

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11191 SENATE JUDICIARY

**Subject:** HB275

**Date:** Fri, 2 Apr 2004 18:04:48 -0800 (PST)

**From:** Carol <busface1999@yahoo.com>

**To:** Representative\_Lesil\_McGuire@legis.state.ak.us,  
Representative\_Tom\_Anderson@legis.state.ak.us,  
Representative\_Jim\_Holm@legis.state.ak.us, Representative\_Dan\_Ogg@legis.state.ak.us,  
Representative\_Ralph\_Samuels@legis.state.ak.us, Representative\_Les\_Gara@legis.state.ak.us,  
Representative\_Max\_Gruenberg@legis.state.ak.us

4/2/04

Judiciary Committee:

I'm very upset that Representative Kott has decided to make it much more difficult for this long overdue, necessary and excellent bill to pass this session by adding two more committee referrals. I will take that up with him.

I'm asking that you move this bill out of committee **RIGHT AWAY WITH NO AMENDMENTS.**

Animal cruelty is rampant in Alaska. Our one sentence animal cruelty statute is vague, impossible to enforce, and a dismal joke. For every high-profile, horrific case of animal abuse that you hear about, there are hundreds more that go unreported or if reported, ignored. Prosecutors will not take up animal abuse cases because of all the loopholes, and troopers or other law enforcement officers won't take the time to efficiently and quickly investigate. This has to end and this bill is a good start.

Don't listen to Bush legislators who want to kill this bill to protect the continued abuse in their areas. Don't worry about this costing extra money. It won't, but even if it did, most of the public would gladly have money spent to rein in animal abuse.

Too many animals have suffered and died horrible, agonizing deaths! Republicans are known as heartless, cold politicians. This is your chance to try to change this image.

Thank you for your consideration and swift action.

Carol Jensen  
4800 E. 112th Avenue  
Anchorage, AK 99516  
Email: [busface1999@yahoo.com](mailto:busface1999@yahoo.com)  
Day phone: 907-244-1979

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**Debbie Moore**

**From:** "Nancy Henricksen" <agroomer@ptialaska.net>  
**To:** "Debbie Moore" <pathways@alaska.net>  
**Sent:** Saturday, December 21, 2002 11:33 AM  
**Subject:** FW: petition

We're the heart of Kenai

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

**From:** Ethel [mailto:donethel@pci.net]  
**Sent:** Wednesday, December 18, 2002 5:01 PM  
**Subject:** petition

**TO:** 2003 STATE OF ALASKA LEGISLATORS  
**FROM:** THE FOLLOWING ALASKANS AND OUTSIDE  
CITIZEN  
**REF:** LACK OF ANIMAL CRUELTY LAWS AND  
ENFORCEMENT

WE/ I STRONGLY URGE THE 2003 LEGISLATURE TO REVISE AND STRENGTHEN THE ANIMAL CRUELTY LAWS FOR THE STATE OF ALASKA. IN VIEW OF NUMEROUS AND INCREASING TRAGEDIES INVOLVING ANIMALS THIS SHOULD BE NUMBER ONE PRIORITY OF YOUR LEGISLATIVE BUSINESS THIS COMING SESSION. MANY PEOPLE HAVE DECIDED NOT TO INCLUDE ALASKA IN THEIR TRAVEL BECAUSE OF THESE HORRORS.

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THERE ARE STRICT LAWS, BIG BUDGETS AND ENFORCEMENT OFFICERS TO PROTECT WILDLIFE BUT NOTHING FOR THE DOMESTIC ANIMALS, PARTICULARLY, DOGS, CATS AND HORSES.

WE ARE MOST SERIOUS IN THIS REQUEST.

PRINTED NAME	SIGNATURE	ADDRESS	DATE
Robin Sichel	<i>[Handwritten Signature]</i>	Sichel	12/26/02
Tom Weaver	<i>[Handwritten Signature]</i>	P.O. Box 1913 Kenai	12-26-02
Sharon Traugott	<i>[Handwritten Signature]</i>	12 B704 Nekiski	12-26-02

12/23/02

Printed Name	Signature	Address	Date
Lucy Abel	Lucy Abel	P.O. Box 1325 Kenai, AK 99611	12-26-02
Dale Hudson	Dale Hudson	P.O. Box 1325 Kenai, AK 99611	
Joe Trefren	Joe Trefren		12-26-02
Jim & Ann	Jim & Ann	Box 7091 Nikiski	
JESSICA TREFREN	Jessica Trefren	P.O. Box 3048 Kenai AK 99611	12/26/02
Debbie Boyle	Debbie Boyle	49729 DeBuck Dr Kenai AK 99611	12-26-02
Thomas Donnan	Thomas Donnan		12-26-02
Jacob Newton	Jacob Newton		12-26-02
Jathan Wolff	Jathan Wolff		12-26-02
Brian Myers	Brian Myers	PO Box 1796 Kenai	12-26-02
Edith Stolz	Edith Stolz	P.O. Box 8114 Nikiski	12-26-02
Phil Blythe	Phil Blythe	P.O. Box 8152 Nikiski	12/26/02
Ed Ash	Edward W. Ash	P.O. Box 6894 NIKISKI	12/26/02
Alan McLaughrey	Alan McLaughrey	PO Box 8075 Nikiski	12.26.02
Kristal McLaughrey	Kristal McLaughrey	P.O. Box 8305 NIKISKI	12/26/02
Edward Ebel	Edward Ebel	P.O. Box 5581 Nikiski	12-26-02
Frank Ebel	Frank Ebel	P.O. Box 5281 Nikiski	99635
Chris Ellis	Chris Ellis	P.O. Box 7995 Nikiski	99635
David Giff	David Giff	P.O. Box 7067 Nikiski	99635
Robert Giff	Robert Giff	P.O. Box 3603 NIKISKI AK	99635
Jeremy Giff	Jeremy Giff	P.O. Box 8602 Nikiski AK	99635

776-8300  
Debbie Moore

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PRINTED NAME	SIGNATURE	ADDRESS	DATE
LESIA JEFFREYS	<i>Lesia Jeffreys</i>	P.O. Box 7533 NIKISKI	12-26-02
PATRICIA BROWN	<i>Patricia Brown</i>	P.O. Box 8142 NIKISKI	12-26-02
Andrea Jeffreys	<i>Andrea Jeffreys</i>	P.O. Box 7533 NIKISKI	12-26-02

12/23/02

Printed Name	Signature	Address	Date
Pamela Martinez	Pamela Martinez	Nikiski, AK	12-26-02
Lina Sullens	Lina Sullens	Nikiski	12-26-02
Sophia VanLoan	Sophia VanLoan	Nikiski	12/26/02
Linda Dodge	Linda Dodge	Nikiski	12/26/02
Conrad B. Sumner	Conrad B. Sumner	Nikiski	12/26-02
PANDY ESQUIRO	Randy Esquiro	Nikiski	12/26/02
VANNEY Marshall	Nancy Marshall	P.O. Box 1574 Nikiski	12-26-02
Marcelle Hurst-Simmons	Marcelle Hurst-Simmons	Nikiski	12-26-02
Felicia Ault	Felicia Ault	Nikiski	12-26-02
By J. MOORE	By J. Moore	Nikiski	12-26-02
MONIQUE R. ROSS	Monique R Ross	Nikiski	12-26-02
Jason Sully	J. Sully	P.O. Box 8192 N. K. AK	12-26-02
Rebecca Flynn	Rebecca Flynn	P.O. Box 8036 N. K. AK	12-26-02
Pamela Lytle	Pamela Lytle	P.O. Box 7556 Nikiski AK	
Shelly Zink	Shelly M. Zink	P.O. Box 8176 Nikiski, AK	
Wright Wood	W. Wood	50190 CORCORAN Nikiski	
Tracy Sanders	Tracy Sanders	Jawline Nikiski	
Aue Stephens	Aue Stephens	P.O. Box 7246 Nikiski	
Christine Griffith	Christine Griffith	Box 8116 Nikiski	12-26-02
WILL JACKSON	Will Jackson	Box 7216 Nikiski AK	
Brian E. Zink	Brian E. Zink	Box 8001 N. K. AK	

**Debbie Moore**

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**From:** "Nancy Henricksen" <agroomer@ptialaska.net>  
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PRINTED NAME	SIGNATURE	ADDRESS	DATE
Jamie Bras	<i>Jamie Bras</i>	703 Swires Rd, Kenai	12/21/02
Dawn Stetz	<i>Dawn Stetz</i>	P.O. Box 88, Kaslof	12/26/02
Angie Richardson	<i>Angie Richardson</i>	32940 Richardson Saddona	12-26-02

12/23/02

Printed Name	Signature	Address	Date
BRANDI HARBAUGH	[Signature]	70 Box 2867 Soldotna	12/26/02
Amy Falk	[Signature]	PO Box 7067 N. Kiski	12/26/02
Gray L. Meryman	[Signature]	446 W. Riverview Dr Soldotna AK	12/26/02
Sylvia Meryman	[Signature]	446 W. Riverview Ave Soldotna AK	
Catherine Bush	[Signature]	225 Richfield Drive, Kenai AK 99611	
Ann M Curtis	[Signature]	PO Box 91 Soldotna AK 99669	
HOLLY CAMPBELL	[Signature]	P.O. Box 512 SOLDOTNA AK 99669	
Richard Stables	[Signature]	PO. Box 28 Kenai AK 99611	
Margaret Martin	[Signature]	368 W Beluga Soldotna AK 99669	
MICHELLE A PRICE	[Signature]	51200 BISCAYNE KEENAI 99611	
Janice Moore	[Signature]	235 W. Daisy Ln Soldotna, AK 99669	
De Ann Cain	[Signature]	319 W. Beluga St. Soldotna, AK 99669	
Ellen Crowder	[Signature]	319 W. Beluga St. Soldotna AK 99669	
Joyce Armstrong	[Signature]	36345 Shady St Soldotna	
Frank S. J.	[Signature]	36345 Shady St Soldotna AK 99669	12/26/02
Miris Anderson	[Signature]	PO Box 1642 Soldotna AK 99669	
AMY STEELE	[Signature]	289 Lorraine Ct Soldotna AK 99669	
RONNIE HANSON	[Signature]	298 W. KATMAI AVE SOLDOTNA AK 99669	
Donna Hicks	[Signature]	P.O. Box 2544 Soldotna AK 99669	
Katie Crane	[Signature]	35555 Spur Hwy PMB 246 Soldotna, AK 99669	

**Debbie Moore**

---

**From:** "Nancy Henricksen" <agroomer@ptialaska.net>  
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PRINTED NAME	SIGNATURE	ADDRESS	DATE
Julie Eggemeyer	<i>Julie Eggemeyer</i>	48950 Totopole Rd Soldotna AK 99669	12/30/02
Barbara OLSON	<i>Barbara J Olson</i>	317 Diane Lane Soldotna 99669	12-30-02
Kenya Weston	<i>Kenya Weston</i>	Po Box 3755 Soldotna 99669	12-31-02

12/23/02

Printed Name	Signature	Address	Date
Natalie A. Kohler	Natalie A. Kohler	Box 2591, Kenai, Ak	1/9/03
Dawn Davis	Dawn Davis	PO Box 336 Kenai, AK	1/9/03
Debbie Allen	Debbie Allen	228 Susieana Ln Kenai	1/10/03
Jenna Lester	Donna Lester	PO 891 Soldotna Ak	4/13/03
KAREN WELER	Karen Weller	SOLDOTNA AK 30630 STUBBLEDICK	1/23/03

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PRINTED NAME	SIGNATURE	ADDRESS	DATE
Curt Morris	<i>Curt Morris</i>	P.O. Box 2010 N. Kiski AK	99635
Peter M.D. Kenzi	<i>Peter M.D. Kenzi</i>	P.O. Box 4968	12/26/02 AK 99655
Donna Chen	<i>Donna Chen</i>	Box 7385 N. Kiski	12-26-02

Printed Name	Signature	Address	Date
KEVIN THOMAS	Kevin Thomas	PO Box 7248, NIKISKI	1/03/03
ELLEN Baling	Ellen Baling	P.O. Box 8681 99635	1/04/03
Nancy Brown	Nancy Brown	PO Box 1805 Kenai 99611	1-4-03
Amy Little	Amy Little	PO Box 7473 NIKISKI 99635	1-22-03
David Little	David Little	PO Box 7473 Nikiski 99635	1/24/03
Sharon Thomas	Sharon	Box 1836 Nikiski 99611	1-24-03
Pam Lettington	Pamela Lettington	Box 8304 Nikiski 99635	1-24-03
Evela Cox	Evela Cox	509 Pine Ave Kenai AK 99611	1/24/03
Debbie Falk	Debbie Falk	P.O. Box 7332 Nikiski, AK 99635	1/24/03
Steve B Falk	Steve B Falk	P.O. Box 7332 NIKISKI, AK 99635	1-24-03
MARIE TAYLOR	Marie C. Taylor	PO Box 7224 NIKISKI AK 99635	1-27-03
Marcie Curry	Marcie Curry	POB 7671 NIKISKI, AK 99635	1-30-03
<del>Anthony Sanders</del>	<del>Anthony Sanders</del>	DOROTHY DANOHUE SANDERS Box 8702 NIKISKI AK 99635	2/11/03

Debbie Moore

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PRINTED NAME	SIGNATURE	ADDRESS	DATE
Leanne King	<i>Leanne King</i>	POB 3095 K	2/1/03
Tyles Johnson	<i>Tyles Johnson</i>	PO Box 764 Seldovia	2-2-03
PETER A. MICCICHE	<i>P. A. Micciche</i>	PO Box 1544 SOLDOON, AK	776-2024

2/23/02

Printed Name	Signature	Address	Date
Kendi McCollum	Kendi McCollum	P.O. Box 249 Kenai	2-6-03
Jeanne V. Hardesty	Jeanne V. Hardesty	48271 Will Rose Lake <sup>Nikiski</sup>	2-8-03



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ALASKA AP

## Neighbors say charged couple kept flawed kennel

The Associated Press

ANCHORAGE AP) - Neighbors of two Nikiski collie breeders facing 182 counts of misdemeanor animal abuse say the operation had a notorious reputation in the rural subdivision near Island Lake Road.

