

ALASKA'S LANDS AND MINERAL RESOURCES, 2010-2011
1540 HOUSE LABOR & COMMERCE

[*195] have been fixed when the loss occurred. Allowing the interested private parties to litigate the validity issue is a useful way to encourage compliance. We therefore hold that [HN2] private parties may litigate whether an endorsement attempting to limit attorney's fees [**13] coverage is enforceable if it arguably does not comply with 3 AAC 26.550.

Grant Aviation also argues that the **Therchiks** are not the assignees of Grant Aviation's rights against Houston Casualty. But Grant Aviation does not argue that the absence of an assignment altogether prevents the **Therchiks** from seeking a declaration that Endorsement 8 is invalid. Such an argument would be inherently inconsistent with the terms of the settlement, which Grant Aviation characterizes on appeal as providing that "the settling parties will abide by the ultimate court ruling on the one remaining issue — the extent of attorney fees owed under the policy." The **Therchiks** and Grant Aviation (and, we assume, Houston Casualty) agreed to settle on terms that expressly permitted the lawsuit to determine "whether there are any additional amounts in . . . Rule 82 attorneys' fees within the coverage of the Houston Casualty Company policy which will be paid by Houston Casualty Company should the Bethel Superior Court award additional funds." No argument is asserted by the **Therchiks** or Grant Aviation that Houston Casualty should have been a named party in the continuing litigation or that its absence somehow affects [**14] the outcome of this appeal.

C. Endorsement 8 Does Not Satisfy 3 AAC 26.550.

The primary issue on appeal is whether Endorsement 8 satisfies the requirements of 3 AAC 26.550. The **Therchiks** argue that the superior court erred in declaring valid an endorsement that neither conformed with Notice A nor had received the director's approval, as 3 AAC 26.550 alternatively requires. The regulation requires an insurer seeking to limit coverage for Civil Rule 82 attorney's fees awards against its insured to include a "policyholder notice" that must either:

(1) conform with the division's

(A) Attorney Fees Coverage Notice A, dated March 29, 1996, and hereby adopted by reference, for a policy with a duty to defend in addition to its limit of liability;

. . . or

(2) be approved in writing by the director upon a determination that the proposed notice is substantially equivalent to the division's Attorney's Fees Coverage Notice A . . . n21

n21 3 AAC 26.550(b) (emphasis added).

It is undisputed [**15] that the director had not approved Endorsement 8 before it was issued to Grant Aviation. The controlling question therefore is whether Endorsement 8 satisfied the alternative requirement that it "conform with" Notice A.

The superior court held that Endorsement 8 did not "conform with" Notice A but was nonetheless "substantially equivalent" to it. The court defined "conform with" as being "very close to identical [to]," and described "substantially equivalent" as a "lesser standard." In holding that Endorsement 8 validly limited the coverage, the court observed, "although there's different wording used, different form used . . . it seems to me that it is at least as good as Notice A in informing an insured about the limitation and putting the insured on notice that part of the attorneys' fees will not be covered under the policy."

Grant Aviation first asserts that the endorsement need not comply with the letter of 3 AAC 26.550, but must only satisfy the notice requirements established in *Russell v. Criterion Insurance Co.* — a case in which we upheld the validity of an endorsement limiting an insurer's obligation to pay prevailing party attorney's fees awarded against the insured. [**16] n22. There we relied on 3 AAC 29.010, n23 and interpreted that regulation to

[*196] require that an insurer limiting coverage "must clearly disclose the limitation itself," and "must clearly disclose the insured's potential liability for attorney's fees if the judgment exceeds the liability limits of the policy." n24 Grant Aviation argues that Endorsement 8 is valid because it satisfies the requirements we discussed in *Russell*.

n22 *Russell v. Criterion Ins. Co.*, 917 P.2d 664 (Alaska 1996).

n23 Former 3 AAC 29.010 (1982) read in pertinent part:

(a) Any policy form subject to the requirements of AS 21.42 which provides defense, settlement, or supplementary payments, may limit payments of attorney fees taxed against the insured as costs under Rule 82 of the Alaska Rules of Civil Procedure. The limit may not be less than the amount which would be allowed under Civil Rule 82(a)(1) to the prevailing party in a contested case if the amount recovered were equal to the liability limit of the policy. This limit must be in addition to the otherwise applicable limit of liability of the policy.

....

(d) An insurer limiting coverage as permitted in (a) of this section must clearly disclose to its insured the limitation and the insured's potential liability for attorney fees if judgment exceeds the liability limits of the policy.

[**17]

n24 *Russell*, 917 P.2d at 666.

Grant Aviation's reliance on *Russell* is misplaced. The regulation on which we relied there, 3 AAC 29.010, was repealed in July 1996, after we decided *Russell*. The Division of Insurance replaced 3 AAC 29.010 with 3 AAC 26.500-.550. Division of Insurance Bulletin 96-04 gave notice to insurers of "new requirements regarding coverage for Alaska Rule of Civil Procedure 82." The bulletin informed insurers that after July 1, 1996 the division required that policies limiting Rule 82 coverage "must satisfy the minimum standards" of the newly promulgated regulations. In an order announcing the adoption of 3 AAC 26.500-.550, the Alaska Director of Insurance explained the 1996 amendments as follows:

Limitations of coverage for attorney fees taxable as costs against an insured according to Alaska Rule of Civil

Procedure 82 that do not address an insured's reasonable expectations for coverage or do not provide adequate disclosure of the insured's potential uninsured liability constitute an unfair or deceptive trade act. Therefore, the adoption or repeal [**18] of regulations under this order is appropriate.

The *Russell* criteria are therefore inapplicable to questions arising under the new regulations. To be effective, Endorsement 8 had to comply with 3 AAC 26.550. n25

n25 The division promulgated 3 AAC 26.500-.550 in 1996. Houston Casualty issued the insurance policy at issue here for the policy period of December 15, 1998 to December 15, 1999. The air crash occurred on December 7, 1999.

The superior court held that Endorsement 8, which had not received director approval, was valid because it was "substantially equivalent" to Notice A. [HN3] A post-accident judicial determination of substantial equivalence to Notice A is not sufficient to satisfy 3 AAC 26.550. Per the regulation, the director must determine that the proposed notice is "substantially equivalent" to Notice A and then approve the proposed notice in writing. The director did not approve Endorsement 8 before it was issued. Therefore Endorsement 8 could satisfy 3 AAC 26.550 only if it "conforms [**19] with" Notice A.

The regulation does not explicitly define "conform with." That the alternative provision allows the director to preapprove "substantially equivalent" proposed language suggests that the "conform with" provision contemplates a higher standard. There would, after all, be no need or incentive to seek preapproval if the two standards meant the same thing. Likewise, the opportunity to seek preapproval implies that the director has the administrative expertise to distinguish between those deviations that provide insureds with adequate notice of the proposed limitations and those that do not. No such disinterested expert review occurs when an insurer issues a limiting endorsement without seeking the director's preapproval. It is logical to require something more than mere "substantial equivalence" to Notice A in the absence of administrative review.

The superior court recognized that "conform with" must mean something "very close to identical," rather than "word-for-word identical." We agree with this observation but disagree with superior court's ultimate findings. The court's "very close to identical" definition is workable because it accounts for minute deviations, such [**20] as immaterial

[*197] punctuation errors, that would not diminish the quality of notice or the substantive message. The standard must be stringent, because anything less would denigrate the administrative expertise that fashioned Notice A as a model for adequate disclosure and eviscerate the alternative requirement for preapproval. Moreover, any dispute about conformity under subsection .550(b) will almost inevitably arise after a loss occurs. It is by then too late for the insurer to invoke agency expertise.

Endorsement 8 does not "conform with" Notice A because we conclude that the endorsement alters the model form's language in ways that go beyond being "minute deviations." For example, Notice A directly and forcefully informs an insured of its exposure to an award of Rule 82 attorney's fees, and its obligation to pay any fees not covered by the policy. Notice A provides in part:

Alaska Rule of Civil Procedure 82 provides that if you are held liable, some or all of the attorney fees of the person making a claim against you must be paid by you. The amount that must be paid by you is determined by Alaska Rule of Civil Procedure 82. We provide coverage for attorney fees for which you [**21] are liable under Alaska Rule of Civil Procedure 82 subject to the following limitation:

We will not pay that portion of any attorney's fees that is in excess of fees calculated by applying the schedule for contested cases in Alaska Rule of Civil Procedure 82(b)(1) to the limit of liability of the applicable coverage.

This limitation means the potential costs that may be awarded against you as attorney fees may not be covered in full. You will have to pay any attorney fees not covered directly.

(Italics in original; underline emphasis added.) The underlined language is far more direct than the language in Endorsement 8, which provides in part:

Contrary to the general rule applicable in the United States, Rule 82 of the Alaska Rules of Court awards attorneys fees to the party which prevails in bringing, or defending against, a claim. [Houston Casualty] will only pay a limited amount of attorney's fees an insured is re-

quired to pay under Rule 82 of the Alaska Rules of Court.

The most [Houston Casualty] will pay for attorney's fees the insured is liable to pay under Rule 82 of the Alaska Rules of Court ("Rule 82") is that amount of attorney's fees the insured [**22] would be liable to pay under Rule 82 if the claim was a contested claim and the amount of the final award was equal to the limit of liability for the applicable coverage stated in the policy.

The limit of liability for Rule 82 attorney's fees described in this section is the absolute maximum and will not change based upon the number of insured persons, vehicles, aircraft, number of injured persons, number of claimants, or number of claims arising out of the relevant occurrence.

WARNING OF EXPOSURE TO UNINSURED ATTORNEY FEES

The amount of attorney's fees the insured is liable to pay under Rule 82 may be greater than the amount [Houston Casualty] is agreeing to pay under this policy. The insured will have to pay the excess attorney's fees charged under Rule 82.

(Emphasis added.)

The differences are partly a matter of emphasis ("you," rather than "the insured") and partly a matter of directness ("must be paid by you" and "you will have to pay," rather than "the insured is required to pay"). Endorsement 8 and Notice A are similar in substance. But the text of Endorsement 8 is longer than the text of Notice A. Its sentence structure is more complex, and it is harder [**23] to read and understand. Each sentence in the quoted passage from Notice A averages about twenty-five words. Each sentence from the quoted Endorsement 8 passage averages about thirty-eight words. The division promulgated section .550 to increase notice and to reduce disputes about the adequacy of notice provided. In this context and given these purposes, sentence structure and word choice are important. And, had Houston Casualty wanted to limit its attorney's fees coverage using its own language, it could have complied with th

[*198] regulation by submitting its endorsement to the director for preapproval. Had it done so, the director might have required Houston Casualty to simplify or alter its text and message.

We do not read Endorsement 8 to be "very close to identical" to Notice A. The differences in substance, tone, clarity, and directness convince us that Endorsement 8 does not "conform with" Notice A. And because these differences diminish the adequacy of the notice given, we hold that Endorsement 8 does not satisfy 3 AAC 26.550.

D. Alaska Statute 21.42.220 Does Not Save Endorsement 8.

Grant Aviation argues that even if Endorsement 8 does not [*24] "conform with" Notice A, AS 21.42.220 saves the endorsement from invalidity. That statute provides in pertinent part:

[HN4] An insurance policy, rider, or endorsement issued and otherwise valid that contains a condition or provision not in compliance with the requirements of this title, is not thereby rendered invalid but shall be construed and applied in accordance with the conditions and provisions as would have applied had the policy, rider, or endorsement been in full compliance with this title.

We have never before cited this statute. Alaska Statute 21.42.220 was enacted in 1966, when the Alaska Legislature completely revised Title 21, the state's insurance code. n26 Nothing analogous to AS 21.42.220 existed before 1966. The legislative history of the 1966 revision indicates that the legislature modeled the revised insurance laws after Montana's insurance code. n27 That code contains a "validity of noncomplying forms" provision virtually identical to AS 21.42.220. n28 However, there is no Alaska legislative history specifically addressing AS 21.42.220 [*25].

n26 Ch. 120, § 1, SLA 1966.

n27 Analysis of House Bill No. 313 (Proposed State Insurance Code), House Journal Supp. No. 12 at 3, 1966 House Journal 431 ("After careful study, it was determined that the insurance code of the State of Montana, enacted in 1961 by the Legislature of that State, would serve as a good model for the revision of Alaska's insurance laws. . . . The Montana Code was the most modern and up-to-date body of insurance regulation of any of the fifty states.").

n28 Section 33-15-315 of the Montana Code provides:

Any insurance policy, rider, or endorsement hereafter issued and otherwise valid which contain

any condition or provision not in compliance with the requirements of this code shall not be thereby rendered invalid but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this code. MONT. CODE ANN. § 33-15-315 (2002).

[**26]

Montana and other states with savings statutes similar to AS 21.42.220 n29 interpret these provisions to save policy provisions that do not conform with their insurance codes by replacing the inconsistent policy terms with statutory provisions. n30 This usually, but not always, has the effect of reforming the policies in favor of coverage.

n29 Arizona, ARIZ. REV. STAT. § 20-1118 (2002); Georgia, GA. CODE ANN. § 33-24-12 (a) (2002); Hawaii, HAW. REV. STAT. § 431:10-238 (2002); Kentucky, KY. REV. STAT. ANN. § 304.14-210(2) (2002); Louisiana, LA. REV. STAT. ANN. § 22:653 (2002); Montana, MONT. CODE ANN. § 33-15-315 (2002); Oklahoma, OKLA. STAT. ANN. tit. 36, § 3620 (2002); Virginia, VA. CODE ANN. § 38.2-318 (A) (2002); Virgin Islands, 22 V.I. CODE ANN. § 845 (2002); Washington, WASH. REV. CODE ANN. § 48.18.510 (2003); West Virginia, W. VA. CODE, § 33-6-17 (2002).

[**27]

n30 See *Taylor v. MFA Mut. Ins. Co.*, 322 So. 2d 842, 845-46 (La. App. 1976) (holding that three-month policy had to be considered as if issued for statutory requirement of six months where insurer issued three-month policy and terminated policy for failure to pay renewal fee without providing notice of cancellation); *USAA Cas. Ins. Co. v. Yaconiello*, 226 Va. 423, 309 S.E.2d 324, 325 (Va. 1983) (holding that statute's more inclusive term "motor vehicle" superseded policy's term "automobile" because statute would also include motorcycles); *Arkins v. Meador*, 201 W. Va. 148, 494 S.E.2d 915, 920-24 (W. Va. 1997) (holding that statute's more inclusive requirement that insured be "using" vehicle superseded policy's requirement that insured be "occupying" vehicle).

In *Sagan v. Prudential Insurance Co. of America* the Montana Supreme Court applied the Montana "validity of noncomplying forms" statute to save a suicide exclusion that did not comply with the state insurance code. n31 Under the authority of the savings

[**199] statute, the court substituted [**28] the relevant statutory provision into the policy rather than invalidating the entire exclusion. n32 The court observed that the plain meaning of the statute is "to give effect to insurance policies and provisions to the fullest extent possible by reading statutory provisions into them to achieve full compliance with the insurance code. Nothing in the plain language of the statute supports applying it to *invalidate* policy provisions." n33 *Sagan* may seem to use Montana's savings statute to validate a nonconforming policy provision, to the beneficiary's detriment. But in reality, the only inconsistency between the policy provision and the insurance code concerned the amount of refund payable if the insured died by suicide within two years after the policy was issued. The policy was actually more favorable to *Sagan* than the code. The court rejected *Sagan's* attempt to invalidate the entire suicide exclusion on *Sagan's* theory that the refund provision deviated from the code. The deviation was immaterial to the validity of the entire exclusion.

n31 *Sagan v. Prudential Ins. Co. of Am.* 259 Mont. 506, 857 P.2d 719, 722 (Mont. 1993); see also *Georgeson v. Fid. & Guar. Ins. Co.*, 48 F. Supp. 2d 1262, 1266 (D. Mont. 1998) (applying MCA § 33-15-315 and ruling that when language of insurance policy is contrary to statute, and therefore void, policy should be construed to contain coverage mandated by law).

