITY LEADER

Sponsor Statement HB 184 – Deferred Annuity Products

HB 184 is an act relating to individual deferred annuity products that are regulated by the Alaska Division of Insurance under Alaska insurance statutes. The current economic trends and the corresponding drop in market interest rates prompts the need for this legislation. Specifically, the proposed insurance code revision deals with guaranteed minimum interest rates that determine minimum values holders of a fixed annuity product must receive upon policy surrender. This law would provide two basic essential provisions: **1. Give companies relief in times of low interest rates and 2. Provide an appropriate minimum guarantee for the consumer.**

As originally introduced, the bill would have simply reduced the guaranteed minimum interest rate to 1.5 % from the current 3% rate. This reduction reflects the decline of yields on fixed investments that have occurred over the last two years, and presented a practical short-term response to this problem that over 16 states have already addressed and adopted.

Even with the declining rates, fixed annuities present an attractive choice for millions of conservative, long-term investors—increasingly so as equity markets continue to produce losses or weak returns. The 1.5% figure would have made these products continually viable and available.

The National Association of Insurance Commissioners (NAIC) has been working on a long-term solution to the problem, and recently adopted The Standard Nonforfeiture Law for Individual Deferred Annuities. The revised version of HB 184 reflects that long-term solution. The model act has gained broad support among regulators and the insurance industry.

HB 184 recently passed the House.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSSHB 184(L&C)
(H) Publish Date: 4/4/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Community & Economic Development
Title: Individual Deferred Annuities BRU: Insurance (116)
Component: Insurance
Sponsor: Representative Coghill
Requester: House Labor & Commerce Component No. 354

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2002) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Any cost to enforce the provision on insurers would be absorbed within existing division resources.

Prepared by: Linda S. Hall, Director Phone 269-7900
Division: Division of Insurance Date/Time 4/1/03 5:18 PM
Approved by: Edgar Blatchford, Commissioner Date 4/1/2003
Agency: Department of Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 184
(S) Publish Date: 5/3/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title: "An Act relating to individual deferred annuities; . . ." BRU: Civil Division
Sponsor: Representative Coghill Component: Fair Business Practices
Requester: House Labor and Commerce Committee Component No.: 2206

Expenditures/Revenues (Thousands of Dollars)

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
This bill changes the interest rate used in determining the minimum nonforfeiture amount for certain deferred annuities from three percent to one and a half percent.

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

Prepared by: Joan M. Kasson Phone: (907) 465-5370
Division: Attorney General's Office Date/Time: 3/28/03 2:45 PM
Approved by: Joan M. Kasson for Gregg D. Renkes, Attorney General Date: 3/28/2003
Agency: Department of Law



NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

**EXECUTIVE
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FAX 212-382-4207

**WORLD
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www.naic.org

TO: Merwin Stewart, Chair
Life Insurance and Annuities (A) Committee

FROM: Michael Batte, Chair
Life and Health Actuarial Task Force

DATE: March 8, 2003

SUBJECT: Project History of Revisions to the "Standard Nonforfeiture Law for Individual Deferred Annuities ("Model")"

At its meeting on Friday, March 7, 2003, the Life and Health Actuarial Task Force ("Task Force") voted to recommend that the Life Insurance and Annuities (A) Committee adopt the Model. In order to assist the A Committee in its review of this document, I am submitting the following brief project history. Please feel free to contact me if you have additional questions.

1) **What issues was the project intended to address?**

At the Executive Committee and Plenary Meeting in San Antonio, Texas, on February 8, 2002, the issue of the appropriate interest rate to incorporate into Section 4 of the Model was discussed. The following excerpt from the minutes summarizes that discussion:

Commissioner Koken, vice chair of the Life Insurance and Annuities (A) Committee, stated that the A Committee has been reviewing the issue of the minimum nonforfeiture rate on annuities. It is currently 3%, which in the current economic climate means that companies may have to take some products off the market because they can't invest at that rate, or there will be real solvency concerns. The recommendation from the A Committee is to support the industry in their efforts to go to the legislatures and ask for a reduction in the nonforfeiture rate to 1.5% and to give a charge to the Life and Health Actuarial Task Force to develop a long-term solution to this issue. The group believes that ultimately an indexed rate is the best response so that as the economy changes it will not be necessary to go back to the legislatures.

The minutes of that meeting further show that the following motion was adopted: "Recommend that the states support a 1.5% nonforfeiture with a sunset of July 1, 2004 and a charge to develop an indexed rate."

In a subsequent discussion of the Task Force, the project was defined to include the following general scope (as captured in the Life and Health Actuarial Task Force minutes from March 14-15, 2002):

William Schreiner (ACLI) reported that the ACLI has a committee studying this matter, and that committee is looking for the Task Force's input on areas to study. He said "it is fair that you will want to look at more than just the interest rate." A lengthy, wide-ranging discussion ensued on how to proceed. Mr. Hartnedy summarized the discussion by saying that three potential areas of inquiry had been identified: 1) "You've got to carefully consider in the change of any minimum guarantees the surrender charge;" 2) "We're very interested in a dynamic or, if you will, index rate"; and 3) "We want pros and cons as to impact on people in different circumstances by doing this." Mr. Gorski suggested "maybe there is a need to think about disclosure at the same time." Mr. Schreiner added that "all the elements of the (nonforfeiture) 'formula' will be in play."

2) What states participated in drafting the model?

The following states are currently members of the Task Force: New Mexico (Chair), Arkansas (Vice-Chair), California, Connecticut, Florida, Illinois, Minnesota, Nebraska, New York, Oklahoma, Pennsylvania, Texas, Utah, and Vermont.

3) What general procedure was followed in drafting the model? What efforts were made to assure that all interested parties were provided an opportunity to comment during the drafting process?

The efforts of the Task Force were closely coordinated with all industry interested parties. In addition to open sessions at the quarterly meetings of the NAIC, seven conference calls were held over the last year to discuss the various submissions and drafts of the Model. Notice of those conference calls was posted on the NAIC's home page on the Internet and e-mailed to approximately 200 regulators and interested parties, including representatives of the American Council of Life Insurers, the National Alliance of Life Companies, the National Fraternal Congress of America, and the American Academy of Actuaries (AAA).

4) What significant issues were raised during the drafting process, and how were those issues resolved?

Given this complexity of this topic and the myriad of opinions, it is impossible to put together a brief description which captures a) all of the issues raised and b) all of the detail underlying those issues. Any summary will of necessity be a broad overview and will omit numerous particulars of the project. However, I believe that the items below represent the major points of discussion:

A) Is there really a need to change the Model?

Many regulators expressed doubts regarding whether there was a need to change the Model. This excerpt from Frank Dino's (Florida Department of Financial Services) summary of the October 10, 2002, conference call of the Task Force summarized the basic nature of those concerns:

Some of the previously expressed doubts regarding whether a problem actually exists in the current nonforfeiture law were repeated. It was noted that the current law allows initial expense loads of 35% and 10% for flexible premium and single premium products, respectively. Even ignoring annual expense charges, it would take fifteen years and four years, respectively, for the minimum values to match the

original deposit, assuming the minimum 3% were credited each year. It was also noted almost all states interpret the existing law as imposing a cumulative standard, rather than requiring that a minimum interest credit of 3% be applied each year. This gives companies the ability to credit less than 3% some years (provided they can still meet the cumulative requirement).

Ultimately, a consensus emerged on the Task Force that changes to the Model should be made. The distinct expense loads for flexible premium and single premium products were eliminated, and replaced by a single standard of 12.5%. In its first draft Model submitted on August 22, 2002, the ACLI suggested 15%. However, subsequent discussions resulted in the compromise figure of halfway between the existing 10% standard for single premium annuities and the ACLI's proposed 15%.

B) What should be the basis of the index used in establishing the minimum nonforfeiture interest rate?

Early on in this project, it became clear that there is no economic or actuarial theory that makes any one index the obvious choice over another. The following suggestions were among the many received:

In correspondence received on May 24, 2002, the ACLI suggested the following:

Proposal: five-year constant maturity treasuries (CMT) is proposed as the basis of required minimum interest rate credits.

Rationale: the use of a CMT basis has the virtue of expected continuous availability, while the choice of a five-year basis lies between short and longer-term maturities.

The ACLI provided this commentary with the submission of their initial proposal for actual draft language on August 22, 2002: "The interest rate proposed is the Five-Year Constant Maturity Treasury rate (CMT) as of June 30 of the preceding calendar year minus two and one-half percent (2.5%), but not greater than four percent (4%) nor less than one percent (1%)."

In a submission dated November 13, 2002, the ACLI modified its proposal as follows: "Index Basis: 3 Year Constant Maturity Treasury (monthly) rate – minus 150 basis points, but not less than 1%."

In a submission dated January 22, 2003, the ACLI made the following recommendation: "Therefore, we urge that the index basis in the proposed model Individual Deferred Annuity Nonforfeiture Law be changed to the three-year CMT reduced by 125 bps."

In a submission labeled "Preliminary Draft" dated September 10, 2002, the AAA stated that "an index rate for the annuity non-forfeiture value can be based on either the Treasury Curve, The Swap Curve (or) somewhere on any myriad of credit curves." The submission includes a description of how LIBOR swap rates might be used:

Under this approach we define the Non-Forfeiture Interest Rate (NIR) as equal to the Applicable Swap Rate less X. The Applicable Swap Rate is the monthly average swap rate for a swap whose term is equal to the term of the guarantee period for the premium/renewal (rounded up to the next whole year) during the month the premium is received or the renewal rate is set.

Many other comments were provided relative to the appropriate choice of an index, as well as a) what reductions to the index should be made to recognize company expenses and b) maximum and minimum limits on the interest rates.

In reaching a decision, the Life and Health Actuarial Task Force concluded that the Five-Year CMT less 125 basis points provides a reasonable balance between 1) giving companies relief in times of low interest rates and 2) providing an appropriate minimum guarantee for the consumer. Also, a consensus seemed to emerge on the Task Force in agreement with the position expressed in the January 22, 2003, submission from the ACLI: "The primary goal of the law's revision is to provide a means to permit lower interest rate guarantees than the current law allows in low interest rate environments." Accordingly, a cap equal to the existing 3% interest rate was established. However, in order to provide some minimum level of guarantee to the consumer, a floor of 1% was also established. Finally, flexibility was provided to the companies by allowing for the redetermination of the minimum interest guarantees on a periodic basis.

C) Should a lower minimum nonforfeiture interest rate be allowed for equity-indexed annuities?

This matter was not raised in a substantive way by any of the interested parties until the Task Force meeting in December 2002. Subsequently, a report was received from the AAA (dated January 27, 2003) that recommended the following: "The Academy of Actuaries recommends that an offset for Equity Indexed Annuities be allowed. The Academy strongly believes there is a need for an offset as long as the product provides a meaningful equity participation guarantee."

The Task Force agreed with this recommendation, and inserted the following language into the Model:

During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in Subsection B(2) above by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, of the additional reduction shall not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the reduction does not exceed the market value of the benefit. Lacking such a demonstration that is acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.

The commissioner may adopt rules to implement the provisions of Section 4C and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the commissioner determines adjustments are justified.

Several members of the Task Force expressed a desire that a model regulation be developed to assist the states in implementing this provision.

5) What are the implications of this project for accreditation and codification?