But at least two people who bought dogs from Valiant Collies said the animals arrived in fine shape and that they have no complaints.

The kennel was loud and smelled and groups of collies would occasionally escape to roam, according to neighbors interviewed by the Anchorage Daily News.

"I've never, ever, ever seen any one of those dogs in good condition," said Missy Batty, who until recently lived next door to the kennels.

Batty is moving out of the area in part, she said, because of the hassle of living next door to the collie breeders.

The owners, Jonathan Harman, 49, and Athena Ann Lethcoe-Harman, 40, are awaiting a jury trial in Shelby, Mont. They were stopped Oct. 31 at the U.S.-Canada border in Montana while driving from Alaska to Arizona with a semi loaded with 171 dogs and 11 cats.

Authorities say the animals were in bad condition inside the poorly ventilated 40-foot trailer. Many could not walk and some were thin and dirty. One dog was dead.

The Harmans had received a written warning about the condition of their dogs a week earlier while their tractor trailer rig was parked at an Anchorage store, according to Anchorage Animal Control.

The dogs and cats are being fed and walked by residents of Shelby until a trial determines whether the animals can be returned to their owners.

Batty and other neighbors of the Harmans said they didn't like going up to what many call "the collie house" because of its odor, but

their friends.

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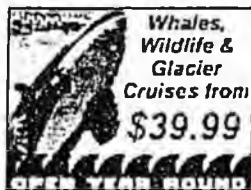
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sometimes they had to visit to return escaped collies.

"Those dogs, you could hear them all the time. Several would escape from time to time. They were always really stinky," said Patty Gallien, who lives about half a mile away. "In the summer, when you open a window, you can hear the dogs barking half the night."

Nikiski has no local government and the Kenai Peninsula Borough does not have animal control powers.

Gallien said she has lived there for 12 years and the collies have been there the entire time.

Despite citing frustrations over dealing with the nuisance, neighbors of the Harmans expressed empathy for Athena Harman, describing her as a person who loved her dogs but who was so disabled by chronic diabetes that she may not have been able to cope with the responsibility.

A former kennel employee told the Great Falls, Mont. Tribune said he worked for the Harmans for 10 years, until he was 18, but quit in disgust.

Brett Encelewski, 21, said kennel conditions were decent when he started, but worsened over the years. Toward the end, he said, Lethcoe-Harman took special care of about a dozen of her favorite dogs, but kept the rest in overcrowded and filthy pens.

However, collie breeders Darlene Kerr of Regina, Sask., and Dana Giles of Nova Scotia told the Montana newspaper that dogs they acquired from Lethcoe-Harman were healthy, well-cared for and arrived in fine shape. Both said they had not visited her breeding business in Alaska.

"To say her dogs are abused, I'm sorry, I can only speak from what I've seen, but Shiloh (the first dog she got from Lethcoe (Harman)- was in excellent condition," she said.

Lethcoe-Harman is a member of the Normal Eyed Network and has been breeding her dogs to eliminate genetic problems such as Collie Eye Anomaly, an eye disorder that can cause blindness.

Kerr said Shiloh has produced five normal-eyed collies, four of which are champions. She said some breeders are criticizing Lethcoe-Harman harshly on Internet chat rooms.

"This woman is not what they're saying she is," Kerr said. "They're crucifying her. For years, Athena has been outspoken about the thing you can defeat, Collie Eye Anomaly. She has been very vocal about breeding for health."

Giles said she bought three collie puppies from Lethcoe-Harman in 1997 and 1998 and the puppies arrived in excellent shape. She said canine ophthalmologists raved about the dogs and the condition of

their eyes.



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# Animal cruelty case points need for tougher laws

Montana volunteers are caring for the collies and other animals found in the Harmans' truck, and the effort is straining local resources.

Lynn Melling

Anchorage, Alaska, Nov. 8 - John and Athena Harman of Nikiski are awaiting trial in Montana, charged with animal cruelty after being arrested at the Canadian border last week.

The SPCA says, as the Harmans were heading out of town, they were stopped by Animal Control and told to clean things up. They left town anyway, only to be stopped at the border.

Volunteers in Montana are now nursing the Harmans' dogs back to health -- nearly 200 of them. The effort is taking a toll on financial and emotional resources there.

Alaska animal advocates are appalled by the Harmans' story, and say the warning signs were sitting in Nikiski for years. They also say it's time to strengthen Alaska's animal cruelty laws.

At the end of a narrow dirt road in the woods outside Nikiski sits the Harman place -- a plot of land littered with

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everything from crates and rugs to old cars. It's the remains of a now defunct dog breeding kennel known as Valiant Collies.

"Like a pigpen, there was just muck everywhere," says Stephanie Batchelder, a dog groomer who worked for the Harmans about 10 years ago.

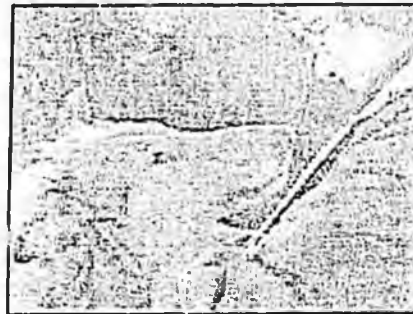
Batchelder says the dogs were in such bad condition, she lasted only a day.

"They had to have been unhealthy, being that wet and having feces on them all the time. They're going to get sores," she said.

There's little evidence now, but pictures show several dogs at a time crammed into small fenced-in areas.

Concerned neighbors only add to the picture. One woman says the place appeared to have been hot-wired -- with jumper cables hung from wire kennels. She suspects they were hooked to a battery and used to jolt the animals, to keep them under control.

It came as no surprise to some in the Nikiski area that the Harmans were arrested for animal cruelty in Sweet Grass, Montana, last week. U.S. Customs officials caught them at the Canadian border on a trip from Alaska to Arizona, with more than



Courtesy Photo / KTUU

A volunteer in Montana makes a friend.

170 dogs and 11 cats packed from top to bottom in a semi-trailer -- sick and living in their own waste.

"I could've seen it coming, definitely," says Batchelder.

The Harmans face more than 180 misdemeanor counts of animal cruelty, a situation animal advocates say could have been prevented.

"It's just not right," says Diane Zarfoss of the Alaska Society for the Prevention of Cruelty to Animals. Zarfoss says the SPCA has dealt with complaints about the Harmans for years, but Alaska's laws made it nearly impossible to do anything to stop the neglect.

According to Alaska State Troopers, the law on animal cruelty states: A person cannot "intentionally inflict pain or cause prolonged suffering on an animal," nor can someone fail to care for an animal to the extent it results in the animal's death or suffering.

Violation of this law is a class A misdemeanor offense. Animal advocates say the statute doesn't do animals justice.

"They really can't do a whole lot unless they can prove that they were doing the neglect on purpose," says Batchelder.

Advocates also say the weak law is not the only problem. State enforcement should be stepped up, too.

"We can't rely on troopers to provide this service," says

Zarfoss.

Troopers are responsible for inspecting complaints of animal neglect outside the limits of a city with an animal control operation. Both advocates and troopers themselves say this puts a strain on already thin resources.

"We're short of people and, obviously, the population in this neck of the woods is growing," says First Sgt. Chuck Bartolini of the Soldotna trooper detachment.

Bartolini says they do the best they can to respond to calls of animal cruelty. Fortunately, he says, few such calls are received. He says a trooper inspected the Harmans' kennel almost two years ago, and, in the officer's opinion, the dogs were adequately cared for. Bartolini says that if there appears to be abuse, troopers will call in an animal expert. He'd like to see such a person on the borough's staff.

"It would help us greatly if the borough had some sort of enforcement power, and an animal control officer that could actually investigate these cases and take the time," Bartolini says.

Zarfoss wants to take that idea even further and hire a state humane officer, someone to deal strictly with animal cruelty cases, and who is authorized to step on private property and stop neglect as soon as complaints come in. She says lawmakers could complete the package with more clearly defined laws to support that person.

"It's getting worse. It's getting larger numbers and it's getting way out of hand," says Zarfoss.

She recalls the Carolyn Boughton case, in which a Sterling woman was charged with neglecting 66 dogs and some other animals. The animals were rescued by the SPCA a year ago this month, but the cruelty case has yet to go to trial.

"It's still in the courts. Nothing has been done," says Zarfoss. She fears the Harman case will drag on for a long time, as well.

Meanwhile, the dogs being cared for in Montana still belong to the Harmans unless they're proved guilty in court. In the meantime, the dogs -- now recovering from a traumatic trip across the border -- will have to wait to go home, wherever that turns out to be.

Currently, the Harmans are out on bond. People in the Nikiski area say John Harman may be back in Alaska, but he wasn't at his property when Channel 2 News stopped by, and the couple could not be reached for comment on this story.

To outsiders, the Harmans' breeding operation seemed to be quite professional. The couple has won competitions, and their Web site tells others how to care for dogs.

Some neighbors say they believe the Harmans had good intentions but the operation just spun out of control. Others say, quite frankly, they think the couple was running a puppy mill, breeding huge numbers of dogs to sell. The Harmans' Web site lists prices of up to \$2,000 per dog, or more.

Animal advocates say puppy mills are not unusual in Alaska and the only way they're going to be stopped is if people stop buying puppies from pet stores. Pet stores disagree that the puppies they buy are raised in inhumane conditions.

Another question to be investigated is whether the Harmans' Nikiski operation was cruel, or whether it was simply a matter of how the Harmans chose to transport the dogs as they were moving out of state.

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## Animal Abuse Cases - Details

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### Hoarding 45 dogs - (Sterling, AK - US)

Crime Date: 10/07/2001  
 Case Status: Alleged  
 Case Updates: [Available - Click Here](#)  
 Case Photos: [Available - Click Here](#)

Accused Abuser(s):  
[Caroline Boughton](#)

### Case Report

Alaska State Troopers are threatening to seize at least 45 dogs owned by a Sterling woman who has been accused of animal abuse for the last year.

Troopers said they found four dead dogs, two dead cats and scores of dogs needing basic care during a tour on Monday of a wooded lot where Sterling resident Caroline Boughton keeps her animals. They set an ultimatum.

As many as 20 dogs, purebred bouvier des Flandres and Kerry blue terriers, were kenneled in double-decker plywood pens inside a ramshackle Greyhound-style bus that was so fouled by urine and feces that the ammonia-like stench nearly brought tears to the eyes of veterinarian Jerry Nybakken, who assisted troopers serving a search warrant.

Two of the terriers had been killed by a bouvier, which gnawed through the plywood roof of its crate to get at the smaller dogs housed overhead. The body of one of the terriers was firmly wedged in a hole and its legs had been chewed from below, Nybakken said.

The rest of the dogs -- which included a mix of mutts and huskies -- were chained, cabled and roped to trees, trucks and other objects. Some were in much better shape than others.

Few of the dogs had shelter. Food and water bowls were overturned and appeared unattended, Nybakken said. Warm bedding such as straw was absent. Inside the bus, the dogs' fur was matted and covered with feces and every pen was wet with urine, he said.

"I think we have a case here of neglect, bordering on cruelty," Nybakken said on Tuesday. "My personal opinion is, Caroline should never have this many dogs," he said. "If she wants dogs, she's going to have to keep them within her economic means to support them."

Boughton said she still enjoys her dogs, has done nothing wrong and is struggling to juggle the demands of her landlords, whom she said insisted she kennel her dogs in the bus.

Her landlords, Milton and Lee Ross, say Boughton owes them \$1,350 in back rent and pay for helping to feed the dogs. The Rosses live on the lot and agreed to let

Boughton pay them to keep her dogs there, but now say they want her out.

Boughton, who lives nearby, said she has nowhere to go. It's hard finding a rental when you've got dozens of dogs, she said.

The Texas transplant first got into trouble last fall after a Kenai Peninsula animal cruelty organization accused her of neglect for keeping her dogs in a Sterling junkyard. She quickly hired some helpers who got straw for the dogs and began feeding them. At the time, troopers deemed her care adequate.

But after Boughton moved her animals to a 2.6-acre wooded property on Spruce Lane outside Sterling, the barking, fighting and loose dogs soon prompted angry calls from her new neighbors.

