

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11190 SENATE JUDICIARY

prevailing employer. *Grimes v. Kinney Shoe Corp.*, Op. No. 4815, 938 P2d 997 (Alaska 1997).

Where main issue in action for reformation of public trust was approval or rejection of settlement agreement, intervenor who prevailed on that issue was entitled to attorney's fees even if intervenor's legal arguments did not directly, primarily or necessarily cause court's favorable decision. *Alaska Center For the Environment v. State*, Op. No. 4830, 940 P2d 916 (Alaska 1997).

Prevailing defendants in actions to recover wages under Alaska Wage and Hour Act are not entitled to award of attorney's fees pursuant to this rule. *Schorr v. Frontier Transp. Co.*, Op. No. 4847, 942 P2d 418 (Alaska 1997).

In an in rem civil forfeiture proceeding in which trial court dismissed state's forfeiture complaint because of state's delay and ordered res released to claimant, claimant was prevailing party for purposes of attorney fee award even though res was seized by federal government when claimant did not show to take receipt of res. *State v. Johnson*, Op. No. 4991, 958 P2d 440 (Alaska 1998).

Trial court did not abuse its discretion by splitting prevailing party status for divergent claims. *Bliss v. Bobich*, Op. No. 5043, 971 P2d 141 (Alaska 1998).

In cases involving mixed causes of action, some governed by attorney fee provisions of this rule and some governed by attorney fee provisions of Alaska Wage and Hour Act, determination of prevailing party status remains matter of trial court discretion. *Bliss v. Bobich*, Op. No. 5043, 971 P2d 141 (Alaska 1998).

Prevailing plaintiff did not waive its claim to an enhanced attorney's fee award, even though it did not request an enhanced award in its original motion for fees. *Alderman v. Iditarod Props., Inc.*, Op. No. 5486, 32 P3d 373 (Alaska 2001).

### III. Review

#### A. Standard

The trial judge has large discretion in allowing attorney's fees for the prevailing party, but the supreme court will reduce the allowance where the amount awarded is unduly high. *Davidson v. Kirkland*, Op. No. 38, 362 P2d 1068, 1070 (Alaska 1961).

Court-initiated amendment as to attorney's fees awarded as costs under this rule, did not affect the running of the time for appeal as provided under Supreme Court Rule 7(a). *Radich v. Fairbanks Builders, Inc.*, Op. No. 285, 399 P2d 215 (Alaska 1965).

Where appellant employer, albeit rightly so, prosecuted an appeal in a workmen's compensation case and thereby imposed upon employee the necessity to engage counsel to represent him in the superior court, trial judge did not abuse his discretion under this rule in denying an attorney's fee to appellant. *M-B Contracting Company v. Davis*, Op. No. 275, 399 P2d 433 (Alaska 1965).

Even if it may be assumed that appellant were "prevailing party" within the meaning of Civil Rule 54(d) and 82(a)(1), the trial court's determination as to denial of attorney's costs where the action was settled pursuant to Civil Rule 68 was not disturbed on appeal in the absence of a showing of clear abuse of the wide discretion allowed under this rule. *Albritton v. Estate of Larson*, Op. No. 413, 428 P2d 379 (Alaska 1967).

Awarding attorney's fees to the prevailing party is committed to the broad discretion of the trial court. *Da v. Gi Anchorage Area Borough*, Op. No. 476, 439 P2d 790 (1968); *Froelicher v. Hadley*, Op. No. 486, 442 P2d 51 (1968).

The award of \$1,300 as attorney's fees rather than \$ requested on the basis of hourly charges of \$30 and \$4 hour and \$350 per day for trial, is not an abuse of discretion. *Connelly v. Peede*, Op. No. 577, 459 P2d 362 (Alaska 1970).

The supreme court will interfere with the trial court's exercise of discretion in awarding attorney's fees as cost where such discretion has been abused. An abuse of discretion is established where it appears that the trial court's determination is manifestly unreasonable. *Palfy v. Rice*, Op. No. 473 P2d 606 (Alaska 1970).

The award of \$7,100 attorney's fees in an action arising out of a collision of an automobile and a tractor trailer combination on an ice and snow-covered curve of a highway is not an abuse of discretion, in view of the complexity of the factual issues, the length of the trial and the potentially large liability parties. *Ferrell v. Baxter*, Op. No. 688, 484 P2d 250 (1971).

Where an affidavit which is filed by the defendant in support of several factual allegations of the plaintiff and a memorandum filed by the defendant raises four defenses, such document tantamount to an answer and the plaintiff's right to dismissal is terminated. Thus, although the plaintiff files a motion for dismissal of the suit, the trial court has the authority to award defendant attorney fees. *Miller v. Wilke*, Op. No. 78 P2d 176 (Alaska 1972).

Where a subcontractor is the prevailing party in an action against a contractor for recovery of prepayments, an award of \$10,000 as attorney's fees to the subcontractor is not an abuse of discretion in view of the potentially large liability of the subcontractor. *Owen Johnson Sons, Inc. v. C.R. Lewis Co., Inc.*, Op. No. 795, 497 P2d 176 (Alaska 1972).

A trial court does not necessarily abuse its discretion in refusing to award attorney's fees to a property owner who successfully defends a suit for specific performance contract to sell property. *Hollaus v. Arend*, Op. No. 89 P2d 1074 (Alaska 1973).

The award of attorney's fees is discretionary with the trial judge and is reviewable on appeal only for an abuse of discretion. *Cooper v. Carlson*, Op. No. 907, 511 P2d 1305 (1973).

Although an award of attorney's fees to a prevailing party is not mandatory, the denial of a motion for such fees may be arbitrary or capricious or result from improper motive. *Cooper v. Carlson*, Op. No. 907, 511 P2d 1305 (Alaska 1973).

In an action against the state to recover additional compensation arising out of a contract, an award to the state of attorney's fees of \$22,633.91 is not an abuse of discretion, where the case was pending for over four years, the case involved potential liability of over \$500,000 and culminated in a five-day trial against the contention that the state should receive no award greater than the equivalent to the hourly salary of the trial court's paid assistant attorney general who worked on the case multiplied by the number of hours allowed by the trial court. *Morrison-Knudson Co., Inc. v. State*, Op. No. 1012, 511 P2d 834 (Alaska 1974).

The amount award as attorney fee: is within the sound discretion of the trial court. Review is limited to question of whether the court exceeded that discretion. *City of Valdez v. Valdez Development Company*, Op. No. 1051, 523 P2d 177 (Alaska 1974).

The refusal to award attorney's fees in a case where each party prevails in part, and in which each award is of approximately equal value, it is not an abuse of discretion. *City of Valdez v. Valdez Development Company*, Op. No. 1051, 523 P2d 177 (Alaska 1974).

The award of attorney's fees is vested in the sound discretion of the trial court, and will be interfered with on appeal only when that discretion is manifestly abused. *Grasle Electric Co. v. Clark*, Op. No. 1073, 525 P2d 1081 (Alaska 1974).

Where the trial in a personal injury action lasts over four days and involves complicated medical and psychiatric issues, an award of attorney's fees of over \$15,000, based entirely on the schedule set out in this rule, is not an abuse of discretion. *Grasle Electric Co. v. Clark*, Op. No. 1073, 525 P2d 1081 (Alaska 1974).

Both the award of costs and attorney fees to a prevailing party and the actual determination of who the "prevailing" party is are within broad discretion of the trial court. Only on a clear abuse of discretion will the supreme court interfere with its exercise, such abuse being established only where it appears that the trial court's determination is manifestly unreasonable. *Adoption of V.M.C.*, Op. No. 1103, 528 P2d 788 (Alaska 1974).

In reviewing a trial court's settlement of attorneys' fees granted at its discretion, the supreme court will disturb such a finding only upon a showing that a warrant was manifestly unreasonable. *Western Airlines, Inc. v. Lathrop Co.*, Op. No. 1146, 535 P2d 1209 (Alaska 1975).

Determination of which party prevails and is entitled to costs is within discretion of the trial judge. *First National Bank of Fairbanks v. Enzler*, Op. No. 1170, 537 P2d 517 (Alaska 1975).

Moot issues will not be reviewed solely to provide a means of contesting trial court's award of attorney's fees. *Munroe v. City Council for City of Anchorage*, Op. No. 1236, 545 P2d 165 (Alaska 1976).

To require widow to pay \$10,750 in attorney's fees to defendant in wrongful death action whose counsel was provided by insurance carrier was not improper. *Sloan v. Atlantic Richfield Co.*, Op. No. 1195, 552 P2d 157 (Alaska 1976).

Determination of which party is the prevailing party is in the trial judge's discretion and is reviewable only for abuse. *Continental Ins. Co. v. U. S. Fid. & Guar. Co.*, Op. No. 1258, 552 P2d 1122 (Alaska 1976).

Trial court's discretion in awarding attorney's fees will be interfered with only when manifestly unreasonable. *Alaska Placer Co. v. Lee*, Op. No. 1294, 553 P2d 54 (Alaska 1976).

An award of attorney's fees under this rule will not be reversed unless manifestly unreasonable, arbitrary or designed for a purpose other than justly deserved compensation. *Fairbanks Builders, Inc. v. Sandstrom Plumbing & Heating, Inc.*, Op. No. 1324, 555 P2d 964 (Alaska 1976).

It was not abuse of discretion to award additional attorney's fees as compensation for efforts to force opposing party to answer interrogatories and appear at depositions. *Fairbanks*

*Builders, Inc. v. Sandstrom Plumbing & Heating, Inc.*, Op. No. 1324, 555 P2d 964 (Alaska 1976).

Trial court's discretion under this rule is broad enough to warrant the denial of attorney's fees altogether. *Haskins v. Sheldon*, Op. No. 1357, 558 P2d 487 (Alaska 1976).

Trial court's discretion under this rule will be interfered with only when abuse is established by a "manifestly unreasonable" award. *Haskins v. Sheldon*, Op. No. 1357, 558 P2d 487 (Alaska 1976).

In view of complexity of issues, time during which case was pending before trial, amount of potential liability, and amount of trial preparation and presentation, trial court was not manifestly unreasonable in awarding \$192,111 attorney's fees. *Beech Aircraft Corp. v. Harvey*, Op. No. 1338, 558 P2d 879 (Alaska 1976).

Award of \$14,000 in attorney's fees where \$1,750 would have been awarded under this rule was not abuse of discretion in six-day trial with extensive pre- and post-trial briefing and with a significant number of difficult and complex legal issues. *Chugach Electric Association v. Northern Corp.*, Op. No. 1408, 562 P2d 1053 (Alaska 1977).

An award of attorney's fees which represented 86 percent of the total bill submitted by plaintiffs' counsel was somewhat high but not manifestly unreasonable under the circumstances of the case. *Hausam v. Wodrich*, Op. No. 1558, 574 P2d 805 (Alaska 1978).

It was not manifestly unreasonable in determining attorney's fees and costs for the court to take into account that it ruled against the prevailing party on one of the contested issues. *Alaska State Bank v. Gen. Ins. Co.*, Op. No. 1564, 579 P2d 1362 (Alaska 1978).

Court did not abuse its discretion in denying attorney's fees to defendant who prevailed in paternity suit brought in good faith even though denial was based in part on fact that defendant admitted to having sexual relations with a minor. *Larry v. Dupree*, Op. No. 1652, 580 P2d 326 (Alaska 1978).

Where plaintiffs' status as a prevailing party could not be inferred from the settlement agreement because of the political nature of the case, the trial court did not err in denying plaintiffs' claim for attorney fees. *Tobeluk v. Lind*, Op. No. 1781, 589 P2d 873 (Alaska 1979).

Attorney fee award of \$9,861 was not abuse of discretion where party had agreed to accept legal services in partial consideration of claim against attorney and the value of the attorney services was well in excess of \$10,000. *Puritan Life Ins. Co. v. Guess*, Op. No. 1881, 598 P2d 900 (Alaska 1979).

Complexity of a case may be considered in determining the amount of attorney's fees, but that factor alone does not justify an award of full fees. *Moses v. McGarvey*, Op. No. 2139, 614 P2d 1363 (Alaska 1980).

Award of \$55,000 in attorney's fees was not manifestly unreasonable for complex litigation which extended for over two years. *F/V American Eagle v. State*, Op. No. 2227, 620 P2d 657 (Alaska 1980).

Award of \$15,000 for attorney's fees to successful public interest plaintiff was not abuse of discretion where the award did not cover actual attorney's fees but did constitute full "reasonable" attorney's fees. *City of Yakutat v. Ryman*, Op. No. 2581, 654 P2d 785 (Alaska 1982).

**HB**

**252**

23-LS0945AS  
Mischel  
3/11/04

**SENATE CS FOR CS FOR HOUSE BILL NO. 252( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-THIRD LEGISLATURE - SECOND SESSION**

BY

Offered:  
Referred:

Sponsor(s): **REPRESENTATIVES MCGUIRE, Lynn**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the terms and duties of the members of the State Board of**  
2 **Registration for Architects, Engineers and Land Surveyors; and relating to the**  
3 **employment and classification of an executive secretary for the board."**

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

5 **\* Section 1.** AS 08.48.021 is amended by adding a new subsection to read:

6 (c) For purposes of determining appointments and terms under AS 08.01.035,  
7 notwithstanding the reference in that section relating to eligibility for reappointment  
8 after serving a full or partial term,

9 (1) a member who has served all of two successive terms on the board  
10 may not be reappointed to the board unless four years have elapsed since the person  
11 last served on the board; and

12 (2) for purposes of (1) of this subsection, a person who serves for two  
13 years or more of a four-year term is considered to have served a full term.

