

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11202 SENATE JUDICIARY

(5) "Master Settlement Agreement" means the settlement agreement and related documents described in AS 45.53.010 ;

(6) "original participating manufacturer" means "original participating manufacturer" as that term is defined in the Master Settlement Agreement;

(7) "qualified escrow fund" means a fund described in AS 45.53.020(c);

(8) "released claims" means "released claims" as that term is defined in the Master Settlement Agreement;

(9) "releasing parties" means "releasing parties" as that term is defined in the Master Settlement Agreement;

(10) "tobacco product manufacturer"

(A) means an entity that, on or after June 4, 1999, directly, and not exclusively through an affiliate,

(i) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer; provided, however, that an entity that manufactures cigarettes that it intends to be sold in the United States shall not be considered to be a tobacco product manufacturer under this clause (i) if, first, such cigarettes are sold in the United States exclusively through an importer that is an original participating manufacturer, as that term is defined in the Master Settlement Agreement, that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of sec. II(mm) of the Master Settlement Agreement and that pays the taxes specified in sec. II(z) of the Master Settlement Agreement, and, second, the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States;

(ii) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(iii) becomes a successor of an entity described in (i) or (ii) of this subparagraph;

(B) does not include an affiliate of an entity described in (A) of this paragraph unless the affiliate itself meets the standards set out in any of (A)(i) - (iii) of this paragraph;

(11) "units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or

through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs or "roll-your-own" tobacco containers.

RESOLUTION SUPPORTING ALLOCABLE SHARE LEGISLATION

WHEREAS, Cigarette smoking presents serious public health concerns to the States, requires the States to spend billions of dollars for the treatment of health conditions resulting from Cigarette smoking, and imposes substantial additional costs on the States, many of which costs occur years after the Cigarettes are sold; and

WHEREAS, 46 States, the District of Columbia, the Commonwealth of Puerto Rico, and four United States territories ("the Settling States") and more than 40 Cigarette manufacturers are parties to the tobacco Master Settlement Agreement of 1998 ("the MSA") under which Cigarette manufacturers who are parties to the MSA have agreed to significant limitations on the advertising, promotion, and marketing of Cigarettes and agreed to make substantial payments to the States in exchange for a release from liability for certain claims of the States related to Cigarette smoking; and

WHEREAS, in connection with the MSA the Settling States have enacted statutes that require Cigarette manufacturers who do not become parties to the MSA ("Non-Participating Manufacturers" or "NPMs") to make payments into an escrow fund of a specified amount for each of its Cigarettes sold in the State; and

WHEREAS, the Escrow Statute is designed to ensure that a Settling State that obtains a judgment against an NPM for the costs imposed by sales of the NPM's Cigarettes will have an Escrow Fund available against which to satisfy a judgment; and

WHEREAS, in the absence of a significant escrow fund, companies that choose not to enter into the MSA and are not subject to its restrictions on advertising and promotion would be able to sell cigarettes without making any provision for the costs imposed on the State by the sales of their cigarettes; and

WHEREAS, the existing escrow statutes as originally enacted by the Settling States contain language that inadvertently permits NPMs that concentrate their sales in only a few states to avoid the large majority of their obligation to keep funds in escrow and thereby confers on those companies an unfair competitive advantage over both Participating Manufacturers and over other NPMs; and

WHEREAS, as a result of this language several NPMs have enjoyed an unintended competitive advantage over the more than 40 companies that have chosen to join the Master Settlement Agreement and have thereby expanded their sales at the expense of those companies; and

WHEREAS, permitting NPMs to make sales in any State without requiring them to keep significant escrow funds on deposit jeopardizes the health care objectives and MSA payments of all States; and

WHEREAS, the availability of low-priced cigarettes made possible by the

deficiencies in the existing escrow statutes has reduced the effectiveness of State programs to discourage youth smoking; and

WHEREAS, a large number of States, recognizing the deficiency in the existing escrow statutes, jointly developed proposed legislation (the "Allocable Share legislation," attached as Tab A hereto) designed to eliminate this inadvertent deficiency and to serve the purposes for which the escrow statute was originally designed; and

WHEREAS, the Tobacco Committee of the National Association of Attorneys General considered and endorsed enactment of the Allocable Share legislation; and

WHEREAS, seventeen States have already enacted the Allocable Share legislation and the legislation is under consideration in other jurisdictions;

NOW, THEREFORE, be it resolved that the National Association of Attorneys General:

1. Reaffirms the principle that the purpose of the escrow statute is to preserve the public health gains of the MSA by ensuring that all Cigarette manufacturers selling Cigarettes in a State must either join the MSA, restrict their advertising and promotion, and make MSA payments to compensate the State for the costs imposed on the State by cigarette smoking or establish and maintain an escrow fund sufficient to ensure that significant funds will be available in the event that the State obtains a judgment for such costs; and
2. Recognizes that the existing escrow statutes as originally drafted and enacted do not always accomplish this objective; and
3. Endorses the enactment of the Allocable Share Amendment in each Settling State in order that this objective be accomplished; and
4. Directs the Executive Director to communicate this resolution to interested parties; and
5. Directs the Tobacco Project to provide support to attorneys general for the enactment of the legislation.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

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**CHANGES TO THE ALLOCABLE SHARE PROVISION
OF THE MODEL ESCROW STATUTE****INTRODUCTION AND ANALYSIS*****WHY IS THIS LEGISLATION IMPORTANT?***

Enactment of the proposed change to the Model Act is necessary to avoid hundreds of millions of dollars in losses to the States' tobacco payments under the MSA. The proposed change is also important to ensure that the central public health purposes of the MSA are met. The Model Escrow Statute was enacted to ensure that Settling States would receive the benefits of the MSA and that companies that refused to enter into the MSA would not thereby be able to profit unfairly from such refusal. Some companies that neither make MSA payments to the States nor observe any of the public health restrictions in the MSA are profiting from a loophole in the current law that allows them to avoid any significant responsibility under the State's Model Escrow Statute. This amendment is designed to ensure that the Model Escrow Statutes operate evenhandedly as originally intended, thereby advancing the legitimate health and safety goals contemplated by the MSA.

WHAT IS THE MSA AND WHAT DOES IT PROVIDE?

The MSA was executed on November 23, 1998 by 52 Settling States with the major tobacco companies and numerous smaller manufacturers (collectively known as "Participating Manufacturers" or "PMs"). The MSA provides that in exchange for the agreement of the PMs to make specified payments to the Settling States -- estimated to exceed \$200 billion through 2025 -- and their agreement to abide by extensive public health restrictions on the advertising, promotion and marketing of cigarettes, the Settling States agreed to release the PMs from claims by the States. Tobacco Product Manufacturers that did not sign the MSA ("Non-Participating Manufacturers" or "NPMs") were not released from potential State claims and did not undertake any of the payment obligations or agree to abide by the public health restrictions.

The parties to the MSA also proposed a "Model Statute" designed to prevent NPMs from taking advantage of the fact that they do not make payments under the MSA and are not bound by the public health, advertising and other MSA restrictions. The Model Statute requires all NPMs whose cigarettes are sold in a State to establish and annually fund a qualified escrow account in an amount determined by the sales volume in the State. Funds deposited in the escrow account are released to the NPM after 25 years if not used before then to pay a judgment in favor of the State against the NPM. All Settling States enacted a Model Escrow Statute.

WHAT ARE THE PURPOSES OF THE MODEL ESCROW STATUTE?

In the MSA the States released their claims against companies that joined the MSA and that thereby agreed to make MSA payments and abide by the public health provisions of the MSA. As noted, companies that chose not to join the MSA were not released from claims by the States. They do not make MSA payments and they are not required to abide by the public health provisions of the MSA.

There was a concern, however, that NPMs could sell cigarettes in the States, take advantage of the fact that they did not have to bear the cost of making MSA payments or abide by the public health provisions of the MSA, yet be unable to satisfy judgments that the States might eventually obtain for the costs imposed as a result of these sales. The Model Escrow Statute is designed to ensure that there will be a fund available to satisfy State claims in the event the State obtains a judgment against an NPM. In addition, under the MSA, Settling States that enact and "diligently enforce" a Model Escrow Statute are not subject to certain potential downward adjustments to their MSA payments.

HOW DOES THE MODEL ESCROW STATUTE WORK?

The Model Escrow Statute requires an NPM to make escrow deposits on its cigarettes sold in a Settling State at a set figure per cigarette sold (about 1.5¢ 2002 sales). Deposits remain the property of the NPM and the NPM earns currently-payable interest. Principal must remain in escrow for twenty-five years to be available to meet potential State claims. In order to fairly estimate the sum necessary to satisfy any potential judgment a State may obtain, the NPM escrow obligation is calculated to approximate the MSA payment on a per-cigarette basis (and does so almost precisely).

HOW HAVE THE PURPOSES OF THE MODEL ESCROW STATUTE BEEN SUBVERTED BY THE CURRENT ALLOCABLE SHARE RELEASE PROVISION?

A provision of the Model Escrow Statute permits an NPM to obtain a release of funds from escrow "to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement ... had it been a Participating Manufacturer under the MSA...." Experience in several states has shown that this provision enables NPMs that concentrate their sales in a single state or a few states to obtain early releases of the great majority of their escrow deposits. This outcome was never contemplated and threatens to undermine the effectiveness of the Model Escrow Statutes. Escrow funds so minimized are not adequate to provide security to the States nor do they prevent unfair profit taking.

HOW DOES THE CURRENT ALLOCABLE SHARE RELEASE PROVISION SUBVERT THE PURPOSES OF THE MODEL STATUTE?

Participating Manufacturers under the MSA make payments to the States based on their nationwide sales. The States share in the payments in accordance with fixed percentages, known as Allocable Shares. By contrast, under each State's Model Statute, NPMs make payments only on their cigarettes sold in that State. The payments are designed to be the same as the payments that would be made on an equivalent number of cigarettes under the MSA if the NPM had become a Participating Manufacturer. The loophole that this legislation seeks to close gives some NPMs an immediate release of nearly all of those payments.

By way of example, consider an NPM that makes all its sales -- 100 million cigarettes -- in a state whose allocable share of MSA payments is two percent. Under the current statute, that NPM would be entitled to an immediate release of that portion of its escrow deposit that exceeds what would have been the State's allocable share of the NPM's total MSA payment had it been an MSA participant. Under this example, because the NPM makes all its sales in a single State and because the escrow deposit per cigarette and the MSA payment per cigarette are approximately the same, the NPM's (hypothetical) total MSA payment is the same as its escrow deposit. However, because the State's allocable share of the total MSA payment is only two percent, under current law the NPM would be

entitled to a release of 98 percent of its Escrow deposit. In other words, although the NPM sold 100 million cigarettes in the State, the amount it would have to leave in escrow would be based on only 2 million cigarettes. Accordingly, some NPMs that sell large numbers of cigarettes in a given State are not being required to keep significant funds in escrow in that State despite the volume of cigarette sales that continue to impose substantial health and other costs on that State. This outcome frustrates the fundamental objective of the Model Escrow Statute.

As the example demonstrates, the current provision permits an NPM that has geographically concentrated sales to obtain a refund of the vast majority of its escrow deposits. This allows the NPM to significantly lower the cost of its cigarettes, because the NPM is not escrowing its full share of the future healthcare burden that its product imposes on the State. In lowering the cost, the NPM presents a product that is very attractive to kids, whose cigarette usage is sensitive to price.

HOW DOES THE PROPOSED AMENDMENT REMEDY THE PROBLEM?

The proposed amendment to the Model Escrow Statute eliminates the unintended consequence of the original language that has compromised the law's effectiveness. The amendment is necessary to accomplish the fundamental purpose of the law: to ensure that every NPM is required to post escrows for sales of its cigarettes in the State that provide a meaningful fund from which the State can recover damages in the event it obtains a judgment against the NPM.

This first part of the amendment would limit releases from escrow accounts to any amounts paid into escrow in excess of the MSA payments that the NPM would have been required to make as a PM on account of cigarettes sold in the State for a particular year. Thus, under the amendment the MSA payments relevant to release would not be limited to a State's allocable share of the NPM's (hypothetical) total MSA payments, but rather would be the NPM's MSA payments on the same number of cigarettes as are sold in the State. In other words, under the above example where the NPM sells 100 million cigarettes in a State, the NPM under the amendment would be entitled to a release only to the extent that its escrow payment exceeded what would have been its MSA payment on these 100 million cigarettes.

WEREN'T STATES TOLD THEY WERE NOT SUPPOSED TO AMEND THE MODEL STATUTE?

All States have Model Statutes. Their payments are potentially subject to reduction if Participating Manufacturers establish that the statute has been amended in a way that disqualifies them from being Model Statutes. All the Original Participating Manufacturers and all the major Subsequent Participating Manufacturers have signed letters of assurance declaring that the proposed amendment will not affect the status of the Model Statute. Thus, a State that enacts the amendment will continue to have the protection afforded by having a Model Statute. In fact, the amendment strengthens the Model Escrow Statute by eliminating the unintended consequence that confers an unfair competitive advantage on some NPMs.

The amendment is consistent with the purposes of the Model Escrow Statute: it sharply reduces the ability of an NPM to minimize its payments by concentrating its sales in one or two states and it sharply reduces the unintended disparity created by the current Model Escrow Statute.

WHAT HAPPENS IF THE AMENDMENT IS CHALLENGED AS UNCONSTITUTIONAL?