Two chapters of the Society for the Prevention of Cruelty to Animals, the Alaska chapter based in Anchorage and a newly formed Kenai Peninsula group, have been struggling to help Boughton's dogs, with different tactics.

The Alaska chapter has been working with Boughton for months, helping her reduce her kennel size a few dogs at a time, said Nancy Wall, the chapter's Peninsula volunteer.

The Kenai organization has been more direct. It was the group that first demanded action last fall, and it also called in the troopers this week.

Its founder, Michele DeMilta, accepted four or five of Boughton's sickest dogs. Those dogs were to be taken to a veterinarian for treatment and documentation, Nybakken said. DeMilta declined to comment until the situation is resolved.

Troopers said they would like to come back Friday and see that Boughton is providing adequate care for her animals. But Tressler said that if they get another complaint about her, they will seize her dogs.

Just what would happen with the dogs if they are seized isn't clear. Even the official number of dogs is vague. Troopers estimated that about 45 dogs were on the property. Boughton said she had many more than that. And Nybakken guessed the number might be closer to 100.

"What a mess, huh?," said Judy McConnell of Anchorage, the American Bouvier des Flandres Club's designated rescue person for the region. "This whole thing was been a nightmare for a year, as far as I'm concerned."

If a court were to make to final ruling, McConnell said, the nationwide club has the finances, expertise and contacts to place whatever dogs were deemed suitable.

Alaskans are accustomed to sled dog yards, and while that sort of kennel works with active teams of huskies, it isn't appropriate for bouviers, she said. The independent breed has a tough side and needs a lot of one-on-one love, she said.

McConnell and other bouvier fanciers describe Boughton as a "collector," a person with a good heart who wants to protect animals but lets them breed and gets overwhelmed when their numbers swell.

Two of Boughton's dead dogs are bouviers. One was found at the end of its cable tether wearing a spiked choke collar, but Nybakken said he was unsure what caused the death. The other was found with three of its paws tangled in nylon rope, he said.

Boughton, feeding Atta Boy to her dogs Tuesday evening, said she suspected foul play in both cases and wanted an autopsy on the dogs' frozen carcasses, still laying on the ice. "Both of those dogs were very active the day before yesterday," she said.

"All of a sudden they're dead, overnight. I'd like to learn why."

Troopers said a report would be forwarded to the Kenai district attorney's office for consideration of possible charges of animal cruelty, a misdemeanor. Boughton said she has tried to give away her dogs, but had no luck.

She said she refuses to take them to the pound because some would inevitably be put down. I've got too big of a heart," Boughton said. "All I want for them is a home."

### Case Updates

Posted: Apr 22, 2003 - 5:49 PM

The Boughton trial has once again been postponed. The Judge did give admonishment that Ms. Boughton needs to work with her doctors so that she can be lucid even if in some discomfort by the new trial call date of 7/25 and trial set for 8/5.

Posted: Feb 5, 2003 - 9:49 AM

Boughton rescue trial has been postponed until 4/22/03

### References

- [Anchorage Daily News](#)

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## Sterling woman charged with animal cruelty

ANCHORAGE (AP) -- A Sterling woman has been charged with nine criminal counts of animal cruelty for keeping dozens of underfed, filthy dogs

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Alaska State Troopers found 66 dogs under Caroline Boughton's care in a Sterling yard last November.

According to court documents some of the dogs were found dead, others needed prompt medical care and still others were so sick they had to be euthanized. Troopers seized the dogs.

**Boughton**, is scheduled to go to trial Oct. 29 in Kenai.

Animal welfare activists who treated **Boughton's** dogs and placed them in new homes say there is easily enough videotape and documentation to support those charges.

"It's pretty cut and dried. We have records on each and every animal on the property that was taken in," said Diane Zarfoss, clinic director of the Alaska Society for the Prevention of Cruelty to Animals.

**Boughton** was reportedly living in Nikiski and commuting to the site to feed and to provide water for the dogs. Most were bouvier des Flandres and kerry blue terriers. A couple of bouvier carcasses were found tangled in tethers, and two terriers stored in wooden boxes had died and were partially eaten by another dog.

The rest were in varying states of health, but all suffered from malnutrition, Zarfoss said. Many were treated for eczema, skin mites and infections of the ears and eyes.

Dogs that were strong enough to recover have all been placed. The last -- a bouncy, 100-pound malamute mix -- was scheduled to arrive at its new home today, she said.

Search

**Boughton** was the subject of troopers investigations for a year before she agreed to give up her dogs. In fall 2000, she was criticized for keeping the animals tied to wrecked cars in a Sterling junkyard before moving them across the Sterling Highway to another location.

Troopers were called once more, this time during a cold snap last November that drove temperatures down to 20 below zero.

A troopers report said officers wanted to look inside a large bus that **Boughton** had converted into an animal carrier. She said she forgot the key. They cut a lock off the door and were forced back by the ammonia-like stench of urine until the vehicle was ventilated, the report said.

Sixteen dogs were kept inside wooden boxes in the bus without food, water or dry bedding. They were covered in frozen urine and feces.

A few days after the inspection, an Alaska SPCA volunteer who had worked with **Boughton** over the months persuaded her to turn over her animals voluntarily.

The resulting rescue cost the Alaska SPCA about \$30,000, Zarfoss said. The group wants to see **Boughton** convicted, punished and made an example, she said. Alaska SPCA gets 10 to 12 calls a year about large-scale problems but cannot handle them all.

"She's proved over the last 10 years or plus that she is not a responsible animal owner," Zarfoss said.



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May 07, 2003  
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Article Published: Tuesday, May 06, 2003 - 3:08:35 AM AKST

## Convoy transports collies seized in Montana

The Associated Press

GREAT FALLS, Mont.--Nearly 200 collies and other animals that were seized in an animal cruelty investigation involving their Alaska owners have been moved from Shelby to Great Falls, Mont.

The owners, Jon Harman and Athena Lethcoe-Harman, were arrested last fall.

The animals spent six months at Camp Collie, a 4-H barn at the Marias Fairgrounds near Shelby. They'll likely spend the next several months in a 20,000-square foot warehouse--dubbed Camp Collie Great Falls--as the legal case against their owners continues.

About 100 volunteers were there to place the dogs in metal kennels tall enough for people to stand in.

The animals were brought to Great Falls because 4-H'ers needed their barn in Shelby and local residents were worn out from caring for the animals since the Harmans were arrested on Nov. 1.

The animals had ridden 2,240 miles in nine days in a crowded tractor trailer from Nikiski, Alaska, to the Sweet Grass border station when customs officials found them dehydrated, weak, sick and cold.

On Sunday, sheriff's cars with flashing lights led a convoy of 30 horse trailers, vans and animal rescue vehicles down Interstate 15 to deliver the 170 collies, six other dogs and 16 cats to Great Falls.

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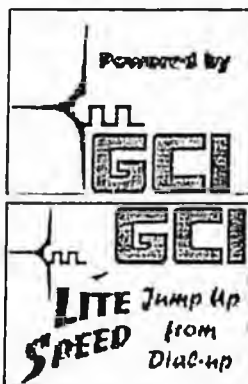
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Article Published: Monday, May 05, 2003 - 9:00:07 AM AKST

# Convoy transports collies from Shelby to Great Falls

By Associated Press

GREAT FALLS, Mont.

Nearly 200 collies and other animals that were seized in an animal cruelty investigation involving their Alaska owners have been moved Shelby to Great Falls, Mont.

The owners, Jon Harman and Athena Lethcoe-Harman, were arrested last fall.

The animals spent six months at Camp Collie, a 4-H barn at the Marias Fairgrounds near Shelby. They'll likely spend the next several months in a 20,000-square foot warehouse \_ dubbed Camp Collie Great Falls \_ as the legal case against their owners continues.

"This is way, way nicer," Toole County Undersheriff Don Hale said. "The story's not over, but it just got better for the dogs."

About 100 volunteers were there to place the dogs in metal kennels tall enough for people to stand in. The 16 cats have a separate carpeted room.

The animals were brought to Great Falls because 4-H'ers needed their barn in Shelby and local residents were worn out from caring for the animals since the Harmans were arrested on Nov. 1.

The animals had ridden 2,240 miles in nine days in a crowded tractor trailer from Nikiski, Alaska, to the Sweet Grass border station when customs officials found them dehydrated, weak, sick and cold. The Harmans were moving to Arizona.

On Sunday, sheriff's cars with flashing lights led a convoy of 30 horse trailers, vans and animal rescue vehicles down

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Interstate 15 to deliver the 170 collies, six other dogs and 16 cats to Great Falls.

Toole County, the American Working Collie Association, The Humane Society of the United States and private donations are paying for the animals' care.

The Harmans, who followed the caravan to Great Falls, have pleaded innocent to 181 misdemeanor counts of animal cruelty and their first trial ended with a hung jury in January. A second Justice Court trial is expected to get underway later this month.

The Harmans weren't allowed into the warehouse on Sunday, but will be permitted an hourlong visit each weekday, officials said.

The Harmans have been living in Shelby since December. They would not comment Sunday on whether they plan to move to Great Falls.

As the animals were being loaded in Shelby, Lethcoe-Harman sat behind yellow police tape, dictating into a tape recorder her comments on the conditions of each dog. Her attorney filed a motion last week asking that the charges be dismissed on grounds that authorities have failed to properly keep track of which dogs are kept in what pens.

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Article Published: Thursday, April 24, 2003 - 9:30:28 AM AKST



# Judge says nearly 200 dogs can be moved to Great Falls

By Associated Press

CHOTEAU, Mont.

Nearly 200 animals, most of them collie dogs, can be relocated from Shelby to Great Falls beginning as early as Friday, a justice of the peace ruled Wednesday.

Volunteers have spent nearly six months caring for the dogs in a 4-H barn in Shelby, where they've been kept as evidence in an animal cruelty case involving their Alaska owners.

There are 170 collies, five other dogs and 16 cats to be housed in a 30,000-square-foot metal building in Great Falls.

Teton County Justice of the Peace Pete Howard said he'll now go to work finding a place to rety the dogs' owners, Jon Harman and Athena Lethcoe-Harman, on charges they neglected the animals last fall during a trip to Arizona.

The Harmans were charged with 181 counts each of misdemeanor animal cruelty after authorities discovered 166 collies, five other dogs and 10 cats in the rear of their tractor-trailer as the couple tried to cross the Canadian border into the United States on Halloween night.

When they were stopped at the border, the Harmans said they were in the process of moving from Nikiski, Alaska to an area south of Woodruff, Ariz.

Officials said the animals were thin, dehydrated, weak and sick after the nine-day, 2,240-mile trip.

A six-person Toole County Justice Court jury deadlocked in the couple's first trial in January, resulting in a mistrial.

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Howard said he's looking to retry the case in Anaconda, Butte or Helena, all places out of the reach of the Great Falls media, where publicity about the collies could hinder efforts to seat an unbiased jury. Howard hopes to preside over the trial the week of May 12 or May 19, he said.

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He scheduled another hearing for the afternoon of May 9 in the Teton County Courthouse in Choteau.

Howard took over the case after Toole County Justice of the Peace Janice Freeland recused herself following the seven-day January trial.

Toole County Undersheriff Don Hale said the animals will be moved in small groups, probably next week but beginning possibly as early as Friday. He said officials intend to meet a May 1 eviction deadline set by Marias Fair officials.

Hale said the Harmans did not object to moving the dogs.

"It's pretty obvious ... it's in the best interest of the dogs and that's what the whole situation is about," he said.