Since this project does not deal with solvency monitoring, there is no impact for accreditation and codification.

w:\mar03\lha\prhsannf.doc

Alaska Statutes

(6) term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in (h) - (w) of this section is less than the adjusted premiums calculated, on a policy of uniform amount or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance for a term defined as follows: for ages at issue 50 and under, the term shall be 15 years; thereafter, the term decrease one year for each year of age beyond 50, and for a term of 20 years or less expiring before age 71, for which uniform premiums are payable during the entire term of the policy;

(7) policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in (d) - (w) of this section, exceeds two and one-half percent of the amount of insurance at the beginning of the same policy year;

(8) policy which shall be delivered outside this state through an agent or other representative of the insurer issuing the policy.

(bb) For purposes of determining the applicability of subsection (aa), the at expiry for a joint term life insurance policy shall be the age at expiry of the oldest life.

(cc) The operative date of this section is January 1, 1968 except that an insurer may elect to comply with this section before that date by filing a written notice of election with the director. A written notice of election is not effective unless the insurer specifies in the notice

(1) the date upon which this section is to be operative, which date must be later than the date on which the notice is filed;

(2) the policies to which this section applies.

Sec. 21.45.305. Standard nonforfeiture law for individual deferred annuities.

(a) This section does not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under 26 U.S.C. 408 (Internal Revenue Code), as amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract that shall be delivered outside this state through an agent or other representative of the company issuing the contract.

(b) In the case of contracts issued on or after the operative date of this section as defined in (k) of this section, no contract of annuity, except as stated in (a) of this section, may be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions that in the opinion of the director are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract: (1) that upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in (d) - (g) and (i) of this section; (2) if a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or before the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in (d), (e), (g) and (i) of this section; the company shall reserve the right to defer the payment of that cash surrender benefit for a period of six months after demand for the payment with

surrender of the contract; (3) a statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of those benefits; (4) a statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which those benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract. Notwithstanding the requirements of this subsection, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid before that period would be less than \$20 monthly, the company may at its option terminate the contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by that payment shall be relieved of any further obligation under the contract.

(c) The minimum values as specified in (d) - (g) and (i) of this section of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section:

(1) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or before the commencement of any annuity payments shall be equal to an accumulation up to that time at a rate of interest of three per cent a year of percentages of the net considerations as defined in this paragraph paid before that time, decreased by the sum of (A) any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three per cent a year; and (B) the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of \$30 and less a collection charge of \$1.25 per consideration credited to the contract during that contract year. The percentages of net considerations shall be 65 per cent of the net consideration for the first contract year and 87 1/2 per cent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65 per cent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was 65 per cent.

(2) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(A) the portion of the net consideration for the first contract year to be accumulated shall be the sum of 65 per cent of the net consideration for the first contract year plus 22 1/2 per cent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years;

(B) the annual contract charge shall be the lesser of \$30 or 10 per cent of the gross annual consideration.

(3) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts

shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to 90 per cent and the net consideration shall be the gross consideration less a contract charge of \$75.

(d) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

(e) For contracts which provide cash surrender benefits, such cash surrender benefits available before maturity may not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid before the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract. The present value shall be calculated on the basis of an interest rate not more than one per cent higher than the interest rate specified in the contract for accumulating the net considerations to determine the maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event may any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

(f) For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time before maturity may not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid before the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity. The present value shall be calculated for the period before the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine the maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits before the commencement of any annuity payments, the present values shall be calculated on the basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event may the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

(g) For the purpose of determining the benefits calculated under (e) and (f) of this section, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be considered to be the latest date for which election shall be permitted by the contract, but is not considered to be later than the anniversary of the contract next following the annuitant's 70th birthday or the 10th anniversary of the contract, whichever is later.

(h) Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount before the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

(i) Any paid-up annuity, cash surrender, or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

(j) For any contract which provides, within the same contract by rider or supplemental contract

provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of (d) - (g) and (i) of this section, additional benefits payable (1) in the event of total and permanent disability, (2) as reversionary annuity or deferred reversionary annuity benefits, or (3) as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by this section. The inclusion of such additional benefits is not required in any paid-up benefits, unless those additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits.

(k) After July 6, 1978, any company may file with the director a written notice of its election to comply with the provisions of this section after a specified date before July 6, 1980. After the filing of the notice, then upon the specified date, which shall be the operative date of this section for the company, this section shall become operative with respect to annuity contracts thereafter issued by the company. If a company makes no such election, the operative date of this section for the company shall be July 6, 1980.

Sec. 21.45.310. Prohibited policy plans.

(a) An insurer may not issue for delivery or deliver in this state a life insurance policy or annuity contract issued under any plan for the segregation of policyholders into mathematical groups and providing benefits for a surviving policyholder of a group arising out of the death of another policyholder of that group or under another similar plan.

(b) An insurer may not issue for delivery or deliver in this state a life insurance policy or annuity contract providing benefits or values for surviving or continuing policyholders contingent upon the lapse or termination of the policies of other policyholders, whether by death or otherwise. This provision does not prohibit the payment or allowance of regular annual dividends or savings under participating forms of policies or contracts, or prohibit the annual distribution to policyholders or beneficiaries of sums representing in part gains to the insurer from lapses, surrenders, or mortality either in general or as resulting from particular classifications of policies.

Sec. 21.45.320. Industrial life insurance defined. [Repealed, Sec. 17 ch 21 SLA 1985].

Repealed or Renumbered

Chapter 21.48. GROUP LIFE INSURANCE

Sec. 21.48.010. Group requirements for group contracts.

(a) A group life insurance policy may not be delivered in this state insuring the lives of more than one individual unless

(1) the policyholder was formed for purposes other than obtaining insurance or is a trust established by one or more employers or labor unions or by one or more employers and labor unions;

(2) the policy covers at least two individuals at the date of issue;

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 184
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to individual deferred annuities; ..." BRU Civil Division
Sponsor Representative Coghill Component Fair Business Practices
Requester House Labor and Commerce Committee Component No. 2206

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
This bill changes the interest rate used in determining the minimum nonforfeiture amount for certain deferred annuities from three percent to one and a half percent.

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

Prepared by: Joan M. Kasson Phone (907) 465-5370
Division Attorney General's Office Date/Time 3/28/03 2:45 PM
Approved by: Joan M. Kasson for Gregg D. Renkes, Attorney General Date 3/28/2003
Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 184
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to individual deferred annuities; . . ." BRU Civil Division
Sponsor Representative Coghill Component Fair Business Practices
Requester House Labor and Commerce Committee Component No. 2206

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
This bill changes the interest rate used in determining the minimum nonforfeiture amount for certain deferred annuities from three percent to one and a half percent.

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

Prepared by: Joan M. Kasson Phone (907) 465-5370
Division: Attorney General's Office Date/Time 3/28/03 2:45 PM
Approved by: Joan M. Kasson for Gregg D. Renkes, Attorney General Date 3/28/2003
Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SSHB 184
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Community & Economic Development
Title Individual Deferred Annuities BRU Insurance (116)
Component Insurance

Sponsor Representative Coghill
Requester House Labor & Commerce Component No. 354

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2002) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Any cost to enforce the provision on insurers would be absorbed within existing division resources.

Prepared by: Linda S. Hall, Director Phone 269-7900
Division: Division of Insurance Date/Time 4/1/03 5:18 PM
Approved by: Edgar Blatchford, Commissioner Date 4/1/2003
Agency: Department of Community & Economic Development

HB

188

Representative Mike Hawker

Alaska State Legislature



Session:

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907 465-4949 direct
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716 W 4th Avenue
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907 269-0248 fax

Member:

House Finance Committee
Legislative Budget
& Audit Committee

House District 32:

Agle River
Anchorage
Rainbow
Indian
Bird
Girdwood
Portage
Whittier
Sunrise
Hope

Memorandum

To: Senator Ralph Seekins, Chair
Senate Judiciary Committee

From: Representative Mike Hawker *Mike Hawker*

Date: 4/15/2004

Re: House Bill 188-Bail Schedule for Skiing Violation

I request House Bill 188- "An Act relating to the authority of the Department of Natural Resources to issue citations for certain skiing violations; relating to establishing a bail schedule for certain skiing violations and to procedures for issuing a citation for a skiing violation." be scheduled for a hearing at the earliest possible convenience in the Senate Judiciary Committee.

The 18th Alaska Legislature passed the Alaska Ski Safety Act in 1994. The establishment of a bail schedule was intended in the original Ski Safety Act, however the court ruled they needed more specific statutory directive to do so.

House Bill 188 is necessary to direct the Supreme Court to establish a bail forfeiture schedule for violations codified in the Ski Safety Act. It is not the intent of House Bill 188 to change any part of the original Alaska Ski Safety Act.

Attached to this memo are the bill, sponsor statement, sectional analysis, relevant statutes, letters from the Alaska Court System regarding the bail schedule, fiscal notes and letters of support.

We are expecting testimony from Anchorage, Girdwood and Juneau.

If you have any questions, please contact myself or Sara Wright of my staff at 6899.

Thank you for your consideration of this request.

Representative Mike Hawker

Alaska State Legislature



Session:

State Capitol
Juneau, AK 99801
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Member:

House Finance Committee
Legislative Budget
& Audit Committee

House District 32:

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Portage
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Sunrise
Hope

House Bill 188 Sponsor Statement

The 18th Alaska Legislature passed the Alaska Ski Safety Act (ASSA) in 1994. This Act codified certain duties and responsibilities of both downhill ski-area operators and downhill skiers using those facilities. The ASSA facilitates development and management of a safe and responsible downhill skiing industry in Alaska.

HB 188 does not change any aspect of the original ASSA or the rights, responsibilities or authorities codified therein. HB 188 is supported by both the Department of Natural Resources and the ski industry in Alaska.

Section 1 of HB 188 clarifies that the ASSA is applicable to both state operated and privately operated downhill ski areas. The original language stating the ASSA was applicable within a ski area "over which the state has jurisdiction" was originally intended to distinguish state legal jurisdiction from preemptive federal legal jurisdiction. Confusion over the applicability of the ASSA is resolved by deleting this distinction.

Section 2 of HB 188 clarifies language in the original ASSA that the Alaska Court System found inadequate to compel their compliance with legislative intent.

HB 188 Sponsor Statement
Page 2 of 3

The ASSA intended for the Alaska Supreme Court to establish a bail forfeiture schedule for certain offenses. The Supreme Court declined to create such a schedule concluding they did not have the adequate statutory authorization required by Administrative Rule 43(a). HB 188 clearly directs the Supreme Court to establish a bail forfeiture schedule for violations of specified provisions the ASSA.

A "violation" is a noncriminal offense that is punishable only by a fine. A bail forfeiture schedule is a list of fines for specified offenses. Without a bail schedule, the fine for all violations specified the ASSA is \$50 for each offense. The bail schedule allows different fines for different violations in an amount up to \$150 per offense.

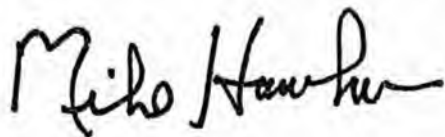
Section 3 of HB 188 adds citations issued for violations of the ASSA to the special list of citations that are exempt from the general statutory requirement that citation documents require violators to make a written promise to appear in court. This promise is not appropriate for violations that are punishable only by a fine.

Alaska Ski Safety Act

The following is provided for background information on the ASSA. It is not the intent of the sponsor of HB188 to change any aspect of the original ASSA or the rights, responsibilities or authorities codified therein.