There is no significant risk of the proposed amendment being held unconstitutional. The Model Escrow Statute, or versions identical to it in other states, has been challenged and consistently been upheld as a valid enactment. For example, in Star Scientific Inc. v. Beales, 278 F.3d 339 (4th Cir.), cert. denied, 123 S.Ct. 93 (2002), the Fourth Circuit Court of Appeals held that Virginia's statute was constitutional under the Equal Protection, Due Process, and Commerce Clauses. In none of the lawsuits has a court suggested that the aspect of the statute that the proposed legislation would amend is necessary to its constitutionality.

Moreover, in the unlikely event the amendment were challenged and struck down as unconstitutional, there exists a "back-up provision" which eliminates the paragraph dealing with the allocable share release in its entirety. Should the Model Escrow Statute thereafter be held unconstitutional due to the ABSENCE of the allocable share release paragraph, then the original Model Escrow Statute language would be restored. As a result, in the extremely unlikely event that BOTH alternative changes (i.e., eliminating the loophole, and eliminating the release paragraph altogether) are held unconstitutional, the Statute would be restored to its original constitutionally upheld position. This "revival" provision is a general rule that exists in every state – namely if an unconstitutional amendment is passed, the law is restored to its prior condition. (Think of it this way: If you amend your assault statute, and the amendment is held to be unconstitutional, assault doesn't suddenly become legal. Rather, the law is restored to its original position, because the unconstitutional change is deemed to be a nullity.)

WILL PASSAGE OF THE AMENDMENT PUT AT RISK MY STATE'S MSA PAYMENTS?

NO. Passing the amendment will NOT jeopardize a State's MSA payments. The only parties that could make such a challenge are parties to the MSA. The parties that make the preponderance of the payments have signed letters of assurance that the amendment will not affect the salutary effect of the Model Escrow Statutes. Companies that want to maintain an unfair competitive advantage may try to scare States with misinformation so that they can continue to profit by exploiting the loophole in the current statute. States that enact the amendment will ensure that NPMs who sell in their States make escrow deposits as originally intended.

HOW WILL THIS AMENDMENT PROTECT PUBLIC HEALTH?

Studies have repeatedly demonstrated that cheap cigarettes are favored by kids, who tend to be more price-sensitive than adults. By ensuring that NPM cigarette prices include some of the cost burden imposed on the State, this amendment will maintain the price of NPM cigarettes at a higher level and help discourage another generation of minors from becoming addicted to cigarettes.

WILL THE PROPOSAL HAVE A FISCAL IMPACT?

The proposed amendment would likely be "revenue neutral." Escrow deposits do not constitute state revenues; they remain the property of the NPM. However, the legislation would likely result in a reduction in the administrative costs of enforcing the Model Escrow Statute because there would be fewer requests for releases from escrow for the State to process. Moreover, should the State obtain a judgment against an NPM to recover the health care costs imposed on the State by the NPM's products, the proposed legislation would enhance the State's ability to recover that judgment.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

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February 26, 2004

Representative Eric Croft
State Capitol Building
Juneau, Alaska 99801-1182

Re: HB 503
Our File: 023-96-0114

Dear Rep. Croft:

You raised a question in the House Finance hearing of February 25 regarding whether a tax-crediting approach would be a workable solution to the NPM issue. My understanding from the National Association of Attorneys General (NAAG) is that various proposals along these lines have been proposed in other states. For instance, legislation that imposes a fee of \$.50/pack on NPM cigarettes only has been enacted in Michigan and has been introduced in Utah and Indiana. A working group of states and NAAG has determined that this legislation has serious constitutional and antitrust problems, a conclusion with which I am not inclined to disagree.

Another proposal is similar to what you suggested yesterday: an additional tax with a credit for MSA payments. This proposal is apparently currently under consideration in the Missouri. The problem with this particular proposal is that whereas MSA payments are determined on a national basis with each participating state sharing in those payments based on a fixed allocation percentage, a tax credit based on in-state sales would effectively convert MSA revenue calculation and apportionment to a state-by-state sales methodology, which could substantially change the amounts of revenue states receive under the MSA. NAAG is also concerned that enactment of such legislation could result in litigation by the participating manufacturers alleging that the state had breached the MSA. That being said, my current understanding is that NAAG is open to consideration of similar proposals that do not have such problems and that work is ongoing in this regard on a national level. If such a proposal is ultimately recommended to the states for adoption by NAAG, we will certainly bring it to the attention of the legislature.

Representative Eric Croft
Re: HB503
Our File: 023-96-0114

February 26, 2004
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Additionally, I have updated and enclosed the spreadsheet I distributed at the hearing in an effort to better demonstrate the impact of geographic market concentration by an NPM. Hopefully, this updated spreadsheet will more readily reveal the significant windfall available to NPMs when they concentrate their sales in a few states, and how the HB 503 proposal restores the level and fair playing field originally intended by the MSA.

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL

By:



Michael A. Barnhill
Assistant Attorney General

MAB:mi

Enclosure

cc: David Marquez, Department of Law, Civil Division
Deborah Behr, Department of Law, Civil Division
Johanna Bales, Department of Revenue, Tax Division
Mike Tibbles, Office of the Governor, Legislative Office
Rep. John Harris, Co-chair House Finance Committee
Rep. Bill Williams, Co-chair House Finance Committee
Rep. Kevin Meyer, House Finance Committee
Rep. Mike Chenault, House Finance Committee
Rep. Richard Foster, House Finance Committee
Rep. Mike Hawker, House Finance Committee
Rep. Bill Stoltze, House Finance Committee
Rep. Carl Moses, House Finance Committee
Rep. Hugh Fate, House Finance Committee
Rep. Reggie Joule, House Finance Committee

**NPM Escrow Release Calculations
for hypothetical non participating manufacturer
Cheap Smokes, Inc.**

Cheap Smokes' national cigarette sales	100,000,000				
Approx. MSA Contr./cigarette	\$0.02				
"As if" MSA Contribution	\$2,000,000				

	Alaska	Washington	California	Oregon	Total
MSA Allocable Share Percentage	0.003414187	0.020532582	0.127639554	0.0114766	
Allocable share of Cheap Smokes' "as if" MSA payment	\$6,828.37	\$41,065.16	\$255,279.11	\$22,953.16	\$326,125.81

Cheap Smokes' sales	1,000,000	20,000,000	75,000,000	4,000,000	100,000,000
Approx. Escrow Deposit/cigarette	\$0.02	\$0.02	\$0.02	\$0.02	
Escrow Deposit Requirement	\$20,000	\$400,000	\$1,500,000	\$80,000	\$2,000,000

Current Law:

Escrow Release Threshold	\$6,828.37	\$41,065.16	\$255,279.11	\$22,953.16	\$326,126
Escrow Release Amount	\$13,171.63	\$358,934.84	\$1,244,720.89	\$57,046.84	\$1,673,874
Amount Left in Escrow	\$6,828.37	\$41,065.16	\$255,279.11	\$22,953.16	\$326,126
Effective Amount Deposited/Cigarette	\$0.0068	\$0.0021	\$0.0034	\$0.0057	\$0.0033

HB 503 Proposal, Section 1:

Escrow Release Threshold	\$20,000	\$400,000	\$1,500,000	\$80,000	\$2,000,000
Escrow Release Amount	\$0.00	\$0.00	\$0.00	\$0.00	\$0
Amount Left in Escrow	\$20,000	\$400,000	\$1,500,000	\$80,000	\$2,000,000
Effective Amount Deposited/Cigarette	\$0.02	\$0.02	\$0.02	\$0.02	\$0.02

HB 503 Proposal, Section 2:

Escrow Release Threshold	none
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HB 503 Proposal, Section 3:

same as current law

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**Amendment to the Allocable Share Release Provision of State Escrow Statutes
Status of State Legislation**

(Please Note: This chart is based on the most current information available to the NAAG Tobacco Project as of April 16, 2004. The actual status of these and other similar bills may not be properly reflected here. Please check with individual states for current status.)

	STATE	BILL STATUS
1	Alabama	Signed into Law
2	California	Signed into Law
3	Colorado	Passed by the Legislature
4	Georgia	Passed by the Legislature
5	Hawaii	Signed into Law
6	Idaho	Signed into Law
7	Illinois	Signed into Law
8	Indiana	Signed into Law
9	Iowa	Signed into Law
10	Kentucky	Passed by the Legislature
11	Louisiana	Signed into Law
12	Maine	Signed into Law
13	Maryland	Passed by the Legislature
14	Michigan	Signed into Law
15	Montana	Signed into Law
16	Nebraska	Passed by the Legislature
17	New Mexico	Signed into Law
18	New York	Signed into Law
19	Ohio	Signed into Law
20	Oklahoma	Signed into Law
21	Oregon	Signed into Law

22	South Dakota	Signed into Law
23	Tennessee	Passed by the Legislature
24	Utah	Signed into Law
25	Vermont	Signed into Law
26	Washington	Signed into Law
27	West Virginia	Signed into Law
28	Wisconsin	Signed into Law
29	Wyoming	Signed into Law

HB

513

LEGAL SERVICES

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MEMORANDUM

March 24, 2004

SUBJECT: Suspension of drivers' licenses for child support enforcement purposes (CSHB 513()); version "H")

TO: Representative Pete Kott
Attn: John Main

FROM: Jean Mischel
Legislative Counsel



Enclosed is a blank CS for HB 513.

The new language you asked for is primarily in a new subsection (q), added in sec. 8 of the draft. It was not sufficient to provide just for reinitiating proceedings against an obligor who fell behind after a two-year payment history under a payment schedule; it was also necessary to provide for revocation of the release previously granted to the obligor when the original payment schedule was negotiated and to distinguish this revocation from the revocations under subsections (o) and (p), which are added by sec. 8 of the draft and referred to in secs. 3, 5, and 6 of the draft.

Since the general rule under AS 25.27.246(c), as amended in sec. 3 of the draft, is that a revoked release leads immediately to suspension of a drivers' license, and the general rule under AS 25.27.246(h), as amended in sec. 5 of the draft, is that an obligor can challenge an agency decision to revoke a release, I have drafted the new subsection (q) to provide clearly that the process after a release is revoked under (q) is different, i. e., paragraph (q)(1) provides that the revocation cannot be challenged and does not lead to immediate suspension of the obligor's drivers' license, and paragraphs (q)(2) and (3) provide, as you requested, that the process to be followed after revocation of a release under (q)(1) is to initiate a new enforcement action against the obligor, starting with placement of the obligor's name on the list maintained under AS 25.27.246(a) and continuing with the other procedures applicable to a person whose name is on the list.

Because of the interplay of subsections in AS 25.27.246, there are minor conforming changes made in secs. 2 and 7 of the draft and in subsection (p), added by sec. 8 of the draft.

If there are other conforming changes that are needed, or if the draft does not conform to your intent in any way, please do not hesitate to let me know.

JMM:mdr
04-113.mdr

Enclosure

23-LS1638VH
Mischel
3/24/04

CS FOR HOUSE BILL NO. 513()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION**

BY

**Offered:
Referred:**

**Sponsor(s): REPRESENTATIVES KOTT, Coghill, Harris, Hawker, McGuire, Rokeberg, Anderson, Lynn,
Dahlstrom**

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the enforcement of support orders through suspension of drivers'**
2 **licenses; changing the name of the child support enforcement agency to the child**
3 **support services agency; amending Rules 90.3 and 90.5, Alaska Rules of Civil**
4 **Procedure; and providing for an effective date."**

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

6 *** Section 1.** AS 25.27.010 is amended to read:

7 **Sec. 25.27.010. Creation of child support services [ENFORCEMENT]**
8 **agency. There is created in the Department of Revenue the child support services**
9 **[ENFORCEMENT] agency.**

10 *** Sec. 2.** AS 25.27.246(a) is amended to read:

11 (a) The agency shall compile and maintain a list of obligors who have a
12 driver's license, and **either (1)** are not in substantial compliance with a support order,
13 or **(2) whose names are required to be placed on the list under (a)(2)** [PAYMENT
14 SCHEDULE NEGOTIATED UNDER (f)(1)] of this section. The agency may not

1 include an obligor on the list unless the agency has sent to the obligor, at the obligor's
2 most recent address on file with the agency, written notice of the arrearages at least 60
3 days before placement on the list. The list must include the names, social security
4 numbers, dates of birth, and last known addresses of the persons. The list shall be
5 updated by the agency on a monthly basis.

6 * **Sec. 3.** AS 25.27.246(c) is amended to read:

7 (c) If the licensee fails to obtain a release during the 150-day period following
8 notice under (b) and (d) of this section or if the agency revokes a release of a
9 person's license under (o) or (p) of this section, the agency shall notify the
10 department that the licensee's driver's license should be suspended and further
11 renewals or applications should be denied until the agency sends the department a
12 release for the licensee. Upon receiving the agency's notice under this subsection, the
13 department shall suspend the licensee's driver's license and may not issue or renew a
14 driver's license for the licensee until the department receives a release to do so from
15 the agency. If a license is suspended or an application is denied under this section,
16 money paid by the applicant or licensee may not be refunded by the department.