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## Email for new Justice of the peace for 2nd trial

NEW [tetonjp@3rivers.net](mailto:tetonjp@3rivers.net) NEW

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Tuesday, March 4, 2003

Collie owners to be tried again on animal cruelty charges

By CAROL BRADLEY Tribune Staff Writer

CHOTEAU -- Jon Harman and Athena Lethcoe-Harman of Alaska will be tried a second time on animal cruelty charges stemming from the discovery of 181 collies and other animals in the tractor trailer last fall, a Teton County justice of the peace ruled Monday. The trial is expected to take place in mid to late April after he's had a chance to sort through motions, Judge Pete Howard said. He'll determine the location of the trial in a matter of weeks, depending in part on whether a change of venue is requested. The Harmans asked, but Howard refused to give them custody of their animals in the meantime, with one exception: Lethcoe-Harman, a diabetic, may reclaim her short-haired collie she says helps alert her when her blood sugar is about to drop. Even if the collie, Panache, had no medical intuition, "Dogs are pretty nice to have around," Howard said. That was his only concession to the Harmans of Nikiski, Alaska. The couple was arrested last Nov. 1 when U.S. customs inspectors discovered 166 collies, five other dogs and 10 cats crammed into the back of the Harmans' tractor trailer when they arrived at the Sweet Grass border stop late Halloween night. The animals had traveled 2,240 miles over nine days. They were malnourished, dehydrated, shivering, sick and distressed, according to sheriff's deputies. One dog was dead. Toole County charged the Harmans with 181 counts of misdemeanor animal cruelty. Each count is punishable by a fine of up to \$500 and up to six months in jail. A seven-day Justice Court trial ended in a mistrial in January when the six-person jury failed to reach a unanimous verdict. One of the jurors wanted to convict the Harmans. The case has attracted national attention in part because, for four months now, Toole County residents have operated "Camp Collie" at the Montana State Fairgrounds. Supporters from across the country have donated more than \$100,000 to help care for the dogs, and animal lovers from Florida to California have flown to Montana to help feed, water, groom and walk the collies. Spectators whispered "Yes!" under their breaths as Howard denied the Harmans' requests first to dismiss the case and then to let them move their dogs to Arizona while they await a second trial. Whether the dogs can remain in Shelby is another matter, however. Toole County Sheriff Donna Mattoon testified that the local 4-H club wants its building back by the first of April, although she said the organization might be willing to extend that deadline. The regional office of the Humane Society of the United States is scouting for new locations to house "Camp Collie," but no deal has been announced. On the witness stand, Lethcoe-Harman described the 40-foot-by-40-foot metal Quonset hut and four dog runs awaiting the collies on the Harmans' property south of Woodruff, Ariz. Defense attorney Scott Albers presented an affidavit signed by Winslow, Ariz., veterinarian Emerson Scott noting that the Harmans' new kennel had the approval of the Humane Society. Contacted later Monday, Scott said the kennel wasn't completed when he visited in December, but he was impressed by the "extremely big" size of the four runs and by the

Harmans interest in treating their dogs humanely. Parents sold interest Lethcoe-Harman said has given her parents, Jim and Nancy Lethcoe, a secured interest in the dogs in exchange for roughly \$30,000 that she can apply toward her legal bills. The Lethcoes are living in Arizona would be able to care for the dogs while the case against the Harmans continues, Lethcoe-Harman said. She repeated her desire to adopt out about 70 of the collies. Under cross-examination, she acknowledged that the kennel permit granted to her by Navajo County would allow an unlimited number of animals. Albers spent half an hour trying to prove that the record keeping during the first trial was inadequate and therefore grounds for rejecting a second trial. Howard denied the motion. Albers also argued that, given the lack of evidence demonstrated by the hung jury, there was no probable cause to go forward with the case. When he opened a book to cite an argument he hadn't included in his written motion, Howard stopped him and told him to close the book. 'Retrial's appropriate' Montana has a long history of handling mistrials, Howard said. "I can't imagine the legislature or the state Supreme Court would have created a Catch-22 situation" by which a mistrial would negate retrying a case, he said. Albers said he would ask the state Supreme Court to review that decision, but agreed that Howard shouldn't wait to hear the results before proceeding. The bulk of the 2 1/2-hour hearing was spent discussing Lethcoe-Harman's dissatisfaction with the care of the collies in Shelby. She said Toole County authorities not only allowed Jon Harman's personal fox terrier, Kryptonite, to be stolen out from under them and neutered, but they dodged questions about the theft for more than a month. 'The dog disappeared two days after Christmas and was returned on Valentine's Day. Under oath Toole County Undersheriff Don Hale said he didn't disclose the incident earlier because it was still under investigation and he wasn't certain the Harmans themselves hadn't taken Kryptonite. He said he also didn't want to upset Lethcoe-Harman any more than she already was in light of the upcoming trial. He told her of the dog's disappearance the night the mistrial was declared. Hale said the dog was traced to Lethbridge, Alberta, resident Kerry Lee King and said felon charges are pending. Didn't know about surgery Lethcoe-Harman, who moved to Shelby three months ago to be near the dogs, also protested that no one told her or asked her permission to perform surgery on a 10-year-old female collie, Link. The dog died last month, a couple of days after undergoing surgery for an anal-rectal tumor that was obstructing her bowels. Mattoon said she didn't think it was necessary to inform Lethcoe-Harman every time one of her dogs needed medical treatment. "The animals are under my care and custody," Mattoon said. If a problem arises, "We take care of it. We keep a record of it." Albers tried to make an issue of the Humane Society's involvement in looking for new Camp Collie sites. Lethcoe-Harman said Jean Lea, president of the American Working Collie Association -- which has donated tens of thousands of dollars in supplies and manhours toward caring for the collies -- co-owns a collie that has competed against Lethcoe-Harman's at shows. Albers questioned openly whether all of the money raised by the Humane Society and the AWCA on behalf of the collies is actually going to the dogs. 'Dogs too fat' Lethcoe-Harman also complained that life at Camp Collie is making dogs obese. On a veterinarian's scale of 1 to 9, she likes to keep her dogs at a 3 or 4, Lethcoe-Harman said. She said most of the dogs are now at 6 or 7 and some have reached a 9. "One morning one of the bitches could barely stand up, she was so fat," Lethcoe-Harman protested. "That wasn't the same one that had to be carried out of the truck" the night of Nov. 1, asked County Attorney Joe Coble, who's helping prosecute the case. Veterinarians testified during the first trial that a number of the Harmans' dogs were so emaciated they ranked a 2 on the scale. Howard said the dogs were being treated well and humanely under Toole County's care and would remain in the county's custody. 'Agree on care' The judge ordered both sides to draft an agreement addressing the care of the dogs. Among other things, Lethcoe-Harman wants permission to tape the ears of show-worthy collies so they will curl the proper degree. Howard told her she's not allowed to take Panache outside Toole County except to Cut Bank, which Lethcoe-Harman said is a frequent destination. The judge will review motions regarding the trial at 10 a.m. April 4.

Calgary Herald article by Deborah Tetley:

Dog trial juror advises prosecutor to stick to "issues"

Deborah Tetley Calgary Herald

Now that a Montana judge has granted a retrial in the infamous Shelby dog abuse case, a member of the hung jury in the first hearing has advice for lawyers, defendants and jurors involved in the next round. "The trial kept getting run off the rails by issues that had nothing to do with the charges," Dan Roark, 22, said Monday. "We had a responsibility that would change someone's life forever - a really big deal we all took seriously - and a lot of the testimony wasn't about abuse charges." Roark was on the six-person jury that became deadlocked in January after a seven-day animal abuse trial here. He said the charges are unfounded and the dire condition of the dogs described during testimony was an "over-exaggeration." An internationally known collie breeder from Alaska, Athena Lethcoe-Harman, and her husband, Jon Harman, were each charged with 181 counts of animal cruelty on Oct. 31 after they were pulled over at the Alberta-Montana border at Sweetgrass. Experts testified the 171 dogs, mostly collies, and 10 cats were emaciated and dehydrated. "I think that was over-exaggerated," Roark, a dog owner, said. "She did the best she could considering she was moving everything she owned. "If they did abuse the dogs - I don't think they did - the prosecution did not prove it beyond a reasonable doubt," Roark said. "I'd like to see her get her dogs back." Roark spoke out for the first time on the same day Teton County Justice Pete Howard rejected several motions from the defendant's lawyer, Scott Albers, to dismiss the case. In an unusual twist, however, Howard allowed Lethcoe-Harman to take her 171 dogs to her rental unit in Shelby to live with her until the case wraps up. Court heard the owner is a "brittle" diabetic and the "medical alert" dog, named Panache, is able to detect blood sugar. "I didn't think it was an unreasonable request," Howard said, adding he denied the motion to have all the dogs returned. "I don't doubt her ability to care for this dog and appear she has a valid medical concern." This is the same dog that gave birth to a litter the night of the seizure. Howard also indicated the defence intends to appeal Monday's ruling to the Montana Supreme Court. Albers could not be reached for comment Monday. Howard plans to set a new trial date April 4. "We are starting anew," he said. "Both parties are in the same position they were back in November." Calgaryian Dee Clair, who's twice volunteered at the Shelby fairgrounds where the dogs are housed, was relieved at the decision. "I was so anxious all day," she said she couldn't stand it anymore so she called the courthouse. "As soon as I heard the news, the knot in my stomach went away." Roark said although the jury voted 5-1 in favour of the defendants, it felt as cut and dry as initially thought. Roark said one man couldn't make up his mind. The same juror also said he would only find the couple not guilty if the judge imposed a probation provision that would see officials visit the dogs routinely in Arizona and monitor their health. "We didn't have the authority to do that," Roark said, adding the other jurors were "convinced beyond a reasonable doubt" of the couple's innocence. Roark said it should be expected nearly 200 animals housed in a 13.7- by 2.4-metre trailer for eight days and 3,800 kilometres would be in bad shape. "Sure, the trip was tough on them," he said. "They were in pens most of the time, but that doesn't mean she treated them any differently than anyone else would." Most of the jury was convinced the couple let the dogs out of the trailer to walk, water and feed them on a regular basis, Roark said. Court heard Harman slept while his wife let the animals out for up to nine hours at a time. Sometimes he would help her move the heavy fencing. "We saw pictures of her at the border freezing in nothing but a poncho and taking care of the animals by herself," Roark said. "I think the evidence we were shown of some dogs was only of the worst conditions." Two veterinarians and the director of the U.S. Humane Society testified the dogs were in some of the worst physical shape they'd seen in their careers. The defence has maintained that an overnight delay at the border caused the animals to become thin, diseased and dehydrated. One dog died after breathing in its own waste. Roark said it didn't matter that the defence admitted lying to several authorities.

along the way about the number of dogs in the truck. "It wasn't enough to convince us she a or neglected her dogs," he said. "I needed more evidence of abuse." Roark initially believed Harmans were guilty and began to change his mind when the trial visited Camp Collie. "She knew all the dogs by name," he said of Lethcoe-Harman. "Maybe she was making it up, but thought that was impressive and showed she cared about them all individually."

tetleyd@theherald.southam.ca

Jan. 22, 2003

**UPDATE 1/22/03 on the Montana Collies**

**Statement by AWCA President Jean Levitt, from Shelby, MT**

**\*Permission to crosspost\***

At 9 AM opening arguments began. Athena Lethcoe-Harman and John Harman were charged with 181 counts of animal cruelty. The original charge of 182 counts was changed because authorities originally thought there were 11 cats instead of 10.

Defense attorney Scott Albers stressed the importance of the Valiant kennel because of genetic work Ms. Harman was doing over the past 20 years with collie eye anomaly. He explained she needed a large amount of dogs to carry out her work. He explained the Harmans were moving to Arizona: 1, because of the weather; 2, larger population to sell unneeded dogs to keep number of dogs down. He explained the normal practice in Arizona was to just shoot all dogs no longer needed in a kennel. She chose to truck the excess dogs to Arizona rather than shoot them; 3, more stud dogs available; 4, many Europeans are interested in her dogs. In Arizona she can ship more dogs to Europe; 5, she is diabetic and needed a warmer climate.

Albers stressed how carefully the Harmans planned the trip to ensure it would go well because of the importance of AKC registration.

Prosecutor Merle Raph, assisted by Teton County attorney Joe Coble, called U.S. Customs Inspector Russell Hancock of the Port of Sweetgrass. Hancock testified the Harmans said they were transporting 105 dogs, and that each dog had its own kennel except for a few puppies. Concerned that the dogs needed food and water, he stated he discussed this with Ms. Harman. She replied they didn't have any food. The defense pointed out it had only been 12 hours since they had been last fed and watered. He stated she wanted to buy food but that it was 10:30 at night and the nearest open store was about 60 miles away. They had some water in a blue plastic barrel. According to the inspector at Sweetgrass, the only water on the truck was in the bottom of the crates soaked in urine and fecal material. Inspector Hancock testified he detained the Harmans to get a veterinarian to check the overall health of the animals. He said it was an unusual case.

Deputy Sheriff Mike Lamie described inching his way to the back of the truck sideways along the filthy narrow aisle after the chainlink fencing panels were removed. He described the urine and fecal material that dripped onto his uniform from the crates piled up on the sides of the truck. He looked into the pens with his flashlight and saw the collies wet with urine and fecal material. He described the foul smell, the 0 degree temperature, and the frozen condensation on the ceiling of the poorly ventilated truck. He called the Toole County Sheriff's Office in Shelby and reported his findings to then-Undersheriff Donna Matoc. She also called in Dr. Hardee Clark, Shelby veterinarian, to assess the condition of the dogs. Portable fence panels from the truck were set up outside, and about 20 dogs were offloaded. He testified Ms. Harman began giving the dogs water, and attempted to scoop out filth from the bottom of some crates. He described two collies separated from the others, not drinking water, and appearing listless. Deputy Lamie testified Dr. Clark asked Ms. Harman why two dogs appeared unwell, and were separated. She said they were separated because they were recovering from narcolepsy. Deputy Lamie explained he felt a crime was being

committed.

Defense attorney Albers pointed out Ms. Harman was diligently watering the 15-20 dogs in the pen, and cleaning their empty crates. He reviewed Deputy Lamie's written report and asked him about his statement, "Frozen particles of liquid in the dogs' fur." Albers explained there had been a flood in Alaska before the Harmans began their trip.

Prosecutor Merle Raph called Dr. James Becker, DVM, the Port of Sweetgrass veterinarian. He described the sanitation: "Very filthy, filthy cages, filthy animals, and some cleaning taken place before I got there. He assessed the overall condition of the dogs, saw one dog basically OUT, couldn't get up, died shortly. His decision: Must clean up situation as soon as possible and get those dogs treated. He further stated, "Dogs were definitely on the thin side. I wanted to see if these critters were able to stand. He testified he asked Ms. Harman, "What happened?" She explained, "Fire." He testified he asked if she had considered aborting the mission. He testified that she said she didn't think they would make it through the winter in Alaska.

