

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11199 SENATE JUDICIARY

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



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House Judiciary Committee

Sectional Analysis CSHB 414 (JUD)

"An Act relating to filling a vacancy in the office of United States senator, and to the definition of 'political party'"

Section 1: This bill section is an intent section stating that it is the desire of this legislature that the provisions of this bill which are substantially similar to those proposed in the initiative, Sections 2-8, and 10 of this bill, not be repealed for at least two years after the Act's effective date.

Section 2: This bill section adds "United States senator" to the language that currently governs special elections held to replace vacancies in the office of U.S. representative. This bill section further clarifies the language controlling when a special election is not to be called, when a vacancy occurs 60 days or less before a primary election in a general election year.

Section 3: This bill section allows for the governor to temporarily appoint a qualified individual to fill a vacant U.S. Senate seat until the results of the special election are certified. This section will ensure that Alaska is not unrepresented in such an important seat while awaiting the special election results.

Section 4: This bill section adds a new statutory section that specifies that a U.S. senator elected in a special election will hold office for the remainder of the unexpired term of the U.S. senator who previously held the U.S. Senate seat. This section further states when a specially elected U.S. senator will take office.

Section 5: This bill section adds "United States senator" to the language that currently governs political party petitions submitted on behalf of candidates for U.S. representatives in special elections.

Section 6: This bill section adds "United States senator" to the language that currently governs the provisions for the conduct of special elections for U.S. representative, and further enumerates what these provisions are, deleting a reference to a statutory section relating to special elections for U.S. Senator that had the effect of providing a list of such provisions. This latter statutory section is deleted by Section 10 of the bill.

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Section 7: This bill section makes a conforming amendment that specifically enumerates the provisions that are to apply to special elections for governor and lieutenant governor, deleting a reference to a statutory section relating to special elections for U.S. senator that had the effect of providing a list of such provisions. This latter statutory section is deleted by Section 10 of the bill.

Section 8: This bill section makes a conforming amendment that specifically enumerates the provisions that are to apply to special elections for state senators, deleting a reference to a statutory section relating to special elections for U.S. senator that had the effect of providing a list of such provisions. This latter statutory section is deleted by Section 10 of the bill.

Section 9: This bill section expands the definition of "political party" to include results of statewide elections for U.S. senator or U.S. representative as secondary and tertiary criteria, respectively, that may enable an organized group of voters that represents a political program to qualify as a political party.

Section 10: This bill section deletes seven statutory sections from Chapter 40 of the Alaska Elections Act, in order to remove references from Alaska Statutes made unnecessary by the bill. These include: a reference to appointment of a person to fill a vacancy in the U.S. Senate; a reference to the timing of a special primary election made redundant by the bill; a reference to the proclamation calling a special election made inconsistent and unnecessary by the bill; a reference to the term to be served by the person elected in a special election made redundant by the bill; provisions pertaining to declaration of candidacy and date of nomination for a special election made redundant by the bill; provisions for the conduct of a special election made redundant by the bill; and, a definition of special primary election made unnecessary by the bill.

Alaska State Legislature



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Representative Lesil McGuire
Chair, Judiciary Committee

EXPLANATION OF CHANGES SCS CSHB 414 (STA)

"An Act relating to filling a vacancy in the office of United States senator, and to the definition of 'political party.'"

From CSHB 414 (JUD)

DELETE (Page 3 Line 31 to Page 4 Line 10)

- (A) [EITHER] nominated a candidate for governor who received at least three percent of the total votes cast for governor at the preceding general election **at which a governor was elected;**
- (B) nominated a candidate for United States senator who received at least three percent of the total votes cast for United States senator at the preceding general election or at the most recent general election at which a governor was elected;
- (C) nominated a candidate for United States representative who received at least three percent of the total votes cast for United States representative at the preceding general election or at the most recent general election at which a governor was elected; or

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 414(STA)
 (H) Publish Date: 2/12/04

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
 Title An Act relating to filling the vacancy in the office RDU Elections
of United States senator, and to the definition of 'political party'. Component Elections
 Sponsor House Judiciary
 Requester House State Affairs Component No. 21

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on the division, however, if a special election were required, the division would need to seek a special appropriation for that purpose. ** During the 1999 Legislative Session HB SCS CSHB 231 a GF appropriation of 939.0 was allocated to conduct a special election.

Prepared by: Leonard G. Jones Phone 465-3051
 Division Division of Elections Date/Time 2/2/04 9:45 AM
 Approved by: Laura A. Glaiser, Director Date 2/2/2004
 Agency Office of the Lt. Governor, Division of Elections

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SCS CSHB 414(STA)
(S) Publish Date: 3/22/04

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
Title An Act relating to filling the vacancy in the office RDU Elections
of United States senator, and to the definition of 'political party'. Component Elections
Sponsor House Judiciary
Requester House Judiciary Component No. 21

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
This bill has no fiscal impact on the Division. However, if a special election is required in the future, the Division would need to seek a special appropriation for that purpose.

Prepared by: Leonard G. Jones Phone 465-3051
Division: Division of Elections Date/Time 2/18/04 11:41 AM
Approved by: Laura A. Caiser, Director Date 2/18/2004
Agency: Office of the Lt. Governor, Division of Elections

Source: [Legal](#) > [Area of Law - By Topic](#) > [Litigation](#) > [Statutes & Legislative Materials](#) > **USCS - United States Code Service: Code, Const, Rules, Conventions & Public Laws**

Terms: 17th amendment ([Edit Search](#))

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USCS Const. Amend. 17

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CONSTITUTION OF THE UNITED STATES OF AMERICA
AMENDMENTS
AMENDMENT 17

◆ [Review Court Orders which may amend this Rule.](#)

USCS Const. Amend. 17 (2003)

Election of Senators.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The **Seventeenth Amendment** of the Constitution of the United States was proposed to the legislatures of the several states by the Sixty-second Congress on May 13, 1912, and was declared, in a proclamation of the Secretary of State, dated May 31, 1913, to have been ratified by the legislatures of the following states: Arizona, June 3, 1912; Arkansas, February 11, 1913; California, January 28, 1913; Colorado, February 5, 1913; Connecticut, April 8, 1913; Idaho, January 31, 1913; Illinois, February 13, 1913; Indiana, February 19, 1913; Iowa, January 30, 1913; Kansas, January 17, 1913; Maine, February 11, 1913; Massachusetts, May 22, 1912; Michigan, January 28, 1913; Minnesota, June 10, 1912; Missouri, March 7, 1913; Montana, January 30, 1913; Nebraska, March 14, 1913; Nevada, February 6, 1913; New Hampshire, February 19, 1913; New Jersey, March 17, 1913; New Mexico, March 13, 1913; New York, January 15, 1913; North Carolina, January 25, 1913; North Dakota, February 14, 1913; Ohio, February 25, 1913; Oklahoma, February 24, 1913; Oregon, January 23, 1913; Pennsylvania, April 2, 1913; South Dakota, February 19, 1913; Tennessee, April 1, 1913; Texas, February 7, 1913; Vermont, February 19, 1913; Virginia, February 4, 1913; Washington, February 7, 1913; West Wisconsin, February 18, 1913; and Wyoming, February 8, 1913.

Ratification was completed on April 8, 1913.

The **amendment** was subsequently ratified by Louisiana on June 11, 1914.

The amendment was rejected, and not subsequently ratified, by Utah on February 26, 1913.

NOTES:

RESEARCH GUIDE

Am Jur:

- 16A Am Jur 2d, Constitutional Law § 402.
- 25 Am Jur 2d, Elections § 103.
- 26 Am Jur 2d, Elections § 239.
- 77 Am Jur 2d, United States § 9.

Law Review Articles:

Choper. The Scope of National Power Vis-a-Vis the States: The Dispensability of Judicial Review. 86 Yale L J 1552.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Primary elections
3. Special elections

1. Generally

Requirement that United States senators from each state be "elected by the people thereof" does not require that candidate receive majority of votes cast at general election in order to be elected. Phillips v Rockefeller (1970, CA2 NY) 435 F2d 976.

Despite presumption of enfranchisement, there is no per se rule against disenfranchisement; rather Supreme Court has recognized that in special interest elections government can limit franchise to those who have required special interest. Duncan v Coffee County (1995, CA6 Tenn) 69 F3d 88, 1995 FED App 321P.

Word "qualifications" in constitutional provisions concerning election of members of the House of Representatives and Senators means natural endowments or requirements which fit person for place, office, or employment, or as elector; restrictions on right of voter to vote because of his failure to register or to vote in particular manner at certain time and place are limitations on right, and not on qualification to exercise it. Commonwealth ex rel. Dummit v O'Connell (1944) 298 Ky 44, 181 SW2d 691.

2. Primary elections

Political party's rule permitting registered voters not affiliated with any party to vote in that party's primary election for U.S. House of Representatives and Senate while remaining silent as to voting in that party's primary elections for state legislature, did not violate federal constitution under qualifications of federal congressional electors clause (Art I, § 2, Cl 1) and **Seventeenth Amendment**, since rule did not disenfranchise any voter in federal congressional election who was qualified to vote in primary or general election for more numerous house of that state's legislature, and **Seventeenth Amendment** and qualification of congressional electors clause do not require perfect symmetry of qualifications of voters in state and federal legislative elections. Tashjian v Republican Party (1986) 479 US 208, 93 L Ed 2d 514, 107 S Ct 544.

Seventeenth Amendment does not require state to hold primary for nominations to fill senatorial vacancy. Trinsey v Pennsylvania (1991, CA3 Pa) 941 F2d 224, cert den (1991) 502 US 1014, 116 L Ed 2d 750, 112 S Ct 658.

State executive committee of recognized political party may call special primary election for nomination of its candidate or candidates to be voted for in ensuing general election when, by reason of death, resignation, or otherwise, office of United States Senator becomes vacant at time when it is too late for candidate to qualify to be voted for in general primary elections held biennially, and when there is sufficient time intervening between happening of condition creating vacancy and date of ensuing general election in which to call and hold such special primary election; when such special primary election is called by state executive committee of recognized political party, it becomes duty of state and county officers to function in connection

with such special primary election in same manner and to same extent that they would function in connection with general primary election. State ex rel. Andrews v Gray (1936) 125 Fla 1, 169 So 501.

3. Special elections

Election directed to be held by writ of election issued by governor of state to fill vacancy in office of United States Senator, which election was to be held on same day as primary election, was special election at which absent voters ballots could not be cast. State ex rel. Lanier v Hall (1946) 74 ND 426, 23 NW2d 44 (superseded by statute on other grounds as stated in State ex rel. Kusler v Sinner (1992, ND) 491 NW2d 382).

Under **Seventeenth Amendment**, governor of state would be authorized to issue writ of election to fill vacancy caused by death of senator; such writ may be defined as written order from governor directed to proper authority commanding it to hold state-wide election on day certain, as provided by law, for purpose of electing senator for unexpired term of deceased senator. Advisory Opinion to Governor (1946) 157 Fla 885, 27 So 2d 409.

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Terms: 17th amendment ([Edit Search](#))

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LEGISLATIVE RESEARCH REPORT

FEBRUARY 20, 2002



REPORT NUMBER 02.133

POLITICAL PARTY AFFILIATION OF APPOINTEES TO THE U.S. SENATE—LEGISLATIVE HISTORY

BY PATRICIA YOUNG, MANAGER

You wished to know the legislative history behind the requirement that, when filling a vacancy in the office of U.S. Senator, the governor must appoint an individual from the political party of the person who vacated the office.

As originally passed in 1960, the law in Alaska specified as follows in regard to the qualifications of appointees to the office of U.S. Senator:

The appointee shall be a member of the same political party as that which nominated the predecessor in office. If the predecessor in office was not nominated by a political party, the governor may appoint any qualified person.¹

The provision remained unchanged until 1967 when lawmakers repealed the section. The act became law without Governor Hickel's signature and went into effect in April of 1967.²

In December of 1968, Senator E.L. (Bob) Bartlett, a Democrat, died in office. Because at that time the law was silent on the matter of political party affiliation of appointees, Republican Governor Hickel was able to appoint Ted Stevens, also a Republican, to fill the vacancy left by the death of Senator Bartlett. As you know, Senator Stevens still holds that seat.

In 1998, Alaska lawmakers amended AS 15.40.010, to require that the governor, within 30 days of the date of the vacancy, fill such vacancy by appointing an individual who, if the predecessor

¹ Codified at AS 15.40.020, the provision on qualification of appointee passed as Sec. 8.02, ch 83 SLA 1960.

² Ch 139 SLA 1967.

was nominated by a political party, has been for at least the previous six months a member of the same political party as the predecessor in office.³

As you may know, governors typically make temporary appointments to fill U.S. Senate vacancies. Alaska is one of a small minority of states, however, in which the governor is required to appoint an individual of the same political party as the predecessor in office.⁴

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

³ Chapter 30 SLA 1998 also specified that the governor's appointment is temporary until the vacancy is filled permanently by election, and that the vacancy must be permanently filled by special election if the predecessor's term would expire more than 30 months after the date of the vacancy. The date of the special primary election would be the date of the first primary election held more than 30 days after the vacancy; the date of the special general election would be the date of the first general election held after such primary election.

⁴ The National Conference of State Legislatures (NCSL) compiled information on filling vacancies in the U.S. Senate from the *Senate Election Law Guidebook 2000: A Compilation of Senate Campaign Information Including Federal and State Laws Governing Election to the United States Senate*, a publication of the Committee on Rules and Administration, U.S. Senate (106th Congress, Revised to January 1, 2000; November 19, 1999). According to the NCSL compilation, at that time only Oregon and Wisconsin did not permit a governor to make an appointment filling such a vacancy. Also at that time, Arizona, Hawaii, Utah, and Wyoming were the only states in which the governor was required to appoint an individual from the same political party as the predecessor. The Guidebook is available in its entirety on-line at http://nwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_documents&docid=f:sd014.106. We include as Attachment A the NCSL compilation of the laws regarding vacancies.