[**29]

n32 *Sagan*, 857 P.2d at 722.

n33 *Id.*

Virginia applies its "validity of noncomplying forms" statute n34 to save nonconforming insurance policies when they impermissibly restrict the scope of coverage mandated by statute. n35 When an insurance policy grants more coverage than that prescribed by statute, the terms of the policy control. n36 In *Hill v. State Farm Mutual Insurance Co.*, the Virginia Supreme Court observed that "the superseding provisions of . . . [Code § 38.2-318] take effect only where an insurer seeks, by policy language, to narrow, avoid, vary or restrict the coverage the legislature has required." n37

n34 Section 38.2-318(A) of the Virginia Code is substantially similar to AS 21.42.220. It provides:

"Any insurance policy or form containing any condition or provision that is not in compliance with this title shall be valid, but shall be construed and applied in accordance with the conditions and provisions required by this title." VA. CODE ANN. § 38.2-318(A) (2002).

[**30]

n35 See *Yaconiello*, 309 S.E.2d at 325.

n36 See *Hill v. State Farm Mut. Ins. Co.*, 237 Va. 148, 375 S.E.2d 727, 729, 5 Va. Law Rep. 1510 (Va. 1989) (holding that uninsured motorist endorsement, which afforded broader coverage than that mandated by statute, was not superseded by more restrictive term in statute); *Interstate Van Lines, Inc. v. Artis*, 24 Va. Cir. 164, 1991 WL 835002, at *6 (Va. Cir. June 5, 1991) (holding that "validity of noncomplying forms" statute did not apply because policy's definition of insured afforded broader coverage than that mandated by statute).

n37 *Hill*, 375 S.E.2d at 729; see also 1 LEE R. RUSS, COUCH ON INSURANCE § 17: 14 (3d ed. 1998). It provides:

Where the statutes specify certain provisions which must form a part of a contract of insurance, and further provide that a policy issued in violation thereof should be valid, a policy which does not contain the statutory provisions is valid and must be given effect, but the provisions of the statute must be substituted for those of the policy where the two conflict. However, where the provisions of the policy are more favorable to the insured than are the statutory requirements, the policy provisions will be enforced. In any event, the insured is not in a position to accept standard provisions in his or her favor and reject those which are unfavorable to him or her. (Footnotes omitted.)

[**31]

Grant Aviation argues that AS 21.42.220 saves Endorsement 8 from invalidity even though Houston Casualty did not obtain the insurance director's written preapproval for Endorsement 8. In support, Grant Aviation cites cases holding that an insurer's failure to follow a statute requiring the insurer to file all policy forms before issuing the policy does not invalidate that policy. n38 But the problem:

[*200] here is not that the insurer failed to obtain preapproval, but that its limiting provision did not "conform with" Notice A. Grant Aviation cites only two cases that mention statutes providing for the validity of noncomplying forms. n39

n38 *Great Lakes Container Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 727 F.2d 30, 32 (1st Cir. 1984) (holding that insurer's failure to follow statute requiring policies be approved by insurance commissioner did not void policy); *Resolution Trust Corp. v. Hedden*, 879 F. Supp. 600, 602-03 (N.D. Miss. 1995) (insurer's failure to submit exclusion for approval did not invalidate exclusion); *Gary v. Am. Cas. Co. of Reading, Pa.*, 753 F. Supp. 1547, 1551 (W.D. Okla. 1990) (holding that failure to file endorsement does not render it void); *Cage v. Litchfield*, 45 Conn. Supp. 298, 315, 713 A.2d 281 (Conn. Super. 1997) (holding that endorsement not filed with commissioner was valid and that "the imposition of a monetary fine or a penalty other than voidance is sufficient to protect the efficacy of [filing statute]"); *Home Indem. Co. v. Hoechst Celanese Corp.*, 128 N.C. App. 226, 494 S.E.2d 768, 773 (N.C. App. 1998) (holding that insurer's failure to get form approval for pollution exclusions did not void exclusions because, among other reasons, statute that provides for penalties for insurers does not mention voiding policy as remedy).

[**32]

n39 See *Highlands Ins. v. Am. Marine Corp.*, 607 F.2d 1101, 1104 (5th Cir. 1979) (holding that insureds could not avoid paying premiums due under policy by claiming that insurer's failure to file policy made it void); *Williams v. Metro. Life Ins. Co.*, 10 Wn. App. 600, 519 P.2d 1310, 1313 n.2 (Wash. App. 1974) (holding that insured's beneficiary could not collect on life insurance policy because policy never became effective because insured misrepresented his health on application form, even though application amendment slightly differed from form approved by insurance commissioner).

Those two cases — *Highland Insurance v. American Marine Corp.* and *Williams v. Metropolitan Life Insurance Co.* — are inapposite. The courts there cited "validity of noncomplying forms" statutes in rejecting insureds' attempts to void otherwise valid policy forms merely because insurers failed to file and obtain approval for the policy forms. n40

n40 See *Highland*, 607 F.2d at 1104; *Williams*, 519 P.2d at 1313 n.2.

[**33]

Our case does not concern an insurer's failure to file or obtain approval for an otherwise valid policy. It involves an insurer's failure to comply with a regulation promulgated for the purpose of giving insureds adequate notice of potential attorney's fees liability. The division adopted 3 AAC 26.500-.550 and Notice A because it found that inadequate disclosure constituted an unfair or deceptive trade act. Grant Aviation cites no cases in which a court has held that a provision that materially deviates from the insurance code and that restricts or excludes coverage is effective under a "validity of noncomplying forms" statute.

There are other reasons not to apply AS 21.42.220 to validate Endorsement 8. First, applying the statute as Grant Aviation proposes would effectively deprive the Division of Insurance of authority to prevent nonconforming provisions from becoming effective. On its face, Grant Aviation's reading of the statute would validate provisions that depart from any minimum requirements that the division, in legitimate exercise of its expertise, might require. This would be an unusual result given the extensive regulation of the insurance [**34] industry and the regular practice of states requiring insurance policies to include particular provisions or model forms.

Second, Grant Aviation's reading of the statute would undermine the regulation's critical purpose — to give insureds adequate notice of a provision limiting coverage. Reading the noncomplying form as though it does give the insured the required notice would defeat the division's purpose in promulgating the notice regulation and model form. Applied as Grant Aviation proposes, AS 21.42.220 would validate endorsements limiting Rule 82 coverage notwithstanding a complete failure to satisfy the regulation.

We decline to read AS 21.42.220 [HN5] to uphold a defective provision that attempts to limit coverage. We will therefore not apply it to save Endorsement 8.

E. The Division of Insurance Had Authority To Promulgate 3 AAC 26.510.

Grant Aviation also asserts that 3 AAC 26.510 is invalid because the Division of Insurance did not have authority to promulgate that regulation. [HN6] That regulation applies to insurance policies with duty-to- defend provisions. It provides in relevant part that "a policy under which an [**35] insurer has a right or duty to provide a defense for an insured must provide coverage for the payment of attorney fees taxable as costs against the insured

under Alaska Rule of Civil Procedure 82." The regulator further requires an insurance carrier to cover additional attorney's fees. n41

n41 3 AAC 26.510.

The division cited several statutes from Title 21 as its authority for promulgating 3

[*201] AAC 26.510. n42 Title 21 deals with insurance generally. Grant Aviation claims that the Title 21 statutes cited as authority for 3 AAC 26.510 only "govern matters of procedure, not substance." Grant Aviation further contends that *Title 2 of the Alaska Statutes* contains the provisions that regulate the aviation industry.

n42 The division cited *AS 21.06.090; AS 21.36.150; AS 21.42.120, .130, and .160* as authority for 3 AAC 26.510. See 3 AAC 26.510.

[**36]

Grant Aviation directs us to no provision in Title 2 that expressly or impliedly makes 3 AAC 26.510 inapplicable to air carriers. Title 21 gives the director authority to "adopt reasonable regulations" to effectuate the purposes of the title. n43 And 3 AAC 26.510 represents a justifiable exercise of the director's authority. One section in Title 2, which governs aeronautics, specifies minimum insurance limits for air carriers, but it does not purport to

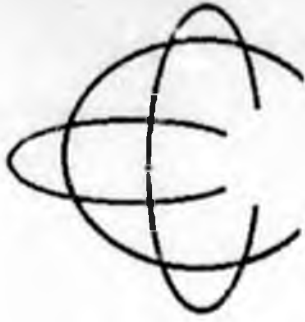
render Title 21 altogether inapplicable to insurance for air carriers. n44 It does not address coverage for attorney's fees. Nothing Grant Aviation has argued would justify a conclusion that the Director of Insurance had no authority to promulgate 3 AAC 26.510.

n43 See *AS 21.06.090*.

n44 See *AS 02.40.010(a)*.

IV. CONCLUSION

Because we conclude that Endorsement 8 does not "conform with" the model form and thus violates 3 AAC 26.550 and because *AS 21.42.220* [**37] does not save the endorsement, we REVERSE the judgment and REMAND for calculation of the attorney's fees recoverable under the policy.



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MODEL UNFAIR INSURANCE PRACTICES ACT

The following is an overview of the pertinent elements of the Model Unfair Insurance Practices Act:

- Misrepresentation of pertinent facts or insurance policy provisions relating to coverage at issues.
- Denial of a claim under a purportedly cancelled policy with knowledge that statutory cancellation procedures have not been followed.
- Deliberate misrepresentation of legal precedent to avoid paying a claim.
- Filing a false material statement regarding a person's financial status or business.
- Failing to acknowledge and act reasonably and promptly on communication with respect to pending claims.
- An insurer should not necessarily delay payment of policy proceeds.
- The Model Act suggests that every insurer should acknowledge receipt of a claim within ten (10) business days and respond to all pertinent communications from a claimant which reasonably requires a response.
- The insurer should promptly provide the insured with necessary claims forms and

reasonable assistance in complying with policy conditions.

- The insurer must adopt and implement reasonable standards for prompt investigation of claims.
- The insurer should conduct a thorough and adequate investigation of each claim.
- The Model Act suggests that claim investigation should be completed within thirty (30) days after notification. If the investigation cannot be completed within that time, the insured should be kept apprised of the status. It should be noted the insurer cannot avoid a bad faith claim by failing to investigate, and thus avoiding acquisition of the facts to support the insured's claim.
- An insurer cannot refuse to pay a claim without conducting a reasonable investigation based on all available information.
- An insurer cannot unreasonably delay the investigation or resolution of a claim.
- An insurer must make a good faith attempt to effectuate prompt, fair and equitable settlement of claims in which liability has become reasonably clear.
- An insurer must not force an insured to institute litigation to recover amounts due under the insurance policy by offering substantially less than the amount ultimately recovered.
- An insurer must not force an insured to initiate suit when no substantial defense exists.
- An insurer must not attempt to settle a claim for less than full value based on information in the application that was included or added without the knowledge of the insured.
- An insurer must not delay payment or settlement of a claim by requiring an insured to produce documentation of the claim, and then requiring a formal proof of loss, which contains the same information.

- An insured must not delay or refuse to settle a portion of a claim when liability is reasonably clear in order to influence settlement of other portions of the claim.
- An insurer must not fail to tender the full amount the insurer believes is due and owing.
- An insurer must promptly provide a reasonable explanation of the basis for the denial of a claim or for an offer to compromise.
- An insurer must provide a proper defense.
- An insurer must provide separate counsel for the insured when there is a conflict of interest.
- An insurer must promptly and fully advise the insured of the danger of an excess verdict.
- An insurer must negotiate in good faith.
- An insurer must follow the advice of counsel unless there is reasonable justification to not do so.
- An insurer must not ask an insured to contribute to any settlement that is within policy limits.

*505 N. Fox Trail
Round Lake, IL 60073-2355*

*Telephone:(847)201-7980
Fax:(847)201-7981*

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Alaska Stat. § 21.36.125

ALASKA STATUTES
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*** CURRENT THRU ALL 2005 LEGISLATION ***
 *** ANNOTATIONS CURRENT THRU OPINIONS DECIDED ***
 *** AS OF SEPTEMBER 23, 2005 ***

TITLE 21. INSURANCE
 CHAPTER 36. TRADE PRACTICES AND FRAUDS

◆ **GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

Alaska Stat. § 21.36.125 (2006)

Sec. 21.36.125. Unfair claim settlement practices

(a) A person may not commit any of the following acts or practices:

- (1) misrepresent facts or policy provisions relating to coverage of an insurance policy;
- (2) fail to acknowledge and act promptly upon communications regarding a claim arising under an insurance policy;
- (3) fail to adopt and implement reasonable standards for prompt investigation of claims;
- (4) refuse to pay a claim without a reasonable investigation of all of the available information and an explanation of the basis for denial of the claim or for an offer of compromise settlement;
- (5) fail to affirm or deny coverage of claims within a reasonable time of the completion of proof-of-loss statements;
- (6) fail to attempt in good faith to make prompt and equitable settlement of claims in which liability is reasonably clear;
- (7) engage in a pattern or practice of compelling insureds to litigate for recovery of amounts due under insurance policies by offering substantially less than the amounts ultimately recovered in actions brought by those insureds;
- (8) compel an insured or third-party claimant in a case in which liability is clear to litigate for recovery of an amount due under an insurance policy by offering an amount that does not have an objectively reasonable basis in law and fact and that has not been documented in the insurer's file;

(9) attempt to make an unreasonably low settlement by reference to printed advertising matter accompanying or included in an application;

(10) attempt to settle a claim on the basis of an application that has been altered without the consent of the insured;

(11) make a claims payment without including a statement of the coverage under which the payment is made;

(12) make known to an insured or third-party claimant a policy of appealing from an arbitration award in favor of an insured or third-party claimant for the purpose of compelling the insured or third-party claimant to accept a settlement or compromise less than the amount awarded in arbitration;

(13) delay investigation or payment of claims by requiring submission of unnecessary or substantially repetitive claims reports and proof-of-loss forms;

(14) fail to promptly settle claims under one portion of a policy for the purpose of influencing settlements under other portions of the policy;

(15) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; or

(16) offer a form of settlement or pay a judgment in any manner prohibited by AS 21.09.030;

(17) violate a provision contained in AS 21.07.

(b) The provisions of this section do not create or imply a private cause of action for a violation of this section.

HISTORY: (§ 6 ch 163 SLA 1976; am §§ 5, 6 ch 97 SLA 2000; am § 3 ch 99 SLA 2000)

NOTES:

REVISOR'S NOTES. --Paragraph (a)(17) was enacted as (16). Renumbered in 2000.

ADMINISTRATIVE CODE. --For bail bonds, see 3 AAC 23, art. 5.

For unfair claims settlement acts or practices, see 3 AAC 26, art. 1.

For uniform claim forms, see 3 AAC 28, art. 8.

EFFECT OF AMENDMENTS. --The first 2000 amendment, effective January 1, 2001, in subsection (a) deleted "or engage in with such frequency as to indicate a practice" following "commit" in the introductory language, substituted "engage in a pattern or practice of compelling" for "compel" at the beginning of paragraph (7), added present paragraph (8) and redesignated paragraphs accordingly, and rewrote paragraph (12); and added subsection (b).

The second 2000 amendment, effective July 1, 2001, added paragraph (a)(17).

NOTES TO DECISIONS

A THIRD PARTY CLAIMANT has no cause of action against an insurer under this section. O.K. Lumber Co. v. Providence Wash. Ins. Co., 759 P.2d 523 (Alaska 1988).

PUNITIVE DAMAGES. --Not all conduct which amounts to the tort of bad faith is sufficiently outrageous to warrant an award of punitive damages. State Farm Mut. Auto. Ins. Co. v.

Weiford, 831 P.2d 1264 (Alaska 1992).

UNFAIR CONTROVERSION OF WORKERS' COMPENSATION CLAIM. --When the Workers' Compensation Board found that an insurer unfairly controverted a workers' compensation claim, that finding was appealable, before the Division of Insurance decided, under AS 23.30.155(o), if the unfair controversion was also an unfair claims settlement practice, under this section, because the Board had completed its decision-making process and the Board's finding adversely affected the insurer because it required an investigation by the Division and could support the Division's finding that the insurer committed an unfair claims settlement practice. Crawford & Co. v. Baker-Withrow, 81 P.3d 982 (Alaska 2003).