14 **\* Sec. 2.** AS 08.48 is amended by adding a new section to read:

1           **Sec. 08.48.055. Executive secretary of the board.** (a) The department, in  
2 consultation with the board, shall employ an individual who is not a member of the  
3 board to serve as the executive secretary of the board. The executive secretary is the  
4 principal executive officer of the board and is in the partially exempt service under  
5 AS 39.25.120.

6           (b) The executive secretary of the board shall perform duties as prescribed by  
7 the board.

8 \* **Sec. 3.** AS 08.48.101(a) is amended to read:

9           (a) The board may adopt regulations to carry out the purpose of this chapter,  
10 including regulations

11                   (1) describing the contents of an examination;

12                   (2) establishing the conduct of an examination;

13                   (3) establishing a minimum score for passing an examination;

14                   (4) establishing bylaws governing its meetings and activities;

15                   (5) publishing a code of ethics or professional conduct for those  
16 persons regulated by this chapter, including corporations, limited liability companies,  
17 and limited liability partnerships under AS 08.48.241;

18                   (6) establishing continuing education requirements for persons  
19 regulated by this chapter that must be completed before a certificate may be  
20 renewed; the continuing education requirements may not exceed standards  
21 established by a national accrediting body or other recognized professional  
22 organization.

23 \* **Sec. 4.** AS 39.25.120(c) is amended to read:

24           (c) The following positions in the state service constitute the partially exempt  
25 service:

26                   (1) deputy and assistant commissioners of the principal departments of  
27 the executive branch, including the assistant adjutant general of the Department of  
28 Military and Veterans' Affairs;

29                   (2) the directors of the major divisions of the principal departments of  
30 the executive branch and the regional directors of the Department of Transportation  
31 and Public Facilities;

1 (3) attorney members of the staff of the Department of Law, of the  
2 public defender agency, and of the office of public advocacy in the Department of  
3 Administration;

4 (4) one private secretary for each head of a principal department in the  
5 executive branch;

6 (5) employees of councils, boards, or commissions established by  
7 statute in the Office of the Governor or the office of the lieutenant governor, unless a  
8 different classification is provided by statute;

9 (6) not more than two special assistants to the commissioner of each of  
10 the principal departments of the executive branch, but the number may be increased if  
11 the partially exempt service is extended under AS 39.25.130 to include the additional  
12 special assistants;

13 (7) the principal executive officer of the following boards, councils, or  
14 commissions:

15 (A) Alaska Public Broadcasting Commission;

16 (B) Professional Teaching Practices Commission;

17 (C) Parole Board;

18 (D) Board of Nursing;

19 (E) Real Estate Commission;

20 (F) Alaska Royalty Oil and Gas Development Advisory Board;

21 (G) Alaska State Council on the Arts;

22 (H) Alaska Police Standards Council;

23 (I) Alaska Commission on Aging;

24 (J) Alaska Mental Health Board;

25 (K) State Medical Board;

26 (L) Governor's Council on Disabilities and Special Education;

27 (M) Advisory Board on Alcoholism and Drug Abuse;

28 (N) Statewide Suicide Prevention Council;

29 **(O) the State Board of Registration for Architect, Engineers**

30 **and Land Surveyors;**

31 (8) Alaska Pioneers' Home managers;

- 1 (9) hearing examiners in the Department of Revenue;
- 2 (10) the comptroller in the division of treasury, Department of
- 3 Revenue;
- 4 (11) airport managers in the Department of Transportation and Public
- 5 Facilities employed at the Anchorage and Fairbanks International Airports;
- 6 (12) the deputy director of the division of insurance in the Department
- 7 of Community and Economic Development;
- 8 (13) the executive director and staff of the Alaska Public Offices
- 9 Commission;
- 10 (14) the rehabilitation administrator of the Workers' Compensation
- 11 Board;
- 12 (15) guards employed by the Department of Public Safety for
- 13 emergencies;
- 14 (16) marine pilot coordinator of the Board of Marine Pilots;
- 15 (17) guards employed by the Department of Corrections, other than in
- 16 state correctional facilities, to carry out the responsibility of the commissioner of
- 17 Corrections under AS 33.30.071(b);
- 18 (18) hearing officers and administrative law judges of the Regulatory
- 19 Commission of Alaska;
- 20 (19) the compact administrator appointed under AS 33.36.130.

23-LS1850A  
Mischel  
3/12/04

**SENATE CONCURRENT RESOLUTION NO.**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY**

**Introduced:**  
**Referred:**

**A RESOLUTION**

1 **Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State**  
2 **Legislature, concerning House Bill No. 252, relating to boards under AS 08.01.**

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4       That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of  
5 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding  
6 changes to the title of a bill, are suspended in consideration of House Bill No. 252, relating to  
7 boards under AS 08.01.

# Alaska State Legislature

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*Interim:*  
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**Representative Lesil McGuire**  
Chair, Judiciary Committee

## MEMORANDUM

To: Brian Hove, Senate Judiciary Aide

Cc:

From: Heath E. Hilyard, Staff to Rep. McGuire

Date: February 10, 2004

Re: Hearing request for HB 252 - "An Act relating to the terms and duties of the members of the State Board of Registration for Architects, Engineers and Land Surveyors."

Included in this packet is a sponsor statement, the most recent version of HB 252, and accompanying fiscal note.

I am requesting a hearing for HB 252 before the Senate Judiciary Committee at the Senator's earliest convenience. As a note, I am having a blank committee substitute drafted to include amendments requested by the AELS board. These amendments may require a title change resolution.

I will forward to you a draft of the committee substitute as soon as one is available.

# Alaska State Legislature

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## Representative Lesil McGuire

Chair, Judiciary Committee

### Sponsor Statement HB 252

*"An Act relating to the terms of members of boards and commissions that regulate businesses and professions and to the duties of the members of the State Board of Registration for Architects, Engineers and Land Surveyors."*

I have introduced HB 252 by request of the State Board of Registration for Architects, Engineers and Land Surveyors (AELS Board), the regulatory board responsible for adopting regulations to ensure minimum competency of design professionals and to ensure the public health, safety and welfare is met. The AELS Board is also responsible for overseeing the scope of work practices of those professionals. Board members can serve a minimum of two full terms, and the bill would allow board members to serve a minimum of 6 years full years; and would enhance public health, safety, and welfare by allowing the AELS Board to require a mandatory continuing education program for continued professional competency. HB 252 would accomplish two things:

First, HB 252 modifies the existing term limit statute so that serving a partial term of less than two years would not represent a full term on the State Board of Registration for Architects, Engineers, and Land Surveyors defined under AS 08.48.021 but serving a partial term of two or more years would count as a full 4-year term. The AELS Board has, in the past, experienced problems with this statutory provision when a vacancy occurs but is not filled for some time. When an individual fills a partial term, it counts as a full term, no matter how short the partial term may be. This change would allow a Board member filling a partial term of less than two years, to serve the partial term, plus a full 8 years (two 4-year terms).

Second, the AELS Board requires statutory authority in order to adopt regulations concerning continuing education. The first recommendation cited in the Legislative Audit #08-20001-00 dated October 20, 2000 specified this ability be legislated to the AELS Board in order to help implement and maintain high standards in the professions they oversee. HB 252 would provide the AELS Board statutory authority under AS 08.48.101(a) to develop mandatory continuing education programs for the professions it serves. It is important to the Board that the statute not specifically mandate the Board to require a mandatory continuing education as a condition of licensure renewal, because in some instances professionals are already complying with continuing education requirements required by their professional societies. The AELS Board would work with the professional societies before developing any programs.

I would appreciate your support on HB 252.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSHB 252 (STA)  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title Occ Licensing Terms of Bd & Cont. RDU Occupational Licensing (117)  
Education Component Occupational Licensing  
 Sponsor Representatives McGuire & Lynn  
 Requester Senate Judiciary Component No. 2360

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

Estimate of any current year (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)

HB 252 specifies that a person who serves for two years or more of a term on a board is considered to have served a full term. The bill also authorizes the State Board of Registration for Architects, Engineers and Land Surveyors to establish continuing education requirements by regulation before a license is renewed. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144  
 Division Occupational Licensing Date/Time 2/13/04 11:00 AM  
 Approved by: Edgar Blatchford, Commissioner Date 2/13/2004  
 Agency Department of Community & Economic Development

# Alaska State Legislature

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## Representative Lesil McGuire

Chair, Judiciary Committee

### Explanation of Changes to HB 252

*"An Act relating to the terms of members of boards and commissions that regulate businesses and professions and to the duties of the members of the State Board of Registration for Architects, Engineers and Land Surveyors."*

**CSHB 252(L&C)** – The Labor and Commerce Committee amended HB 252 in Section 1 by applying the changes of the terms and duties of members of boards and commission only to the members of the State Board of Registration for Architects, Engineers, and Land Surveyors rather than to all members of all State boards and commissions. The original version amended AS 08.01.035 and the Labor and Commerce committee substitute amends AS 08.48.021. This amendment necessitated an appropriate title change.

**CSHB 252(STA)** – The State Affairs Committee deleted the word "has" from Page 1, line 10 of CSHB 252(L&C). The amendment has no significant policy impact.

**Blank CS for CSHB 252 (23-LS0945\O)** – This blank CS, requested by the AELS Board, includes specific language to amend AS 39.25.120(c)(7) to add the Executive Secretary of the AELS board to the list of principal executive officers that are considered partially exempt. (Page 3, Lines 27 & 28)

23-LS0945\Q  
Mischel  
2/11/04

**SENATE CS FOR CS FOR HOUSE BILL NO. 252( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY**

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

**Sponsor(s): REPRESENTATIVES MCGUIRE, Lynn**

**A BILL**

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6           (b) The executive secretary of the board shall perform duties as prescribed by  
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24                   (1) deputy and assistant commissioners of the principal departments of  
25 the executive branch, including the assistant adjutant general of the Department of  
26 Military and Veterans' Affairs;

27                   (2) the directors of the major divisions of the principal departments of  
28 the executive branch and the regional directors of the Department of Transportation  
29 and Public Facilities;

30                   (3) attorney members of the staff of the Department of Law, of the  
31 public defender agency, and of the office of public advocacy in the Department of

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Administration;

(4) one private secretary for each head of a principal department in the executive branch;

(5) employees of councils, boards, or commissions established by statute in the Office of the Governor or the office of the lieutenant governor, unless a different classification is provided by statute;

(6) not more than two special assistants to the commissioner of each of the principal departments of the executive branch, but the number may be increased if the partially exempt service is extended under AS 39.25.130 to include the additional special assistants;

(7) the principal executive officer of the following boards, councils, or commissions:

- (A) Alaska Public Broadcasting Commission;
- (B) Professional Teaching Practices Commission;
- (C) Parole Board;
- (D) Board of Nursing;
- (E) Real Estate Commission;
- (F) Alaska Royalty Oil and Gas Development Advisory Board;
- (G) Alaska State Council on the Arts;
- (H) Alaska Police Standards Council;
- (I) Alaska Commission on Aging;
- (J) Alaska Mental Health Board;
- (K) State Medical Board;
- (L) Governor's Council on Disabilities and Special Education;
- (M) Advisory Board on Alcoholism and Drug Abuse;
- (N) Statewide Suicide Prevention Council;
- (O) the State Board of Registration for Architect, Engineers**

**and Land Surveyors;**

- (8) Alaska Pioneers' Home managers;
- (9) hearing examiners in the Department of Revenue;
- (10) the comptroller in the division of treasury, Department of

- 1 Revenue;
- 2 (11) airport managers in the Department of Transportation and Public
- 3 Facilities employed at the Anchorage and Fairbanks International Airports;
- 4 (12) the deputy director of the division of insurance in the Department
- 5 of Community and Economic Development;
- 6 (13) the executive director and staff of the Alaska Public Offices
- 7 Commission;
- 8 (14) the rehabilitation administrator of the Workers' Compensation
- 9 Board;
- 10 (15) guards employed by the Department of Public Safety for
- 11 emergencies;
- 12 (16) marine pilot coordinator of the Board of Marine Pilots;
- 13 (17) guards employed by the Department of Corrections, other than in
- 14 state correctional facilities, to carry out the responsibility of the commissioner of
- 15 Corrections under AS 33.30.071(b);
- 16 (18) hearing officers and administrative law judges of the Regulatory
- 17 Commission of Alaska;
- 18 (19) the compact administrator appointed under AS 33.36.130.