17 * **Sec. 4.** AS 25.27.246(f) is amended to read:

18 (f) If a licensee wishes to challenge being included on the list, the licensee
19 shall submit to the agency a written request for review within 30 days after the notice
20 under (b) of this section was personally delivered or postmarked by using the form
21 developed under (d) of this section. Within 30 days after receiving a written request
22 for review, the agency shall inform the licensee in writing of the agency's findings.
23 The agency shall immediately send a release to the department and the licensee if any
24 of the following conditions is met:

25 (1) the licensee is found to be in substantial compliance with each
26 support order applicable to the licensee or has negotiated an agreement with the
27 agency for a payment schedule on arrearages and is in substantial compliance with the
28 negotiated agreement; [IF THE LICENSEE FAILS TO BE IN SUBSTANTIAL
29 COMPLIANCE WITH AN AGREEMENT NEGOTIATED UNDER THIS
30 PARAGRAPH, THE AGENCY SHALL SEND TO THE DEPARTMENT A
31 REVOCATION OF ANY RELEASE PREVIOUSLY SENT TO THE ENTITY FOR

1 THAT LICENSEE;]

2 (2) the licensee has submitted a timely request for review to the
3 agency, but the agency will be unable to complete the review and send notice of
4 findings to the licensee in sufficient time for the licensee to file a timely request for
5 judicial relief within the 150-day period before the licensee's license will be suspended
6 under (c) of this section; this paragraph applies only if the delay in completing the
7 review process is not the result of the licensee's failure to act in a reasonable, timely,
8 and diligent manner upon receiving notice from the agency that the licensee's driver's
9 license will be suspended in 150 days;

10 (3) the licensee has, within 30 days after receiving the agency's
11 findings following a request for review under (2) of this subsection, filed and served a
12 request for judicial relief under this section, but a resolution of that relief will not be
13 made within the 150-day period before license suspension under (c) of this section;
14 this paragraph applies only if the delay in completing the judicial relief process is not
15 the result of the licensee's failure to act in a reasonable, timely, and diligent manner
16 upon receiving the agency's notice of findings; or

17 (4) the licensee has obtained a judicial finding of substantial
18 compliance.

19 * Sec. 5. AS 25.27.246(h) is amended to read:

20 (h) If the agency refuses to release the license under (f) of this section or
21 the agency revokes a release under (o) or (p) of this section, the [EXCEPT AS
22 OTHERWISE PROVIDED IN THIS SECTION. THE AGENCY MAY NOT ISSUE
23 A RELEASE IF THE LICENSEE IS NOT IN SUBSTANTIAL COMPLIANCE
24 WITH THE ORDER FOR SUPPORT OR WITH AN AGREEMENT NEGOTIATED
25 UNDER (f)(1) OF THIS SECTION. THE] agency shall notify the licensee in writing
26 that the licensee may request any or all of the following: (1) judicial relief from the
27 agency's decision not to issue a release or the agency's decision to revoke a release
28 under (o) or (p) [(f)(1)] of this section; (2) a judicial determination of substantial
29 compliance; (3) a modification of the support order. The notice must also contain the
30 name and address of the court in which the licensee may file the request for relief
31 [AND INFORM THE LICENSEE THAT THE LICENSEE'S NAME SHALL

1 REMAIN ON THE LIST IF THE LICENSEE DOES NOT REQUEST JUDICIAL
2 RELIEF WITHIN 30 DAYS AFTER RECEIVING THE NOTICE]. The licensee shall
3 comply with all statutes and rules of court implementing this section. This section
4 does not limit a licensee's authority under other law to request an order to show cause
5 or notice of motion to modify a support order or to fix a payment schedule on
6 arrearages accruing under a support order or to obtain a court finding of substantial
7 compliance with a support order [OR A COURT FINDING OF COMPLIANCE
8 WITH SUBPOENAS AND WARRANTS DESCRIBED IN (a) OF THIS SECTION].

9 * **Sec. 6.** AS 25.27.246(i) is amended to read:

10 (i) A request for judicial relief from the agency's decision not to issue a
11 release under (f) of this section or from the agency's decision to revoke a release
12 under (o) or (p) of this section must state the grounds on which relief is requested,
13 and the judicial action shall be limited to those stated grounds. Judicial relief under
14 this subsection is not an appeal and shall be governed by court rules adopted to
15 implement this section. Unless otherwise provided by court rule, the court shall hold
16 an evidentiary hearing within 20 calendar days after the filing of service on the
17 opposing party. The court's decision shall be limited to a determination of each of the
18 following issues, as applicable:

19 (1) whether there is a support order or a payment schedule on
20 arrearages;

21 (2) whether the petitioner is the obligor covered by the support order;
22 and

23 (3) whether the obligor is in substantial compliance with the support
24 order or payment schedule.

25 * **Sec. 7.** AS 25.27.246(k) is amended to read:

26 (k) If a licensee is in substantial compliance with a support order or payment
27 schedule, the agency shall mail to the licensee and the department a release stating that
28 the licensee is in substantial compliance. The receipt of a release shall serve to notify
29 the licensee and the department that, for the purposes of this section, the licensee is in
30 substantial compliance with the support order or payment schedule unless the agency

31 (1) [,] under (a) of this section, certifies subsequent to the issuance of a

1 release that the licensee is once again not in substantial compliance with a support
2 order ; or

3 (2) under (o), (p), or (q) of this section, revokes a release because
4 the licensee is not in substantial compliance with a payment schedule negotiated
5 under this section [OR PAYMENT SCHEDULE].

6 * Sec. 8. AS 25.27.246 is amended by adding new subsections to read:

7 (o) If the agency releases a license under (f)(2) or (3) of this section because
8 the review could not be completed within the 150-day period, the review process,
9 including any request for judicial relief, may be completed after the 150-day period.
10 If, at the completion of the review process, the licensee is found not to be in
11 substantial compliance with each support order applicable to the licensee and has not
12 entered into a payment schedule under this section, the agency shall send to the
13 department a revocation of the release previously sent to the department for that
14 licensee. The agency shall send notice of the revocation to the licensee as provided in
15 (h) of this section.

16 (p) Except as provided in (q) of this section, if the licensee fails to be in
17 substantial compliance with a payment schedule negotiated under this section, the
18 agency shall send to the department a revocation of any release previously sent to the
19 department for that licensee. The agency shall send notice of the revocation to the
20 licensee as provided in (h) of this section.

21 (q) If a licensee fails to be in substantial compliance with a payment schedule
22 negotiated under this section but paid the monthly obligation under the payment
23 schedule for at least two years immediately after the schedule was negotiated, the
24 agency shall

25 (1) revoke the release previously granted to the licensee under this
26 section and notify the department and licensee that the release has been revoked; the
27 licensee may not challenge the revocation of this release; upon receiving the agency's
28 notice under this paragraph, the department may not suspend the licensee's driver's
29 license or refuse to issue or renew a driver's license for the licensee unless the
30 department subsequently receives a new notice to do so from the agency under (c) of
31 this section;

1 (2) initiate new proceedings against the licensee under this section by
 2 placing the licensee's name on the list compiled under (a) of this section after
 3 following the procedures required under (a) of this section;

4 (3) follow the procedures of this section with respect to the licensee as
 5 if it were the first time that the licensee's name had been placed on the list compiled
 6 under (a) of this section, except that the agency may either negotiate a new payment
 7 schedule under (f)(1) of this section or seek to enforce the previously negotiated
 8 payment schedule.

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

11 **INDIRECT COURT RULE AMENDMENT.** Section 1 of this Act has the effect of
 12 changing Rule 90.3, Alaska Rules of Civil Procedure, by changing the name of the child
 13 support enforcement agency to the child support services agency.

14 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
 15 read:

16 **INDIRECT COURT RULE AMENDMENT.** Sections 1 - 8 of this Act have the effect
 17 of changing Rule 90.5, Alaska Rules of Civil Procedure, by changing the name of the child
 18 support enforcement agency to the child support services agency and by changing the
 19 procedure for expedited relief from action against a driver's license for unpaid support.

20 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
 21 read:

22 **TWO-THIRDS VOTE NOT REQUIRED FOR RULE 90.3 AMENDMENT.** Because
 23 Rule 90.3, Alaska Rules of Civil Procedure, was adopted under the Alaska Supreme Court's
 24 interpretive authority exercised under art. IV, sec. 1, Constitution of the State of Alaska, sec. 1
 25 of this Act takes effect for the purpose of amending Rule 90.3, Alaska Rules of Civil
 26 Procedure, without needing to meet the two-thirds vote requirement normally applicable to
 27 changing court rules under art. IV, sec. 15, Constitution of the State of Alaska.

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

30 **REVISOR OF STATUTES AND REGULATIONS ATTORNEY INSTRUCTIONS.**

31 (a) The revisor of statutes is instructed to change the term "child support enforcement

1 agency" to "child support services agency" throughout the Alaska Statutes when to do so
2 would be consistent with sec. 1 of this Act.

3 (b) The regulations attorney is instructed to change the term "child support
4 enforcement agency" to "child support services agency" throughout the Alaska Administrative
5 Code when to do so would be consistent with sec. 1 of this Act.

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

8 **CONDITIONAL EFFECT FOR RULE 90.5 AMENDMENTS.** Sections 2 - 8 of this
9 Act take effect only if sec. 10 of this Act receives the two-thirds majority vote of each house
10 required by art. IV, sec. 15, Constitution of the State of Alaska.

11 * **Sec. 14.** This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature

Session: (Jan-May)
State Capitol, Room 208
Juneau, AK 99801-1182
(907) 465-3777
Fax (907) 465-2819

Interim: (June-Dec)
716 West 4th Avenue, Suite 600
Anchorage, AK 99501-2133
(907) 269-0155
(907) 269-0154 Fax

Pete Kott Speaker of the House

Date: March 2, 2004

From: Representative  Pete Kott

To: Senator Ralph Seekins, Chair
Senate Judiciary Committee

Re: HB 513, "CSED name change/driver's license suspension"

I respectfully request that House Bill 513 be scheduled for a hearing in the Senate Judiciary Committee at your earliest convenience. Attached to this memo are the following:

1. HB 513
2. Sponsor Statement
3. Sectional Analysis
4. Fiscal Notes

If you have any questions please feel free to contact me personally, or my staff, John Main, at ext. #3777.

Alaska State Legislature

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Pete Kott **Speaker of the House**

SPONSOR STATEMENT

HB 513

“An Act relating to the enforcement of support orders through suspension of driver’s licenses; changing the name of the child support enforcement agency to the child support services agency; amending Rules 90.3 and 90.5, Alaska Rules of Civil Procedure; and providing for an effective date.”

HB 513 changes the name from “Child Support Enforcement Division” to “Child Support Services.” This change will foster positive public and client attitudes about child support payments.

HB 513 also closes an expensive and time-consuming loophole in CSED’s licensing program. When an obligor signs a payment agreement, the agency must release the obligor’s driver’s license. If the obligor fails to comply with the payment agreement, the agency can revoke that release. However, before the obligor’s license can be suspended, the agency must go through the entire notice and review process again. This legislative proposal would allow the agency to suspend an obligor’s driver’s license after revoking a release of the license because the obligor failed to comply with the payment agreement, without going through the entire review process again. Instead, the obligor would have 30 days to request a judicial review of the decision revoking the release. Law must hold the judicial review held within 20 days after the review is requested. This would simplify the process by which a release can be revoked while at the same time ensuring an obligor receives due process before the license is actually revoked. CSED’s ability to use this option to suspend for noncompliance would be limited to five years. In other words, if the obligor has been complying with a payment plan for five years, but then becomes noncompliant, CSED would not be able to automatically suspend, and must restart the more lengthy suspension process.

This legislation will show that CSED is a service-oriented agency dedicated to serve the public in a positive and informative manner, while at the same time, closes a loophole that has allowed individuals to use the system to the detriment of their children. I respectfully request the committee’s favorable consideration of HB 513.

LEGAL SERVICES

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

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


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

MEMORANDUM

February 19, 2004

SUBJECT: Child Support Enforcement Agency Name Change and Driver's License Suspension (HB 513)

TO: Representative Pete Kott
Attn: John Main

FROM: Jean M. Mischel
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. Changes the name of the child support enforcement agency to "child support services" agency.

Section 2. Deletes language pertaining to a payment schedule for purposes of maintaining and compiling a list of obligors who have a driver's license and who are not in substantial compliance with a support order.

Section 3. Adds driver's license release revocations, added in another section of this bill, for child support enforcement purposes.

Section 4. Deletes reference to payment schedules for revocation release purposes.

Section 5. Deletes a restriction on release of driver's license and adds a provision regarding refusal of the agency to release a driver's license. Also adds a cross-reference to new sections added by the bill and deletes some of the notice requirements. Deletes opportunity to seek a court finding of compliance with a subpoena and warrant for child support.

Section 6. Adds limiting language to a request for judicial relief from an agency's decision.

Section 7. Adds a cross-reference to new sections in the bill pertaining to a revocation of release of a driver's license as an exception to evidence of substantial compliance.

Section 8. Adds two new sections pertaining to a release and revocation of a release of a driver's license, including failure to be in substantial compliance with a payment schedule or for delay caused by the agency.

Section 9. Adds a new section to the uncodified law regarding an indirect court rule amendment to Rule 90.3, Alaska Rules of Civil Procedure due to the name change in the bill.

Section 10. Adds a new section to the uncodified law regarding an indirect court rule amendment to Rule 90.5, Alaska Rules of Civil Procedure due to the name change in the bill and the change to judicial procedure.

Section 11. States that a 2/3 vote of the legislature is not required for a Rule 90.3 amendment.

Section 12. Adds a revisor's instruction to make conforming amendments as a result of the agency name change in the bill.

Section 13. States that sections 2-8 of the bill are effective only on the condition of a 2/3 vote of the legislature.

Section 14. Adds an effective date.

JMM:med
04-206.med

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 513
(H) Publish Date: 2/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title CSED Name Change/ BRU Alaska Court System
Driver's License Suspension Component Trial Courts
Sponsor Representative Kott
Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 513.