Court was then adjourned until 9 AM Thursday. The trial is expected to last through Friday.

Thea Sperline, professional groomer Kay Bullard, and I drove out to Camp Collie today to see the dogs at lunchtime. They are clean, well fed, and of course continuing to receive veterinary care. The dog with the most serious hernia has had surgery and is recovering nicely. AWCA is proud to be able to pay his bill, and we thank the animal community for making that possible.

Calmly, Jean Levitt, President AWCA Lisa King, AWCA Director AWCA Rescue Officer and Members of AWCA

If you would like to assist AWCA with this rescue effort, you may send a check to:

Bethany Burke AWCA Treasurer 2807 Lee Trevino Court Shalimar, FL 32579

Make the check out to AWCA and in the memo area note: collie rescue-medical, collie rescue-stainless steel, or collie rescue-general.

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Saturday, March 22, 2003

## Attorney asks high court to reject collie retrial

By CAROL BRADLEY

Tribune Staff Writer

The attorney for accused collie abusers Jon Harman and Athena Lethcoe-Harman is asking Montana's Supreme Court to rule out a retrial of the animal cruelty case on grounds that the Harmans shouldn't be tried twice for the same alleged crime.

Even if the Supreme Court votes down the motion it could delay the second trial, which was tentatively planned for mid- to late-April.

The high court typically gives the opposing side 15 to 30 days to respond to such motions, then acts on the case a month or two later, assistant clerk Joni Holliday said. In this case, Toole County Attorney Merle Raph said he'll ask the high court to expedite matters in hopes of meeting the scheduled trial date.

Teton County Justice of the Peace Pete Howard said Albers' motion definitely could affect the trial date.

Howard took over the case after Toole County Justice of the Peace Janice Freeland recused herself when the first trial ended in a hung jury in January. He rejected a similar "double jeopardy" motion from defense attorney Scott Albers on March 3, siding instead with Raph, who argued that jury verdicts must be unanimous in Montana and that double-jeopardy theories don't apply to hung juries in Justice Court.

The Supreme Court received Albers' motion Thursday.

Meanwhile, Raph is asking Howard to hold the trial somewhere other than Shelby, where publicity about the case has made it difficult to find jurors who haven't already formed an opinion about the Harmans' guilt.

Toole County sheriff's officials arrested the Harmans, a Nikiski, Alaska, couple, Nov. 1 after U.S. Customs inspectors discovered 166 collies, five other dogs and 10 cats crowded into the back of the couple's tractor trailer

when they tried to cross the Canadian border into the United States.

The Harmans were headed to a new home in Arizona. They had transported the animals 2,240 miles over nine days. The dogs were dehydrated, weak and sick. One died later that day.

The Harmans each face a maximum of six months in jail and-or a \$500 fine for each of 181 counts of misdemeanor animal cruelty.

Since their arrest, most of the couple's collies have been housed at the Marias Fairgrounds just outside Shelby, where paid search and rescue workers and a small core of volunteers have kept them fed, watered and exercised.

The fair's livestock committee wanted the dogs out of the 4-H building by April 1, but agreed to extend the deadline until May 1, Undersheriff Don Hale said. Officials are eyeing a couple of possible alternative sites in Toole County to move the dogs as well as a possible site in Great Falls.

The facility in Great Falls has five fenced acres -- ideal for walking the dogs -- and is near North Star Boulevard, Linda Hughes, director of the Humane Society of Cascade County, confirmed Friday. She did not have the exact address.

Moving the dogs to Great Falls would give a much-needed break to Shelby residents, who have borne the brunt of the animals' care. But "we have to remember that even though they are beautiful animals, they're also evidence," Hughes said.

Toole County Sheriff Donna Matoon ultimately will decide where to move the dogs.

Housing is necessary because, even if the second trial is over by May 1, the verdict could be appealed to District Court.

The American Working Collie Association is now paying for two to three workers to clean the pens of the dogs, but a half dozen volunteers -- more on weekends -- devote hours a day to walking them.

Toole County Extension Agent Tyler Lane said 4-H folks need time to sanitize the building and pour a concrete floor before the fair starts in mid-July. The floor was planned before the collies' arrival.

"The quicker the dogs are moved the less chance of disease being transferred to livestock," Lane said.

The collies have suffered from a half dozen parasites, including giardia, coccidia, ear mites, ringworm and hookworm. The worst is hookworm, said Dr. Hardee Clark, the Shelby veterinarian who has been treating the

dogs.

Aside from the collies, "we just don't have hookworm in this area," Clark said. "But now we've got contaminated ground there. If we have a mild, moist summer we could really cause an infestation of hookworm."

He added, however, that hookworm is "very species specific" and that while dogs and cats might be at risk, the collies' hookworm would not spread to horses, cattle, sheep or pigs.

Roughly 70 cattle, 80 pigs and 25 lambs from Toole, Liberty, Glacier and Pondera counties are expected to be shown in the facility during fair week July 16-20, Lane said.

Clark said collie caregivers have been "pretty good" about scooping poop in the field next to the barn where the dogs are walked. He said harrowing the soil around the building would help dry out the soil and prevent the spread of parasites.

Legal maneuvering continues behind the scenes as well. When a second collie died March 7, Albers filed a motion asking that a forensic autopsy be performed. Howard ruled that a necropsy would suffice.

What difference an autopsy would make was unclear. Albers was not available for comment Friday.

The results of the necropsy aren't yet back from the state, Clark said Friday.



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Tuesday, March 4, 2003

## Collie owners to be tried again on animal cruelty charges

By CAROL BRADLEY  
Tribune Staff Writer

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The trial is expected to take place in mid to late April after he's had a chance to sort through motions, Judge Pete Howard said. He'll determine the location of the trial in a matter of weeks, depending in part on whether a change of venue is requested.

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That was his only concession to the Harmans of Nikiski, Alaska.

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A seven-day Justice Court trial ended in a mistrial in January when the six-person jury failed to reach a unanimous verdict. Only one of the jurors

wanted to convict the Harmans.

The case has attracted national attention in part because, for four months now, Toole County residents have operated "Camp Collie" at the Marias Fairgrounds. Supporters from across the country have donated more than \$100,000 to help care for the dogs, and animal lovers from Florida to California have flown to Montana to help feed, water, groom and walk the collies.

Spectators whispered "Yes!" under their breaths as Howard denied the Harmans' requests first to dismiss the case and then to let them move their dogs to Arizona while they await a second trial.

Whether the dogs can remain in Shelby is another matter, however. Toole County Sheriff Donna Matoon testified that the local 4-H club wants its building back by the first of April, although she said the organization might be willing to extend that deadline.

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Lethcoe-Harman also complained that life at Camp Collie is making her dogs obese. On a veterinarian's scale of 1 to 9, she likes to keep her dogs at a 3 or 4, Lethcoe-Harman said. She said most of the dogs are now at 6 or 7 and some have reached a 9.

"One morning one of the bitches could barely stand up, she was so fat," Lethcoe-Harman protested.

"That wasn't the same one that had to be carried out of the truck" the night of Nov. 1, asked Teton County Attorney Joe Coble, who's helping prosecute the case.

Veterinarians testified during the first trial that a number of the Harmans' dogs were so emaciated they ranked a 2 on the scale.

Howard said the dogs were being treated well and humanely under Toole County's care and would remain in the county's custody.

'Agree on care'

The judge ordered both sides to draft a joint agreement addressing the care of the dogs. Among other things, Lethcoe-Harman wants permission to tape the ears of show-worthy collies so they will curl the proper degree.

Howard told her she's not allowed to take Panache outside Toole County except to Cut Bank, which Lethcoe-Harman said is a frequent destination.

The judge will review motions regarding the new trial at 10 a.m. April 4.

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Saturday, February 1, 2003

## County will retry collie case

By CAROL BRADLEY  
Tribune Staff Writer

Stymied by a mistrial, Toole County will go to court a second time to try collie owners Jon Harman and Athena Lethcoe-Harman of Alaska on cruelty-to-animal charges, County Attorney Merle Raph announced Friday.

The trial may be held somewhere else this time around, however. Justice of the Peace Janice Freeland, who presided over the seven-day trial that ended Wednesday, has recused herself, according to Undersheriff Don Hale.

Raph said it's possible a second trial could be in four to eight weeks, but details have yet to be worked out.

The Harmans pleaded not guilty to 181 misdemeanor counts of animal cruelty. The first trial ended in a mistrial after the six-person jury was unable to reach a unanimous verdict. Five of the six wanted to acquit the Harmans. One juror wanted to convict.

The jurors made a pact not to identify which jurors voted guilty and which voted not guilty, forewoman Michelle Edwards said. The other five jurors were Toole County residents Joe Hofer, Terry Parsons, Della Dubbe and Daniel Roark.

Raph said he decided to seek a second trial after discussing the issue for the past two days with assisting prosecutor Joe Coble of Teton County and Toole County sheriff's officials.

Scott Albers, the attorney for the Harmans, declined comment, saying he's still discussing the matter with his clients.

The news assuaged animal lovers like Jean Levitt of Vermont who is president of the American Working Collie Association. The organization has raised thousands of dollars and provided elbow grease from around the country to care for the Harmans' 172 collies, five other dogs and 10 cats.

The animals have been in Toole County's custody since the Harmans were

arrested on Nov. 1.

"We wanted this news, we expected this news and we're very pleased that (Toole County) has done this," Levitt said from her hotel room in Shelby.

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- \*Clerk and Recorder
- \*Clerk of District Court
- \*Conservation District
- \*County Attorney
- \*County Commissioners
- \*Department of Revenue
- \*DES/Fire Warden
- \*Extension Office
- \*Health Department
- \*Justice of the Peace
- \*Nursing Home
- \*Planner
- \*Road Department
- \*Sanitarian
- \*Sheriff
- \*Superintendent of Schools
- \*Treasurer
- \*Weed Department
- \*Youth Court

## County Attorney

Joe Coble - *Teton County Attorney*  
 Diane Graf - *Legal Assistant*  
 P.O. Box 899  
 Choteau 59422  
 406-466-2860  
 E-mail: [joec@3rivers.net](mailto:joec@3rivers.net) or [dianed@3rivers.net](mailto:dianed@3rivers.net)

Joe Coble, the Teton County Attorney is a full-time elected official. He represents both Teton County and the state of Montana and Teton County. As County Attorney, Joe is responsible for the prosecution of all felony crimes occurring in Teton County, and is also responsible for defending or prosecuting all civil claims for or against Teton County. Joe advises County departments regarding legal matters and, when necessary, represents the County in legal suits.

*Please note that full-time County Attorneys are prohibited by law from:*

1. Private practice
2. Representing private clients
3. Giving legal advice to private citizens.



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## Washington laws

Washington has two state animal-cruelty laws. They are RCW 16.52.205, animal cruelty in the first degree, and RCW 16.52.207, animal cruelty in the second degree.

### RCW 16.52.205 Animal cruelty in the first degree.

(1) A person is guilty of animal cruelty in the first degree when, except as authorized in law, he or she intentionally (a) inflicts substantial pain on, (b) causes physical injury to, or (c) kills an animal by a means causing undue suffering, or forces a minor to inflict unnecessary pain, injury, or death on an animal.

(2) Animal cruelty in the first degree is a class C felony.

### RCW 16.52.207 Animal cruelty in the second degree.

(1) A person is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the person knowingly, recklessly, or with criminal negligence inflicts unnecessary suffering or pain upon an animal.

(2) An owner of an animal is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the owner knowingly, recklessly, or with criminal negligence:

(a) Fails to provide the animal with necessary food, water, shelter, rest, sanitation, ventilation, space, or medical attention and the animal suffers unnecessary or unjustifiable physical pain as a result of the failure; or (b) Abandons the animal.

(3) Animal cruelty in the second degree is a misdemeanor.

(4) In any prosecution of animal cruelty in the second degree, it shall be an affirmative defense, if established by the defendant by a preponderance of the evidence, that the defendant's failure was due to economic distress beyond the defendant's control.

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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.

**HB**

**285**

# Alaska State Legislature

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Fax (907) 465-6592

Interim  
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Anchorage, Alaska 99501  
Phone (907) 269-0250  
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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 Ralph Seekins, Chair  
Senate Judiciary Committee

From: Representative Lesil McGuire, Chair   
House Judiciary Committee

Date: March 30, 2004

Re: Request for Hearing, CSHB 285 (JUD), "Electronic Transactions & Signatures"

---

I respectfully request that CSHB 285 (JUD): Electronic Transactions & Signatures, be scheduled for a hearing in the Senate Judiciary Committee at your earliest convenience. I have included the following in the bill packet for your information:

1. Sponsor Statement
2. CSHB 285 (JUD), Version D  
The only change from the original version of the bill is the addition of AS 45.02 in Section 1 (the scope section). AS 45.02 is the UCC chapter on Sales and its omission was a drafting oversight. UETA provides that UCC sales and lease transactions may be accomplished via electronic transactions.
3. Zero Fiscal Notes
4. Bill History
5. Why States Should Adopt UETA
6. A Few Facts about UETA
7. Summary of UETA
8. Letters of Support
9. Additional Background Information

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

# Alaska State Legislature

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Oil & Gas Committee

## Representative Lesil McGuire

*House District 28*

### Sponsor Statement CSHB 285 (JUD)

**“An Act adopting the Uniform Electronic Transactions Act; repealing certain statutes relating to electronic records and electronic signatures; amending Rule 402, Alaska Rules of Evidence; and providing for an effective date.”**

With the advent of electronic means of communication and information transfer, business models and methods for doing business have evolved to take advantage of the speed, efficiencies, and cost benefits of electronic technologies. These developments have occurred in the face of existing legal barriers to the legal efficacy of records and documents that exist solely in electronic media. Whether the legal requirement that information or an agreement or contract must be contained or set forth in a pen and paper writing derives from a statute of frauds affecting the enforceability of an agreement, or from a record retention statute that calls for keeping the paper record of a transaction, such legal requirements raise real barriers to the effective use of electronic media.