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HB 252: Mandatory Continuing Education

**Subject: HB 252: Mandatory Continuing Education****Date: Wed, 25 Feb 2004 07:49:28 -0900****From: "Bear, David" <dbear@HomerElectric.com>****To: <Kenai\_Lio@legis.state.ak.us>**

From: David M. Bear, RLS #7336

I am totally supportive of continuing education in all professional disciplines and at all levels. However, given the disparity of access to education centers and the limited type of education available to individuals statewide I think it is not only unfair but unnecessary to "mandate" continuing education in order to renew a license. Any licensed professional who's livelihood depends on business practices is going to acquire the knowledge necessary to compete in his/her discipline. No amount of education will change the practices of an unscrupulous or unethical individual anyway.

Until a detailed list of available and applicable education categories has been established and a method of making said education equally available to ALL Licensees I am adamantly opposed to passing a law that allows for discretionary undefined/undetailed requirements to renew a license.

As I am unable to attend the 8:00 a.m. teleconference this a.m. I would very much appreciate your introduction of my comments at the hearing.

Thank You,  
dbear,

Subject:

HB 252: Mandatory Continuing Education

Date:

Wed, 25 Feb 2004

From: David M. Bear, RLS #7336

I am totally supportive of continuing education in all professional disciplines and at all levels. However, given the disparity of access to education centers and the limited type of education available to individuals statewide, I think it is not only unfair but unnecessary to "mandate" continuing education in order to renew a license. Any licensed professional who's livelihood depends on business practices is going to acquire the knowledge necessary to compete in his/her discipline. No amount of education will change the practices of an unscrupulous or unethical individual anyway.

Until a detailed list of available and applicable education categories has been established and a method of making said education equally available to ALL Licensees, I am adamantly opposed to passing a law that allows for discretionary undefined/undetailed requirements to renew a license.

As I am unable to attend the 8:00 a.m. teleconference this a.m., I would very much appreciate your introduction of my comments at the hearing.

Thank You,  
Dave Bear.

**HB**

**260**

# ALASKA STATE LEGISLATURE

*Chair*  
FISHERIES

*Vice-Chair*  
EDUCATION

*Member*  
HEALTH, EDUCATION AND SOCIAL SERVICES

*Member*  
STATE AFFAIRS



**REPRESENTATIVE PAUL SEATON**  
House District 35

*Session:*  
State Capitol Building  
Juneau, Alaska 99801  
Phone 907-465-2689  
Fax 907-465-3472  
1-800-665-2689  
Rep.Paul.Seaton@legis.state.ak.us

*Interim:*  
345 W. Sterling Highway  
Suite 102B  
Homer, Alaska 99603  
Phone 907-235-2921  
Fax 907-235-4008

## MEMORANDUM

**TO:** Senator Ralph Seekins, Chair  
Senate Judiciary Committee

**FM:** Representative Paul Seaton, Chair  
House Special Committee on Fisheries

**DATE:** February 16<sup>th</sup>, 2004

**RE:** HB 260 Hearing Request

---

I respectfully request a hearing on HB 260, "Volunteer Health Care Provider Immunity Act." Attached, you will find all pertinent background material.



# ALASKA STATE LEGISLATURE

*Chair*  
FISHERIES

*Vice-Chair*  
EDUCATION

*Member*  
HEALTH, EDUCATION AND SOCIAL SERVICES

*Member*  
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Phone 907-235-2921  
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**REPRESENTATIVE PAUL SEATON**  
House District 35

## SPONSOR STATEMENT

**CS HB 260 (JUD) Version S**

### **“Volunteer Health Care Provider Immunity Act”**

Alaska is currently experiencing a shortage of health care providers, and with many of Alaska's physicians nearing retirement, the state can only expect to see further declines in the availability of affordable health care. CSHB 260 aims to mitigate this problem by encouraging licensed physicians and other health care providers to administer health care services free of charge. By exempting voluntary services from malpractice liability, CSHB 260 would allow health care providers to donate their services without bearing the personal cost of medical malpractice insurance. CSHB 260 will be especially helpful for retiring health care professionals that wish to donate their services but do not still carry malpractice insurance. 43 other states have enacted similar legislation.

Historically, Alaska has had a difficult time recruiting and retaining adequate numbers of physicians and other health care providers. With 186 physicians per 100,000 residents, Alaska currently ranks 49<sup>th</sup> in the country in per capita physicians. Furthermore, the average age of Alaska's physicians is over 51 years old. Many of Alaska's most experienced physicians will be retiring in the next 5 to 10 years.

As licensed physicians in Alaska retire, many of them would like to provide free medical services within their communities. Unfortunately, paying for extremely expensive medical malpractice insurance while providing free services is costly and prohibitive. CSHB 260 would allow health care providers to give free services without this added cost, increasing the volunteer activity among the state's aging health care providers.



CSHB 260 exempts from malpractice liability only those health care services that are provided for free to individuals that are willing to receive such services. Patients would have to receive advanced written notice of this exemption and give informed consent. CSHB 260 does not in any other way alter medical malpractice laws or liability. Health care providers would still be liable for actions resulting from gross negligence, reckless behavior, or intentional misconduct.

I ask for your support in this effort to broaden the availability of affordable health care in Alaska.

# LEGAL SERVICES

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

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


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

## MEMORANDUM

February 11, 2004

**SUBJECT:** Blank Senate CS for HB 260  
(Work Order No. 23-LS0823\V)

**TO:** Representative Paul Seaton  
Attn: Cameron Yourkowski

**FROM:**   
Donald M. Bullock Jr.  
Legislative Counsel

Enclosed with this memorandum is a blank Senate committee substitute for HB 260. Section 3 of this draft differs from SCS CSHB 260(HES) by adding language to AS 09.65.300(a)(3) so that it now reads as follows:

(3) services were provided at a medical clinic, medical facility, nonprofit facility, temporary emergency site, or other facility owned or operated by a governmental entity or nonprofit organization and the provider was acting within the scope of the provider's responsibilities in the governmental entity or nonprofit organization;

This language is based on 42 U.S.C. 14503 (Sec. 4 of the Volunteer Protection Act of 1997). This language requires that the provider perform services as a volunteer for a governmental unit or nonprofit organization. I also added a definition for "nonprofit organization" in AS 09.65.300(b) because of the insertion of that term as described above.

While we were on the phone, you asked for an explanation of 42 U.S.C. 14502 (Sec. 3 of the Volunteer Protection Act of 1997). Subsection (a) of that section states that the federal act preempts state laws that are inconsistent with the act, except that the federal act does not preempt "any state law that provides additional protection from liability relating to volunteers or to any category of volunteers in the performance of services for a nonprofit organization or governmental entity." In other words, the federal act does not apply if the state provides more immunity than the federal act. I think that the draft bill provides equal or greater immunity for health care providers when compared to the federal act.

You also asked about the language in AS 09.65.300(b)(1) that is included in sec. 3 of the draft. That paragraph means that a health care provider may not be immune from liability for civil damages that are the result of "gross negligence or reckless or intentional

Representative Paul Seaton  
February 11, 2004  
Page 2

misconduct." The quoted language is used consistently in the Alaska statutes as an exception to immunity from liability and describes an extraordinary departure from the expected standard of care.<sup>1</sup>

If I may be of further assistance, please advise.

DMB:mdr  
04-042.mdr

Enclosure

---

<sup>1</sup> The quoted language is used in AS 09.65.090, 09.65.092, 09.65.097, 09.65.112, 09.65.145, 09.65.200, 09.65.280; AS 13.26.150; AS 14.33.140; AS 34.17.055; and AS 47.35.810.

# LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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FAX (907) 465-2029  
Mail Stop 3101


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

## MEMORANDUM

January 28, 2004

**SUBJECT:** Immunity for the Provision of Free Health Care (CSHB 260(JUD))

**TO:** Representative Paul Seaton  
Attn: Cameron Yourkowski

**FROM:** Jean M. Mischel  
Legislative Counsel 

You have asked about the absence of a definition of "gross negligence" in section 3 of CS HB 260(JUD) at page 3, line 2.

I have found approximately 50 references to the term "gross negligence" in the Alaska Statutes, only one of which contains a definition (AS 18.08.086(a) (providing immunity for emergency medical service providers). In this single definition, the term "gross negligence" includes the additional concepts of wilful and reckless misconduct, both of which are explicitly included in HB 260.

In the absence of an express definition, courts will apply the common law definition of this term. The common law definition of "gross negligence," as expressed in Black's Law Dictionary, Seventh Edition is, in pertinent part,

1. A lack of slight negligence or care. 2. A conscious, voluntary act or omission in reckless disregard of a legal duty and of the consequences to another party, who may typically recover exemplary damage.--Also termed *reckless negligence; wanton negligence; hazardous negligence.*

If I may be of further assistance, please advise.

JMM:mdr  
04-027.mdr

23-LS0823V  
Bullock  
2/12/04

SENATE CS FOR CS FOR HOUSE BILL NO. 269( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES SEATON, Wilson, Gara, Anderson, McGuire, Holm

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to immunity for free health care services provided by certain health  
2 care providers; and providing for an effective date."

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

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

6 SHORT TITLE. This Act may be known as the Volunteer Health Care Provider  
7 Immunity Act of 2004.

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

10 FINDINGS. The legislature finds that

11 (1) many of the state's most senior and experienced physicians will be retiring  
12 in the next five to 10 years; retiring physicians deciding to reside in Alaska could continue to  
13 benefit our local communities by volunteering their medical services;

14 (2) historically, Alaska has had difficulty in attracting and maintaining

1 adequate numbers of qualified physicians; currently, Alaska ranks 49th in the number of  
2 physicians per capita, while Alaska's physicians continue to grow older, reaching an average  
3 age of 51 years;

4 (3) without civil liability protection, retired physicians would be unwilling to  
5 provide free services to the indigent and elderly;

6 (4) 43 states have enacted legislation limiting liability for retired physicians,  
7 thus encouraging retired physicians to continue in providing voluntary medical services; and

8 (5) removing liability requirements for retired physicians would be in the best  
9 interests of the state; retired physicians unhindered by expensive malpractice insurance would  
10 be more inclined to volunteer necessary and important medical services to all Alaskans.

11 \* Sec. 3. AS 09.65 is amended by adding a new section to read:

12 **Sec. 09.65.300. Immunity for providing free health care services. (a)**

13 Except as otherwise provided in this section, a health care provider who provides  
14 health care services to another person is not liable for civil damages resulting from an  
15 act or omission in providing the health care services if the health care

16 (1) provider is licensed in this state to provide health care services;

17 (2) services provided were within the scope of the health care  
18 provider's license;

19 (3) services were provided at a medical clinic, medical facility,  
20 nonprofit facility, temporary emergency site, or other facility owned or operated by a  
21 governmental entity or nonprofit organization and the healthcare provider was acting  
22 within the scope of the provider's responsibilities in the governmental entity or  
23 nonprofit organization;

24 (4) services were provided voluntarily and without pay to the health  
25 care provider for the services, except as provided in (b)(2) and (3) of this section; and

26 (5) provider

27 (A) obtains informed consent from the person receiving the  
28 health care services as described under AS 09.55.556, except in the case of an  
29 emergency; and

30 (B) provides the person receiving the health care services  
31 advance written notice of the immunity provided under this section to a health

1 care provider when providing voluntary health care services as described under  
2 this section.

3 (b) This section does not preclude

4 (1) liability for civil damages that are the result of gross negligence or  
5 reckless or intentional misconduct;

6 (2) a health care provider from receiving payment or being reimbursed  
7 for expenses, including travel and room and board while providing voluntary services;

8 (3) a medical clinic or facility from charging for its services.

9 (c) In this section,

10 (1) "health care provider" means a state licensed physician, physician  
11 assistant, dentist, dental hygienist, osteopath, optometrist, chiropractor, registered  
12 nurse, practical nurse, nurse midwife, advanced nurse practitioner, naturopath,  
13 physical therapist, occupational therapist, marital and family therapist, psychologist,  
14 psychological associate, licensed clinical social worker, or certified direct-entry  
15 midwife;

16 (2) "health care services" means services received by an individual in  
17 order to treat or to prevent illness or injury;

18 (3) "nonprofit organization" means an organization that qualifies for  
19 exemption from taxation under 26 U.S.C. 501(c)(3) or (4) (Internal Revenue Code).

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

22 **APPLICABILITY.** This Act applies to a cause of action that accrues on or after the  
23 effective date of this Act.

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

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**REPRESENTATIVE PAUL SEATON**  
House District 35

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## SECTIONAL ANALYSIS

### CSHB 260 (JUD) Version S

#### **"Volunteer Health Care Provider Immunity Act"**

**Section 1:** Titles CSHB 260 as the Volunteer Health Care Provider Immunity Act of 2003.

**Section 2:** Lays out the findings of the legislature in drafting CSHB 260.

**Section 3:** Amends AS 09.65 by adding a new section that gives health care providers immunity from civil damages resulting from medical malpractice, but only if the services are provided without charge and the patient gives informed consent (09.65.290). This section also lays out further provisions that must be met for this immunity to apply and makes it clear that immunity is not granted for civil damages resulting from gross negligence and reckless or intentional misconduct. "Health care provider" and "health care services" are also defined in this section.

