

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11266 SENATE LABOR & COMMERCE

1 buyer, or as an agent, director, officer, member, or employee of a fish processor, of a
2 primary fish buyer, or of a cooperative corporation organized under AS 10.15,
3 intentionally or knowingly make an original purchase of fish from a seller who [, IN
4 VIOLATION OF AS 16.43,] does not hold

5 (1) a landing permit, an entry permit, or an interim-use permit; or

6 (2) a fish transporter permit under AS 16.05.671.

7 * Sec. 6. AS 16.10.267(b) is amended to read:

8 (b) If requested by the purchaser of the fish or by a peace officer, the
9 fisherman or fish transporter shall present for inspection the identification card,
10 entry permit, interim-use permit, fish transporter permit, or other document required
11 to be in the fisherman's or the fish transporter's possession under (a) or (e) of this
12 section.

13 * Sec. 7. AS 16.10.267(c) is amended to read:

14 (c) Examples of a suitable identification card required under (a)(2) and (e)(2)
15 of this section are a motor vehicle operator's license issued under AS 28.15.111 and an
16 identification card issued under AS 18.65.310.

17 * Sec. 8. AS 16.10.267 is amended by adding a new subsection to read:

18 (e) When a fish transporter sells fish as the agent of the commercial fisherman
19 who caught the fish, the fish transporter shall possess

20 (1) a fish transporter permit and the fish ticket completed by the fish
21 transporter under AS 16.05.671(d); and

22 (2) an identification card that has been issued to the fish transporter by
23 a state or federal agency or other organization designated by the Department of Public
24 Safety and that bears a photograph of the fish transporter.

25 * Sec. 9. AS 25.27.244(s)(2)(A) is amended by adding a new sub-subparagraph to read:

26 (xvii) fish transporter permit under AS 16.05.671.

27 * Sec. 10. This Act takes effect immediately under AS 01.10.070(c).

Changes to the Bill

CS(FISH) -House Fisheries Committee recommended a committee substitute that made a technical amendment removing language about "paperwork required." This language was accidentally left in the bill and during simplification of the bill additional paperwork requirements were removed.

CS(RES) - House Resources Committee recommended a committee substitute that incorporated Child Support Enforcement Division's concerns that a fish transporter could transport fish for money. Therefore, the CS includes a fish transporter permit in their list of licenses and permits, which are accessed for child support enforcement reasons.

CS HB 118(RES) **Amended**- For purposes of the bill, Fish & Game put forth a technical amendment carried on the floor by the sponsor, which clarified the definition of fish as it relates to fish caught in the participating fisheries.

Blank CS() The blank CS before the committee reflects another amendment by CSED, which allows for the collection of social security numbers. This information was accidentally omitted in CSED's first amendment in House Resources.

Alaska State Legislature

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Homer, AK 99603
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REPRESENTATIVE Paul Seaton

District 35

Recommended by the Joint Legislative
Salmon Industry Task Force

Sponsor Statement

CS HB 118 (RES)

“An Act relating to the transportation and sale of certain commercially caught fish by an agent of a commercial fishing permit holder and to the sale of fish; and providing for an effective date.”

In 1988, the value of Alaska's salmon was worth \$800 million. This year salmon fisherman took home significantly less money, totaling \$150 million. Municipal revenues have dwindled, jobs have been lost, and fishermen are going broke. The economic effects of a failing salmon industry on the rest of the state could be detrimental. The Joint Legislative Salmon Industry Task Force has recognized the plight of Alaska's Salmon fisherman by forwarding to the legislature fourteen different bills and resolutions; House Bill 118 is one of those bills. HB 118 is a tool to help the industry by adding an alternative to cut costs for fisherman. It also creates new possibilities for accessing fresh markets.

HB 118 allows commercial fisherman to transport fish caught by associates to market. Under current law, transporting another person's fish is illegal unless you are a licensed processor or act as a contractor for a licensed processor. HB 118 creates an opportunity for fisherman to work together and consolidate their product for shipment. This simple option may cut down on additional fuel costs and give fisherman the ability to get their fish to market when processors no longer provide tender services.

As aforementioned, current laws limit fishermen's marketing flexibility. Currently, processors buy fish at the dock or send tenders out to the fishing fleet in order to bring fish to market. These special arrangements between fisherman and processors can be costly. HB 118 changes the statute by allowing fisherman to hire their own tender or pool their resources on one boat and transport the fish to market. Under the bill, a person transporting fish would need to have a transporter permit in addition to the currently required fish ticket. Only the fish ticket is used for the final sale of the fish. This arrangement would allow for the fisherman to retain ownership of the fish, while authorizing his/her associate or another vessel to transport and sell his or her fish. In some areas of the state, processors are non-existent. In that case, the transporter flexibility created in this bill may be the only avenue to get fish to market.

HB 118 simply provides an additional tool for fishermen to cut costs and increase quality while creating efficient and productive businesses.

SPONSOR STATEMENT

Alaska State Legislature

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REPRESENTATIVE Paul Seaton

District 35

Recommended by the Joint Legislative
Salmon Industry Task Force

Sectional Analysis

HB 118

“An Act relating to the transportation and sale of certain commercially caught fish by an agent of a commercial fishing permit holder and to the sale of fish; and providing for an effective date.”

*Section 1.

- (a) Amends Alaska Statute (AS) 16.05 by adding a new section, AS 16.05.671, which allows for the transportation and sale of a fish as an agent of a commercial fisherman. Under this new section, the agent/transporter must be permitted to be a transporter by the commissioner of ADF&G.
- (b) Authorizes the commissioner to officially permit a person to conduct the activity of transporting another fisherman's fish.
- (c) Describes the process in which a transporter must acquire and maintain proper documentation to act as a transporter.
- (d) Describes the process in which a commercial fisherman shall provide a fish ticket to the transporter.
- (e) Allows a commercial fisherman to act as a fish transporter with proper documentation and continue to operate, selling his/her own fish as a commercial fisherman.
- (f) Allows the commissioner to adopt regulations relating to the permitting of transporters and to the act of transporters.
- (g) Defines ownership of the fish being transferred to the transporter, which are still the property of the fisherman who caught the fish until sold to a buyer.

Sectional Analysis

(h) Defines the term "fish" as it relates to this bill.

***Section 2.**

Amends AS 16.675(a) by allowing a permitted transporter to deliver fish in the state.

***Section 3.**

Amends AS 16.05.680 by adding a fish transporter to one of the exemptions for unlawful practices with regards to purchasing of fish.

***Section 4.**

Adds the definition of a "fish transporter" by amending AS 16.05.940, fish & game code.

***Section 5.**

Amends AS 16.10.265(a) by including a fish transporter as a person from whom fish can be purchased.

***Section 6.**

Includes a fish transporter under AS 16.10.267(b) as a person required to show identification if asked to do so by a peace officer.

***Section 7.**

As it relates to examples of identification, a fish transporter is included under AS 16.10.267(c) as referenced in Section 6.

***Section 8.**

Amends AS 16.10.267 by adding a new subsection (e), which requires the fish transporter to carry a transporter permit, a completed fish ticket for the fish being transported, and a personal piece of identification.

***Section 9.**

Amends AS 25.27.244(s)(2)(A) under the Child Support Enforcement Statutes by listing a fish transporter permit as a permit that could be denied if person is in arrears with CSED.

***Section 10.**

(The Effective Date) This act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____

Bill Version: HB 118

Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: Public Safety

Title "An Act relating to the transportation a
sale of commercially caught fish . . ."

BRU Fish and Wildlife Protection

Component Enforcement

Sponsor Representative Seaton

Requester House Resources

Component No. 490

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

Estimate of any current year (FY2003) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

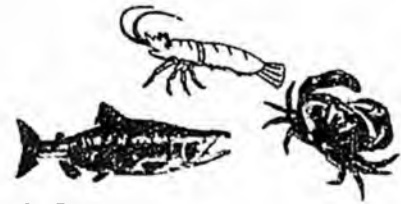
No fiscal impact.

Prepared by: Captain Howard Starbard
 Division: Fish and Wildlife Protection
 Approved by: Commissioner William Tandeske
 Agency: Department of Public Safety

Phone 269-5589
 Date/Time 3/10/03 8:24 AM
 Date 3/10/2003

Southeast Alaska Fishermen's Alliance

9369 North Douglas Highway
Juneau, AK 99801



Phone 907-586-6652

Fax 907-586-5648 E-mail: seafa@gci.net

March 25, 2003

Dear Southeast Legislators,

Support for HB 118

It is our understanding that HB 118 will come up for a house floor vote sometime this week. The Southeast Alaska Fishermen's Alliance supports the transporter bill HB 118.

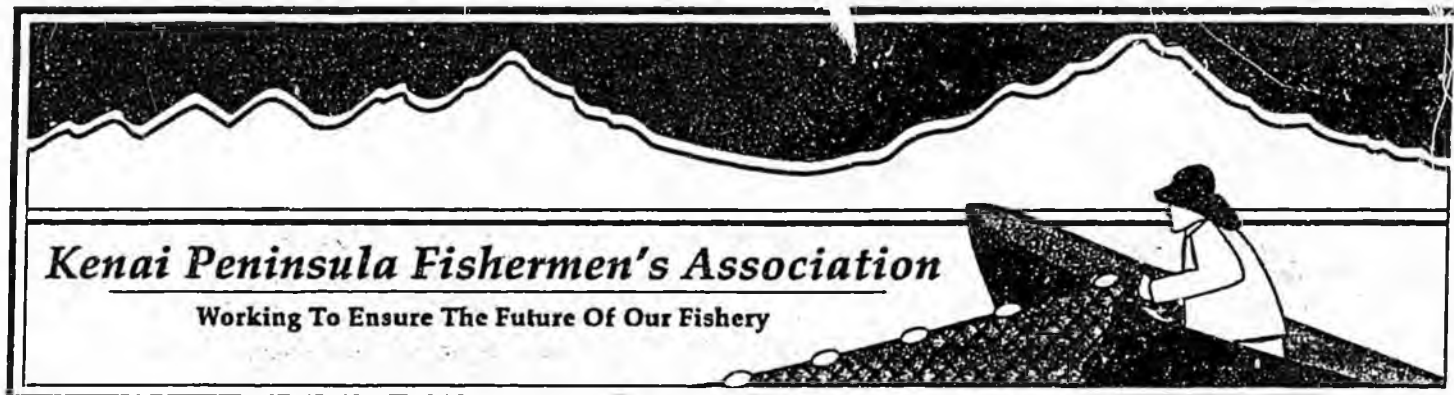
This legislation provides the fishing industry another tool and additional flexibility in getting fish to the market by working together. This can reduce the cost of getting fish to the market in a more efficient manner.

We hope that you will support this legislation discussed and supported by the Salmon Industry Task Force as one of the fourteen pieces of legislation moved forward for consideration this session. This legislation allows the fishermen an additional tool to use or not as appropriate.

The Southeast Alaska Fishermen's Alliance is a non-profit membership based fishing organization representing our members involved in the salmon, crab, shrimp and longline fisheries of Southeast Alaska. Please feel free to call us regarding commercial fishing issues if we may be of any help to you or your staff.

Sincerely,

Kathy Hansen
Executive Director



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(907) 262-2492 • Fax: (907) 262-2898 • E Mail: kpfa@alaska.net

Testimony given to the House Special Fisheries Committee on HB 118 (2-28-03)

February 28, 2003

My name is Paul Shadura, I reside on the Kenai Peninsula and represent the Kenai Peninsula Fishermen's Association.

We support the adoption of *hb 118* although we feel that it stops short of addressing the regulatory impediments on the Cook Inlet set-net fishery. We believe that if this bill is to truly allow efficiency and higher productivity, this bill should address other changes in the delivery and reporting requirements.

Currently, commercial set-net fishermen in CI are fined several thousand dollars for doing what they have practiced for several years. We have operated a form of *co-operatives* in Cook Inlet for many years. They are comprised of family and extended family or groups of small businessmen who have pooled their resources to reduce costs and accommodate individual situations.

Currently, a set-net fishermen cannot have his wife or other crewmember of his or her operation deliver their salmon to market. They must stop fishing, stop picking their nets and drive to wherever their market is. Considering that many times that openings for set-net fleet are 24 hrs. or are near 24 hrs, there leaves little time to repair or prepare for the next opening or sleep.


This is counter productive for the quality efforts that we are attempting with our branding program within Cook Inlet.

We strongly object to the CFEC position on the need for individual fish ticket reporting. It is apparent that the operations of set-net fishing in Cook Inlet is not fully understood.

And with this last statement, I will stop here.

Thank You Chairman Seaton and other members of the fisheries committee,

Sincerely Yours,


Paul A. Shadura II
President and Acting Ex. Director
Kenai Peninsula Fishermen's Association

Cordova District Fishermen United

Celebrating 65 Years of Service to Commercial Fishermen in Cordova, Alaska
P.O. Box 939 Cordova, Alaska 99574 / phone (907) 424-3447 / fax (907) 424-3430 /
e-mail cdfu@ptialaska.net

February 27, 2003

House Special Committee on Fisheries
c/o Representative Paul Seaton, Chair
State Capitol, MS 3100
Juneau, AK 99801-1182

SENT VIA FACSIMILE TO 907.465.3472

Dear Members,

Cordova District Fishermen United (CDFU) represents the commercial fishing fleets of Area E—Prince William Sound and the Copper River.