Prepared by: Doug Wooliver Administrative Attorney
Division: Alaska Court System
Approved by: Stephanie Cole Administrative Director by Doug Wooliver
Agency: Alaska Court System

Phone 463-4750
Date/Time 2/23/04 11:35 AM
Date 2/23/2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 513
 (H) Publish Date: 2/24/2004

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title CSED Name Change/ RDU Revenue Programs & Services
Driver's License Suspension Component Child Support Enforcement
 Sponsor Representative Kott
 Requester House Judiciary Component No. 111

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)
 There will be no measurable fiscal impact from this legislation. The driver's license suspension portion of the bill will save staff time which will allow the staff to be work license suspension action in a more timely manner.

Prepared by: John Mallonee Phone (907) 269-6802
 Division Child Support Enforcement Date/Time 2/23/04 9:26 AM
 Approved by: Steve Porter, Deputy Commissioner Date 2/23/2004
 Agency Department of Revenue

HB

514

MEMORANDUM

Date: April 30, 2004

To: Brian Hove, Senate Judiciary Committee Aide
Senator Seekins, Chair, Senate Judiciary Committee

From: Sue Stancliff, Staff *me*
Representative Pete Kott, Speaker of the House

RE: Blank Senate CS for CSHB 514 ()

Blank Senate CS for CSHB 514 ()
Work Draft
23-LS1639\C
Mischel
4/29/04

Includes amendments adopted by Senate Judiciary and incorporates language from
HB 176 (Rep. Coghill). HB 176 language can be found on Pg. 5 - 6, Section 12.

Amendment #1
Page 6 - 7, Sec. 14
Page 9 - 10, Sec. 23

Amendment #2
Page 3 - 4, Sec. 5 & 6

Amendment #3
Page 2, Sec. 4

23-LS1639\C
Mischel
4/29/04

SENATE CS FOR CS FOR HOUSE BILL NO. 514()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KOTT, Harris, Hawker, McGuire, Rokeberg, Anderson, Lynn, Dahlstrom, Gruenberg

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to child support modification and enforcement, to the establishment of
2 paternity by the child support enforcement agency, and to the crimes of criminal
3 nonsupport and aiding the nonpayment of child support; amending Rule 90.3, Alaska
4 Rules of Civil Procedure; and providing for an effective date."

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

6 * Section 1. AS 11.51.120(a) is amended to read:

7 (a) A person commits the crime of criminal nonsupport if, being a person
8 legally charged with the support of a child [UNDER 18 YEARS OF AGE,] the person
9 knowingly fails, without lawful excuse, to provide support for the child.

10 * Sec. 2. AS 11.51.120(c) is repealed and reenacted to read:

11 (c) Except as provided in (d) of this section, criminal nonsupport is a class A
12 misdemeanor.

13 * Sec. 3. AS 11.51.120 is amended by adding new subsections to read:

14 (d) Criminal nonsupport is a class C felony if the support the person failed to

1 provide is monetary support required by a court or administrative order from this or
2 another jurisdiction and, at the time the person failed, without lawful excuse, to
3 provide the support,

4 (1) the aggregate amount of accrued monetary child support arrearage
5 is \$10,000 or more;

6 (2) no child support payment has been made for a period of 24 months
7 or more; or

8 (3) the person had been previously convicted under this section or a
9 similar provision in another jurisdiction and

10 (A) the aggregate amount of accrued monetary child support
11 arrearage is \$5,000 or more; or

12 (B) no child support payment has been made for a period of six
13 months or more.

14 (e) In addition to the provisions of (c) and (d) of this section, criminal
15 nonsupport is punishable by loss or restriction of a recreational license as provided in
16 AS 12.55.139.

17 (f) In this section,

18 (1) "child" means a person

19 (A) under 18 years of age; or

20 (B) 18 years of age or older for whom a person is ordered to
21 pay support under a valid court or administrative order;

22 (2) "child support" means support for a child;

23 (3) "without lawful excuse" means having the financial ability to
24 provide support or having the capacity to acquire that ability through the exercise of
25 reasonable efforts.

26 * **Sec. 4.** AS 11.51 is amended by adding a new section to read:

27 **Sec. 11.51.121. Aiding the nonpayment of child support in the first**
28 **degree.** (a) A person commits the crime of aiding the nonpayment of child support in
29 the first degree if the person violates AS 11.51.122 and the person knows the obligor

30 (1) has an aggregate amount of accrued monetary child support
31 arrearage of \$20,000 or more;

1 (2) has not made a child support payment for a period of 24 months or
2 more; or

3 (3) had been previously convicted under AS 11.51.120 or a similar
4 provision in another jurisdiction and

5 (A) has an aggregate amount of accrued monetary child support
6 arrearage of \$5,000 or more; or

7 (B) has not made a child support payment for a period of 24
8 months or more.

9 (b) Aiding the nonpayment of child support in the first degree is a class C
10 felony.

11 (c) In addition to the penalties under (b) of this section, aiding the nonpayment
12 of child support in the first degree is punishable by loss or restriction of a recreational
13 license as provided in AS 12.55.139.

14 * Sec. 5. AS 11.51.122(a) is amended to read:

15 (a) A person commits the crime of aiding the nonpayment of child support in
16 the second degree if the person [(1)] knows that an obligor has a duty under an
17 administrative or judicial order for periodic payment of child support or for the
18 provision of health care coverage for a child under a medical support order [;] and

19 (1) being a person with a statutory duty to disclose information to
20 a child support enforcement agency [(2)] intentionally [(A)] withholds the
21 information [ABOUT THE RESIDENCE OR EMPLOYMENT OF THE OBLIGOR]
22 when it [THAT INFORMATION] is requested by a child support enforcement
23 agency;

24 (2) [(B)] being an employer of the obligor, intentionally withholds
25 information about the residence or employment of the obligor, the eligibility of the
26 obligor's children for coverage under the employer's health insurance plan, or
27 [ABOUT] the cost of the coverage of the children under the plan, when that
28 information is requested by a child support enforcement agency or when the
29 employer is required by state or federal law to report the information without a
30 request by a child support enforcement agency; or

31 (3) intentionally [(C)] participates in a commercial, business, [OR]

1 employment, or other arrangement with the obligor, knowing at the time that the
2 arrangement is made that it will allow the obligor to avoid paying all or some of the
3 support when it is due or to avoid having a lien placed on assets for the payment of
4 delinquent support; receipt of a substantial asset for less than fair market value from
5 an obligor after the obligor's support order has been established constitutes a
6 rebuttable presumption that the person receiving the asset knew that the transfer would
7 allow the obligor to avoid paying all or some of the support or to avoid having a lien
8 placed on the asset.

9 * Sec. 6. AS 11.51.122(b) is amended to read:

10 (b) In a prosecution under (a)(2) and (3) [(a)(2)(B) AND (C)] of this section,
11 it is a defense that the

12 (1) defendant did not intend to assist the obligor in the nonpayment of
13 child support or in the avoidance of a duty to provide health care coverage of a child;
14 or

15 (2) obligor did not intend to avoid paying child support or to avoid
16 providing health care coverage of a child.

17 * Sec. 7. AS 11.51.122(d) is amended to read:

18 (d) Aiding the nonpayment of child support in the second degree is a class A
19 misdemeanor.

20 * Sec. 8. AS 11.51.122 is amended by adding new subsections to read:

21 (e) In addition to the penalties under (d) of this section, aiding the nonpayment
22 of child support in the second degree is punishable by loss or restriction of a
23 recreational license as provided in AS 12.55.139.

24 (f) In this section, "child" and "child support" have the meaning given in
25 AS 11.51.120.

26 * Sec. 9. AS 12.55.139 is amended to read:

27 **Sec. 12.55.139. Penalties for criminal nonsupport.** In addition to other
28 penalties imposed for the offense of criminal nonsupport under AS 11.51.120, the
29 court may suspend, restrict, or revoke, for the period during which the arrearage
30 continues to exist [FOR A PERIOD NOT TO EXCEED SIX MONTHS], a
31 recreational license as defined in AS 09.50.020(c), if the defendant is a natural person.

1 * Sec. 10. AS 12.55.139 is amended by adding a new subsection to read:

2 (b) In addition to other penalties imposed for the offense of aiding the
3 nonpayment of child support in the first degree under AS 11.51.121 and for the
4 offense of aiding the nonpayment of child support in the second degree under
5 AS 11.51.122, the court may suspend, restrict, or revoke, for a period not to exceed
6 one year, a recreational license as defined in AS 09.50.020(c), if the defendant is a
7 natural person.

8 * Sec. 11. AS 22.10.020 is amended by adding a new subsection to read:

9 (j) The superior court, in an action for divorce, separation, or child support,
10 may issue orders to aid in the enforcement of child support, including orders requiring
11 an individual who owes support under an order of support to

12 (1) make payments according to an approved payment plan;

13 (2) participate in appropriate work activities if the individual is not
14 incapacitated; or

15 (3) complete and submit an application for a permanent fund dividend
16 under AS 43.23.015 or provide proof to the agency or the court that the individual is
17 not eligible for a dividend in a given year.

18 * Sec. 12. AS 25.27.020(b) is amended to read:

19 (b) In determining the amount of money an obligor must pay to satisfy the
20 obligor's immediate duty of support, the agency shall consider all payments of money
21 made by the obligor directly to the child [OBLIGEE] or to the child's [OBLIGEE'S]
22 custodian before the time the obligor is ordered to make payments through the agency.
23 After the obligor is ordered to make payments through the agency, the agency may not
24 consider direct payments of money made to the child [OBLIGEE] or the child's
25 [OBLIGEE'S] custodian unless the obligor provides clear and convincing evidence of
26 the payment. Notwithstanding the definition of "support order" in AS 25.27.900,
27 the agency shall reduce the amount of money an obligor must pay to satisfy the
28 obligor's duty of support for a child by the fair market value, as determined by
29 agreement between the child's custodian and the obligor, of a noncash
30 contribution made by the obligor under the following circumstances:

31 (1) the child's custodian has agreed to allow the agency to give the

1 obligor credit for noncash support and has not withdrawn that agreement;

2 (2) the noncash contribution is for basic food, housing, or heat; the
3 agency, by regulation, may also give credit for other types of noncash
4 contributions that help to satisfy the basic material needs of the child;

5 (3) the noncash contribution is made directly to the child's
6 custodian or to a creditor of the child's custodian;

7 (4) the obligor presents clear and convincing evidence of the
8 noncash contribution; and

9 (5) the child's custodian is not receiving assistance for the benefit
10 of the child under AS 47.27 or under 42 U.S.C. 612.

11 * Sec. 13. AS 25.27.020(d) is amended to read:

12 (d) The agency may issue an administrative order or request a court order that
13 requires an individual in arrears under an order of support for a child who is receiving
14 assistance under AS 47.07, or under AS 47.25.310 - 47.25.420 or a successor program,
15 or for a child whose parent, guardian, or designee of the parent or guardian has
16 applied for aid from the agency under AS 25.27.100, to make payments according
17 to an approved payment plan or, if the individual is not incapacitated, to participate in
18 appropriate work activities.

19 * Sec. 14. AS 25.27.020 is amended by adding new subsections to read:

20 (f) The agency shall, by regulation, establish procedures and standards for the
21 forgiveness of an arrearage owed to the state under AS 25.27.120. The agency may
22 forgive arrears under this section, with the approval of the commissioner and without
23 the approval of the Department of Law, if

24 (1) the obligor

25 (A) has or obtains employment for which income withholding
26 is initiated under AS 25.27.250 within 60 days after the date the obligor is
27 approved for the forgiveness program;

28 (B) enrolls in and successfully completes an employment
29 training program approved by the agency and obtains employment for which
30 income withholding is initiated under AS 25.27.250 within 30 days after
31 completion of the employment training program; or

1 (C) enters into an agreement with the agency for alternative
2 payment procedures if the agency determines that there are unusual
3 circumstances justifying a waiver of income withholding; and

4 (2) the obligor is in compliance with additional requirements and
5 limitations imposed by the agency by regulation to assure that forgiveness of the
6 arrearage is in the best interest of the child and of the state; and

7 (3) the obligor makes monthly payments pursuant to a payment
8 agreement approved by the agency; if the obligor misses more than two monthly
9 payments in a calendar year or more than two consecutive payments without approval
10 of the agency for good cause, the obligor is not eligible to continue in the arrears
11 forgiveness program under this section.

12 (g) During each year in which an obligor complies with the requirements for
13 the forgiveness of an arrearage under (f) of this section and any regulations adopted by
14 the agency under that subsection, the agency may forgive up to 20 percent of the total
15 arrearage owed to the state under AS 25.27.120, including any interest owed on that
16 debt. For purposes of determining the amount of the forgiveness, the arrears shall be
17 calculated as of the date the obligor is approved for participation in the forgiveness
18 program.

19 (h) The agency may establish by regulation requirements and limitations on
20 eligibility for the forgiveness program in addition to those stated in (f) and (g) of this
21 section.

22 * Sec. 15. AS 25.27.040(b) is amended to read:

23 (b) The agency may not attempt to establish paternity in any case

24 (1) involving incest or forcible rape, unless the mother of the child is
25 legally competent and requests the establishment of paternity; in this paragraph,
26 "forcible rape" means sexual assault in the first degree under AS 11.41.410 or a
27 conviction under a law or ordinance from another jurisdiction with similar
28 elements; "forcible rape" includes adjudications of delinquency for acts with
29 elements similar to AS 11.41.410;

30 (2) when legal proceedings for adoption are pending; [,] or

31 (3) when it would not be in the best interests of the children or the

1 state.

2 * **Sec. 16.** AS 25.27.060 is amended by adding a new subsection to read:

3 (e) Notwithstanding the requirements in (a) - (d) of this section and the
4 definition of "support order" in AS 25.27.900, in a court or administrative proceeding
5 where the support of a minor child is at issue, the court or agency, as applicable, shall
6 reduce the amount of money an obligor must pay to satisfy the obligor's duty of
7 support for a child by the fair market value, as determined by the court or by
8 agreement between the child's custodian and the obligor, of a noncash contribution
9 made by the obligor under the circumstances described under AS 25.27.020(b)(1) -
10 (5).