Section 05.45.100 of the ASSA specifies the following violations:

1. Skiing on a ski slope or trail that has been posted as "closed"
2. Not using a safety strap or device capable of stopping the ski should the ski become unattached from the skier
3. Crossing the uphill track of a ... tow except at locations designated by the operator, or placing an object in an uphill track
4. Moving uphill on a tramway or using a ski slope or trail while the skier's ability is impaired by the influence of alcohol or a controlled substance
5. Knowingly entering upon public or private land from an adjoining ski area when the land has been closed by an owner and is posted by the owner or by the ski area operator
6. Except for the purpose of securing aid for a person injured in a collision, a skier involved in a collision with another skier or person that results in an injury may not leave the vicinity of the collision before giving the skier's name and current address to the other person involved in the collision and to an employee of the ski area operator or a member of the voluntary ski patrol. A person who leaves the scene of a collision to obtain aid shall give the person's name and current address as required ... after obtaining aid.



Representative Mike Hawker

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 188
 (H) Publish Date: 2/26/04

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Bail Schedule for Skiing Violations BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Hawker
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB188.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 2/20/04 8:10 AM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/20/2004
 Agency Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB188
 (H) Publish Date: 3/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
 Title Bail schedule for skiing violations RDU Resource Development
 Component Claims, Permits & Leases
 Sponsor Rep. Hawker
 Requester (H) RES Component No. 2460

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Bob Loeffler, Director Phone 269-8600
 Division Mining, Land and Water Date/Time 2/24/04
 Approved by: Thomas Irwin, Commissioner Date 2/24/04
 Agency Natural Resources

**Alaska
Ski Safety Act**

AS 05.45

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Sec. 05.35.100. Alaska Winter Olympics account. [Repealed, § 2 ch 6 SLA 1986.]

Sec. 05.35.150. Alaska amateur sports fund. [Repealed, § 12 ch 42 SLA 1997.]

Chapter 40. Alaska Amateur Sports Authority.

[Repealed, § 9 ch 115 SLA 1989.]

Chapter 45. Ski Liability, Safety, and Responsibility.

Section

- 10. Limitation on actions arising from skiing
- 20. Effect of violations
- 30. Duties of passengers
- 40. Required plan and patrol by ski area operators
- 50. Required signs for tramways; duties of operators
- 60. Required signs for trails and slopes; duties of operators
- 70. Other duties of ski area operators

Section

- 80. Skiers outside marked boundaries
- 90. Reckless skiers; revocation of skiing privileges
- 100. Duties and responsibilities of skiers
- 110. Competition; immunity for ski area operator
- 120. Use of liability releases
- 200. Definitions
- 210. Short title

Cross references. — For safety, inspection and regulation of recreational devices, see AS 05.20; for limitations on claims arising from skiing, see AS 09.65.135; for legislative findings and purpose in connection with the enactment of this chapter, see

§ 1, ch. 63, SLA 1994 in the Temporary and Special Acts.

Effective date of chapter. — Section 4, ch. 63, SLA 1994 makes this chapter effective May 26, 1994, in accordance with AS 01.10.070(c).

Sec. 05.45.010. Limitation on actions arising from skiing. Notwithstanding any other provision of law, a person may not bring an action against a ski area operator for an injury resulting from an inherent danger and risk of skiing. (§ 2 ch 63 SLA 1994)

Sec. 05.45.020. Effect of violations. (a) A ski area operator or other person who violates a requirement of this chapter, a provision of a plan of operation prepared under AS 05.45.040, or a regulation adopted by the Department of Labor and Workforce Development under AS 05.20.070 is negligent and civilly liable to the extent the violation causes injury to a person or damage to property.

(b) Notwithstanding the provisions of AS 09.17.080,

(1) the limitation of liability described under AS 05.45.010 is a complete defense in an action against a ski area operator for an injury if an inherent danger or risk of skiing is determined to be a contributory factor in the resulting injury, unless the ski area operator has violated a requirement of this chapter, a provision of a plan of operation prepared under AS 05.45.040, or a regulation adopted by the Department of Labor and Workforce Development under AS 05.20.070;

(2) a violation of the passenger duties imposed under AS 05.45.030 or skier duties imposed under AS 05.45.100 is a complete defense in an action against a ski area operator if the violation is determined to be a contributory factor in the resulting injury, unless the ski area operator has violated a requirement of this chapter, a provision of a plan of operation prepared under AS 05.45.040, or a regulation adopted by the Department of Labor and Workforce Development under AS 05.20.070.

(c) If the ski area operator is determined to have violated a requirement of this chapter, a provision of a plan of operation prepared under AS 05.45.040, or a regulation adopted by the Department of Labor and Workforce Development under AS 05.20.070, the provisions of AS 09.17.080 apply in an action against a ski area operator for an injury resulting from the violation. (§ 2 ch 63 SLA 1994)

Revisor's notes. — In 1999, "Department of La- Workforce Development" in each subsection in accordance with § 90, ch. 58, SLA 1999.

Sec. 05.45.030. Duties of passengers. (a) A passenger may not board a tramway if the passenger does not have

(1) sufficient physical dexterity or ability and knowledge to negotiate or use the facility safely; or

(2) the assistance of a person authorized by the ski area operator to assist a skier.

(b) A passenger may not

(1) embark upon or disembark from a tramway except at a designated area unless reasonably necessary to prevent injury to the passenger or others; this paragraph does not apply if the tramway stops and the operator assists the passengers to disembark from the tramway;

(2) intentionally throw or expel an object from a tramway while riding on the tramway, except as permitted by the operator;

(3) act while riding on a tramway in a manner that may interfere with proper or safe operation of the tramway;

(4) engage in conduct that may contribute to or cause injury to a person;

(5) intentionally place in an uphill track of a J-bar, T-bar, platter pull, rope tow, or another surface lift an object that could cause another skier to fall;

(6) embark upon a tramway marked as closed;

(7) disobey instructions posted in accordance with this chapter or oral instructions by the ski area operator regarding the proper or safe use of a tramway unless the oral instructions are contrary to this chapter or contrary to posted instructions. (§ 2 ch 63 SLA 1994)

Sec. 05.45.040. Required plan and patrol by ski area operators. (a) A ski area operator shall prepare a plan of operation for each ski season and shall implement the plan throughout the ski season. A plan of operation must include written provisions for ski patrol, avalanche control, avalanche rescue, grooming procedures, tramway evacuation, hazard marking, missing person procedures, and first aid. Before the operation of the ski area for that season, the plan shall be reviewed and approved by the commissioner of natural resources except that if an agency of the United States manages the land on which the ski area operates, the plan shall be reviewed and approved by that agency. The commissioner of natural resources may require a ski area operator to pay a fee not to exceed the department's cost of reviewing the plan, and may adopt regulations to implement this subsection.

(b) A ski area operator shall provide a ski patrol whose members meet or exceed the training standards of the National Ski Patrol System, Inc. This subsection does not apply to a ski area if the operator transports skiers using only a single tramway consisting of a rope tow, the rope tow does not transport skiers more than 500 vertical feet, and the ski area is operated by a nonprofit corporation or a municipality. In this subsection, "nonprofit corporation" means a corporation that qualifies for exemption from taxation under 26 U.S.C. 501(c)(3) or (4) (Internal Revenue Code).

(c) Notwithstanding any other law, the state and the commissioner of natural resources are not civilly liable for damages resulting from an act or omission in reviewing, approving, or disapproving a plan of operation under (a) of this section. (§ 2 ch 63 SLA 1994)

Sec. 05.45.050. Required signs for tramways; duties of operators. (a) A ski area operator who operates a tramway shall maintain a sign system with concise, simple, and pertinent information for the protection and instruction of passengers. Signs shall be prominently placed on each tramway, readable in conditions of ordinary visibility, and where applicable adequately lighted for nighttime passengers. Signs shall be posted

(1) at or near the loading point of each tramway, regardless of the type, advising that a person not familiar with the operation of the device must ask the operator of the device for assistance and instruction;

(2) in the interior of each two-car and multicar tramway showing

(A) the maximum capacity in pounds of the car and the maximum number of passengers allowed;

(B) instructions for procedures in emergencies;

(3) in a conspicuous place at each loading area of two-car and multicar tramways stating the maximum capacity in pounds of the car and the maximum number of passengers allowed;

(4) at all chair lifts stating the following:

(A) "Prepare to Unload," which shall be located not less than 50 feet ahead of the unloading area;

(B) "Keep Ski Tips Up," which shall be located ahead of any point where the skis may come in contact with a platform or the snow surface;

(C) "Unload Here," which shall be located at the point designated for unloading;

(D) "Stop Gate," which shall be located where applicable;

(E) "Remove Pole Straps from Wrists," which shall be located prominently at each loading area;

(F) "Check for Loose Clothing and Equipment," which shall be located before the "Prepare to Unload" sign;

(5) at all J-bars, T-bars, platter pulls, rope tows, and any other surface lift, stating the following:

(A) "Remove Pole Straps from Wrists," which shall be placed at or near the loading area;

(B) "Stay in Tracks," "Unload Here," and "Safety Gate," which shall be located where applicable;

(C) "Prepare to Unload," which shall be located not less than 50 feet ahead of each unloading area;

(6) near the boarding area of all J-bars, T-bars, platter pulls, rope tows, and any other surface lift, advising passengers to check to be certain that clothing, scarves, and hair will not become entangled with the lift;

(7) at or near the boarding area of all lifts, stating the skier's duty set out in AS 05.45.100(c)(2).

(b) Signs not specified by (a) of this section may be posted at the discretion of the ski area operator.

(c) A ski area operator, before opening the tramway to the public each day, shall inspect the tramway for the presence and visibility of the signs required by (a) of this section.

(d) A ski area operator shall post and maintain signs that are required by (a) of this section in a manner that they may be viewed during conditions of ordinary visibility. (§ 2 ch 63 SLA 1994)

Sec. 05.45.060. Required signs for trails and slopes; duties of operators. (a) A ski area operator shall maintain a sign and marking system as required in this section in addition to that required by AS 05.45.050. All signs required by this section shall be maintained so as to be readable and recognizable under conditions of ordinary visibility.

(b) A ski area operator shall post a sign recognizable to skiers proceeding to the uphill loading point of each base area lift that depicts and explains signs and symbols that the skier may encounter at the ski area. The sign must include the following:

(1) the least difficult trails and slopes, designated by a green circle and the word "easier";

(2) the most difficult trails and slopes, designated by a black diamond and the words "most difficult"; trails intended for expert skiers may be marked with a double black diamond and the words "expert only";

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(3) the trails and slopes that have a degree of difficulty that falls between the green circle and the black diamond designation, designated by a blue square and the words "more difficult";

(4) danger areas designated by a red exclamation point inside a yellow triangle with a red band around the triangle and the word "danger" printed beneath the emblem;

(5) closed trails or slopes designated by a sign with a circle or octagon around a figure in the shape of a skier with a band running diagonally across the sign from the upper right-hand side to the lower left-hand side and with the word "closed" printed beneath the emblem.

(c) If applicable, a sign shall be placed at or near the loading point of each tramway as follows:

**WARNING: This lift services (most difficult) or
(most difficult and more difficult) or (more
difficult) slopes only.**

(d) If a particular trail or slope or portion of a trail or slope is closed to the public by a ski area operator, the operator shall place a sign notifying the public of that fact at each identified entrance of each portion of the trail or slope involved. A slope without an entrance defined by terrain or forest growth may be closed with a line of signs in a manner readily visible to skiers under conditions of ordinary visibility. This subsection does not apply if the trail or slope is closed with ropes or fences.