CDFU supports the increased flexibility to respond to change circumstances in our fisheries that HB 118 provides. The seafood industry is rapidly evolving in response to a changing global marketplace; this legislation provides another tool in the box that can be utilized.

Full accountability of resource harvests to ADF&G is very important to CDFU and we understand the imperative of assuring accurate and timely reporting to responsive management of the fisheries. We therefore appreciate that as per subsection (f), ADF&G may not always be able to allow utilization of transporter permits because of existing regulations that have evolved out of special circumstances within specific fisheries. Subsection (f) is very appropriate and we acknowledge its necessity.

We are concerned about enforceability, and look forward to hearing the comments of Fish & Wildlife Protection as to how this legislation might affect their ability to monitor harvests. We are concerned about the potential for harvest abuses that this system may enable.

We look forward to being a part of the discussions as this bill moves through the process and urge your positive consideration of it.

Sincerely,

Sue Aspelund

Sue Aspelund
Executive Director

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

BOARDS SUPPORT SECTION

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 25526
JUNEAU, AK 99802-5526
PHONE: (907) 465-4110
FAX: (907) 465-6094

January 23, 2003

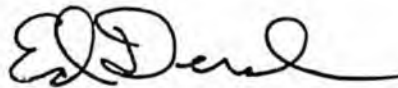
The Honorable Paul Seaton
Alaska House of Representatives
State Capitol, Room 428
Juneau AK, 99811

Dear Representative Seaton:

I would like to express my support for the concepts contained in your draft legislation regarding fish transporter issues.

As you know, we have four new members on the Alaska Board of Fisheries and began a long series of regulation meetings on January 20, immediately after appointment of the new members. As soon as our agenda allows, it is my intent to bring the fish transporter bill to the attention of the full board to ask for a resolution of support. I look forward to the Board of Fisheries, Department of Law, and Department of Fish and Game working with the legislature to find statutory and regulatory solutions to the problems your bill addresses.

Sincerely,



Ed Dersham
Chair, Alaska Board of Fisheries

February 27, 2003

House Fisheries Sub- Committee,

Dear Representative Seaton,

The North Pacific Fisheries Association in Homer met earlier this week to discuss House Bill No. 118. Our group supports this bill. We feel that it will solve a number of problems fishers face in remote locations. This bill will allow fishermen to save costs by consolidating fish to be transported to primary processors. We feel that, if enacted, this bill would have an immediate positive effect for fishermen this summer. We feel that this is a well thought out and well researched bill that has no downside.

Allow me to give you an example of two scenarios where this bill would work. Often times I am fail fishing for coho salmon on the Alaska Peninsula when the local processor will stop sending a tender after a certain date even though the fish are still available. The cost of the tender is too high for the volume of fish being caught or the processor is busy doing pollock. That means that every night 3-8 boats must run to King Cove to deliver if they wish to sell their catch. With current coho prices of \$.15/lb., losing the tender usually means the fishing boats leave the grounds and the resource goes unharvested. Under current regulations each boat must run in to deliver. Sometimes boats that aren't catching much try to hold over their fish for a second day which is detrimental to quality. Under this act I would be allowed to consolidate say three or four of my fishing friends' catch onto my refrigerated seawater boat on the grounds and run them in to the market. Perhaps the next night another boat would provide that service and I could get a night's sleep. The savings in fuel and effort would potentially make the difference between ending the season, versus fishermen and processors continuing to utilize the salmon resources.

Another situation I have faced where this act may help is during the state-water cod fishery on the Alaska Peninsula. Last year the cannery had a three day back-up after the season closed. That means that we had to wait for three days from the closure time to get our fish delivered. A better quality fish could be delivered for a higher price if three 58 foot cod pot boats could consolidate their catch (say 100,000 pounds) and send one boat to Kodiak where the price last year was over 33% higher per pound than the King Cove market.

We hope that this bill will move through the legislative process so that we can utilize these advantages in the upcoming season.

Sincerely,

Buck Laukitis
President, NPFA
Homer, Alaska

HB

120

SENATE COMMITTEE REPORT

DATE: 4/23/03

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 120(RLS) am

HB 120 SERVICE CONTRACT SALES ARE NOT INSURANCE

"An Act excluding service contracts from regulation as insurance; relating to insurance licensing for motor vehicle service contracts and home warranties; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>Bettina Davis</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	X			
CHAIR: <i>[Signature]</i>	✓			

ALASKA STATE HOUSE OF REPRESENTATIVES

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Session Contact:
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State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

SPONSOR STATEMENT - HB 120

The last administration and its director of the Division of Insurance concluded that service contracts are considered insurance. Leaving the interpretation of service contracts to the will of an administration could eliminate the willingness of manufacturers to offer such contracts in Alaska. HB 120 guarantees that consumers have easy access to service contracts through local sources without creating a whole new set of laws for the state to regulate.

HB 120 exempts service contracts from Title 21 regarding insurance. Six other states, Idaho, Montana, Nebraska, North Dakota, South Dakota and West Virginia, have taken the same approach as HB 120 and exempted service contracts from insurance statutes rather than creating more bureaucracy.

Insurance covers repair or replacement from perils such as fire, earthquake, or flood. Service contracts cover repair and replacement from a faulty part or normal wear and tear that is pretty predictable.

Incidental indemnity is in the legislation to cover a cash settlement for an appliance that repair is not possible for a variety of reasons including the possibility that parts are no longer made for the appliance. Incidental is the key word because a cash settlement would be rare and is not the primary function of the contract. If incidental indemnity is not in the statute, claims that would otherwise be settled through a cash payment would be denied.

HB 120 provides that persons who sell motor vehicle service contracts or home warranties do not have to be licensed to sell insurance, while allowing the division to continue to collect premium taxes on those contracts.

Service contracts are important to Alaskan consumers. To keep them available, manufacturers must be assured that Alaska's laws do not pre-empt the availability through local repair shops, retail subsidiaries and other third party sources because of over-regulation.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 120(RLS)
 (H) Publish Date: 4/11/2003

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Excluding Service Contracts from Reg BRU Insurance (116)
 Component Insurance
 Sponsor Rep. Coghill
 Requester House Rules Component No. 354

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Janet S. Seitz, Staff Phone (907) 465-3764
 Division House Rules Committee Date/Time 4/11/03 9:33 AM
 Approved by: Representative Norman Rokeberg, Chairman Date 4/11/2003
 Agency House Rules Committee

Frank H. Murkowski, Governor



Division of Insurance

P.O. Box 110805, Juneau, AK 99811-0805

Telephone: (907) 465-2515 • Fax: (907) 465-3422 • Text Telephone: (907) 465-5437

Email: Insurance@dced.state.ak.us • Website: www.dced.state.ak.us/insurance/

April 14, 2003

The Honorable Norman Rokeberg, Chairman
Alaska House of Representatives
House Rules Committee
State Capitol, Room 214
Juneau, AK 99801-1182

RE: HB 120 Service Contract Sales Are Not Insurance

Dear Representative Rokeberg:

During the hearing on HB 120, the Division of Insurance was asked to respond to questions related to the definition of insurance and the exemption of service contracts from being regulated as insurance products as well as how a service contract would apply if there is similar coverage provided in an insurance policy.

Definition of Insurance

Under current law, service contracts and extended warranties may be regulated as insurance when in form and in substance the contracts fall within the scope of the definition of insurance in the code. In AS 21.90.900(23), insurance is defined as a contract whereby one undertakes to indemnify another, or pay or provide a specified or determinable amount or benefit upon determinable contingencies. Based on this definition, the essential elements of insurance include the shifting or transfer of a risk of loss for some consideration and a distribution of the risk among many consumers.

Historically, the division has taken the position that service contracts and extended warranties offered by a manufacturer of a product do not fall within the scope of the definition of insurance. This is because in that context, such contracts or extended warranties fall on the side of warranties (guarantees of performance) and not insurance. Whereas, service contracts or extended warranties sold or underwritten by sellers or dealers of a product may be insurance if the substance of the transaction, the contracts involved, and the risk assumed or shifted by the dealer fall under the definition of insurance in AS 21.

Service contracts or extended warranties sold or underwritten by third parties other than a manufacturer or dealer are treated as insurance by the division. In this context, the classic elements of insurance exist—consumers shifting risk of loss to the third party for a premium and distribution of this risk by the third party among many consumers.

HB 120 is designed to remove certain service contracts and extended warranties from regulation under the insurance code (AS 21). The bill accomplishes this through an express exception in AS 21.03.021 which makes the insurance code inapplicable to certain defined service contracts. The bill does not except all service contracts, only service contracts related to tangible personal

property, household consumer goods, household appliances, and household systems. To clarify this, the language of version W, page 2 line 15, should be amended to read "service contract insurance on a motor vehicle subject to registration under AS 28.10.011." This will parallel the new language added to AS 21.27.020 in line 25.

Conflict Between the Definition of Insurance and Service Contracts

AS 21.03.021 governs the application of the title. A conflict would not be created for a product that consists of the elements needed to make it an insurance product under AS 21.90.900 if that product also meets the exception in AS 21.03.021. In this case, the exception in AS 21.03.021 controls and a service contract would not be regulated as a contract of insurance under AS 21.

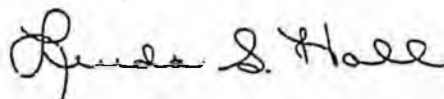
It is conceivable, however, that a product will contain both service contract and traditional insurance features. If a product covers perils or provides benefits arising from losses caused by covered perils beyond what HB 120 describes as the features of a service contract, the division will treat that product as an insurance product subject to regulation under AS 21. If the product only provides the coverage or benefits within the scope of service contract features described in HB 120, then the division will treat that product as a service contract excepted from regulation under AS 21. Accordingly, the fact that a homeowners policy may provide coverage for power surges, which is a permissible feature of a service contract under HB 120, will not change how the division regulates the homeowners policy. The coverage for power surges would still be treated as part of the homeowners insurance policy and regulated as such.

Amendment Defining a Service Contract Is Not a Contract of Insurance

During the hearing there was discussion about an amendment that would state a service contract is not a contract of insurance. Adoption of this amendment may raise additional issues and concerns, particularly in relation to the exception for power surges. Homeowners and commercial property insurance policies may provide some coverage for damage to appliances and electrical equipment due to artificially generated electrical current. How the insurance policy and service contract coordinate benefits will depend upon the language in the policy or service contract. For example, the fact that there may be coverage for the same loss under a service contract and under a separate insurance policy may not be an issue if the service contract is considered insurance. This is because most insurance policies contain an "other insurance" clause that ordinarily determines which policy or contract pays first to avoid double coverage or a windfall. If a service contract is not considered insurance and unless the insurance policy language specifically describes how it coordinates with service contracts or warranty products, there may or may not be coverage under the insurance policy in addition to coverage under the service contract. In addition, some service contracts exclude coverage for losses that would be covered by other insurance.

Thank you for the opportunity to address the issues that were raised during the hearing. If additional information is needed, please let me know.

Sincerely,



Linda S. Hall
Director

LSH/SMG/go3813
041503a

cc: Representative John Coghill Jr.
 Representative Ethan Berkowitz

THE
FOLLOWING
DOCUMENT(S)
ARE
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ORIGINAL
COPIES



Joshua S. Ellis
Manager
Government Affairs
Sears, Roebuck and Co.
3333 Beverly Road, BC-12BA
Hoffman Estates, IL 60179

March 3, 2003

Chairman Tom Anderson
House Labor & Commerce Committee
State Capitol Room 432
Juneau, Alaska 99801-1182

Re: House Bill 120

Dear Chairman Anderson:

I am pleased to write to you today on behalf of Sears, Roebuck and Co, our four retail stores, and our 600 associates employed in Alaska. I am writing to ask your support of HB 120, which allows for increased competition in the service contract marketplace.

Sears and its wholly-owned subsidiary Sears Protection Company are among the leaders in selling protection agreements, Sears' term for service contracts, for consumers and small businesses throughout the country. The principal purpose of these agreements is to provide for the repair, replacement or maintenance of specified products necessitated by inherent defects or by normal wear and tear. These kinds of agreements do not have the fundamental characteristics of an insurance contract because they do not cover accidental damage due to fire, floods, acts of God and similar risks.

House Bill 120 if enacted would clarify that all service contracts would not be regulated as insurance. Under current practice as we understand it in Alaska, some service contracts are not treated as insurance (for example, when Sears itself issues a protection agreement on an item it sold). But other service contracts could be treated as insurance (for example, if Sears Protection Company issued a protection agreement on an item Sears sold). In other words, only retailers and manufacturers of products can safely sell service contracts -- not repair shops, not subsidiaries of retailers, no third parties at all.

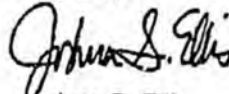
Other states have recognized that focusing on who sells a service contract rather than on the principal purpose of service contracts reduces competition in the marketplace. H.B. 120 would benefit consumers by opening up the market for these non-insurance contracts to all companies. Alaska is one of a small number of states that do not permit this increased competition.