When the Workers' Compensation Board found that an insurer unfairly controverted a workers' compensation claim, and the insurer appealed that finding, there was no requirement that, when the matter was referred to the Division of Insurance, pursuant to AS 23.30.155(o), for a determination of whether the insurer had also committed an unfair claims settlement practice, under this section, the determination of the Division had to be stayed pending the outcome of the insurer's appeal. Crawford & Co. v. Baker-Withrow, 81 P.3d 982 (Alaska 2003).

QUOTED IN State Farm Fire & Cas. Co. v. Nicholson, 777 P.2d 1152 (Alaska 1989).

STATED IN Ace v. Aetna Life Ins. Co., 139 F.3d 1241 (9th Cir. 1998), cert. denied, 525 U.S. 930, 119 S. Ct. 338, 142 L. Ed. 2d 279 (1998).

COLLATERAL REFERENCES. --Insurer's liability to insurance agent or broker for damages suffered as result of insurer's denial of coverage or refusal to pay policy proceeds to insured. 6 ALR5th 611.

What constitutes bad faith on part of insurer rendering it liable for statutory penalty imposed for bad faith in failure to pay, or delay in paying, insured's claim -- Particular grounds for denial of claim: risks, causes, and extent of loss, injury, disability, or death. 123 ALR5th 259.

USER NOTE: For more generally applicable notes, see notes under the first section of this article, chapter or title.

Source: [Legal > States Legal - U.S. > Alaska > Statutes & Regulations > AK - Alaska Statutes](#) 

TOC: [Alaska Statutes > /.../ > CHAPTER 36. TRADE PRACTICES AND FRAUDS > Sec. 21.36.12F. Unfair claim settlement practices](#)

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TOC: [Alaska Administrative Code > / > ARTICLE 1. UNFAIR CLAIMS SETTLEMENT ACTS OR PRACTICES > 3 AAC 26.080. Additional standards for prompt, fair, and equitable settlements of motor vehicle claim](#)

Section: [3 Alaska Admin. Code 26.080 \(2006\)](#)

3 Alaska Admin. Code 26.080 (2006)

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*** THIS SECTION IS CURRENT THROUGH DECEMBER 20, 2005 ***

TITLE 3. COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
PART 2. DIVISION OF INSURANCE
CHAPTER 26. TRADE PRACTICES
ARTICLE 1. UNFAIR CLAIMS SETTLEMENT ACTS OR PRACTICES

3 Alaska Admin. Code 26.080 (2006)

3 AAC 26.080. Additional standards for prompt, fair, and equitable settlements of motor vehicle claims

(a) Any person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a first-party motor vehicle claim must:

(1) apply one of the following settlement methods if coverage provides for the adjustment of a motor vehicle total loss on the basis of actual cash value or replacement with a vehicle of like kind and quality:

(A) offer a comparable and available replacement motor vehicle, with all applicable taxes, license fees, destination or delivery charges, and other fees incident to transfer of ownership of the motor vehicle paid, at no cost to the first-party claimant other than the deductible amount, if any, as stated in the coverage; the offer of a replacement motor vehicle shall be made in writing if rejected by the first-party claimant; or

(B) make a cash settlement based upon the actual cost to purchase a comparable motor vehicle, including all applicable taxes, license fees, destination or delivery charges, and other fees incident to transfer of ownership, less the deductible amount, if any, as stated in the coverage; the cost shall be determined by:

(i) the cost of a comparable motor vehicle in the local market area to the claimant, if that motor vehicle is available in that area; or

(ii) the average of two or more cost quotations obtained for a comparable motor vehicle from two or more qualified dealers located within the local market area, if a comparable motor vehicle is not available in that area; or

(iii) a basis that is allowable under the coverage but deviates from the rules set out in (i) and (ii) of this subparagraph, if the deviation is supported by documentation in the claim file which gives the particulars of the condition of the motor vehicles involved; any deduction from the cost of a comparable motor vehicle, including deduction for salvage value, must be a fair and appropriate amount; the basis for the deduction shall be fully explained to the claimant;

(2) provide to a first-party claimant a reasonable written explanation of the valuation of damages to the motor vehicle;

(3) include the first-party claimant's deductible, if any, in a subrogation demand unless the first-party claimant requests that it not be included or unless the deductible has been otherwise recovered by the first-party claimant; no deduction for expense may be made from any deductible recovered unless an outside attorney or other outside expert witnesses have been retained and any deduction is no more than a pro rata share of their cost less any attorney fees and costs recovered; any recovery of prejudgment or postjudgment interest shall be shared pro rata.

(b) Any person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a third-party motor vehicle claim:

(1) shall provide a third-party claimant a reasonable written explanation of the valuation of damages to a motor vehicle which is the basis of any settlement offer;

(2) may not recommend that a third-party claimant make a claim under the claimant's own coverage in order to delay or avoid paying a claim where liability and damages are reasonably clear.

(c) A claimant may not be required to travel unreasonably either to inspect a replacement motor vehicle, obtain a repair estimate, or have the motor vehicle repaired at a specific facility.

(d) Any estimate or appraisal of the cost of repair of a motor vehicle must be in a fair and appropriate amount that the claimant may reasonably be expected to be charged for repairs at one or more conveniently located repair facilities.

(e) If the amount claimed as damage to the motor vehicle is reduced on the basis of betterment or depreciation, the person adjusting or settling the claim shall itemize each deduction and explain the basis for each reduction in writing to the claimant.

(f) If a person adjusting or settling a claim elects to have repaired a claimant's motor vehicle and chooses a specific facility for the repairs, that person shall guarantee the repairs and cause the damaged motor vehicle to be restored to its condition before the loss, at no additional cost to the claimant, and cause the repairs to be completed within a reasonable time.

(g) If the claimant's motor vehicle is determined to be economically unrepairable and, therefore, a total loss, the person adjusting or settling the claim may not reduce the salvage value of the vehicle by charges for cleaning.

AUTHORITY: AS 21.06.090; AS 21.36.125; AS 21.36.350

SOURCE: Eff. 5/6/89, Register 110

Source: [Legal > States Legal - U.S. > Alaska > Statutes & Regulations > AK - Alaska Administrative Regulations - Book Browse](#)

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Section: [3 Alaska Admin. Code 26.080 \(2006\)](#)

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> [3 AAC 26.090. Additional standards for prompt, fair, and equitable settlements of property claims](#)

Section: [3 Alaska Admin. Code 26.090 \(2006\)](#)

3 Alaska Admin. Code 26.090 (2006)

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TITLE 3. COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
PART 2. DIVISION OF INSURANCE
CHAPTER 26. TRADE PRACTICES
ARTICLE 1. UNFAIR CLAIMS SETTLEMENT ACTS OR PRACTICES

3 Alaska Admin. Code 26.090 (2006)

3 AAC 26.090. Additional standards for prompt, fair, and equitable settlements of property claims

(a) Any person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a first-party property claim shall:

(1) apply one of the following settlement methods if coverage provides for the adjustment of a claimant's property loss on the basis of actual cash value or replacement with other property of like kind and quality;

(A) offer specific comparable and available replacement property, with all applicable taxes, charges, and other fees incident to the transfer of ownership of the property at no cost to the claimant other than the deductible amount, if any, as stated in the coverage; the offer of replacement property shall be in writing if rejected by the first-party claimant; or

(B) make a cash settlement based upon the actual cost of comparable property, including all applicable taxes, charges and other fees incident to transfer of ownership, less the deductible amount, if any, as stated in the coverage; the cost shall be determined by:

(i) the cost of comparable property in the local market area to the claimant, if such property is available in that area; or

(ii) the average of two or more cost quotations obtained for comparable property from two or more qualified dealers, suppliers or contractors located within the local market area, if comparable property is not available in that area; or

(iii) settle a loss on a basis that deviates from the rules set out in (i) and (ii) of this subparagraph, if the deviation is supported by documentation in the claim file which gives the particulars of the condition of the property involved; the valuation, including salvage value of the property lost, if any, must be in an adequate and appropriate amount; the basis for settlement shall be fully explained to the claimant;

(2) provide to a first-party claimant a reasonable written explanation of the valuation of the damages to the property;

(3) include the first-party claimant's deductible, if any, in a subrogation demand unless the first-party claimant requests that it not be included or unless the deductible has been otherwise recovered by the first-party claimant; no deduction for expense may be made from any deductible recovered unless an outside attorney or other outside expert witnesses have been retained and deduction may be for no more than a pro rata share of their cost less attorney fees and costs recovered; any recovery of prejudgement or postjudgement interest shall be shared pro rata.

(b) Any person transacting the business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a third-party property claim:

(1) shall provide to a third-party claimant a reasonable written explanation of the valuation of damages to property which is the basis of any settlement offer;

(2) may not recommend that a third-party claimant make a claim under the claimant's own coverage in order to delay or avoid paying a claim where liability and damages are reasonably clear.

(c) Any person settling or adjusting a property claim may not require a claimant to travel unreasonably either to inspect replacement property, obtain a repair estimate, or have the property repaired at a specific facility.

(d) Any estimate of the costs of the repair of the property must be a fair and appropriate amount for which the damage can be reasonably expected to be repaired at one or more conveniently located repair facilities, dealers, or contractors.

(e) Any person who reduces the amount claimed as damage to property on the basis of betterment or depreciation shall itemize each deduction. The basis for the reduction shall be documented in the claim file.

(f) If a person adjusting or settling a claim elects to have repaired a claimant's property and chooses a specific repair facility, dealer, or contractor, that person shall guarantee the repairs and cause the damaged property to be restored to its condition before the loss, at no additional cost to the claimant, and cause the repairs to be completed within a reasonable period of time.

AUTHORITY: AS 21.06.090; AS 21.36.025; AS 21.36.350

SOURCE: Eff. 5/6/89, Register 110

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Section: [3 Alaska Admin. Code 26.090 \(2006\)](#)

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Section: [3 Alaska Admin. Code 26.100 \(2006\)](#)

3 Alaska Admin. Code 26.100 (2006)

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TITLE 3. COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
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ARTICLE 1. UNFAIR CLAIMS SETTLEMENT ACTS OR PRACTICES

3 Alaska Admin. Code 26.100 (2006)

3 AAC 26.100. Additional standards for prompt, fair, and equitable settlements of workers' compensation claims

Any person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a workers' compensation claim:

(1) may not require a claimant to travel unreasonably for medical care, rehabilitation services, or any other purpose;

(2) shall provide necessary claim forms, written instructions, and assistance that is reasonable so that any claimant not represented by an attorney is able to comply with the law and reasonable claims handling requirements;

(3) shall promptly make all payments or denials of payments as required by statute or regulation.

AUTHORITY: AS 21.06.090; AS 21.36.125; AS 21.36.350

SOURCE: Eff. 5/6/89, Register 110

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Section: [3 Alaska Admin. Code 26.100 \(2006\)](#)

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TOC: [Alaska Administrative Code](#) > [/](#) > [ARTICLE 1. UNFAIR CLAIMS SETTLEMENT ACTS OR PRACTICES](#) > [3 AAC 26.110. Additional standards for prompt, fair, and equitable settlements of health claims](#)

Section: [3 Alaska Admin. Code 26.110 \(2006\)](#)

3 Alaska Admin. Code 26.110 (2006)

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TITLE 3. COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
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 ARTICLE 1. UNFAIR CLAIMS SETTLEMENT ACTS OR PRACTICES

3 Alaska Admin. Code 26.110 (2006)

3 AAC 26.110. Additional standards for prompt, fair, and equitable settlements of health claims

(a) A person that provides coverage in this state for health care services or supplies on an expense incurred basis for which benefits are based on an amount that is less than the actual amount billed for the health care services or supplies shall

(1) maintain or use a statistically credible profile of covered health care services and supplies on which to base payment; the profile must

(A) be updated at least every six months;

(B) contain billed charges for services performed not more than one year before the date of the most recent profile; and

(C) contain billed charges for each geographical area in which a claimant might receive treatment or, if statistically credible data for a particular service or supply item in a certain geographical area is unavailable, contain a sufficient number of billed charges for that service or supply item from another geographical area so that a reliable basis is established;

(2) determine the final payment for a covered service or supply based on an amount that

(A) reflects the general cost differences between the geographical area where the service was performed and the other geographical areas used in establishing the statistically credible profile under (1) of this subsection; the adjustment may be based on the Consumer Price Index, the medical care component of the Consumer Price Index, or another reasonable basis stated in writing; and

(B) is equal to or greater than the 80th percentile of charges under (1) of this subsection for the health care services or supplies;

(3) provide with any claim payment an explanation of the basis of payments in clear and simple terms, including explanation of any adjustments made under (2)(A) of this subsection, and document the explanation provided in the claim file; and

(4) provide an explanation in the health insurance policy of the basis of payments, including any payments for which a covered individual may be responsible and include on any schedule or summary of benefits page accompanying the policy

(A) the percentile used to determine final payment under (2)(B) of this subsection; and

(B) a statement regarding whether the covered individual is responsible for any amount billed for a health care service or supply item that exceeds the amount of final payment.

(b) This section does not apply to workers' compensation claims.

(c) If a person who is required to include a coordination of benefits provision under AS 21.42.205 provides coverage on a secondary basis,

(1) absent evidence of fraud, the secondary insurer must accept the primary insurer's precertification, utilization review, or other managed care requirement determination and may not deny, delay, or reduce benefits under its policy for a covered person who has met the primary insurer's precertification, utilization review, or other managed care requirement; and

(2) the secondary insurer must calculate its covered benefits at no greater cost to the covered person than if the health care services were obtained from the secondary insurer's participating provider if

(A) the secondary policy provides benefits through a provider network but the primary insurer's policy does not provide coverage through a provider network;

(B) both the primary policy and the secondary policy provide benefits through provider networks but the covered person obtains health care services from a provider that is in the provider network of the primary insurer but not the provider network of the secondary insurer; or

(C) both the primary policy and the secondary policy provide benefits through provider networks but the covered person obtains health care services from a provider that is not part of the provider network of the primary insurer or the secondary insurer because no provider in the primary insurer's provider network is able to meet the particular health need of the covered person.

AUTHORITY: AS 21.06.090; AS 21.36.125; AS 21.36.350; AS 21.42.205

SOURCE: Eff. 5/6/89, Register 110; am 4/20/97, Register 142; am 1/2/98, Register 145; am 9/15/2004, Register 171

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3 Alaska Admin. Code 26.300 (2006)

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ARTICLE 1. UNFAIR CLAIMS SETTLEMENT ACTS OR PRACTICES

3 Alaska Admin. Code 26.300 (2006)

3 AAC 26.300. Definitions

In this chapter,

(1) "claim" means notice that an event, act or omission has occurred which may result in injury or damage for which an insured may be legally obligated to pay;

(2) "claimant" means a first-party claimant, a third-party claimant, or both, and includes the claimant's legal representative and includes a member of the claimant's immediate family if authorized by the claimant;

(3) "Consumer Price Index" means the data published annually in the Detailed Report by the United States Department of Labor, Bureau of Labor Statistics;

(4) "destination or delivery charges" means the charges for shipping a motor vehicle to a primary residence of the claimant or to where the motor vehicle is primarily operated;

(5) "first-party claimant" means a person asserting a right to payment under his or her own coverage;

(6) "frequency as to indicate a general business practice" means violation of any one standard committed on one or more percent of claims handled within a 12-month period, or the repeated violation of a single standard without reasonable explanation;

(7) "local market area" means the geographical area, in the closest proximity, to the claimant's residence, in which two or more qualified dealers are located;

(8) "outside attorney" means an attorney who is in private practice and not an employee of a person transacting a business of insurance under AS 21;

(9) "person" means an individual, corporation, association, partnership, or other legal entity;

(10) "third-party claimant" means any person asserting a claim against any other person;

(11) repealed 9/15/2004;

(12) "working days" means all calendar days except Saturdays, Sundays, all official federal holidays, and all official Alaska holidays.