(e) A ski area operator shall

(1) place a sign at or near the beginning of each trail or slope, which must contain the appropriate symbol of the relative degree of difficulty of that particular trail or slope as described in (b) of this section; this paragraph does not apply to a slope or trail designated "easier" that to a skier is substantially visible in its entirety under conditions of ordinary visibility before beginning to ski the slope or trail;

(2) mark the ski area boundaries in a fashion readily visible to skiers under conditions of ordinary visibility;

(3) mark that portion of the boundary with signs as required by (b)(5) of this section if the owner of land adjoining a ski area closes all or part of the land and notifies the ski area operator of the closure;

(4) mark hydrants, water pipes, and all other man-made structures on slopes and trails that are not readily visible to skiers under conditions of ordinary visibility from a distance of at least 100 feet and adequately and appropriately cover man-made structures that create obstructions with a shock absorbent material that will lessen injuries; any type of marker is sufficient, including wooden poles, flags, or signs, if the marker is visible from a distance of 100 feet and if the marker itself does not constitute a serious hazard to skiers; in this paragraph, "man-made structures" does not include variations in steepness or terrain, whether natural or as a result of slope design, snow making, grooming operations, roads and catwalks, or other terrain modifications;

(5) mark exposed forest growth, rocks, stumps, streambeds, trees, or other natural objects that are located on a slope or trail that is regularly used by skiers or that is regularly packed and prepared by a ski area operator using a snow vehicle and attached implements and that are not readily visible to skiers under conditions of ordinary visibility from a distance of at least 100 feet;

(6) mark roads, catwalks, cliffs, or other terrain modifications that are not readily visible to skiers under conditions of ordinary visibility from a distance of at least 100 feet;

(7) post and maintain signs that contain the warning notice specified in (g) of this section; the notice shall be placed in a clearly visible location at the ski area where lift tickets and ski school lessons are sold and in a position to be recognizable as a sign to skiers proceeding to the uphill loading point of each base area lift; the signs may not be

smaller than three feet by three feet and must be white with black and red letters as specified in this paragraph; the word "WARNING" must appear on the sign in red letters; the warning notice specified in this paragraph must appear on the sign in black letters with each letter to be a minimum of one inch in height.

(f) A ski lift ticket sold or made available for sale to skiers by a ski area operator must contain in clearly readable print the warning notice specified in (g) of this section.

(g) The signs described in (e)(7) of this section and the lift tickets described in (f) of this section must contain the following warning notice:

WARNING

Under Alaska law, the risk of an injury to person or property resulting from any of the inherent dangers and risks of skiing rests with the skier. Inherent dangers and risks of skiing include changing weather conditions; existing and changing snow conditions; bare spots, rocks, stumps and trees; collisions with natural objects, man-made objects, or other skiers; variations in terrain; and the failure of skiers to ski within their own abilities.

(§ 2 ch 63 SLA 1994)

Sec. 05.45.070. Other duties of ski area operators. (a) A ski area operator shall equip a motorized snow-grooming vehicle with a light visible at any time the vehicle is moving on or in the vicinity of a ski slope or trail.

(b) When maintenance equipment is being employed to maintain or groom a ski slope or trail while the ski slope or trail is open to the public, the ski area operator shall place a conspicuous notice regarding the maintenance or grooming at or near the top of that ski slope or trail.

(c) A motor vehicle operated on the ski slope or trails of a ski area shall be equipped with at least

- (1) one lighted head lamp;
- (2) one lighted red tail lamp;
- (3) a brake system maintained in operable condition; and

(4) a fluorescent flag at least 40 square inches mounted at least six feet above the bottom of the tracks.

(d) A ski area operator shall make available at reasonable fees, instruction and education regarding the inherent danger and risk of skiing and the duties imposed on skiers under this chapter. Notice of the availability of the instruction and education required under this subsection shall be placed in a clearly visible location at the ski area where lift tickets and ski school lessons are sold, in a position to be recognizable as a sign to skiers proceeding to the uphill loading point of each base area lift, and printed on equipment rental agreements. (§ 2 ch 63 SLA 1994)

Sec. 05.45.080. Skiers outside marked boundaries. A ski area operator does not have a duty arising out of the operator's status as a ski area operator to a skier skiing beyond the area boundaries if the boundaries are marked as required by AS 05.45.060(e)(2). (§ 2 ch 63 SLA 1994)

Sec. 05.45.090. Reckless skiers; revocation of skiing privileges. (a) A ski area operator shall develop and maintain a written policy covering situations involving reckless skiers, including a definition of reckless skiing, procedures for approaching and warning skiers regarding reckless conduct, and procedures for taking action against reckless skiers, including revocation of ski privileges. A ski area operator shall designate ski patrol personnel responsible for implementing the ski area operator's policy regarding reckless skiers.

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(b) A ski area operator, upon finding a person skiing in a careless and reckless manner, may revoke that person's skiing privileges. This section may not be construed to create an affirmative duty on the part of the ski area operator to protect skiers from their own or from another skier's carelessness or recklessness. (§ 2 ch 63 SLA 1994)

Sec. 05.45.100. Duties and responsibilities of skiers. (a) A skier is responsible for knowing the range of the skier's own ability to negotiate a ski slope or trail and to ski within the limits of the skier's ability. A skier is responsible for an injury to a person or property resulting from an inherent danger and risk of skiing, except that a skier is not precluded under this chapter from suing another skier for an injury to person or property resulting from the other skier's acts or omissions. Notwithstanding any other provision of law, the risk of a skier's collision with another skier is not an inherent danger or risk of skiing in an action by one skier against another.

(b) A skier has the duty to maintain control of the skier's speed and course at all times when skiing and to maintain a proper lookout so as to be able to avoid other skiers and objects. However, a person skiing downhill has the primary duty to avoid collision with a person or object below the skier.

(c) A skier may not

*

(1) ski on a ski slope or trail that has been posted as "closed" under AS 05.45.060(b)(5) and (d);

(2) use a ski unless the ski is equipped with a strap or other device capable of stopping the ski should the ski become unattached from the skier;

(3) cross the uphill track of a J-bar, T-bar, platter pull, or rope tow except at locations designated by the operator, or place an object in an uphill track;

(4) move uphill on a tramway or use a ski slope or trail while the skier's ability is impaired by the influence of alcohol or a controlled substance as defined in AS 11.71.900 or other drug;

(5) knowingly enter upon public or private land from an adjoining ski area when the land has been closed by an owner and is posted by the owner or by the ski area operator under AS 05.45.060(e)(3).

(d) A skier shall stay clear of snow grooming equipment, vehicles, lift towers, signs, and other equipment on the ski slopes and trails.

(e) A skier has the duty to heed all posted information and other warnings and to refrain from acting in a manner that may cause or contribute to the injury of the skier or others. Evidence that the signs required by AS 05.45.050 and 05.45.060 were present, visible, and readable at the beginning of a given day creates a presumption that all skiers using the ski area on that day have seen and understood the signs.

(f) Before beginning to ski from a stationary position or before entering a ski slope or trail from the side, a skier has the duty to avoid moving skiers already on the ski slope or trail.

*

(g) Except for the purpose of securing aid for a person injured in the collision, a skier involved in a collision with another skier or person that results in an injury may not leave the vicinity of the collision before giving the skier's name and current address to the other person involved in the collision and to an employee of the ski area operator or a member of the voluntary ski patrol. A person who leaves the scene of a collision to obtain aid shall give the person's name and current address as required by this subsection after obtaining aid.

(h) A person who violates a provision of (c) or (g) of this section is guilty of a violation as defined in AS 11.81.900. The commissioner of natural resources, a person designated by the ski area operator who is authorized by the commissioner, or an employee of the Department of Natural Resources authorized by the commissioner may issue a citation in accordance with the provisions of AS 41.21.960 to a person who violates (c) or (g) of this section within a ski area over which the state has jurisdiction. (§ 2 ch 63 SLA 1994)

Sec. 05.45.110. Competition; immunity for ski area operator. (a) The ski area operator shall, before the beginning of a ski competition, allow an athlete who will ski in the competition a reasonable visual inspection of the course or area where the competition is to be held.

(b) An athlete skiing in competition assumes the risk of all course or area conditions, including weather and snow conditions, course construction or layout, and obstacles that a visual inspection would have revealed. A ski area operator is not liable for injury to an athlete who skis in competition and who is injured as a result of a risk described in this subsection. (§ 2 ch 63 SLA 1994)

Sec. 05.45.120. Use of liability releases. (a) A ski area operator may not require a skier to sign an agreement releasing the ski area operator from liability in exchange for the right to ride a ski area tramway and ski in the ski area. A release that violates this subsection is void and may not be enforced.

(b) Notwithstanding (a) of this section, a ski area operator may

(1) require a special event coach, participant, helper, spectator, or rental customer to sign an agreement releasing the ski area operator from liability in exchange for the right to coach, participate, assist in, or observe the special event; or

(2) use a release agreement required by a third party as a condition of operating a rental program or special event at the ski area.

(c) In this section, "special event" means an event, pass, race, program, rental program, or service that offers competition or other benefits in addition to a ticket representing the right to ride a ski area tramway and ski on the ski slopes or trails, whether or not additional consideration is paid. (§ 2 ch 63 SLA 1994)

Sec. 05.45.200. Definitions. In this chapter,

(1) "base area lift" means a tramway that skiers ordinarily use without first using some other tramway;

(2) "conditions of ordinary visibility" means daylight or, where applicable, nighttime, in nonprecipitating weather;

(3) "inherent danger and risk of skiing" means a danger or condition that is an integral part of the sport of skiing, including changing weather conditions; snow conditions as they exist or may change, including ice, hard pack, powder, packed powder, wind pack, corn, crust, slush, cut-up snow, and machine-made snow; surface or subsurface conditions including bare spots, forest growth, rocks, stumps, streams, streambeds, and trees, or other natural objects, and collisions with natural objects; impact with lift towers, signs, posts, fences or enclosures, hydrants, water pipes, other man-made structures, and their components; variations in steepness or terrain, whether natural or as a result of slope design, snowmaking or grooming operations, including roads and catwalks or other terrain modifications; collision with other skiers; and the failure of skiers to ski within their own abilities; the term "inherent danger and risk of skiing" does not include the negligence of a ski area operator under AS 05.45.020, or acts or omissions of a ski area operator involving the use or operation of ski lifts;

(4) "injury" means property damage, personal injury, or death;

(5) "passenger" means a person who is lawfully using a tramway;

(6) "ski area" means all downhill ski slopes or trails and other places under the control of a downhill ski area operator; "ski area" does not include a cross-country ski trail;

(7) "ski area operator" means a person having operational responsibility for a downhill ski area, and includes an agency of the state or a political subdivision of the state;

(8) "skier" means an individual using a downhill ski area for the purpose of

(A) skiing;

(B) sliding downhill on snow or ice on skis, a toboggan, a sled, a tube, a ski-bob, a snowboard, or another skiing or sliding device; or

- (C) using any of the facilities of a ski area, including ski slopes and trails;
 (9) "ski slopes or trails" means those areas designated by a ski area operator to be used by a skier;
 (10) "tramway" means a device that is a passenger tramway, aerial or surface lift, ski lift, or rope tow regulated under AS 05.20. (§ 2 ch 63 SLA 1994)

Sec. 05.45.210. Short title. This chapter may be cited as the Alaska Ski Safety Act of 1994. (§ 2 ch 63 SLA 1994)

Chapter 90. Miscellaneous Provisions.