Attachment A

National Conference of State Legislatures, Compilation of Information on Laws
Governing Vacancies in the U.S. Senate, from
*Senate Election Law Guidebook 2000: A Compilation of Senate Campaign
Information Including Federal and State Laws Governing Election to the United
States Senate*, a publication of the Committee on Rules and Administration, U.S.
Senate (106th Congress, Revised to January 1, 2000; November 19, 1999)



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

State Laws Governing Vacancies in the U.S. Senate

The process of filling vacancies in the U.S. Senate is governed by both state and federal law. The U.S. Constitution stipulates that states must hold a special election to fill a senate vacancy, and permits state legislatures to determine the timing of such special elections. It also permits a state legislature to empower the governor to make a temporary appointment to fill the vacancy until a special election is held. (See Appendix A)

Most state legislatures have granted governors the power to make such interim appointments. Oregon and Wisconsin are the only two states that do not permit the governor to make an appointment, and require that the senate seat remain vacant until filled at a special election.

In most states, the governor's temporary appointee remains in office until the next regularly-scheduled general election, when a new senator is elected. Even though this election coincides with a regularly-scheduled general election, it is deemed a special election because the person elected will not serve a full term as U.S. Senator. Rather, that person serves out the unexpired term of the vacated office.

In very few states, the governor's appointee fills the unexpired term of the office vacated.

(See Appendices B and C for details of state laws)

APPENDIX A

Text of Federal Laws Governing U.S. Senate Vacancies

U.S. Constitution, Article I, Section 3

...if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

U.S. Constitution, 17th Amendment

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

2 U.S.C. Sec. 8. Vacancies

The time for holding elections in any State, district, or territory for a Representative or Delegate to fill a vacancy, whether such vacancy is caused by a failure to elect at the time prescribed by law, or by the death, resignation, or incapacity of a person elected, may be prescribed by the laws of the several States and territories respectively.

APPENDIX B

Text of State Laws Governing U.S. Senate Vacancies

ALABAMA

The Governor may make temporary appointment of a Senator in the Senate of the Congress of the United States from Alabama, whenever a vacancy exists in that office, the appointee to hold office until his successor is elected and qualified (Sec. 36-9-7).

Whenever a vacancy occurs in the office of Senator of and from the State of Alabama in the Senate of the United States more than 4 months before a general election, the Governor of Alabama shall forthwith order an election to be held by the qualified electors of the State to elect a Senator of and from the State of Alabama to the United States Senate for the unexpired term. If the vacancy occurs within 4 months of but more than 60 days before a general election, the vacancy shall be filled at that election. If the vacancy occurs within 60 days before a general election, the Governor shall order a special election to be held on the first Tuesday after the lapse of 60 days from and after the day on which the vacancy is known to the Governor, and the Senator elected at such special election shall hold office for the unexpired term (Sec. 36-9-8).

The Governor must give notice of a special election to elect a Senator for an unexpired term in the same manner and for the same time as is prescribed for special elections to fill a vacancy in the office of Members of the House of Representatives (Sec. 36-9-9), i.e., by proclamation (Sec. 17-18-4). For special election procedures, see Sec. Sec. 17-18-1-17-18-7.

ALASKA

When a vacancy occurs in the office of a United States Senator, the Governor, within 30 days, shall appoint a qualified person of the same political party of the predecessor to fill the vacancy. However, if the remainder of the term of the predecessor in the office will expire more than 30 calendar months after the vacancy, the vacancy will be filled by a special primary and special general election. (Sec. 15.40.010).

The special primary election shall be held on the date of the first primary election that is held more than 30 days after the vacancy. The special election to fill the vacancy shall be held on the date of the first general election after the first primary election which is held more than 30 days after the vacancy occurs (Sec. 15.40.050).

The Governor shall issue the proclamation calling the special election at least 80 days before the election (Sec. 15.40.060).

At the special election a United States Senator shall be elected to fill the remainder of the unexpired term (Sec. 15.40.070).

ARIZONA

When a vacancy occurs in the office of United States Senator by reason of death or resignation, or from any other cause, the vacancy shall be filled at the next general election. At such election the person elected shall fill the unexpired term of the vacated office. In the interim, the governor shall appoint a person to fill the vacancy. That appointee shall be of the same political party as the person vacating the office and shall serve until the person elected at the next general election is qualified and assumes office (Sec. 16-222).

ARKANSAS

A vacancy in the United States Senate from Arkansas shall be filled by the governor by temporary appointment until the people fill the vacancy at the next ensuing general election for state and county officers to be held more than 60 days and less than 12 months after such vacancy shall occur; provided that if no general election for state and county officers shall occur within 12 months after such vacancy, the governor shall call a special election to be held not less than 60 days and not more than 120 days after the vacancy shall occur (Sec. 7-8-102).

CALIFORNIA

If a vacancy occurs in the representation of this State in the Senate of the United States, the Governor may appoint and commission an elector of this State, who possesses the qualifications for the office, to fill the vacancy until his successor is elected and qualifies and is admitted to his seat by the United States Senate. However, whenever a vacancy occurs within term fixed by law to expire on the third day of January following the next general election, the person so appointed shall hold office for the remainder of the unexpired term unless such vacancy is filled at a special election held prior to such general election, in which case the person elected at such special election shall hold office for the remainder of the unexpired term. An election to fill a vacancy in the term of a United States Senator shall be held at the general election next succeeding the occurrence of the vacancy or at any special election

(Sec. 10720).

The special election shall be proclaimed within 14 calendar days after the occurrence of the vacancy (Sec. 10700). When the vacancy occurs in a congressional office after the close of the nomination period in the final year of the term of office, the Governor may decline to issue an election proclamation at his discretion (Sec. 10701).

COLORADO

(1) Whenever a vacancy happens in the office of United States Senator from this State, the Governor shall make a temporary appointment to fill such vacancy until the same is filled by election.

(2) When a vacancy happens, the Governor shall direct the Secretary of State to include in the general election notice for the next general election a notice of the filling of such vacancy. The Secretary of State shall give notice accordingly. At such election the vacancy shall be filled for the unexpired term. If for any reason, no United States Senator is elected at the next general election, the person temporarily appointed by the Governor shall hold the office until a United States Senator is elected at a succeeding general election (Sec. 1-12-201).

CONNECTICUT

In case of a vacancy in the office of Senator in Congress, the Governor is empowered to fill such vacancy by appointment. If such vacancy occurs 60 or more days prior to a state election, the appointee shall serve until the third day of January following such election, and at such election there shall be elected a Senator in Congress to serve for the remaining portion, if any, of the term vacated. If such vacancy occurs within less than 60 days of a state election and the term vacated does not expire on the third day of January following such election, the appointee shall serve until the third day of January following the next such election but one, and at such next election but one there shall be elected a Senator in Congress to serve for the remaining portion, if any, of the term vacated. If such vacancy occurs within less than 60 days of a state election and the term vacated expires on the third day of January following, the appointee shall serve until such third day of January (Sec. 9-211).

DELAWARE

When a vacancy occurs in the office of the United States Senate, it shall be filled for the unexpired term at the next general election. The Governor may make a temporary appointment from among the qualified electors of the State until the vacancy is filled by the next general election (Sec. 7321).

FLORIDA

If a vacancy happens in the representation of the State in the United States Senate, the Governor shall issue a writ of election to fill such vacancy at the next general election; and the Governor may make a temporary appointment until the vacancy is filled by election (Sec. 100.161).

GEORGIA

In the event of a vacancy, it shall be filled by special election at the next November election, occurring at least 40 days after the occurrence of such vacancy, and until such election, the Governor may make a temporary appointment to fill such vacancy (Sec. 21-2-542).

HAWAII

When a vacancy occurs in the office of a United States Senator, the vacancy shall be filled for the unexpired term at the following state general election, provided that the vacancy occurs not later than 4:30 p.m. on the 60th day prior to the date of the primary for nominating candidates to be voted for at the election; otherwise at the state general election next following. The chief election officer shall issue a proclamation designating the election for filling the vacancy. Pending the election, the governor shall make a temporary appointment to fill the vacancy and the person so appointed shall serve until the election and qualification of the person duly elected to fill the vacancy and shall be a registered member of the same political party as the Senator causing the vacancy. All candidates for the unexpired term shall be nominated and elected in accordance with this title (Sec. 17-1).

IDAHO

Whenever any vacancy shall occur in the office of United States Senator from the State of Idaho by death, resignation or otherwise, the governor shall have the power and is hereby authorized and empowered to fill such vacancy by appointment, and the person so appointed shall hold office until such time as a United States Senator is regularly elected to fill such vacancy at the next succeeding general election, and qualifies by virtue of such election; provided, however, that in case a vacancy occurs in the position of United States Senator from the state of Idaho within 30 days of any general election, no election for United States Senator to fill said vacancy shall be held at such general election (Sec. 59-910).

ILLINOIS

When a vacancy shall occur in the office of United States Senator from Illinois, the Governor shall make temporary appointment to fill such vacancy until the next election of representatives in Congress, at which time such vacancy shall be filled by election, and the senator so elected shall take office as soon thereafter as he shall receive his certificate of election (Sec. 5/25-8).

INDIANA

- (a) A vacancy that occurs, other than by resignation, in the United States Senate shall be certified to the governor by the secretary of state.
- (b) The governor shall immediately fill a vacancy in the United States Senate by appointing a person possessing the qualifications required under Article 1, Section 3, Clause 3 of the Constitution of the United States. The person appointed holds office until the next general election, when the vacancy shall be filled by the election of a Senator in a special election to hold office for the unexpired term.
- (c) If a vacancy in the United States Senate occurs after the last day on which notice of the special election can be published under IC 3-10-8-4, the person appointed under subsection (b) holds office until the vacancy is filled in a special election held at the time of the next general election for which notice can be published under IC 3-10-8-4 (Sec. 3-13-3-1).

IOWA

In the office of United States Senator, when the vacancy occurs when the Senate of the United States is in session or when such Senate will convene prior to the next general election, it shall be filled by the Governor. Such appointment shall be for the period until the vacancy is filled by election pursuant to law (Sec. 69.13, Supp.). If a vacancy occurs in the office of Senator in the Congress of the United States 89 or more days prior to a general election, and the unexpired term in which the vacancy exists has more than 70 days to run after the date of that general election, the vacancy shall be filled for the balance of the unexpired term at that general election and the person elected to fill the vacancy shall assume office as soon as a certificate of election has been issued and the person qualified (Sec. 69.13).

KANSAS

When a vacancy shall occur in the office of United States Senator from this state, the governor shall make a temporary appointment to fill such vacancy until the next election of representatives in Congress, at which time such vacancy shall be filled by election, and the senator so elected shall take office as soon thereafter as he shall receive his certificate of election (Sec. 25-318).

KENTUCKY

The Governor shall fill vacancies in the office of United States Senator by appointment until the next regular election at which members of the lower branch of Congress are elected, and shall, under the Seal of the Commonwealth, certify the appointment to the President of the Senate of the United States. The certificate of appointment shall be countersigned by the Secretary of State (Sec. 63.200).

LOUISIANA

The Governor may fill any vacancy in the office of United States Senator by appointment; however, if the United States Senate is in session when the vacancy occurs, the Governor, within ten days after receiving official notice of the vacancy, shall appoint a Senator to fill the vacancy. If a vacancy occurs in the office of United States Senator and the unexpired term is more than one year, any appointment to fill the vacancy shall be temporary, and any Senator so appointed shall serve until his successor is elected at a special election and takes office, and the Governor, within ten days after receiving official notice of the vacancy, shall issue his proclamation for a special election to fill the vacancy for the unexpired term. The date of the special election shall be established by the

Governor in accordance with the provisions of R.S. 18:402(E). The election shall be conducted and the returns shall be certified as in regular elections for United States Senator. (Sec. 1278(A), (B)).

MAINE

Within a reasonable time after a vacancy occurs, the Governor shall appoint a qualified person to fill the vacancy until his successor is elected and qualified. If the vacancy occurs 60 days or more before a regular primary election, nominees must be chosen at the primary and a successor elected for the remainder of the term at the general election. If the vacancy occurs less than 60 days before a regular primary election, nominees must be chosen at the next regular primary following the one in question, and a successor elected for the remainder of the term at the general election (Sec. 391).

MARYLAND

In the event of a vacancy in said office of Senator, however said vacancy may arise, the Governor of the State shall make a temporary appointment of a Senator who shall serve until the people shall fill such vacancy by nomination and election (Sec. 21-1(c)).

Special election.—It shall be the duty of the Governor of the State, within 10 days after such vacancy shall have been made or becomes known to him, to issue a proclamation accompanied by a writ of election declaring and providing that at the next ensuing primary election held for the nomination of candidates for the House of Representatives, candidates for said unexpired portion of the term of said office of Senator in which such vacancy has occurred shall be nominated in the manner aforesaid. The election of a Senator to fill such unexpired portion of said term shall take place at the next ensuing general congressional election (Sec. 21-1(d)).

MASSACHUSETTS

The vacancy shall be filled for the unexpired term at the following biennial state election provided said vacancy occurs not less than seventy days prior to the date of the primaries for nominating candidates to be voted for at such election, otherwise at the biennial state election next following. Pending such election the governor shall make a temporary appointment to fill the vacancy, and the person so appointed shall serve until the election and qualification of the person duly elected to fill such vacancy (ch. 54, Sec. 139).

MICHIGAN

Whenever a vacancy shall occur in the office of United States Senator, the Governor shall appoint, to fill the vacancy, some suitable person having the necessary qualifications for Senator. The person so appointed shall hold office from the time of his appointment and qualification until the first day of December following the next general November election which occurs more than one hundred twenty days after such vacancy happens. At such general November election, a United States Senator to fill such vacancy shall be elected and the person so elected shall hold office from the first day of December following such election for the balance of the unexpired term of the Senator whose vacancy is filled (Sec. 168.105).

MINNESOTA

Every vacancy shall be filled for the remainder of the term by a special election, except that no special election shall be held in the year before the term expires. The special election shall be held at the next November election if the vacancy occurs at least 6 weeks before the regular primary preceding that election. If the vacancy occurs less than 6 weeks before the regular primary preceding the next November election, the special election shall be held at the second November election after the vacancy occurs. The Governor may make a temporary appointment to fill any vacancy until the next special or regular election (Sec. 204D.28).

MISSISSIPPI

If a vacancy shall occur in the office of United States Senator from Mississippi by death, resignation, or otherwise, the Governor shall, within ten days receiving official notice of such vacancy, issue his proclamation for an election to be held in the State to elect a Senator to fill such unexpired term as may remain, provided the unexpired term is more than 12 months, and election shall be held within 90 days from the time the proclamation is issued and the returns of such election shall be certified to the Governor in the manner set out for regular elections unless the vacancy occurs in a year in which there shall be held a general state or congressional election, in which event the Governor's proclamation shall designate the general election day as the time for electing a Senator, and the vacancy shall be filled by appointment as hereinafter provided (Ser. 23-15-855).