AUTHORITY: AS 21.06.090; AS 21.36.125; AS 21.36.350

SOURCE: Eff. 5/6/89, Register 110; am 4/20/97, Register 142; am 9/15/2004, Register 171

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Section: [3 Alaska Admin. Code 26.300 \(2006\)](#)

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Alaska State Legislature

State Capitol, Room 505
Juneau, AK 99801-1182
Phone: 465-3779
Fax: 465-2833
Toll Free (800) 465-3779
Representative_Mike_Chenault@legis.state.ak.us



145 Main St. Loop
Second Floor
Kenai, Alaska 99611
Phone: 907-283-7223
Fax: 907-283 7184

REPRESENTATIVE Mike Chenault

District 34

Memorandum

Date: January 24, 2006

To: Representative Tom Anderson, Chair
House Labor & Commerce Committee

From: Representative Mike Chenault

Subject: House Bill 350

Please schedule House Bill 350 to be heard in the House Labor & Commerce Committee at your earliest convenience. This bill would allow a person harmed by an Unfair Claim Settlement to seek a remedy in court if the person is harmed by the violation.

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MEMORANDUM

January 3, 2006

SUBJECT: Sectional analysis (Work Order No. 24-LS1413\A)

TO: Representative Mike Chenault
Attn: Julie Morris

FROM: Dennis C. Bailey
Legislative Counsel

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

Section 1. contains the main provisions of the bill. AS 21.36.125(b) changes existing law to allow a person injured by a violation of the Unfair Claims Settlement Practices Act to seek a remedy in court if the person is harmed by the violation.

Section 2.

This section conforms the penalty section of AS 21.36, that enforces AS 21.36.125, to allow a court, as well as the director, to impose a cease and desist order if a person commits an unfair claim settlement practice.

Section 3.

AS 21.36.320(d) permits a court to impose remedies for violations of the Unfair Claims Settlement Practices Act allowed under the existing statute as well as compensatory damages or punitive damages if warranted.

Section 4.

AS 21.36.320(e) permits a court to impose the existing remedies for intentional violations of the Unfair Claims Settlement Practices Act.

Section 5.

This section repeals AS 21.36.320(h) which restricts the penalty for single act violations of the Act.

Section 6. Gives the measure an immediate effective date.

DCB:med
05-585.med

HB

373

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB373-LAW-CJL-1-25-06
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title "An Act relating to the manufacture and transportation of alcoholic beverages; relating to forfeitures..." RDU CRIMINAL
Sponsor Representative Meyer Component Criminal Justice Litigation
Requester House Labor and Commerce Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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 (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 04.11.010 (c) (Alcoholic Beverages - Licensing and Reporting Requirements) by reducing from 12 liters to 10.5 liters the amount of distilled spirits a person may possess, send, transport or bring, before it is presumed they intend it for sale. It also amends AS 04.16.220(a) (Alcoholic Beverages - Regulation of Sales and Distribution) by subjecting alcoholic beverages transported by a common carrier to forfeiture and seizure. The bill adds additional property items, including firearms, to the list of other property subject to forfeiture or seizure under the same subsection.

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

Prepared by: Kathryn Daughhete, Director Phone 465-3673
Division Administrative Services Division Date/Time 1/25/06 10:19 AM
Approved by: Kathryn Daughhete for David Márquez, Attorney General Date 1/25/2006
Agency Department of Law

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

SPONSOR STATEMENT

HB 373

"An Act relating to the manufacture and transportation of alcoholic beverages; relating to forfeitures of property for violations of alcoholic beverage laws; and relating to violations of alcoholic beverage laws."

In 2004, Congress established the Alaska Rural Justice and Law Enforcement Commission, recognizing that: "...many remote rural residents in Alaska lack a law enforcement presence in their communities and face the highest alcohol abuse and family violence rates in the country." The Commission released a *Draft Interim Report* in 2005 that contained several recommendations. The Commission's recommendations primarily addressed local, federal and executive branch responsibilities. Also, the Commission recommended three changes to Alaska state statutes.

There are three major revisions of current statute contained in HB 373. The first pertains to our current forfeiture laws, which allow property used in bootlegging (the illegal introduction of alcohol into an area that has adopted a local option) to be seized by the state. HB 373 proposes that alcohol transported in violation of a local option, property that is purchased with the proceeds of illegal alcohol sales, and firearms that are carried, used or visible in the furtherance of a violation of local option laws, are all subject to seizure by the state. HB 373 also proposes a procedure for the seizure and appeal of, property seized by the state. Strengthening the forfeiture provisions of state statute will provide needed teeth to the laws designed to protect communities that have chosen to ban or limit alcohol.

HB 373 also proposes to add the definition of the "manufacture" of alcohol to our statutes. While current statute prohibits the manufacture of alcohol in a community that has adopted a local option, it does not include a definition. HB 373 would correct this oversight and set a clear standard for prosecution of the local production of alcohol in dry or damp communities.

Finally, HB 373 makes the allowable quantities of alcohol consistent in the statutes. In current statutes, 12 liters of distilled spirits is allowed, yet 24 liters of wine and 12 gallons of beer are allowed. 12 Liters of distilled spirits represents significantly more alcohol than 24 liters of wine or 12 gallons of beer. HB 373 proposes that the 12 liters allowed in current statute be reduced to 10 ½ liters to make the quantities allowed consistent.

HB 373 will provide clarity, consistency and strength to the state's alcohol and beverage control statutes in order to help law enforcement and communities fight the illegal importation of alcohol into their midst.

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: January 9, 2006
TO: Representative Kevin Meyer
FROM: Mike Pawlowski
RE: Sectional Analysis for HB 373
(Version No. 24 - LS1198\G)

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Reduces the quantity of distilled spirits allowed in AS 04.11.010(c) to 10 ½ from 12 liters to make it consistent with the quantity of malt beverages or wine allowed.

Section 2. Adds alcoholic beverages transported in violation of AS 04.16.125, items of value purchased from the proceeds of the sale of alcoholic beverages in violation of a local option, and a firearm visible, carried during, or used in the furtherance of a violation to the forfeiture provisions of title 4.

Section 3. Clarifies the procedure for seizures and the appeal of seizures made under section 2.

Section 4. Makes a conforming amendment to AS 04.16.220 (d).

Section 5. Adds a definition of "manufacture" to the definitions section of title 4.

**Draft Interim Report of the
Alaska Rural Justice and Law Enforcement
Commission**

Attached

Chapter 1: *Statement of Need*

Appendix G: *Attachments for the Alcohol Importation
Recommendations*

The Report can be found in full at the following url:
http://www.aipc.org/site_documents/Draft%20Interim%20Report-2.mht

Chapter I. Statement of Need

The Alaska Rural Justice and Law Enforcement Commission was created by Congress to respond to a number of needs related to justice and law enforcement in rural Alaska that are detailed in the congressional language (Public Law 108-199). This chapter of the Commission's Final Report reviews current conditions in rural Alaska, recounts the history of law enforcement in rural Alaska, recognizes some of the improvements in rural Alaska that have occurred in recent years, and presents excerpts of the testimony given to the Commission during the public hearings.

A. Current Conditions

1. *Problems the Commission has been asked to address*

Like all communities nationwide, residents of remote, rural Alaska grapple with family violence, child abuse and neglect, and alcohol addiction. Unlike other communities, however, many remote rural residents in Alaska lack a law enforcement presence in their communities and face the highest alcohol abuse and family violence rates in the country. Congress asked the Commission to consider various options that might address these issues, including creation of a unified law enforcement and judicial system, cross deputization, and restorative justice methods to address family violence, child protection and alcohol consumption. This charge reflects congressional concern about the profound challenges facing rural Alaska.

Alcohol abuse presents profound challenges in rural Alaska; its effects are insidious, affecting and influencing the health and welfare of all who live there. As the Alaska Natives Commission reported more than a decade ago:

Facts do not lie: alcohol abuse among Alaska Natives equals tragedy for family and village. It is proven that alcohol abuse equals violence, imprisonment, and death. It is proven that alcohol abuse in the Native family results in frightened, psychologically disordered children. Alcohol abuse leaves FAS, FAE, and a myriad other physical and psychological symptoms in its destructive wake.^{1[3]}

Last year the Institute of Social and Economic Research (ISER), University of Alaska Anchorage, in its *The Status of Alaska Natives Report 2004, Volume I*, stated, "Analysts say that the most difficult social problems in the Native community – from high rates of suicide to domestic violence and child abuse – can be traced in large part to alcohol."^{2[4]} The costs to Alaska are not only social. Financially, it is estimated that alcohol abuse and alcoholism cost Alaska well over \$615,000,000 a year.^{3[5]}

The Commission emphasizes that alcohol abuse and alcoholism in rural Alaska are not *Native* problems, *per se*, but rather problems for Natives and non-Natives alike.

But the Commission also acknowledges that over 66% of the population in rural Alaska is Native⁴¹⁶¹ and that recommendations in this report that mention the importance of culturally appropriate approaches predominantly focus on Alaska Natives. However, that is not intended to imply that these approaches are inappropriate for non-Natives living in rural Alaska.

The impacts of substance abuse and the relevance of finding effective means to prevent alcohol and other drugs from reaching rural Alaska communities that have, through local option laws, decided to ban, partially or wholly, alcohol⁵¹⁷¹ are important threads in the fabric of society in rural Alaska, as they have been in the Commission's work over the last ten months. Numerous statistics point to the continuing – and in many cases growing – overrepresentation of Alaska Natives from rural Alaska among children in need of aid, victims and perpetrators of domestic violence and sexual assault, and other crimes. The percentage of Native children under the care of the Office of Children's Services hovers close to 50% and the numbers of Native youth and adults in Alaska's juvenile justice and correctional systems are similarly disproportionately large. The justice systems in rural Alaska struggle to find locally and culturally appropriate ways to manage offenders in a way that minimizes negative impacts to families and communities and strives to restore harmony quickly. There are frequent "disconnects" between tribal and state court systems, and disputes over jurisdiction continue throughout rural Alaska. In the mean time, rural residents criticize the inadequacies of current law enforcement and public safety in much of rural Alaska, but an affordable and acceptable resolution has yet to be found.

Domestic violence, child abuse, child neglect, and sexual assault are major problems in rural Alaska. The following quote highlights the experiences of one Alaskan researcher:

In Alaska, we often see abusive partners who have relocated their families to remote communities to isolate them from the support of their friends and family, and to more easily track and control their movements. Victims may be held hostage in their own homes with no winter clothing or means of escaping their extreme isolation. Deprivation and isolation become powerful tools to control victims.

One survivor, who shares her story to help others understand the dynamics of abuse in rural communities, described how her husband stranded her and their new baby at a remote fish camp for several weeks without enough food, medications and other essentials. Eventually, she was able to escape her abusive marriage and became a domestic violence outreach worker to remote villages in the Arctic. Although she struggles with debilitating, long-term health problems secondary to the abuse, she survived. Her former husband murdered his next wife.

When domestic violence services are available in rural regions, they face additional challenges in maintaining security and accommodating rural lifestyles. In Alaska, none of the shelter locations are secret – the communities are too small to hide a facility. Maniilaq Family Crisis Center, a victims' assistance program and shelter in northwestern Alaska, offers a safe haven to victims and the animals that they are often unwilling to leave behind. The center uses a snowmobile to pick up clients and has a fenced yard where clients can keep their dog teams and other animals. Susan Jones, the center's executive director, takes threats against victims' pets seriously. The murder or mutilation of a pet by an abusive partner is another indicator of escalating domestic violence.^{6[8]}

Statistics reported by the Alaska Council on Domestic Violence and Sexual Assault highlight the seriousness and widespread nature of the situation in Alaska:^{7[9]}

- In calendar year 2002 the Division of Family and Youth Services (now the Office of Children's Services) received 1,475 reports of suspected child sexual abuse.
(Division of Family and Youth Services, State of Alaska)
- On average, an Alaska woman is forcibly raped every 18 hours and 17 minutes.
(Alaska Uniform Crime Report, 2001)
- During FY 2002, 1,851 victims of sexual assault sought services from victim service programs in Alaska.
(Council on Domestic Violence and Sexual Assault, State of Alaska)
- 311 sexual assault cases and 241 sexual abuse of a minor cases were referred to Alaska District Attorney offices in 2001.
(Department of Law, State of Alaska)

Domestic violence, child abuse, child neglect, and sexual assault, especially in rural Alaska and in the Alaska Native population, represent major issues that need new, creative solutions to resolve.

Part of the solution may lie in enhanced or altered rural law enforcement. Accordingly, the Commission also has been asked to study issues related to law enforcement in rural Alaska. A brief history will help put the current systems in perspective.

Appendix G

**Attachments for Recommendations Related to
the Definition of Alcohol Manufacture**

Forfeiture

Quantity Consistency

Attachment 1: Definition of Alcohol Manufacture

The suggested statutory changes are as follows.

Put in AS 04.21.080(b) alcohol definition section: **"manufacture" of alcoholic beverages means to use the fermentation process with natural or artificial sugar and yeast, or the distillation process, to create alcoholic content.**

The statutes currently do not have a definition for "manufacture" as it relates to alcohol, but below are the definitions of Title 4 "alcoholic beverage" and Title 11.71 drug cases "manufacture".

AS 04.21.080(b)(i) "alcoholic beverage" means a spirituous, vinous, malt, or other fermented or distilled liquid, whatever the origin, that is intended for human consumption as a beverage and that contains one-half of one percent or more of alcohol by volume, whether produced commercially or privately; however, in an area that has adopted a local option under AS 04.11.491, "alcoholic beverage" means a spirituous, vinous, malt, or other fermented or distilled liquid, whatever the origin, that is intended for human consumption as a beverage by the person who possesses or attempts to possess it and that contains alcohol in any amount if the liquid is produced privately, or that contains one-half of one percent or more of alcohol by volume, if the liquid is produced commercially;

AS 11.71.900(13) "manufacture"

A. means the production, preparation, propagation, compounding, conversion, growing, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; however, the growing of marijuana for personal use is not manufacturing;

B. includes the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance or its container unless done in conformity with applicable federal law

(i) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(ii) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

Attachment 2: Forfeiture

Below are the current provisions of the forfeiture statute as applies to alcohol offenses. Added in **bold** are the suggested statutory changes.

AS 04.16.220

(a) The following are subject to forfeiture:

(1) alcoholic beverages manufactured, sold, offered for sale or possessed for sale, bartered or exchanged for goods and services in this state in violation of AS 04.11.010; alcoholic beverages possessed, stocked, warehoused, or otherwise stored in violation of AS 04.21.060; alcoholic beverages sold, or offered for sale in violation of a local option adopted under AS 04.11.491; alcoholic beverages transported into the state and sold to persons not licensed under this chapter in violation of AS 04.16.170(b); **alcoholic beverages transported in violation of AS 04.16.125.**

(2) materials and equipment used in the manufacture, sale, offering for sale, possession for sale, barter or exchange of alcoholic beverages for goods and services in this state in violation of AS 04.11.010; materials and equipment used in the stocking, warehousing, or storage of alcoholic beverages in violation of AS 04.21.060; materials and equipment used in the sale or offering for sale of an alcoholic beverage in an area in violation of a local option adopted under AS 04.11.491;

(3) aircraft, vehicles, or vessels used to transport, or facilitate the transportation of

(A) alcoholic beverages manufactured, sold, offered for sale or possessed for sale, bartered or exchanged for goods and services in this state in violation of AS 04.11.010;

(B) property stocked, warehoused, or otherwise stored in violation of AS 04.21.060;

(C) alcoholic beverages imported into a municipality or established village in violation of AS 04.11.499;

(4) alcoholic beverages found on licensed premises that do not bear federal excise

(5) alcoholic beverages, materials or equipment used in violation of AS 04.16.175;

(6) money, securities, negotiable instruments, or other things of value used in financial transactions, **or items of value purchased from the proceeds** derived from activity prohibited under AS 04.11.010 or in violation of a local option adopted under AS 04.11.491; **and**

(7) **a firearm which is visible, carried during, or used in furtherance of a violation of Title 4.**

(b) Property subject to forfeiture under this section may be actually or constructively seized under an order issued by the superior court upon a showing of probable cause that the property is subject to forfeiture under this section. Constructive seizure is effected upon posting a signed notice of seizure on the item to be forfeited, stating the violation and the date and place of seizure. Seizure without a court order may be made if

(1) the seizure is incident to a valid arrest or search;

(2) the property subject to seizure is the subject of a prior judgment in favor of the state; or

(3) there is probable cause to believe that the property is subject to forfeiture under

(a) of this section; except for alcoholic beverages possessed on violation of AS 04.11.501 or an ordinance adopted under AS 04.11.501, property seized under this paragraph may not be held over 48 hours or until an order of forfeiture is issued by the court, whichever is earlier.