Page 2 of 2
Chairman Tom Anderson
03/03/03

There are two types of solutions that other states have used to open up the market. First, some states have opted to comprehensively regulate the business of issuing service contracts – no matter who sells the contracts. Some states do this in the Insurance Department, others in catch-all regulatory agencies, still others in the Agriculture Department. Another group of states -- including Idaho, Montana, Nebraska, North and South Dakota and West Virginia -- decided to exempt all service contracts from the scope of insurance laws as House Bill 120 provides.

We support House Bill 120 and urge its passage. We stand ready to provide any information that you and your colleagues need as you consider this measure. Please do not hesitate to ask me.

Sincerely,



Joshua S. Ellis
Manager
Government Affairs

CC: Thyes Schaub

HB

124

SENATE COMMITTEE REPORT

E: 3/13/03

FURTHER: Transportation

DATE TURNED
IN TO OFFICE: _____

or and Commerce Committee considered HOUSE BILL NO. 124

HB 124 COMMERCIAL MOTOR VEHICLE DRIVERS/EMPLOYER

Act relating to commercial motor vehicle drivers and their employers and to railroad-highway grade crossings; and providing for an effective date."

Committee recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Betty Davis</i>	X			
<i>[Signature]</i>	X			
<i>Ralph Seekin</i>	✓			
CHAIR: <i>A. B...</i>	✓			

Alaska State Legislature

Representative Jim Holm

District 9

Session

Capitol Building, Room 110

Juneau, AK 99801

Phone: (907) 465-3466

Fax: (907) 465-2937



Interim

119 N. Cushman St.

Fairbanks, AK 99701

Phone: (907) 456-7423

Fax: (907) 451-9293

HB124

SPONSOR STATEMENT

“An Act relating to commercial motor vehicle drivers and their employers and to railroad-highway grade crossings; and providing for an effective date.”

Although federal law and commercial driver training already state that certain commercial vehicles must approach with flashers and stop at all rail crossings, Alaska law currently does not require this. State law must be brought into compliance with Federal requirements in order to avoid the loss of between \$20,000,000 and \$40,000,000 in federal highway monies. HB124 will conform Alaska law to federal requirements.

The bill would prohibit an employer of a commercial vehicle driver from knowingly allowing, authorizing, or encouraging the driver to violate any federal, state, or municipal code or regulation relating to railroad-highway crossings. It also would require the court to disqualify a commercial motor vehicle driver for certain periods of time upon conviction of a federal, state or municipal code or regulation relating to railroad-highway crossings.

The administration has expressed support for this bill and the federal deadline for compliance has already passed; therefore, I urge prompt consideration of this bill in order that we do not lose federal Highway funds.

STATE OF ALASKA
HOUSE OF REPRESENTATIVES

Representative Jim Holm



119 N. Cushman
Fairbanks, AK 99701
TEL 456-7423, FAX 451-9293

House District 9

State Capitol
Juneau, AK 99801
TEL 465-3466, FAX 465-2937

House Bill 124

COMMERCIAL MOTOR VEHICLE DRIVERS/EMPLOYER

Sectional Analysis

Section 1 of the bill amends responsibilities of employers of commercial vehicle drivers to encourage compliance with federal code regarding railroad-highway grade crossings.

Section 2 of the bill amends responsibilities of employees (drivers) to require compliance with federal code regarding railroad-highway grade crossings.

Section 3 prescribes drivers' penalties for non-compliance.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 124
 () Publish Date: _____

Revision: Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: An act relating to commercial motor BRU Motor Vehicles
vehicle drivers..... Component _____
 Sponsor Rep Holm
 Requester (H) TRA Component No. 2348

Expenditures/Revenues (Thousands of Dollars)

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The ICC Termination Act of 1995 (Public Law 104-88) contained a provision that required the Federal Highway Administration (FHWA) to adopt regulations requiring states to disqualify drivers of commercial vehicles that violate federal, state, or local laws or regulations pertaining to a railroad-highway grade crossing. The act also prohibited employers from allowing drivers to violate these provisions.

The number of railroad-highway grade crossing violations in Alaska is very low and it is not anticipated that this provision will have any substantial effect on drivers, employers, or state agencies.

Prepared by: Charles R. Hosack Phone 269-5559
 Division: Motor Vehicles Date/Time 2/28/03
 Approved by: Mike Miller, Commissioner Date _____
 Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB124
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
 Title An Act relating to commercial motor vehicle BRU Measurement Standards & CVE
drivers and their employers Component Measurement Standards & CVE
 Sponsor Holm
 Requester HTRA Component No. 2332

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 If this legislation does not pass, the state of Alaska will receive sanctions by the Federal Highway Administration for not complying with Federal Motor Carrier Safety laws. The sanction will withhold 5% of the state's annual federal surface transportation funding, approximately \$17.5 million/year. This will result in a corresponding \$17.5 million reduction of the state's highway construction capital budget.

Prepared by: Dennis R. Poshard Phone 465-3900
 Division Special Assistant to Commissioner Date/Time 3/5/03 10:26 AM
 Approved by: Commissioner Mike Barton Date 3/5/2003
 Agency Alaska Department of Transportation and Public Facilities

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 124
() Publish Date: _____

Revision Date/Time (Note if correction): N/A Dept. Affected: Public Safety
Title An act relating to commercial motor BRU AST Detachment
vehicle drivers and their employers Component AST Detachment
Sponsor Representative Holm
Requester House Transportation Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

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

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Lieutenant Matthew Leveque Phone 907 269-0390
Division Alaska State Troopers Date/Time 3/3/03 3:09 PM
Approved by: William Tandeske, Commissioner Date 3/3/2003
Agency Department of Public Safety



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Administration	DIVISION Motor Vehicles	BILL NUMBER LL 773-03-0008	SPONSOR
SHORT TITLE OF BILL An act relating to commercial motor vehicle drivers and their employers and to railroad-highway grade crossings..			
DEPARTMENT POSITION Support			
PREPARED BY Charles R. Hosack	DATE 2-3-03	COMMISSIONER'S SIGNATURE	DATE

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Dept of Transportation, Dept of Public Safety	CONSTITUENT GROUP(S) AFFECTED BY BILL Commercial Vehicle Drivers and Employers
ORGANIZATIONAL SUPPORT FOR BILL None Known	ORGANIZATIONAL OPPOSITION TO BILL None Known

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The ICC Termination Act of 1995 (Public Law 104-88) contained a provision that required the Federal Highway Administration (FHWA) to adopt regulations requiring states to disqualify drivers of commercial vehicles that violate federal, state, or local laws or regulations pertaining to a railroad-highway grade crossing. The act also prohibited employers from allowing drivers to violate these provisions. In 1999 FHWA passed regulations requiring states to take action on these violations as part of the Commercial Driver License (CDL) program. States had until October 2002 to comply with this requirement. This bill satisfies that requirement.

ANALYSIS OF BILL/PROGRAM EFFECTS

The number of railroad-highway grade crossing violations in Alaska is very low and it is not anticipated that this provision will have any substantial effect on drivers, employers, or state agencies.

Drivers of commercial vehicles convicted under this new provision will be disqualified from operating a commercial vehicle for 60 days on the first offense, 120 for a second offense within 3 years, and one year for a third offense within 3 years.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

Billanal.doc

(TITLE IV)

PUBLIC LAW 104-88 — DEC. 29, 1995

109 STAT. 956

SEC. 403. VIOLATION OF GRADE-CROSSING LAWS AND REGULATIONS.

(a) FEDERAL REGULATIONS.—Section 31310 of title 49, United States Code, is amended by adding at the end thereof the following:

“(h) GRADE-CROSSING VIOLATIONS.—

“(1) SANCTIONS.—The Secretary shall issue regulations establishing sanctions and penalties relating to violations, by persons operating commercial motor vehicles, of laws and regulations

pertaining to railroad-highway grade crossings.

“(2) MINIMUM REQUIREMENTS.—The regulations issued under paragraph (1) shall, at a minimum, require that—

“(A) the penalty for a single violation is not less than a 60-day disqualification of the driver’s commercial driver’s license; and

“(B) any employer that knowingly allows, permits, authorizes, or requires an employee to operate a commercial motor vehicle in violation of such a law or regulation shall be subject to a civil penalty of not more than \$10,000.”.

(b) DEADLINE.—The initial regulations required under section 31310(h) of title 49, United States Code, shall be issued not later than 1 year after the date of the enactment of this Act.

(c) STATE REGULATIONS.—Section 31311(a) of title 49, United

States Code, is amended by adding at the end thereof the following:

“(18) The State shall adopt and enforce regulations prescribed by the Secretary under section 31310(h) of this title.”.

49 USC 31310

note.

(THIS IS THE ACTUAL FEDERAL REQUIREMENT FROM 1995: "ICC TERMINATION ACT", WHICH CURRENTLY ENDANGERS OUR HWY FUNDS.)

HB

135

SENATE COMMITTEE REPORT

DATE: 4/24/03

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 135(HES)

HB 135 MARITAL & FAMILY THERAPISTS

"An Act relating to marital and family therapists."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Betty Davis</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
CHAIR: <i>[Signature]</i>	✓			



Alaska State Legislature

*Representative Peggy Wilson
Putting Alaska's Families First*

SPONSOR STATEMENT SCS CS House Bill 135(HES)

“An act relating to marital and family therapists.”

The law that established the Board of Marital and Family Therapy has been in place for ten years. It is time to pursue the placement of updated language within the statute.

SCS CSHB 135 will bring the Alaska Statutes for Marriage and Family Therapy to the same standard as the laws regarding other counseling services in the state and Marriage and Family Therapy statutes nationally.

SCS CSHB 135(HES)~

- *Adds* the Board of Marital and Family Therapy to the list of boards that may request the Division of Occupational Licensing to contract for substance abuse treatment under licensed therapists,
- *Gives* the Board of Marital and Family Therapy authority to order a licensed marital and family therapist to submit to a reasonable physical or mental examination if the board has credible evidence sufficient to conclude that the therapist's physical or mental capacity to practice safely is at issue,
- *Allows* for individual client contact to be used as hours toward licensing,
- *Requires* the therapist to communicate to a potential victim or law enforcement officer if a threat of imminent serious physical harm to an identified victim has been made by a client,
- *Imposes* disciplinary sanctions with regard to therapist sexual misconduct.

SCS CS HOUSE BILL 135(HES) not only brings parity to the mental health professions in the state, it also adds additional consumer protection for Alaskans seeking professional counsel.



Alaska State Legislature

Representative Peggy Wilson
Putting Alaska's Families First

Sectional analysis SCS CSHB 135(HES)

Section 1. Adds the board of Marital and Family Therapists (hereafter "board") to the list of boards that may request the division of occupational licensing to contract for substance abuse treatment for licensed therapists (hereafter "licensees").

Section 2. Authorizes the board to require physical and mental exams of licensees.

Section 3. Changes a licensing requirement relating to post-degree clinical contact.

Section 4. Adds two more categories of circumstances when a client's communications to a licensee may be revealed to others.

Section 5. Adds a new ground for disciplinary sanctions

Section 6. Allows summary suspension of a licensee who refuses to submit to a physical or mental examination.

Section 7. Adds two new sections of law. One requires disclosure statements to clients. The other enacts a practice limitation.

Section 7 was amended by deleting the words "*for marital and family therapy services*" on page 5, lines 9-10, and inserting "**by a licensed marital and family therapist,**" (amendment made in House HESS).

Section 7 was amended by deleting, "*A client may not be charged a fee for marital and family therapy services unless, before the performance of the services, the client was furnished a copy of a professional disclosure statement that contained*" on page 5, lines 9-11, and inserting, "**Before the performance of services the client will be furnished a copy of a professional disclosure statement that contains**" (amendment made in Senate HES).



**Alaska Association for
Marriage and Family Therapy**

2600 Denali St., Ste 450
Anchorage, Alaska 99503
Ph. (907) 272-7002

February 28, 2003

Representative Peggy Wilson
State Capital Rm 409
Juneau, AK. 99801

Re: House Bill 135

Dear Representative Wilson,

The Alaska Association for Marriage and Family Therapy appreciates your sponsorship of House Bill 135. Our organization supports this bill and was primarily responsible for initiating it. Much of the bill is housekeeping but there are parts, which are substantial changes. The addition of sexual misconduct brings MFT standards up to other mental health care professionals in the state as well as our own National Association's standards. It requires that two years must pass before a LMFT can have a sexual relationship with a former client. Sexual misconduct is one of the most problematic issues facing mental health care providers because of the nature of the relationships that are formed in the therapeutic process. Strict boundaries are absolutely necessary because of that relationship. The disclosure statement is a new provision, which is intended to inform and protect the client as a consumer of mental health services. It is a national trend in marriage and family therapy to educate the client with regards to the professional's training and specialization. In addition, it is a commonly accepted ethical procedure to make consumers aware of fees.

Again, thanks for sponsoring this bill.