In case of a vacancy, the Governor may appoint a Senator to fill such vacancy temporarily, and if the United States Senate is in session at the time the vacancy occurs, the Governor shall appoint a Senator within 10 days after receiving official notice thereof, and the Senator so appointed shall serve until his successor is elected and

commissioned; provided, that such unexpired term as he may be appointed to fill shall be for a longer time than 1 year, but if for a shorter time than one year, he shall serve for the full time of the unexpired term and no special election shall be called by the Governor, but his successor shall be elected at the regular election (Sec. 23-15-855).

MISSOURI

Whenever a vacancy in the office of Senator of the United States occurs, the Governor shall appoint a person to fill such vacancy who shall continue in office until a successor shall have been duly elected and qualified according to law (Sec. 105.040).

MONTANA

If a vacancy occurs, an election to fill the vacancy shall be held at the next general election. If the election is invalid or not held at that time, the election to fill the vacancy shall be held at the next succeeding general election. The Governor may make a temporary appointment to fill the vacancy until an election is held (Sec. 13-25-202).

NEBRASKA

When a vacancy occurs in the representation of the State of Nebraska in the Senate of the United States, the office shall be filled by the Governor. The Governor shall appoint a suitable person possessing the qualifications necessary for senator to fill such vacancy. If the vacancy occurs within 60 days of a statewide general election and if the term vacated expires on the following January 3, the appointee shall serve until the following January 3, and if the term extends beyond the following January 3, the appointee shall serve until January 3 following the second statewide general election next succeeding his or her appointment. If the vacancy occurs more than 60 days before a statewide general election, the appointee shall serve until January 3 following the statewide general election and at the statewide general election a senator shall be elected to serve the unexpired term if any (Sec. 32-565).

NEVADA

If a vacancy occurs due to death, resignation or otherwise, the Governor may appoint some qualified person to fill the vacancy, who shall hold office until the next general election and until his successor shall be elected and seated (Sec. 304.030).

NEW HAMPSHIRE

If a vacancy occurs, the Governor shall fill the vacancy by temporary appointment until it is filled at the next general election (Sec. 661:5).

NEW JERSEY

If a vacancy occurs, the Governor shall issue a writ of election to fill the same unless the term of service of the person whose office shall become vacant will expire within 6 months next after the happening of the vacancy (Sec. 19:27-4). If the vacancy shall happen within 64 days next preceding the primary prior to the general election, it shall be filled by election at the second succeeding election unless the Governor shall deem it advisable to call a special election therefor (Sec. 19:27-6).

The Governor may make a temporary appointment of a Senator whenever a vacancy shall occur by reason of any cause other than the expiration of the term; and such appointee shall serve as such Senator until a special election or general election shall have been held pursuant to law and the board of state canvassers can deliver to his successor a certificate of election (Sec. 19:3-26).

NEW MEXICO

If a vacancy occurs, the Governor shall make a temporary appointment to fill the vacancy until such time as an election is held to fill the vacancy for the unexpired term. The election to fill the vacancy for the unexpired term shall be held at the next general election occurring not less than thirty (30) days subsequent to the happening of such vacancy. If the vacancy occurs within thirty (30) days next preceding a general election, the person appointed by the Governor to fill the vacancy shall hold office until the next general election occurring more than thirty (30) days subsequent to the happening of the vacancy unless the term of office for such Senator shall sooner expire. Candidates to fill a vacancy in the office of United States Senator for an unexpired term shall be nominated and elected in the same manner as candidates are nominated and elected for the full term (Sec. 1-15-14).

NEW YORK

At the general election next preceding the expiration of the term of office of a United States Senator from this state, a United States Senator shall be elected by the people for a full term of 6 years. Elections to fill a vacancy for an unexpired term shall be held as provided in the public officers law (Sec. 12-200).

If a vacancy occurs in any even-numbered calendar year on or after the 59th day prior to an annual primary election, the Governor shall make a temporary appointment to fill such vacancy until the third day of January in the year following the next even-numbered calendar year. If such vacancy occurs in any even-numbered calendar year on or before the 60th day prior to an annual primary election, the Governor shall make a temporary appointment to fill such vacancy until the third day of January in the next calendar year. If a vacancy occurs in any odd-numbered year, the Governor shall make a temporary appointment to fill such vacancy until the third day of January in the next odd-numbered calendar year. Such an appointment shall be evidenced by a certificate of the Governor which shall be filed in the Office of the State Board of Elections along with a writ of election (McKinney's Public Officers Law, Sec. 42(4-a)).

NORTH CAROLINA

Whenever there shall be a vacancy in the office of United States Senator from this State, whether caused by death, resignation, or otherwise than by expiration of term, the Governor shall appoint to fill the vacancy until an election shall be held to fill the office. The Governor shall issue his writ for the election of a Senator to be held at the time of the first election for members of the General Assembly that is held more than 60 days after the vacancy occurs. The person elected shall hold office for the remainder of the unexpired term. The election shall take effect from the date of the canvassing of the returns (Sec. 163-12).

NORTH DAKOTA

When a vacancy occurs in the office of United States senator from this state, the governor shall issue a writ of election to fill the vacancy at the next statewide primary or general election, whichever occurs first, and that occurs at least ninety days after the vacancy. However, if the next primary or general election at which the vacancy could be filled, occurs in the year immediately preceding the expiration of the term, then no election may be held. The governor, by appointment, may fill the vacancy temporarily, but any person so appointed shall serve only until the vacancy is filled by election or until the term expires if no election can be held (Sec. 16.1-13-08).

OHIO

If a vacancy occurs, the Governor shall make a temporary appointment of some suitable person having the necessary qualifications for Senator. The appointee shall hold office until the 15th of December succeeding the next regular state election which occurs more than 180 days after such vacancy happens. At that next regular state election, a special election to fill the vacancy shall be held, provided, that when the unexpired term ends within 1 year immediately following the date of such regular state election the appointment shall be for the unexpired term (Sec. 3521.02).

OKLAHOMA

Whenever a vacancy shall occur in the office of a member of the United States Senate from Oklahoma, such vacancy shall be filled at a special election to be called by the Governor within 30 days after occurrence of the vacancy. No special election shall be called if the vacancy occurs after March 1 of any even-numbered year if the term of the office expires the following year. In this case the candidate elected to the office at the regular General Election shall be appointed by the Governor to fill the unexpired term (Sec. 12-101).

OREGON

Under Article V, Section 16 of the Constitution of Oregon, if a vacancy occurs in the office of United States Senator, the vacancy shall be filled at the next general election provided such vacancy occur more than 20 days prior to such general election.

(1) If a vacancy in election or office of Representative in Congress or United States Senator occurs before the 61st day before the general election, the Governor shall call a special election to fill that vacancy. If a vacancy in election or office of United States Senator occurs after the 62nd day before the general election but on or before the general election, and if the term of that office is not regularly filled at that election, the Governor shall call a special election to fill the vacancy as soon as practicable after the general election.

(2) If a special election to fill the vacancy in election or office of Representative in Congress or United States Senator is called before the 80th day after the vacancy occurs, each major political party shall select its nominee for the office and certify the name of the nominee to the Secretary of State. The Secretary of State shall place the name of the nominee on the ballot.

(3) If a special election to fill the vacancy in election or office of Representative in Congress or United States Senator is called after the 79th day after the vacancy occurs, a special primary election shall be conducted by the Secretary of State for the purpose of nominating a candidate of each major political party. A declaration of candidacy or nominating petition may be filed not later than the 10th day following the issuance of the writ of

election (Sec. 188.120).

PENNSYLVANIA

If a vacancy occurs, it shall be filled for the unexpired term by the vote of the electors of the State at a special election held at the next general or municipal election, occurring at least 90 days after the happening of such vacancy. Candidates shall be nominated by political parties in accordance with party rules and by means of nomination certificates. Until such time as the vacancy shall be filled by an election, the Governor may make a temporary appointment to fill the vacancy (Sec. 2776).

RHODE ISLAND

If a vacancy occurs, it shall be filled at the next general election after the expiration of 70 days from the date of such vacancy. In case of such vacancy, the Governor shall make a temporary appointment of a person, pending the results of such an election (Sec. 17-4-9).

SOUTH CAROLINA

If a vacancy occurs, the Governor may fill such vacancy by appointment for the period of time intervening between the date of such appointment and January 3 following the next succeeding general election. But, if such vacancy occurs less than 100 days prior to any general election, the appointment shall be for the period of time intervening between the date of such appointment and January 3 following the second general election next succeeding. The Governor shall within 5 days after any such appointment order an election to occur at the time of the general election immediately preceding the expiration date of the appointment if at the expiration of such appointment an unexpired term shall remain. (Sec. 7-19-20).

SOUTH DAKOTA

If a vacancy occurs, it is the duty of the Governor within 10 days of the occurrence to issue a proclamation setting the date of and calling for a special election to fill the vacancy. If either a primary or general election is to be held within 6 months, an election to fill a vacancy in the office of representative in the United States Congress shall be held in conjunction with that election; otherwise, the election shall be held not less than 80 nor more than 90 days after the vacancy occurs (Sec. 12-11-1). The Governor may fill by temporary appointment, until a special election is held, vacancies in the office of U.S. Senator (Sec. 12-11-4).

TENNESSEE

If a vacancy occurs in the office of United States Senator, a successor shall be elected at the next regular November election and shall hold office until the term for which his predecessor was elected expires. If the vacancy will deprive the State of its full representation at any time Congress may be in session, the governor shall fill the vacancy by appointment until a successor is elected at the next regular November election and is qualified (Sec. 2-16-101).

TEXAS

The governor shall appoint a person to fill a vacancy in office if the vacancy exists or will exist when congress is in session. The appointee serves until a successor has been elected and has qualified (Sec. 204.002). If a vacancy occurs during an odd-numbered year or after the 62nd day before general primary election day in an even-numbered year, the remainder of the unexpired term shall be filled by a special election except that the minimum number of signatures that must appear on a petition accompanying a candidate's application for a place on the ballot is 5,000 (Sec. 204.005, Supp.).

UTAH

When a vacancy occurs in the office of U.S. senator, it shall be filled for the unexpired term at the next regular general election. The governor shall appoint a person to serve as U.S. senator until the vacancy is filled by election from one of three persons nominated by the state central committee of the same political party as the prior officeholder (Sec. 20A-1-502(2)).

VERMONT

If a vacancy occurs in the office of United States Senator, the governor shall call a special election to fill the vacancy. His proclamation shall specify a day for the special election and a day for a special primary. The special election shall be held not more than 3 months from the date that the vacancy occurs, except that, if vacancy occurs within 6 months of a general election, the special election may be held the same day as the general election (Sec. 2621). The governor may make an interim appointment to fill a vacancy in the office of United States Senator, pending the filling of the vacancy by special election (Sec. 2622).

VIRGINIA

When any vacancy occurs in the representation of the Commonwealth of Virginia in the United States Senate, the Governor shall issue a writ of election to fill the vacancy for the remainder of the unexpired term. The election shall be held on the next succeeding November general election date or, if the vacancy occurs within 120 days prior to that date, on the second succeeding November general election date. The Governor may make a temporary appointment to fill the vacancy until the qualified voters fill the same by election. (Sec. 24.2-207).

WASHINGTON

When a vacancy happens in the representation of the State in the Senate of the United States, the Governor shall make a temporary appointment until the people fill the vacancy by election (Sec. 29.68.070).

Whenever a vacancy occurs in the office of United States representative or United States senator from this state or any congressional district of this state, the governor shall order a special election to fill the vacancy. Within 10 days of such vacancy occurring, he or she shall issue a writ of election fixing a date for the special vacancy election not less than 90 days after the issuance of the writ, fixing a date for the primary for nominating candidates for the special vacancy election not less than 30 days before the day fixed for holding the special vacancy election, fixing the dates for the special filing period, and designating the term or part of the term for which the vacancy exists. If the vacancy occurs less than 6 months before a state general election and before the second Friday following the close of the filing period for that general election, the special primary and special vacancy elections shall be held in concert with the state primary and state general election in that year. If the vacancy occurs on or after the first day for filing under RCW 29.18.030 and on or before the second Friday following the close of the filing period, a special filing period of 3 normal business days shall be fixed by the governor and notice thereof given to all media, including press, radio, and television within the area in which the vacancy election is to be held, to the end that, insofar as possible, all interested persons will be aware of such filing period. The last day of the filing period shall not be later than the third Tuesday before the primary at which candidates are to be nominated. The names of candidates who have filed valid declarations of candidacy during this 3-day period shall appear on the approaching primary ballot. If the vacancy occurs later than the second Friday following the close of the filing period, a special primary and special vacancy election to fill the position shall be held after the next state general election but, in any event, no later than the 90th day following the November election. As used in this chapter, "county" means in the case of a vacancy in the office of United States senator, any or all of the counties in the state and, in the case of a vacancy in the office of United States representative, only those counties wholly or partly within the congressional district in which the vacancy has occurred (Sec. 29.68.080).

WEST VIRGINIA

Any vacancy occurring in the office of secretary of state, auditor, treasurer, attorney general, commissioner of agriculture, United States Senator, judge of the supreme court of appeals, or in any office created or made elective, to be filled by the voters of the entire state, or judge of a circuit court, shall be filled by the governor of the state by appointment. If the unexpired term of a judge of the supreme court of appeals, or a judge of the circuit court, be for less than 2 years, or if the unexpired term of any other office named in this section be for a period of less than 2 years and 6 months, the appointment to fill the vacancy shall be for the unexpired term. If the unexpired term of any office be for a longer period than above specified, the appointment shall be until a successor to the office has timely filed a certificate of candidacy, has been nominated at the primary election next following such timely filing and has thereafter been elected and qualified to fill the unexpired term. Proclamation of any election to fill an unexpired term shall be made by the governor of the state, and, in the case of an office to be filled by the voters of the entire state, shall be published prior to such election as a Class II-0 legal advertisement in compliance with the provisions of article 3 [Sec. 59-3-1 et seq.], chapter 59 of this code, and the publication area for such publication shall be each county of the state. If the election is to fill a vacancy in the office of judge of a circuit court, the proclamation shall be published prior to such election as a Class II-0 legal advertisement in compliance with the provisions of article 3, chapter 59 of this code, and the publication area for such publication shall be each county in the judicial circuit (Sec. 3-10-3).