(c) Within 30 days of a seizure under this section the Department of Public Safety shall make reasonable efforts to ascertain the identity and whereabouts of any person holding an interest or

an assignee of a person holding an interest in the property seized, including a right to possession, a lien, mortgage, or conditional sales contract. The Department of Public Safety shall notify the person ascertained to have an interest in property seized of the impending forfeiture, and before forfeiture the Department of Law shall publish, once a week for four consecutive calendar weeks, a notice of the impending forfeiture in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district.

(d) Property subject to forfeiture under (a) of this section may be forfeited

(1) upon conviction of a person for a violation of AS 04.11.010 , 04.11.499, AS 04.21.060 , or AS 04.11.501 or an ordinance adopted under AS 04.11.501, or AS 04.16.125 ; or

2) upon judgment by the superior court in a proceeding in rem that the property was used in a manner subjecting it to forfeiture under (a) of this section. Upon service or publication of notice of commencement of a forfeiture action under this section, a person claiming interest in the property shall file within 30 days after the service or publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the state's allegations. If a claim and answer is not filed within the time specified, the property described in the state's allegation must be ordered forfeited to the state without further proceedings or showings.

Questions of fact or law raised by a notice of forfeiture action and answer of a claimant in an action commenced under this section must be determined by the court sitting without a jury. This proceeding may be held in abeyance until conclusion of any pending criminal charges against the claimant.

(e) The owner of property subject to forfeiture under (a) or (i) of this section is entitled to relief from the forfeiture in the nature of remission of the forfeiture if, in an action under (d) of this section, the owner shows that the owner

(1) was not a party to the violation;

(2) had no actual knowledge or reasonable cause to believe that the property was used or was to be used in violation of the law; and

(3) had no actual knowledge or reasonable cause to believe that the person committing the violation had

(A) a criminal record for violating this title; or

(B) committed other violations of this title.

(f) A person other than the owner holding, or the assignee of, a lien, mortgage, conditional sales contract on, or the right to possession to property subject to forfeiture under (a) or (i) of this section is entitled to relief from the forfeiture in the nature of remission of the forfeiture if, in an action under (d) of this section, the person shows that the person

(1) was not a party to the violation subjecting the property to forfeiture; and

(2) had no actual knowledge or reasonable cause to believe that the property was to be used in violation of the law; and

(3) had no actual knowledge or reasonable cause to believe that the person committing the violation had

(A) a criminal record for violating this title; or

(B) committed other violations of this title.

(i) Upon conviction for a violation of AS 04.11.010 or 04.11.499, if an aircraft, vehicle, or watercraft is subject to forfeiture under (a) of this section, the court shall, subject to remission to innocent parties under this section,

- (1) order the forfeiture of an aircraft to the state;
- (2) order the forfeiture of a vehicle or watercraft if
 - (A) the defendant has a prior felony conviction for a violation of AS 11.41 or a similar law in another jurisdiction;
 - (B) the defendant is on felony probation or parole; the defendant has a prior conviction for violating AS 04.11.010 or 04.11.499; or
 - (C) the quantity of alcohol transported in violation of this title was twice the presumptive amounts in AS 04.11.010(c).

(j) Notwithstanding (i) of this section, a court is not required to order the forfeiture of a vehicle or watercraft if the court determines that

- (1) the vehicle or watercraft is the sole means of transportation for a family residing in a village;
- (2) the court may impose conditions that will prevent the defendant's use of the vehicle or watercraft; and
- (3) either
 - (A) a member of the family would be entitled to remission under this section if the family member were an owner of or held a security interest in the vehicle or watercraft; or
 - (B) if a member of the family would not be entitled to remission, the family member was unable as a practical matter to stop the violation making the vehicle or watercraft subject to forfeiture.

(k) When forfeiting property under (a), (d), or (i) of this section, a court may award to a municipal law enforcement agency that participated in the arrest or conviction of the defendant, the seizure of property, or the identification of property for seizure, (1) the property if the property is worth \$5,000 or less and is not money or some other thing that is divisible, or (2) up to 75 percent of the property or the value of the property if the property is worth more than \$5,000 or is money or some other thing that is divisible. In determining the percentage a municipal law enforcement agency may receive under this subsection, the court shall consider the municipal law enforcement agency's total involvement in the case relative to the involvement of the state.

(l) In this section, "village" means a community of fewer than 1,000 persons located off the interconnected state road system.

Current forfeiture provisions relating to controlled substances below

AS 17.30.110. Items Subject to Forfeiture.

The following may be forfeited to the state:

- (1) a controlled substance which has been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or AS 11.71;
- (2) raw materials, products, and equipment which are used or intended for use in manufacturing, distributing, compounding, processing, delivering, importing, or exporting a controlled substance which is a felony under this chapter or AS 11.71;
- (3) property which is used or intended for use as a container for property described in (1) or (2) of this section;
- (4) a conveyance, including but not limited to aircraft, vehicles, or vessels, which has been used or is intended for use in transporting or in any manner in facilitating the

transportation, sale, receipt, possession, or concealment of property described in (1) or (2) of this section in violation of a felony offense under this chapter or AS 11.71; however,

(A) a conveyance may not be forfeited under this paragraph if the owner of the conveyance establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the owner was neither a consenting party nor privy to the violation;

(B) a forfeiture of a conveyance encumbered by a valid security interest at the time of seizure is subject to the interest of the secured party if the secured party establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the secured party was neither a consenting party nor privy to the violation;

(5) books, records, and research products and materials, including formulas, microfilm, tapes, and data, which are used in violation of this chapter or AS 11.71;

(6) money, securities, negotiable instruments, or other things of value used in financial transactions derived from activity prohibited by this chapter or AS 11.71; and

(7) a firearm which is visible, carried during, or used in furtherance of a violation of this chapter or AS 11.71.

AS 17.30.116. Procedure For Forfeiture Action.

(a) Within 20 days after a seizure under AS 17.30.110 - 17.30.126, the commissioner of public safety shall, by certified mail, notify any person known to have an interest in an item with an appraised value of \$500 or more, or who is ascertainable from official registration numbers, licenses, or other state, federal, or municipal numbers on the item, of the pending forfeiture action. Additionally, the commissioner of public safety shall publish notice of forfeiture action of an item valued at \$500 or more in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district. The notice shall be published once each week during four consecutive calendar weeks. The requirements of this subsection do not apply to the forfeiture of controlled substances which have been manufactured, distributed, dispensed, or possessed in violation of this chapter or AS 11.71, regardless of their value.

(b) Upon service or publication of notice of commencement of a forfeiture action under this section, a person claiming interest in the property shall file within 30 days after the service or publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the state's allegations. If a claim and answer is not filed within the time specified, the property described in the state's allegation must be ordered forfeited to the state without further proceedings or showings.

(c) Questions of fact or law raised by a notice of forfeiture action and answer of a claimant in an action commenced under this section must be determined by the court sitting without a jury. This proceeding may be held in abeyance until conclusion of any pending criminal charges against the claimant under this chapter or AS 11.71.

The most common item bootlegged is R&R whiskey (distilled spirits). The quantity of 14 bottles (750 ml size) equals 10 and one half liters. (16 -750 ml bottles equals 12 liters.) As seen below, the quantity amounts for malt beverages and wine are essentially equivalent for presumptive sale, felony importation and allowable shipping to a sale-restricted location.

The suggested statutory change would make the quantity in AS 04.11.010 consistent if stated "**10 and one half liters or more of distilled spirits**".

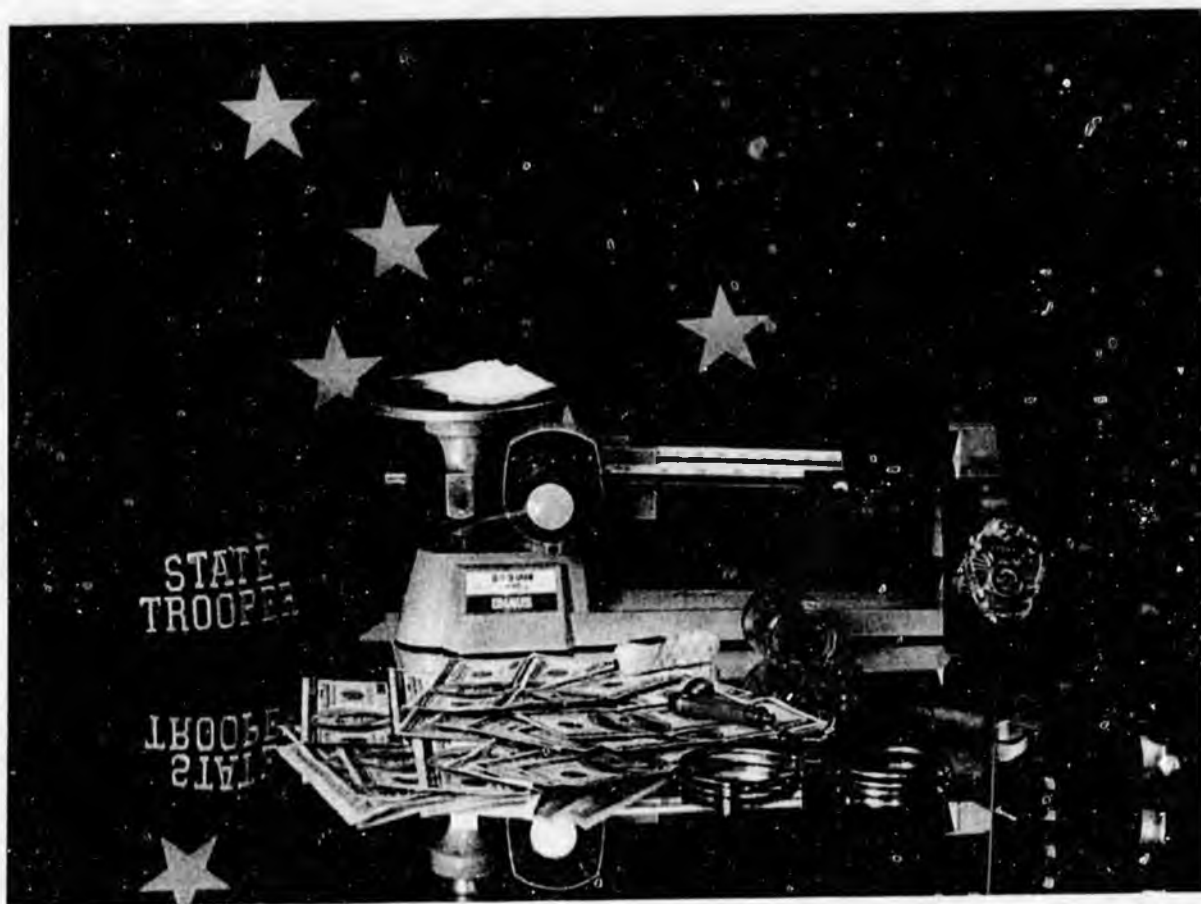
Currently, the statutes provide:

AS 04.11.010 presumptive amount for sale is possession **more than 12 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages.**

AS 04.16.200(e)(2) amount that makes importation into a dry location a felony is **10 and one half liters or more of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages.**

AS 04.11.140(g) package store license permits shipping monthly to a damp (restriction of sale) location **10 and one half liters of distilled spirits, less than 24 liters of wine, or less than 12 gallons of malt beverages.**

Alaska State Troopers Alaska Bureau of Alcohol and Drug Enforcement



2004 Annual Drug Report



2004 Annual Drug Report

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Introduction

The Alaska State Troopers, Bureau of Alcohol and Drug Enforcement in authoring this publication, has endeavored to represent the drug situation in Alaska in a manner that provides the broadest possible picture of the true situation.

There are numerous agencies that conduct drug investigations in Alaska. While some agencies have a less formal relationship, most work closely with the Alaska State Troopers. In order to properly represent the true drug situation in Alaska, statistics from agencies other than those that participate in Alaska Bureau of Alcohol and Drug Enforcement are included in this report. Information provided by all sources should be considered when attempting to measure how drugs are impacting the citizens of this state.

We believe that all of this material is vital when analyzing the needs of the state in the arena of drug enforcement.



Our Mission

Alaska Bureau of Alcohol and Drug Enforcement

The Alaska State Troopers, Alaska Bureau of Alcohol and Drug Enforcement (ABADE) provides a leadership role in coordinating law enforcement's efforts to reduce the availability of alcohol and controlled substances throughout Alaska. ABADE recognizes that a successful alcohol and drug program depends upon a unified effort blending traditional law enforcement techniques with demand reduction programs that address educational, social, and community concerns.

ABADE's mission is to:

- ❖ Interdict and seize alcohol and controlled substances that are illegally distributed throughout Alaska.
- ❖ Identify and arrest distributors of controlled substances and illegal alcohol.
- ❖ Provide training and investigative support to criminal justice agencies.
- ❖ Support and participate in public education programs.



Staffing and Support

Using a combination of federal and state funding, ABADE consisted of twenty-seven (27) State Trooper investigators and twelve (12) civilian clerical personnel for the majority of 2004. ABADE recognizes that because of Alaska's geographical vastness and ethnic diversity, no single law enforcement agency is capable of handling the drug and alcohol problems alone. ABADE encourages cooperative efforts between federal, state and local law enforcement agencies and has taken a leadership role in fostering and developing many of these cooperative arrangements through multi-jurisdictional and/or multi-agency efforts. The ABADE headquarters office in Anchorage supports six (6) investigative teams throughout the state. These teams are broken down by region as follows:

Alaska Interdiction Task Force (DEA sponsored)

Fairbanks Area-wide Narcotics Team

Mat-Su Drug Narcotics Enforcement Team

Major Offenders Unit

Southeast Alaska Narcotics Enforcement Team

Western Alaska Alcohol and Narcotics Team

The Alaska National Guard Counter Drug Support Program (CDSP) provides additional support in several ABADE units. They provide operational resources, which include, but are not limited to manpower, equipment, and logistical support to federal, state, and local law enforcement throughout Alaska. Financed under a special congressional appropriation, there is no cost to the state of Alaska for the CDSP. This program contributes numerous resources not normally available to law enforcement agencies for assistance specific to drug investigations.

ABADE participates with and receives assistance from several investigative agencies involved in drug enforcement. These agencies include the Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), the U.S. Postal Inspection Service, the Internal Revenue Service (IRS), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and U.S. Immigration and Customs Enforcement (ICE) as well as other state and local agencies.



Nature of the Drug Problem

Members of Alaska's law enforcement community and others who are part of Alaska's criminal justice system have long known that the greatest contributing factor to violent crimes, including domestic violence and sexual assault, is drug and alcohol abuse. It is also widely recognized that many of the accidental deaths that occur in Alaska are related to alcohol use. This is especially true in the western regions of the state.

While there is no question that many aspects of the drug and alcohol problem are unique to Alaska, ABADE strives to provide a continuing and coordinated effort that not only meets the needs of Alaska, but is also dovetailed with the National Drug Control Strategy. The Strategy underscores the social and economic costs to society and was developed to provide general guidance and a framework for federal, state, and local agencies in developing a counter drug effort. The Strategy's established goals are:

- Educate and enable America's youth to reject illegal drugs as well as alcohol and tobacco.
- Increase the safety of America's citizens by substantially reducing drug-related crime and violence.
- Reduce health and social costs to the public of illegal drug use.
- Shield America's air, land and sea frontiers from the drug threat.
- Break foreign and domestic drug sources of supply.

The National Institute of Justice's Arrestee Drug Abuse Monitoring (ADAM) program tracks trends in the prevalence and type of drug use among booked arrestees in urban areas. This data has played an important role in assembling the national picture of drug abuse in the arrestee population and has been a central component in studying the links between drug use and crime.