**Section 4:** States that this act applies only to actions occurring after the effective date of this act.

**Section 5:** Sets the effective date of this act at July 1, 2003.



# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: SCS CSHB 260(HES)  
(S) Publish Date: 1/30/04

Revision Date/Time (Note if correction):  
Title Immunity for Providing Free Health Care  
Sponsor House Judiciary  
Requester Senate HESS  
Dept. Affected: DCED  
RDU Occupational Licensing (117)  
Component Occupational Licensing  
Component No. 2360

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

Estimate of any current year (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)

CSHB 260(JUD) provides immunity for free health care services by certain health care providers. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144  
Division Occupational Licensing Date/Time 1/22/04 1:57 PM  
Approved by: Edgar Blatchford, Commissioner Date 1/22/2004  
Agency Department of Community and Economic Development

# FISCAL NOTE

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

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 260  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction):  
 Title Immunity for Providing Free Health Care

Dept. Affected: DCED  
 BRU Occupational Licensing (117)  
 Component Occupational Licensing

Sponsor Representative Seaton  
 Requester Labor and Commerce

Component No. 2360

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

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

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

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

<b>CHANGE IN REVENUES ( )</b>						
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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 1156 - Receipt Supported Services						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

HB 260 provides immunity for free health care services by certain health care providers. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Manager

Phone (907) 465-2144

Division Occupational Licensing

Date/Time 4/28/03 1:32 PM

Approved by: Edgar Blatchford, Commissioner

Date 4/28/2003

Agency Department of Community & Economic Development

Public Law 105-19  
105th Congress

An Act

June 18, 1997  
[S. 543]

To provide certain protections to volunteers, nonprofit organizations, and governmental entities in lawsuits based on the activities of volunteers.

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

Volunteer  
Protection Act of  
1997.  
42 USC 14501  
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Volunteer Protection Act of 1997".

42 USC 14501.

SEC. 2. FINDINGS AND PURPOSE.

- X (a) FINDINGS.—The Congress finds and declares that— X
- (1) the willingness of volunteers to offer their services is deterred by the potential for liability actions against them;
  - (2) as a result, many nonprofit public and private organizations, social service agencies, educational institutions, and other civic programs, have been adversely affected by the withdrawal of volunteers from boards of directors and service in other capacities;
  - (3) the contribution of these programs to their communities is thereby diminished, resulting in fewer and higher cost programs than would be obtainable if volunteers were participating;
  - (4) because Federal funds are expended on useful and cost-effective social service programs, many of which are national in scope, depend heavily on volunteer participation, and represent some of the most successful public-private partnerships, protection of volunteerism through clarification and limitation of the personal liability risks assumed by the volunteer in connection with such participation is an appropriate subject for Federal legislation;
  - (5) services and goods provided by volunteers and nonprofit organizations would often otherwise be provided by private entities that operate in interstate commerce;
  - (6) due to high liability costs and unwarranted litigation costs, volunteers and nonprofit organizations face higher costs in purchasing insurance, through interstate insurance markets, to cover their activities; and
  - (7) clarifying and limiting the liability risk assumed by volunteers is an appropriate subject for Federal legislation because—
    - (A) of the national scope of the problems created by the legitimate fears of volunteers about frivolous, arbitrary, or capricious lawsuits;

within the scope of the volunteer's responsibilities in the non-profit organization or governmental entity;

(3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; and

(4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to—

(A) possess an operator's license; or

(B) maintain insurance.

(b) **CONCERNING RESPONSIBILITY OF VOLUNTEERS TO ORGANIZATIONS AND ENTITIES.**—Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of such organization or entity.

(c) **NO EFFECT ON LIABILITY OF ORGANIZATION OR ENTITY.**—Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to harm caused to any person.

(d) **EXCEPTIONS TO VOLUNTEER LIABILITY PROTECTION.**—If the laws of a State limit volunteer liability subject to one or more of the following conditions, such conditions shall not be construed as inconsistent with this section:

(1) A State law that requires a nonprofit organization or governmental entity to adhere to risk management procedures, including mandatory training of volunteers.

(2) A State law that makes the organization or entity liable for the acts or omissions of its volunteers to the same extent as an employer is liable for the acts or omissions of its employees.

(3) A State law that makes a limitation of liability inapplicable if the civil action was brought by an officer of a State or local government pursuant to State or local law.

(4) A State law that makes a limitation of liability applicable only if the nonprofit organization or governmental entity provides a financially secure source of recovery for individuals who suffer harm as a result of actions taken by a volunteer on behalf of the organization or entity. A financially secure source of recovery may be an insurance policy within specified limits, comparable coverage from a risk pooling mechanism, equivalent assets, or alternative arrangements that satisfy the State that the organization or entity will be able to pay for losses up to a specified amount. Separate standards for different types of liability exposure may be specified.

(e) **LIMITATION ON PUNITIVE DAMAGES BASED ON THE ACTIONS OF VOLUNTEERS.**—

(1) **GENERAL RULE.**—Punitive damages may not be awarded <sup>†</sup> against a volunteer in an action brought for harm based on the action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by an action of such volunteer which constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed. <sup>X</sup>

(3) **NONECONOMIC LOSSES.**—The term “noneconomic losses” means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other nonpecuniary losses of any kind or nature.

(4) **NONPROFIT ORGANIZATION.**—The term “nonprofit organization” means—

(A) any organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note); or



(B) any not-for-profit organization which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note).

(5) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

(6) **VOLUNTEER.**—The term “volunteer” means an individual performing services for a nonprofit organization or a governmental entity who does not receive—

(A) compensation (other than reasonable reimbursement or allowance for expenses actually incurred); or

(B) any other thing of value in lieu of compensation, in excess of \$500 per year, and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

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## Primary Health Care

### Access to Health Care: Volunteer Health Care Providers and Civil Immunity Laws

Updated March 2000

X **Laws establishing immunity from civil liability for health care providers delivering uncompensated care to indigent populations have been enacted in a majority of the states in the last decade. Viewed as a way to encourage health care providers to provider free care to underserved populations, states have removed the threat of civil suits against providers who are acting in good faith.** X

Laws providing immunity only for services rendered in an accident or emergency situation are not included.

First Letter of State A C D F G H I K L M N O P R S T U V W

State	Description
Alabama	Ala. Code § 6-5-339 provides immunity from civil immunity to medical professionals who volunteer their services at free medical clinics without compensation, and provides that an act or omission of a volunteer medical professional shall be the responsibility of the free medical clinic.
Alaska	-
American Samoa	-
Arizona	Ariz. Rev. Stat. Ann. § 12-571 states that a health professional who provides medical or dental treatment within the scope of their certificate or license at a nonprofit clinic where neither the professional or the clinic receives compensation is not liable in a medical malpractice action unless the health professional was grossly negligent.
Arkansas	Ark. Stat. Ann. § 16-6-105 states that physicians and health care professionals who are licensed under the laws of the state, and who render medical services voluntarily and without compensation to any person at a any free or low-cost medical clinic shall not be liable

for any civil damages for any act or omission resulting from the medical services unless the act or omission was a result of gross negligence or willful misconduct.

**Ark. Stat. Ann. § 17-95-108** expands upon the previous law to state that the immunity applies when the patient acknowledges in writing that the physician is immune from civil liability.

**California**

**Cal. Business and Professions Code § 2395.5** states that a physician who serves on an on-call basis to a hospital emergency room and in good faith renders emergency obstetrical services to any person while on-call shall not be liable for any civil damages except in cases of gross negligence, recklessness, or willful misconduct.

**Colorado**

**Colo. Rev. Stat. § 24-10-103 (4)** extends governmental immunity from civil damages to any health care practitioner employed by a public entity and to any health care practitioner who volunteers his services at or on behalf of a public entity or as a participant in the community maternity services program.

**Connecticut**

-

**Delaware**

**Del. Code Ann. Tit. 10 § 8135** grants immunity from civil suits resulting from any negligent act or omission performed during or in connection with an activity of the volunteer while serving the medical clinic to any licensed physician or nurse engaged in an activity for a medical clinic without compensation.

**District of Columbia**

**D. C. Code Ann. § 2-1344** extends limited immunity to health care professionals including physicians, nurses or nurse midwives who in good faith provide health care or treatment at a free health clinic without the expectation of receiving or intending to receive compensation unless the act or omission is an intentional wrong or constitutes a willful or wanton disregard for the health and safety of others.

**Florida**

**Fla. Stat. § 768.13(4)** states that any person who is licensed to practice medicine, while acting as a staff member or with professional clinical privileges at a nonprofit medical facility shall not be held liable for any civil damages for any care provided gratuitously.

**Georgia**

**Ga. Code. § 51-1-29** states that no health care provider licensed under Chaps. 11, 26, 30, or 34 who voluntarily and without expectation or receipt of compensation provides professional service, within the scope of their license, for a hospital, public school, nonprofit organization or an agency of the state shall be liable for damages or injuries alleged to have occurred in the rendering of these services.

**Guam**

-

**Hawaii**

-

**Idaho**

**Idaho Code § 6-1605** provides immunity for civil liability for nonprofit organization officers, directors, and volunteers who serve

the nonprofit without compensation with the exception of willful, wanton misconduct.

**Illinois**

**Ill. Rev. Stat. ch. 111§ 4400-30** provides immunity from civil damages for physicians who provide medical treatment in good faith at a free medical clinic to medically indigent patients if he or she receives no compensation, excludes willful or wanton misconduct.

**Indiana**

**Ind. Code § 34-412.1-2, 34-4-12-1.5** provides that a health care provider, including a retired physician, who voluntarily provides health care at a medical clinic or health care facility is immune from civil liability arising from the care provided unless the acts constitute a criminal act, gross negligence or willful, wanton misconduct.

**Iowa**

**Iowa Code § 65-135.24** establishes a volunteer physician program and states that physicians providing care under this program will be considered employees of the state and shall be afforded the protection from civil immunity for their services.

**Kansas**

**Kan. Stat. Ann. § 75-6102** provides indemnity to charitable health care providers who have entered into an agreement with the secretary of health and environment and who provides free professional services to medically indigent patients by considering the provider a state employee.

**Kentucky**

**Ky. Rev. Stat. § 304.40-075** states that the Department of Insurance will provide medical malpractice insurance to a charitable health care provider who has registered with the Cabinet for Human Resources. A charitable health care provider is defined as any person, agency, clinic or facility engaged in providing medical care without compensation. This law also applies to health care providers who are not licensed in the state of Kentucky as long as they meet the definition of charitable health care provider.

**Louisiana**

**La. Rev. Stat. Ann. § 40:1299.152** provides state indemnification of health care providers who provide charity care in at least 10% of the provider's patient encounters. Charity care is limited to defined State programs or care provided at federally funded nonprofit clinics. Health care providers can be a person, partnership or corporation. The providers must maintain liability insurance, the law excludes protection for gross negligence or intentional misconduct.

**La. Rev. Stat. Ann. § 40:1299.161** provides a state mandated premium discount for health care providers who provide at least 10% or more charity care in their practices.

**Maine**

**Me. Rev. Stat. Ann. Tit. 24, § 2904** states that a licensed physician who voluntarily, and without compensation, provides professional services within the scope of his practice to a nonprofit organization or to an agency of the state shall not be liable for damages or injuries related to those services. The state will be liable unless the damages were caused willfully, wantonly or by gross negligence.

**Me. Rev. Stat. Ann. Tit. 14, §315** states that the Board of Medicine

shall issue a license free of charge to any physician who provides medical services to patients with no compensation and is not engaged in the private practice of medicine.

**Maryland**

**Md. Courts & Judicial Proceedings Code Ann. Sec. 5-616** repealed a requirement compelling volunteer health care providers and physicians delivering care at charitable organization to carry a specified amount of insurance to qualify for immunity from specified types of civil liability.

**Massachusetts**

**Mass. Gen. Laws Ann. Ch. 112, § 12C** states that no physician rendering immunizations or other protective programs under public programs shall be liable for civil damages.

**Michigan**

-

**Minnesota**

-

**Mississippi**

**Miss. Code Ann. § 11-46-1** indemnifies physicians who provide care under an agreement with State government. The physician is considered a State employee.

**Miss. Code Ann. § 73-25-18** establishes a special volunteer medical license for physicians who are retired from active practice and with to donate their expertise for the medical care and treatment of indigent and needy people or people in medically underserved areas. The laws provides that the license be issued without charge and that the license shall limit the practice of the physician to a specific location.

**Missouri**

**Mo. Rev. Stat. § 195.711** provides that the state legal defense fund covers payment of claims against physicians, dentists, dental hygienists, nurses and physician assistants who provide primary or preventive care for free at a city or county health department or a tax-exempt nonprofit community health center or who provide such care to students of public, private or parochial elementary or secondary schools, pursuant to a contract with a local health department.

**Montana**

-

**Nebraska**

-

**Nevada**

**Nev. Rev. Stat. Ann. § 41.505** provides civil immunity for physicians, including retired physicians, who offer free care and, or provide emergency obstetrical services.

**Nev. Rev. Stat. Ann. § 41.485** states that a volunteer of a charitable organization is immune from liability for civil damages as a result of an act or omission. Volunteer includes any person who performs services without compensation.

**New Hampshire**

**N.H. Rev. Stat. Ann. § 329:25-a** grants certain retired physicians immunity from civil liability for health education services.