WISCONSIN

Vacancies in the office of U.S. Senator shall be filled by election, as provided in Sec. 8.50(4)(b), for the residue of the unexpired term (Sec. 17.18). A vacancy in the office of U.S. Senator occurring prior to the 2nd Tuesday in May in the year of the general election shall be filled at a special primary and election. A vacancy in that office occurring between the 2nd Tuesday in May and the 2nd Tuesday in July in the year of the general election shall be filled at the September primary and general election (Sec. 8.50(4)(b)).

WYOMING

If a vacancy occurs in the office of United States Senator, the governor shall fill the vacancy by temporary appointment according to specified rules (Sec. 22-18-111(a)(i)).

APPENDIX C

Summary of State Laws Governing U.S. Senate Vacancies

	Date of Special Election	Interim Appointment	Term of Appointee	Restrictions on Appointment
Alabama	Such as the governor directs, if vacancy occurs more than 4 months before next general election	Yes - governor	Until successor is elected and qualified	None
Alaska	On date of the first primary & general that is held more than 30 days after the vacancy	Yes - governor	If predecessor's term has 30 months or more remaining, until special election is held.	Within 30 days Qualified person of same political party of predecessor
Arizona	Next general election	Yes - governor	Unexpired term of vacated office	Same political party as person vacating office
Arkansas	Next state/county general election more than 60 days and less than 12 months after vacancy occurs; if no general election falls during that time, governor must call a special to be held no less than 60 and no more than 120 days after the vacancy occurs	Yes - governor	Until next general election	None
California	Next general election succeeding vacancy; must be proclaimed within 14 days of vacancy; governor may decline to issue election proclamation if vacancy occurs after close of nomination period in final year of the term of office	Yes - governor	Until successor is elected, qualifies and is admitted to his seat by the Senate	An elector of the state who possesses the qualifications for the office
Colorado	Next general election	Yes - governor	Until office is filled by election	None
Connecticut	Next general state election	Yes - governor	If vacancy occurs 60 or more days before an election, until Jan. 3 following election.	None
Delaware	Next general election	Yes - governor	Until vacancy is filled at next general election	Qualified elector of the state

	Date of Special Election	Interim Appointment	Term of Appointee	Restrictions on Appointment
Florida	Next general election	Yes – governor	Until vacancy is filled at next general election	None
Georgia	Next November election occurring at least 40 days after vacancy	Yes – governor	Until vacancy is filled at next general election	None
Hawaii	Following state general election, provided vacancy occurs no later than 4:30pm on 60 th day prior to primary; otherwise at state general election next following	Yes – governor	Until vacancy is filled at next general election	Registered member of same political party as Senator causing the vacancy
Idaho	Next regularly scheduled election for senator	Yes – governor	Until a Senator is regularly elected to fill such vacancy	None
Illinois	Next election of representatives in Congress	Yes – governor	Until vacancy filled at next general election	None
Indiana	Next general election	Yes – governor	Until the next general election	None
Iowa	If vacancy occurs 89 days or more prior to a general election; and unexpired term has more than 70 days to run after that election, vacancy is filled for balance of unexpired term at that general election	Yes – governor	Until vacancy is filled	None
Kansas	Next congressional election	Yes – governor	Until vacancy is filled at next election of representatives in Congress	None
Kentucky	Next congressional election	Yes – governor	Until vacancy is filled at next election of representatives in Congress	None
Louisiana	See RS 18:402(B)	Yes – governor	If unexpired term is more than one year, appointee serves until successor is elected at a special election	Within 10 days of receiving official notice of vacancy

	Date of Special Election	Interim Appointment	Term of Appointee	Restrictions on Appointment
Maine	Next general election	Yes – governor	Until the next regular election, if the vacancy occurs 60 days or more before a regular primary; until the next election following the one in question, if vacancy occurs less than 60 days before primary	None
Maryland	Next congressional election	Yes – governor	Until the people fill vacancy by nomination and election	None
Massachusetts	Next biennial state election	Yes – governor	Until next election	None
Michigan	Next general election	Yes – governor	Until first day of December following the next general November election which occurs more than 120 days after vacancy happens	None
Minnesota	Next November election	Yes – governor	Until next election	None
Mississippi	Within 90 days of appointment, unless vacancy occurs in the year of a regular general election, in which event the special election coincides with the general election	Yes, if unexpired term is more than 12 months -- governor	Until successor is elected and commissioned	Appointment must be made within 10 days of receiving official notice of vacancy
Missouri	Next regularly scheduled election for senator	Yes – governor	Until successor is elected	None
Montana	Next general election	Yes – governor	Until election is held	None
Nebraska	Next general election	Yes – governor	Until following Jan. 3, if vacancy occurs within 60 days of a statewide general election and the term vacated expires on the following Jan. 3. If the term extends beyond the following Jan. 3, until Jan. 3 following the second statewide general election next succeeding his/her appointment.	None
Nevada	Next general election	Yes – governor	Until successor is elected	None
New Hampshire	Next general election	Yes – governor	Until next general election	None

	Date of Special Election	Interim Appointment	Term of Appointee	Restrictions on Appointment
New Jersey	If vacancy happens within 64 days of next primary, then it is filled at the second succeeding election unless the governor calls a special election	Yes – governor	Until a special election or general election is held	None
New Mexico	Next general election occurring not less than 30 days subsequent to the vacancy	Yes – governor	Until election is held to fill the vacancy for the unexpired term	None
New York	Next even-year general election	Yes – governor	If vacancy occurs in even-numbered year on or after the 59 th day prior to an annual primary, until the 3 rd day of January in the year following the next even-numbered calendar year. If vacancy occurs in an even year on or before the 60 th day prior to an annual primary, until the 3 rd of January in the next calendar year. If vacancy occurs in an odd year, until the 3 rd day of January in the next odd year.	None
North Carolina	Next election for members of the General Assembly	Yes – governor	Until election is held to fill the office	None
North Dakota	Next statewide primary or general election, whichever occurs first, and that occurs at least 90 days after the vacancy. If the next election at which the vacancy could be filled occurs in the year immediately preceding the expiration of the term, then no election may be held.	Yes – governor	Until election is held to fill the vacancy, or until the term expires if no election can be held	None

	Date of Special Election	Interim Appointment	Term of Appointee	Restrictions on Appointment
Ohio	Next regular state election	Yes – governor	Until Dec. 15 th succeeding the next regular state election which occurs more than 180 days after such vacancy happens; or if the unexpired term ends within 1 year immediately following the date of the next regular state election, the appointment is for the unexpired term	None
Oklahoma	Called by the governor within 30 days after occurrence of the vacancy. No special election if vacancy occurs after March 1 of an even year and the term of office expires the following year	If vacancy occurs after March 1 in an even year and the term of office expires the following year, the governor shall appoint the candidate elected to the office at the regular election to fill the unexpired term	Election Day – Jan. 3	Only the candidate elected at the regular election may be appointed
Oregon	Next general election, provided vacancy occurs more than 20 days prior to such general election. If vacancy occurs before 61 st day before the general election, the governor must call a special election. If a vacancy occurs after the 62 nd day before the general election and the term of that office is not regularly filled at that election, the governor must call a special election as soon as practicable after the general election	No	N/A	N/A
Pennsylvania	Next general or municipal election occurring at least 90 days after vacancy occurs	Yes – governor	Until vacancy is filled in an election	None
Rhode Island	Next general election after the expiration of 70 days from the date of the vacancy	Yes – governor	Until election	None

	Date of Special Election	Interim Appointment	Term of Appointee	Restrictions on Appointment
South Carolina	Next general election immediately preceding the expiration date of the appointment	Yes – governor	From date of appointment until January 3 of next succeeding general election. If vacancy occurs less than 100 days prior to general election, until January 3 following second general election next succeeding	None
South Dakota	If a primary or general election is to be held within 6 months, special election is held in conjunction with that election; other wise, special election is held not less than 80 nor more than 90 days after the vacancy occurs	Yes – governor	Until special election is held	None
Tennessee	Next regular November election	Yes – governor	Until successor is elected at next regular November election	None
Texas	If vacancy occurs during an odd year or after the 62 nd day prior to the next regular primary election, the remainder of the unexpired term is filled by a special election	Yes – governor	Until a successor is elected	None
Utah	Next regular general election	Yes – governor	Until vacancy is filled by election from one of three persons nominated by the state central committee of the same political party as the prior officeholder	None
Vermont	Special election held not more than 3 months from the date of the vacancy. If the vacancy occurs within 6 months of a general election, the special election may be held the same day as the general election	Yes – governor	Until vacancy is filled by special election	None

	Date of Special Election	Interim Appointment	Term of Appointee	Restrictions on Appointment
Virginia	Next succeeding November election, or if the vacancy occurs within 120 days prior to that date, on the second succeeding November general election date	Yes – governor	Until vacancy is filled by election	None
Washington	Special election not less than 90 days after issuance of writ (which must occur within 10 days of vacancy occurring). If vacancy occurs less than 6 months before a state general election, the special primary and vacancy election shall be held in concert with the state primary and general elections	Yes – governor	Until vacancy filled by election	None
West Virginia	Upon proclamation of the governor	Yes – governor	If unexpired term is less than 2 years and 6 months, appointment is for the unexpired term. If unexpired term is longer, appointment is until a successor is elected	None
Wisconsin	If vacancy occurs prior to the 2 nd Tuesday in May in the year of the general election, it is filled in a special election. A vacancy occurring between the 2 nd Tuesday in May and the 2 nd Tuesday in July in the year of the general election is filled at the September primary and general election.	No	N/A	N/A
Wyoming	??	Yes – governor	??	?? Gov. must select from a list of 3 nominated by the central comm. of same political party as predecessor. Sec. 22-18-41(a)(1).

CRS Report for Congress

Received through the CRS Web

House and Senate Vacancies: How Are They Filled?

Sula P. Richardson and Thomas H. Neale
Analysts in American National Government
Government and Finance Division

Summary

Vacancies in Congress occur due to the death, resignation, or declination (refusal to serve) of a Senator or Representative, or as the result of expulsion or exclusion by either house. The Constitution requires that vacancies in both houses be filled by special election, but in the case of the Senate, it empowers state legislatures to provide for temporary appointments by the state governor until special elections can be scheduled.

In practice, most Senate vacancies are filled by such appointments in the interim, while all House vacancies are filled by special elections. If, however, a House vacancy occurs late in the life of a Congress, many states will leave the seat empty until general election day, when a special election for the balance of the term and a regular election for the forthcoming Congress are held simultaneously.

Nominations for Senate special elections are usually by primary, while those for House special elections can be by primary, nominating petition, or party action, as specified by state law.

A plurality is necessary to win in most special elections, although there are significant variations in certain states.

Procedures Governing Vacancies

Vacancies in Congress occur when a Senator or Representative dies, resigns, declines to serve, or is expelled or excluded from either house.

Senate

Procedures governing vacancies in the Senate were initially established by Article I, Section 3 of the Constitution, as later amended by paragraph 2 of the 17th Amendment. The latter states:

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided* that the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

Appointment of Interim Senators. Prevailing practice is for state governors to fill Senate vacancies by appointment, with the appointee serving until a special election has been held, at which time the appointment expires immediately. In the event a seat becomes vacant between the time of a general election and the expiration of the term, however, the appointee usually serves the balance of the term, until the next regularly scheduled general election. This practice originated with the constitutional provision that applied prior to the popular election of senators, under which governors were directed to make temporary appointments when state legislatures were in recess. It was intended to ensure continuity in a state's Senate representation during the lengthy intervals between state legislative sessions.

The governor's direct authority to make interim appointments is specified in the various state laws. Oregon¹ and Wisconsin² do not allow the governor to make interim appointments, requiring, instead, a special election to fill any Senate vacancy. The State of Oklahoma also requires that Senate vacancies be filled by special elections, with an exception. If the vacancy occurs after March 1 of any even-numbered year and the term expires the following year, no special election is held; rather, the governor is required to appoint the candidate elected in the regular general election to fill the unexpired term.³ At least five states restrict the governor's power to appoint interim Senators. Alaska, Arizona, and Hawaii require the governor to fill Senate vacancies with a person affiliated with the same political party as the previous incumbent.⁴ Utah and Wyoming require the governor to select an interim senator from a list of three candidates proposed by the state central committee of the political party with which the previous incumbent was affiliated.⁵

Many states limit the term of office for interim senators to the date set for the special election. In these cases, the term of the interim senator expires immediately upon the election of the popularly chosen successor, who serves the balance of the Senate term, whether it is a few weeks or several years. Moreover, when an interim appointment is made late in the term, it is often customary for the interim senator to resign his or her seat immediately after the election, and for the governor to appoint the special election winner to serve the balance of the term. It is also customary, for the purposes of determining seniority, for the newly elected replacement senator to be sworn in as soon as possible.

Nominations. Nomination procedures for Senate special elections vary widely among the states. The majority require a special primary election to determine the major

¹ Or. Rev. Stat. §188.120 (2001).

² Wis. Stat. § 17.18 (1999-2000).

³ Okla. Stat. tit. 26, §12-101.

⁴ Alaska Stat. §15.40.010 (2001); Ariz. Rev. Stat. §16.222 (2001); and Haw. Rev. Stat. § 17-1 (2001).

⁵ Utah Code Ann. § 20A-1-502(2) (2001) and Wyo. Stat. § 22-18-111 (i) (2002).

party nominees, while minor party and independent candidates generally qualify by filing a requisite number of petitions for general election ballot placement. Finally, some states provide for nomination by party-determined procedures, such as by the party's state committee, or at a state party convention. Louisiana and Texas, which provide the major exceptions to these rules, are treated in the next section of this report.

General Elections. Generally, the governor has the authority to set the dates for both primary and general special elections within either a window of time or a specific number of days after the vacancy occurs, according to state requirements. In the interests of convenience, enhanced voter interest and participation, and economy, special elections are often scheduled to coincide with regular elections. A plurality of votes in the primary and general elections is sufficient to nominate or elect in most cases, although a number of southern states require a majority to nominate, providing for a runoff election if no candidate attains a majority.