11 * **Sec. 17.** AS 25.27.080(b) is amended to read:

12 (b) The agency on behalf of the custodian or the state shall take all necessary
13 action permitted by law to enforce child support orders [SO ENTERED], including
14 petitioning the court for orders to aid in the enforcement of child support.

15 * **Sec. 18.** AS 25.27.190(e) is amended to read:

16 (e) Modification or termination of future periodic support payments may be
17 ordered upon a showing of good cause and material change in circumstances. The
18 adoption or enactment of guidelines or a significant amendment to guidelines for
19 determining child support is a material change in circumstances, if the guidelines are
20 relevant to the petition. As necessary to comply with 42 U.S.C. 666, a periodic
21 modification of child support may be made without a showing of a material
22 change in circumstances if the child support order being modified on the periodic
23 basis has not been modified or adjusted during the three years preceding the
24 periodic modification.

25 * **Sec. 19.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 **INDIRECT COURT RULE AMENDMENT.** Sections 12 and 16 of this Act have the
28 effect of amending Rule 90.3(b)(4), Alaska Rules of Civil Procedure, by changing the
29 requirement that a child support order award is to be paid in equal installments.

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

1 INDIRECT COURT RULE AMENDMENT. Section 18 of this Act has the effect of
2 changing Rule 90.3, Alaska Rules of Civil Procedure, by changing the grounds for modifying
3 a support order.

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

6 **TWO-THIRDS VOTE NOT REQUIRED.** Because Rule 90.3, Alaska Rules of Civil
7 Procedure, was adopted under the Alaska Supreme Court's interpretive authority exercised
8 under art. IV, sec. 1, Constitution of the State of Alaska, secs. 12, 16, and 18 of this Act take
9 effect for purposes of Rule 90.3, Alaska Rules of Civil Procedure, without needing to meet
10 the two-thirds vote requirement normally applicable to changing court rules under art. IV, sec.
11 15, Constitution of the State of Alaska.

12 * **Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 **APPLICABILITY.** (a) The provisions of AS 11.51.120(d)(1) and (d)(3)(A), enacted
15 by sec. 3 of this Act, and the provisions of AS 11.51.121(a)(1) and (a)(3)(A), enacted by sec.
16 4 of this Act, apply to monetary arrearages that have accrued before the effective date of this
17 Act, but only if the person fails to provide monetary support in violation of AS 11.51.120, as
18 amended by secs. 1, 2, and 3 of this Act, on or after the effective date of this Act or the person
19 aids in the nonpayment of child support in the first degree under AS 11.51.121, as enacted by
20 sec. 4 of this Act, on or after the effective date of this Act, as applicable.

21 (b) The provisions of AS 11.51.120(d)(2) and (d)(3)(B), enacted by sec. 3 of this Act,
22 and the provisions of AS 11.51.121(a)(2) and (a)(3)(B), enacted by sec. 4 of this Act, apply to
23 nonpayment of child support in violation of AS 11.51.120, as amended by secs. 1, 2, and 3 of
24 this Act, on or after the effective date of this Act or to aiding the nonpayment of child support
25 in the first degree under AS 11.51.121, as enacted by sec. 4 of this Act, on or after the
26 effective date of this Act, as applicable.

27 (c) AS 25.27.020(b), as amended by sec. 12 of this Act, and AS 25.27.060(e), added
28 by sec. 16 of this Act, apply to noncash contributions made on or after the effective date of
29 secs. 12 and 16 of this Act.

30 * **Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 TRANSITION. The forgiveness program authorized under AS 25.27.020 (f) and (g),
2 as enacted in sec. 14 of this Act, may not be implemented until the agency has adopted
3 regulations setting standards and procedures for the program. Regulations under this section
4 must be adopted within nine months after the effective date of this section.

5 * Sec. 24. Sections 12 and 16 of this Act take effect immediately under AS 01.10.070(c).

6 * Sec. 25. Except as provided in sec. 24 of this Act, this Act takes effect July 1, 2004.

LEGAL SERVICES

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

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


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

MEMORANDUM

April 28, 2004

SUBJECT: Child Support Modification and Enforcement (SCS CSHB 514()
(Work Order No. 23-LS1639\B))

TO: Representative John Coghill
Attn: Rynniva Moss

FROM: Jean M. Mischel
Legislative Counsel 

Enclosed is the blank CS you requested for this bill incorporating CSHB 176(), version M, with a change in what was sec. 1 in that bill from "obligee" to "child." Although we changed "obligee" to "child" as you requested, "obligee" still appears in other statutes in AS 25.27.

Since the subject matter of HB 176 pertains to noncash contributions to child support obligations, this CS may require a title change in the Senate. The current title of HB 514 relates to "modification" of child support orders, while HB 176 also affects the amount in original child support orders. Normally, a modification of child support, as the title provides, involves a change to existing awards, not a change before an initial award. On the other hand, if "modification" is read broadly to mean that the usual child support cash award under Court Rule 90.3 may be "modified" to include noncash contributions even on initial awards then the bill title is acceptable.

If you would like me to prepare a title change resolution to avoid any risk associated with the title interpretation, let me know.

JMM:mdr:med
04-199.mdr

Enclosure

23-LS1639B
Mischel
4/28/04

SENATE CS FOR CS FOR HOUSE BILL NO. 514()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KOTT, Harris, Hawker, McGuire, Rokeberg, Anderson, Lynn, Dahlstrom, Gruenberg

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to child support modification and enforcement, to the establishment of
2 paternity by the child support enforcement agency, and to the crimes of criminal
3 nonsupport and aiding the nonpayment of child support; amending Rule 90.3, Alaska
4 Rules of Civil Procedure; and providing for an effective date."

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

6 * Section 1. AS 11.51.120(a) is amended to read:

7 (a) A person commits the crime of criminal nonsupport if, being a person
8 legally charged with the support of a child [UNDER 18 YEARS OF AGE,] the person
9 knowingly fails, without lawful excuse, to provide support for the child.

10 * Sec. 2. AS 11.51.120(c) is repealed and reenacted to read:

11 (c) Except as provided in (d) of this section, criminal nonsupport is a class A
12 misdemeanor.

13 * Sec. 3. AS 11.51.120 is amended by adding new subsections to read:

14 (d) Criminal nonsupport is a class C felony if the support the person failed to

1 provide is monetary support required by a court or administrative order from this or
2 another jurisdiction and, at the time the person failed, without lawful excuse, to
3 provide the support,

4 (1) the aggregate amount of accrued monetary child support arrearage
5 is \$10,000 or more;

6 (2) no child support payment has been made for a period of 24 months
7 or more; or

8 (3) the person had been previously convicted under this section or a
9 similar provision in another jurisdiction and

10 (A) the aggregate amount of accrued monetary child support
11 arrearage is \$5,000 or more; or

12 (B) no child support payment has been made for a period of six
13 months or more.

14 (e) In addition to the provisions of (c) and (d) of this section, criminal
15 nonsupport is punishable by loss or restriction of a recreational license as provided in
16 AS 12.55.139.

17 (f) In this section,

18 (1) "child" means a person

19 (A) under 18 years of age; or

20 (B) 18 years of age or older for whom a person is ordered to
21 pay support under a valid court or administrative order;

22 (2) "child support" means support for a child;

23 (3) "without lawful excuse" means having the financial ability to
24 provide support or having the capacity to acquire that ability through the exercise of
25 reasonable efforts.

26 * **Sec. 4.** AS 11.51 is amended by adding a new section to read:

27 **Sec. 11.51.121. Aiding the nonpayment of child support in the first**
28 **degree.** (a) A person commits the crime of aiding the nonpayment of child support in
29 the first degree if the person violates AS 11.51.122 and the person knows the obligor

30 (1) has an aggregate amount of accrued monetary child support
31 arrearage of \$10,000 or more;

1 (2) has not made a child support payment for a period of 24 months or
2 more; or

3 (3) had been previously convicted under AS 11.51.120 or a similar
4 provision in another jurisdiction and

5 (A) has an aggregate amount of accrued monetary child support
6 arrearage of \$5,000 or more; or

7 (B) has not made a child support payment for a period of 24
8 months or more.

9 (b) Aiding the nonpayment of child support in the first degree is a class C
10 felony.

11 (c) In addition to the penalties under (b) of this section, aiding the nonpayment
12 of child support in the first degree is punishable by loss or restriction of a recreational
13 license as provided in AS 12.55.139.

14 * Sec. 5. AS 11.51.122(a) is amended to read:

15 (a) A person commits the crime of aiding the nonpayment of child support in
16 the second degree if the person

17 (1) knows that an obligor has a duty under an administrative or judicial
18 order for periodic payment of child support or for the provision of health care
19 coverage for a child under a medical support order; and

20 (2) intentionally

21 (A) being a person with a statutory duty to disclose
22 information to a child support enforcement agency, withholds the
23 information [ABOUT THE RESIDENCE OR EMPLOYMENT OF THE
24 OBLIGOR] when it [THAT INFORMATION] is requested by a child support
25 enforcement agency;

26 (B) being an employer of the obligor, withholds information
27 about the residence or employment of the obligor, the eligibility of the
28 obligor's children for coverage under the employer's health insurance plan, or
29 [ABOUT] the cost of the coverage of the children under the plan, when that
30 information is requested by a child support enforcement agency or when the
31 employer is required by state or federal law to report the information

1 without a request by a child support enforcement agency; or

2 (C) participates in a commercial, business, [OR] employment,
3 or other arrangement with the obligor, knowing at the time that the
4 arrangement is made that it will allow the obligor to avoid paying all or some
5 of the support when it is due or to avoid having a lien placed on assets for the
6 payment of delinquent support; receipt of a substantial asset for less than fair
7 market value from an obligor after the obligor's support order has been
8 established constitutes a rebuttable presumption that the person receiving the
9 asset knew that the transfer would allow the obligor to avoid paying all or
10 some of the support or to avoid having a lien placed on the asset.

11 * Sec. 6. AS 11.51.122(d) is amended to read:

12 (d) Aiding the nonpayment of child support in the second degree is a class A
13 misdemeanor.

14 * Sec. 7. AS 11.51.122 is amended by adding new subsections to read:

15 (e) In addition to the penalties under (d) of this section, aiding the nonpayment
16 of child support in the second degree is punishable by loss or restriction of a
17 recreational license as provided in AS 12.55.139.

18 (f) In this section, "child" and "child support" have the meaning given in
19 AS 11.51.120.

20 * Sec. 8. AS 12.55.139 is amended to read:

21 **Sec. 12.55.139. Penalties for criminal nonsupport.** In addition to other
22 penalties imposed for the offense of criminal nonsupport under AS 11.51.120, the
23 court may suspend, restrict, or revoke, for the period during which the arrearage
24 continues to exist [FOR A PERIOD NOT TO EXCEED SIX MONTHS], a
25 recreational license as defined in AS 09.50.020(c), if the defendant is a natural person.

26 * Sec. 9. AS 12.55.139 is amended by adding a new subsection to read:

27 (b) In addition to other penalties imposed for the offense of aiding the
28 nonpayment of child support in the first degree under AS 11.51.121 and for the
29 offense of aiding the nonpayment of child support in the second degree under
30 AS 11.51.122, the court may suspend, restrict, or revoke, for a period not to exceed
31 one year, a recreational license as defined in AS 09.50.020(c), if the defendant is a

1 natural person.

2 * Sec. 10. AS 22.10.020 is amended by adding a new subsection to read:

3 (j) The superior court, in an action for divorce, separation, or child support,
4 may issue orders to aid in the enforcement of child support, including orders requiring
5 an individual who owes support under an order of support to

6 (1) make payments according to an approved payment plan;

7 (2) participate in appropriate work activities if the individual is not
8 incapacitated; or

9 (3) complete and submit an application for a permanent fund dividend
10 under AS 43.23.015 or provide proof to the agency or the court that the individual is
11 not eligible for a dividend in a given year.

12 * Sec. 11. AS 25.27.020(b) is amended to read:

13 (b) In determining the amount of money an obligor must pay to satisfy the
14 obligor's immediate duty of support, the agency shall consider all payments of money
15 made by the obligor directly to the child [OBLIGEE] or to the child's [OBLIGEE'S]
16 custodian before the time the obligor is ordered to make payments through the agency.
17 After the obligor is ordered to make payments through the agency, the agency may not
18 consider direct payments of money made to the child [OBLIGEE] or the child's
19 [OBLIGEE'S] custodian unless the obligor provides clear and convincing evidence of
20 the payment. Notwithstanding the definition of "support order" in AS 25.27.900,
21 the agency shall reduce the amount of money an obligor must pay to satisfy the
22 obligor's duty of support for a child by the fair market value, as determined by
23 agreement between the child's custodian and the obligor, of a noncash
24 contribution made by the obligor under the following circumstances:

25 (1) the child's custodian has agreed to allow the agency to give the
26 obligor credit for noncash support and has not withdrawn that agreement;

27 (2) the noncash contribution is for basic food, housing, or heat; the
28 agency, by regulation, may also give credit for other types of noncash
29 contributions that help to satisfy the basic material needs of the child;

30 (3) the noncash contribution is made directly to the child's
31 custodian or to a creditor of the child's custodian;

1 (4) the obligor presents clear and convincing evidence of the
2 noncash contribution; and

3 (5) the child's custodian is not receiving assistance for the benefit
4 of the child under AS 47.27 or under 42 U.S.C. 612.