Section

01. Racing events

Sec. 05.90.001. Racing events. (a) To the extent that it is consistent with federal law and regulations, a special racing event of limited duration that is conducted according to (b) of this section may be held on a state highway.

(b) The Department of Public Safety, with the concurrence of the Department of Transportation and Public Facilities, may grant, and for cause cancel, permission to conduct a special racing event as provided in this section upon terms and conditions and at times and places the department may determine. If an applicant's permission is refused or cancelled, the applicant may request the Department of Public Safety for a hearing. The hearing shall be conducted under the provisions of the Administrative Procedure Act (AS 44.62). (§ 2 ch 192 SLA 1970; am §§ 1, 2 ch 32 SLA 1983)

Revisor's notes. — Formerly AS 05.35.010 and 05.35.020. Renumbered and reorganized in 1981.

Cross references. — For state's immunity from liability for injuries arising out of permitted events, see AS 44.80.070.

Collateral references. — 4 Am. Jur. 2d, Amusements and Exhibitions, §§ 28, 29-34, 46, 78.
 61A C.J.S., Motor Vehicles, §§ 571-587.

Zoning regulation forbidding "racing" or a "race track." 83 ALR2d 877.

Liability of participant in unauthorized highway race for injury to third person directly caused by other racer. 13 ALR3d 431.

Liability of public authority for injury arising out of automobile race conducted on street or highway. 80 ALR3d 1192.

Automobile or horse race: liability for injury or death of participant in automobile or horse race at public track. 13 ALR4th 623.

**Excerpt from
AS 11.81.900**

**Defining
“Violation”**

(A) a belief that circumstances exist which increase the probability of detection or apprehension of the defendant or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose; or

(B) a decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective;

(55) "serious physical injury" means

(A) physical injury caused by an act performed under circumstances that create a substantial risk of death; or

(B) physical injury that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that unlawfully terminates a pregnancy;

(56) "services" includes labor, professional services, transportation, telephone or other communications service, entertainment, including cable, subscription, or pay television or other telecommunications service, the supplying of food, lodging, or other accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, the use of a computer, computer time, a computer system, a computer program, a computer network, or any part of a computer system or network, and the supplying of equipment for use;

(57) "sexual contact" means

(A) the defendant's

(i) knowingly touching, directly or through clothing, the victim's genitals, anus, or female breast; or

(ii) knowingly causing the victim to touch, directly or through clothing, the defendant's or victim's genitals, anus, or female breast;

(B) but "sexual contact" does not include acts

(i) that may reasonably be construed to be normal caretaker responsibilities for a child, interactions with a child, or affection for a child;

(ii) performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical or mental health of the person being treated; or

(iii) that are a necessary part of a search of a person committed to the custody of the Department of Corrections or the Department of Health and Social Services;

(58) "sexual penetration" means

(A) genital intercourse, cunnilingus, fellatio, anal intercourse, or an intrusion, however slight, of an object or any part of a person's body into the genital or anal opening of another person's body;

(B) but "sexual penetration" does not include acts

(i) performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical health of the person being treated; or

(ii) that are a necessary part of a search of a person committed to the custody of the Department of Corrections or the Department of Health and Social Services;

(C) each party to any of the acts defined as "sexual penetration" is considered to be engaged in sexual penetration;

(59) "solicits" includes "commands";

(60) "threat" means a menace, however communicated, to engage in conduct described in AS 11.41.520(a)(1) — (7) but under AS 11.41.520(a)(1) includes all threats to inflict physical injury on anyone;

(61) "violation" is a noncriminal offense punishable only by a fine, but not by imprisonment or other penalty; conviction of a violation does not give rise to any disability or legal disadvantage based on conviction of a crime; a person charged with a violation is not entitled

(A) to a trial by jury; or

(B) to have a public defender or other counsel appointed at public expense to represent the person;

**Form and
issuance of
citation**

AS 41.21.960

Article 10. General Provisions.

Section
950. Penalty
955. Enforcement authority

Section
960. Form and issuance of citation
990. Definitions

Sec. 41.21.950. Penalty. A person who violates a provision of this chapter or a regulation adopted under this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than six months, or by both. (§ 1 ch 161 SLA 1970)

Revisor's notes. — Enacted as AS 41.20.200. Renumbered as AS 41.20.043 in 1970. Renumbered again in 1983.

NOTES TO DECISIONS

Stated in *State v. Lawrence*, 858 P.2d 635 (Alaska Ct. App. 1993).

Sec. 41.21.955. Enforcement authority. (a) For offenses committed within parks and recreational facilities subject to the department's supervision, the following persons are peace officers of the state and they shall enforce the provisions of this chapter and the regulations adopted under this chapter:

- (1) an employee of the department authorized by the commissioner;
- (2) a police officer in the state;
- (3) any other person authorized by the commissioner.

(b) Each person designated in (a) of this section may, when enforcing the provisions of this chapter or a regulation adopted under this chapter,

- (1) execute a warrant or other process issued by an officer or court of competent jurisdiction;
- (2) administer or take an oath, affirmation or affidavit; and
- (3) arrest or issue a citation to a person who violates a provision of this chapter or a regulation adopted under this chapter. (§ 1 ch 161 SLA 1970; am § 2 ch 102 SLA 1984)

Revisor's notes. — Enacted as AS 41.20.210. Renumbered as AS 41.20.045 in 1970. Renumbered again in 1983.

Sec. 41.21.960. Form and issuance of citation. (a) When a peace officer stops or contacts a person concerning the commission of a misdemeanor offense committed within a park or recreational facility subject to the department's supervision, the officer may issue a citation to the person, subject to the provisions of AS 12.25.180 — 12.25.230. The person receiving the citation may not be required to endorse the citation.

(b) The state supreme court shall identify those offenses that are amenable to disposition without court appearance and shall establish by rule or order a schedule of bail amounts, not to exceed fines prescribed by law, for those offenses. Before establishing or amending the schedule of bail amounts required by this subsection, the supreme court shall appoint and consult with an advisory committee consisting of two persons from the department, two district court judges, one member of the House Resources Committee, and one member of the Senate Resources Committee of the legislature. If the offense for which the citation is issued is one that may be disposed of without court appearance, the citing officer shall write on the citation the amount of bail applicable to the cited offense.

(c) A person cited for an offense for which a bail amount has been established under (b) of this section may, within 15 days from the date of the citation, mail or personally deliver to the clerk of the court having jurisdiction over the place where the offense occurred

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(1) the amount of bail indicated on the citation for that offense; and
 (2) a copy of the citation indicating the offender's waiver of appearance, plea of no contest, and direction to forfeit the bail and any items seized from the offender.

(d) When bail has been forfeited under this section, a judgment of conviction shall be entered. Forfeiture under this section of bail and items seized from the offender is a complete satisfaction for the offense, and the clerk of the court shall provide the offender with a receipt stating that fact if requested.

(e) If the person cited fails to pay the bail amount or appear in court as required, the citation shall be considered a summons for a misdemeanor charge and the offender shall be proceeded against in the manner prescribed by law.

(f) Notwithstanding other provisions of law, if a person cited for a misdemeanor for which a bail amount has been established under (b) of this section appears in court and is found guilty, the penalty that is imposed for the offense may not exceed the bail amount for that offense established under (b) of this section. (§ 3 ch 102 SLA 1984; am § 4 ch 25 SLA 1995; am § 46 ch 30 SLA 1996)

Cross references. — For parks bail forfeiture schedule, see Alaska Court Rule of Administration 43.3.

Effect of amendments. — The 1995 amendment, effective August 9, 1995, added "if requested" at the end of subsection (d).

The 1996 amendment, effective May 16, 1996, substituted "Forfeiture under this section of bail and items seized" for "Bail forfeited under this section and the forfeiture of items seized" at the beginning of the second sentence of subsection (d).

Sec. 41.21.990. Definitions. In this chapter

(1) "scenic park" means relatively spacious areas of outstanding natural significance, where major values are in their natural geological, faunal or floral characteristics, the purpose of which is directed primarily toward the preservation of its outstanding natural features and where development is minimal and only for the purpose of making the areas available for public enjoyment in a manner consistent with the preservation of the natural values such as camping, picnicking, sightseeing, nature study, hiking, riding and related activities which involve no major modification of the land, forests or waters, and without extensive introduction of artificial features or forms of recreational development that are primarily of urban character;

(2) "wilderness park" means an area whose predominant character is the result of the interplay of natural processes, large enough and so situated as to be unaffected, except in minor ways, by what takes place in the nonwilderness around it, a physical condition which activates the innermost emotions of the observer and where development of man-made objects will be strictly limited and depend entirely on good taste and judgment so that the wilderness values are not lost. (§ 1 ch 161 SLA 1970; am § 1 ch 82 SLA 1972; am § 43 ch 85 SLA 1988)

Revisor's notes. — Enacted as AS 41.20.220. Renumbered as AS 41.20.047 in 1970. Renumbered again in 1983.

Cross references. — For additional definitions, see AS 41.99.900.

Chapter 22. Outdoor Recreational, Open Space, and Historic Properties Development.

[Renumbered as AS 41.98.170 — 41.98.180.]

Chapter 23. Multiple Use Management of Public Resources.

Article

1. Public Use Areas (§§ 41.23.010 — 41.23.170)
2. Recreation Rivers (§§ 41.23.400 — 41.23.510)
3. Recreational Mining Areas (§§ 41.23.600 — 41.23.630)

**Exemption from
requirement for written
promise to appear in
court in citations issued
for violations for which
various bail schedules
have been established**

AS 12.25.180

AS 12.25.190

NOTES TO DECISIONS

Arrest for speedy trial purposes. — "Arrest," as used in Crim. R. 45(c)(1), which provides for a 120-day speedy trial period, must be defined in conformity with the statutory definition of an arrest. *G.D. v. State*, 681 P.2d 366 (Alaska Ct. App. 1984).

Defendant was not arrested on the date of the child-in-need-of-aid hearing, and the 120-day speedy trial period did not begin to run until he was served with a copy of the information charging him with sexual assault in the first degree and contributing to the delinquency of a minor. *G.D. v. State*, 681 P.2d 366 (Alaska Ct. App. 1984).

Where a defendant was suspected of driving while intoxicated leading to an injury accident, was informed that he could submit to a blood test at the hospital or be arrested and transported to the state police where he would be required by law to submit to a breath test to determine his blood-alcohol level, was released after the blood sample was taken, and was never handcuffed or moved from the hospital, the trial court could find that although the defendant was in police custody, the custody never amounted to an arrest as defined in this section. *Greenawalt v. Municipality of Anchorage*, 692 P.2d 983 (Alaska Ct. App. 1985).

Reading Cr. R. 45 and AS 12.25.160 together, as interpreted by this court and the Alaska supreme court, the time for trial begins to run from the date the defendant is arrested and held to answer for the commission of a specific crime as well as any subsequent charges arising out of the same conduct or same

criminal episode. *Knowlton v. State*, 795 P.2d 1287 (Alaska Ct. App. 1990).