Sincerely,

Susan Arth, Division President, AkAMFT

**Larry Holman M.S. LMFT
Susitna Counseling and Associates
2600 Denali St. Ste 450
Anchorage, AK. 99503
Ph. (907) 272-7002 Fax (907) 272-2851**

February 28, 2003

Representative Peggy Wilson
State Capital Rm. 409
Juneau, AK. 99801

Re: House Bill 135

Dear Representative Wilson,

The Regulatory Board for Licensed Marriage and Family Therapists in the State of Alaska strongly support the passage of HB 135. One of our goals for the last couple of years has been to review our laws and regulations after being licensed for about 10 years, to see if they meet current standards of practice nationally. There were several areas identified which were seen as deficient and/or not up to the standards of other mental health professions in this state and nationally. The national organization for marriage and family therapists (AAMFT) as well as the Association of Marital and Family Therapy Regulatory Board has provided us with direction and guidance in bringing our laws and regulations up to a high standard so that the Alaskan public will be protected.

House Bill 135 advances that goal in several significant ways. First and possibly foremost is the provision that addresses sexual relationships between MFTs and clients. There are no mental health professional associations of which I am aware that do not have strict sanctions and prohibitions against sexual relationships with clients and former clients. Many specify two to three years. Social Workers specify a lifetime prohibition. This provision needs to be spelled out clearly since the possible harm caused can be so egregious. Other provisions in this law are attempts to be more responsive to the public, which our Board is charged to protect. The disclosure statement section contains a description of therapist's formal education, degrees obtained and institutions attended, therapist's area of specialization, and therapist's fee schedule. We think this is an important addition to our law in that it spells out the contract between a therapist and his/her client. Many clients are not very informed about these issues and this provision clarifies them.

These are just mentioned two examples of new provisions that this law addresses. The other provisions are significant as well and we encourage you to support them vigorously as we do. The Marriage and Family Therapy Regulatory Board thanks you for your sponsorship of this bill and if there is anything we can do to support its passage please let us know.

Sincerely,

Larry Holman, LMFT, Chairperson, MFT Regulatory Board

Sexual Exploitation - the "Two-Year Rule"

Issue

Enact a law to create a cause of action against a psychotherapist for engaging in sexual relations with a patient either during the therapeutic relationship or within two years following termination of therapy.

Background

Sexual relations between a psychotherapist and his/her patient is generally prohibited by law. Violations usually result in disciplinary action by the licensing board (revocation or suspension of the license) and/or the filing of a civil action for damages by the patient. In some states, criminal penalties can be imposed on a psychotherapist who engages in sexual relations with his/her patient. Some believe that sexual relations between a psychotherapist and a patient or former patient should be prohibited in perpetuity. **This bill would instead provide that sexual relations between a psychotherapist and his/her patient are prohibited during the therapist-patient relationship and for two years following a termination of the relationship and would create a specific cause of action against a psychotherapist for a violation.**

This bill is necessary for several reasons. First, some argue or believe that a psychotherapist may have sexual relations with an ex-patient since the law only prohibits such relationships between therapist and patient. In the past, some therapists have simply terminated the therapist-patient relationship, perhaps made a referral, and then engaged in sexual relations with their "ex-patient," either moments or days later. This is clearly inappropriate and constitutes an ethical violation in most professions. Additionally, because of the power imbalance often present in the therapist-patient relationship, some reasonable amount of time must be allowed to pass before an intimate relationship should be allowed to begin.

Therapists who exploit the trust and vulnerability of patients for their own sexual gratification, especially when it can have such devastating and long-term effects upon patients, are practicing predatory psychotherapy. Imposition of a "two-year rule" will prevent therapists from avoiding the very purpose of the long-standing prohibition against therapist-patient sex by simply terminating therapy and engaging in sexual contact shortly thereafter. Establishment of a two-year rule provides for a cooling-off period that will discourage such relationships from occurring. The burden on therapists is not great, since they are free to have sexual relations with everyone except minors and ex-patients (for two years).

Opposition

This bill could be opposed by civil libertarian groups (such as the ACLU) on the basis of the limitation of a person's right to freely associate with others. They may argue that consenting adults should be allowed to engage in sexual relations with each other regardless of their prior professional relationship. They may additionally argue that the two-year rule is an arbitrary barrier to the right of free association. Other affected professions may claim that the present law is sufficient to deal with the existing problems and that the two-year rule is excessive or unnecessary.

Sample Language

Section 43.93 of the California Civil Code is an example of a law that creates a cause of action against a psychotherapist for engaging in sexual relations with a patient within two years following termination of therapy. Licensing law provisions that prohibit sexual relations between therapist and patient should also be amended to include the "two-year rule."

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 135
 (H) Publish Date: 3/7/03

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title An Act relating to marital and family therapists BRU Occupational Licensing (117)
 Component Occupational Licensing
 Sponsor Representative Wilson
 Requester House Labor & Commerce Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation amends several sections of AS 08 to include the responsibilities and requirements of marital and family therapists.

New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
 Division: Occupational Licensing Date/Time 3/3/03 3:43 PM
 Approved by: Edgar Blatchford, Commissioner Date 3/3/2003
 Agency: Department of Community & Economic Development

HB

146

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

SENATE COMMITTEE REPORT

DATE: 3/18/03

FURTHER: Resources

DATE TURNED
IN TO OFFICE: _____

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 146(HES)

HB 146 CHILD SUPPORT/SOCIAL SECURITY NUMBERS

"An Act repealing the termination date of certain provisions that require the reporting of social security numbers and automated data matching with financial institutions for child support enforcement purposes; relating to social security numbers on applications for commercial fishing licenses; and providing for an effective date."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Bruce Davis</i>	X			
<i>HOOK</i>	X			
<i>Keith Seaborn</i>	✓			
<i>[Signature]</i>	X			
CHAIR: <i>C Bunde</i>	✓			

Alaska State Legislature

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



Interim:
716 W 4th Avenue, Suite 300
Anchorage, AK 99501-2133
Phone: (907) 269-0250
Fax: (907) 269-0249

Representative Lesil McGuire Chair, Judiciary Committee

House Bill 146

"An Act repealing the termination date of certain provisions that require the reporting of social security numbers and automated data matching with financial institutions for child support enforcement purposes; and providing for an effective date."

Sponsor Statement

House Bill 146 will repeal certain provisions of ch. 54, SLA 2001, regarding the reporting of social security numbers and automated data matching with financial institutions for the purpose of child support enforcement. Without passage and enactment of this bill, the child support enforcement program, and related programs, are in danger of losing substantial federal financial participation. That loss would negatively affect Alaska's children and the state as a whole.

The federal government provides millions of dollars to help finance Alaska's child support enforcement program and, through a block grant under the federal Temporary Assistance to Needy Families (TANF) program, to help finance the state's Alaska Temporary Assistance Program (ATAP). Many Alaska children depend on these programs to meet their basic needs for feed, shelter, clothing, and other necessities. The child support enforcement program also reduces reliance on state assistance by assuring that Alaska's children receive the support that a court or administrative agency ordered their parents to pay.

In 1996, federal welfare reform legislation was enacted (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996). That Act was designed to reduce dependence on welfare programs. To achieve this goal, the federal Act imposed numerous additional requirements for state child support enforcement programs. Federal financial participation in this state's child support enforcement and ATAP programs is dependent on compliance with these federal requirements.

In 1997 and 1998, ch. 87, SLA 1997, and ch. 132, SLA 1998, were enacted to meet those federal requirements. However, in 2001, legislation was enacted that imposed "sunset" provisions on two sets of provisions in the 1997 and 1998 legislation. Under the 2001 Act (ch. 54, SLA 2001), the provisions requiring the reporting of social security numbers and the provisions authorizing financial institution data matches will be repealed as July 1, 2003. This bill will repeal that "sunset" provision, keeping Alaska compliant with federal law, and thus eligible for these greatly needed federal dollars.

Alaska State Legislature

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State Capitol
Juneau, AK 99801
Phone: (907) 465-2995
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Interim:
716 W 4th Avenue, Suite 300
Anchorage, AK 99501-2133
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Representative Lesil McGuire
Chair, Judiciary Committee

CSHB 146 (HES) Sectional Analysis

"An Act repealing the termination date of certain provisions that require the reporting of social security numbers and automated data matching with financial institutions for child support enforcement purposes; and providing for an effective date."

Section 1 – Amends AS 16.05.480(b) by deleting and adding language intended to correct drafting errors in the original statute which inadvertently omitted non-resident commercial fisherman. This amendment has been added at the request of the Commercial Fisheries Entry Commission. This language is an addition to the original version of HB 146.

Section 2 – Amends AS 16.05.480(d) by adding language requiring that the Commercial Fisheries Entry Commission shall provide a social security number provided by any applicant for a license, correcting the original language which omitted non-resident license applicants. This language is an addition to the original version of HB 146.

Section 3 – Repeals Sections 1-10, 14, and 17, ch. 54, SLA 2001. This section is part of the original version of HB 146.

Section 4 – Provides for an effective date. This section is part of the original version of HB 146.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 146(HES)
 H() Publish Date: 3/14/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title Child Support / BRU Child Support Division
Social Security Numbers Component Child Support Division
 Sponsor Representative McGuire
 Requester House HESS Component No. 111

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There would be no fiscal impact from this legislation on the Child Support Division's operating budget. The legislation merely removes the sunset provision in statute from several sections of Alaska's child support enforcement laws.

However, failure to adopt this legislation would move the state out of compliance with federal law for child support enforcement programs and would expose the state to the penalty of losing \$75.6 million a year in federal funding for: Alaska's child support enforcement program (\$15.4 million), and Alaska's Temporary Assistance Program (\$60.2 million).

Prepared by: John Main, Director Phone 269-6800
 Division Child Support Enforcement Division Date/Time 3/7/03 5:03 PM
 Approved by: Larry Persily, Deputy Commissioner Date 3/7/2003
 Agency Department of Revenue

**License Applications & Other Official Documents
Requiring Social Security Numbers
(March 14, 2003)**

- AS 06.20.020 small business loan license
- AS 06.40.050 insurance or premium finance business license
- AS 08.01.060 business or professional license, which includes (among others):
- accountants
 - acupuncturists
 - architects, engineers, and land surveyors
 - audiologists and speech-language pathologists
 - barbers and hairdressers
 - big game guides and transporters
 - chiropractors
 - collection agencies
 - concert promoters
 - construction contractors
 - dentists and dental hygienists
 - direct-entry midwives
 - dietitians and nutritionists
 - dispensing opticians
 - electrical and mechanical administrators
 - explosives handlers
 - agencies providing euthanasia services
 - professional geologists
 - hearing aid dealers
 - junk dealers and metal scrappers
 - marine pilots
 - marital and family therapists
 - medical doctors and other related professions
 - morticians
 - motor vehicle dealers
 - naturopaths
 - nurses
 - nursing home administrators
 - optometrists
 - pharmacists
 - physical and occupational therapists
 - professional counselors
 - psychologists and psychological associates
 - real estate brokers
 - real estate appraisers
 - social workers
 - veterinarians

AS 08.08.137	Alaska bar application
AS 09.55.050	presumptive death certificates
AS 14.20.027	teacher's certificate
AS 16.05.450	crewmember license
AS 16.05.480	commercial fishing license
AS 18.50.165(a)	paternity acknowledgment
AS 18.50.230	death certificate
AS 18.50.280	dissolution/divorce/annulment certificates
AS 18.60.395	boiler operator license
AS 18.65.410	security guard license
AS 18.72.030	fireworks wholesaler license
AS 21.06.255	insurance license
AS 25.05.091	marriage license
AS 25.20.050(n)	paternity acknowledgements
AS 25.24.160	divorce decrees
AS 25.24.210	dissolution petitions
AS 25.24.230	dissolution decrees
AS 28.15.061	driver's license

CHILD SUPPORT ENFORCEMENT 2003 "SUNSET" SUMMARY

Introduction

Sunset provisions that will take effect in 2003 were attached to legislation passed during the 2001 session. These laws support programs and activities at CSED that have resulted in a significant increase in child support payments¹, and improved services to families in Alaska. If the sunsets are allowed to occur, these improvements will be diminished, and by being out of compliance with welfare reform laws Alaska will be in jeopardy of losing \$75,000,000 in federal public assistance and child support funding.

Below is an outline of key parts of the 2001 legislation, as well as a description of how the sunset provisions would affect CSED's work. Each of these segments is a requirement of federal compliance.

Financial Institution Data Match and Immunity from Liability

Current statutes allow us to match the names of parents who owe arrears with the names on accounts at financial institutions. This makes it much more difficult for delinquent parents to hide their assets, simplifies the search for funds in multi-state institutions, and allows the institutions to cooperate without fear of retaliatory lawsuits. Few banks would participate in the FIDM if this protection were repealed. Searching for hidden assets would require sweeps of all banks for each and every case. For many children our ability to collect support would be seriously compromised.

CSED has had no significant complaints from parents or financial institutions regarding this statute.

Social Security Numbers

Legislation passed in 2001 continued the requirement that applications for state licenses, including professional, business, occupational, driver's, recreational and marriage licenses, include the social security number of the applicant. These numbers help CSED locate parents and collect child support, and reduce the number of cases of mistaken identity. Use of Social Security numbers is critical to our New Hire Reporting, license suspension, and locate programs.

CSED is cognizant of the confidential responsibilities conferred on us through use of Social Security numbers and other items of personal information included in our files. We make confidentiality training a priority, and monitor it constantly so that no inappropriate use can be made of the parties' personal information.