5 * Sec. 12. AS 25.27.020(d) is amended to read:

6 (d) The agency may issue an administrative order or request a court order that
7 requires an individual in arrears under an order of support for a child who is receiving
8 assistance under AS 47.07, or under AS 47.25.310 - 47.25.420 or a successor program,
9 or for a child whose parent, guardian, or designee of the parent or guardian has
10 applied for aid from the agency under AS 25.27.100, to make payments according
11 to an approved payment plan or, if the individual is not incapacitated, to participate in
12 appropriate work activities.

13 * Sec. 13. AS 25.27.020 is amended by adding new subsections to read:

14 (f) The agency may forgive all or part of an arrearage owed to the state under
15 AS 25.27.120 as provided under this subsection and under (h) of this section. The
16 agency shall adopt regulations establishing procedures and standards for the
17 forgiveness of all or part of an arrearage providing, at a minimum, that the forgiveness
18 is based on satisfactory proof that the obligor

19 (1) has or obtains employment for which income withholding can be
20 initiated under AS 25.27.250 within 60 days after the date the agency approves the
21 obligor for forgiveness;

22 (2) has enrolled in an employment training program approved by the
23 agency, has completed the training program on a date set by the agency, and has or
24 obtains employment for which income withholding can be initiated under
25 AS 25.27.250 within 30 days after completion of the employment training program; or

26 (3) enters into an agreement with the agency providing for alternative
27 payment procedures if the agency determines that there are unusual circumstances
28 justifying a waiver of income withholding and the terms of the agreement with the
29 agency are met under (g) of this section.

30 (g) An agreement providing for alternative payment procedures under (f)(3) of
31 this section must require minimum monthly payments. If an obligor fails to pay the

1 minimum monthly payment required by the agency for more than two months in a
 2 calendar year without approval of the agency for good cause shown, the obligor is no
 3 longer eligible for forgiveness under (f) of this section and the agency shall take all
 4 necessary steps to enforce the original obligation.

5 (h) During each year in which an obligor complies with the requirements for
 6 forgiveness of an arrearage under (f) of this section and any regulations adopted by the
 7 agency, the agency may forgive 20 percent of the total arrearage owed to the state
 8 under AS 25.27.120, including any interest owed on that part of the debt. For
 9 purposes of determining the amount of the forgiveness under this section, the
 10 arrearage amount is calculated as of the date the obligor is approved for participation
 11 in the forgiveness program.

12 * Sec. 14. AS 25.27.040(b) is amended to read:

13 (b) The agency may not attempt to establish paternity in any case

14 (1) involving incest or forcible rape, unless the mother of the child is
 15 legally competent and requests the establishment of paternity; in this paragraph,
 16 "forcible rape" means sexual assault in the first degree under AS 11.41.410 or a
 17 conviction under a law or ordinance from another jurisdiction with similar
 18 elements; "forcible rape" includes adjudications of delinquency for acts with
 19 elements similar to AS 11.41.410;

20 (2) when legal proceedings for adoption are pending; [,] or

21 (3) when it would not be in the best interests of the children or the
 22 state.

23 * Sec. 15. AS 25.27.060 is amended by adding a new subsection to read:

24 (e) Notwithstanding the requirements in (a) - (d) of this section and the
 25 definition of "support order" in AS 25.27.900, in a court or administrative proceeding
 26 where the support of a minor child is at issue, the court or agency, as applicable, shall
 27 reduce the amount of money an obligor must pay to satisfy the obligor's duty of
 28 support for a child by the fair market value, as determined by the court or by
 29 agreement between the child's custodian and the obligor, of a noncash contribution
 30 made by the obligor under the circumstances described under AS 25.27.020(b)(1) -
 31 (5).

1 * Sec. 16. AS 25.27.080(b) is amended to read:

2 (b) The agency on behalf of the custodian or the state shall take all necessary
3 action permitted by law to enforce child support orders [SO ENTERED], including
4 petitioning the court for orders to aid in the enforcement of child support.

5 * Sec. 17. AS 25.27.190(e) is amended to read:

6 (e) Modification or termination of future periodic support payments may be
7 ordered upon a showing of good cause and material change in circumstances. The
8 adoption or enactment of guidelines or a significant amendment to guidelines for
9 determining child support is a material change in circumstances, if the guidelines are
10 relevant to the petition. As necessary to comply with 42 U.S.C. 666, a periodic
11 modification of child support may be made without a showing of a material
12 change in circumstances if the child support order being modified on the periodic
13 basis has not been modified or adjusted during the three years preceding the
14 periodic modification.

15 * Sec. 18. The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 INDIRECT COURT RULE AMENDMENT. Sections 11 and 15 of this Act have the
18 effect of amending Rule 90.3(b)(4), Alaska Rules of Civil Procedure, by changing the
19 requirement that a child support order award is to be paid in equal installments.

20 * Sec. 19. The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 INDIRECT COURT RULE AMENDMENT. Section 17 of this Act has the effect of
23 changing Rule 90.3, Alaska Rules of Civil Procedure, by changing the grounds for modifying
24 a support order.

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

27 TWO-THIRDS VOTE NOT REQUIRED. Because Rule 90.3, Alaska Rules of Civil
28 Procedure, was adopted under the Alaska Supreme Court's interpretive authority exercised
29 under art. IV, sec. 1, Constitution of the State of Alaska, secs. 11, 15, and 17 of this Act take
30 effect for purposes of Rule 90.3, Alaska Rules of Civil Procedure, without needing to meet
31 the two-thirds vote requirement normally applicable to changing court rules under art. IV, sec.

1 15, Constitution of the State of Alaska.

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

4 **APPLICABILITY.** (a) The provisions of AS 11.51.120(d)(1) and (d)(3)(A), enacted
5 by sec. 3 of this Act, and the provisions of AS 11.51.121(a)(1) and (a)(3)(A), enacted by sec.
6 4 of this Act, apply to monetary arrearages that have accrued before the effective date of this
7 Act, but only if the person fails to provide monetary support in violation of AS 11.51.120, as
8 amended by secs. 1, 2, and 3 of this Act, on or after the effective date of this Act or the person
9 aids in the nonpayment of child support in the first degree under AS 11.51.121, as enacted by
10 sec. 4 of this Act, on or after the effective date of this Act, as applicable.

11 (b) The provisions of AS 11.51.120(d)(2) and (d)(3)(B), enacted by sec. 3 of this Act,
12 and the provisions of AS 11.51.121(a)(2) and (a)(3)(B), enacted by sec. 4 of this Act, apply to
13 nonpayment of child support in violation of AS 11.51.120, as amended by secs. 1, 2, and 3 of
14 this Act, on or after the effective date of this Act or to aiding the nonpayment of child support
15 in the first degree under AS 11.51.121, as enacted by sec. 4 of this Act, on or after the
16 effective date of this Act, as applicable.

17 (c) AS 25.27.020(b), as amended by sec. 11 of this Act, and AS 25.27.060(e), added
18 by sec. 15 of this Act, apply to noncash contributions made on or after the effective date of
19 secs. 11 and 15 of this Act.

20 * **Sec. 22.** Sections 11 and 15 of this Act take effect immediately under AS 01.10.070(c).

21 * **Sec. 23.** Except as provided in sec. 22 of this Act, this Act takes effect July 1, 2004.

Alaska State Legislature

Session: (Jan-May)
State Capitol, Room 208
Juneau, AK 99801-1182
(907) 465-3777
Fax (907) 465-2819

Interim: (June-Dec)
716 West 4th Avenue, Suite 600
Anchorage, AK 99501-2133
(907) 269-0155
(907) 269-0154 Fax

Pete Kott Speaker of the House

Date: April 1, 2004

From: Representative  Kott

To: Senator Ralph Seekins, Chair
Senate Judiciary Committee

Re: CSHB 514 (FIN) am. "Child Support Enforcement/Crimes"

I respectfully request that CS House Bill 514 (FIN) am be scheduled for a hearing in the Senate Judiciary Committee at your earliest convenience. Attached to this memo are the following:

1. CSHB 514 (FIN) am
2. Sponsor Statement
3. Sectional Analysis (To Follow)
4. Fiscal Notes

If you have any questions please feel free to contact me personally, or my staff, John Main, at ext. #3777.

Alaska State Legislature

Session: (Jan-May)
State Capitol, Room 208
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Pete Kott **Speaker of the House**

SPONSOR STATEMENT

CS House Bill 514 (FIN) am

“An Act relating to child support modification and enforcement, to the establishment of paternity by the child support enforcement agency, and to the crimes of criminal nonsupport and aiding the nonpayment of child support; amending Rule 90.3, Alaska Rules of Civil Procedure; and providing for an effective date.”

House Bill 514 has been introduced as an omnibus bill to help the Child Support Enforcement Division better serve the parents and children of Alaska. There are six changes to the child support statutes. Each piece of this legislation attempts to remedy problems the agency has encountered over many years.

Making Criminal Nonsupport a felony

Thirty-three states have a felony criminal nonsupport law. Currently in Alaska, the crime of criminal nonsupport is a Class A Misdemeanor.

The total outstanding arrearages for child support cases in the Alaska Child Support Enforcement Division totals \$583,434,030. Currently, there are 14,946 cases having either arrearages greater than \$10,000 or no payments for 24 months or more. Not all these cases would qualify for criminal nonsupport charges. Owing a large amount of child support doesn't make an individual a criminal. The arrears owed are only one factor of many taken into consideration when charging a nonpaying parent with criminal nonsupport.

This legislation would follow the lead of the 33 other states and federal government and make criminal nonsupport a felony, giving the agency another tool to deal with the most egregious cases.

Making Aiding and Abetting nonpayment of child support a felony

Normally, misdemeanor crimes don't have conspiracy laws as companions to the actual crime. This law was created because there was a need for the public to know that helping a noncustodial parent to avoid their obligation was not in the best interest of the children or society as a whole.

There are individuals, whether relatives or friends, who believe they are helping the individual (through their sense of fairness) by providing "under the table" employment opportunities or the ability to hide assets when instead they are harming the children most of all.

If the crime of criminal nonsupport is raised to the level of a Class C felony, it is reasonable that the crime of aiding and abetting the nonpayment of child support should be raised as well. Raising this crime to a felony sends a clear and convincing message to those individuals who have their own sense of justice and help people skirt the law.

Giving the courts statutory authority

This legislation gives the courts statutory authority to issue orders pertaining to requiring non-custodial parents to pay child support payments according to an approved payment plan; ordering them to seek work unless incapacitated; and/or requiring them to complete and submit applications for Permanent Fund Dividend.

Because there is not yet a clear defined authority to do so, there is one judicial jurisdiction within the State of Alaska that will not issue these orders. This legislation corrects that situation.

Giving CHILD SUPPORT ENFORCEMENT DIVISION authority to compromise state debt through settlements or approved payment plans

Federal government is concerned with the ever-increasing child support debt owed. The debt accumulated is to (1) the custodial parent, (2) to the state, and (3) the Federal government. Currently, there is \$90 billion owed throughout the nation. Alaska's share of this debt is approximately \$600 million. Of the \$600 million, \$300 million is owed to custodial parents, and \$300 million is owed to the State of Alaska and the Federal government.

In 2002, the Office of Child Support Enforcement (OCSE) in Washington, DC commissioned a study of the \$90 billion owed in child support throughout the nation. The study completed found that approximately 70% of the child support owed is by persons making less than \$10,000 a year, and that if the income was raised to \$20,000 the percentile is raised to 84%

There are many nonpaying non-custodial parents who want to pay, but because the debt owed is so overwhelming they give up and make no payments at all. This legislation does not create a giveaway program, but rather provides a way to bring those needing a helping hand an opportunity to be responsible for their children again. The consistency of payments they make over a period of time would earn them the ability or allow them to seek a reduction in their child support arrearages.

"It is not the one payment a year that will help those parents stay off welfare, but the consistent monthly child support on which the custodial parent can rely," said Commissioner Cherie Heller, Office of Children Support Enforcement, Washington, DC

Allowing Paternity and child support establishment for rape and incest victims if they want to pursue it

Under current statute, if a victim of rape or incest requests the Child Support Enforcement Division to establish paternity and a monthly child support order, the Child Support Enforcement Division is prohibited. In this, the State of Alaska penalizes the victim again. This legislation would allow the Child Support Enforcement Division to establish paternity and seek a child support order only if the victim requests it.

Adopting Federal changes to modification of child support orders

This legislation provides necessary changes in Alaska statutes to ensure state law is consistent with federal funding laws. This Alaska statute revision ensures the Child Support Enforcement Division's compliance with state plan requirements and ensures federal funds to Alaska. Federal law (42 USC 666) requires support orders be modified whether or not there has been a material change in circumstances if more than three years have passed since the order was issued or modified.

Failure of this legislation to pass this year potentially places the State of Alaska in jeopardy of significant losses (\$14 - 75 million) in federal funding for the Child Support Enforcement Division and the Temporary Aid to Needy Family (TANF) block grants.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 514(JUD)
 (H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to child support enforcement RDU Risk Management
 Component Risk Management
 Sponsor Rep. Kott, Coghill, et al
 Requester _____ Component No. 71

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	*	*	*	*	*	*

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

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

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)

State civil liability exposure and the amount Risk Management might ultimately pay in future liability claims could be significantly impacted by the proposed AS 25.27.020(f) enabling CSED investigators to exercise powers of peace officers including carrying firearms.