The arrest of a parolee for a parole violation, which is an independent crime, did not trigger the beginning of the 120-day period for prosecution of the underlying offense under Cr. R. 45. *Knowlton v. State*, 795 P.2d 1287 (Alaska Ct. App. 1990).

The differing purposes governing parole revocation proceedings and criminal trials warranted a conclusion that defendant was not "held to answer" for the commission of the crime of forgery, AS 12.25.160, by virtue of his arrest for violating the conditions of his parole even though the condition violated was that defendant refrain from committing further crimes. *Knowlton v. State*, 795 P.2d 1287 (Alaska Ct. App. 1990).

Drawn guns and handcuffing do not necessarily turn stop into arrest. *Howard v. State*, 664 P.2d 603 (Alaska Ct. App. 1983).

Lawful stops and custodial arrest distinguished. — See *Howard v. State*, 664 P.2d 603 (Alaska Ct. App. 1983).

Applied in *Goss v. State*, 390 P.2d 220 (Alaska 1964); *Aldridge v. State*, 602 P.2d 798 (Alaska 1979); *Maynard v. State*, 652 P.2d 489 (Alaska Ct. App. 1982).

Quoted in *Jacobson v. State*, 786 P.2d 388 (Alaska Ct. App. 1990); *Dementieff v. State*, 814 P.2d 745 (Alaska Ct. App. 1991).

Cited in *Cannizzaro v. State*, 765 P.2d 110 (Alaska Ct. App. 1988).

Article 2. Citations.

Section

180. When peace officer may issue citation or take person before the court
190. When person to be given five-day notice to appear in court
195. Disposition of scheduled offenses

Section

200. Form for citations
210. Disposition and records of citations
220. When copy of citation considered a lawful complaint
230. Failure to obey citation

Sec. 12.25.180. When peace officer may issue citation or take person before the court. (a) When a person is stopped or contacted by a peace officer for the commission of a misdemeanor or the violation of a municipal ordinance, the person may, in the discretion of the contacting peace officer, be issued a citation instead of being taken before a judge or magistrate under AS 12.25.150, unless

- (1) the person does not furnish satisfactory evidence of identity;
- (2) the contacting officer has reasonable and probable cause to believe the person is a danger to self or others;
- (3) the crime for which the person is contacted is one involving violence or harm to another person or to property;
- (4) the person asks to be taken before a judge or magistrate under AS 12.25.150; or
- (5) the peace officer has probable cause to believe the person committed a crime involving domestic violence; in this paragraph, "crime involving domestic violence" has the meaning given in AS 18.66.990.

(b) When a person is stopped or contacted by a peace officer for the commission of an infraction or a violation, the person shall be issued a citation instead of being taken before a judge or magistrate under AS 12.25.150, unless

- (1) the person does not furnish satisfactory evidence of identity; or
- (2) the person refuses to accept the citation or to give a written promise to appear as provided for under AS 12.25.190(c). (§ 1 ch 31 SLA 1973; am § 19 ch 127 SLA 1974; am § 3 ch 144 SLA 1977; am § 34 ch 102 SLA 1980; am § 9 ch 64 SLA 1996)

Effect of amendments. — The 1996 amendment, effective July 1, 1996, in subsection (a), added paragraph (5) and made related stylistic changes.

Legislative history reports. — For report on ch. 31, SLA 1973 (SB 25), see 1973 Senate Journal Supplement No. 7, p. 2.

NOTES TO DECISIONS

Credibility of witnesses. — Since the trial court has the primary responsibility for evaluating witness credibility, where the court concluded that a police officer's version of events was credible, probable cause existed to stop the defendant and issue a citation, and there was no error in denying the defendant's suppression motion. *Vigue v. State*, 987 P.2d 204 (Alaska Ct. App. 1999).

Subsection (a) does not require a citation to be

issued. — Subsection (a) authorizes a police officer to issue a citation to a misdemeanor offender in lieu of making an arrest, unless one of the four enumerated exceptions applies. But the statute does not require a police officer to follow this course. *Jurco v. State*, 825 P.2d 909 (Alaska Ct. App. 1992).

Applied in *Ahmaogak v. State*, 595 P.2d 985 (Alaska 1979).

Sec. 12.25.190. When person to be given five-day notice to appear in court.
(a) When a person is contacted by a peace officer and the peace officer exercises the option provided for in AS 12.25.180, the officer shall prepare a written citation and issue it to the person.

(b) The time specified in the notice to appear shall be at least five days after the alleged violation or the issuance of the citation, whichever is later, unless the person cited requests an earlier hearing.

(c) The person cited for the crime shall give a written promise to appear in court by signing at least one copy of the written citation prepared by the peace officer, and the officer shall deliver a copy of the citation to the person. The written promise requirement of this subsection does not apply to boating citations for which a bail schedule has been established under AS 05.25.090(b), motor vehicle and traffic citations for which a bail or fine schedule has been established under AS 28.05.151, fish and game citations for which a bail schedule has been established under AS 16.05.165, citations issued under AS 04.21.065, citations issued under AS 18.35.341, citations issued in state park and recreational facilities under AS 41.21.960, or littering citations issued under AS 46.06.080. (§ 1 ch 31 SLA 1973; am § 20 ch 127 SLA 1974; am § 4 ch 144 SLA 1977; am § 20 ch 178 SLA 1978; am § 12 ch 34 SLA 1984; am § 1 ch 102 SLA 1984; am § 1 ch 132 SLA 1984; am § 1 ch 37 SLA 1987; am § 1 ch 76 SLA 1987; am § 3 ch 81 SLA 1989; am § 25 ch 28 SLA 2000)

Delayed amendment of subsection (c). — Under sec. 30, ch. 28, SLA 2000, effective on the earlier of July 1, 2005, or the occurrence of the contingency described in sec. 30(2), ch. 28, SLA 2000, (c) of this section will be repealed and reenacted. The contingency described in sec. 30(2), ch. 28, SLA 2000, gives effect to the change "90 days after the date the chair of the Alaska Legislative Council notifies the revisor of statutes that in the previous state fiscal year the state did not receive and does not anticipate receiving federal funding for a statewide boating and safety education program; the director of the division of legislative finance shall notify the chair of the Alaska Legislative Council when the state, in the previous fiscal year, did not receive federal funding for a statewide boating and safety program; the chair of the Alaska Legislative Council may not give the notice described in this paragraph unless the notice is approved by a vote of a majority of the members of the Alaska Legislative Council." Thereafter, subsection (c)

will be reenacted to read as follows: "(c) The person cited for the crime shall give a written promise to appear in court by signing at least one copy of the written citation prepared by the peace officer, and the officer shall deliver a copy of the citation to the person. The written promise requirement of this subsection does not apply to motor vehicle and traffic citations for which a bail or fine schedule has been established under AS 28.05.151, fish and game citations for which a bail schedule has been established under AS 16.05.165, citations issued under AS 04.21.065, citations issued under AS 18.35.341, citations issued in state park and recreational facilities under AS 41.21.960, or littering citations issued under AS 46.06.080."

Under sec. 1(b), ch. 28, SLA 2000, any intervening amendments to subsection (c) are not to be retained when that subsection is amended under sec. 30, ch. 28, SLA 2000.

NOTES TO DECISIONS

Applied in *Ahmaogak v. State*, 595 P.2d 985 (Alaska 1979).

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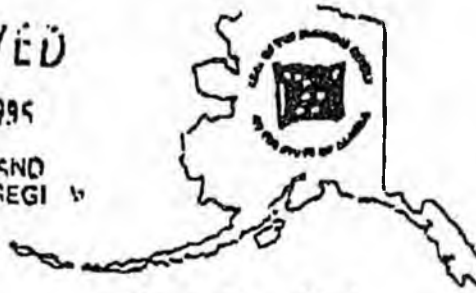
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Letters from Alaska Court System

**identifying need for
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ball forfeiture schedule**

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Susan Miller
Office of Special Projects

Alaska Court System
State of Alaska
OFFICE OF THE ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, Alaska 99501-2099

Phone: (907) 264-3329
Fax: (907) 258-6968

August 16, 1995

Mike Sullivan
Natural Resource Manager
Division of Land
Department of Natural Resources
PO Box 107005
Anchorage AK 99510-7005

Dear Mr. Sullivan:

On August 8 the Alaska Supreme Court discussed your December 21, 1994 request that a bail forfeiture schedule be adopted for the new skiing offenses defined in AS 05.45.100. The court declined to create such a schedule because there is no clear authorization in the statute for such a schedule. Administrative Rule 43(a) states: "The supreme court will consider adopting a bail forfeiture schedule only when so authorized by statute...." The court decided the language in AS 05.45.100(b) is not an adequate authorization.

Please give me a call when you get a chance. A copy of Administrative Rule 43 is attached.

Sincerely,

Susan Miller
Susan Miller
Office of Special Projects

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Enclosure

Rule 43. Bail Forfeiture Schedules.

(a) **Procedure for Adopting Bail Forfeiture Schedule.** The supreme court will consider adopting a bail forfeiture schedule only when so authorized by statute. The agency charged with enforcement under a statute for which a bail forfeiture schedule has been authorized shall forward to the administrative director its recommendations for a proposed schedule, listing offenses by number, describing the offenses, and proposing a bail forfeiture amount. The proposed schedule shall be accompanied by commentary explaining the basis for the agency's recommendation, and by a copy of the proposed citation form. The supreme court shall consider the recommendation, and shall determine whether to adopt a bail forfeiture schedule, and if so, shall determine which offenses are amenable to disposition by bail forfeiture and whether the bail forfeiture amounts are appropriate. The administrative director shall notify the agency when an order adopting the schedule is issued.

Memorandum

Alaska Court System

101 E. Street, Anchorage, AK 99501-2099
Phone: 354-8229 Fax: 238-4959

TO: Christine Johnson
Court Rules Attorney

DATE: July 24, 1995

FROM: Susan Miller
Special Projects

SUBJ: Ski Area Bail Forfeiture Schedule

Issue: Can the new Alaska Ski Safety Act offenses in AS 05.45.100 be added to the Parks Bail Forfeiture Schedule?

It is my understanding that the supreme court will not create bail forfeiture schedules without a clear mandate from the legislature. The Department of Natural Resources has requested that a bail forfeiture schedule be adopted for six of the new downhill skiing offenses created by the Alaska Ski Safety Act of 1994. A copy of the request and a copy of the new law (ch 63 SLA 1994) are attached.

There is no explicit requirement in this legislation that the court create a bail forfeiture schedule for these offenses. However, Mike Sullivan, author of the attached memorandum from the Department of Natural Resources, believes it was the intent of the drafters of the legislation that such a schedule be created. He points to AS 05.45.100(h) as the authority for this. Paragraph (h) states:

(h) A person who violates a provision of (c) or (g) of this section is guilty of a violation as defined in AS 11.81.900. The commissioner of natural resources, a person designated by the ski area operator who is authorized by the commissioner, or an employee of the Department of Natural Resources authorized by the commissioner may issue a citation in accordance with the provisions of AS 41.21.960 to a person who violates (c) or (g) of this section within a ski area over which the state has jurisdiction.

Apparently the drafters thought all that was required to make the new offenses eligible to be on a bail forfeiture schedule was to make them "violations" rather than misdemeanors. This is, of course, not correct. Alternatively, they apparently believed that the reference to AS 41.21.960 in the last sentence was enough to make it clear that the court should add the offenses to the Parks Bail Schedule.