One striking example of electronic barriers involves so-called check retention statutes in every State. A study conducted by the Federal Reserve Bank of Boston identified more than 2500 different state laws that require the retention of canceled checks by the issuers of those checks. These requirements not only impose burdens on the issuers, but also effectively restrain the ability of banks handling the checks to automate the process. Although check truncation is validated under the Uniform Commercial Code, if the bank's customer must store the canceled paper check, the bank will not be able to deal with the item through electronic transmission of the information. By establishing the equivalence of an electronic record of the information, the Uniform Electronic Transactions Act (UETA) removes these barriers without affecting the underlying legal rules and requirements.

It is important to understand that the purpose of the UETA is to remove barriers to electronic commerce by validating and effectuating electronic records and signatures. It is NOT a general contracting statute - the substantive rules of contracts remain unaffected by UETA. Nor is it a digital signature statute. To the extent that a State has a Digital Signature Law, the UETA is designed to support and compliment that statute.

Finally, recognition that the paradigm for the Act involves two willing parties conducting a transaction electronically, makes it necessary to expressly provide that some form of acquiescence or intent on the part of a person to conduct transactions electronically is

necessary before the Act can be invoked. Accordingly, UETA only applies between parties that have agreed to conduct transactions electronically. In this context, the construction of the term agreement must be broad in order to assure that the Act applies whenever the circumstances show the parties intention to transact electronically, regardless of whether the intent rises to the level of a formal agreement.

# FISCAL NOTE

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

Fiscal Note Number: 1  
 Bill Version: HB 285  
 (H) Publish Date: 5/13/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: All  
 Title An Act adopting the Uniform BRU \_\_\_\_\_  
Electronic Transactions Act Component \_\_\_\_\_  
 Sponsor Rep. McGuire \_\_\_\_\_  
 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 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill would not have a significant fiscal impact on any state agency.

Prepared by: Jack Kreinheder, Senior Analyst Phone 465-4676  
 Division OMB Date/Time 5/7/03 11:57 AM  
 Approved by: Jay Hogan, Deputy Director Date 5/7/2003  
 Agency OMB

# FISCAL NOTE

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

Fiscal Note Number: 2  
 Bill Version: CSHB 285(JUD)  
 (H) Publish Date: 1/23/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Natural Resources  
 Title Electronic Transactions & Signatures RDU Resource Development  
 Component Recorder's Office/UCC  
 Sponsor Representative McGuire  
 Requester (H) JUD Component No. 802

**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

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

**POSITIONS**

Full-time	0					
Part-time	0					
Temporary	0					

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

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

Prepared by: Vicky Backus, State Recorder  
 Division: Support Services - Recorder's Office  
 Approved by: Thomas Irwin, Commissioner  
 Agency: Natural Resources

Phone 269-8882  
 Date/Time 1/20/04  
 Date 1/20/04

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Section Title: [Introductions & Adoptions Of Uniform Acts.](#)

[> Why States Should Adopt ...](#)

## THE UNIFORM ELECTRONIC TRANSACTIONS ACT

The Uniform Electronic Transactions Act (UETA) allows the use of electronic records and electronic signatures in any transaction, except transactions subject to the Uniform Commercial Code. The fundamental purpose of this act is to remove perceived barriers to electronic commerce.

The UETA is a procedural statute. It does not mandate either electronic signatures or records, but provides a means to effectuate transactions when they are used. The primary objective is to establish the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures.

There are many reasons why every state should adopt the Uniform Electronic Transactions Act.

- UETA defines and validates electronic signatures. An electronic signature is defined as "an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record."
- UETA removes writing and signature requirements which create barriers to electronic transactions.
- UETA insures that contracts and transactions are not denied enforcement because electronic media are used.
- UETA insures that courts accept electronic records into evidence.
- UETA protects against errors by providing appropriate standards for the use of technology to assure party identification.
- UETA avoids having the selection of medium (paper vs. electronic) govern the outcome of any disputes or disagreements, and it assures that parties have the freedom to select the media for their transactions by agreement.
- UETA authorizes state governmental entities to create, communicate, receive and store records electronically, and encourages state governmental entities to move to electronic media.

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A Few Facts About  
UNIFORM ELECTRONIC TRANSACTIONS ACT

**PURPOSE:** The Uniform Electronic Transactions Act is designed to support the use of electronic commerce. The primary objective of this act is to establish the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures, removing barriers to electronic commerce.

**ORIGIN:** Completed by the Uniform Law Commissioners in 1999.

**APPROVED BY:** American Bar Association

**SUPPORTED BY:** American Council of Life Insurance  
Equipment Leasing Association of America

<b>STATE</b>	Alabama	Kansas	North Carolina
<b>ADOPTIONS:</b>	Arizona	Kentucky	North Dakota
	Arkansas	Louisiana	Ohio
	California	Maine	Oklahoma
	Colorado	Maryland	Oregon
	Connecticut	Michigan	Pennsylvania
	Delaware	Minnesota	Rhode Island
	District of	Mississippi	South Dakota
	Columbia	Montana	Tennessee
	Florida	Nebraska	Texas
	Hawaii	Nevada	Utah
	Idaho	New Hampshire	Virginia
	Indiana	New Jersey	West Virginia
	Iowa	New Mexico	Wyoming

**2003 INTRODUCTIONS:** Alaska Missouri  
Massachusetts Vermont

For any further information regarding the Uniform Electronic Transactions Act, please contact John McCabe or Katie Robinson at 312-915-0195.

(4/28/03)

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## UNIFORM ELECTRONIC TRANSACTIONS ACT

### *- A Summary -*

The Uniform Law Commissioners promulgated the Uniform Electronic Transactions Act (UETA) in 1999. It is the first comprehensive effort to prepare state law for the electronic commerce era. Many states have already adopted legislation pertaining to such matters as digital signatures, but UETA represents the first national effort at providing some uniform rules to govern transactions in electronic commerce that should serve in every state. Although related to the Uniform Commercial Code, the rules of UETA are primarily for "electronic records and electronic signatures relating to a transaction" that is not subject to any article of the Uniform Commercial Code, except for Articles 2 and 2A. A "transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs. Much is excluded in this definition, including required notices, disclosures or communications by courts and governmental agencies.

UETA applies only to transactions in which each party has agreed by some means to conduct them by electronically. Agreement is essential. Nobody is forced to conduct to electronic transactions. Parties to electronic transactions come under UETA, but they may also opt out. They may vary, waive or disclaim most of the provisions of UETA by agreement, even if it is agreed that business will be transacted by electronic means. The rules in UETA are almost all default rules that apply only in the event the terms of an agreement do not govern.

Electronic commerce means, of course, persons doing business with other persons with computers and telephone or television cable lines. The Internet is the great marketplace for these kinds of transactions; a marketplace developing almost daily in 1999 (and presumably into the foreseeable future). The outlines and boundaries for this marketplace are still unknown and developments are not predictable. It is not possible to predict with any certainty how new law should develop to serve that marketplace or any other electronic marketplace that might develop in the future.

However, a few things are known about the existing electronic marketplace and there are some assumptions about the law that governs transactions within it that can be made with reasonable certainty in 1999, and that will continue to be reasonably certain into the future.

Electronic transactions are conducted by communicating digitized information from one person to another. That digitized information can be communicated and stored without the use of paper, and the basic language of electronic transactions is fully and inherently paperless. In fact, relying on paper for the memorialization of transactions and upon manual signatures for verifying them are most likely to impede electronic transactions, adding to their costs. And there is no benefit to any party to an electronic transaction, with very few exceptions, in requiring that they be memorialized on paper with signatures that are manual. The need to expand requirements in the law for writings and manual signatures so that electronic records and electronic signatures will satisfy those requirements, is the one thing that is reasonably certain with respect to electronic transactions.

UETA does not attempt to create a whole new system of legal rules for the electronic marketplace. The objective of UETA is to make sure that transactions in the electronic marketplace are as enforceable as transactions memorialized on paper and with manual signatures, but without changing any of the substantive rules of law that apply. This is a very limited objective—that an electronic record of a transaction is the equivalent of a paper record, and that an electronic signature will be given the same legal effect, whatever that might be, as a manual signature. The basic rules in UETA serve this single purpose.

The basic rules are in Section 7 of UETA. The most fundamental rule in Section 7 provides that a "record or signature may not be denied legal effect or enforceability solely because it is in electronic form." The second most fundamental rule says that "a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation." The third most fundamental rule states that any law that requires a writing will be satisfied by an electronic record. And the fourth basic rule provides that any signature requirement in the law will be met if there is an electronic signature.

Almost all of the other rules in UETA serve the fundamental principles set out in Section 7, and tend to answer basic legal questions about the use of electronic records and signatures. Thus, Section 15 determines when information is legally sent or delivered in electronic form. It establishes when electronic delivery occurs—when an electronic record capable of retention by the recipient is legally sent and received. The traditional and statutory rules that govern mail

delivery of the paper memorializing a transaction can't be applied to electronic transactions. Electronic rules have to be devised., and UETA provides the rule.

Another rule that supports the general validity of electronic records and signatures in transactions is the rule on attribution in Section 9. Electronic transactions are mostly faceless transactions between strangers. UETA states that a signature is attributable to a person if it is an act of that person, and that act may be shown in any manner. If a security procedure is used, its efficacy in establishing the attribution may be shown. In the faceless environment of electronic transactions, the obvious difficulties of identification and attribution must be overcome. UETA, Section 9 gives guidance in that endeavor.

Much has been much written about digital signatures in electronic commerce. What is a digital signature? It is really a method of encryption that utilizes specific technology. In the faceless environment of the electronic marketplace and particularly the Internet, such technologies are highly useful.

It is not wholly certain what the legal impact of these technologies should be. For that reason UETA may not be characterized as a digital signature statute. It does facilitate the use of digital signatures and other security procedures in rules such as the one in Section 9 on attribution. Section 10 provides some rules on errors and changes in messages. It favors the party who conforms to the security procedure used in the specific transaction against the party who does not, in the event there is a dispute over the content of the message.

But nothing in UETA requires the use of a digital signature or any security procedure. It is technologically neutral. Persons can use the most up-to-date digital signature technology, or less sophisticated security procedures such as passwords or pin numbers. Whatever parties to transactions use for attribution or assuring message integrity may be offered in evidence if there is a dispute.

UETA is procedural, not substantive. It does not require anybody to use electronic transactions or to rely upon electronic records and signatures. It does not prohibit paper records and manual signatures. Basic rules of law, like the general and statutory law of contracts, continue to apply as they have always applied.

There are three provisions in UETA that need special attention, and that are not directly in support of the basic rules in Section 7. First, UETA excludes transactions subject to the Uniform Commercial Code, except for those under Articles 2 and 2A, the Uniform Computer Information Transactions Act, laws governing estates and trusts, and any other specific laws that a state wants to exempt from the rules applied in UETA. Some writing and signature requirements in state law do not impact the enforceability of transactions, and have objectives that should not be affected by adoption of a statute like UETA. The limitation of UETA to agreed electronic transactions will eliminate any conflict with other writing requirements for the most part. However, there is some room for jurisdiction-specific tailoring of UETA permitted in each state, to assure no conflict. Exclusions should be carefully and conservatively selected. Most law relating to contracts and transactions between persons will serve the public better if electronic records and signatures are recognized.

Second, UETA provides for "transferable records" in Section 16. Notes under Article 3 and documents under Article 7 of the Uniform Commercial Code are "transferable records" when in electronic form. Notes and documents are negotiable instruments. The quality of negotiation relies upon the note or document as the single, unique token of the obligations and rights embodied in the note or document. Maintaining that quality as a unique token for electronic records is the subject of Section 16. A transferable record exists when there is a single authoritative copy of that record existing and unalterable in the "control" of a person. A person in "control" is a "holder" for the purposes of transferring or negotiating that record under the Uniform Commercial Code. Section 16 is essentially a supplement to the Uniform Commercial Code, until its relevant articles can be fully amended or revised to accommodate electronic instruments.

Third, UETA clearly validates contracts formed by electronic agents. Electronic agents are computer programs that are implemented by their principals to do business in electronic form. They operate automatically, without immediate human supervision, though they are certainly not autonomous agents. They are a kind of tool that parties use to communicate. Section 14 provides that a person may form a contract by using an electronic agent. That means that the

principal, which is the person or entity which provides the program to do business, is bound by the contract that its agent makes.