The authority to carry firearms in the performance of duty is one of, if not the highest, liability risk activity of all state agency operations. The use of deadly force with its inherent ability to inflict catastrophic injury has the potential to generate enormous tort liability exposure. The state paid its largest individual personal injury claim of \$7.3 million (not including significant defense costs) for settlement of neck down paralysis of an individual (later discovered to be unarmed) shot after apparently failing to respond to a trooper's command.

Prepared by: Brad Thompson, Director Phone 465-5723
 Division Risk Management Date/Time 2/23/04 8:16 AM
 Approved by: Mike Miller, Commissioner Date 2/23/2004
 Agency Department of Administration

FISCAL NOTE #1

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 514(JUD)

ANALYSIS CONTINUATION

It is arguably less likely that any action by an individual child support enforcement agency investigator should evolve into such a serious incident, yet the state has paid less significant damages for alleged improper use of a weapons arising from confrontations escalating from routine traffic stops.

Should this statutory change be implemented, it is strongly urged the required minimum level of experience be the same required of all other state police professionals (Alaska Police Standards Council) and that significant effort be first committed to the development of policies and procedures for the training, monitoring and supervision of all investigators before permission is actually granted under this new authority to carry firearms.

No actual cost is explicitly presented but, in future fiscal years, Risk Management's liability premium assessments to the Department of Revenue will reflect any costs actually realized by this new exposure as premiums charged each agency are developed from actual claims expenses incurred.

The extent of such cost is difficult to forecast due to the uncertainty of claim that may be filed, the severity of damages that could be awarded, or the amount of litigation costs incurred defending future liability claims related to this new activity. The fiscal impact is indeterminate for a low frequency yet potentially high severity risk.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 514(JUD)
 (H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Child Support Enforcement/Crimes BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Kott
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 House Bill 514, in part, raises from a misdemeanor to a felony the crime of criminal nonsupport in cases where the obligor is \$10,000 or more in arrears in child support payments or has made no payments for a period of 24 months or more. According to the Child Support Enforcement Division (division), approximately 15,000 Alaskans fall into that category. If felony proceedings were to be brought against even a small percentage of these persons then the impact on the court would be significant. However, the existing crime of criminal nonsupport has been charged very infrequently. The division testified that it plans to continue that tradition and estimates that it would file 6 to 12 felony cases a year under this bill. Given this history and the divisions plans for the future, the court would not anticipate a significant fiscal impact from the passage of this bill. However, if this crime is charged more regularly then the court system may return to the legislature for additional funding.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division: Alaska Court System Date/Time 2/25/04 3:52 PM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/25/2004
 Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 514(JUD)
 (H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act relating to child support modification and enforcement, to the establishment of paternity by the child support..." RDU: CRIMINAL & CIVIL
 Sponsor: Representative Kott Component: Criminal Justice Litigation, Torts & Workers' Comp, Collections & Supp
 Requester: House Judiciary Committee 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	*****	*****	*****	*****	*****	*****

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1007 Interagency Receipts						
1141 RCA Receipts						
TOTAL	*****	*****	*****	*****	*****	*****

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)
 Sections 1-6 amend the statutes relating to criminal nonsupport and aiding and abetting nonsupport. The bill increases each offense to a felony if certain conditions are met. Also, the bill eliminates the requirement that the children be under the age of 18, thus allowing CSED to pursue criminal non support for children who have turned 18 but are still subject to a support order for adult disabled children.
 Section 9 permits CSED investigators to be peace officers and carry firearms. Section 12 amends the statute relating to the modification of administrative support orders to eliminate the requirement that there be a material change in circumstances before a modification is granted if more than three years have passed since the order was last issued or modified.
 Passage of this legislation will have an indeterminate fiscal impact on law. Any time a penalty is raised

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
 Division: Administrative Services Date/Time 2/22/04 12:32 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/22/2004
 Agency: Department of Law

FISCAL NOTE #3

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 514(JUD)

ANALYSIS CONTINUATION

from a misdemeanor to a felony, it is more time and resource intensive to prosecute. Additionally, CSED investigators acting as "peace officers" and carrying firearms increases tort liability exposure for the State which raises fiscal implications that we are similarly unable to quantify.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: CSHB 514(FIN)
 (H) Publish Date: 3/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to child support modification and BRU Centralized Administrative Services
enforcement... Component Retirement and Benefits
 Sponsor Rep. Kott, et al
 Requester House Finance Component No. 64

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

Estimate of any current year (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)*
 AS 24.08.036 FISCAL NOTES ON BILLS AFFECTING STATE RETIREMENT SYSTEMS requires an analysis of the long term and short term costs to the state if a bill is adopted, as well as the impact of the bill on the actuarial soundness of the funds.

Removal of section 12 of version U of this bill results in no change in PERS classification of the four investigators affected and no change in employer contribution rates or the unfunded accrued liability of the System.

Prepared by: Melanie Millhorn, Director Phone 465-4408
 Division Retirement and Benefits Date/Time 3/12/04 2:30 PM
 Approved by: Mike Miller, Commissioner Date 3/12/2004
 Agency Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: CSHB 514(FIN)
 (H) Publish Date: 3/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to child support enforcement RDU Risk Management
 Component Risk Management
 Sponsor Rep. Kott, Coghill, et al
 Requester _____ Component No. 71

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The proposed AS 25.27.020(f) enabling CSED investigators to exercise powers of peace officers including carrying firearms was deleted in this committee substitute, therefore Risk Management concerns regarding increased tort liability exposure have been eliminated.

Prepared by: Brad Thompson, Director Phone 465-5723
 Division Risk Management Date/Time 3/9/04 9:42 AM
 Approved by: Mike Miller, Commissioner Date 3/9/2004
 Agency Department of Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 6
 Bill Version: CSHB 514(FIN)
 (H) Publish Date: 3/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title Act Relating to Child Support Enforcement . . . RDU Alaska State Troopers
 Component AST Detachments
 Sponsor Rep. Kott
 Requester H.Finance Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

Estimate of any current year (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 addresses and amends several provisions of the statutes relating to child support enforcement.

This bill will have no fiscal impact on the Department of Public Safety.

Prepared by: Lt. Al Storey Phone 269-4532
 Division: Alaska State Troopers Date/Time 3/12/04 11:14 AM
 Approved by: Commissioner William Tandeske Date 3/12/2004
 Agency: Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 7
Bill Version: CSHB 514(FIN)
(H) Publish Date: 3/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title Child Support Enforcement/Crimes RDU Revenue Programs & Services
Component Child Support Enforcement Division
Sponsor Representative Kott
Requester _____ Component No. 111

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	31.2	2.0	2.0	2.0	2.0	2.0
Supplies						
Equipment	28.4					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	59.6	2.0	2.0	2.0	2.0	2.0

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

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
1002 Federal Receipts	39.3	1.3	1.3	1.3	1.3	1.3
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	20.3	0.7	0.7	0.7	0.7	0.7
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	59.6	2.0	2.0	2.0	2.0	2.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
The expenditures would occur to provide training and equipment for the child support investigators. The compromising of arrears section will result in the elimination of arrears owed to the state in favor of receiving ongoing monthly support. This program will provide increased revenues to the state and reduce the amount of child support debt owed. Since CSED can not determine which individuals will use this program, we can not project what this increase in revenue will be.

Prepared by: John Mallonee Phone 269-6802
Division: Child Support Enforcement Date/Time 3/9/04 2:50 PM
Approved by: Steve Porter, Deputy Commissioner Date 3/9/2004
Agency: Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 514(FIN)am
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to child support BRU Legal and Advocacy Services
and the crimes of criminal nonsupport Component Public Defender Agency
 Sponsor Reps. Kolt, Harris, Hawker...
 Requester (S) Judiciary Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill would likely have a fiscal impact on the operations of the Public Defender Agency, because in Sections 1-6 it creates a new level of offenses for nonpayment of child support and aiding the nonpayment of child support and makes the offenses C felonies. Currently criminal nonsupport and aiding the nonpayment of support are both class A misdemeanors. While those offenses will continue to exist, the newly created higher offenses will result in more cases handled by the Agency. At this point it is not possible to determine the extent of the increase in caseload and workload (felonies require more work than misdemeanors to defend) since the Agency does not have current figures on the number of cases meeting the criteria for the new offenses, therefore an indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
 Division Public Defender Agency Date/Time 4/5/04 12:00 AM
 Approved by: Kevin Jardell, Assistant Commissioner Date 4/6/2004
 Agency Administration

LEGAL SERVICES

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

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

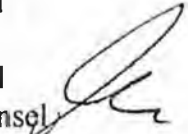
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 1, 2004

SUBJECT: Child Support Enforcement
(CSHB 514(FIN) am; (Work Order No. 25-LS1639\X.A))

TO: Representative Pete Kott
Attn: John Main

FROM: Jean M. Mischel
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. Clarifies elements for criminal nonsupport and deletes the reference to the age of the child owed the support. Sec. 3 adds a definition of "child" which reinserts age considerations.

Section 2. Adds a reference in the misdemeanor penalty section for criminal nonsupport to the new felony crime added in this bill.

Section 3. Establishes a class C felony for certain circumstances involving criminal nonsupport. Replaces a cross-reference to a loss or restriction of a recreational license as an additional criminal penalty. Adds definitions of "child," including a person who is over age 18 when there is a valid support order; a definition of "child support"; and a definition of "without lawful excuse" to incorporate the judicial holding pertaining to the ability to pay in Taylor v. State 710 P.2d 1019 (1985).

Section 4. Establishes a felony of aiding the nonpayment of child support in the first degree for circumstances related to felony nonsupport in section 3. Adds cross-reference to a loss or restriction of a recreational license as an additional penalty.

Section 5. Makes previous crime of aiding the nonpayment of child support a second degree crime. Modifies some elements related to knowledge and a duty to disclose certain information.

Section 6. Adds "second degree" to the existing misdemeanor penalty provision for aiding the nonpayment of child support.

Section 7. Adds cross-reference to a loss or restriction of a recreational license as an additional penalty for aiding the nonpayment of child support. Adds cross-reference to definitions of "child" and "child support."

Section 8. Changes the time period for loss or restriction of a recreational license as a penalty for criminal nonsupport.

Section 9. Adds to the penalty for aiding criminal nonsupport in the first and second degree the loss or restriction of a recreational license for up to one year. (This is the material cross-referenced in secs. 4 and 7).

Section 10. Adds a new subsection to the jurisdiction of the superior court pertaining to enforcement of child support orders.

Section 11. Adds to the authority for the agency to issue an order or request a court order in arrearage cases to require a payment plan or work activities for an obligor whose child is the subject of an application for agency aid in collecting the arrearage.

Section 12. Adds new subsections authorizing the agency to 1) adopt regulations and to forgive a child support obligation through various mechanisms including an agreement; 2) enter into agreements under specific minimum requirements; and 3) set the amount of forgiveness of a child support arrearage as specified.

Section 13. Adds a circumstance in which the agency may attempt to establish paternity in cases involving incest or rape.

Section 14. Deletes "so entered" for support orders subject to enforcement by the agency. This change has the effect of avoiding a limitation on enforcement in this section to only court orders.

Section 15. Adds cross-reference to 42 U.S.C. 666 for periodic modification of child support orders without showing of changed circumstances.

Section 16. Describes indirect court rule amendment to Rule 90.3, Alaska Rules of Civil Procedure necessitated by sec. 15 of the bill.

Section 17. States that a 2/3 vote is not required for amendment to Rule 90.3.

Section 18. Describes the applicability of the class C felonies established in this bill as pertaining to violations occurring on or after the effective date of the Act for certain long-term and high-dollar amount arrearages.

Section 19. Provides an effective date for the bill.

Representative Pete Kott
April 1, 2004
Page 3

If I may be of further assistance, please advise.

JMM:med
04-362.med

TO: Senate Judiciary
FROM: Linda K. Wilson, Deputy Public Defender
RE: CS for HB 514(FIN) am
DATE: 4/16/04

WRITTEN TESTIMONY:

Chairman Seekins, and members of the Committee:

Thank you for allowing me to submit this written testimony on CS HB 514(FIN) am.

The Public Defender Agency has submitted an indeterminate fiscal note on this bill that you should have in your packet, but I also wanted to submit written testimony on the legal aspects of this bill.

Most of the bill will not significantly affect the operations of the Agency or its clients, except for section 3. The Agency has some concerns about increasing the penalty for criminal nonsupport from an A misdemeanor to a class C felony when the arrearages are \$10,000 or more. In the sponsor statement it notes that there are over 14,000 cases in Alaska where more than \$10,000 is owed in child support. As evidenced by the number of people with high arrearages, this sum is not difficult to reach. In previous hearings the testimony has been that the state CSED does not intend to prosecute all 14,000 of these people, but only the ones who choose not to pay. The Department of Revenue representative stated in prior testimony that it would only go after those people " where it is important for the department to make a statement and to identify those people who should be prosecuted." Testimony of STEVEN B. PORTER, Deputy Commissioner, Office of the Commissioner, Department of Revenue (DOR), taken before the House Judiciary Committee 2/23/04.

The problem with leaving the language in the bill so broadly written is that it leaves the possibility open for a large number of these 14,000 people to be prosecuted. The bill gives too much charging discretion to CSED and/or prosecutors. Wouldn't it be better to narrow the language of the bill to reach the targeted worst offenders and not leave it to the discretion of a particular division worker or prosecutor on whether or not to prosecute a person for a felony offense?

Thanks again, Linda Wilson, Deputy Director, Public Defender Agency

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110400
JUNEAU, ALASKA 99811-0400
TELEPHONE: (907) 465-2300
FACSIMILE: (907) 465-2389

April 18, 2004

The Honorable Ralph Seekins,
Chair – Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Re: HB 514, Child Support Enforcement and Crimes.