The last data available for these types of statistics are for calendar year 2003 and were found in an article published by the Alaska Justice Forum. Research conducted by ADAM continues to show several very serious trends. This data represents only males screened at one correctional facility.

There were a total of 943 male arrestees screened for being under the influence of drugs and alcohol at time of booking. Among those screened, 10.4% were under 21, while over 40.3% were 36 years of age or older. These age percentages do not seem to dovetail with the normal expectations since such a large percent of those arrested are over 36 years of age.

When arrested, 25.4% of the 943 arrestees tested positive for cocaine, 52% tested positive for marijuana and 12.1% tested positive for alcohol.

The primary reason that these persons were arrested is not indicated in the ADAM report, but a strong inference can certainly be made that among arrestees, the use of drugs is prevalent. Another interesting statistic reveals that among those interviewed 37.8% admitted to using cocaine in the last 12 months and 62.5% admitted to using marijuana in the last 12 months.

While there are no ADAM type statistics on hand to indicate drug or alcohol use among arrestees in the more rural areas of Alaska, there is certainly strong evidence that alcohol is a very large contributor to the reasons that rural citizens are arrested.

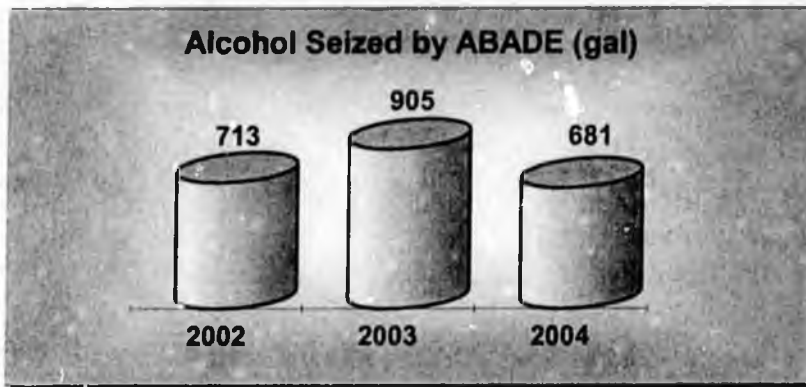
Drugs of Choice

Alcohol, cocaine, methamphetamine, marijuana and pharmaceuticals have been identified as the primary substances of abuse and are the focus of most law enforcement efforts. During 2004, methamphetamine use and manufacturing have increased significantly. Another area of significant increase was the use of prescription drugs, many of which are obtained with fraudulent prescriptions. Other drugs such as LSD, Ecstasy and designer and/or "club" drugs were also cause for concern.

Alcohol

Alaska's criminal justice professionals recognize that alcohol is the primary substance of abuse in Alaska and is the leading cause of violent, suicidal, and accidental deaths, especially in rural areas. Currently, 122 communities have voted in favor of local option statutes prohibiting the sale, importation, and/or possession of alcohol. Because alcohol remains legal in many areas of Alaska, illegal bootlegging activities continue to be a problem in the local option communities. Alcohol is easily transported to the villages via the U.S. Postal Service, local air carriers, private aircraft, boat, snow machines and express mailing services. Bootlegging alcohol has become a very lucrative business in rural Alaska.

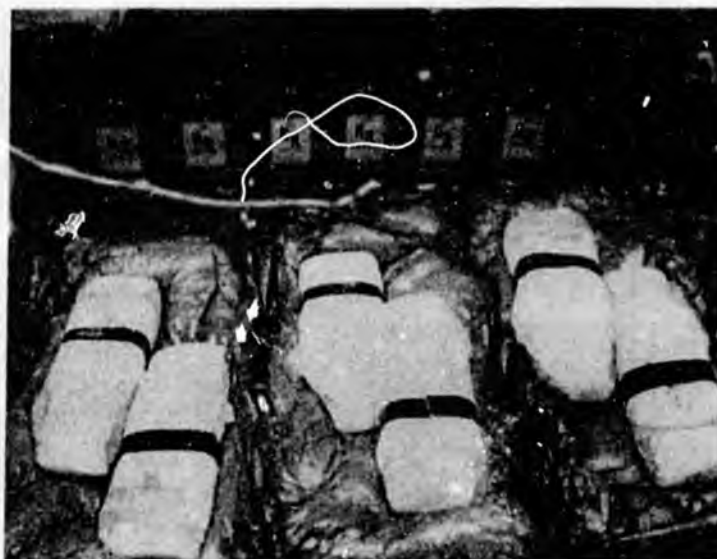
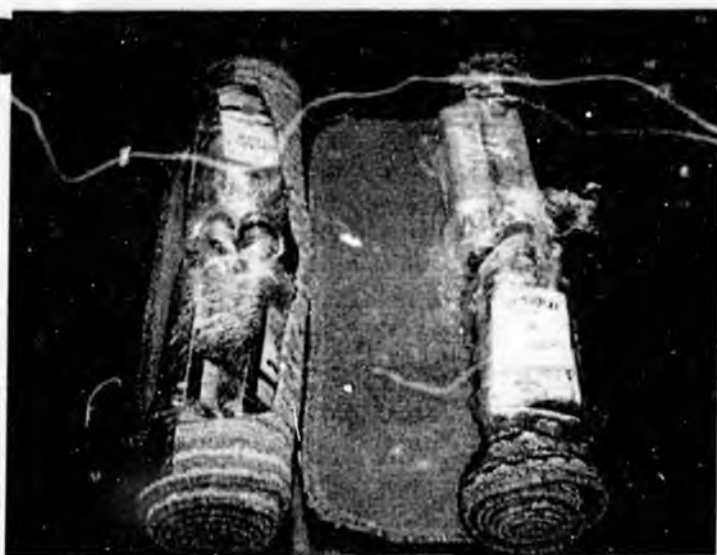
The Alaska State Troopers applied for and received federal funding for five investigators whose function is focused on alcohol issues. During most of 2004, all five investigators dedicated 100% of their time to alcohol investigations.



The economics of the illegal sales of alcohol is staggering. A bootlegger can purchase a 750-milliliter bottle of alcohol legally for \$10 or less in an urban liquor store. The same bottle of alcohol in Bethel, Kotzebue or Barrow may sell for \$50. In the more remote communities, alcohol can easily sell for \$150 to over \$300 per bottle depending on the supply and demand. The initial purchase for the bootlegger involves a minimal cash investment, a maximum cash return with little threat of being caught or criminally charged. A dollar-for-dollar comparison of alcohol and drugs purchased in Anchorage and then sold in many Alaskan villages breaks down as follows:

Substance	Investment	Return *
Cocaine	\$1.00	\$1.50
Marijuana	\$1.00	\$4.00
Alcohol	\$1.00	\$15.00

* Calculated at \$1.50 per bottle



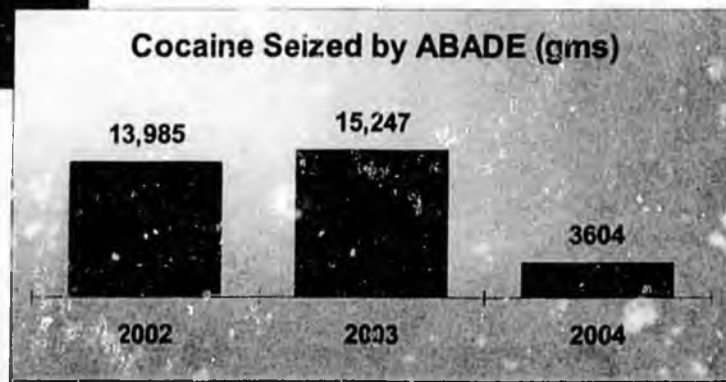
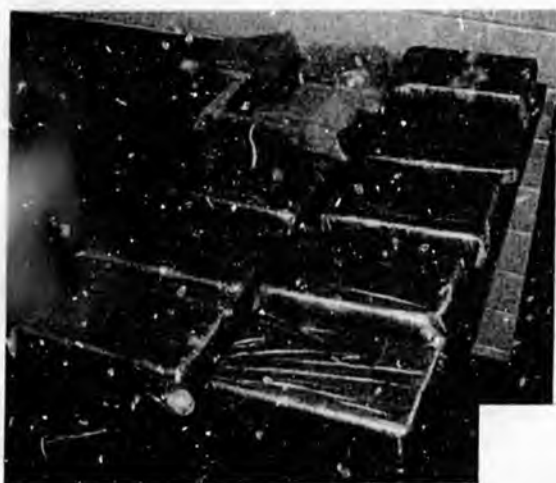
Cocaine

Cocaine continues to be a lucrative drug for sale and use in Alaska. Cocaine is readily available in most areas of the state and is seen with great frequency in powder form and crack cocaine in the major urban areas such as Anchorage and Fairbanks.

Cocaine is brought into Alaska concealed on passengers or in luggage through ports of entry such as the Ted Stevens Anchorage International Airport, and it is also shipped via the US Post Office or commercial parcel companies such as FedEx or UPS.

The cocaine brought into Alaska is typically packaged in kilogram quantities and later broken down by dealers into smaller quantities for retail sale. In powder form, it is normally sold in gram quantities for \$100-150 and its primary method of ingestion is by snorting.

Crack dealers use a process involving powder cocaine, water, baking soda and heat to produce crack cocaine, which is then sold in small rocks for \$20. The primary method of use for crack is by smoking.



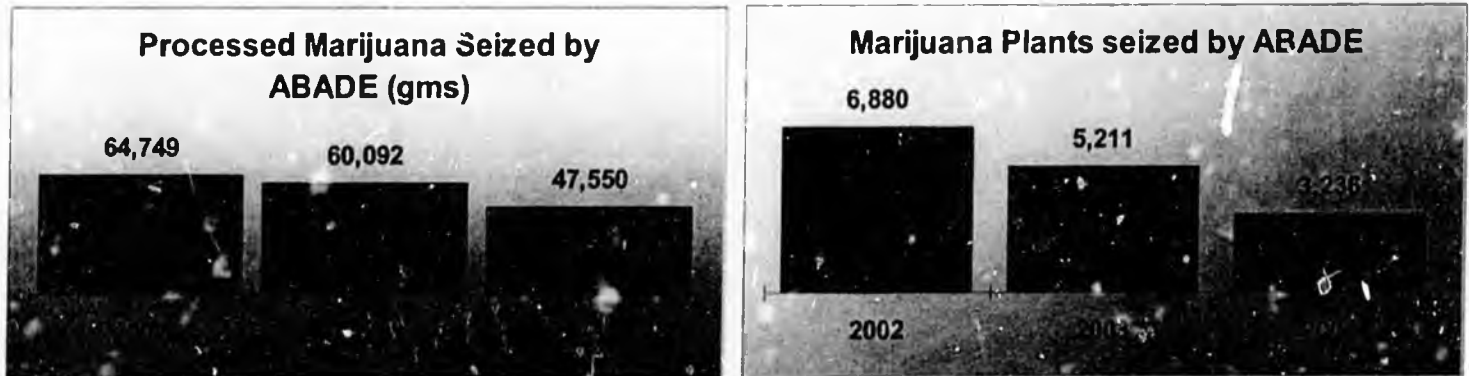
Marijuana

Marijuana is available throughout the state and is viewed as a gateway drug to other drugs for young adults and teenagers. Demand for Alaskan-grown marijuana continues to be high as a result of its exceptional tetrahydrocannabinol (THC) content. Because Alaskan produced marijuana is extremely high quality; Alaska is considered a marijuana exporting state.

During 2004, the investigation of commercial marijuana cultivations were diminished due to the increased use and manufacturing of methamphetamine. In addition, recent Alaska court decisions, like Noy and Crocker, have diminished the ability of the investigators to obtain search warrants for marijuana cultivations.

However, ABADE teams continue to find extremely sophisticated indoor growing operations. Most commercial marijuana grows take place along the road system in the south central part of Alaska from Anchorage to Fairbanks. The Mat-Su Valley area is the "Marijuana Growing Capital of Alaska", followed by Fairbanks and the Kenai Peninsula. It is not unusual for sites to be located in homes with hidden or underground rooms specifically designed for the cultivation of marijuana. These rooms are often equipped with surveillance cameras and state-of-the-art timers controlling temperature, lighting, water, humidity and air purifiers.

In some parts of the state, the local economy is directly affected by the influx of money from illegally produced marijuana. Proceeds from marijuana production are used for a multitude of purchases including fuel, grow equipment/supplies, utilities, vehicles, ATV's and building materials.



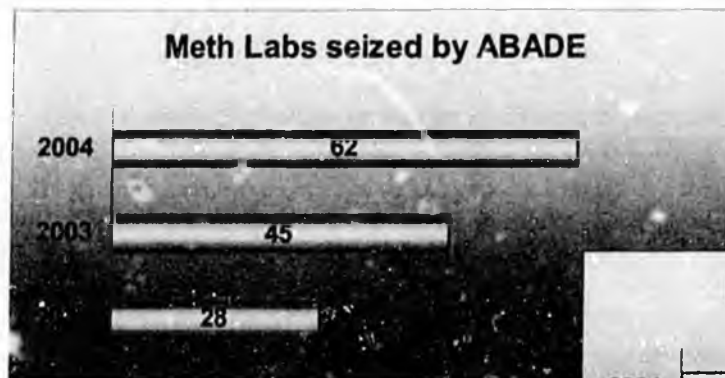
Methamphetamine

Methamphetamine use and manufacturing continues to be on the rise throughout the United States including Alaska. The manufacture and distribution of meth has reached alarming proportions. Methamphetamine, also known as meth, speed, crank, crystal and ice, produces an increase in energy and alertness, and a decrease in appetite. The effects, which also include an intense rush, can last up to 12 hours. It can be smoked, snorted, injected, or taken orally. The most frequent method of use is injection.

The DEA continues to conduct training in Alaska so that police officers will have the skills, knowledge, and tools to safely investigate suspected clandestine laboratories. There is now a sizable cadre of trained officers across the state. These officers are available to assist in the eradication of clandestine laboratories. They consist of federal, state, and local officers. In order to stay compliant with OSHA regulations, these members require annual re-certification as well as constant replacement of one time use equipment. In July 2004, 14 ABADE members were meth lab certified during training sponsored by CDSP.

Additionally, DEA has been extremely helpful in assisting in the cost of gross clean-up at clandestine lab sites. This requires a certified clean-up company to respond to the scene of each location, containerize larger items as well as the containers of chemical. These containers are then transported to a location for safe long-term storage and/or destruction.

Methamphetamine laboratories are being operated increasingly in single and multi-family residences in many neighborhoods. In addition to meth labs producing illegal, often deadly drugs, the clandestine nature of the manufacturing process and the presence of ignitable, corrosive, reactive, and toxic chemicals at the sites, have resulted in explosions, fires, toxic fumes, and irreparable damage to human health and to the environment. On several occasions in 2002, 2003, and again in 2004 labs were also discovered in hotel/motel rooms. Frequently children are found residing within clan lab sites.



Some of the commonly available items used in the manufacturing of meth include, Ephedrine or pseudoephedrine (found in cold/allergy tablets), lithium batteries, starter fluid, rock/table salt, matchbooks, coffee filters, acetone, aluminum foil and assorted kitchen glassware.

The methamphetamine problem in Alaska has certain peculiarities depending upon the region of the state in which the problem is located. The Anchorage, Mat-Su, Kenai Peninsula, and Fairbanks areas have a significant problem with clandestine labs that produce methamphetamine that is consumed in the local area. Southeast Alaska, specifically Ketchikan and Juneau, tend to have relatively large amounts of methamphetamine arrive already in a processed and usable form. The same tends to be true for coastal commercial fishery related communities.

Prescription Drugs

The sale and abuse of prescription drugs such as Oxycontin, Oxycodone, Methadone, Hydrocodone continue to be an issue in 2004. These drugs are being sought after for their pharmaceutical purity and ability to alter the central nervous system. With the identification of this increasing health hazard, statistics have been put into place for capturing the true impact anticipated in the upcoming years. Not only does the abuse of prescription drugs create a health hazard for the users, it creates a financial tragedy in the communities. The drugs vary in price and can cost anywhere from one dollar per milligram to two dollars per milligram depending on availability. With the increased demand for the drugs and a shortening of supply, many abusers may not have the money or insurance to pay for their addiction. Thus increasing property and violent crimes in the communities to pay for the drugs. It has been reported that tens of thousands of dollars are being spent to feed this growing abuse and addiction.