Federal requirements for social security numbers on hunting and fishing licenses were waived in 2000. The waiver will expire this year, however, CSED has requested that it be extended.

¹ Since the first of these statutes was passed in 1996, child support collections in Alaska have increased from \$71 million to \$95 million, a 33% increase.

HB

151



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: May 7, 2003
TO: Senate Labor and Commerce Committee Members
FROM: Representative Kevin Meyer *Kevin Meyer*
RE: Senate Committee Substitute for CS HB 151(JUD)am

Attached to this memo is a blank committee substitute for CS HB 151(JUD)am.

HB 151 was amended on the House Floor. Due to the adoption of the floor amendment, several conforming amendments needed to be made. At the advice of Terri Bannister, legal counsel, I have incorporated those changes into a blank committee substitute that I would like the committee to consider.

The changes to CS HB 151(JUD)am are as follows:

Page 6, line 5-6:

Delete: "be contained on a separate page, and must"

Reason for change: Language in the House Floor amendment duplicated language already in HB 151.

Page 6, line 7:

Delete: "building or remodeling"

Insert: "design, construction, or remodeling"

Reason for change: Provide consistency throughout the legislation with legal drafting style.

Page 6, line 8:

Delete: "deemed as"

Insert: "considered to be the"

Reason for change: Provide consistency throughout the legislation with legal drafting style.

Thank you for your consideration of this blank committee substitute.

23-LS0499\X
Bannister
5/5/03

SENATE CS FOR CS FOR HOUSE BILL NO. 151()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MEYER, Lynn

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to claims and court actions for defects in the design, construction, and**
2 **remodeling of certain dwellings; limiting when certain court actions may be brought;**
3 **and amending Rules 79 and 82, Alaska Rules of Civil Procedure."**

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

5 *** Section 1.** AS 08.18.081 is amended by adding a new subsection to read:

6 (c) If the claim for which a person may bring suit under (a) of this section is
7 subject to AS 09.45.881 - 09.45.899, the person may not bring suit unless the person
8 complies with AS 09.45.881 - 09.45.899.

9 *** Sec. 2.** AS 09.10 is amended by adding a new section to read:

10 **Sec. 09.10.054. Limits on when certain design, construction, and**
11 **remodeling actions may be brought.** (a) For actions covered under AS 09.45.881 -
12 09.45.899, a claimant may not begin an action against a construction professional
13 unless the notice of claim under AS 09.45.881 is given within one year after the
14 claimant discovers the defect that is the subject of the action, except that the action

1 may not be begun more than 10 years after substantial completion of the dwelling
2 construction or remodeling that contains or implements the alleged defect.

3 (b) A limitation imposed under this chapter for an action under AS 09.45.881 -
4 09.45.899 is tolled between the time the claimant serves notice under AS 09.45.881
5 and the time the claimant should reasonably understand that settlement under the
6 procedures in AS 09.45.881 - 09.45.899 will not succeed.

7 (c) In this section,

8 (1) "action," "claim," "construction professional," and "dwelling" have
9 the meanings given in AS 09.45.899;

10 (2) "substantial completion" means the date when the construction or
11 remodeling is sufficiently completed to allow the owner of the dwelling or a person
12 authorized by the owner to use or occupy the dwelling or the improvement to the
13 dwelling in the manner for which the dwelling or improvement was intended.

14 * **Sec. 3.** AS 09.45 is amended by adding new sections to read:

15 **Article 10A. Action for Dwelling Design, Construction, or Remodeling Claims.**

16 **Sec. 09.45.881. Notice of claim.** (a) In an action brought on a claim against a
17 construction professional, the claimant shall, at least 90 days before filing the action,
18 serve written notice of the claim on the construction professional.

19 (b) The notice of the claim in (a) of this section must state that the claimant
20 asserts a claim against the construction professional for a defect in the design,
21 construction, or remodeling of a dwelling and must describe the claim in reasonable
22 detail sufficient to determine the general nature of the alleged defect and the results of
23 the defect if known.

24 (c) At the request of the construction professional, the claimant shall provide
25 to the construction professional any evidence that the claimant possesses that depicts
26 the nature and cause of the defect and the nature and extent of the repairs necessary to
27 repair the defect, including expert reports, photographs, and videotapes.

28 **Sec. 09.45.882. Written response to notice of claim.** (a) Within 21 days
29 after service of the notice under AS 09.45.881, the construction professional shall
30 serve a written response on the claimant.

31 (b) The written response under (a) of this section must state that the

1 construction professional

2 (1) offers to inspect the dwelling that is the subject of the claim within
3 a specified time to determine if the construction professional will offer to repair the
4 defect, will compromise and settle the claim by payment of money, or will dispute the
5 claim;

6 (2) offers to compromise and settle the claim by a payment of money
7 without inspection; or

8 (3) disputes the claim and will not repair the alleged defect or
9 compromise and settle the claim by a payment of money.

10 **Sec. 09.45.883. Court action allowed if claim disputed or not responded**
11 **to.** If the construction professional disputes the claim in the notice under
12 AS 09.45.882(b)(3) or does not respond to the claimant's notice of claim within the
13 time required by AS 09.45.882(a), the claimant may bring an action against the
14 construction professional for the claim described in the notice of the claim made under
15 AS 09.45.881 without further notice.

16 **Sec. 09.45.884. Consequence of rejecting inspection or settlement offer.**
17 (a) If the claimant rejects the inspection offer under AS 09.45.882(b)(1) or the
18 settlement offer under AS 09.45.882(b)(2), the claimant shall serve written notice of
19 the claimant's rejection on the construction professional.

20 (b) The notice under (a) of this section must include the basis for the
21 claimant's rejection of the construction professional's offer.

22 (c) After service of the rejection notice required by (a) of this section, the
23 claimant may bring an action against the construction professional for the claim
24 described in the notice of claim made under AS 09.45.881 without further notice.

25 **Sec. 09.45.885. Consequence of accepting inspection offer.** If a claimant
26 elects to allow the construction professional to make an inspection under
27 AS 09.45.882(b)(1), the claimant shall provide the construction professional and its
28 contractors or other agents reasonable access to the claimant's dwelling during normal
29 working hours to inspect the dwelling and the alleged defect to determine the nature
30 and cause of the alleged defect and the nature and extent of any repairs necessary to
31 repair the alleged defect.

1 **Sec. 09.45.886. Procedure after inspection.** Within 14 days after completion
2 of an inspection made under AS 09.45.885, the construction professional shall serve
3 on the claimant a written

4 (1) offer to repair the defect without charge to the claimant; the offer
5 must include a report of the scope of the inspection, the findings and results of the
6 inspection, a description of any repairs necessary to repair the defect, and a schedule
7 for the completion of the repairs;

8 (2) offer to compromise and settle the claim by a payment of money
9 under AS 09.45.882(b)(2); or

10 (3) statement that the construction professional will not repair the
11 defect.

12 **Sec. 09.45.887. Court action allowed after failure to repair or to settle.** If
13 the construction professional does not respond within the time required by
14 AS 09.45.886, does not repair the defect to the satisfaction of the claimant within the
15 time agreed under AS 09.45.886(1), does not provide an offer under AS 09.45.886(2),
16 or serves a statement under AS 09.45.886(3), the claimant may bring an action against
17 the construction professional for the claim described in the notice of claim without
18 further notice.

19 **Sec. 09.45.888. Court action allowed if claimant rejects offer.** (a) If the
20 claimant rejects an offer made by the construction professional under AS 09.45.886(1)
21 or (2), the claimant shall serve written notice of the claimant's rejection on the
22 construction professional that includes the basis for the claimant's rejection of the
23 construction professional's offer.

24 (b) After service of the notice under (a) of this section, the claimant may bring
25 an action against the construction professional for the claim described in the notice of
26 claim made under AS 09.45.881 without further notice.

27 **Sec. 09.45.889. Unreasonable rejection of offer.** (a) If a claimant
28 unreasonably rejects an offer made under AS 09.45.881 - 09.45.899 or does not give
29 the construction professional a reasonable opportunity to repair the defect under an
30 accepted offer of settlement, the claimant may not recover an amount that exceeds

31 (1) the reasonable cost of the repairs offered under AS 09.45.886(1)

1 that are necessary to cure the defect and that are the responsibility of the construction
2 professional; or

3 (2) the amount of a reasonable settlement offer of money that was
4 made under AS 09.45.886(2).

5 (b) If a claimant unreasonably rejects a construction professional's offer made
6 under AS 09.45.881 - 09.45.899 or does not give the construction professional a
7 reasonable opportunity to repair the defect under an accepted offer of settlement, the
8 court may deny the claimant an award of attorney fees and costs and may award
9 attorney fees and costs to the construction professional.

10 **Sec. 09.45.890. Acceptance of offer.** (a) To accept an offer of a construction
11 professional to repair a defect under AS 09.45.886(1), a claimant shall serve the
12 construction professional with a written notice of acceptance within a reasonable
13 period of time, not to exceed 30 days, after receiving the offer.

14 (b) A claimant who accepts an offer under (a) of this section shall provide the
15 construction professional and its contractors or other agents reasonable access to the
16 claimant's dwelling during normal working hours to perform the repairs by the time
17 stated in the offer.

18 **Sec. 09.45.891. Presumption of mitigation.** If a claimant fails to allow a
19 construction professional to make a reasonable inspection requested by the
20 construction professional under AS 09.45.882(b)(1), or fails to provide a good faith
21 written response to a construction professional's offer under AS 09.45.882(b)(2) or
22 09.45.886(1) or (2), the failure establishes a rebuttable presumption that the claimant's
23 damages could have been mitigated.

24 **Sec. 09.45.892. Noncompliance assertion prohibited.** Unless there is good
25 cause for the failure, a construction professional may not assert that the claimant did
26 not comply with AS 09.45.881 - 09.45.899 if the construction professional fails to
27 respond in good faith to the claimant's notice of claim made under AS 09.45.881.

28 **Sec. 09.45.893. Notice required in contract.** (a) In order to take advantage
29 of any rights of a construction professional under AS 09.45.881 - 09.45.899, when a
30 construction professional enters into a contract with another person to design,
31 construct, or remodel a dwelling, the construction professional shall give the person a

1 notice of the construction professional's right to offer to cure a defect before the
2 person may file an action in court against the construction professional.

3 (b) The notice required by (a) of this section must be included on a separate
4 page attached to the contract and must contain a title at the top of the page that reads
5 "Notice of Potential Claims Must Be Provided Within One Year." This form shall be
6 signed by the purchaser or purchaser's authorized representative. The signature of
7 either spouse to a design, construction, or remodeling contract shall be considered to
8 be the authorization of both spouses.

9 (c) The notice required by (a) of this section must be conspicuous and must be
10 in substantially the following form:

11 ALASKA LAW AT AS 09.45.881 - 09.45.899 CONTAINS
12 IMPORTANT REQUIREMENTS THAT YOU MUST FOLLOW
13 BEFORE YOU MAY FILE A COURT ACTION FOR DEFECTIVE
14 DESIGN, CONSTRUCTION, OR REMODELING AGAINST THE
15 DESIGNER, BUILDER, OR REMODELER OF YOUR HOME.
16 WITHIN ONE YEAR OF THE DISCOVERY OF A DESIGN,
17 CONSTRUCTION, OR REMODELING DEFECT, BEFORE YOU
18 FILE A COURT ACTION, YOU MUST DELIVER TO THE
19 DESIGNER, BUILDER, OR REMODELER A WRITTEN NOTICE
20 OF ANY DESIGN, CONSTRUCTION, OR REMODELING
21 CONDITIONS YOU ALLEGE ARE DEFECTIVE IN ORDER TO
22 PROVIDE YOUR DESIGNER, BUILDER, OR REMODELER WITH
23 THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY
24 FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT
25 ANY OFFER MADE BY THE DESIGNER, BUILDER, OR
26 REMODELER. THERE ARE STRICT DEADLINES AND
27 PROCEDURES UNDER STATE LAW, AND FAILURE TO
28 FOLLOW THEM MAY AFFECT YOUR RIGHT TO FILE A COURT
29 ACTION.

30 **Sec. 09.45.894. Additional construction defects; additional notice of claim**
31 **required.** A court action for a defect that is discovered after a claimant has provided a

1 construction professional with a notice of claim required in AS 09.45.881 - 09.45.899
2 may not be commenced until the claimant has complied with the provisions of
3 AS 09.45.881 - 09.45.899.

4 **Sec. 09.45.895. Collateral sources.** In an action under AS 09.45.881 -
5 09.45.899, a court shall deduct from the compensation awarded to a claimant any
6 compensation paid to the claimant under a homeowner's warranty contract or a
7 homeowner's insurance policy as compensation for the defects that are the subject of
8 the action. The amount of this deduction does not include any compensation paid by
9 the construction professional to the claimant to satisfy the claim or any compensation
10 paid under an insurance policy issued to the construction professional to satisfy the
11 claim.

12 **Sec. 09.45.896. Exemption.** AS 09.45.881 - 09.45.899 do not apply to claims
13 for personal injury, including death.