When somebody buys something on the Internet, therefore, that person will be assured that the agreement is valid, even though the transaction is conducted automatically by a computer that solicits orders and payment information. Did anyone really think that every order on the Internet involves a direct communication with a human being?

Three sections of UETA deal with electronic records that state governmental agencies create and retain. Section 17 allows a state to designate one agency or officer as the authority on creation and retention of governmental records. Section 18 allows a state to designate which agency or officer regulates the communication of electronic records and use of electronic signatures between agencies and other persons. Section 19 allows a state to designate an agency or officer to set standards that promote consistency and interoperability between state agencies with respect to the use of electronic records and signatures. All three sections are optional sections, there for the state that needs them, but not mandatory for all states in order to implement uniformity. These are very important provisions, however, because they provide a state with some root law for organizing the electronic business of the state. They should be given very serious consideration in every state.

It is not possible to cover every aspect of UETA in a short summary. This summary highlights some important aspects. The adoption of these rules will be a boon to electronic commerce. They will not artificially skew any market or make any substantive law relating to contracts any different from that governing transactions memorialized on paper. Every state should adopt them as quickly as possible.

*Founded in 1892, the National Conference of Commissioners on Uniform State Laws is a confederation of state commissioners on uniform laws. Its membership comprises more than 300 attorneys, judges, and law professors, who are appointed by each of the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, to draft uniform and model state laws and work toward their enactment.*

# STATE OF ALASKA

FRANK H. MURKOWSKI,  
GOVERNOR

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL

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

May 14, 2003

The Hon. Lesil McGuire, Chair  
House Judiciary Committee  
State Capitol, Room 118  
Juneau, Alaska 99801-1182

*Vanessa A*

Re: HB 285

Dear Representative McGuire:

On behalf of the Alaska Uniform Law Commissioners, we would appreciate early scheduling of a hearing on HB 285 (Uniform Electronic Transactions Act). The bill is important to keep Alaska as a business friendly climate by making law changes to facilitate businesses using electronic records and signatures.

The Uniform Act has been passed into law by over 42 states (see attachment). Also, we have included a fact sheet explaining the advantages of the Uniform Electronic Transactions Act.

We appreciate your consideration of this request.

Sincerely,

GREGG D. RENKES  
ATTORNEY GENERAL

By: *Deborah E. Behr*  
Deborah E. Behr  
Assistant Attorney General

DEB:pvp

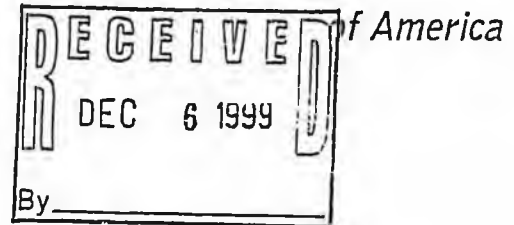
cc: Mike Tibbles, Legislative Director, Office of the Governor  
Dave Marquez, Legislative Contact, Dept. of Law  
Alaska Uniform Law Commissioner  
Dave Jones, AAG, Governmental Affairs/Anchorage  
Nico Bus, Div. of Support Services, Dept. of Natural Resources  
Sharon Young, State Recorder, Dept. of Natural Resources

# ELA

Equipment  
Leasing  
Association

December 1, 1999

National Conference of Commissioners  
On Uniform State Laws  
211 E. Ontario Street, Suite 1300  
Chicago, Illinois 60611



Re: Uniform Electronic Transactions Act

Dear Commissioners:

I am writing on behalf of the Equipment Leasing Association of America (ELA) to voice our enthusiastic support for the new Uniform Electronic Transactions Act (UETA). Our ELA members have a vital interest in UETA to facilitate internet commerce as a way to conduct the more than \$200 billion in equipment leasing transactions that occur each year in this country.

## I. Overview of the UETA Statute

The statute is minimalist and "procedural." It facilitates internet commerce by replacing the current hodge-podge of state laws<sup>1</sup> with a fair and predictable set of uniform rules on electronic commerce.

A. Central Provisions. Essentially, UETA provides that electronic records, signatures and contracts are just as effective and enforceable (and admissible in evidence) as their old-fashioned paper counterparts. UETA section 7 thus provides that:

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<sup>1</sup> Over the past several years, a number of States have enacted statutes giving legal effect to certain types of electronic contracts and electronic signatures. But these new statutes are not uniform: Some of them are limited to electronic contracts and signatures that are authenticated with digital certificates and public key/private key cryptography meeting specified criteria. Other state laws validate a broader class of electronic signatures and contracts. Some state statutes recognize electronic signatures and contracts only in the context of government transactions, while others apply more broadly to both government and commercial transactions.

- o A record or signature may not be denied legal effect solely because it is in electronic form.
- o A contract may not be denied legal effect solely because an electronic record was used in its formation.
- o If a law requires a record to be in writing, an electronic record satisfies the law.
- o If a law requires a signature, an electronic signature satisfies the law.

Two other sections of UETA also provide critical support for e-commerce: Section 13 provides that evidence of a record or signature may not be excluded solely because it is in electronic form. Section 12 provides that if a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record.<sup>2</sup>

**B. Scope.** The scope of the UETA statute is generally limited to “transactions between parties each of which has agreed to conduct transactions by electronic means.” Wills and testamentary trusts are excluded from the coverage of UETA, as are transactions subject to UCC laws that already contain specific provisions for electronic signatures and/or electronic records. The older pre-internet UCC rules on the commercial law of sales and leases would be subject to UETA’s new procedural rules for conducting electronic commerce.<sup>3</sup>

Writing requirements in federal law are not affected by UETA, which is only a state law. However, there are a number of federal statutes, such as the

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<sup>2</sup> To be able to take advantage of Section 12, the retained electronic record must: (a) accurately reflect the information in the record as first generated in its final form; and (b) remain accessible for later reference.

<sup>3</sup> UETA section 3(b) provides that the statute does not apply to a transaction “to the extent it is governed by” the following laws: (1) A law governing the creation or execution of wills, codicils or testamentary trusts; (2) the UCC other than Sections 1-107 (written waiver of rights after breach) and 1-206 (residual statute of frauds for kinds of personal property not otherwise within the statute of frauds), Article 2 (sales) and Article 2A (leases); (3) UCC Articles 3,4,4A,5,6,7,8, or 9; and (4) the new Uniform Computer Information Transactions Act (UCITA).

federal Truth in Lending Act, that defer to state law on the issue of whether there is an agreement, or whether a consumer has authorized a transaction. UETA would apply in this context.

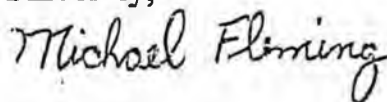
**C. Other provisions.** To come to grips with consumer protection writing requirements, UETA section 8(a) provides that, if a state law "requires a person to provide, send, or deliver information in writing to another person," that requirement is satisfied if the information is provided "in an electronic record capable of retention" – that is, capable of retention by printing or storing the electronic record– "by the recipient at the time of receipt." More generally, UETA section 8(c) imposes a penalty on a sender of a record that is not retainable: It provides that if a sender "inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient." Section 8(c) seems to apply to all electronic records, not just those electronic records that substitute for a legally required written disclosure or written record. Though some have questioned this aspect of section 8(c), we think it is reasonable. We see no harm in ensuring that legally enforceable records be reasonably "capable of retention." The scope of section 8(c) may be clarified by Reporter's comments issued in the future.

## CONCLUSION

The member companies of ELA are leaders in the commercial use of innovative new technologies. ELA strongly supports the central provisions of UETA, which provide in section 7 for legal recognition and enforcement of electronic records, electronic signatures, and electronic contracts. Already the law in California, UETA embodies a mainstream approach to electronic commerce. It should be speedily enacted throughout the Nation.

Thank you for promulgating this much-needed set of uniform state laws to facilitate e commerce.

Sincerely,



Michael Fleming  
President

**USKH****PRINCIPALS**

Leo von Scheben  
Earl D. Korynta  
James A. Huettl  
Gary H. Pohl  
Theodore R. Kruth  
Kenneth D. Maynard  
Gregory A. Ingham  
Timothy J. Vig  
D. Lance Meang  
Daryl D. Sorenson  
Zane W. Shanklin  
W. Wright Alcorn

**ASSOCIATES**

Donna L. Marks  
Steven M. Tjaden  
Scott V. Bell  
Bruce E. Hopper  
John M. Stadium  
Howard A. Parich  
Joann C. Mitchell  
Marshall L. Hettel  
Arthur J. Johnson  
Steven M. Korf  
Lori A. Kropidlowski  
Frederick J. Schwaderer  
Dean E. Syla  
Jeffrey N. Logan  
Sara Morla  
Daniel Hayhurst  
Jeff Hogge  
Michael N. Anderson  
Gerald V. Neubert  
Gregory A. Uebel

**ADDRESS**

2515 A Street  
Anchorage, Alaska 99503  
Phone (907) 276-4248  
FAX (907) 258-4653  
<http://www.uskh.com>

1-888-706-USKH (8754)

**OFFICE LOCATIONS**

Anchorage, Alaska  
Fairbanks, Alaska  
Juneau, Alaska  
Wasilla, Alaska  
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Spokane, Washington  
Ferndale, Washington

May 7, 2003

The Honorable Tom Anderson, Chairman  
Legislature of the State of Alaska  
Labor and Commerce Committee  
716 W. 4<sup>th</sup> Avenue, 2<sup>nd</sup> Floor  
Anchorage, Alaska 99501  
Sent via facimile: (907) 465-2418

Subject: Written Testimony in Support of House Bill (HB) No. 285  
Uniform Electronic Transactions Act

Dear Mr. Anderson and Members of the Labor and Commerce Committee:

As President of USKH, Inc. (USKH), I am providing you with this written testimony stating our strong support of HB No. 285. This bill authorizes the use of electronic records and electronic signatures relating to transactions. USKH is an employee-owned multidisciplinary professional services firm providing consulting architectural, engineering, land surveying, and planning services. We have been in business in Alaska for over 31 years and have networked offices in Anchorage, Juneau, Wasilla, and Fairbanks. USKH has successfully completed numerous projects, both large and small, for a variety of public and private clients throughout the state.

In our business, the production process of designing a project has become completely electronic. That is, minus the present requirement of having a "wet" signature. The days of completing design work at a drafting table has been replaced with completing our work at a computer using computer aided drafting (CAD) software. This trend has made our designs more accurate and more efficient, and the passage of this bill will just add to that efficiency. For example, one of our recent projects for the Anchorage School District (A.J. Dimond High School Replacement) is a \$50 million-plus project that required the completion of over 400 drawings, all electronically, but the final completion of stamping and signing the drawings must be completed by "wet" signature. In this era, this process is cumbersome, chaotic, and inefficient. There is no benefit to the client or the consultant in requiring this manual signature.

MAY. 7. 2003 2:40PM

USKH - ANCHORAGE

NO. 4333 1. 373

UNWIN SCHEBEN KORYNTA HUETTL INC.

ARCHITECTURE • ENGINEERING • LAND SURVEYING • PLANNING

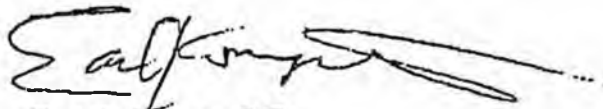
**Support of House Bill (HB) No. 285 - Uniform Electronic Transactions Act**

Page 2

I am not an electronic wizard or a computer guru, but I do know this industry. This law needs to be enacted so we can do this part of our business production better and more efficiently. This will not only better serve consultants such as USKH, but also our clients and the general public at large. I am confident that the industry and government will be able to find acceptable means and methods to adequately protect the public's interest against electronic fraud and I strongly support HB 285.

Very truly yours,

USKH, Inc.



Earl D. Koynta, P.E.

President

cc: The Honorable Loren Leman  
Lieutenant Governor of Alaska

**American Council of Life Insurance**

Carroll A. Campbell, Jr.  
President & Chief Executive Officer

November 24, 1999

Mr. John L. McClaugherty  
President  
National Conference of Commissioners on Uniform State Laws  
211 East Ontario Street, Suite 1300  
Chicago, Illinois 60611

Re: The Uniform Electronic Transactions Act

Dear Mr. McClaugherty:

I am writing on behalf of the American Council of Life Insurance ("ACLI") to express our organization's strong support for the Uniform Electronic Transactions Act ("UETA"), as adopted by the National Conference of Commissioners on Uniform State Laws ("NCCUSL").

ACLI is a national trade association comprised of almost 500 member legal reserve life insurance companies. ACLI staff had Observer status during the UETA Drafting Committee deliberations, and we appreciate the ability to participate in NCCUSL's drafting process. Our member companies view authentication legislation as vital to the continued growth of electronic commerce, and I commend NCCUSL for accepting the challenge of drafting a model act that will help all businesses and consumers by providing legal certainty to electronic signatures and electronic records.

Our member companies believe that UETA is a well written, balanced law that will facilitate electronic commerce while preserving substantive state law. UETA is technology and industry neutral, taking into account the dynamic nature of the Internet. We believe UETA's recognition of electronic records is particularly critical to providers of financial services, including life insurers.