Prescription drugs have been linked to the following crimes; homicide, assault, prescription fraud, home invasion thefts and pharmacy robberies. People who are addicted to prescription facilitate their addition by doctor shopping, pharmacy shopping, forgery, and purchasing the drugs via the Internet.

It is the intent of the ABADE to increase pressure on those involved in the non-medical use, abuse, and sales of these addictive drugs. It has been said in the past that once problems of this sort have taken a toehold in the community, the community is at great risk for social decay from within. It has been and will continue to be the intent and purpose of the ABADE program not to allow that to happen in Alaska.



Alaska Bureau of Alcohol and Drug Enforcement Overviews

During the year of 2003, the Department of Public Safety (DPS) underwent substantial changes. One such change was the restructuring of the Statewide Drug Enforcement Unit (SDEU). With that restructuring, SDEU became the Alaska Bureau of Alcohol and Drug Enforcement (ABADE). ABADE, previously assigned to "I" Detachment, is now its own detachment. ABADE's program has expanded and been enhanced throughout the state. The command staff has grown from the traditional commander only to a commander and a deputy commander. During 2004, manning has been increased with the addition of three investigators and two administrative support personnel.

The six teams that comprise the Alaska Bureau of Alcohol and Drug Enforcement are spread throughout the state. Each team works hand-in-hand with the local law enforcement agencies and, in most locations, with the federal law enforcement agencies. The map below shows these teams and their area of responsibility.

⊗ AITF

❄ Fairbanks

⊖ Major Offenders

⊞ Palmer

➔ SEANET

★ WAANT



Alaska Interdiction Task Force

The importance of the narcotics interdiction effort at key locations is constantly being reaffirmed and the Alaska Interdiction Task Force (AITF) continued its success in making large seizures of US Currency, cocaine, crack, methamphetamine and other controlled substances during 2004.

The AITF is a federally funded task force sponsored by the Drug Enforcement Administration (DEA). The AITF is responsible for investigations that involve drug trafficking at various ports of entry to include passengers and luggage arriving at airport terminals, packages and cargo shipped through parcel delivery services, and commercial cargo carriers. AITF is strategically located in Anchorage near the Ted Stevens International Airport, allowing the unit easy access to the airport and shipping companies where most passengers and parcels arrive.

Cocaine primarily comes into Alaska through the Anchorage airport from various source cities in the lower 48 states. Various methods are used to transport cocaine, such as concealing it in carry-on luggage, secured underneath clothing, or hidden in shoes, just to name a few. It is also imported and distributed through parcel express companies and the U.S. Postal Service. With the increase in airport security since September 11, drug traffickers have shifted their transportation methods and started to use parcel and cargo delivery services on a more frequent basis. Members of the AITF have worked diligently to develop working relationships with key business in this industry.

AITF team members consist of a DEA group supervisor, two DEA agents, two Alaska State Troopers, an Anchorage Police officer, an Airport Public Safety officer, one ICE agent four members of the National Guard Counterdrug Support Program (CDSP) and an AST administrative clerk.

In addition to the cocaine seizures, the AITF seized significant amounts of U.S. currency as it was leaving Alaska through the airport. The currency is commonly found to be the proceeds of drug trafficking.

The amount of cocaine detected and interdicted in the last several years in Anchorage clearly indicates that the illegal possession, sale, and use of cocaine in Alaska is a significant problem. There are organizations with international connections moving very large quantities of controlled substances and drug related monies across the country and state.

During 2004, AITF made several large seizures of US Currency as well as multi-kilo seizures of opium being shipped to Alaska from Asia.

Fairbanks Area-wide Narcotics Team

The primary area of responsibility for the Fairbanks Area-wide Narcotics Team is interior Alaska, which includes Fairbanks and the surrounding area, north to Barrow, and east to the Canadian border. This team is made up of one AST sergeant, two AST investigators, and a Fairbanks Police Department investigator. The Fairbanks team also works closely with two DEA agents assigned to the Fairbanks area. DEA compliments the teams' investigative ability by additional manpower, resources and the possibility of federal prosecution of drug traffickers.

Their focus varies from the identification and investigation of street level dealers of crack cocaine to the investigation of large distributors of powder cocaine. Of significant concern in the Fairbanks area is the continuing threat of manufacturing, use, and distribution of methamphetamine. Clandestine methamphetamine laboratories are prevalent in the Fairbanks area and are being operated increasingly in or near single and multi-family homes, where public health and safety is at an extremely high risk. Marijuana cultivation also continues to be a problem in the Fairbanks area. During 2004, the team eradicated 9 meth labs and 13 marijuana grows.

In May, investigators received information that a vehicle was driving from Fairbanks to Anchorage with a large amount of cocaine. Unit members and DEA stopped the vehicle and a search of the vehicle resulted in a seizure of 400 grams of cocaine, one gram of crack, and three handguns. The three male occupants were arrested.

In July, Fairbanks Airport Police received information that a male subject was arriving at the Fairbanks International Airport carrying a large quantity of prescription drugs. Contact was made with the suspect and 998 Oxycodone tablets and 1.5 grams of methamphetamine were seized. Members of the Fairbanks unit assisted with the execution of the search warrants in relation and follow-up to the case.

In August, the Fairbanks unit, with assistance from DEA, University of Alaska Fairbanks Police Department and the Fairbanks Police Department served two separate search warrants and a knock-and-talk on suspected marijuana grow sites. Three marijuana grows with a total of 502 marijuana plants were seized as well as \$3,609 in cash and one shotgun. The investigation revealed that all three grows were being operated by the same group of defendants.

In October, Fairbanks unit investigators began assisting the Fairbanks Police Department with the surveillance of a homicide suspect. The Fairbanks unit investigators, Fairbanks city detectives, the FBI and DEA conducted a traffic stop on a subject related to the homicide victim after investigators witnessed a suspected drug deal. The individual was found to have approximately 210 grams of cocaine on his person as well as at his residence. A 2001 GMC pickup truck and \$14,000 in cash was seized. The suspect then worked for the investigators and purchased 1,134 grams of cocaine from another suspect. The suspect was arrested and a 1999 Ford Mustang was seized as evidence.

Mat-Su Drug Enforcement Team

The Mat-Su Drug Enforcement Team focuses on drug investigations within the Matanuska-Susitna region to include Palmer, Wasilla, Talkeetna, Glennallen, Valdez, and Cordova. The team is comprised of one AST sergeant, two AST investigators, one officer from the Palmer Police Department, one officer from the Wasilla Police Department, and one individual from CDSP. The Mat-Su team works closely with the local police departments and the uniformed patrol section of the Alaska State Troopers to educate, train, and support their efforts related to drug enforcement.

This team's primary enforcement duties have shifted from marijuana cultivation to the investigation of meth labs. However, the Mat-Su region still comprises the bulk of marijuana related seizures throughout Alaska and has long been recognized as the primary area of marijuana cultivation and distribution in the state.

The production of methamphetamine in illegal clandestine laboratories continues to be a significant problem across the Mat-Su area. During 2004 the number of meth labs tripled to 37, compared to 10 labs in 2003. The rise in the number of seized meth labs indicates that meth use and manufacturing is a steadily growing problem in the Mat-Su area. ABADE is continually analyzing this situation and adjusting resources as needed to maintain an aggressive enforcement effort.

In February, the Mat-Su Team executed a search warrant in Wasilla. A commercial marijuana cultivation operation was discovered. Investigators seized 128 live marijuana plants. Also seized during the search warrant were scales, grow equipment, processed marijuana, suspected cocaine, firearms and various drug paraphernalia. The processed marijuana had a weight of 7.49 pounds with a street value estimated at approximately \$30,000.

Also in February the Mat-Su Team served a search warrant and seized a commercial marijuana cultivation operation consisting of 120 live plants. Investigators also seized processed marijuana, related grow equipment, scales and drug paraphernalia. One person was arrested and charged with four counts of Misconduct Involving a Controlled Substance in the 4th degree and three counts of contributing to the delinquency of minor.

In May, the Mat-Su unit executed a search warrant on a suspected meth lab at the Goldminer Hotel in downtown Palmer. This investigation started after a suspicious fire was discovered in a City of Palmer garbage truck. It appeared that the fire was started from the chemicals from a meth lab. Further investigation led investigators to the Goldminer Hotel where two suspects were discovered in the process of manufacturing methamphetamine. Both suspects were arrested at the scene.

In April, troopers with 'B' Detachment located a possible meth lab in Wasilla. A search was obtained for the residence and one of the largest meth labs seized during 2004 was discovered in the crawl space of the residence. Also found at the time of the search warrant was a loaded 9mm pistol and an illegally sawed off shotgun. Both suspects were located and arrested for the manufacturing of methamphetamine.

In October, the Mat-Su Unit along with investigators from DEA, the Anchorage Interdiction Task Force, Palmer Alaska Bureau of Investigation and Palmer Patrol executed a search warrant in Wasilla. Investigators delivered a parcel containing approximately 20 grams of crystal methamphetamine that was shipped from Arizona to the Wasilla address. Upon execution of the search warrant investigators seized approximately one ounce of methamphetamine, packaging used for distribution, digital scales and \$1,200 in US Currency. Firearms and miscellaneous drug paraphernalia was also seized. Two suspects were arrested at the residence.

Major Offender Unit

During 2003, the Department of Public Safety reinstated a statewide Major Offenders Unit. Ultimately the unit is located in Anchorage, but would have the ability to travel and conduct long-term drug and alcohol investigations anywhere in the state, targeting major offenders. Once the unit becomes established, AST plans to invite other agencies, such as, DEA, and the Anchorage Police Department to participate. The Major Offenders Unit is co-located with the Alaska Interdiction Task Force, allowing for better communication and cooperation between the units.

During most of 2004, the Major Offender Unit consisted of 2 to 3 investigators supervised by an Officer In Charge. The members worked to support other ABADE units when available and also assisted the Alaska Bureau of Investigations.

Late in 2004, the unit was completed with the assignment of a sergeant and two additional investigators, which brought the unit to a total of five investigators. In addition, an administrative clerk was added as well as a part-time prosecutor from the Department of Law. The prosecutor has been assigned to assist with legal questions, case development assistance and prosecution of drug and alcohol cases. The unit has been actively investigating several cases around the state.

Southeast Alaska Narcotics Enforcement Team

The primary responsibility for drug enforcement in southeast Alaska lies with the Southeast Alaska Narcotics Enforcement Team (SEANET). This team is composed of one AST sergeant, two Juneau Police Department officers, all located in Juneau and one AST investigator located in Ketchikan. SEANET also works closely with officers from the Ketchikan, Sitka, Wrangell, Yakutat, Craig, Haines, Skagway, Hoonah and Petersburg Police Departments. The teams focus ranges from street level dealers to major offenders. Some of the investigative methods used by this team include interdiction activities and undercover operations. This program works hand-in-hand with the **SouthEast Alaska Cities Against Drugs (SEACAD)** project that is oversighted by the Sitka Police Department.

Of particular note in Southeast Alaska is the quick rise in the availability, sales, possession, and use of methamphetamine. It appears that most of the substance is introduced into the region in a powder form, having been manufactured at other locations and imported into Southeast Alaska.

In June SEANET seized 1,679 grams of cocaine with a street value of approximately \$120,000 from a vehicle shipped to Juneau on a barge from Seattle, Washington. Two suspects have been charged.

Also in June, the U.S. Coast Guard and the Royal Canadian Mounted Police (RCMP) made contact with four individuals on a 20-foot skiff after information was provided by SEANET Juneau. The RCMP arrested 3 U.S. citizens at the scene for possession of 4 ounces of cocaine, 6 pounds of marijuana and 200 grams of Psilocybin mushrooms. The fourth suspect, a Canadian citizen, escape from the scene on foot.

In September, SEANET in Juneau discovered 2,203 grams of narcotics hidden on a vehicle being shipped from Seattle to Juneau on the Alaska Marine Highway Ferry system. This investigation led to the arrest of 3 people in Juneau who were attempting to import 495 grams of cocaine, 444 grams of methamphetamine and 1,097 grams of cocaine base (crack). Follow up investigation led to the delivery of a kilo of cocaine in Seattle and the arrest of another suspect.

On 9/16/04, SEANET Ketchikan completed a two-month investigation resulting in the seizure of 266 Oxycontin pills with a street value of approximately \$4,095

On 10/28/04, SEANET and Juneau Police Department seized \$13,100 in cash. The cash was suspected of being proceeds from drug sales. A residential search warrant resulted in the seizure of a stolen Tech-9 semi-auto pistol.

On 11/03/04, SEANET Juneau intercepted 5 pounds of marijuana being shipped from Seattle, Washington and \$28,000 in cash. The suspect had hidden the marijuana inside a new washing machine that was shipped to Juneau. One suspect was arrested.

Western Alaska Alcohol and Narcotics Team (WAANT)

This team's area of responsibility is Alaska's west coast, to include: Kotzebue, Nome, Bethel, Kodiak, Dillingham, the Aleutian Chain, and the Kenai Peninsula. For most of 2003, the WAANT team consisted of one AST sergeant and two AST investigators in Anchorage; one AST investigator and one officer from Soldotna Police Department in Soldotna; one AST investigator and one officer from Bethel Police Department in Bethel; one AST investigator in Kodiak, working with two investigators from Kodiak Police Department.

One of the positions in Bethel and one in Anchorage are dedicated specifically to alcohol interdiction and investigations. During 2003, three troopers previously assigned to "C" Detachment were reassigned to the WAANT unit. These three investigators, located in Bethel, Nome and Kotzebue will focus on alcohol interdictions.

Due to the vast number of local option communities in Western Alaska, a large portion of this team's principal focus is on alcohol enforcement. They target smugglers and bootleggers through undercover operations and interdictions.

Two common methods of importing alcohol and illegal drugs into rural communities are via the U.S. Postal system and local airlines. Alcohol shipped legally to regional hubs such as Nome, Bethel, and Kotzebue is then illegally distributed to local option communities that have banned alcohol or have limited the possession of alcohol under the local option laws of Alaska.

Because much of the alcohol and drugs, being sold illegally in Alaska are shipped through the U.S. mail, the U.S. Postal Inspectors Service conducts interdictions with direct support from CDSP. These efforts consist mainly of US Postal Inspectors assisted by CDSP members monitoring packages en route to outlying villages and communities through the Anchorage postal hub facility. Suspicious packages are brought to the attention of the Postal Inspectors, who then decide how best to investigate the shipment.

The investigations of many of these seizures are coordinated through AST and/or other local law enforcement entities. The Postal Inspectors office relies heavily on support from ABADE. This support includes resources like scent detection canines, intelligence information and follow-up efforts. Not only do these resources assist in the seizure, they also help successfully investigate and prosecute those involved in alcohol bootlegging and drug trafficking.

In other WAANT areas of responsibility, the team has conducted long term undercover operations in Kodiak, Soldotna and Seward. Investigations vary from marijuana grows and meth labs to drug distributors dealing marijuana, meth, cocaine and prescription drugs.

In January, WAANT investigators in Anchorage discovered a suspicious box being shipped to Kotzebue. Investigators received consent to open the box and 4 pounds of marijuana was seized.

In February, investigators seized 5 bottles of alcohol being imported into the local option community of Selawik. As a result, a 2003 Polaris snow machine was also seized.

A contact at the Kotzebue airport resulted in the seizure of 94 grams of marijuana and the service of a search warrant. During the search investigators discovered 130 blasting caps, 500 feet of time/fuse cord and a small amount of C4 explosives. Also seized were 39 seal bombs, 28 rifles, 10 handguns, 8 shotguns and a 37mm gas gun.

In July, Kotzebue investigators saw a person loading alcohol into a vehicle at the airport. The vehicle operator drove to an 18-foot boat where the suspect loaded and hid the alcohol on the boat. The alcohol was being delivered to the local option community of Kivalina. Property seized from the investigation included the boat valued at \$8500, the vehicle valued at \$12,000 along with 60 cans of beer and 14 bottles of alcohol. The alcohol was valued at \$5100. Three suspects were arrested in this case.