Special election procedures in Georgia, Louisiana, and Texas constitute significant variations from the norm. Georgia requires a majority to elect in all congressional and statewide special elections. Louisiana and Texas provide for an all-parties special primary election. All candidates qualifying for placement on the ballot participate in the election, in which a majority is necessary to elect. Any candidate receiving more than 50% of the vote is declared elected. If no candidate receives a majority, the two receiving the most votes, regardless of party affiliation, compete in a second election, termed a general election in Louisiana and a runoff in Texas. Louisiana mandates the all-parties primary for regular as well as special elections, while the Texas practice is unique to that state's special elections.

One of the more interesting developments in Senate special elections in recent years was Oregon's 1996 decision to conduct both the primary and general elections to fill a Senate vacancy by mail-in ballot only, with no in-person voting at polling places.⁶

Staff Disposition. In the event of a Senator's death, his or her staff continue to be compensated for a period not exceeding 60 days (unless the Senate Committee on Rules and Administration determines that more time is needed to complete the closing of the office), performing duties under the direction of the Secretary of the Senate.⁷

House of Representatives

The Constitution provides for cases in which House seats become vacant in Article I, Section 2, clause 4:

⁶ In 1998, voters in Oregon passed a ballot initiative that requires Oregon's biennial primary and general elections to be conducted by mail. This "vote-by-mail" system replaces traditional polling place elections, but voters can still hand-deliver their ballots to designated drop sites.

⁷ S. Res. 458, 98th Cong., 2nd Sess., Oct. 4, 1984; as amended by S. Res. 173, 100th Cong., 1st Sess., Mar. 4, 1987, "Closing The Office of a Senator or Senate Leader Who Dies or Resigns," in U.S. Congress, Senate Committee on Rules and Administration, *Senate Manual, 106th Congress*, "Standing Orders of the Senate," Sec. 72, p. 108 (Washington: GPO, 2000).

When Vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The Constitution thus requires that all House vacancies be filled by special election. There is no constitutional provision for the appointment of interim Representatives.

Scheduling. The responsibility for scheduling special elections is vested in the state legislatures (2 U.S.C. 8):

The time for holding elections in any State, District, or Territory for a Representative to fill a vacancy, whether such vacancy is caused by the death, resignation, or incapacity of a person elected, may be prescribed by the laws of the several States and Territories respectively.

House vacancies that occur in the first session of a Congress are invariably filled by special elections. The responsibility for ordering a special election is vested in the governors of the states. Most states also either set a window of time, or prescribe an exact number of days after the vacancy occurs, in which nomination procedures and the special election must be held. Within these constraints, state governors and election authorities generally attempt to schedule special elections for a regular election day, in the interests of economy, convenience, and increased voter participation.

Procedures governing vacancies occurring during the second session of a Congress differ from state to state, and are largely dependent on the amount of time intervening between the vacancy and the next general election. For instance, if a House seat becomes vacant within six months of the expiration of the previous incumbent's term, many states allow the seat to remain vacant for a time, providing for a special election to be held on the regularly scheduled election day, at the same time that a regular election for that seat for the ensuing Congress is held. Other states, under these circumstances, do not provide for a special election, and the affected seat remains vacant until the ensuing Congress convenes the following January.

Nominations. Nomination procedures for House of Representatives special elections vary as widely among the states as do those for the Senate. Some states require a special primary election to determine the major party nominees, while minor party and independent candidates generally qualify by filing a requisite number of petitions for general election ballot placement. A plurality is sufficient to elect in most primary states, but some southern states require a majority to nominate in the primary. If no candidate attains a majority, then a runoff, or second, primary is held at a later date, in which the two candidates winning the most primary votes compete for the nomination. Others provide for nomination by such party-established procedures as party congressional district caucuses and conventions, or meetings of party committees or interested party members in jurisdictions comprising the affected congressional district.

General Elections. Special general election procedures for the House of Representatives generally mirror those for the Senate, with some variations. Once again, in most states a plurality is sufficient to elect in the general election. Several states, however, have adopted procedures for House special elections that effectively conjoin the nomination and election process, sometimes in combination with other variations. These include California, Georgia, Louisiana, and Texas.

All qualified candidates for House special elections in California compete in a special primary, regardless of party affiliation. Nomination is by petition. Any candidate receiving more than 50% of the vote in the primary is elected, and the general election is canceled. If no candidate receives the required majority, the single candidate of each party receiving the most votes competes in a special general election, wherein a plurality of votes is sufficient to elect. In the event that candidates of only one party compete in the primary, a plurality is sufficient to elect, and there is no general election.⁸

As noted previously, Georgia requires a majority to elect in all congressional and statewide special elections. If no candidate receives 50% of the vote, then a runoff, or second, election is held between the two candidates gaining the most votes.⁹

Louisiana procedures for House special elections are the same as those applying to its Senate elections. All candidates who qualify for ballot access compete in the primary election, in which a majority of votes is necessary to elect. A candidate receiving 50% of the vote is declared elected. If no candidate receives a majority, the two candidates receiving the most votes, regardless of party affiliation, compete in a second election, termed a general election. Louisiana mandates the all-parties primary for regular as well as special elections.¹⁰

Texas provides for an all-parties special primary election to fill House vacancies. All candidates qualifying for placement on the ballot participate in the election, in which a majority is necessary to elect. A candidate receiving 50% of the vote is declared elected. If no candidate receives a majority, the two candidates receiving the most votes, regardless of party affiliation, compete in a second election, termed a runoff in Texas. Unlike in Louisiana, in Texas the all-parties primary is unique to special elections.¹¹

Winners of House special elections held concurrently with those for the ensuing Congress are often not sworn in as Members of the House of Representatives, since Congress has usually adjourned *sine die* before election day. They are, however, accorded the status of incumbent Representatives for the purposes of seniority, office selection, and staffing.

Staff Disposition. Staff of a deceased or resigned Representative are compensated until a successor is elected to fill the vacancy, performing duties under the direction of the Clerk of the House (2 U.S.C. 92 b,c).

⁸ *California Election Code*, § 10700-10707 (2001).

⁹ *Georgia Election Code*, § 21-2-501 (2001).

¹⁰ *Louisiana Election Code*, tit. 18, § 511, §512, and §1279. The Supreme Court's 1997 decision in *Foster v. Love* (522 U.S. 67 (1997)) affected only the timing of regular general elections in Louisiana; the all-parties nature of the procedure was not in question, and remains intact for both special and regularly scheduled elections.

¹¹ *Texas Election Law*, § 203.001-012, 0A; and 204.021.

HB

421

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:
LABOR & COMMERCE COMMITTEE, CHAIRMAN
COMMUNITY & REG AFFAIRS COMMITTEE, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
ADMINISTRATIVE REGULATION REVIEW COMMITTEE, MEMBER

website: <http://www.akRepublicans.org/Anderson.htm>

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FAX (907) 269-0264

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ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE (907) 465-4939
1-800-465-4939
FAX (907) 465-2418

Representative Tom Anderson

email: Representative_Tom_Anderson@legis.state.ak.us

Date: May 4, 2004

To: Senator Ralph Seekins, Chair
Senate Judiciary Committee

From: Representative Tom Anderson, Chair *Tom*
House Labor & Commerce Committee

Re: CSHB 421(JUD)

This memo is to request a hearing by the Senate Judiciary Committee on CSHB 421(JUD),
"An Act relating to reconveyances of deeds of trust, at the earliest possible convenience."

Enclosed are:

1. The most recent version of CSHB 421(JUD)
2. Current Sponsor Statement
3. Fiscal Note (Dept. Natural Resources)
4. Communications of support:
 - a. Bryan S. Merrell, State Agency Manager, First American Title Insurance Co.
 - b. Tim Hurley, President, Western Alaska Land Title Co.

Thank you for your consideration of this legislation.

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT FOR CS HB 421(JUD) BY: Representative Tom Anderson

TITLE: An Act relating to reconveyances of deeds of trust.

CS HB 421(JUD) is legislation proposed and requested by the Alaska Land Title Association (ALTA). The legislation would help to clear land records of paid off mortgage liens. In other words, after a mortgage (or deed of trust) has been paid off, a title insurance company could, through the procedures established in CS HB 421(JUD), record the reconveyance.

A title insurance company, acting as trustee under a deed of trust, could release (by deed of reconveyance) a lien after notice to the lender, if the title company paid off the deed of trust through a closing. The lender would be given 60 days to object to the proposed release of the lien.

CS HB 421(JUD), based on a law from the State of Idaho, would be helpful in "cleaning up" many old liens left unreleased by lenders who may be from out-of-state, or have closed. In Alaska, it is very common for the company servicing a mortgage on a home to be located outside of state.

By having this sort of law in place, the net result is a quicker closing and fewer hassles for sellers, lenders and agents. For example, any previous liens on the deed could be cleared away before they become burdensome on any future transactions or sales of the property.

The intent of this bill is to provide a clear and clean process allowing liens to be cleared from deeds after satisfactory evidence of payment has been presented to the title company. This does not establish any additional risks or opportunities for fraud, and it is not intended to create any unnecessary burdens upon mortgage lenders in Alaska.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 421(L&C)
 (H) Publish Date: 3/25/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
 Title Deed of Trust Reconveyance RDU Resource Development
 Component Recorder's Office
 Sponsor Rep. Anderson
 Requester (H) L&C 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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact for the Recorder's Office associated with implementation of this legislation.

Prepared by: Vicky Backus Phone 907-269-8882
 Division: Recorder's Office Date/Time 3/9/04
 Approved by: Thomas Irwin, Commissioner Date 3/9/04
 Agency: Natural Resources

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**First American
Title Insurance Company**

3035 "C" Street • Anchorage, Alaska 99503 • Phone (907) 561-1844 • Fax (907) 561-1948

February 11, 2004

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

Via Fax 907-465-2418

Re: HB 421

Dear Rep. Anderson:

I am State Agency Manager, Counsel & Underwriter for First American Title Insurance Company, the largest underwriter of title insurance in the State of Alaska, and the Immediate Past President of the Alaska Land Title Association, the trade organization made up of the active title insurance agents and underwriters in Alaska. I am writing today to express First American's support for HB 421, relating to reconveyances of deeds of trust.

This bill would solve a growing problem in Alaska and other states, where as years have passed lenders and borrowers have not, for one reason or another, followed through on releasing deeds of trust representing mortgage loans on both residential and commercial properties. Title insurance agents, acting both as insurers of the status of title and as neutral escrow closers of such transactions, often pay off these loans but never receive the paperwork from the lender or borrowers to get the liens released of record at the Recorder's Office. This bill would allow us in the title industry to help future owners of the properties still encumbered with such unreleased, but paid off, loans to clear the record by reconveying (a deed of reconveyance is the document signed by the trustee under a deed of trust) the deeds of trust. This is of benefit to the real estate community as a whole, as it will result in quicker, cleaner real estate closings.

I have spoken to Josh Applebee in your office about the bill, and I would be happy to answer any questions you or others may have about it. Thank you for your assistance and support.

Very truly yours,

FIRST AMERICAN TITLE INSURANCE CO.

Bryan S. Merrill
State Agency Manager, Counsel & Underwriter

cc: John Bitney

WESTERN ALASKA LAND TITLE CO.

Agents for Stewart Title Guaranty Co.

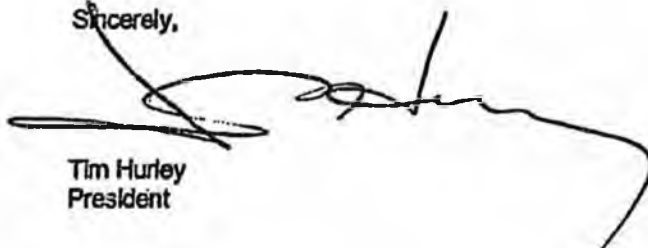
February 11, 2004

The Honorable Tom Anderson
House of Representatives
State Capitol
Juneau, Alaska 99801-1182
VIA Fax: (907) 485-2418

Dear Mr. Anderson;

With HB421 we have an opportunity to speed up the Real Estate closing process. Title searches consistently turn up mortgages, which have been paid in full and have never been released of record. Although lenders are quick to secure their loans, some never produce the proper paperwork to release their interests of record after receiving satisfaction in full. HB421 would at least provide a tool to the industry to help alleviate the backlog of unreleased mortgages which burden the "Public Records". The speedy passage of this bill can only benefit the consumer and the industry.

Sincerely,



Tim Hurley
President

TJH/ds
CC: Representative Dan Ogg

HB

423

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS
LABOR & COMMERCE COMMITTEE, CHAIRMAN
COMMUNITY & REG. AFFAIRS COMMITTEE, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
ADMINISTRATIVE REGULATION REVIEW COMMITTEE, MEMBER

website: <http://www.akrepublicans.org/Anderson.htm>

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Representative Tom Anderson

email: Representative_Tom_Anderson@legis.state.ak.us

MEMORANDUM

DATE: April 30, 2004

TO: Senator Ralph Seekins
Chairman, Senate Judiciary Committee

FROM: Representative Tom Anderson 

RE: CSHB 423(JUD)am Taxicab Driver Liability

At your earliest convenience, please calendar House Bill 423 Taxicab Driver Liability for a hearing in the Senate Judiciary Committee.

Under CSHB 423(JUD) am, a taxicab operator who transports a motor vehicle owned by an intoxicated person to their home or another directed residential location would be not civilly liable for damages. CSHB 423(JUD) am allows a taxicab operator to drive an intoxicated person home while a second operator follows them home in their vehicle.

HB 423 was amended in the House State Affairs Committee by adding a repeal date of July 1, 2007. In the House Judiciary Committee, CSHB 423(STA) was amended to include any organizations or entities participating in this program.

Attached please find the completed bill packet, which includes:

- The most recent version of HB 423
- Fiscal Notes:
 - Department of Law
 - Department of Public Safety
- Sponsor Statement
- Explanation of all changes

- Sectional Analysis
- Support letters from:
 - John George
 - MADD
- Anchorage Daily News article by Frank Dahl (published March 9, 2004)
- Anchorage CHARR "Off the Road Program" packet

Thank you for your consideration of this matter.

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT FOR CSHB 423(JUD) am **BY: Representative Tom Anderson**

TITLE: "An Act relating to accidents involving the vehicle of a person under the influence of an alcoholic beverage; and providing for an effective date."

House Bill 423 is a bill for taxicab operators who transport a motor vehicle owned by an intoxicated person to their home or another directed residential location. (Another cab will take the intoxicated person to the same residential location.) Absent gross negligence or reckless or intentional misconduct, a person engaged in this activity would not be civilly liable for damages.