**N.H. Rev. Stat. Ann. § 508:17** provides immunity from civil damages for volunteers of a nonprofit organization or government

<b>Texas</b>	<p><b>Texas Civil Practice and Remedies Code Ann. § 710.001</b> indemnifies physicians for defined "charity care" if the physician renders the care in at least 10% of his patient encounters during the year a claim is made.</p> <p><b>Texas Insurance Code Ann. § 5.15-4</b> states that a physician is entitled to a premium discount for medical professional liability insurance for providing services for selected charity care programs.</p>
<b>U.S. Virgin Islands</b>	-
<b>Utah</b>	<p><b>Utah Code Ann. § 58-12-23.5</b> provides qualified immunity for health care providers who render charity care without compensation in a qualified location, excludes gross negligence and willful misconduct.</p>
<b>Vermont</b>	-
<b>Virginia</b>	<p><b>Va. Stat. Ann. Tit. § 54-1.2:2</b> states that health care professionals rendering services free of charge at free clinics are exempt from civil liability, excludes acts of gross negligence and willful misconduct.</p>
<b>Washington</b>	-
<b>West Virginia</b>	<p><b>W. Va. Code § 30-3-10a</b> establishes special volunteer medical licenses for physician wishing to donate their expertise for the medical care and treatment of indigent and needy patients of clinics organized in whole or in part for the delivery of health care services without charge and provides immunity from civil actions for physicians rendering such care.</p>
<b>Wisconsin</b>	<p><b>Wis. Stat. § 146.89</b> provides indemnification for volunteer health care providers who submit an application associating them with a nonprofit agency to the state.</p>
<b>Wyoming</b>	-

Return to Legislative Summary Table of Contents

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# Alaska State Hospital & Nursing Home Association

*We're helping people care for people!*

April 28, 2003

Representative Tom Anderson  
Capitol Building, Room 432  
Juneau AK 99801-1182

Dear Representative Anderson:

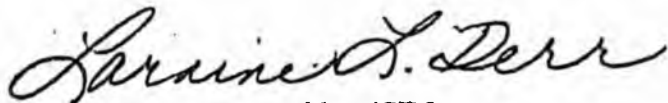
I am writing in support of HB 260 relating to immunity for free health care services provided by certain health care providers.

ASHNHA wholeheartedly supports this legislation. Any efforts to increase the limited medical resources available in Alaska are a positive for the health care community and Alaskans.

The Alaska State Hospital and Nursing Home Association (ASHNHA) is an organization of all but one of the hospitals and nursing homes in Alaska. As such we represent the views of those medical facilities. They are solidly in favor of this legislation.

If you have questions, please contact me.

Sincerely yours,



Laraine L. Derr, President/CEO

426 Main Street, Juneau, Alaska 99801

Phone: 907-586-1790 • Fax: 907-463-3573 • Web: ashnha.com

# COVENANT HOUSE ALASKA

The Honorable Paul Seaton  
House of Representatives  
Alaska State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Seaton:

Thank you for sponsoring HB260. This legislation would be of great benefit to Covenant House programs in two ways. First it would provide us an extra layer of protection for the services we are currently providing to youth without charge. Second, it would increase our abilities to utilize the services of health care providers from the community who are willing to volunteer. We provide free health care services to the youth we serve in all our programs. In one year we have had over 650 visits to our health clinic. A part-time Family Nurse Practitioner currently staffs our clinic.

We have had offers from nurses and physicians to provide volunteer services to our youth. Concerns about liability often keep individuals from being able to provide additional services to our youth. We recently had an offer for assistance from a military doctor, who could not provide direct services because her military malpractice does not cover her in the private sector.

#### Background Information

Covenant House Alaska is a non-profit social service organization. We have been a "lifeline from the streets" for homeless and runaway youth in Anchorage since 1988.

Covenant House operate multiple programs the include:

- Crisis Center: temporary residential care for youth in need of immediate sanctuary
- Youth Resource Center: offers outreach and walk-in services
- Transitional Living Programs: provides residential care for 24 youth

We provide an opportunity for young Alaskans to leave the streets, finish school, learn a skill, find a job, reunify with their families and begin their lives again. Our annual budget is 3.5 million and we employ 60 full time staff.

I appreciate your efforts and can be contacted at #907-339-4203 if you have additional questions.

Sincerely,

  
Deirdre A. Phayer  
Executive Director

**THE ALASKA ASSOCIATION OF NATUROPATHIC PHYSICIANS**

**11238 EAGLE RIVER ROAD, SUITE 254 • EAGLE RIVER, ALASKA • 99577-7228**

**PHONE: 907-694-5522 • FAX: 907-694-5524**

May 7, 2003

Representative Paul Seaton  
Capital Building  
Juneau, Alaska 99811

Dear Representative Seaton:

Thank you for sponsoring the Volunteer Health Care Provider Immunity Act (HB 260). We as naturopathic physicians strongly agree that the removal of liability requirements for retired physicians would be in the best interest of the state of Alaska. We agree that removing the hindrance of malpractice insurance for retired physicians would increase the availability of quality volunteer medical care for Alaskans in all parts of the state. Further, we appreciate Section 09.65.290 that provides immunity from civil damages for physicians providing free health care services. Our profession has a tradition of providing volunteer health care for alcohol and drug detox centers, outreach clinics, and other state funded programs.

Licensed naturopathic physicians (N.D.) have completed a minimum of four years of graduate level naturopathic medical school. They are educated in all of the same basic and clinical sciences as a M.D., but with a strong emphasis on disease prevention and health optimization. In addition to the standard medical curriculum, the naturopathic physician is trained in acupuncture, botanical medicine, clinical nutrition, counseling, homeopathic medicine, physical medicine and psychology. Entry into the profession requires rigorous national board exams so that they can be licensed as primary care, general practice physicians. N.D.s know when, and how to refer to medical doctors, or specialists, for patients who require immediate or further medical intervention.

We appreciate that naturopathic physicians have been included and support your sponsorship of HB 260.

Sincerely,

Madeleine Morrison-Young N.D.  
AKANP President

Jason Harmon N.D.  
Vice President  
Anchorage

Scott Luper N.D.  
Secretary  
Fairbanks

Gigi Schulte N.D.  
Treasurer  
Anchorage

Daniel J. Young N.D., L.Ac.  
Legislative Affairs  
Anchorage

**The Senner Family, P.O. Box 102264, Anchorage, AK 99510**  
907-243-8044 (home) ♦ [senfam@customcpu.com](mailto:senfam@customcpu.com)

May 6, 2003

Honorable Paul Seaton  
State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Seaton;

On May 9th the House Judiciary Committee is scheduled to hear testimony on HB 260, "An Act relating to immunity for free health care services provided by certain health care providers...". The Alaska Nurses Association is very much in favor of this piece of legislation, but we would like to see one change be made to the bill.

The Alaska Nurses Association along with the Alaska Chapter of the American Red Cross, the Alaska Division of Public Health Nursing, and the Municipality of Anchorage Health Department has established the Alaska Nurse Alert System. This is a registry of nurses willing to volunteer in an event such as an epidemic or disaster.

We would like to see section 09.64.290 (3) of HB 260 amended to include emergency shelters and temporary health facilities set up as part of a disaster response. This would help provide added liability protection to those health care providers who volunteer in response to a public health emergency.

Thank you for your attention to this request, if you have any question please give me a call. We hope that we are able to testify on this bill by teleconference.

Sincerely,

Patricia Senner RN  
President, Alaska Nurses Association

April 30, 2003

Dear Representative Seaton, (fax: (907) 465-3472)

I was listening to the House L&C Committee hearing on HB 260 on April 28. I appreciated that you acknowledged that nurses should also be included in Section 2 of your bill. But I was very disappointed to hear that you were not aware of the levels of licensure for the nursing categories named in your bill.

Two weeks ago I sent to every Legislator an informational brochure about the various categories of Advance Practice Nurses in Alaska. Attached is some of the information, in case your staff did not give that to you. I provided this information because legislators usually do not know much about this topic.

Nurses are a most altruistic group of health care providers. While I appreciate that you are carrying this bill on behalf of ASMA, nurses far outnumber MDs and do far more volunteer work in their communities than do MDs.

The defined health care providers in HB 260 is very appropriate, if the purpose of the bill is to provide a more hospitable environment for access to health care for Alaskans of all economic levels. I would encourage you NOT to entertain a reduction of those categories. I don't know if you heard Dr. Hedrick Hanson, who commented that he could not operate a clinic without nurses. Rep. Gara commented that he sees his dental hygienist much more frequently than his dentist.

I support your statement that free health care from volunteer health care providers is certainly vastly more desirable than no health care at all. There are too many Alaskans with no health care at all and that is the need that will be addressed by HB 260.

Thank you for your service to Alaska in the legislature.

Respectfully,



Cathy Glesse, MSN, FNP-CS  
Marketing Committee Chair, Alaska Nurse Practitioner Association  
12701 Ridgewood Rd  
Anchorage, AK 99516

907 345 5470

copy to Representative Wilson (fax: (907) 465-3175)



**A N P A**

*Alaska Nurse Practitioner Association  
2207 E. Tudor Rd. #34  
Anchorage, AK 99507  
907.222.6847*

## **Advanced Nurse Practitioners In Alaska**

**Advanced practice nurses are Registered Nurses (RN) who have masters or other advanced degrees in specialty medical care.**

**There are 670 advanced practice nurses in the State of Alaska (2002 licensure figures). They are:**

- **Advanced Nurse Practitioners (ANP) - 477**
- **Certified Registered Nurse Anesthetists (CRNA) - 93**

**Advanced Nurse Practitioners (ANP) hold specialty certifications in:**

- family and adult health care
- pediatrics
- gerontology
- women's health and midwifery
- school health
- psychiatric
- oncology
- cardiology

**Advanced Nurse Practitioners:**

- provide independent primary health care services
- provide professional consulting services
- are post-secondary and graduate level educators
- are administrators for health care facilities
- conduct professional research

**ANP health care services include:**

- health histories, physical examinations and diagnosis
- ordering of lab and x-ray testing
- prescription of medications and other treatments
- management of illnesses
- promotion of prevention and proactive health counseling

**Advanced Nurse Practitioners can be found in:**

- Alaska's large cities and rural communities
- clinics ANPs own and operate
- collaborative practices with physicians or other health care providers
- hospitals, nursing homes and long term care settings

**w w w . a l a s k a n p . o r g**

**ANP continuing education:**

- License renewal every 2 years
- Continuing education required for license renewal
- National specialty certification
- Periodic peer review

**Advanced Nurse Practitioners are very active in community and state-wide issues:**

- employing a lobbyist in Juneau
- participating in political campaigns for candidates of their choice
- voting

**Advanced Nurse Practitioners contribute to the quality of life in Alaska as active members of their community and state, providing professional, caring and affordable health services for all ages.**

**For more information contact:**

**Alaska Nurse Practitioner Association  
2207 East Tudor Rd, Suite #34  
Anchorage, AK 99507  
907 222 6847**

**Cathy Glessel, MSN, FNP-CS  
cglessel@mac.com**

# Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (907) 562-0304 • (907) 561-2063 (fax)

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04/24/2003

Honorable Paul Seaton  
State of Alaska  
House  
State Capitol, Room 428  
Juneau, AK 99801 - 1182

Transmitted by Fax:  
907-465-3472

Re: HB 260 - Volunteer Health Care Provider Immunity Act of 2003

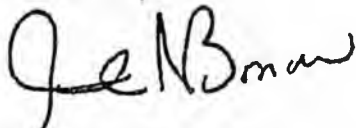
Dear Representative Seaton:

The Alaska State Medical Association (ASMA) represents Alaska's patients and the physicians who care for them.

ASMA supports the Volunteer Health Care Provider Immunity Act of 2003 (HB 260). HB 260 provides the vehicle for tapping into this experienced physician resource to provide free care.

Physicians provide significant amounts of free care during their active careers. The Volunteer Health Care Provider Immunity Act will allow that practice to be carried into the retirement years.

Sincerely,



By: Jeanne Bonar, MD  
President  
For: Alaska State Medical Association



Honorable Tom Anderson, Chair  
House Labor and Commerce Committee  
Alaska Capital, Room 432  
Juneau, AK 99801-1182

April 28, 2003

RE: HB 260 (Seaton)—Support

Dear Chair Anderson:

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the House Labor and Commerce Committee to support HB 260, authored by Representative Paul Seaton, and co-sponsored by Representatives Peggy Wilson, Les Gara, and you.

As you know, several states have programs that provide immunity to health care professionals who volunteer their services to help citizens in need. As Alaska attempts to provide care for the 20% of us who have no health insurance, volunteerism among health care workers is one option that is being explored to help fill the gap.

We believe HB 260 will help encourage volunteerism while still maintaining consumer access to damages if there was a case of gross negligence or reckless intentional conduct. AARP believes this is a "win-win" bill for citizens who need access to health care as well as the health professionals who are willing to volunteer their services in the highest tradition of their professions.

We look forward to your support of this bill in the House Labor and Commerce Committee and we sincerely thank you in anticipation of that support. AARP recommends an "AYE" vote on HB 260.