In August, Soldotna WAANT investigators served a search warrant on a residence suspected of having a marijuana grow. Over 100 marijuana plants were discovered in several underground storage units. The property, consisting of a two-story, structure was seized and forfeiture proceedings were begun against the owner by DEA in Anchorage. One person was arrested in this case.

A contact at the Kotzebue airport led to the service of a search warrant at a known marijuana distributor's residence. The search resulted in the seizure of 3 Skidoo snow machines, one Honda 4 wheeler, a 20-foot Bayliner boat, one 16-foot Lund boat and other property totaling approximately \$49,000. In addition, \$11,975 in cash and 18 firearms were seized and 5 suspects were arrested.



DRUG ENFORCEMENT ADMINISTRATION

The Drug Enforcement Administration (DEA) in Anchorage is deeply involved in working with all state and local drug units to enhance and facilitate investigations of major offenders throughout Anchorage.

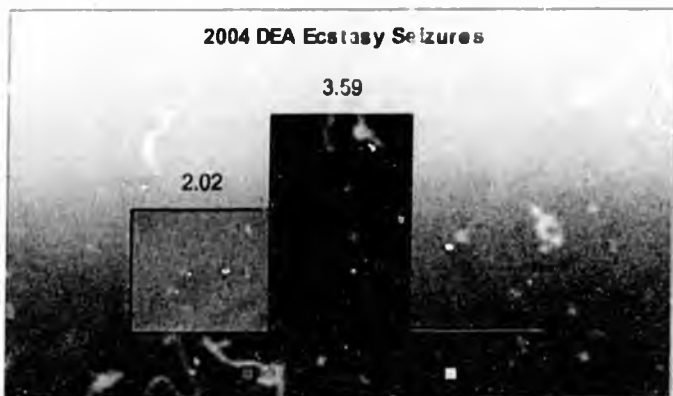
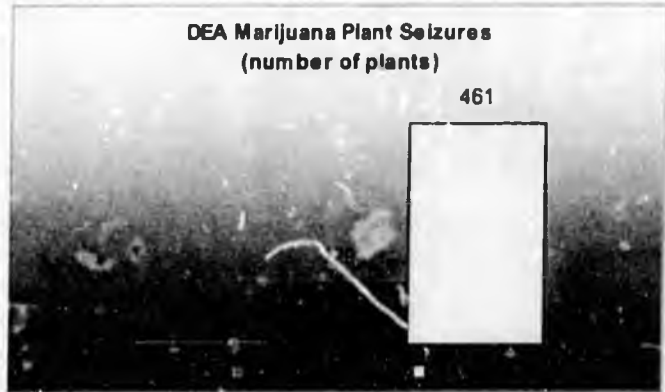
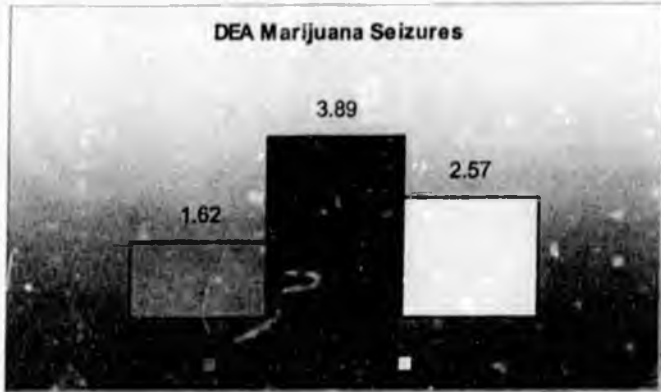
The DEA has added several Special Agents to Alaska in the last few years to support the entire state of Alaska, including two positions in Fairbanks that work hand-in-hand with the Alaska State Troopers, Alaska Bureau of Alcohol and Drug Enforcement to investigate a wide variety of drug related crimes in and around the area.

They are the host agency for the Alaska Interdiction Task Force, a joint effort involving DEA, AST, Ted Stevens Anchorage International Airport Police, Anchorage Police Department, Postal Inspectors, CDSP, and several other agencies as needed.

DEA continues to furnish training to state and local officers to include topics related to clandestine methamphetamine laboratories. DEA provided the funds for members of the Alaska Interdiction Task Force and other law enforcement personnel to be trained and get re-certified in clandestine laboratory safety and investigations. In addition, they have facilitated participation of troopers in a Drug Unit Commanders Academy held in Quantico, Virginia. The DEA Anchorage office is also currently planning additional training to state and local law enforcement personnel through a DEA sanctioned "Two-Week Basic Drug Enforcement School."

DEA continues to facilitate forfeiture proceedings related to assets and funds seized as a result of criminal investigations and drug trafficking. This effort allows state and local law enforcement agencies to receive a portion of the assets seized, which in turn funds additional criminal investigations.

Seizure Statistics for DEA Anchorage



Emerging Trends in 2004

The most significant trend in 2004 continues to be the explosion in the manufacturing and abuse of methamphetamine throughout Alaska. The number of illicit methamphetamine labs has continued to rise since 2002 when 29 labs were seized statewide, 66 labs were seized in 2003 and 80 labs were seized in 2004. Due to the volatile chemicals involved, investigators need to be trained and certified and wear hazardous material protective gear when responding to methamphetamine labs. Several residential fires were reported this year were caused by the manufacturing of methamphetamine. Also during 2004, several methamphetamine labs were discovered inside hotel/motel rooms creating chemical and fire hazards for other civilians that also occupy the buildings. Violent crime related to methamphetamine manufacturing and usage also appears to be on the rise. During the year there were several homicides that have been connected to methamphetamine. The sale and abuse of methamphetamine is as much on the rise as the number of meth labs.

A trend that continues from year to year is the illegal transport of alcohol and drugs to villages throughout Alaska. ABADE will continue to aggressively pursue and investigate the illegal possession, shipment and sale of alcohol in local option communities and other illegal drugs throughout Alaska. With funding from federal sources, as well as traditional program funds, the dedication to the task of pursuing bootleggers and drug dealers has been expanded and enhanced. Between the efforts of ABADE, Alaska State Troopers, Village Public Safety Officers, local law enforcement, federal agencies and the promised support of Governor Frank Murkowski, we will strive to decrease the alcohol and drug problem within the State of Alaska.

Summary

The Alaska Bureau of Alcohol and Drug Enforcement, with its unique ability to interdict and investigate cases across the state, recognizes that drug abuse is not confined to any one geographical location or any economic strata in our state. Drug and alcohol abuse affects all Alaskans, despite social, ethnic, racial and economic barriers.

The Alaska State Troopers, Alaska Bureau of Alcohol and Drug Enforcement is committed to working with all interested agencies in the fight against substance abuse throughout the state by using innovative concepts to deal with the illegal sale and distribution of alcohol and drugs. We are also committed to focusing on increased awareness and knowledge of drug abuse through educational presentations to the Public Safety Academy and in public forums, such as schools, service organizations and other community groups.



The 2004 Annual Drug Report is a publication of the Alaska State Troopers, Alaska Bureau of Alcohol and Drug Enforcement. It can be accessed via the Department of Public Safety Internet site therefore there is no publication cost and is intended to inform Alaskans about the type and frequency of drug related crime reported in Alaska during 2004.

The Alaska State Troopers, Alaska Bureau of Alcohol and Drug Enforcement supplied the majority of information and photos presented in this report. Additional data was obtained from Office of National Drug Control Policy (ONDCP) publications, the National Criminal Justice Reference Service (NCJRS) and the Alaska Justice Forum.



HB

377

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 377
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title: Exemption: Res. Bldg. Drawing & Specs RDU: Corp. Bus & Prof Licensing (117)
 Component: Corp. Bus & Prof Licensing
 Sponsor: Meyer
 Requester: Labor and Commerce Component No.: 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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						
1156 Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation amends AS 08.48.331(a) by making an exemption from certain registration and practice requirements for persons preparing drawings or specifications related to the construction of certain buildings. New funds are not required to implement the provisions of this legislation.

Prepared by: Katherine Mason, Administrative Manager
 Division: Corporations, Business and Professional Licensing
 Approved by: William C. Noll, Commissioner
 Agency: Commerce, Community, and Economic Development

Phone: (907) 465-2572
 Date/Time: 2/23/06 3:05 PM
 Date: 2/23/2006



ALASKA STATE LEGISLATURE
Representative Kevin Meyer

Sponsor: Representative Meyer
Current Version: HB 394 24-LS1471A
Contact: Mike Pawlowski 465-2812
Date: March 2, 2006

Committee Substitute Comparison Sheet for House Bill ~~374~~ 377

Short Title:

"EXEMPTION: RES. BLDG. DRAWINGS & SPECS."

Summary:

- HB 377 adds an exemption to the requirement to have designs approved by an architect or engineer for residential buildings intended for not more than four families to three stories from the current two stories.

Changes in blank CSHB 377:

The exemption added in HB 377 is changed to a residence of not more than **two** families from not more than **four** families. Where HB 377 allowed a fourplex, CSHB 377 will instead allow a three story duplex to be built without the approval of an architect or engineer.

24-LS1471\G
Bannister
2/28/06

CS FOR HOUSE BILL NO. 377()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVE MEYER

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to an exemption from certain registration and practice requirements**
2 **for persons preparing drawings or specifications related to the construction of certain**
3 **buildings and the grounds of the buildings."**

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

5 *** Section 1. AS 08.48.331(a) is amended to read:**

6 (a) This chapter does not apply to

7 (1) a contractor performing work designed by a professional architect,
8 engineer, or landscape architect or the supervision of the construction of the work as a
9 supervisor or superintendent for a contractor;

10 (2) workers in building trades crafts, earthwork, grounds keeping, or
11 nursery operations, and superintendents, supervisors, or inspectors in the performance
12 of their customary duties;

13 (3) an officer or employee of the United States government practicing
14 architecture, engineering, land surveying, or landscape architecture as required by the

1 person's official capacity;

2 (4) an employee or a subordinate of a person registered under this
3 chapter if the work or service is done under the direct supervision of a person
4 registered under this chapter;

5 (5) associates, consultants, or specialists retained by a registered
6 individual, a partnership of registered individuals, a corporation, a limited liability
7 company, or a limited liability partnership authorized to practice architecture,
8 engineering, land surveying, or landscape architecture under this chapter, in the
9 performance of professional services if responsible charge of the work remains with
10 the individual, the partnership, or a designated representative of the corporation,
11 limited liability company, or limited liability partnership;

12 (6) a person preparing drawings or specifications for

13 (A) a building for the person's own use and occupancy as a
14 single family residence and related site work for that building;

15 (B) farm or ranch buildings and their grounds unless the public
16 health, safety, or welfare is involved;

17 (C) a building that is intended to be used only as a residence by
18 not more than

19 (i) four families and that is not more than two stories
20 high and the grounds of the building; or

21 (ii) two families and that is not more than three
22 stories high and the grounds of the building;

23 (D) a garage, workshop, or similar building that contains less
24 than 2,000 square feet of floor space to be used for a private noncommercial
25 purpose ~~and~~ the grounds of the building;

26 (7) a specialty contractor licensed under AS 08.18 while engaged in
27 the business of construction contracting or designing systems for work within the
28 specialty to be performed or supervised by the specialty contractor, or a contractor
29 preparing shop or field drawings for work that the specialty contractor has contracted
30 to perform;

31 (8) a person furnishing drawings, specifications, instruments of

1 service, or other data for alterations or repairs to a building or its grounds that do not
2 change or affect the structural system or the safety of the building, or that do not affect
3 the public health, safety, or welfare;

4 (9) a person who is employed by a postsecondary educational
5 institution to teach engineering, architectural, or landscape architectural courses; in
6 this paragraph, "postsecondary educational institution" has the meaning given in
7 AS 14.48.210;

8 (10) an officer or employee of an individual, firm, partnership,
9 association, utility, corporation, limited liability company, or limited liability
10 partnership, who practices engineering involved in the operation of the employer's
11 business only, and further provided that neither the employee nor the employer offers
12 engineering services to the public; exclusions under this paragraph do not apply to
13 buildings or structures whose primary use is public occupancy;

14 (11) a person while involved in revegetation, restoration, reclamation,
15 rehabilitation, or erosion control for disturbed land;

16 (12) a person while maintaining or directing the placement of plant
17 material;

18 (13) an employee, officer, or agent of a regulatory agency of the state
19 or a municipality when reviewing drawings and specifications for compliance with the
20 building codes of the state or a municipality if the drawings and specifications have
21 been signed and sealed by a professional architect or professional engineer or the
22 preparation of the drawings and specifications is exempt under this section from the
23 requirements of this chapter; in this paragraph, "building codes" includes codes
24 relating to building, mechanical, plumbing, electrical, and fire standards.



DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Division of Corporations, Business and Professional Licensing

Frank H. Murkowski, Governor
William C. Noll, Commissioner
Rick Union, Director

**BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS
AND LAND SURVEYORS**

February 24, 2006

RE HB 377

To Whom It May Concern:

The Board of Architects, Engineers, and Land Surveyors has become aware that the Alaska State Legislature is considering modifying AS 08.48.031(a)(6)(C) to allow three-story residences to be exempt from the requirement that they be designed by a registered design professional (Architect & Engineer).

This decision would allow a contractor to build a three-story home without the involvement of a professional architect or engineer.

This decision would put at risk of harm those that the statute (AS 08.48) was created to protect. The design loads on a structure can significantly increase with the addition of a third story. This affects placement of the structure on a lot, foundation, wall, ceiling, and roof design, as well as the floor plan, placement of windows, doors, etc.

Special materials and construction techniques not typical to a two-story residence are often required to handle these increased loads. Assuming a contractor would be able to recognize the dangers, properly calculate the loads, and modify the design to prevent a structural failure is a dangerous assumption. Contractors are not required by the State of Alaska to have the education, training, and verification by exam to ensure they are capable of performing this work.

This statute sets forth the requirements for Architects and Engineers to ensure they are competent to design these structures in a manner that is safe for the public.

The Board of Registration for Architects, Engineers, and Land Surveyors (AELS Board) is opposed to the modification of this statute in the interest of public safety.

Sincerely,

Kenneth D. Maynard, Chair
AELS Board
(907) 343-5282
kmaynard@uskh.com



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

SPONSOR STATEMENT

HB 377

"An Act relating to an exemption for certain registration and practice requirements for persons preparing drawings or specifications related to the construction of certain buildings."

State law requires that an engineer or architect prepare drawings or specifications for a residence if it is more than two stories high. However, the building codes adopted by the State Fire Marshall and many municipalities require an engineer or architect only if a residence is more than three stories high.

The process of consulting with an engineer or architect adds an unnecessary expense to the construction or renovation of a home. House Bill 377 amends Alaska statute to reflect the standard already present in the adopted codes across the state. HB 377 will allow contractors and homebuilders to build or expand a residence if it is not more than three stories high.



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: February 15, 2006
TO: Representative Kevin Meyer
FROM: Mike Pawlowski
RE: Sectional Analysis for HB 377
(Version No. 24 - LS1471\A)

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Amends the exemption to the requirements of title 8 chapter 48 in AS 08.48.331 (a) (6) (C) for residential buildings smaller than a four-plex to three from two stories.



Affiliated with NAHB

February 15, 2006

Representative Kevin Meyer
State Capitol, Room 515
Juneau, AK 99801-1182
FAX 907-465-3476

Dear Rep. Meyer:

Regarding legislation (HB 377) for stories above grade the Anchorage Home Builders Association fully endorses and supports this measure.

This is merely a housekeeping measure to align the state statute, the International Building Code and the International Residential Code. Currently the two are inconsistent. The state statute is two-stories and International Codes are 3-stories.

Sincerely,

Ray Hickel
President
Anchorage Home Builders Assn.

Larry Partusch
Treasurer
Anchorage Home Builders Assn.

Harley Sudsbury
Past President
Anchorage Home Builders Assn.

Eric Schach
Vice President
Anchorage Home Builders Assn.

Sue Wolfe
Secretary
Anchorage Home Builders Assn.

"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