14 **Sec. 09.45.899. Definitions.** In AS 09.45.881 - 09.45.899,

15 (1) "action" means a civil action or an arbitration proceeding for
16 damages or indemnification;

17 (2) "claim" means a claim against a construction professional
18 concerning a defect in the design, construction, or remodel of a dwelling;

19 (3) "claimant" means a person who owns or is purchasing a dwelling
20 and who asserts a claim;

21 (4) "construction professional" means a registered contractor, architect,
22 or engineer who is engaged in the business of designing, constructing, or remodeling a
23 dwelling; in this paragraph, "contractor" has the meaning given in AS 08.18.171;

24 (5) "dwelling" means a single-family house, a duplex, or a multi-
25 family housing unit, and the mechanical and other systems, the other components, and
26 all improvements that are part of the house, duplex, or housing unit when the dwelling
27 is constructed or remodeled; for purposes of this paragraph, "multi-family housing
28 unit" means

29 (A) an individual housing unit in a multi-family housing
30 facility; and

31 (B) the interest of the owner of an individual housing unit in

1 the common areas and improvements of a multi-family housing facility;

2 (6) "multi-family housing facility" means a residential horizontal
3 property regime organized under AS 34.07, a residential condominium organized
4 under AS 34.08, and a residential cooperative organized under AS 10.15;

5 (7) "remodel" means a change to a dwelling if the change has a value
6 that is more than 25 percent of the value of the structure being changed;

7 (8) "serve" means to deliver by personal service or by certified mail,
8 return receipt requested, to the last known address of the addressee.

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

11 **INDIRECT COURT RULE AMENDMENTS.** AS 09.45.889(b), enacted by sec. 3 of
12 this Act, has the effect of changing

13 (1) Rule 82, Alaska Rules of Civil Procedure, by allowing the court to deny
14 attorney fees to a claimant in the situation described by AS 09.45.889(b), even if the claimant
15 is the prevailing party;

16 (2) Rule 79, Alaska Rules of Civil Procedure, by allowing the court to deny
17 costs to a claimant in the situation described in AS 09.45.889(b), even if the claimant is the
18 prevailing party.

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

21 **APPLICABILITY.** This Act applies to a claim if the contract for the work on which
22 the claim is based was entered into on or after the effective date of this Act. In this section,
23 "claim" has the meaning given in AS 09.45.899.

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

26 **CONDITIONAL EFFECT.** AS 09.45.889(b), enacted by sec. 3 of this Act, takes
27 effect only if sec. 4 of this Act receives the two-thirds majority vote of each house required by
28 art. IV, sec. 15, Constitution of the State of Alaska.



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

Sponsor Statement

CS HB 151(JUD)am

“An Act relating to claims and court actions for defects in the design, construction, and remodeling of certain dwellings; limiting when certain court actions may be brought; and amending Rules 79 and 82, Alaska Rules of Civil Procedure.”

CS HB 151(JUD)am will assist construction professionals and homeowners in resolving construction defect issues quickly and effectively, before needless litigation ensues.

CS HB 151(JUD)am establishes a formal process for a homeowner to notify a construction professional of construction defects prior to filing a lawsuit. CS HB 151(JUD)am establishes a time frame for the construction professional to address the defect. The homeowner's right to sue remains intact if they're not satisfied with the construction professional's efforts to repair the defect or settle by payment of money.

There are several consequences that homebuyers and construction professionals face without a timely process in place. Builders in nearly every state in the country are reporting enormous increases in general liability insurance premiums, as a result of exorbitant judgments that builders and their insurance companies are required to satisfy. Many providers of construction industry general liability insurance have chosen to stop providing this insurance to builders. Where insurance is available, it is often at significantly higher premiums and reduced levels of coverage.

Lengthy and expensive litigation significantly delays the repair of legitimate problems, decreases the value of homes stigmatized by litigation, and creates difficulties in refinancing or selling homes. Also, new home prices rise due to the increased insurance premiums on homebuilders and contractors.

The bottom line is that lawsuits would be a last resort, not the only way to resolve a problem. CS HB 151(JUD)am puts into place a very simple and logical process for homeowners and construction professionals to follow. Both parties' interests would be guarded to ensure that timely repair occurred and not frivolous lawsuits.

Last Updated: April 24, 2003

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Session: State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-4945 Fax: (907) 465-3476
Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • Phone: (907) 269-0199 Fax: (907) 269-0197



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

Sectional Analysis

CS HB 151(JUD)am

“An Act relating to claims and court actions for defects in the design, construction, and remodeling of certain dwellings; limiting when certain court actions may be brought; and amending Rules 79 and 82, Alaska Rules of Civil Procedure.”

Section 1: Provides that a person may only bring suit against a contractor after following the procedures set forth in the new sections AS 09.45.881-09.45.899.

Section 2: Provides a one-year statute of limitations for claims covered under AS 09.45.881-09.45.899, not to exceed ten years after the substantial completion of the dwelling. Provides that a limitation imposed under AS 09.10 for an action under AS 09.45.881-09.45.899 is tolled until the claimant reasonably understands that settlement under this process will not succeed.

Section 3: Provides the process that homeowners and construction professionals must follow prior to filing an action against a construction professional.

09.45.881: Written notice of claim served on a construction professional 90 days prior to filing the action.

09.45.882: Written response from the construction professional, providing for inspection, settlement, or dispute of claim, is due 21 days after the initial notice of claim is served to the professional.

09.45.883: Homeowner may bring an action against the construction professional if the construction professional disputes the claim in the notice.

09.45.884: If the homeowner rejects the construction professional's offers made under 09.45.882, it must be in writing.

09.45.885: If the offer to inspect is accepted by the homeowner, the homeowner must provide reasonable access to the dwelling.

09.45.886: Within 14 days of the inspection, the construction professional must serve, in writing, an offer to repair, an offer to settle by payment of money, or state that the construction professional will not repair.

09.45.887: Court action is allowed after the construction professional fails to repair or to settle within the 14 days after the inspection.

09.45.888: Court action is allowed if the homeowner rejects the construction professional's offer to repair.

Last Updated: April 24, 2003

Email: Repr
Session: State Capit
Interim: 716 W. 4th Av

Sectional Analysis

45
465-3476
07) 269-0197

09.45.889: If a homeowner unreasonably rejects the construction professional's offer or does not give the professional reasonable opportunity to repair, the homeowner may not recover more than the cost of the repairs or the amount of a reasonable settlement offered by the construction professional.

09.45.890: To accept the construction professional's offer to repair, the homeowner must submit a written notice to the professional within 30 days after receiving the offer.

09.45.891: If a homeowner fails to accept an inspection, or fails to provide a written response to the professional, the failure establishes a rebuttable presumption that the damages could have been mitigated.

09.45.892: A construction professional may not assert that the homeowner did not comply with AS 09.45.881-09.45.899, if the professional failed to respond to the homeowner's written notices.

09.45.893: Construction professionals are required to include notification of this process when the professional enters into a contract with another person to design, construct, or remodel a dwelling. Provides for the location and the language of the notice.

09.45.894: Additional notice of claims and additional defects are to be handled separately from the initial notice of claim under AS 09.45.881.

09.45.895: The courts shall deduct the amount a homeowner receives from personal homeowner's insurance from the total settlement reached.

09.45.896: Exemptions.

09.45.899: Definitions.

Section 4: Indirect Court Rule Amendments, Rule 79 and Rule 82, Alaska Rules of Civil Procedure.

Section 5: Applicability.

Section 6: Conditional effect.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 151(L&C)
 (H) Publish Date: 3/31/2003

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Dwelling Design/Construction Claims BRU _____
 Sponsor Meyer Component _____
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

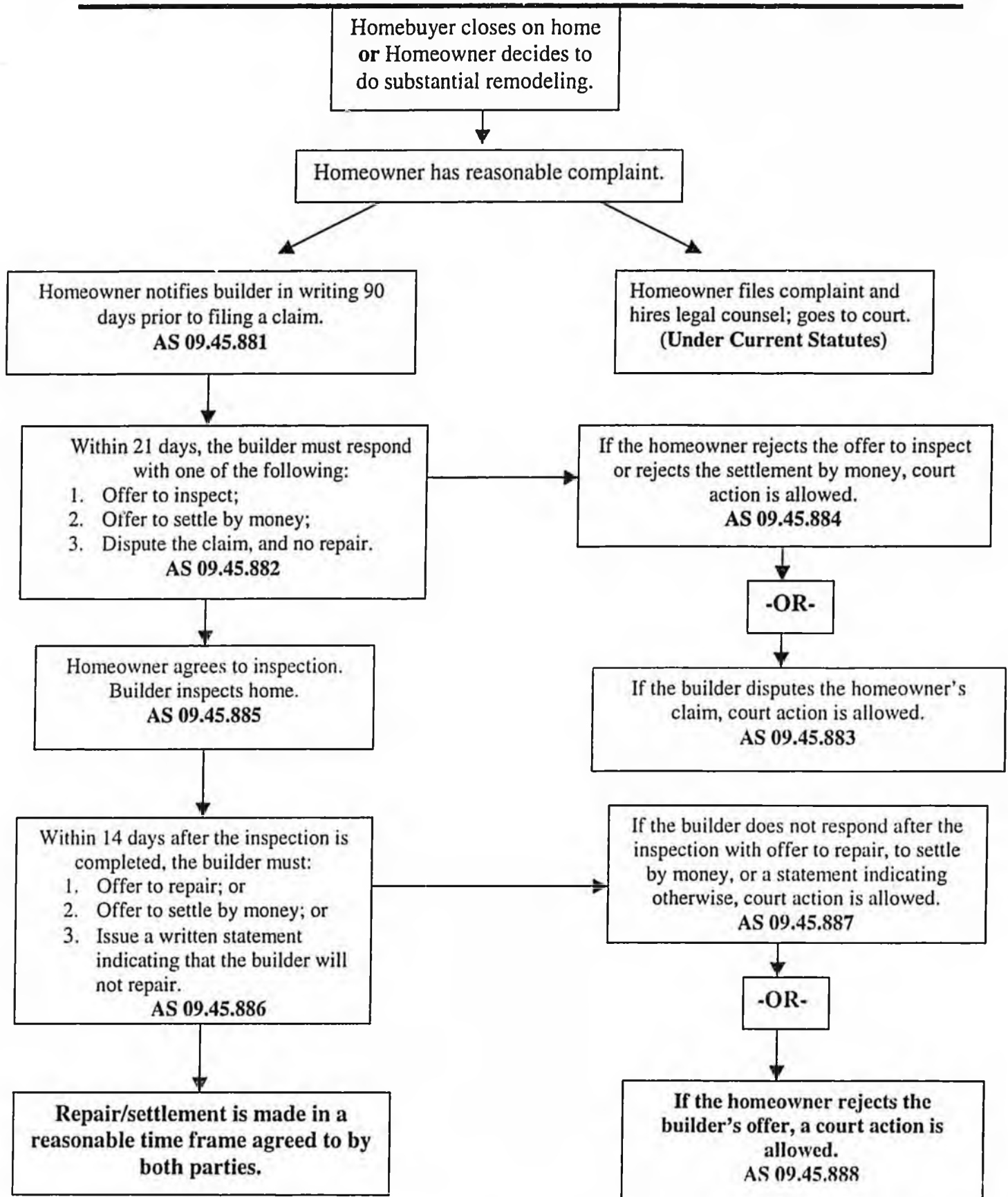
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation has no fiscal impact on state spending.

Prepared by: Representative Tom Anderson, Chairman Phone _____
 Division House Labor & Commerce Date/Time 3/31/03 10:58 AM
 Approved by: Representative Tom Anderson Date 3/31/2003
 Agency House Labor & Commerce

CS HB 151(JUD)am Dwelling Designs/Construction Claims Litigate or Communicate: Which Path to Justice?



General Liability Insurance
Background Paper – February 20, 2003

Builders are confronting a liability insurance crisis. Due to adverse insurance market conditions, including significant increases in construction defect litigation, liability coverage for builders is less available, more expensive, and more restrictive in terms of the coverage afforded. In February 2002, the NAHB Senior Officers formed the General Liability Insurance Task Force to study the current insurance problem and its impact on the housing industry.

The GLI Task Force was charged with studying the insurance crisis and developing a report and recommendations for NAHB policy and actions. The Task Force sponsored a resolution that was adopted by the NAHB Board of Directors at its meeting in Washington, D.C., on June 9, 2002. One element of the resolution includes support for state legislation requiring consumers to give builders and trade contractors notice of alleged construction defects and the opportunity to cure prior to the initiation of litigation. Other elements include support for federal legislation providing secondary insurance coverage for acts of terrorism, and development of education programs for NAHB members on risk management and insurance. The GLI Task Force presented its final report to the NAHB Board of Directors at the 2002 Fall Board meeting in Anchorage, Alaska.

One of the charges under the insurance resolution was to move forward on developing an education program for NAHB members on insurance and risk management. The NAHB University of Housing is developing a joint venture course for NAHB state and local affiliates. The first national program was held on January 19th at the International Builders Show in Las Vegas. There were seven attendees at the Las Vegas program. The University of Housing is finalizing the risk management course and will make it available to state and local home builder associations during 2003.