Should you have any questions about our position, please feel free to contact Marie Darlin (907.588.3637), Coordinator of the AARP Capital City Task Force; Patrick Luby (907.762.3314), AARP Legislative Representative; or me (907.245.5259).

Thank you for your consideration.

Sincerely,

*Marguerite Stetson*

Marguerite Stetson  
AARP Alaska  
Executive Council Member for Advocacy  
3008 Northwood Street  
Anchorage, AK 99517-1871  
907.245.5259 voice  
907.245.5279 fax  
[ffmas@aurora.uaf.edu](mailto:ffmas@aurora.uaf.edu)

cc: Vice-Chair Bob Lynn  
Representative Nancy Dahlstrom  
Representative Carl Gatto  
Representative Norman Rokeberg  
Representative Harry Crawford  
Representative David Guttenberg  
Representative Paul Seaton  
Representative Peggy Wilson  
Representative Les Gara  
Marie Darlin  
Patrick Luby



Lung & Sleep Clinic  
of Alaska, Inc.

**William Lucht MD. FCCP.**

April 17, 2003

Honorable Tom Anderson  
House of Representatives  
Chairman Labor and Commerce  
State Capitol, Room 432  
Juneau, AK 99801-1182

Re: HB260 – The Retired Physicians Immunity Bill

Dear Representative Anderson:

I am an Anchorage based physician specializing in Pulmonary, Critical Care Medicine, and Sleep Medicine.

Like many of my colleagues, I have plans to eventually retire in Alaska, and would like to continue to benefit the community by providing occasional free healthcare services to the elderly and indigent. HB260 will alleviate one of my major concerns about providing this free healthcare.

Currently, it is not realistic for retired physicians to pay large medical malpractice insurance premiums to provide free services. HB260 would provide some needed civil liability protection.

Please note that the bill will also encourage many other types of healthcare providers to offer their services free of charge to many of the most needy in Alaska.

Alaska has always had trouble attracting and maintaining adequate numbers of physicians to care for its geographically dispersed population. HB260 would to some extent help alleviate this problem.

I urge you to support the bill. HB260 will encourage Alaska's healthcare providers to care for those Alaskans most in need, and allow some of Alaska's most senior and experienced physicians to continue to practice even after they retire.

Sincerely,

Bill Lucht, MD

**JOHN B. DEKEYSER, M.D., P.C.**  
Obstetrics & Gynecology

Alaska Medical Plaza  
1200 Airport Heights Drive, #280A  
Anchorage, Alaska 99508-2955  
(907) 339-9717 (800) 818 2229  
Fax (907) 339-9720

April 18, 2003

Honorable Tom Anderson  
House of Representatives  
Chairman Labor and Commerce  
State Capital, Room 432  
Juneau, AK. 99801-1182

Re: HB260 - The Retired Physicians Immunity Bill

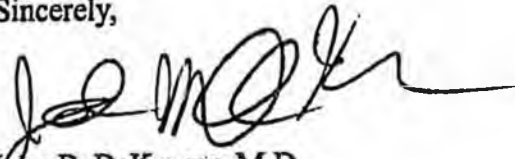
Dear Representative Anderson:

I am an Anchorage based physician specializing in Obstetrics & Gynecology.

Like many of my colleagues, I have plans to eventually retire in Alaska, and would like to continue to benefit the community by providing occasional free healthcare services to the elderly and indigent. HB260 will alleviate one of my major concerns about providing this free healthcare.

As you are aware, we are in the midst of both a medical liability insurance crisis along with a Medicare availability shortage. HB260 is a partial answer to both of these issues. I strongly urge you to support HB260.

Sincerely,



John B. DeKeyser, M.D.

tjl



"Prompt, Thorough, Concerned"

F. LELAND JONES, M.D.  
KENNETH S. LAUFER, M.D.  
R. MATISON WHITE, JR., M.D.  
RICHARD R. TAYLOR JR., M.D.  
CHARLES L. AARONS, M.D.

GLENN J. SCHULTES, M.D.  
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MARIO A. LANZA, M.D.  
DARREN B. LEWIS, M.D.  
TIMOTHY NOAH LAUFER, M.D.

Diplomates American Board of Family Practice

2211 EAST NORTHERN LIGHTS BOULEVARD, ANCHORAGE ALASKA 99508

Honorable Tom Anderson  
House of Representatives  
Chairman Labor and Commerce  
State Capitol, Room 432  
Juneau, AK 99801-1182

April 18, 2003

Re: HB260 - The Retired Physicians Immunity Bill

Dear Representative Anderson:

I am an Anchorage based physician specializing in Family Practice.

Like many of my colleagues, I have plans to eventually retire in Alaska, and would like to continue to benefit the community by providing occasional free healthcare services to the elderly and indigent. HB260 will alleviate one of my major concerns about providing this free healthcare.

Currently, it is not realistic for retired physicians to pay large medical malpractice insurance premiums to provide free services. HB260 would provide some needed civil liability protection.

Please note that the bill will also encourage many other types of healthcare providers to offer their services free of charge to many of the most needy in Alaska.

Alaska has always had trouble attracting and maintaining adequate numbers of physicians to care for its geographically dispersed population. HB260 would to some extent help alleviate this problem.

I urge you to support the bill. HB260 will encourage Alaska's healthcare providers to care for those Alaskans most in need, and allow some of Alaska's most senior and experienced physicians to continue to practice, even after they retire.

Sincerely,

Charles L. Aarons, M.D.

# LEGAL SERVICES

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

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Mail Stop 3101

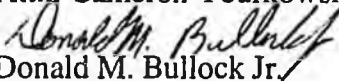
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

February 27, 2004

**SUBJECT:** Volunteer physicians and non-profit entities  
(SCS CSHB 260 ( )) (Work Order No. 23-LS0821V)

**TO:** Representative Paul Seaton  
Attn: Cameron Yourkowski

**FROM:**   
Donald M. Bullock Jr.  
Legislative Counsel

The blank SCS CSHB 260 proposes to immunize health care providers who provide free health care services for liability for negligence while acting within the scope of the provider's responsibilities for a nonprofit organization. You asked whether the nonprofit organization would be liable for the negligence of a volunteer physician or nurse and who would be liable if a nurse employed by the organization followed the negligent order of a volunteer physician.

Vicarious liability is a legal mechanism by which a person incurs liability for the actions of another. For example, an employer is liable for the intentional or negligent tortious conduct of an employee under the doctrine of respondeat superior.<sup>1</sup>

An organization may also be responsible for a volunteer acting on its behalf. In a case involving a volunteer child-care provider working in a church nursery, the Alaska Supreme Court found the church had a duty to determine whether the volunteer was a proper person for the position by doing such things as interviewing the person and performing a background check. The church had argued that it had no liability because the person was a volunteer; however, the court, citing *Restatement (Second) of Agency* §§ 220, 225 (1958), wrote that a volunteer may be a servant if subject to the control of another, in this case of the church.<sup>2</sup> *Restatement (Second of Agency)* §225 states, "One who volunteers services without an agreement for or expectation of reward may be a servant of the one accepting such services."

Under the Alaska case and the Restatement, a volunteer physician could be the "servant" of a nonprofit organization and a court could find the organization responsible for the

<sup>1</sup> See, *Taranto v. North Slope Borough*, 909 P.2d 354 (Alaska 1996).

<sup>2</sup> *Broderick v. King's Way Assembly of God Church*, 808 P.2d 1211, 1221 n.25 (Alaska 1991).

negligent acts of the physician under its control. The actual outcome would require a finding that the physician was in the position of a "servant" for the organization.

In a 2002 California appellate case, the court discussed whether a lay board of a hospital could subject physicians to control for the purposes of the doctrine of respondeat superior.<sup>3</sup> The court noted that for many years the traditional rules of respondeat superior did not apply to highly skilled professionals such as physicians. Courts found that, because of their skill and training in their highly technical field, physicians were not subject to control by a lay board. Under this approach, physicians were treated as independent contractors with the result that the hospitals were not liable for their actions. However, the California court found that times had changed and new rules applied. The court described this evolution as follows:

Courts soon realized, however, that the traditional emphasis on the master's ability to control the servant was unrealistic in the context of the modern health care system. In an often cited passage, a New York court explained:

The conception that the hospital does not undertake to treat the patient, does not undertake to act through its doctors and nurses, but undertakes instead simply to procure them to act upon their own responsibility, no longer reflects the fact. Present-day hospitals, as their manner of operation plainly demonstrates, do far more than furnish facilities for treatment. They regularly employ on a salary basis a large staff of physicians, nurses and interns, as well as administrative and manual workers, and they charge patients for medical care and treatment, collecting for such services, if necessary, by legal action. Certainly, the person who avails himself of "hospital facilities" expects that the hospital will attempt to cure him, not that its nurses or other employees will act on their own responsibility.

In light of this modern reality, the overwhelming majority of jurisdictions employed ostensible or apparent agency to impose liability on hospitals for the negligence of independent contractor physicians.<sup>4</sup>

Although the California case involved paid physicians, I believe the discussion about whether a lay board could be considered to control a physician would be applicable to a

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<sup>3</sup> *Maria del Carmen Meijia v. Community Hospital of San Bernardino*, 99 Cal. App. 4th 1448 (2002).

<sup>4</sup> 99 Cal. App. 4th at 1453 (citations omitted).

Representative Paul Seaton  
February 27, 2004  
Page 3

volunteer physician as well. In both situations the respondeat superior issue is whether the organization can be considered in control of the physician.

The situation of a nurse is the same under the doctrine of respondeat superior. If the nurse is a volunteer, the nurse would enjoy the immunity provided under the proposed legislation. The nurse could also be individually liable, absent immunity, for failing to provide the standard of care applicable to a nurse. Whether the nurse was a paid employee or a volunteer of the nonprofit organization, the organization could be liable for the nurse's negligence under the doctrine of respondeat superior.

In the situation where a nurse or doctor were providing free services for a government entity, the liability of the government entity would depend on the extent to which the entity waived its sovereign immunity and the relationship between the volunteer and the government. The doctrine of respondeat superior may apply, but the government could have immunity under the circumstances in which the negligent act occurred or may be immune from suit.

If I may be of further assistance, please advise.

DMB:mdr  
04-072.mdr

February 23, 2004

Senator Ralph Seekins  
Chair, Senate Judiciary

Re: support for HB 260

Dear Senator Seekins,

I am writing in support of HB 260, related to immunity from liability for healthcare providers who are volunteering their services.

This legislation would open the way for retired physicians and nurses to volunteer their skills to emergency clinics as well as community clinics. There are so many skills embodied in our retired licensed healthcare provider population but the cost of liability insurance creates a barrier for them to offer their services as volunteers.

HB 260 would allow these experienced, licensed healthcare providers to offer volunteer services in clinics such as the one being proposed in Anchorage, designed to increase access to low income people. The providers will still be required to be licensed by their regulatory boards, ensuring safe practice.

HB 260 has been thoroughly scrutinized and revised. I hope you will find it worthy to pass out of Senate Judiciary to the Senate floor.

Respectfully,

***Cathy Giessel***

Cathy Giessel, MS, FNP-CS  
12701 Ridgewood Rd  
Anchorage, AK 99516  
907 345 5470  
cgiessel@mac.com

Alaska Board of Nursing  
Alaska Nurse Practitioner Association Legislative Affairs Representative  
American Academy of Nurse Practitioners, State Representative  
Anchorage Health and Human Services Commission

HB

273

# Alaska State Legislature

Session  
State Capitol Building, Room 118  
Juneau, Alaska 99801-1182  
Phone (907) 465-2995  
Fax (907) 465-6592

Interim  
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Anchorage, Alaska 99501  
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Chair, Judiciary Committee  
Vice-Chair, House Committee on  
Economic Development,  
Trade and Tourism

Member  
Oil & Gas Committee

## Representative Lesil McGuire *House District 28*

### MEMORANDUM

To: Senator Seekins, Chair,  
Senate Judiciary Committee

From: Representative Lesil McGuire 

Date: April 30, 2004

Re: Request for Hearing

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I respectfully request that CSSSHB 273(JUD) am: Parents' Waiver of Child's Sports Claim, be scheduled for a hearing in the Senate Judiciary Committee at your earliest convenience. Please refer to the attached bill packet for background information.

If you have any questions please feel free to contact me personally, or my staff, Vanessa Tondini, at 4990.

# Alaska State Legislature

Session  
State Capitol Building, Room 118  
Juneau, Alaska 99801-1182  
Phone (907) 465-2995  
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716 West Fourth Avenue, Suite 430  
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Chair, Judiciary Committee

Vice-Chair, House Committee on  
Economic Development,  
Trade and Tourism

Member  
Oil & Gas Committee

## Representative Lesil McGuire

*House District 28*

### Sponsor Statement

#### CSSSHB 273(JUD) am

**"An Act relating to the right of a parent to waive an unemancipated child's claim of negligence against a provider of sports or recreational activities."**

CSSSHB 273(JUD)am encourages the availability and affordability of sports and recreational activities to children by recognizing the right of a parent to choose to release, on behalf of his or her child, prospective negligence-based claims that the child may accrue against the provider of such activities.