AS 41.21.960(a) authorizes issuance of a citation for "a misdemeanor offense committed within a park or recreational facility subject to the department's supervision." Paragraph (b) of the statute requires the supreme court to create a bail forfeiture schedule for "those offenses that are amenable to disposition without court appearance." The statute is not completely clear about which offenses can be included in the bail schedule. Arguably, however, "those offenses" means misdemeanors defined in AS 41.21 or a regulation adopted under AS 41.21 which are committed within a park or recreational facility subject to the supervision of the Department of Natural Resources. See AS 41.21.950 and AS 41.21.960(a), attached.

The new downhill skiing offenses in Title 5 do not seem to qualify under this interpretation of AS 41.21.960(b). They are not misdemeanors, they are not offenses defined in AS 41.21 or a regulation adopted under AS 41.21, and it is not clear that they would be committed within a park or recreational facility subject to the supervision of DNR. So, the question becomes: Is the supreme court willing to add these offenses to the Parks Bail Forfeiture Schedule based on the second sentence in AS 05.45.100(h) quoted above?

Susan

**Additional
Information
and
Letters of support**

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
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ANCHORAGE, ALASKA 99501-3650
PHONE: (907) 269-8431
FAX: (907) 269-8918

February 24, 2004

The Honorable Mike Hawker
Alaska State Legislature
State Capitol, Room 434
Juneau, AK 99801

Dear Representative Hawker:

My staff and I have reviewed House Bill 188, proposed changes to the Alaska Ski Safety Act. The revisions allow the Department of Natural Resources (DNR) employees to issue citations for certain skiing violations by establishing a bail schedule for these violations. The bill also extends this DNR authority to all Alaskan ski area operators. Currently DNR's authority is limited to those areas operating under state jurisdiction. Alaskan ski area operators have proposed similar revisions in the past, including HB 134 in 1999. The operators' primary concern is that DNR was never granted the authority to establish bail schedules for ski safety act violations and that all ski areas — those on state land and those on other lands — be treated equally in regards to enforcement of these violations.

When the Alaska Ski Safety Act was passed in 1994, DNR anticipated having the responsibility of issuing a citation for the infractions listed in AS 5.45.100 (c) and (g) for ski areas operating on state lands. However, when attempting to enact a bail schedule for these violations through state court officials it was determined the 1994 legislation lacked the specific direction the courts needed to establish a bail schedule. My staff and ski area managers are particularly concerned that skiers who violate closed areas and boundaries be subject to a fine sufficient to discourage this dangerous behavior. I believe this revision is an important safety concern for both the skiers who violate closed areas and the resort employees who must search for or rescue their customers.

DNR anticipates that this bill will cause a minor increase in workload and will have minimal impact on other DNR operations. DNR supports passage of HB 188.

Sincerely,



Thomas E. Irwin
Commissioner

cc: Bob Loeffler, Director, ML&W



Alaska Division
National Ski Patrol
PO Box 92207
Anchorage, Alaska 99509

February 21, 2004

House Resources Committee
Alaska State Capitol, Room 124
Juneau, Alaska 99801

Dear Co-Chair Dahlstrom and Co-Chair Masek,

The members of the Alaska Division of the National Ski Patrol urge you to adopt HB 188, providing an amendment to the Alaska Ski Safety Act. This correction is necessary to correct a major deficiency of the existing law.

In 1994, the 18th Alaska State Legislature enacted the Alaska Ski Safety Act which itemized the responsibilities of both the ski areas and the skiers and more clearly defined the rights and responsibilities of both parties. This is a good piece of legislation which well serves both the skiing public and the ski area operators.

The Alaska Supreme Court ruled that the language in the original legislation was not specific enough to give them the authority to establish a bail schedule.

In December of 1994 DNR requested the Courts to adopt a bail forfeiture schedule for specific violations of the Alaska Ski Safety Act as included in AS 05.45.100 (c) & (g).

The Alaska Supreme Court responded to this request by declining to create such a schedule because: "there is no clear authorization in the statute for such a schedule" based on the fact that Administrative Rule 43(a) states: "The Supreme Court will consider adopting a bail forfeiture schedule only when so authorized by statute . . . ". The Court decided the language in AS 05.45.100 (h) is not an adequate authorization.

It should be noted that AS 05.45.100 (h) does contain a reference to AS 41.21.960 which is the Statute that pertains to "Form and Issuance of Citation". At the time the Alaska Ski Safety Act was written, it was thought that this would be adequate authority for the Courts to establish the bail schedule. Nonetheless, the Courts didn't feel that this gave them sufficient authority.

HB 188 provides specific language for a bail schedule to be created to enforce the safety provisions of the act. These changes are necessary to protect the safety and well-being of Alaskan skiers, protect others such as patrollers and resort personnel, and maintain consistency with the provisions of the Alaska Ski Safety Act. Skiers who act recklessly and do not observe closure areas can create extremely unsafe conditions for those who may be forced to rescue them.

The Alaska Division represents nearly 400 paid and volunteer ski patrollers across the State of Alaska.

Thank you for your careful consideration of this matter.

Sincerely yours,

Chris Ross
Division Director



A Facility of Youth Exploring Adventure, Inc. A Non-Profit Organization
Dedicated to Developing Recreational Facilities for Our Alaskan Youth

Representative Mike Hawker
State Capital Building Rm 434
Juneau, Alaska 99801-1182

February 25, 2004

Dear Representative Mike Hawker

I have had time to review the proposed House Bill No.188 package that you sent me and would like to offer our support in making this important legislation happen. Without this legislation there are no consequences for persons that willfully and knowingly violate provisions already included in the Alaska Ski Safety Act. It is unfortunate that this detail was overlooked when the Alaska Ski Safety Act was initially passed. It is extremely important that this legislation pass for the safety of all those Alaskans that enjoy this wonderful outdoor recreation and abide by the rules. Without consequences for the people who do not abide by the guidelines, as set forth in the Alaska Ski Safety Act, many innocent people are at risk.

I am hopeful that House Bill No. 188 will be introduced, gain support and be passed in this legislative session. It is vital that our Legislators recognize the importance of having this tool available to those persons that are out there on the front lines enforcing safety.

Please let me know if there is anything more that I can do to help you in this effort.

Sincerely,

A handwritten signature in black ink that reads "Steven P. Remme". The signature is written in a cursive style.

Steven P. Remme
CEO Hilltop Ski Area

February 19, 2004

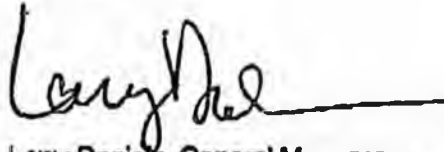
Representative Mike Hawker
State of Alaska

Fx. 907 465-4979

Alyeska Resort strongly supports the enactment of House Bill 188, which would allow for citations to be issued in ski areas throughout the State and provides the Court with the necessary authority to adopt the bail forfeiture schedule for the violations included in the Statute. These measures will allow for full implementation and improved enforcement of the original Alaska Ski Safety Act.

House Bill 188 amends sections of the Alaska Ski Safety Act that have proven to unenforceable. The proposed amendments are technical in nature; they clarify the statutes and are consistent with the original provisions of the Alaska Ski Safety Act.

Thank you,



Larry Daniels, General Manager -

Skilling and Golf



Eaglecrest

Ski Area

February 20, 2004

The Honorable Mike Hawker
House of Representatives
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Hawker:

Thank you for your support of the ski industry in Alaska. Your sponsorship of HB 188 is certainly appreciated. We feel this legislation will give Alaska ski areas an effective tool for dealing with violators of the Ski Safety Act.

The Alaska Ski Safety Act of 1994 allows the Commissioner of the Department of Natural Resources to designate authorized individuals who may issue citations. Unfortunately, the Alaska Court system determined that the bail schedule was not specified clearly in the Act and that there is not sufficient authority to establish the bail schedule. It is our understanding that this situation can be corrected by the legislative amendment you introduced. The bail schedule would specifically cover the following items noted in the ski safety act.

- AS 05.45.100(c)3 Crossing the uphill track of a surface lift or rope tow except at locations designated by the operator, or places an object in the uphill track.
- AS 05.45.100(c)4 Moving uphill on a tramway or use a ski slope or trail while the skier's mobility is impaired by the influence of alcohol or a controlled substance as defined in AS 11.71.900 or other drug.
- AS 05.45.100(c)5 Knowingly enter upon public or private land from an adjoining ski area when the land has been closed by an owner and is posted by the owner or by the ski area operator.
- AS 05.45.100(g) Except for the purpose of securing aid for a person injured in the collision, a skier involved in a collision with another skier or person that results in an injury may not leave the vicinity of the collision before giving the skier's name and current address to the other person involved in the collision and to an employee of the ski area operator or a member of the voluntary ski patrol. A person who leaves the scene of a collision to obtain aid shall give the person's name and current address as required by this subsection after obtaining aid.

155 S. Seward Street
Juneau, Alaska 99801

e-mail: ecrestak@alaska.net
www.skijuneau.com

(907) 586-5284
fax: (907) 586-5677

In December of 1994 the Department of Natural Resources, Division of Lands recommended the following bail schedule.

AS 05.45.100(c)1	Skiing on a closed slope or trail	\$150.00
AS 05.45.100(c)2	Use a ski w/out a stopping device	\$50.00
AS 05.45.100(c)3	Cross uphill track of surface lift	\$50.00
AS 05.45.100(c)4	Ski or ride lifts under the influence of alcohol or drugs	\$100.00
AS 05.45.100(c)5	Skiing in closed area	\$150.00
AS 05.45.100(g)	Skier involved in collision leaves the scene of an accident	\$150.00

It should be noted that this legislation carries out the original intent of the Ski Safety Act, which is very specific on what violations would be subject to citations. The proposed legislation does not address skiers or snowboarders who venture outside the ski area boundary, although the Ski Safety Act notes that skiers/snowboarders do so at their own risk.

Sincerely,



Gary Mendivil,
Business Manager

HB

205

Alaska State Legislature

Session:
State Capitol
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Representative Lesil McGuire
Chair, Judiciary Committee

MEMORANDUM

To: Members of the Senate Judiciary Committee
From: Rep. Lesil McGuire, Chair – Judiciary
Date: May 15, 2003
Re: Waiver request for HB 205 “PFD eligibility for Peace Corps Volunteers”

I have spoken with the Chair, Sen. Seekins, and requested HB 205 be waived from the Senate Judiciary Committee. He has agreed to do so with the consent of all committee members.

I respectfully request that you, the members of the Senate Judiciary Committee, waive HB 205 from your committee.

I appreciate your time and consideration.

AGREEMENT TO WAIVE HB 205 FROM THE SENATE JUDICIARY COMMITTEE

Sen. Ralph Seekins (Chair) *Ralph Seekins*

Sen. Scott Ogan (Vice-Chair) _____

Sen. Gene Therriault _____

Sen. Johnny Ellis _____

Sen. Hollis French *Hollis French*

Alaska State Legislature

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Representative Lesil McGuire Chair, Judiciary Committee

MEMORANDUM

To: Sen. Ralph Seekins – Chair, Senate Judiciary Committee
From: Rep. Lesil McGuire – Chair, House Judiciary Committee
Date: May 15, 2003
Re: Request for waiver for House Bill 205 “PFD eligibility for Peace Corps Volunteers”

Due to the lateness of the Session, the increasing length of our respective floor sessions, and the workload of our respective committees, I am respectfully requesting that the Senate Judiciary Committee consider waiving HB 205 “PFD eligibility for Peace Corps Volunteers”.