A background paper discussing the feasibility of developing an industry standard defining what constitutes a construction defect has been prepared and submitted for review by the Senior Officers. NAHB has voluntary guidelines as reflected in Residential Construction Performance Guidelines, produced by the NAHB Remodelers Council and Single Family Small Volume Builders Committee. The proposed NAHB industry standard would cover items not typically covered by building codes and, in the event of a dispute between builders and homeowners over an alleged construction defect, the dispute would be governed by the recognized standards.

State "Notice & Opportunity to Repair" laws would reform the way in which construction defect claims are resolved. Currently, homeowners with construction conditions that they allege are defective often choose to resolve those claims using the costly and time consuming litigation process where they can expect sympathetic judges and juries. This has resulted in a system of exorbitant judgments that builders and their insurance companies are required to satisfy. As a result of these large awards, many providers of construction industry general liability insurance have chosen to stop providing

this insurance to builders. Where insurance is available at all, it is often at significantly higher premiums and reduced levels of coverage (i.e., higher deductibles and multiple exclusions). "Notice & Opportunity to Repair" laws would enact a system that would attempt to resolve construction defect disputes between home builders and consumers without having to resort to the costly and time-consuming litigation process. The laws would require that homeowners provide written notice to home builders of construction conditions that they allege are defective at least 90 days prior to commencing litigation against the home builder. During the 90-day period prior to litigation, the legislation would require that builders and homeowners attempt to resolve the defects that are the subject of the claim. If, after the 90-day period, the homeowner's claim has not been resolved to their satisfaction, they may proceed with litigation against the builder.

State Consideration (as of 2/18/03):

State: Colorado
Bill No.: H.B. 1161
Status: Passed by House, Senate Consideration (2/20/03)
Provisions: Notice & Right to Cure process 90 days before a lawsuit is filed; alter defect list once to report defects that were not originally found; removes code/standard violations from items that are considered to be defects; insurance performance standards; damage definitions & limitations; removes ability for consumers to get damages under Consumer Protection Act; allows non-economic damages in claims with personal injury

State: Idaho
Bill No.: H.B. 133
Status: Passed by House (2/11/03)
Provisions: "Notice & Opportunity to Repair Act"; Damage limitations; builder affirmative defenses – unforeseen acts of nature, homeowner failure to minimize damage, failure to maintain, etc

State: Indiana
Bill No.: S.B. 451
Status: Passed by Senate Committee
Provisions: Notice & Right to Cure process; damage limitations when homeowner unreasonably rejects builder offer to repair

State: Kansas
Bill No.: H.B. 2294
Status: Introduced, hearing scheduled (2/20/03)
Provisions: Notice & Right to Cure process; damage limitations; homeowner maintenance requirements; affirmative defenses; notice of subsequent defects; insurance performance requirements; subcontractor notification requirements; HOA vote requirements

State: Kentucky
Bill No.: H.B. 289
Status: Introduced, Hearing scheduled (2/19/03)
Provisions: Notice & Right to Cure process; contract notification requirements

State: New Mexico
Bill No.: S.B. 445/H.B. 706
Status: Introduced, referred to committees
Provisions: Notice & Right to Cure process; contract notification provisions

State: Oklahoma
Bill No.: H.B. 1334/S.B. 487
Status: Introduced, referred to committees
Provisions: Construction Defect Remediation Act; notice & opportunity to repair procedure; method of contractor response; method of purchaser response; contractor inspection; certain items inadmissible as evidence; limitation of liability; certain limit on damages; recovery of certain fees; extension of time periods; declaring the Construction Defect Remediation Act procedures as an exclusive remedy

State: Oregon
Bill No.: H.B. 2389
Status: Introduced, hearing held (2/12/03)
Provisions: Notice & Right to Cure process; Construction Contractors Board release of contractors or sub-contractors not related to litigation through state certified inspection program

State: Texas
Bill No.: H.B. 730/S.B. 383
Status: Introduced (2/6/03)
Provisions: "Residential Construction Commission Act"; state sponsored inspection and dispute resolution process; statutory warranty and building standards; warranties and building standards; limit non-economic damages; amend Residential Construction Liability Act

State: Washington
Bill No.: S.B. 5536
Status: Introduced (1/31/03)
Provisions: Resolve disputes using arbitration; "focus on defects that actually cause property damage and affect the habitability of the building"; protect associations from liability for failing to comply with time limits for commencing legal proceedings

State: West Virginia
Bill No.: H.B. 2553/S.B. 440
Status: Introduced (2/4/03)
Provisions: Notice & Right to Repair process; HOA notification requirements; code violations are actionable defects; contract notification provisions; insurance performance requirements

As of February 18, 2003, the following nine states were also considering the introduction of "Notice & Opportunity to Repair" legislation during the 2003 session. This legislation could come in the form of "stand-alone" legislation or as the part of more general tort reform efforts: Alabama, Alaska, Florida, Illinois, Louisiana, Missouri, Montana, South Carolina, and Wisconsin. Builders in Texas & Wisconsin are supporting legislation aimed at reducing construction defect litigation through other legislative means.

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NAHB Urges State Legislators to Address Liability Insurance Crisis

August 12, 2002 - National Association of Home Builders (NAHB) President Gary Garczynski has urged state legislators from around the country to focus their attention on the general liability insurance crisis and the effect that crisis is having on housing and its role in the national economy. Underscoring the severity of the problem, Garczynski's remarks were made during a special session at the annual meeting of the American Legislative Exchange Council (ALEC) on August 9.

"It is in everyone's best interest to solve the general liability insurance problem so that the housing industry can continue to keep the national economy afloat," said Garczynski, a builder/developer from Woodbridge, Va. "The spillover investment in the local economy after a consumer purchases a home is tremendous, and those housing-generated local economic benefits are keeping consumer confidence up at a level that Wall Street is simply not delivering. But the liability insurance issue poses a threat because it could derail the vibrancy of the housing economy. If we don't address this issue, we could diminish the immediate and future growth of the industry at a time when the rest of the economy is relying on housing."

According to NAHB, builders in nearly every state are reporting enormous increases in general liability insurance premiums, and builders in some states are reporting that insurance isn't available at any price. To begin solving the problem, NAHB is urging legislators to work with builders across the country to pass legislation ensuring that builders have an opportunity to fix a problem before being dragged into court.

Garczynski added that the liability insurance issue is preventing builders from constructing more affordable housing and blocking state and local government efforts to achieve Smart Growth. "Not acting quickly to solve the general liability insurance problem will diminish our ability to provide safe, decent and affordable homes for working families and prevent us from implementing Smart Growth goals through the production of new multi-family housing," he said.

California is a prime example of how badly the general liability insurance crisis has affected the affordability and supply of multifamily housing, Garczynski said. Since 1994, litigation has discouraged the production of apartments, townhouses and condominiums. Multifamily for-sale starts dropped from 18,681 in 1994 to just 2,945 in 1999 – an 85% decline in a state already suffering from a dearth of affordable housing.

Commenting about the large number of construction defect liability cases, Garczynski acknowledged that "there are legitimate construction defect cases." To address these concerns, builders are taking proactive steps to minimize disputes, including improving quality control, preparing home owner manuals that give tips on dispute resolution, and providing better customer service.

But litigation remains a major obstacle to solving the problem. "Many trial attorneys are more interested in winning big settlements in court than they are in fixing their clients' problems," Garczynski said. Because of the emphasis on litigation, "the situation has gotten completely out of hand. State legislative and regulatory action is necessary to make it harder for trial attorneys to take advantage of the industry and unsuspecting home owners."

To that end, NAHB is advocating that state legislators work with builders in their states to pass "Notice and Right to Cure" legislation similar to bills passed earlier this year in Washington and Arizona. These bills require home owners and attorneys to notify builders of alleged construction defects prior to filing lawsuits. The legislation also requires a timeframe to give builders an opportunity to address defect concerns. Both bills preserve a home owner's right to sue if they're not satisfied.

Several national organizations of elected public officials are now considering adopting model legislation. The models being considered by ALEC, the Council of State Governments, and the National Conference of State Legislatures are similar to legislation that was adopted in Arizona and Washington.

Under the model "Notice and Right to Cure" process, home owners or home owners associations (HOAs) are required to provide written notice to builders 90 days before a lawsuit is filed that the owners or HOAs allege that construction defects exist in their property. Contractors would then have 30 days in which to: 1) propose to inspect the alleged defects; 2) offer to settle the claim by payment; or 3) dispute the claim.

Other elements of the model legislation being considered include requirements for home owners associations to obtain the written approval of all unit owners prior to commencing a construction defect action and for contractors to provide home owners and home owners associations with the names, addresses, professional licenses (if applicable), and scope of work of all subcontractors, suppliers, or design professionals involved in building the residence.

"We need legislation that spells out a clear and predictable way to solve problems," Garczynski added. "This approach assures that home owner complaints are resolved quickly and prevents builders from being victimized by opportunistic trial lawyers."

Kentucky 2003 General Assembly

2002

Arizona - HB 2620



— IT'S YOUR BUSINESS TO KNOW —

Liability rates rising faster than homes

Feb. 12, 2002

By JR Ball,
Business Report staff

Residential developers, builders say 'frivolous lawsuits' spike insurance costs, limit coverage

Don Joffrion knows lawsuits.

A residential developer and builder for 22 years, Joffrion has been sued numerous times by irate homeowners and their lawyers. Remembering the exact number of lawsuits is difficult, but he is certain of one fact:

"There was only one time that I was found to be liable," said Joffrion, matter-of-factly. "I knew about the problem and offered to fix it without going to court, but the homeowner was a lawyer who was out for blood."

He's not alone. Area home builders are being hauled into court with increasing frequency to defend themselves against construction-defect lawsuits.

Builders say most of the suits are frivolous. Construction-defect attorneys counter that contractors have cut corners while trying to cash in on the housing boom of the 1990s.

Either way, it's up to the builders' general liability insurer to pick up the legal tab.

Tired of the increased risk and mounting legal fees, a number of liability insurance companies have pulled out or are in the process of leaving the Baton Rouge residential construction market. Included in that group is the leading insurer of area builders—Zurich North America, the third largest property and casualty company in the United States.

Those that remain are not only raising rates—between 15 percent and 100 percent, depending on builder experience and volume of business—but are including a greater number of coverage restrictions and exemptions in policies.

Because many builders are in the process of renewing their insurance coverage—or scrambling to find a new carrier—they say it's impossible to predict the impact on home prices. But most agree any increases will be minimal since insurance costs are but a small percentage of the construction budget.

General liability rates last year ranged from \$1,000 to \$1,800 per home, depending on the size and difficulty of the project.

But area insurance agents warn that simply finding a company to carry a builder or developer is the problem, not rate increases.

"I could probably insure somebody who does asbestos abatement on a nuclear submarine faster than I can insure a home builder right now," said Al Scallan, an agent with Bynum, Grace & Joffrion, a company that represents some 100 builders in the area.

<http://www.businessreport.com/cgi-bin/udt/im.display.printable?client.id=businessreport&st...> 4/6/2003

"I have subcontractors that are going into plants and welding pipe next to petroleum cracking facilities and the only question I get from the insurance company is if they're also working on residential home construction."

General liability policies provide broad protection against claims stemming from injuries, building defects or property damage associated with construction.

Developers and general contractors are required to carry general liability and workers' comp insurance to do business in Baton Rouge. That regulation does not extend to most subcontractors, and many do not carry insurance. If that's the case, the contractor must carry them.

Baton Rouge builders are hardly alone in this problem. In fact, the situation is far worse in California, Texas and New York where rates have jumped by as much as 300 percent.

Regardless of where you're at on the map the problem is the same—insurance companies say developers and builders are risky business.

"Plain and simple, it's the increased cost of litigation," said Bill Bateman, an agent for Baton Rouge Agency. "It doesn't matter if the lawsuit has merit. Once it's filed, the insurance agency is obligated to defend it."

The surge in lawsuits began nearly a decade ago when problems associated with the installation of an exterior surface known as EIFS caused the wooden frames in homes to rot.

"Zurich got absolutely pounded on EIFS claims," said Scallan, once a member of the company's advisory board. Company officials declined to reveal how much money was paid out in EIFS-related claims, but industry newsletters project the amount in excess of \$500 million.

A bigger problem in Baton Rouge is subsidence, where the ground is actually sinking beneath homes. Several homeowners in the Country Club of Louisiana have recently filed subsidence-related lawsuits.

Claims stemming from mold appearing in homes has proved to be the third strike for numerous insurance carriers. The exact cause of mold intrusion isn't known, but experts believe the problem is tied to newly constructed homes being increasingly airtight. Consequently, in areas of high humidity, trapped moisture inside a home becomes a breeding ground for mold spores.

While there have been few mold-related lawsuits filed in Louisiana, more than 1,000 such claims have been filed in both California and Texas in the past year.

"None of these problems were contemplated when many of these insurance companies got into residential construction," said Scallan. "There's just not enough money to pay off all the claims."

Zurich isn't the first company to ease its way out of the residential business, but its decision to stop carrying developers and limit general contractor policies has hit the Baton Rouge market hard. "They probably covered 80 percent of the market in this town," said Bateman.

Zurich officials said the move is a simple business decision. "The claims that we're seeing far exceed the fees generated," said Keith Owens, the company's public relations manager. "We're in the business of assuming risk, but we also want to make a profit."