As a result of a recent Colorado Supreme Court case, Cooper v. Aspen Skiing Co., wherein the Court refused to uphold or recognize the mother of a seventeen year old skier's signature on a release document used in a juvenile race camp program, the outdoor industry has been trying to respond to the myriad problems and potentially severe ramifications created by this holding. This erroneous rationale is contrary to a body of authority derived from Midwestern and Eastern states, which find that parents do specifically have the legally binding right to sign release documents on behalf of their minor children. In these states, the courts have articulately stated that prohibiting a parent's right to release or waive on behalf of a minor child would detrimentally chill school, scouting, athletic, and other extra-curricular programs. There exists a well-settled legal history of recognizing parental rights regarding making decisions on behalf of minor children regarding education and medical treatment. To not extend the same logic to recreational activities in Alaska would be legally illogical and unfair.

The practical consequences of not recognizing this parental authority are profound. If an outdoor recreation company is found to have been operating without a valid release/waiver document, either insurance coverage will not be offered or will be voided. Very few programs will stay in business without proper insurance in place. As an outdoor recreation-oriented and supported state, Alaska simply cannot stand by and watch this type of result.

In addition, it is important to note that this bill would not defeat in any way a parent or guardian's right to sue an operator that is not providing a safe service or program. An ordinary release/waiver document provides only a release to causes of action sounding in negligence. Claims of reckless or intentional misconduct are never released in a release/waiver document. It is also crucial to remember that, with respect to pre-recreation releases, these documents regard activities that are totally voluntary in nature; they are activities that regard personal choice for the participant. As such, participants and parents of participants should have the freedom to decide which sports or recreational activities they want to participate in or that they want to have their children participate in and should have the freedom to contract regarding these activities. That fundamental right to make choices regarding a child's activities is what is being protected here; the bill does not negate a parent's rights, it in fact strengthens them.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSSSHB 273((JUD))  
 (H) Publish Date: 3/29/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title "An Act relating to the rights of a parent to waive a child's claim of negligence against a provider of sports..." RDU CIVIL  
 Sponsor Representative McGuire Component Torts & Workers' Compensation  
 Requester House Judiciary Component No. \_\_\_\_\_

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

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

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

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

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

Estimate of any current year (FY2004) cost: 0.0

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill allows a parent to waive prospective claims of negligence by a child against providers of sports or recreational activities in Alaska. It excepts cases that allege willful, wanton, reckless, or grossly negligent acts or omissions.

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

Prepared by: Kathryn A. Daughhete, Director  
 Division Administrative Services  
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General  
 Agency Department of Law

Phone 465-3673  
 Date/Time 3/21/04 10:58 AM  
 Date 3/21/2004

HB

275

Page 1, Line 5:

- (1) food and water sufficient to maintain each animal in good health;
- (2) an environment compatible with protecting and maintaining the good health and safety of the animal; and
- (3) reasonable medical care at times and to the extent available and necessary to maintain the animal in good health;

(b) Any determination as to whether or not the standards of this chapter are met shall be based on the professional opinion of a veterinarian licensed under AS 08.98.

(c) The department may adopt regulations to implement this section.

**Sec. 03.55.110. Investigation of complaints of cruelty to animals.** (a) a person who believes that cruelty to animals has taken place or is taking place may file a complaint with a public or private animal control agency or organization, the department, or with a peace officer. An agency, organization or department may refer the complaint to a peace officer.

(b) A peace officer who receives a complaint of animal cruelty may apply for a search warrant under AS 12.35 to the judicial officer in the district in which the alleged violation has taken place or is taking place. If the court finds that probable cause exists, the court shall issue a search warrant directing the peace officer to proceed immediately to the location of the alleged violation, search the place designated in the warrant, and if warranted, take property, including animals, specified in the warrant. The warrant shall be executed by the peace officer and returned to the court.

(c) Before a peace officer may take an animal or place it into protective custody, the peace officer must request an immediate inspection and decision by a licensed veterinarian that placement into protective custody is in the immediate best interest of the animal. If no veterinarian is available to perform an inspection, before a peace officer may take an animal, the peace officer must communicate with a veterinarian who has, after hearing a description of the condition of the animal and its environment, decide it is in the immediate best interest of the animal that it be placed into protective custody. If the peace officer is not able to communicate with a veterinarian, before the officer may take an animal, the officer must decide it is in the immediate best interest of the animal

that it be placed into protective custody. For purposes of this section, "peace officer" means (1) an officer of the state troopers; (2) a member of the police force of a municipality; (3) a village public safety officer; or (4) a regional public safety officer.

**Sec. 03.55.120. Removal and Protective Custody.** (a) A peace officer must place an animal in protective custody before it can be removed from the location in which it is found. If the animal is removed, the peace officer must place it with a veterinarian licensed under AS 08.98 or, if a veterinarian is not readily available, with a recognized public or private custodian to be sheltered, cared for, and provided necessary medical attention.

(b) A peace officer that has removed an animal shall immediately notify the animal's owner in writing of those actions and of the owner's rights to petition the court under AS 03.55.130 for return of the animal. Notification may be delivered in person, posted at the owner's residence, or may be mailed to the owner.

(c) If a removed animal's owner is unknown and cannot be ascertained with reasonable effort, the animal shall be considered a stray or abandoned.

(d) The state, a municipality, or person that supplies shelter, care, veterinary attention or medical treatment for an animal that has been removed under this section shall make a reasonable effort to locate the owner.

**Sec. 03.55.130. Destruction and adoption of animals.** (a) If a determination is made by a veterinarian licensed under AS 08.98 or by a peace officer in communication with a veterinarian licensed under AS 08.98 or by a peace officer who is unable to locate or communicate with a veterinarian licensed under AS 09.98 that an animal placed into protective custody under AS 03.55.100 – 03.55.190 is injured or diseased to such an extent that it is probable the animal cannot recover, the veterinarian or the peace officer may humanely destroy the animal or arrange for the animal's humane destruction.

(b) Upon diagnosis and recommendation of a veterinarian licensed under AS 08.98, a public or private custodian may, at any time, destroy or arrange for the

destruction of an animal placed into protective custody under this chapter that is a severely injured, diseased or suffering animal.

(c) An owner of an animal destroyed under this section may not recover damages for the destruction of the animal unless the owner shows that the destruction was not reasonable under the facts as known to the veterinarian or the peace officer authorizing destruction.

(d) Except as provided in (a) or (b) of this section, the custodian of an animal may not adopt, provide for the adoption of, or destroy the animal within 10 business days after the animal is taken into custody. An owner may prevent the animal's adoption or destruction by:

(1) petitioning the court of the judicial district in which the animal was removed for the animal's immediate return, subject, if appropriate, to court-imposed conditions; or

(2) posting a bond or security with the court of the judicial district in which the animal was removed in an amount determined by the court to be sufficient to provide for the animal's care for a minimum of 30 days from the date the animal was removed.

(e) If the custodian still has custody of the animal when the bond or security posted under (d)(2) of this section expires and the court has not ordered alternative disposition, ownership of the animal shall vest with the custodian. If a court order prevents the custodian from assuming ownership and the custodian continues to care for the animal, the court shall require the owner of the animal to pay, by bond or otherwise, for the continuing costs of care for the animal until such time as a final determination regarding the disposition of the animal is made by the court.

(f) The state may not be required to reimburse a public or private agency or organization or person that voluntarily assists with the removal of an animal or receives

custody of an animal removed under this section, for costs of shelter, care, veterinarian assistance, or medical treatment rendered to the animal.

**Sec. 03.55.190. Definitions.** In AS 03.55.100 – 03.55.190,

- (1) “animal” has the meaning given in AS 11.81.900
- (2) “department” means the Department of Environmental Conservation.
- (3) “custodian” means a person responsible by authority of law for the care, custody or control of an animal.

**Sec. 11.61.140. Cruelty to animals in the first degree.** (a) A person commits cruelty to animals in the first degree if the person

(1) knowingly inflicts severe and prolonged physical pain or suffering on an animal;

(2) kills or injures an animal by the use of a decompression chamber;

(3) intentionally kills or injures a pet or livestock by use of poison;

(4) with criminal negligence, fails to care for an animal and, as a result, causes the death of the animal or causes severe physical pain or prolonged suffering to the animal;

(6) violates AS 11.61.142(a)(1), but the violation is committed against more than one animal; or

(7) violates AS 11.61.142 and the person has been previously convicted of a crime under this section, AS 11.61.142, or a law or ordinance of another jurisdiction with elements essentially similar to a crime under this section or AS 11.61.142.

(b) Each animal that is subject to cruelty to animals under (a)(1) – (5) and (7) of this section shall constitute a separate offense.

(c) This section does not apply to

- (1) scientific research governed by accepted standards;
- (2) the humane destruction of an animal;
- (3) accepted veterinary or animal husbandry practices;
- (4) fishing, hunting, or trapping activities allowed by law;
- (5) generally accepted dog mushing or pulling contests;
- (6) rodeos or stock contests; or
- (7) professionally accepted training and discipline standards.

(d) In (a)(5) of this section, failure to provide the minimum standards of care for an animal under AS 03.55.100 is prima facie evidence of failure to care for an animal.

(e) Cruelty to animals in the first degree is a class A misdemeanor. The court may also:

(1) require forfeiture of any affected animal to the state, or to a custodian that supplies shelter, care or medical treatment for the animal;

(2) require the defendant to reimburse the state or other custodian for all reasonable costs incurred in providing necessary care, shelter, veterinary attention or medical treatment for any removed animal;

(3) Prohibit or limit the defendant's ownership, possession, or custody of animals for up to 10 years.

(f) In this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

# STATE OF ALASKA

REPRESENTATIVE  
MIKE CHENAULT

Official Business

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Toll Free: (800) 469-3779  
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HOUSE OF REPRESENTATIVES

May 1, 2004

To: Senator Ralph Seekins Chair  
Judiciary Committee

From: Representative Mike Chenault

Re: Request for Scheduling HB275

Please consider this a request to schedule HB 275 "An Act relating to animals, and to the care and cruelty to animals" in the Senate Judiciary Committee at your earliest convenience.

Any questions can be directed to our office 3779. Thank You for your consideration.

Respectfully,

Representative Mike Chenault

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# STATE OF ALASKA

REPRESENTATIVE  
MIKE CHENAULT



Official Business

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Juneau, Alaska 99801-1182  
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HOUSE OF REPRESENTATIVES

## SPONSOR STATEMENT

### HB - VETERINARIANS AND ANIMALS

Two years ago in Sterling, State Troopers, animal rescuers, veterinarians and a member of my staff witnessed possibly the worst case of mass animal cruelty in Alaska. Dozens of dogs some frozen to the ground, but still alive, were found on a parcel of land in the Sterling area. Some were locked in an abandoned bus, some tied to trees and stakes. None had the bare margin of food, water, or humane shelter. The only bedding was canine feces or ice. A video is available for viewing with the warning that is quite graphic and not for the faint of heart.

A week ago, a police officer stopped a drunk driver who had his dog tied to the bumper of his truck. While the dog received emergency medical treatment, it was put down as a result of being dragged for several miles.

It is appalling to find any human being capable of such horror. In fact, many individuals who are later convicted of grave crimes to fellow humans are found to have seriously abused animals at some time in their lives.

I have previously distributed animal cruelty information. I hope one of your staff had the opportunity to read it. The purpose of this memo is to appeal to your humane side and ask for your support to stop cruelty to animals. This is an issue decent human beings should never have to consider. Common sense and compassion dictates how we should treat animals, unfortunately we cannot depend on fellow human beings to be decent and provide basic food, water and shelter for animals. This is not an issue for partisan politics, as most of us have delightful memories of childhood pets.

Please join me in setting an example to stop abuse of animals. You and I have the opportunity to show our children how kind and compassionate animals can be while teaching responsibility of animal care.

My family has a dog-named Destiny that is a loving, mischievous companion to each of us. Although she has to be into what ever I am doing, be it painting or repairing the kitchen sink, the kids are learning the responsibility of caring and providing for another living being, and important part of becoming an adult.

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSHB 275(L&C)  
(H) Publish Date: 4/1/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title "An act relating to veterinarians and animals." RDU CIVIL  
Component Environmental  
Sponsor Representative Chenault  
Requester House Labor and Commerce Component No. \_\_\_\_\_

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

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

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

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

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

Estimate of any current year (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)

Under this bill, veterinarians employed by the state would have responsibilities in addition to those outlined in AS 03-25.020, related chiefly to the well being of livestock and domestic animals. The bill also classifies crimes of cruelty to animals and criminal negligence. It adds persons who have a duty under state law or municipal ordinance to investigate animal cruelty, abuse or neglect to those who are required to report suspected harm arising from child abuse and neglect.