There are times when Alaskans find themselves in an "end of evening" dilemma – they are over the .08 blood alcohol limit and shouldn't drive, but are worried and reluctant to leave their car unattended overnight. HB 423 resolves this dilemma by allowing a taxicab operator to drive an intoxicated person home while a second operator follows them home in the intoxicated person's vehicle.

This legislation would allow the intoxicated person and his or her vehicle to get home safely without the taxicab operator who drives the intoxicated person's vehicle fearing liability. HB 423 promotes responsible behavior and encourages people to do the right thing and not drive while intoxicated.

I urge your support of this important piece of legislation.

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SECTIONAL ANALYSIS CSHB 423(JUD) am BY: Representative Tom Anderson

TITLE: "An Act relating to accidents involving the vehicle of a person under the influence of an alcoholic beverage; and providing for an effective date."

Section 1: Adds new section to 09.65. Under certain specific circumstances, a taxicab operator is not civilly liable for personal injury or death during the transportation of a motor vehicle owned by an intoxicated person to their home or another directed residential location except as a result of gross negligence or reckless or intentional misconduct. Additionally, owner of vehicle or third-party may not bring civil action against taxicab operator unless gross negligence or reckless or intentional misconduct is involved.

Section 2: Applicability section.

Section 3: Repeal date: July 1, 2007.

Changes to HB 423 in (H) STA

Page 1, line 11, after the language "a person employed" insert, in the course and scope of employment. This was added to clarify that the driver must be currently working for the taxicab company at the time of the accident.

Page 2, line 1, after the words "alcoholic beverage" insert, inhalant, or controlled substance. This language conforms to the description given in AS 28.35.030 of a person driving under the influence.

Page 2, line 3, after the words "owner's residence" insert, or designated residential location. This is a clarification so people will not abuse the service by having the taxicab operators drive them to another bar.

HB 423 was amended in the House State Affairs Committee by adding a repeal date of July 1, 2007. Since this is a pilot program in Anchorage it is important to report back to the legislature how successful this program has been.

Changes to CSHB 423(STA) in (H) JUD

Page 1, lines 6-7, after the word "liable" delete [for personal injury, death, or property damage]. Page 1, lines 6-7, after "liable" insert, beyond the limits of any applicable insurance policy purchased by or on behalf of the owner of the vehicle for damages.

Page 2, line 10, delete "personal injury, death, or property damage", and insert any damages. This new language does not limit the damages to personal injury, death, or property damage.

Page 2, lines 12-15, insert A person or entity that participates in making arrangements for transportation of a vehicle under (a) of this section is not liable for damages resulting from a motor vehicle accident described in (a) of this section. This new language gives the organization or person (entity) administering this program the same immunity from civil damages as the taxicab operator.

Changes to CSHB 423(JUD) on the House Floor

Page 2, line 18:
Delete "or"

Page 2, line 20, following "coverage":
Insert "; or"

(3) limit the ability of a person to recover damages under any applicable liability insurance coverage purchased by or on behalf of the person being transported under (a) of this section"

John L. George and Associates
3328 Fritz Cove Road
Juneau Alaska 99801
Tel.907 789-0172 Fax 907 789-6964

Honorable Tom Anderson
Chairman
House labor and Commerce Committee
State Capitol
Juneau, Alaska 99801

Re: House Bill 423

Dear Representative Anderson,

I represent the Property Casualty Insurers Association of America. PCI member companies write thirty eight percent of the automobile insurance premium in the state. The PCI supports HB423 with the amended language faxed to me by your staff on March 15. These amendments preserve recovery by injured individuals from existing insurance policies while they appropriately relieve persons arranging transportation for impaired drivers from liability.

There is no question that insurers and insured owners are better served by having a non impaired permissive driver operating a motor vehicle when the owner is impaired. This bill is a positive step toward removing drunk drivers from the highway.

Sincerely,

John L. George



Mothers Against Drunk Driving
JUNEAU CHAPTER
211 4th St., Suite 314
Juneau, AK 99801
Phone (907)463-2562
Fax (907)463-2540
madd@alaska.net
www.madd.org/ak/juneau

February 10, 2004

Representative Tom Anderson
State Capitol, room 432
Juneau, Alaska 99801

Re: House Bill 423
"An Act relating to accidents involving the vehicle of a person under the influence of an alcoholic beverage; and providing for an effective date."

Dear Representative Anderson:

The MADD Alaska Chapters, *Anchorage, Fairbanks, Juneau and Mat-Su*, support House Bill 423.

House Bill 423 will encourage and protect designated drivers. It is imperative that support is provided for those who drive potential drunk drivers to their destination. A designated driver is "life insurance" for all who use our road system.

House Bill 423 would create a deterrent for those who might otherwise drive impaired if unable to find an alternative method of transportation.

While annual alcohol-related traffic fatalities have decreased by more than 33 percent over the past few decades, the latest statistics show a recent increase with more than 17,400 people killed and more than half a million others injured in alcohol-related crashes in 2002.

Alaska had 87 traffic deaths of which 35 were alcohol-related (40%) in 2002. The previous year our state lost 47 Alaskans out of 89 (53%) because of alcohol.

Sincerely,

Cindy Cashen

Executive Director

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Anchorage Daily News

Print Page

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Novel bill can reduce DWI incidents**COMPASS: Points of view from the community**

By FRANK DAHL

(Published: March 9, 2004)

During Lent and the upcoming Easter holiday, many of us center on our faith and family as well as on our dedication and responsibility to each other. House Bill 423 is a perfect example of taking responsibility one step further by truly watching out for our friends and patrons. And many state House members agree as they ponder the passage of this bill, seeing what could be its positive effects.

Sponsored by Rep. Tom Anderson, this proposed legislation would help reduce our driving-while-intoxicated problem. The premise behind Rep. Anderson's proposal is that people fail to find an alternative means of transportation when they feel they may be legally intoxicated, because they do not wish to incur the cost of a cab, risk vandalism to their vehicle or be hindered by retrieval of their vehicle the next morning. With no perceived alternative, they opt to drive home intoxicated. Many arrive home safely, but for those who are arrested or who cause an accident or injury, the consequences surpass the negligible cost of a cab or time spent returning the next day sober to locate the car.

Solidly supported by Anchorage Cabaret, Hotel, Restaurant and Retailers Association, the concept is to provide a means through which an intoxicated individual, hesitant to drive because he or she is above the legal limit (recently reduced to a new low), can ask for an employee at the participating bar or restaurant to request cab service, not only for himself or herself but also for the car. The cab company would dispatch a cab with an extra driver who would drive the patron's car home at the same time the intoxicated patron is driven home in the cab. Not a bad idea!

Not only does this solution instill a partnership mentality among community, patron and business, but it also reminds residents of the fact that the hospitality industry cares about your safety. Anchorage CHARR wholeheartedly endorses the concept.

One concern that has arisen stems from the potential for a lawsuit if the cab company employee who drives the individual's vehicle home causes an accident from negligence. The context of the bill is intended to hold harmless the driver, cab company and licensed establishment if intentional misconduct is not a factor. In other words, no one will be liable for acting responsibly. To that end, we must formulate effective insurance language in the bill to maintain the integrity of the no-liability intent.

During troubled times, certain members of society tend to find it easier to cast the first stone rather than seek lasting solutions to complicated issues like alcohol abuse and DWI prevention. The easiest approach is to criticize our laws and legislators and be reactive rather than proactive. Or to mandate harsher penalties and fill our correctional system beyond its capacity while increasing our need for more taxes. And, of course, we must always expect certain self-serving groups to demand more taxes on individual industries as a supposed answer. Higher prices have never dissuaded the

addicted toward lesser consumption. The solution lies in curbing behavior with quality treatment, education and hope or, as an alternative, preventing behavior like driving under the influence from even happening.

HB 423 would eliminate the consequences of a DWI while at the same time working with the hospitality industry, with the cab companies, with the insurance industry, in concert with law enforcement at the city and state level. The innovators and sponsor of this bill should be commended for a novel and positive approach to a growing problem that doesn't need to exist.

HB 423 is right on target for a controllable problem. And it would save the state real tax dollars.

Let 2004 be the year of understanding and compassion, neighbor helping neighbor. Let this year be one in which we stop casting stones and instead embrace, using the stones to build a bridge of cooperation. Rep. Anderson's HB 423 can be the first step.

Frank Dahl is owner of Blues Central in Anchorage.

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Presents

"OFF THE ROAD PROGRAM"

**A free ride home for you and your car
Let us all add safety to our community. Together we can make
Anchorage a safer place to live.**

**ANCHORAGE Cabaret, Hotel, Restaurant, and Retailers Association
(CHARR)
OFF THE ROAD PROGRAM**

Our Vision:

Anchorage CHARR, a unified financially sound organization to protect, foster and grow the hospitality industry serving a strong membership and to maintain a positive relationship with the Anchorage community.

Our Mission:

Our mission is to serve and represent the hospitality industry within the Municipality of Anchorage. Collaborate with responsible members, stakeholders, and businesses as a vital part of the community.

Our Concerns:

Unintentional acts created by patron drivers of vehicles under the influence that may be harmful to other members of the community. This may occur when:

- **A patron has a need for their vehicle the following morning and does not want the inconvenience of collecting the vehicle.**
- **Vehicles can be towed for a number of reasons thus incurring unwanted costs.**
- **There is also the possibility the vehicle could be vandalized and/or burglarized.**
- **Simply the patron choose not to pay or can not pay for the cost of a taxi.**

"These are reasons some patrons may justify drinking and driving"

Our Solution:

To provide a safe mode of transportation for the patron and his/her vehicle. This service can be requested by the patron or by the determination of the establishment to limit liabilities and to protect the general public. This accompaniment program would be provided by the municipal licensed chauffeurs (taxi cab drivers).

- **Transportation provided from the establishment to the patrons home.**
- **Patron and vehicle arrive home safe together.**
- **Limited or no cost to the patron for this service.**
- **Educate establishment staff and public of the availability of this program and the benefits that it provides.**



January 21, 2004

In order for this program to be successful the cab companies and the liquor establishments must work and communicate closely. To help facilitate this program, the establishments will implement the following strategies and policies:

- 1. Place signs near pay phones, direct lines to cab companies and in other conspicuous areas of the establishment such as restrooms and near the exits where signs can be easily read.**
- 2. Train the establishment staff members on the availability of this program, how to inform patrons, and how to implement the procedures agreed upon by program officials.**
- 3. Make public service announcements (PSA) on in-house sound systems (if establishment is equipped) from time to time and at closing time to help influence patrons decisions to use the program.**
- 4. Pay a portion of the cab fare cost agreed upon by establishments and program officials.**
- 5. Promote program from time to time in conjunction with other advertising and promotions. Make program informational hand outs available to patrons in the establishments.**
- 6. Track program usage (in conjunction with the cab companies) to assess effectiveness and demographics and to provide informational statistics for program officials to use in promoting and or improving this program.**

Anchorage CHARR feels, with the establishments implementing these strategies and policies will help assure the success of this exciting and new collaboration.

**John G. Pattee
Anchorage CHARR**

RNT Services D.B.A. Checker Cab Company
3215 Mountain View Drive
Anchorage, Alaska 99501-3108

Office (907) 274-3333 Fax (907) 258-7775 24-Hour Dispatch (907) 276-1234

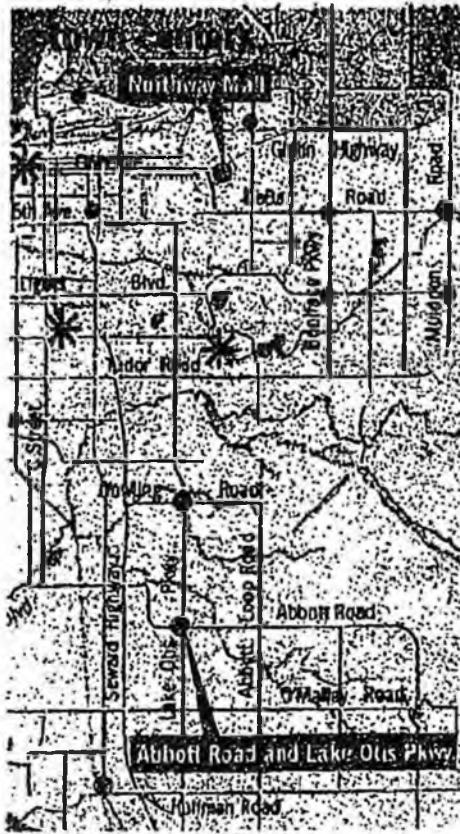
Regarding: Off The Road Program

In order for this program to work and be successful the Restaurant's, Lounge's and all Taxicab Companies **MUST** work together and communicate closely with everyone. To help facilitate this, Checker Cab Company will implement the following procedure and policies:

1. We will have a minimum of six (6) designated taxi drivers on duty every night to be available for this program.
2. We will set a flat rate fee of \$40.00 per car deliveries made from any licensed establishment to one (1) destination in the Anchorage Area, for **BOTH** the patron and his/her vehicle.
3. Every Car Delivery that we do will be logged into a log book in the Dispatch office as it comes in, so it will be easy to track our progress with this program and how well it is working to benefit the Anchorage Community.
4. Train All Taxicab Drivers and Dispatch Employees with our Company about this program, incase designated driver's are not available they will be able to cover the car delivery safely.
5. Promote, with all the taxi drivers help, how this program is available to **ALL** Customers headed to any drinking establishment in the Anchorage Area, A Safe and Convenient way to enjoy all licensed establishments and not have to worry about retrieving their vehicle the next day if it has not been towed away.

RNT Services and Checker Cab Company feel that this program will work to help solve some of the drinking and driving problems that exist here in the Anchorage Area and will make the Community a much safer community for everyone to live in.

Nancy R Brockway
Owner - RNT Services
Office Manager - Checker Cab Company



mix of shopping, public facilities and medium- to high-density
is a local goal for seven sub-areas in the Anchorage Bowl

Bill jumps 'Off the Road' hurdle

■ **DRUNK:** Program would see car, driver home by cabbie.

The Associated Press

JUNEAU — Drunken drivers and their vehicles could get a ride home if a bill that passed the House on Tuesday has its intended effect.