Thank you again for the excellent work your organization has provided. ACLI will be actively supporting enactment of UETA in the states this upcoming legislative season. Please let me know if there is any specific assistance ACLI can provide as UETA is introduced in the various states.

Sincerely,

Carroll A. Campbell, Jr.

State Recorder's Office  
Department of Natural Resources

White Paper:  
The Uniform Electronic Transactions Act

Introduction to the Issue

The Uniform Electronic Transactions Act (UETA) is a uniform law that fosters and supports the use of electronic commerce. According to the National Conference of Commissioners on Uniform State Laws (NCCUSL), **the primary objective of this act is "to establish the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures, removing barriers to electronic commerce."**

On its web site, NCCUSL sets forth the following significant reasons why every state should adopt UETA:

- UETA defines and validates electronic signatures. An electronic signature is defined as "an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record."
- UETA removes writing and signature requirements that create barriers to electronic transactions.
- UETA insures that contracts and transactions are not denied enforcement because electronic media are used.
- UETA insures that courts accept electronic records into evidence.
- UETA protects against errors by providing appropriate standards for the use of technology to assure party identification.
- UETA avoids having the selection of medium (paper vs. electronic) govern the outcome of any disputes or disagreements, and it assures that parties have the freedom to select the media for their transactions by agreement.
- UETA authorizes state governmental entities to create, communicate, receive and store records electronically, and encourages state governmental entities to move to electronic media.

On the federal side, the Electronic Signatures in Global and National Commerce Act (also called "E-Sign") was approved by Congress and signed by the President on June 30, 2000. Although the federal E-Sign law and UETA overlap in many areas, the two acts are not identical. Because UETA is broader and more comprehensive, NCCUSL strongly recommends that states adopt UETA in its entirety, notwithstanding the existence of E-Sign.

Without UETA, the federal E-Sign law is controlling on states. However, UETA is much more comprehensive than the federal law, and addresses some subjects not included in E-

Sign. The E-Sign law specifically addresses UETA and provides that state UETA will govern if the state has enacted the uniform law in its entirety. Thus, in general E-Sign does not preempt a state's UETA enactment, but the results could differ if a state inserts non-uniform language into the state's UETA law. Some of the major differences between the federal law and UETA relate to the handling of consumer protection issues, record keeping and automated transactions.

The handling of consumer protection issues has been a concern to a number of states who have considered UETA. The federal E-Sign law strictly regulates the manner of consenting to receive electronic notices and disclosures electronically. If UETA is considered in Alaska, a full review of these consumer protections must be done. Whether UETA would preempt those federal consumer protections is beyond the scope of this paper but is an important consideration in the analysis.

Another factor that comes into play is Alaska's digital signature law, which took effect in 1998, pre-dating both E-Sign and UETA. One of the underlying forces behind the federal E-Sign law was the fact that individual states were moving forward with digital signature legislation in an inconsistent manner and the differing state requirements were becoming a barrier to electronic commerce rather than serving to promote it. Many of these state digital signature laws are at odds with the federal law and are effectively preempted by E-Sign. Whether or not this is the case with Alaska's digital signature law is a matter that must be reviewed, regardless of whether or not UETA is adopted in Alaska.

The principle behind UETA is to make sure that electronic transactions are as enforceable as paper transactions with manual signatures. UETA does not change any of the substantive rules of law that apply. It is a procedural law, not a substantive law, and does not change the substantive rules of contracts in any way. UETA simply authorizes electronic signatures and the replacement of writings with electronic records. Further, UETA is not a digital signature statute, but if a state has such a statute, UETA merely supports that law, and acts as a complement to it.

The Prefatory Note to UETA clarifies that it does not apply to all writings and signatures, but only to electronic records and signatures relating to a transaction. A transaction is defined as an action or set of actions occurring between two or more persons relating to the conduct of business, commercial and governmental affairs. Transactions that do not involve business, commercial or governmental purposes are not covered by UETA. Further, UETA does not apply to laws governing wills and trusts or to most of the Uniform Commercial Code. In adopting UETA, a state can also identify other state laws that would be excluded. States are given options within UETA of whether to adopt electronic filing systems (Sections 17 through 19 of the Act). See Discussion below.

The parties to a transaction must agree that it will be conducted electronically, but that "agreement" can be derived from the circumstances and other substantive law. For example, the circumstances surrounding a transaction and other law would determine whether an electronic signature has any effect, or whether a party actually intended to be a party to a particular document. The Act validates electronic records, signatures and

contracts and specifies standards for sending and receiving electronic records. For government entities, the Act also allows use of electronic records for retention purposes. While UETA serves to make electronic signatures the equivalent of manual signatures, it requires no specific technology to create a valid signature. The Act provides broad flexibility to the parties to determine the procedures for electronic transactions and the level of security that will be imposed.

### **State of the States**

As of August 2002, forty (40) states and the District of Columbia have adopted UETA, and it has been introduced in five additional states and the U.S. Virgin Islands. UETA has not yet been introduced in Alaska, and it is readily apparent that Alaska will be one of the last states to even consider it, if it can be introduced in the upcoming 23rd legislative session in January. Compare this activity with the last major uniform law that was submitted to the states for adoption - the Uniform Commercial Code Revised Article Nine. In that case, Alaska was one of the early states to introduce the measure and was the 18th state to adopt it. This gave the State Recorder's Office ample time to prepare for changes in its operations and for the nationwide targeted implementation date of July 2001. While there is no similar target date for UETA, the goal of achieving uniformity in electronic commerce will be lost if it is not enacted in all states.

### **The Impact of UETA For Alaska's Recording System**

The Recording System in Alaska is the repository for millions of records affecting real property throughout the state. In today's business world, with E-Sign and UETA laws, it is possible to complete a real estate transaction entirely without paper because these laws give an electronic transaction the same force and effect as a paper transaction. In Salt Lake County, Utah, which has been offering electronic recording for some time now, documents being recorded are available within seconds on the index for public review and access. Counties allowing electronic recording of real estate transactions have documented cost savings and increases in productivity.

The Mortgage Industry Standards Maintenance Organization (MISMO) and the Property Records Industry Joint Task Force are working together to standardize the electronic recording process nationwide. The backbone of this effort is uniformity throughout the states in terms of adopting UETA. The Property Records Industry Joint Task Force is a national standard setting public/private sector task force sponsored by the National Association of County Recorders, Election Officials and Clerks (NACRC) and the International Association of Clerks, Recorders, Election Officials and Treasurers (LACREOT). All of these organizations strongly support UETA in order to provide a uniform framework for electronic recording throughout the nation.

A high percentage of mortgage transactions in Alaska today involve out of state lenders. Standardizing the electronic recording process within the framework of a uniform law like UETA will benefit commerce in those states with a uniform approach. The handful

of states with non-uniform laws may find themselves at a disadvantage in the future world of electronic commerce and recordation.

Both E-Sign and UETA permit state and federal agencies to allow and control electronic filing but E-Sign does not provide any authority for establishing filing standards; this must be derived only from UETA or other state law. UETA encourages government filing offices to promote consistency and interoperability.

### Discussion

As noted above, UETA gives states the option (in Sections 17 through 19) of determining whether to adopt and implement electronic filing systems. [Note: The Revised Article Nine of the Uniform Commercial Code gave states this authorization with regard to UCC transactions. UETA's provision would expand this to allow states to implement electronic systems for recorded documents.]

The inclusion of Sections 17-19 in a state's adoption of UETA will, according to the commentary, provide authorization for intra-governmental uses of electronic media, and further will provide a broader authorization for the State to develop systems and procedures for the use of electronic media in its relations with non-governmental entities and persons. While the impact of these provisions is beneficial to the state's recording system in general, it will also benefit other agencies whose work involves electronic transactions of any kind, including internet transactions. Impact on other agencies is outside of the scope of this paper.

Section 17 authorizes state agencies to use electronic records and electronic signatures generally for intra-governmental purposes, and to convert written records and manual signatures to electronic records and electronic signatures. It also authorizes the destruction of written records after conversion to electronic form. This provision impacts the state's retention requirements and provisions.

Section 18 authorizes state agencies to send and receive electronic records and signatures in dealing with non-governmental persons.

Section 19 is a directive to agencies to provide consistent applications and promote interoperability when developing standards for electronic systems.

Together Sections 17 through 19 provide broader authorization for a state to develop electronic systems and processes in its interactions with non-governmental entities and persons. Land recording systems have historically evolved around written records and processes based on paper documents. UETA's fundamental premise is that electronic media should be treated as the equal of written media and it recognizes and effectuates records and signatures that are generated electronically. This is the future world of recording systems in America.

## Recommendation

The State Recorder's Office and the Department of Natural Resources strongly recommend introduction and adoption of UETA in Alaska at the earliest possible time. In order to promote commerce in Alaska and ensure that the state's recording system is in a position to take advantage of electronic recording capabilities in the future, it is also recommended that the state adopt the optional provisions for electronic filing systems as contained in Sections 17 through 19. The commentary to UETA indicates that inclusion of 17-19 will not have a detrimental import on the uniformity of adoption of the Act, so long as Section 1-16 are adopted uniformly as presented. It is highly important to maintain the uniformity of this Act, so it is further recommended that Sections 1-16 be adopted without change.

## Conclusion

Alaska's recording system has made many significant advances in the past two years, including a premiere role as the first state in the nation to image all incoming recorded documents on a statewide basis, as well as the first state to make statewide document images available for public access in any recording office in the state. Other U.S. recording systems are county-based and unable to achieve the statewide coverage that our image base provides. Our web site contains ten different search options for researching nearly thirty years of index records and is accessible by the public on a 24/7 basis. No other state can make that claim. The web site garners more than 400,000 hits per month and is the most heavily accessed site in the Department of Natural Resources. A number of the title companies, financial institutions and other larger users of recording services have discussed forming a task force to explore electronic recording with a eye toward its implementation in Alaska. Because so many users of the recording system are out of state lenders, electronic recording processes will put Alaska on a par with the Lower 48 states in terms of instantaneous recording operations. This will serve to facilitate commerce.

Ultimate benefits of electronic recording systems include reduced recording times, reduced costs to all parties, improved productivity at recording offices and for major users, standardized processes and technologies, and improved customer service. UETA is the framework for achieving these benefits in Alaska's land recording system.

The State Recorder's Office appeals to all members of the legislature, all government agencies, and all members of the real estate recording industry to consider and support the passage of UETA in this state at the earliest possible time. In today's global economy with increasingly technological advances, a united effort for more efficient and effective land recording systems should be of paramount concern. UETA is the basic framework that will bring Alaska in synch with the vast majority of all other states vis-à-vis electronic recordation.

A single unified approach to electronic transactions is desirable from many points of view. While this white paper only addresses the view from one agency perspective - that of the State Recorder's Office - other agencies will also benefit from the passage of UETA. Increasingly, government work and services are being performed electronically and UETA is the means by which consistent procedures for such transactions can be assured. Failure to enact UETA could be detrimental to fostering electronic commerce in Alaska.

LAYING FOUNDATIONS  
FOR ELECTRONIC COMMERCE

THE UNIFORM ELECTRONIC TRANSACTIONS ACT

©Patricia Brumfield Fry  
Professor of Law  
Chair, Uniform Electronic Transactions Act  
Drafting Committee

1. Electronic Commerce and the Law. Electronic commerce refers to the new world of economic activity created by advances in information technology and communication. This economy is generating opportunities across all sectors; it is a source of new jobs and new wealth, and is dramatically reducing the cost of communication, information and transactions.

While electronic commerce has existed for many years, with the earliest uses of EDI dating back into the 1970s, the public emergence of the Internet and the World Wide Web have revolutionized this young and vibrant economic sector. On all levels of government in the United States, efforts are underway to take advantage of these economic opportunities and realize the efficiencies made possible by the technologies.

Taken literally, electronic commerce ranges from old-fashioned telephone conversations, through the use of facsimiles, electronic mail and electronic data interchange, to establishing a presence on and conducting retail transactions

through the use of Internet websites. In each manifestation, electronic commerce presents challenges for the legal system, but these challenges are brought to their fullest, most obvious manifestations with commercial transactions based on Internet websites.

Electronic commerce poses a number of challenges for the law. The first and most fundamental challenge is presented by the simple fact that transactions may be memorialized on electronic communications, rather than solely on paper. It is no longer accurate to say that paper is required in order to assure that there will be a record of a transaction, in order to assure that a party receives a copy of terms and conditions, in order to assure that notice is given to a counter party. It is not accurate to say that paper is required in order to assure that someone has "signed" a communication. Yet most of our laws were written during an era when paper was the only realistic medium for communicating and storing information and when our mental constructs for such concepts as notice, communication, sending and delivering information, recording the terms of final agreements, etc. depended on paper.

The first step toward laying a legal foundation for electronic commerce is to clear away the barriers to electronic commerce. Each state law or regulation, each local or national law or regulation that requires a writing or signature, delivery or production of an original record impairs electronic commerce. The efficiencies are lost if the law requires the production of paper copies. A recent study on behalf of the Federal Reserve Bank of Boston discovered more than