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

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673  
Division Administrative Services Date/Time 3/28/04 11:10 AM  
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 3/28/2004  
Agency Department of Law

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: CSHB 275(L&C)  
 (H) Publish Date: 4/1/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Environmental Conservation  
 Title Veterinarians and Animals RDU Environmental Health  
 Component Laboratory Services  
 Sponsor Representative Mike Chenault  
 Requester House Labor & Commerce Component No. 2065

**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	183.9	183.9	183.9	183.9	183.9	183.9
Travel	80.0	80.0	80.0	80.0	80.0	80.0
Contractual	370.0	345.0	345.0	345.0	345.0	345.0
Supplies	83.0	33.0	33.0	33.0	33.0	33.0
Equipment	80.0	5.0	5.0	5.0	5.0	5.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>796.9</b>	<b>646.9</b>	<b>646.9</b>	<b>646.9</b>	<b>646.9</b>	<b>646.9</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )	120.0	120.0	120.0	120.0	120.0	120.0
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**FUND SOURCE (Thousands of Dollars)**

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	676.9	526.9	526.9	526.9	526.9	526.9
1005 GF/Program Receipts	120.0	120.0	120.0	120.0	120.0	120.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>796.9</b>	<b>646.9</b>	<b>646.9</b>	<b>646.9</b>	<b>646.9</b>	<b>646.9</b>

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**

POSITIONS	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Full-time	3	3	3	3	3	3
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

This bill requires the department to set up and manage a state wide animal protection program for livestock and domestic animals. This bill would require state veterinarians employed by the commissioner to investigate complaints of animal mistreatment or neglect within three days of receiving a complaint and compile a report of the investigation and findings. Upon determination that mistreatment or neglect has occurred, the veterinarian must immediately remove and provide care for animals that are being mistreated or neglected. Additionally, the veterinarian must refer violations of state law relating to animal mistreatment and neglect to the Department of Law and be available for testimony as required by the courts. Regulations would be promulgated as required.

Prepared by: Kristin Ryan, Director Phone 907-269-7644  
 Division: Environmental Health Date/Time 2/17/04 5:45 PM  
 Approved by: Kurt Fredriksson, Deputy Commissioner Date 2/17/2004  
 Agency: Department of Environmental Conservation

**ANALYSIS CONTINUATION**

A state run animal protection system will require additional state staff to conduct and coordinate investigations, boarding, and care with local government animal control organizations and private veterinarians. On the road system within a 200 mile radius of the Office of the State Veterinarian (OSV) office in Palmer, OSV staff will conduct animal maltreatment and neglect investigations. Through contracts with private veterinarians, animal control organizations and animal shelters, the OSV will establish a network of qualified investigators in other parts of the state, that will conduct an investigation and submit a report. In parts of rural Alaska not covered by this network, OSV staff will respond to complaints, conduct an investigation and if warranted travel to the community to inspect the animal(s). Contracts with animal control organizations, animal shelters and private veterinarians will provide boarding and required care for animals removed as a result of a positive finding of mistreatment or neglect. Cases involving removal and care of an animal outside the established network may require transportation to communities within the network. The OSV staff and contract network participants will provide testimony as required to the courts. The OSV will develop and maintain a complaint and investigation tracking system for reporting and management purposes. The OSV will also develop and maintain an educational program that provides information and resource referrals for the proper care of animals through the department's internet site, pamphlets and participation in mushing and other animal activities and events.

The additional OSV staffing will be two Veterinarian Technicians and one Administrative Assistant. The Veterinarian Technicians will conduct investigations, coordinate animal transportation, maintain and coordinate contracts with animal control shelters and private veterinarians, provide education on proper animal care, and other duties as assigned to maintain the state animal protection system. The Administrative Assistant will provide administrative support to the OSV staff, maintain the animal protection database, manage the administrative requirements of the contracts and other duties as assigned to maintain the state animal protection system.

Travel costs are primarily for the required travel to remote areas around the state not covered by contracts with animal control organizations or a private veterinarian. Travel costs are also included for education activities and participation in mushing and other animal activities and events.

Contractual costs cover contracts with animal control organizations, animal shelters and private veterinarians. Additional contractual costs cover staff support, animal transportation, vehicles, development of educational materials, development and maintenance of the database system, Palmer office lease, and other similar contractual costs.

Supplies costs for the first year include the set up of the Palmer office, investigation processing and data collection supplies for contractors, educational materials, general office supplies and other related costs. Thereafter, the ongoing annual supply costs would be less.

Initial equipment costs include computing and communications equipment, office furniture and furnishings, an animal transportation vehicle, animal cages for transportation and other equipment as required to establish a animal protection program. Thereafter, the ongoing annual equipment costs would be less.

The bill requires a defendant to reimburse the state for the expense of caring for neglected animals.

(See attached)

## FISCAL NOTE #2

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. CSHB 275(L&C)

Line Item Description	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
<b>Personal Services</b>					
2 Veterinarian Technicians	\$134.1	\$134.1	\$134.1	\$134.1	\$134.1
1 Administrative Assistant	\$49.8	\$49.8	\$49.8	\$49.8	\$49.8
Sub-total	\$183.9	\$183.9	\$183.9	\$183.9	\$183.9
<b>Travel</b>					
Inspection related travel	\$80.0	\$80.0	\$80.0	\$80.0	\$80.0
<b>Contractual Services</b>					
OSV Staff support	\$22.0	\$22.0	\$22.0	\$22.0	\$22.0
Palmer Office lease	\$80.0	\$80.0	\$80.0	\$80.0	\$80.0
Investigator contracts	\$115.0	\$115.0	\$115.0	\$115.0	\$115.0
Boarding & care contracts	\$100.0	\$100.0	\$100.0	\$100.0	\$100.0
Animal transport cost	\$20.0	\$20.0	\$20.0	\$20.0	\$20.0
Database systems	\$30.0	\$5.0	\$5.0	\$5.0	\$5.0
Educational material	\$3.0	\$3.0	\$3.0	\$3.0	\$3.0
Sub-total	\$370.0	\$345.0	\$345.0	\$345.0	\$345.0
<b>Supplies</b>					
Staff and office supplies	\$3.0	\$3.0	\$3.0	\$3.0	\$3.0
Investigation supplies	\$60.0	\$20.0	\$20.0	\$20.0	\$20.0
Educational materials	\$20.0	\$10.0	\$10.0	\$10.0	\$10.0
Sub-total	\$83.0	\$33.0	\$33.0	\$33.0	\$33.0
<b>Equipment</b>					
Office equipment/furnishings	\$20.0	\$3.0	\$3.0	\$3.0	\$3.0
Animal transport vehicle	\$50.0	\$0.0	\$0.0	\$0.0	\$0.0
Animal transport cages/crates	\$10.0	\$2.0	\$2.0	\$2.0	\$2.0
Sub-total	\$80.0	\$5.0	\$5.0	\$5.0	\$5.0
<b>Total:</b>	\$796.9	\$646.9	\$646.9	\$646.9	\$646.9

## Personal Services New Position Detail

Department of Environmental Conservation

Scenario: A Scenario for FY2005 Fiscal Notes (3605)  
 Component: Laboratory Services (2065)  
 RDU: Environmental Health (207)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#018	Veterinarian Technician	FT	A	GP	Palmer	2A	18 B	12.0		47,316	0	0	19,712	67,028

**Justification:**

This position will conduct animal abuse and neglect investigations, coordinate animal transportation and care, coordinate contracts with animal control shelters and private veterinarians, provide training on the proper care of animals and other activities associated with HB 275.

**Funding Detail:**

1004	General Fund Receipts	100.00%	67,028
<b>Total Funding:</b>		100.00%	67,028

18-#019	Veterinarian Technician	FT	A	GP	Palmer	2A	18 B	12.0		47,316	0	0	19,712	67,028
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**Justification:**

This position will conduct animal abuse and neglect investigations, coordinate animal transportation and care, coordinate contracts with animal control shelters and private veterinarians, provide training on the proper care of animals and other activities associated with HB 275.

**Funding Detail:**

1004	General Fund Receipts	100.00%	67,028
<b>Total Funding:</b>		100.00%	67,028

18-#027	Administrative Assistant	FT	A	GP	Palmer	2A	13 B	12.0		33,360	0	0	16,427	49,787
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**Justification:**

Provide administrative support to the State Veterinarian staff; maintain animal protection database, manage administrative requirements for contracts with animal shelters and private veterinarians and other associated administrative duties.

**Funding Detail:**

1004	General Fund Receipts	100.00%	49,787
<b>Total Funding:</b>		100.00%	49,787

Note: If a position is split, an asterisk (\*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (\*\*) will appear in this column.

**Personal Services New Position Detail**

Department of Environmental Conservation

Scenario: A Scenario for FY2005 Fiscal Notes (3605)

Component: Laboratory Services (2065)

RDU: Environmental Health (207)

**Component Summary:**

Total New Positions: 3

<u>Fund Description</u>	<u>Fund Percent</u>	<u>Fund Amount</u>
1004 General Fund Receipts	100.00%	183,843
Total Funding:	100.00%	183,843

Note: If a position is split, an asterisk (\*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (\*\*) will appear in this column.

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 3  
 Bill Version: CSHB 275(JUD)  
 (H) Publish Date: 4/19/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Environmental Conservation  
 Title Veterinarians and animals RDU Environmental Health  
 Component Laboratory Services  
 Sponsor Representative Mike Chenault  
 Requester House Judiciary Committee Component No. 2065

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

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

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

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

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

**POSITIONS**

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

This bill will have no known fiscal impact upon the department.

Prepared by: Kristin Ryan, Director Phone (907) 269-7645  
 Division Environmental Health Date/Time 4/2/04 1:34 PM  
 Approved by: Kurt Fredriksson, Deputy Commissioner Date 4/2/2004  
 Agency Environmental Conservation

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 4  
 Bill Version: CSHB 275((JUD))  
 (H) Publish Date: 4/19/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
 Title Act Relating to Care and Cruelty of Animals RDU Alaska State Troopers  
 Component AST Detachments  
 Sponsor R.p. Chenault  
 Requester H. Labor & Commerce Component No. 2325

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

Estimate of any current year (FY2004) cost: 0.0

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill establishes standards of care for animals and processes for investigating complaints of animal cruelty. It also creates the crimes of Cruelty to Animals in the First Degree, a class A misdemeanor, and Cruelty to Animals in the Second Degree, a class B misdemeanor.

The bill also requires that those officers involved in the investigation of cruelty to animal complaints must report child abuse or neglect if such is detected in the course of their investigation.

This is no expected fiscal impact to the Department of Public Safety.

Prepared by: Lt. Al Storey Phone 907-269-4532  
 Division: Alaska State Troopers Date/Time 4/1/04 8:31 AM  
 Approved by: Commissioner William Tandeske Date 4/1/2004  
 Agency: Department of Public Safety

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 5  
 Bill Version: CSHB 275(JUD)  
 (H) Publish Date: 4/19/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title An Act relating to animals BRU Legal and Advocacy Services  
 Component Public Defender Agency  
 Sponsor Reps. Chenault, Gruenberg,...  
 Requester (H) Judiciary Component No. 1631

**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						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

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

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

Estimate of any current year (FY2004) cost: 0.0

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill would likely have some fiscal impact on the operations of the Public Defender Agency, because in Sections 2 and 3 it criminalizes conduct that does not currently qualify for the crime of cruelty to animals. The bill breaks down the crime of cruelty to animals into two levels of misdemeanor offenses. Criminalizing conduct that is not currently a crime will likely increase the caseload of the Agency. The Agency does not currently handle a significant number of cruelty to animal offenses, but would expect to handle many more if this bill were enacted, but it is impossible to predict the impact with any accuracy. There may also be a fiscal impact to the Agency from Section 4 that adds an aggravator for consideration at sentencing for deliberate cruelty to an animal or exposing an animal to a threat of serious physical injury.

Prepared by: Linda K. Wilson, Deputy Director  
 Division: Public Defender Agency  
 Approved by: Ray Matiashowski, Deputy Commissioner  
 Agency: Administration

Phone (907)-334-4416  
 Date/Time 4/5/04 12:00 AM  
 Date 4/5/2004

[Fwd: HB 275]

**Subject:** [Fwd: HB 275]

**Date:** Mon, 05 Apr 2004 13:15:07 -0800

**From:** Ethel <donethel@gci.net>

**To:** Representative\_Lesil\_McGuire@legis.state.ak.us

Representative Lisel,

This is a hard copy of testimony for HB 275 which was canceled for today. Will try and schedule our time for Tuesday,.

Ethel C. Christensen

----- Original Message -----

**Subject:** HB 275

**Date:** Mon, 05 Apr 2004 12:37:58 -0800

**From:** Ethel <donethel@gci.net>

**To:** donethel@gci.net <donethel@gci.net>

Alaska SPCA supports HB 275 but many have voiced concerns that we agree with and that is there is a need to address heinous crimes, such as the recent continued stabbing of a German Shepherd to death here in Anchorage. Past incidents of this nature was the killing and dismemberment of guard dogs at Brewsters Depart Store. Another when a bound couple had to watch when their small dogs were stomped to death by intruders For these heinous crimes, there should be a mandatory jail sentence

In other animal cruelty cases, there are mental and drug related problems that the law and courts are still dealing with . A stronger cruelty law would give both law enforcement and the courts more tools to work with..

It is well documented that persons who are cruel to animals are also cruel to children.

Ethel D. Christensen  
Director Alaska SPCA  
Founder 1966