State Rep. Norm Rokeberg, R-Anchorage, introduced the bill, which limits liability for taxis transporting drunken drivers' cars. He said he's trying to clear the way for an Anchorage program called "Off the Road" to get off the ground.

The Downtown Licensed Beverage Association, the Downtown Partnership and corporate sponsors have pitched in to fund the program, which would pay for cab drivers to take both an individual and his car home from participating downtown bars,

Rokeberg said.

The program should remove one obstacle that prevents drunken drivers from giving up their keys, Rokeberg said.

"Many drivers are really reluctant to leave their dearest possession, sometimes their vehicle, in a parking lot," Rokeberg said.

Often they need their car to get to work the next day, they worry about vandalism or they fear it will be towed, he said.

High insurance costs have kept the "Off the Road" program from starting, Rokeberg said. He said insurance would have cost taxi companies \$1,000 per month per cab.

The bill exempts cab drivers operating the drunken drivers' vehicle from liability in an accident except in cases of gross negligence or reckless or intentional misconduct.

The vehicle owner's insurance would still have to pay for damages in an accident, the

same as if the owner had been driving.

Rep. Eric Croft, D-Anchorage, said that provision removed his concern about the bill. Without it, he said, he had feared accident victims would have no recourse.

The bill passed the House 37-0. Rep. John Davies, D-Fairbanks, gave notice of reconsideration of his vote, so the measure could come up for a final vote today. After that, it would go to the Senate.

The measure is House Bill 68.

In other news at the Capitol

on Tuesday:

• The House State Affairs Committee approved House Joint Resolution 30, by Rep. Pete Kolt, R-Eagle River. It urges the U.S. Congress to begin the process of amending the U.S. Constitution to prohibit desecration of the U.S. flag.

• Groups on both sides of the abortion issue held rallies on the Capitol steps to commemorate the anniversary of Roe vs. Wade, the U.S. Supreme Court decision that legalized abortion in the United States.

Wednesday, January 30, 2002 B-7

oice of the Times

A CONSERVATIVE VOICE FOR ALASKANS

WILLIAM J. TOBIN
Senior editor

DUI taxi bill a positive approach

By FRANK DAHL

The early part of the year is a time for reflection, for many reasons. Many of us center on our faith and family and lives, but also on our dedication and responsibility to each other. House Bill 68 is a perfect example of taking responsibility one step further by truly watching out for our friends and patrons. And the state House agrees, as they recently passed the bill to the state Senate.

Sponsored by Rep. Norm Rokeberg, this proposed legislation will help reduce our DUI (driving under the influence of alcohol) problem. The premise behind Rep. Rokeberg's proposal is that people fail to find an alternative means of transportation when they are legally intoxicated because they do not wish to incur the cost of a cab, risk vandalism to their vehicle or be hindered by retrieval of their vehicle the next morning. With no "perceived" alternative, they opt to drive home intoxicated. Many arrive safely at home, but for those who are arrested, or cause an accident or injury, the consequences surpass the negligible cost of a cab or time spent returning the next day sober to locate the car.

Proposed by the Anchorage Downtown Partnership and Downtown License Beverage

Association, the concept is to provide a means through which an intoxicated individual, hesitant to drive because he/she is above the legal limit (.08 blood-alcohol content), can ask an employee at the participating bar or restaurant to request cab service for himself and his vehicle. The participating cab company will dispatch a cab with an extra driver who will subsequently drive the patron's vehicle home at the same time the intoxicated patron is driven home in the cab. Not a bad idea. And best of all, public safety is not compromised.

Not only does this solution instill a partnership mentality between community, patron and business, but it also



reminds residents of the fact that the hospitality industry cares about your safety. Anchorage Cabaret, Hotel, Restaurant & Retailers Association, for example, wholeheartedly endorses the concept. And many establishments have endorsed the bill and are eager to participate upon enactment of the program. In the end, it's a win-win for everyone.

One concern that has arisen stems from the potential for a lawsuit. If the cab company employee, who drives the individual's vehicle home, causes an accident from negligence. The context of the bill is intended to hold harmless the driver, cab company and licensed establishment if intentional misconduct is not a factor. In other words, no one will be liable for acting responsibly. To that end, we must formulate effective insurance language in the bill to maintain the integrity of the no-liability intent.

During troubled times, members of society tend to find it easier to cast the first stone, rather than seek lasting solutions to issues like alcohol abuse and DUI prevention. The easiest approach is to criticize our laws and legislators, and be reactive, rather than proactive. Or, mandate harsher penalties and fill our correctional system beyond its capacity while increasing our need for more taxes.

But sometimes, no matter how hard one tries, it is impossible to understand the mindset of why people do what they do. Drunks don't make thought-out decisions. They act and react. Driving under the influence is no exception. Many of us are guilty of bad judgment. The solution lies in curbing behavior with quality treatment and education, or, as an alternative, preventing behavior like driving under the influence from even happening.

HB 68 eliminates the consequence of a DUI, while at the same time partnering the hospitality industry with the cab industry with the insurance industry, in concert with law enforcement at the city and state level. The innovators and sponsor of this bill should be commended for a novel and positive approach to a growing problem that doesn't need to exist.

HB 68 is right on target for a controllable problem. And it will save the state of Alaska real tax dollars.

Let 2002 be the year of understanding, neighbor helping neighbor. Let this year be one in which we stop casting stones and instead, embrace using the stones to build a bridge of cooperation. HB 68 can be the first step.

Frank Dahl is president of the Anchorage Cabaret, Hotel, Restaurant and Retailers Association (CHARA).



Dahl

Anchorage CHARR
 OFF THE ROAD PROGRAM
 Budget

Category	July	August	September	October	November	December	Total
Operation:							
Salaries	0	0	0	0	0	0	0
Payroll taxes	0	0	0	0	0	0	0
Accounting	500	500	500	500	500	500	3000
Tax return preparation	0	0	0	0	0	0	0
Bank charges	100	100	100	100	100	100	600
Advertising (events)	0	0	14,000	16,000	0	0	30000
Printing	0	0	8,000	0	2,000	0	10000
Entertainment	100	100	100	100	100	100	600
Telephone	50	50	50	50	50	50	300
Utilities	0	0	0	0	0	0	0
Repairs & Maint.	0	0	0	0	0	0	0
Administrative O.H.	2312.5	2312.5	2312.5	2312.5	2312.5	2312.5	13875
Medical Insurance	0	0	0	0	0	0	0
Insurance - other	500	500	500	500	500	500	3000
Legal	4000		2000	0	0	2000	8000
Transportation cost	6000	6000	6000	6000	6000	6000	36000
Miscellaneous	0	0	0	0	0	0	0
Subtotal Operations	13562.5	9562.5	33562.5	25582.5	11562.5	11562.5	105375

BUDGET
Continuation

Category	January	February	March	April	May	June	Total
Operation:							
Salaries	0	0	0	0	0	0	0
Payroll taxes	0	0	0	0	0	0	0
Accounting	500	500	500	500	500	500	3000
Tax return preparation	0	0	0	0	0	0	0
Bank charges	100	100	100	100	100	100	600
Advertising (events)	0	0	14,000	16,000	0	0	30000
Printing	0	0	8,000	0	2,000	0	10000
Entertainment	100	100	100	100	100	100	600
Telephone	50	50	50	50	50	50	300
Utilities	0	0	0	0	0	0	0
Repairs & Maint.	0	0	0	0	0	0	0
Administrative O.H.	2312.5	2312.5	2312.5	2312.5	2312.5	2312.5	13875
Medical Insurance	0	0	0	0	0	0	0
Insurance - other	500	500	500	500	500	500	3000
Legal	4000		2000	0	0	2000	8000
Transportation cost	6000	6000	6000	6000	6000	6000	36000
Miscellaneous	0	0	0	0	0	0	0
Subtotal Operations	13562.5	9562.5	33562.5	25562.5	11562.5	11562.5	105375

Bill Text



BILL ID: HB 68

00 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 68 (JUD) (efd am)

01 "An Act relating to accidents involving the vehicle of a person under the influen

02 alcoholic beverage; and providing for an effective date."

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

04 * Section 1. AS 09.65 is amended by adding a new section to read:

05 Sec. 09.65.280. Damages resulting from driving the vehicle of a perso

06 under the influence of an alcoholic beverage. (a) A person is not liable

07 injury, death, or property damage resulting from a motor vehicle accident i

08 was driving a vehicle involved in the accident and

09 (1) before the accident, started driving the vehicle involved in

10 accident from or near licensed premises;

11 (2) is, at the time of the accident, a person employed to or und

12 contract to drive a taxicab or limousine, a taxicab or limousine owner, a h

13 taxicab or limousine permit issued by a municipality, or an owner or employ

14 company that dispatches taxicabs or limousines;

01 (3) was not under the influence of an alcoholic beverage at the

02 the accident;

03 (4) was driving the vehicle to the motor vehicle owner's residen

04 the request of the motor vehicle owner or a law enforcement officer; and

05 (5) was driving the vehicle because the motor vehicle owner or

06 operator was under the influence of an alcoholic beverage or reasonably bel

07 under the influence of an alcoholic beverage.

08 (b) A person licensed under AS 04.11.080 - 04.11.250, or an agent or

09 employee of the person, is not liable for personal injury, death, or proper

10 resulting from a motor vehicle accident described under (a) of this section

11 (c) This section does not preclude liability for civil damages as a r

12 gross negligence or reckless or intentional misconduct.

13 (d) A motor vehicle owner is considered to have given consent to anot

14 person to drive the owner's motor vehicle if the other person is involved i

15 and the provisions of (a) of this section apply to the other person.

16 (e) In this section, "licensed premises" has the meaning given in

17 AS 04.21.080.

18 * Sec. 2. The uncodified law of the State of Alaska is amended by adding a ne

19 read:

20 APPLICABILITY. This Act applies to a civil action that accrues on or after

21 effective date of this Act.

22 * Sec. 3. This Act takes effect July 1, 2002.

Bill Root:

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FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSSSHB 68(JUD)
 (H) Publish Date: 1/22/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title: "An Act relating to accidents involving the BRU Civil Division
vehicle of a person under the influence of an alcoholic ..." Component: Special Litigation
 Sponsor: Representative Rokeberg
 Requester: House Judiciary Committee Component No. 2213

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSSS HB 68 (JUD) prevents anyone from bringing a civil action for personal injury, death, or property damage against the driver when the driver holds a taxicab or limousine permit, or is the owner or other employee of a taxicab or limousine company, and is involved in a motor vehicle accident while driving an intoxicated owner's vehicle to the owner's residence from a licensed premises at the request of the owner or a law enforcement officer. The immunity from civil liability does not extend to cases of gross negligence or reckless or intentional misconduct.

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

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division: Attorney General's Office Date/Time 1/17/02 10:57 AM
 Approved by: Bob Meiners for Bruce M. Botelho, Attorney General Date 1/17/2002
 Agency: Department of Law

Journal Text



01-22-2002 House Journal 2032
The Rules Committee submitted the following updated fiscal note:

2. Zero, Dept. of Law

Representative James moved and asked unanimous consent that the following committee substitute be adopted in lieu of the original bill:

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO.
68 (JUD)

"An Act relating to accidents involving the vehicle of a person under the influence of an alcoholic beverage; and providing for an effective date."

There being no objection, it was so ordered.

Amendment No. 1 was offered by Representative Rokeberg:

Page 2, line 22:
Delete "2001"
Insert "2002"

Representative Rokeberg moved and asked unanimous consent that Amendment No. 1 be adopted. There being no objection, it was so ordered.

Representative James moved and asked unanimous consent that CSSSHB 68 (JUD) (efd am) be considered engrossed, advanced to third reading, and placed on final passage. There being no objection, it was so ordered.

CSSSHB 68 (JUD) (efd am) was read the third time.

The question being: "Shall CSSSHB 68 (JUD) (efd am) pass the House?" The roll was taken with the following result:

CSSSHB 68 (JUD) (efd am)
Third Reading
Final Passage

YEAS: 37 NAYS: 0 EXCUSED: 3 ABSENT: 0

01-22-2002 House Journal 2033
Yeas: Berkowitz, Bunde, Chenault, Cissna, Coghill, Crawford, Croft, Davies, Dyson, Fate, Foster, Green, Guess, Halcro, Harris, Hayes, Hudson, James, Joule, Kapsner, Kerttula, Kookesh, Kott, Lancaster, McGuire, Meyer, Morgan, Moses, Mulder, Murkowski, Ogan, Porter, Rokeberg, Stevens, Whitaker, Williams, Wilson

Excused: Kohring, Masek, Scalzi

And so, CSSSHB 68 (JUD) (efd am) passed the House.

Representative James moved and asked unanimous consent that the

Journal Text for HB68 in the 22nd Legislature

roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

Representative Davies gave notice of reconsideration of the vote on CSSSHB 68(JUD) (efd am).

Bill Root:

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FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 423(STA)
 (H) Publish Date: 3/12/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to accidents involving the RDU CIVIL
vehicle of a person under the influence of an alcoholic..." Component Torts and Workers' Compensation
 Sponsor Representative Anderson
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill limits the liability for personal injury, death, or property damage resulting from a motor vehicle accident in circumstances where the damages result from driving the vehicle of a person under the influence of an alcoholic beverage.

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

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
 Division Administrative Services Date/Time 2/9/04 1:15 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/9/2004
 Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 423(STA)
(H) Publish Date: 3/12/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
Title Taxicab Driver Liability RDU Statewide Support
Component ABC Board
Sponsor Rep. Anderson
Requester H.State Affairs Component No. 2690

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill provides legal liability protection to taxicab/limousine drivers and liquor licensees and their employees trying to provide a "safe ride" home for alcohol impaired patrons.

No fiscal impact is anticipated to the Department of Public Safety.

Prepared by: Doug Griffin, Director Phone 269-0351
Division ABC Board Date/Time 2/9/04 2:28 PM
Approved by: Commissioner William Tandeske Date 2/9/2004
Agency Public Safety

HB

427

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS
LABOR & COMMERCE COMMITTEE, CHAIRMAN
COMMUNITY & REG. AFFAIRS COMMITTEE, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
ADMINISTRATIVE REGULATION REVIEW COMMITTEE, MEMBER

website: <http://www.akRepublicans.org/Anderson.htm>

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FAX (907) 269-0264

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ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
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1-800-465-4939
FAX (907) 465-2418


Representative Tom Anderson

email: Representative_Tom_Anderson@legis.state.ak.us

MEMORANDUM

DATE: May 2, 2004

TO: Senator Ralph Seekins, Chair
Senate Judiciary Committee

FROM: Representative Tom Anderson 

RE: CSHB 427(JUD) Protection of Persons and Property

At your earliest convenience, please schedule CS for House Bill 427 Protection of Persons and Property for a hearing in the Senate Judiciary Committee.