I should note that this bill enjoys wide support within the general public and also from the Permanent Fund Division. Beyond simply re-instituting the in-state residency exemption eligibility for Peace Corps Volunteers, this bill also offers the Department of Revenue an administrative remedy for pursuing fraudulent PFD applicants. Currently, the Department of Revenue must pursue fraudulent applications through the court system, and the cost to do so is too prohibitive. This bill would offer DOR a more immediate and cost efficient option for punishing instances of fraud.

I have attached the most current version of the bill, a sponsor statement, and other support materials for your committee member’s review. I appreciate your time and consideration.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 205
 (H) Publish Date: 5/8/02

Revision Date/Time (Note if correction): April 11, 2003 Dept. Affected: Revenue
 Title PFD: Peace Corps Volunteers BRU Revenue Operations
and miscellaneous Component Permanent Fund Dividend
 Sponsor Representative McGuire
 Requester House Finance Committee Component No. 981

Expenditures/Revenues (Thousands of Dollars)

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

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

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1050 Permanent Fund Dividend Fund						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 See attached page for discussion of bill.

Prepared by: Larry Persily, Deputy Commissioner Phone 465-5469
 Division Department of Revenue Date/Time 4/11/03 1:32 PM
 Approved by: Larry Persily, Deputy Commissioner Date 4/11/2003
 Agency Department of Revenue

House Bill 205 - FN#2
Department of Revenue

Page 2 of 2

BILL SUMMARY

This legislation would:

- Re-establish volunteer service in the U.S. Peace Corps as an allowable absence in determining eligibility for the Permanent Fund dividend.
- Start the annual application period for the dividend on January 1 each year instead of January 2. The use of online applications allows the Dividend Division to accept applications on January 1, even if it is a holiday.
- Allow the Department of Revenue to assess administrative penalties of up to \$3,000 each and forfeiture of dividends against individuals who willfully misrepresent information on their application or in the review process for the Permanent Fund dividend. Applicants would have the right to a formal hearing before a hearing examiner to determine whether the fine is appropriate, and, beyond that, applicants could appeal to court. Under existing statute, the only method for the Department to assess a penalty against an applicant who willfully misrepresents information is to file criminal charges in the case. The state is reluctant to file criminal charges because of the great expense. Therefore, the Dividend Division loses out on using such penalties as an effective enforcement tool against fraud. This bill would solve that problem by providing administrative penalties as a lower-cost alternative.



[Click here to return to the original story](#)

Bill nails fraudulent PFD filers

Measure also lets volunteers for Peace Corps collect dividend

Monday, May 12, 2003

**By MASHA HERBST
JUNEAU EMPIRE © 2003**

People who file fraudulent permanent fund applications would stand a greater chance of being punished if a new bill passes the Legislature.

House Bill 205, which the House approved Friday, would allow the Department of Revenue to impose a \$3,000 fine on people it determines have submitted fraudulent applications. Under current law, if the state takes a person to court for permanent-fund fraud, the court may assess a fine of up to \$5,000, but the department itself cannot impose a fine.

"Unless it has been really egregious fraud, it hasn't been cost-effective for the state to pursue those (cases) in court," said Sharon Barton, director of the Department of Revenue's Division of Permanent Fund Dividend.

The permanent fund division has just begun compiling statistics on how many fraud cases it gets each year. In 2000, the most recent year for which the division has numbers, the state received 1,232 fraud tips.

Barton said 433 of the tips were reviewed, but she did not know how many cases were found to be fraudulent.

When the division determines an application is fraudulent or that someone received a dividend check illegitimately in the past, it can refuse to pay the dividend, or attempt to collect the amount of the prior payment, Barton said.

The only other option is court, she said.

Assistant Attorney General Dan Branch said he did not know how many times the state has prosecuted people for permanent-fund fraud.

There have been at least two cases, according to Barton.

In 1997, Carolyn Plum, 59, of Salcha pleaded no contest to theft in the

second degree for filing for and receiving a 1994 dividend in the name of her daughter, who had died the previous year. Plum was sentenced to a year in jail, with all but two months suspended, restitution of \$3,780, and five years of probation. She also is barred from the permanent-fund program forever.

In the second case, Anchorage resident Carolyn Moeller, 53, was indicted on charges of receiving dividends from 1988 to 1994 in the names of her nonresident mother and a deceased sister. Barton did not know whether Moeller was convicted.

House Bill 205 also would allow Peace Corps volunteers to collect dividend checks. The volunteers were added in 1983 to the list of exemptions for people residing out of state, and that exemption was made retroactive to 1982, the year the permanent-fund-dividend program began, said Heath Hilyard, a staffer to Anchorage Republican Rep. Lesil McGuire.

The Legislature removed the Peace Corps exemption in 1998, Hilyard said.

About 35 Alaskans are serving in the Peace Corps, said Peace Corps spokesman Jim Aguirre. He said 855 Alaskans have served since 1961.

Tony Gasbarro, a 30-year Alaska resident and president of the Northern Alaska Peace Corps Friends, was serving with the Peace Corps in El Salvador when the exemption was removed.

"I lost one of my dividend years because of that," said Gasbarro, 64.

Gasbarro, who now lives in Fairbanks, also went to the Dominican Republic with the Peace Corps from 1962 to 1964. He said volunteers deserve the dividend because they are serving their country.

"I would put us on par in many cases with military people who don't ever see combat yet undergo many of the risks," he said. "It's not some vacation."

Eight legislators voted against the bill Friday, saying Peace Corps volunteers forfeit their dividend checks when they choose to go out of state.

Masha Herbst can be reached at masha.herbst@juneauempire.com.

HB

212

Alaska State Legislature

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Representative Lesil McGuire
Chair, Judiciary Committee

Sponsor Statement HB 212

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

Alaska was once in the lead in the development of trust law. However, since that time other states have not only enacted similar legislation, but have improved on it. Delaware has amended its statute six times since the date of enactment. The last time we amended our trust statutes, and in particular our spendthrift statute, was in 1998 and as a result, our laws are viewed as being deficient in many respects. This not only places our trust companies in an uncompetitive position, but also places Alaska residents at a disadvantage when compared to the citizens of our competitor states. This bill rectifies many of these shortcomings.

This bill provides statutory authority to provisions commonly found in trust instruments. For instance, Section 1 of the bill specifically provides for the position of a trust advisor and trust protector and clarifies the manner in which these positions relate to the administration of a trust. Delaware, South Dakota and Idaho has similar legislation. Many trust instruments allow a trustee to make trust assets available for the use of a beneficiary. Section 2 allows trusts assets consisting of real property and tangible personal property to be used by a beneficiary without the use being considered a distribution, which could in turn be subjected to the claims of a beneficiary's creditors. For example, a trustee could exercise its discretion and permit a beneficiary to reside in a family home. Were it not for this provision the settlor's intention that a family homestead be made available for future generations might be defeated.

Other sections contained in the bill codify a number of matters which have always been accepted by Alaska trust practitioners as being the common law of this state, but for which there has been no statutory counterpart. Section 4 provides that trust assets can not be attached by a beneficiary's creditor until such time that trust assets are actually distributed to a beneficiary, nor can there be a continuing order against the trustee with respect to future distributions that a trustee would choose to make. Section 6 adds a new subsection (i) to AS 34.40.110 which clarifies that the statute affording spendthrift protection for beneficial interests applies not only to trusts in which a settler may have a retained interest, but also to the very common third party settled trust where a beneficiary might be serving as sole trustee.

Sections 3, 5 and 6 make amendments or adds subsections to AS 34.40.110 which will assist a future court in the interpretation of our spendthrift statute, something an Alaska court has yet to do. Section 3 clarifies that a trust can be set aside only if a creditor is able to successfully assert by a preponderance of the evidence that the settlor's transfer of property in trust was made with the primary intent to defraud that creditor. In so doing, the finder of fact must weigh all the circumstances surrounding the transfer before making that determination. Section 5 clarifies that a fraudulent conveyance action may only be brought against a settlor of a trust and then only as to a specific transfer of assets, which are, determined to be fraudulent as to that creditor. Section 6, also clarifies the definition of a preexisting creditor who can avail themselves of the time period found in AS 34.40.110(d)(1) for bringing a fraudulent conveyance action against the settlor of a self-settled trust. Subsection (h) as found in Section 6 provides a transfer restriction will be valid with respect to a beneficial interest retained by a settlor even though the settlor serves as a co-trustee, provided the settlor doesn't have the control over the manner in which distributions may be made to the settlor. Subsection (k) invalidates any unwritten agreement or understanding between a settlor who is a beneficiary and a trustee which gives the settlor rights greater than those which are permitted to be expressed in the trust instrument.

Last, there are several provisions contained in this bill which have their counterpart in the laws of other states. Section 3 provides the circumstances in which a transfer restriction will continue to be valid even though a settlor retains a unitrust or annuity in the trust. These provisions presently exist in Delaware. Section 7 of the bill clarifies when property subject to a power of appointment can be subjected to the claims of a donee's creditors and codifies the common law as enunciated in the Restatement 2nd of Property and has its genesis in a comparable Rhode Island statute. All the provisions found in this bill are necessary additions not only if Alaska residents are to have benefits comparable to those of citizens in other states.

Last Updated: 03-28-03

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 212(JUD)
(H) Publish Date: 4/7/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title: "An Act relating to trusts, including trust BRU Civil Division
protectors, trustee advisors, transfers of property in trust, . . ." Component Commercial
Sponsor: Representative McGuire
Requester: House Labor and Commerce Committee Component No. 2211

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TCTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 212 provides for the appointment of a trust protector and a trust advisor. The bill also prevents creditors of beneficiaries from attaching assets transferred into a trust unless certain conditions are met by all parties, and establishes a statute of limitations regarding when creditors must bring an action for a fraudulent transfer claim.

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

Prepared by: Joan M. Kasson Phone (907) 465-5370
Division: Attorney General's Office Date/Time 3/28/03 2:45 PM
Approved by: Joan M. Kasson for Gregg D. Renkes, Attorney General Date 3/28/2003
Agency: Department of Law

HB

214

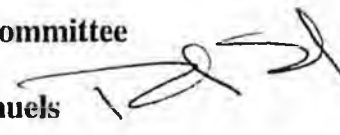
REPRESENTATIVE RALPH SAMUELS

HOUSE DISTRICT 29

Memorandum

Date: April 17, 2003

To: Senator Ralph Seekins
Chair, Senate Judiciary Committee

From: Representative Ralph Samuels 

RE: Hearing for House Bill 214 (Pending referral)

Please schedule a hearing for HB 214, a bill that clarifies guidelines for punitive damages against an employer through vicarious liability.

Attached you will find:

1. CS HB 214 (JUD)
2. Sponsor statement
3. Fiscal Notes (Zero)
4. Letters of support
 - a. Frank Dillon, Alaska Truckers Association
 - b. Pam LaBolle, President, Alaska State Chamber
 - c. Jim Jansen, President & CEO, Lynden Transportation
 - d. Thor: Antonovich, President, Alaska State Homebuilding Association
5. Restatement of Law, Agency and Tort
6. Court Cases
 - a. Laidlaw Transit vs. Crouse
 - b. VECO, Inc. vs. Rosebrock
 - c. Alaskan Village, Inc. vs. Smalley

Email: Representative_Ralph_Samuels@legis.state.ak.us

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