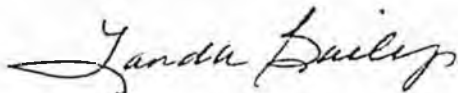
Dear Mr. Chair:

In a letter to you from Commissioner Corbus dated April 2, 2004, he addressed fiscal and legal concerns pertaining to CSHB 514 (FIN) am, Section 12.

I am attaching a proposed amendment to CSHB 514(FIN) am, which deletes all of the present language in Section 12, and inserts all of the language as set forth in the attached amendment. The specific language in the attached amendment has been agreed upon by Commissioner Corbus and the bill's sponsor. The committee's adoption of the language, as set forth in the attached amendment, will resolve the concerns the Commissioner outlined in his April 2, 2004 letter.

Thank you for your assistance.

Very truly yours,



Landa Baily,
Special Assistant to
Commissioner Corbus

Attachment

AMENDMENT Number _____

OFFERED IN THE SENATE JUDICIARY COMMITTEE

BY: _____

TO: CSHB 514(FIN) am

Page 5, Section 12, beginning on line 20, and ending on page 6, line 18:

Delete all material and insert:

AS 25.27.020(d) is amended by adding new subsections to read:

(f) The agency shall, by regulation, establish procedures and standards for the forgiveness of an arrearage owed to the state under AS 25.27.120. The agency may forgive arrears under this section, with the approval of the commissioner and without the approval of the Department of Law, if

(1) the obligor

(A) has or obtains employment for which income withholding is initiated under AS 25.27.250 within 60 days of the date the obligor is approved for the forgiveness program;

(B) enrolls in and successfully completes an employment training program approved by the agency and obtains employment for which income withholding is initiated under AS 25.27.250 within 30 days after completion of the employment training program; or

(C) enters into an agreement with the agency for alternative payment procedures, if the agency determines that there are unusual circumstances justifying a waiver of income withholding; and

(2) is in compliance with additional requirements and limitations imposed by the agency by regulation to assure that a forgiveness is in the best interest of the child and of the state; and

(3) the obligor makes monthly payments pursuant to a payment agreement approved by the agency; if the obligor misses more than two monthly payments in a calendar year, or more than two consecutive payments without approval of the agency for good cause, the obligor will not be eligible to continue in the arrears forgiveness program under this section.

(g) During each year in which an obligor complies with the requirements for the forgiveness of an arrearage under (f) of this section and any regulations adopted by the agency under that subsection, the agency may forgive up to 20 percent of the total arrearage owed to the state under AS 25.27.120, including any interest owed on that debt. For purposes of determining the amount of the forgiveness, the arrears will be calculated as of the date the obligor is approved for participation in the forgiveness program.

(h) The forgiveness program authorized under (f) and (g) of this section may not be implemented until the agency has adopted regulations settings standards and procedures. Regulations under this section must be adopted within nine months after the effective date of this section. The agency may establish by regulation requirements and limitations on eligibility in addition to those stated in (f) and (g) of this section.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB 514(FIN) am
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title Child Support Enforcement/Crimes RDU Revenue Programs & Services
Component Child Support Enforcement
Sponsor Representative Kott
Requester Senate Judiciary Component No. 111

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

* The compromising of arrears section will result in the elimination of receivables owed to the state in favor of receiving payments against the debt. This program may provide increased revenues to the state and reduce the amount of child support debt owed. Since CSED cannot determine which individuals will use this program, we cannot project what this increase in revenue will be. The following is illustrative of the potential arrears that could be forgiven under this legislation. There are approximately 18,000 cases with a total of \$250 million owed to the State of Alaska and the federal government. There are approximately 3,000 cases totalling \$31 million of presently collectible debt owed to the state; these 3,000 cases have current withholding order payments each month. As written, these collectible cases are included in the forgiveness program, and the state will be giving up approximately \$15.5 million of state revenues, and \$15.5 million of federal revenues.

Prepared by: John Mallonee Phone 269-6802
Division Child Support Enforcement Date/Time 4/15/04 4:08 PM
Approved by: Steve Porter, Deputy Commissioner Date 4/15/2004
Agency Department of Revenue

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 514(FIN) am

1 Page 3, line 15, through page 4, line 10:

2 Delete all material and insert:

3 "(a) A person commits the crime of aiding the nonpayment of child support in
4 the second degree if the person [(1)] knows that an obligor has a duty under an
5 administrative or judicial order for periodic payment of child support or for the
6 provision of health care coverage for a child under a medical support order [;] and

7 (1) being a person with a statutory duty to disclose information to
8 a child support enforcement agency [(2)] intentionally [(A)] withholds the
9 information [ABOUT THE RESIDENCE OR EMPLOYMENT OF THE OBLIGOR]
10 when it [THAT INFORMATION] is requested by a child support enforcement
11 agency;

12 (2) [(B)] being an employer of the obligor, intentionally withholds
13 information about the residence or employment of the obligor, the eligibility of the
14 obligor's children for coverage under the employer's health insurance plan, or
15 [ABOUT] the cost of the coverage of the children under the plan, when that
16 information is requested by a child support enforcement agency or when the
17 employer is required by state or federal law to report the information without a
18 request by a child support enforcement agency; or

19 (3) intentionally [(C)] participates in a commercial, business, [OR]
20 employment, or other arrangement with the obligor, knowing at the time that the
21 arrangement is made that it will allow the obligor to avoid paying all or some of the
22 support when it is due or to avoid having a lien placed on assets for the payment of
23 delinquent support; receipt of a substantial asset for less than fair market value from

1 an obligor after the obligor's support order has been established constitutes a
2 rebuttable presumption that the person receiving the asset knew that the transfer would
3 allow the obligor to avoid paying all or some of the support or to avoid having a lien
4 placed on the asset."

5

6 Page 4, following line 10:

7 Insert a new bill section to read:

8 "* Sec. 6. AS 11.51.122(b) is amended to read:

9 (b) In a prosecution under (a)(2) and (3) [(a)(2)(B) AND (C)] of this section,
10 it is a defense that the

11 (1) defendant did not intend to assist the obligor in the nonpayment of
12 child support or in the avoidance of a duty to provide health care coverage of a child;
13 or

14 (2) obligor did not intend to avoid paying child support or to avoid
15 providing health care coverage of a child."

16

17 Renumber the following bill sections accordingly.

18

19 Page 7, line 15:

20 Delete "Section 15"

21 Insert "Section 16"

22

23 Page 7, line 22:

24 Delete "sec. 15"

25 Insert "sec. 16"

HB

539

Alaska State Legislature



Session:
State Capitol
Juneau, AK 99801
Phone: (907) 465-2995
Fax: (907) 465-6592

Interim:
716 W 4th Avenue, Suite 430
Anchorage, AK 99501-2133
Phone: (907) 269-0250
Fax: (907) 269-0249

Representative Lesil McGuire

Chair, Judiciary Committee

SPONSOR STATEMENT

HB 539

"An Act exempting a person who allows a student of the University of Alaska to gain practical work experience with the person while participating in a practicum from vicarious liability as an employer, and exempting the student participating in a practicum from the Alaska Wage and Hour Act and workers' compensation coverage."

HB 539 provides the same employment liability for university practicum programs that already exist in statute for high schools throughout the state.

University health and construction programs have had difficulty obtaining sites for unpaid practicum placement positions. This has been especially problematic with dental students, but can be expected to also be a problem with other professions, especially medical professions where the risk of serious injury is a potential. The legitimate concern of placement sites is that without statutory clarification students could be considered as employees of the site for:

- 1.) Negligence liability;
- 2.) Fair Labor Standards Act responsibility for minimum wage and overtime compensation; and

Though they are unpaid, practicum positions need the exemption from the Fair Labor Standards Act and Workers Compensation to ensure that experimental benefits, which accrue to the intern, cannot be equated to wages for purposes of compensation, liability and Workers comp.

Given the current legal structure, practicum placement sites have suggested that the university agree to indemnify the site for claims based on the acts of the students, or to agree that the students will be the employees of the university for liability purposes. From the university's perspective, neither of these suggestions is realistic. The university does not supervise the students. There is a substantial risk that indemnity could be interpreted to cover damages which are caused by the negligence of the site. The time required to negotiate around these potential liabilities is substantial. All of which is counterproductive to training Alaskans for good in-state jobs.

HB 539 proposes three cumulative statutory fixes designed to protect the sites that offer their services to UA interns on an unpaid basis. The threshold requirement that the students not be paid ensures that sites will not use practicum placement immunity to take advantage of employees who are also students.

From a liability perspective, this proposal is designed to leave each participant—the university, the student, and the site—responsible for its own fault. Thus, this proposal does not alter a party's responsibility for its own negligence, but it does limit vicarious liability of one party for the fault of another.

LEGAL SERVICES

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

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

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

MEMORANDUM

April 16, 2004

SUBJECT: Student Practicum Immunity, CSHB 539(),
(Work Order No. 23-LS1837/D)

TO: Representative Lesil McGuire
Attn: Heath Halyard

FROM: Barbara R. Craver *BRC*
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. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. This section adds a new section to the University of Alaska title, AS 14.40, to define a student practicum and to state that a person who provides the practical experience is not considered to be an employer of the student in a lawsuit based on the vicarious liability of the employer for an employee.

Section 2. This section adds a student who is participating in a student practicum to the list of exemptions to the Alaska Wage and Hour Act.

Section 3. This sets an effective date for this bill.

BRC:mdr
04-157.mdr

As enrollments rise across the UA system, more students are entering fields of study which require placements in the work world as a portion of their study. Two such courses of study are construction and health education.

For instance, enrollment in health education programs such as nursing, dental, medical laboratory, and radiology are growing rapidly. As a portion of their study, students must complete clinical practicum with providers in their offices, clinics and hospitals.

Health providers have been hosting UA students for many years, and with great success. To date there have not been any liability claims against providers for actions that students have taken while working with providers. UA has long-standing and successful partnerships with hospitals, doctors, dentists and many other health care professionals. These are formalized in agreements between the University and the provider which state that the providers are not responsible or liable for any malpractice claims, workers compensation claims, or fair labor standards actions of the student.

Why do we need legislation to address liability if we have not had problems and if we have provider agreements? As more students are enrolled in programs and as programs branch out to more communities, UA is finding that potential new providers are reluctant to participate in practicum programs due to liability concerns. UA can no longer rely on historic arrangements that were put in place when liability concerns of providers were not as critical as they are today.

This last year, for instance, UAF needed clinical sites for its dental assisting students. The dental assisting program is growing rapidly in Fairbanks and new dentists needed to be recruited into the practicum program. While dentists were very interested in taking students, many declined. A bare minimum of practicum were obtained so existing students could graduate. Without this legislation, it is unlikely the dental education programs across the state will continue and grow to meet community needs. Lack of clarity about liability is having a negative impact on the private sector's willingness to be involved in vital practicum programs.

Legislation is needed to state clearly what the University believes is existing policy. The legislation clarifies that students are not employees, and therefore not subject to negligence liability, fair labor standards for minimum wage and overtime compensation.

This legislation is intended to give providers and placement sites the clarity in statute to protect them when offering their facilities and services to University students. The threshold requirement that students not be paid ensures that the sites will not use practicum students immunity to take advantage of employees who are also students. From a liability perspective, this proposal is designed to leave each entity - the university, the student, and the site responsible for their own liability.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 539(L&C)
 (H) Publish Date: 4/19/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act excepting a person who allows a student RDU CIVIL
of the University of Alaska...from liability as an employer..." Component Torts and Workers' Compensation
 Sponsor House Judiciary Committee
 Requester House Labor and Commerce Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill allows an employer to allow a university student to gain practical work experience as part of the student's curriculum without incurring vicarious liability as an employer, and exempting the student from the Alaska Wage and Hour Act and workers' compensation coverage.

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 4/14/04 11:52 AM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 4/14/2004
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 539(L&C)
 (H) Publish Date: 4/19/04

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: Univ. Student Practicum Liability/Wages RDU: Workers' Compensation
 Component: Workers' Compensation
 Sponsor: House Judiciary
 Requester: House L&C Component Number: 344

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

Estimate of any current year (FY2004) cost: None
 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)

There is no anticipated fiscal impact to the department as a result of this legislation.

Prepared by: Paul Lisankle, Director Phone 465-2790
 Division: Division of Workers' Compensation Date/Time 4/12/04 9:47 AM
 Approved by: Greg O'Claray, Commissioner Date 4/12/2004
 Agency: Department of Labor and Workforce Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 539(L&C)
 (H) Publish Date: 4/19/04

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: Univ. Student Practicum Liability/Wages RDU: Labor Standards & Safety
 Component: Wage & Hour
 Sponsor: House Judiciary
 Requester: House L&C Component Number: 345

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

Estimate of any current year (FY2004) cost: None
 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)

There is no anticipated fiscal impact to the department as a result of this legislation.

Prepared by: Grey Mitchell, Director Phone 465-4855
 Division: Labor Standards & Safety Date/Time 4/12/04 7:55 AM
 Approved by: Greg O'Clary, Commissioner Date 4/12/2004
 Agency: Department of Labor and Workforce Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: CSHB 539(L&C)
 (H) Publish Date: 4/19/04

Revision Date/Time (Note if correction):
 Title UNIV. STUDENT PRACTICUM LIABILITY/WAGES

Dept. Affected: University of Alaska
 RDU _____
 Component _____

Sponsor Judiciary
 Requester _____

Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would have no fiscal impact on the University.

Prepared by: Pat Pitney
 Division: University of Alaska
 Approved by: Pat Pitney
 Agency: University of Alaska

Phone 907-474-7958
 Date/Time 4/12/04 10:47 AM
 Date 4/12/2004