Scottsdale Insurance, owned by Nationwide Mutual, has already pulled out of the residential market and CNA has stopped writing general liability policies in Louisiana until it gets state approval for a mold exclusion clause. Essex Insurance Co. won't cover contractors who build more than six homes in an individual subdivision.

"These companies just assume the developer or builder is going to get sued," said Bateman. "An attorney can go into any large subdivision and find three or four people dissatisfied for some reason, including they can't pay their note and they're looking for a way to get out."

Rising litigation costs have come at a particularly hard time for the insurance industry. After a 10-year boom, the market has tightened, prompting significant rate increases. And losses resulting from the Sept. 11 terrorist attacks have forced insurers to reassess their commitment to less profitable insurance lines, said American Insurance Association spokeswoman Julie Rochman. The result? Insurers are walking away "from certain types of risk."

When liability insurance providers leave the marketplace, there is less competition among those who remain. The result is a quasi-monopoly, said Nick Xiros, an insurance consultant for AON Risk Services, an international brokerage and consulting firm. "Carriers can then charge whatever they want."

"I'm not worried about cost increases. I'll take whatever I can get right now," said Ken Jones of St. Francisville-based Jones Design/Builders LLC. "The bigger issue is even finding coverage. There will be some builders who can't and they'll be forced to go out of business."

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NAHB
NATIONAL ASSOCIATION
OF HOME BUILDERS



JESS HALL

Area 15 National Vice President
Hall Quality Homes
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Palmer, AK 99645
907-746-2757
907-746-2759 (Fax)
build@hallqualityhomes.com

March 17, 2003

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

Dear Rep. Meyer:

Thank you for sponsoring HB151, the right to repair legislation. This letter is to express my support for the bill.

Across the entire nation – and especially in Alaska right now – liability insurance rates are dramatically increasing. The cost to my business is increasing and in fact it is becoming very difficult to find carriers who will provide coverage.

This legislation is a win-win situation. A conscientious builder who wants to do a good job will have the opportunity to repair any defects in a home. Also, the homeowner will have the defect repaired. A long and costly lawsuit only makes the problem worse for both sides. Many times a builder is not contacted by a homebuyer about a problem before a summons is issued. My company has been using a warranty program for the last ten years and it has worked quite well. It is very similar to HB151.

In the event that the notification process in HB151 does not solve the issue – both sides will retain their right to pursue claims in court if absolutely necessary. The idea here is that lawsuits should be the last thing that should be done to fix a problem.

A home is indeed a person's castle, and in most cases is the single largest investment that a family will make. Legitimate defects in a home should be repaired before the problem becomes worse for both the homeowner and the builder. Letting a problem fester while disputes wind their way through the court system only creates more potential cost for the builder and a potentially unsafe living situation for the homeowner. HB151 tries to avoid this mess by simply saying, "let the builder fix the problem".

Thank you again for sponsoring this bill and your efforts. Please let me know how I can help you get this legislation passed this session.

Sincerely,

Jess Hall

JH:lfb

1201 15th Street, NW • Washington, DC 20005-2800
(202) 266-8200 • (800) 368-5747 • Fax: (202) 266-8374

Support

ahba

Affiliated with NAHB

March 17, 2003

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

In Re: House Bill 151, Right to Repair

Dear Rep. Meyer:

Thank you for sponsoring HB151, the right to repair legislation. This letter is to express my support for the bill.

Across the entire nation - and especially in Alaska right now - liability insurance rates are dramatically increasing. The cost to my business has increased, and in fact it is becoming even more difficult to find carriers who will provide coverage.

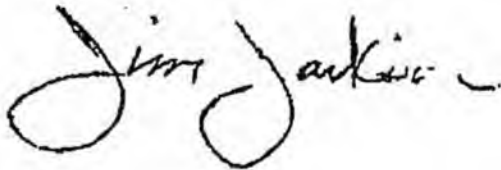
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Thank you again for sponsoring this bill and your efforts. Please let me know how I can help you get this legislation passed this session.

Sincerely,



"Building Better Places to Live, Work and Play"

ANCHORAGE HOME BUILDERS ASSOCIATION, INC.

8301 Schoon Street, Suite 200 • Anchorage, AK 99518 • (907) 522-3605 • Fax (907) 522-3757





a home renovation and building provisions company

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

Re: House Bill 151, "Right to Repair"

Dear Rep. Meyers,

This letter is to express my support of HB-151.

Homebuilders across Alaska are facing a liability insurance crisis. Home Builders have found their insurance premiums have doubled in cost. A greater fear is that insurance brokers and agents are telling us that there are only two companies in the state that are writing general liability insurance policies. With these types of increases many of the small companies are opting not to play by the rules, i.e.: no license, no workers compensation or general liability insurance.

This legislation is a common sense approach to resolving the majority of builder, homeowner disputes. Why is it common sense? Because many issues can be avoided when communication takes place. I believe that most builders want to do the right thing and fix any problems that arise with their products. This legislation forces the builder and the homeowner to communicate and as a last resort they can still go to court.

The cost of housing is always a concern. According to insurance industry professionals this type of legislation provides a level of certainty and stability in the construction industry. We live in a time when our clients would rather file law suits than have the problem fixed. When the cost of defending builders is reduced our premiums should reflect the reduced cost of providing coverage.

Thank you for sponsoring this bill. Your efforts on behalf of the home building industry are appreciated. I'm looking forward to testifying on this bill.

Sincerely,

Alan Wilson, President

Building satisfaction one room at a time.

907-780-3627 907-780-4327

5434 Shaunee Dr. B-4 Juneau, Alaska 99801

Spinelli
HOMES, Inc.

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, AK 99801

In Re: House Bill 151, Right to Repair

Dear Rep. Meyer:

I am a homebuilder in Alaska and would like to take this opportunity to express my appreciation for your support towards HB151, the right to repair legislation.

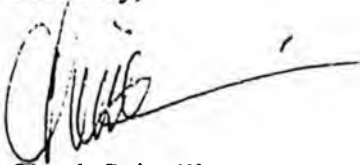
It is becoming more and more complicated to find low liability insurance rates, which makes it more expensive to run my business.

Both parties benefit when a builder gets a chance to fix the problems that occur, and the homeowner is at ease knowing that his/her requests have been fulfilled. A lawsuit will only create more work and effort from both the builder and the homeowner, and should only be used to solve a problem if absolutely necessary. HB151 reserves the right, if appropriate, to create a claim in court if the process does not resolve the issue at hand.

Usually, purchasing a new home is the largest investment a family will make in a lifetime. This is significant when taking into consideration the problems that occur, and the result when the problems sit while questions/complaints are dealt with in a court process. HB151 attempts to counter this problem by simply "letting the builder fix the problem."

If there is anything I can do to assist you in getting this bill passed, please do not hesitate to let me know.

Sincerely,



Chuck Spinelli
Spinelli Homes, Inc.



DECADES OF EXCELLENCE

George Moore, Owner

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

In Re: House Bill 151, Right To Repair

Dear Rep. Mayor:

Thank you for sponsoring HB151, the right to repair legislation. This letter is to express my support for the bill.

Across the entire nation -- and especially in Alaska right now -- liability insurance rates are dramatically increasing. The cost to my business has increased, and in fact it is becoming even more difficult to find carriers who will provide coverage.

The legislation is a win-win situation. A conscientious builder who wants to do a good job will have the opportunity to repair any defect in a home. Also, the homeowner will have the defect repaired. A long and costly lawsuit only makes the problem worse for both sides.

In the event that the notification process in HB151 does not solve the issue -- both sides will retain their right to pursue claims in court in absolutely necessary. The idea here is that lawsuits should be the last thing that should be done to fix a problem.

A home is indeed a person's castle, and in most cases is the single largest investment that a family will make. Legitimate defects in a home should be repaired before the problem becomes worse for both the homeowner and the builder. Letting a problem fester while disputes wind their way through the court system only creates more potential cost for the builder and potentially unsafe living situation for the home owner. HB151 tries to avoid this mess by simply saying "let the builder fix the problem".

Thank you again for sponsoring this bill and your efforts. Please let me know how I can help you get this legislation passed this session.

Sincerely,

George Moore



January 8, 2003

Alaska State Home Builders Association

RE: Subcontractors Insurance Issues

Partusch Plumbing's workers comp insurance premium increased 46% this year. We were only able to get two quotes with the other quote being a 95% increase over 2001. Our losses for 2001 were 12,000 with a total premium paid of approximate 105,000. We managed our losses pretty well but to no avail.

Our General liability and auto insurance went up 13% for 2003. We don't even want to see what the company's health and dental insurance, which renews in April, might be. But they have been averaging approximately a 16% increase each year over the last three years.

The various insurances that we need are now the single biggest cause for price increases to our builders. It now rivals our yearly labor costs increases in total dollars. Our own associations mission statement is to be able to offer affordable housing. Our energies need to be focused on these insurance issues, so we can fulfill that statement.

Thanks for you time,

A handwritten signature in cursive script that reads "Larry Partusch".

Larry Partusch
President



TILLY & COMPANY, Ltd.

Tanana Builders

P.O. Box 72080

Fairbanks, AK 99707

Phone (907) 456-5565 Fax (907) 452-3175

Contractors License #AA24415 / Endorsement #178

Email: tillyco@gci.net

March 15, 2003

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

Re: House Bill 151, Right to Repair legislation

Dear Representative Meyer,

I wish to thank you for sponsoring HB151, the right to repair legislation. This letter serves as my expression of support for this bill.

All across the nation, as well as here in Alaska, liability insurance costs have increased dramatically. The costs to my firm have increased again this year and it is becoming more difficult to find insurance carriers to offer coverage for our industry. The increases in costs eventually are passed along in our final products so the consumer ultimately shares in this increase of expenses. The insurance dilemma will just make affordable housing that much harder to create here in Alaska.

HB151 is a good effort towards positive legislation. A good builder who works to maintain his reputation will have the opportunity to repair any defects in one of his products. Also, the homeowner can rest assured that any problems will be addressed. The involvement of legal action and costly lawsuits only make the problem worse for all parties involved.

As stated in the bill, in the event that the notification process does not solve the issue, both sides will retain the right to pursue claims within the judicial system if absolutely necessary. The whole premise here is that lawsuits should be the last thing that should be pursued to resolve a problem.

A home purchase is most likely the largest investment many families make. Legitimate defects in a home should be repaired prior to the defect becoming a larger problem for the homeowner or the construction contractor. Leaving a problem unresolved during a protracted legal action only creates more hard feelings, costly litigation for both parties as well as possibly a potentially unsafe living condition for the homeowner. HB151 is anticipated to relieve this situation by saying, give the builder the opportunity to correct the problem at hand.

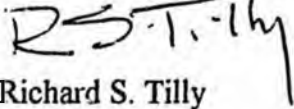
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Page 2.

Again, I thank you for sponsoring this bill. Please feel free to contact me if there is anything I can do to help get this legislation passed during this session. As a professional contractor and builder, I welcome common sense legislation that is in the best interests of all parties involved. As a member of the Alaska State Homebuilding Association, the National Association of Homebuilders and as the current president of the Interior Alaska Homebuilding Association, I appreciate your involvement in issues of concern to the homebuilding industry.

Respectfully submitted,

A handwritten signature in black ink that reads "R.S. Tilly". The signature is written in a cursive, slightly slanted style.

Richard S. Tilly
President
Tilly & Company, Ltd.

Cc: file, Interior Alaska Building Association, Alaska State Homebuilding Association

NCP

DESIGN / BUILD, LTD.

March 17, 2003

The Honorable Kevin Meyer
Alaska House of Representatives
State Capitol Building, Suite 513
Juneau, Alaska 99801

In Re: House Bill 151, Right to Repair

Dear Rep. Meyer:

Thank you for supporting HB151, the right to repair legislation. This letter is to express my support for the bill HB151.

Across the entire nation - and especially in Alaska right now - liability insurance rates are dramatically increasing. The cost to my business has increased, and in fact it is becoming even more difficult to find carriers who will provide coverage.

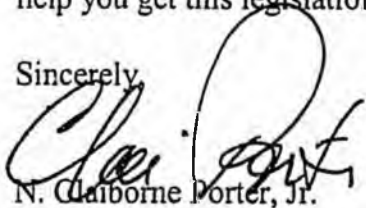
This legislation is a win-win situation. A conscientious builder who wants to do a good job will have the opportunity to repair any defects in a home. Also, the homeowner will have the defect repaired. A long and costly lawsuit only makes the problem worse for both sides.

In the event that the notification process in HB151 does not solve the issue - both sides will retain their right to pursue claims in court if absolutely necessary. The idea here is that lawsuits should be the last thing that should be done to fix a problem.

A home is indeed a person's castle, and in most cases is the single largest investment that a family will make. Legitimate defects in a home should be repaired before the problem becomes worse for both the homeowner and the builder. Letting a problem fester while disputes wind their way through the court system only creates more potential cost for the builder and a potentially unsafe living situation for the homeowner. HB151 tries to avoid this mess by simply saying "let the builder fix the problem".

Thank you again for sponsoring this bill and your efforts. Please let me know how I can help you get this legislation passed this session.

Sincerely,



N. Claiborne Porter, Jr.
NCP Design/Build Ltd.

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MAR 20 2003