Currently in Alaska, private guardians and conservators – individuals with the responsibility to make housing, legal, and medical decisions for the disabled, infirm, mentally ill, and seniors – are completely unregulated. CSHB 427(JUD) will go a long way towards preventing exploitation and mistreatment of vulnerable and incapacitated adults by requiring guardians and conservators to meet certain criteria and register with the State.

Attached please find the completed bill packet, which includes:

- CSHB 427(JUD)
- Fiscal Notes
 - Alaska Court System
 - Department of Community and Economic Development
- Sponsor Statement
- Sectional Analysis
- Explanation of Changes

- Support letters from:
 - AARP Alaska
 - Office of Public Advocacy
 - Written testimony from Robert P. Penzenik
- Supporting documentation from the Alaska State Association for Guardianship and Advocacy.

Thank you for your time and consideration of this matter.

House Bill 427 Testifiers

- Doug Wooliver, Alaska Courts

VIA TELECONFERENCE:

- Josh Fink, Office of Public Advocacy – OFFNET (on the same phone as Jim)
- Jim Parker, Office of Public Advocacy – OFFNET (on the same phone as Josh)
- Suzanne Armstrong, Long-term Care Ombudsman's Office – Anchorage LIO
- Betty Wells, Ak State Association for Guardianship and Advocacy – ANC LIO
- Sharon Wells, Private Professional Guardian – Anchorage LIO
- Edie Dukakis – Disability Law – Anchorage LIO

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT FOR CSHB 427(JUD) **BY: Representative Tom Anderson**

TITLE: "An act relating to guardianships and conservatorships, to the public guardian and the office of public advocacy, to private professional guardians and private professional conservators, to court visitors, court-appointed attorneys, guardians ad litem, and fiduciaries, and to the protection of the person or property of certain individuals, including minors; amending Rules 16(f) and 17(e), Alaska Rules of Probate Procedure; and providing for an effective date."

House Bill 427 will go a long way towards preventing exploitation and mistreatment of vulnerable and incapacitated adults receiving the services of a private guardian or conservator. It was drafted with input from the Alaska State Association for Guardianship and Advocacy, the Office of Public Advocacy, Adult Protective Services, the Long-term Care Ombudsman's office, the Disability Law Center, the Senior Advocacy Coalition, and the Judiciary.

Under current law, private guardians and conservators – individuals with the responsibility to make housing, legal and medical decisions for the disabled, infirm, mentally ill, and seniors – are completely unregulated by the State. This legislation would grant the State regulatory authority over private guardians and conservators, and establish minimum qualifications and standards. The State oversight and standards for such a sensitive and critical job will help ensure that vulnerable and incapacitated adults receive the care they deserve.

Often, vulnerable Alaskans – those with mental illnesses, developmental disabilities, Alzheimer's, dementia, or brain injuries -- need assistance managing their finances and making important decisions regarding their housing, medical, mental health and legal matters. In such situations, a guardian or conservator may be appointed by the court to assist those individuals. Under Alaska law, the court first looks to appoint guardians nominated by the incapacitated person if the choice is a reasonably intelligent one. Then the court looks to the incapacitated person's spouse, family, other relatives, private guardians, and, finally, the Public Guardian at the Office of Public Advocacy. In Alaska, professional guardians (both private and public) and family guardians provide services to approximately 2,500 disabled, vulnerable adults.

Today, private guardians and conservators are not regulated by any state administrative agency, and are not required to meet any minimum qualifications. Many other states regulate private guardians – and appropriately so. Vulnerable and incapacitated adults are easy prey for those wishing to exploit their resources. This was highlighted in Alaska in 2002 when a private agency filed for bankruptcy, causing financial loss and hardship to many of its clients. Moreover, while Alaska regulates Barbers and Hairdressers, Acupuncturists, Concert Promoters, Morticians, and Collection Agencies, those caring for the most vulnerable among us are not subjected to any State oversight.

HB 427 would ensure those individuals or organizations wishing to serve as private guardians or conservators meet certain criteria, and register with the State. Specifically, this legislation requires private guardians to be certified by the National Guardianship Foundation and have at least 2 years of professional experience working with clients, or a degree in human services, social work, psychology, sociology, gerontology, special education, or a closely related field. HB 427 will also require guardians to have experience in financial management or a degree in accounting. Critically, this legislation prohibits private guardians from registering with the State and practicing until a State and national criminal background check is performed.

Finally, HB 427 allows the Division of Occupational Licensing to revoke a private guardian's license if he or she has been found to have abandoned, exploited, abused, or neglected his or her ward, or has become unfit due to professional incompetence. In short, through regulatory oversight and the establishment of professional and academic standards, this legislation will help ensure disabled adults are not exploited by those entrusted to manage their affairs.

I urge your support of this important piece of legislation.

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
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MEMORANDUM

April 21, 2004

SUBJECT: Sectional summary of CSHB 427(JUD) relating to guardianships and conservatorships (Work Order No. 23-LS1627AS)

TO: Representative Tom Anderson
Attn: Jim

FROM: *JB*
Theresa L. Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Adds private professional guardians and private professional conservators to the list of boards and professions covered by the centralized licensing chapter.

Section 2. Adds a new chapter covering the licensing and regulation of private professional conservators and guardians.

Sec. 08.26.010. Requires a license to engage in the business of providing services as a guardian or a conservator.

Sec. 08.26.020. Directs the Department of Community and Economic Development to issue an individual private professional guardian license to an individual who satisfies the listed requirements.

Sec. 08.26.030. Directs the department to issue an individual private professional conservator license to an individual who satisfies the listed requirements.

Sec. 08.26.040. Directs the department to issue an organizational license to a person who is not an individual and who satisfies the listed requirements. The license may cover providing the services of a guardian and a conservator, a guardian, or a conservator.

Sec. 08.26.050. Directs the department to issue a temporary license to an individual who is not certified as required under secs. 08.26.020 or 08.26.030, but is likely to become certified within one year, and meets the other application requirements. Directs the department to issue a regular license if the individual does become certified within the year. Prohibits renewal of a temporary license.

Sec. 08.26.060. To obtain a license, requires a person to submit an application on the department's form and submit the listed items.

Sec. 08.26.070. Directs the department to obtain state and federal criminal history record information checks for each applicant.

Sec. 08.26.080. Requires a licensee to submit an annual report to the department containing the listed items.

Sec. 08.26.090. Requires a licensee to submit to the department a copy of the reports that the licensee is required to submit to a court under AS 13.26.

Sec. 08.26.100. Requires a person who engages in the business of providing services as a guardian or conservator to be licensed before the person may be appointed a guardian or a conservator in a court proceeding, unless the person is exempt under sec. 08.26.180.

Sec. 08.26.110. Prohibits a licensee from receiving payment for services without court approval of a proposed fee schedule. Requires a payment that exceeds the established monthly maximum amount to be approved by the court before being paid. Indicates what the request for court approval must include.

Sec. 08.26.120. Requires a licensee to notify the department immediately if any of the listed events occurs.

Sec. 08.26.130. Authorizes the department to take disciplinary action if the department determines that any of the listed events has occurred.

Sec. 08.26.140. Authorizes the department to petition a court to review the conduct of a licensee under certain conditions.

Sec. 08.26.180. Establishes an exemption for the described financial institutions.

Sec. 08.26.190. Defines terms for the chapter.

Section 3. Declares state policy that guardians and conservators are to abide by the highest ethical standards of decision-making and to consider the standards of practice adopted by the Department of Community and Economic Development. Requires the department to review certain standards of practice before adopting its standards.

Section 4. Defines additional terms.

Section 5. Allows the division to receive confidential information about a court proceeding under the chapter when a private professional guardian or a private professional conservator is involved.

Section 6. Adds a section relating to the appointment of a guardian ad litem in a proceeding under the article dealing with incapacitated persons.

Section 7. Makes a conforming change.

Section 8. Changes the event that triggers the time within which a guardian is to submit a report to the court. Deletes the requirement that the office of public guardian contact the guardian to offer assistance with the report.

Section 9. Deletes an option for a guardian to request that a visitor be appointed to prepare and submit a report. Requires a court to appoint a visitor every three years to file a report reviewing the guardianship. Changes (b) to cover just the guardian's report.

Section 10. Adds a new subsection describing what the visitor's report must include.

Section 11. Allows a guardian of a deceased ward to make funeral and burial arrangements and to apply for burial expense assistance under certain conditions.

Section 12. Allows a court on its own motion to review and amend guardian decisions or to make other orders relating to a guardianship.

Section 13. Makes a conforming change.

Section 14. Changes the persons from whom a court may appoint a guardian of an incapacitated person.

Section 15. Directs a court to require a relative or friend of an incapacitated person who is appointed guardian to complete certain training.

Section 16. Changes the persons identified in the priority list for appointment as guardian. Changes the qualifications for the persons who are first in priority.

Section 17. Requires the court to select the best qualified person when more than one person has equal priority for appointment as guardian.

Section 18. Allows a court to decline to appoint a person with priority as guardian when in the best interests of the incapacitated person. Allows the court to appoint instead a person with lower priority or no priority.

Section 19. States that a guardian has the powers and duties of a conservator under the chapter. If a conservator has also been appointed, directs the guardian to pay the ward's estate held by the guardian to the conservator for management.

Section 20. Removes language that gives a court-appointed lawyer for a person to be

protected the powers and duties of a guardian ad litem.

Section 21. Authorizes a court to appoint a competent person as the conservator of a protected person's estate. Prohibits the court from appointing certain persons to be conservators. Establishes the priority of persons for appointment. Directs the court to select the best qualified person when more than one person has equal priority under (d). Allows a court to decline to appoint a person who has priority under (d) when in the best interest of the protected person; allows the court to appoint instead a person with lower priority or no priority. Directs the court to require that certain persons complete training if they are appointed conservators.

Section 22. Requires a conservator to prepare and file with the court a conservator implementation report within 90 days after distribution of the order of appointment.

Section 23. Requires a conservator to submit a report to the court at least every year.

Section 24. Describes what an initial visitor's report must include. Allows a court to appoint a visitor to file a report every three years reviewing the conservatorship. Gives the court the discretion at any time to appoint a visitor to file a report reviewing a conservatorship. Describes what the three-year and discretionary reports must include.

Section 25. Prohibits a conservator from exercising authority over a protected person's affairs and estate once the conservator knows that the protected person has died. Makes exceptions for paying reasonable burial expenses and to preserve, account for, and transfer control of the assets to certain authorized persons.

Section 26. Adds language limiting the claims a conservator must pay.

Section 27. Requires the public guardian to include in its annual report under AS 13.26.118(a), information on the availability of a private guardian or conservator for a ward or protected person.

Section 28. Makes a conforming amendment.

Section 29. Prohibits the office of public advocacy from using improper pressure to influence the professional judgment of a person who is paid by the office to act as an attorney, a guardian ad litem, or a visitor for a guardianship or conservatorship.

Section 30. Adds the department to the list of agencies subject to the administrative adjudication portion of the state's Administrative Procedure Act when dealing with the licensing and regulation of private professional guardians and conservators under AS 08.26.

Section 31. Repeals certain statutes.

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Section 32. Describes how certain provisions of the bill change court rules.

Section 33. Provides some transition provisions for the bill.

Section 34. Provides some transition provisions for the bill relating to the adoption of regulations.

Section 35. Conditions the court rule changes on the increased majority vote required by the state's constitution.

Section 36. Makes sec. 34 take effect immediately.

Section 37. Makes the rest of the Act effective on January 1, 2005.

If I may be of further assistance, please advise.

TLB:mdr
04-176.mdr

Changes to HB 427 in (H) HESS

Moved the licensing requirement from AS 13.26 (Boards) to AS 08.01 (Division of Occupational Licensing).

Changes to CSHB 427(HES) in (H) JUD

Page 2, line 30: Change current language "who is certified as a conservator by a nationally recognized organization in the field of conservatorships" to "who is certified as required in 08.26.020 (3)" The reason for this change is that the National Guardianship Foundation test is for guardians who also do estate management. They don't certify guardians or conservators separately.

Page 8, line 11: Change language "has not complied the standards of conduct" to "has not complied with the standards of conduct". Grammar change only

Page 10, line 22: Change "National Guardianship Foundation" to National Guardianship Association". The Standards of Practice come from the Association; the certification testing is done through the Foundation.

Page 11, line 21 Change several provisions of proposed A.S. 13.26.025, "Appointment of a guardian ad litem" Specifically, delete subsection (b), and renumber accordingly. A brief summary of the rationale of these changes follows:

Page 11, lines 26 through 27: Delete [CANNOT DETERMINE THE WARD'S, PROTECTED PERSON'S, OR RESPONDENT'S OWN INTERESTS WITHOUT ASSISTANCE], and insert new language to read **is incapable of determining their position regarding the issues involved in the pending proceeding.**

Page 12, lines 2 through 12: Delete subsection (b).

The attorney for the ward, protected person, or respondent may [ALSO BE THE] **be appointed as** the guardian ad litem for the ward, protected person, or respondent if there is no other party readily available and able to serve as a guardian ad litem **and the court determines that the appointment is appropriate under the standards set out in (a) of this section. When such appointment occurs the appointment as attorney ends and the person appointed as the guardian ad litem shall act exclusively as a guardian ad litem for the ward, protected person, or respondent.**

Page 16. line 31,

Deleted the old language and inserted:

(e) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, acting in the best interest of the respondent, may

decline to appoint a person having priority and appoint a person having a lower priority or no priority.

This new language is taken from Section 5-310 of the 1998 version of the Uniform Probate Code and is intended to ensure that the court should not deviate from the priorities set forth in this statute unless such deviation is in the best interests of the respondent

Page 19, line 29:

Deleted the old language and inserted:

- (a) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, acting in the best interest of the respondent, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.

This new language is taken from Section 5-413 of the 1998 version of the Uniform Probate Code and is intended to ensure that the court should not deviate from the priorities set forth in this statute unless such deviation is in the best interests of the respondent