

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2006 80/2

11543 HOUSE LABOR & COMMERCE

**HB**

**402**



# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB402-DPS-CRI-2-17-06  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
 Title "An Act relating to marriage brokers and advertisers RDU Statewide Support  
and to dating and social referral services" Component Alaska Criminal Records and  
 Sponsor Representative Kertula Identification \_\_\_\_\_  
 Requester House Labor and Commerce Committee Component No. 1190

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

Estimate of any current year (FY2006) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill establishes controls for marriage brokers (persons who offer services regarding marriage, dating, or other social referrals). The bill requires clients (persons who live in Alaska who contract with or employ brokers) to provide brokers information about the client's criminal, domestic violence protective order, and marital history. The broker must also provide to recruits (persons who live outside the United States) information in their native languages about client history, immigration, domestic violence, emergency assistance, and rights of crime victims. A broker's failure to comply may result in a civil action with substantial monetary penalties. Unfortunately, the provisions regarding obtaining the client's criminal justice history information - new subsection AS 08.02.100(b) - cannot be complied with by the Department of Public Safety because the provisions regarding access to national criminal history records do not comport with state and federal law. There would therefore be no fiscal impact on the department.

Prepared by: Director David Schade Phone 907-269-0202  
 Division Statewide Services Date/Time 2/17/06 8:51 AM  
 Approved by: Commissioner William Tandeske Date 2/17/2006  
 Agency Department of Public Safety

pm 17

I'm Saralyn Tabachnick, ED of AWARE, Aiding Women in Abuse & Rape Emergencies, here in Juneau. I'm here to speak in support of House Bill 402, which serves to protect the safety and well being of foreign brides, to prevent abusive U.S. citizens from enticing foreign women into abusive relationships, and ultimately to promote safe and healthy marriages.

In the past year, AWARE staff has worked intensely with two women who came to Alaska, Juneau, as foreign brides, and within a couple years, both experienced domestic violence from their husbands. These women are extremely vulnerable, have limited English language skills, are without other resources in the United States, and are unfamiliar with the United States legal system. These are complex issues for battered immigrant women who fear for their and their children's safety and immigration status, particularly when their only source of information is their abusive husband.

Under this bill, foreign brides will receive, in their native language, the marital history of their potential spouse, a criminal history record check including incidents of civil protective orders, explanations regarding marriage based immigration status, and information about domestic violence and appropriate interventions including crisis interventions.

I don't have enough information to say whether or not the women served by AWARE could have avoided violent relationships were this bill in place, however they certainly would have been aware of the resources available to them sooner. And providing foreign brides with information they need and deserve, and holding International Marriage Brokers to a standard of safety and accountability, are critical components for safety.

Within the United States, the federal Violence Against Women Act of 2005 addresses International Marriage Brokers and concerns for safety and access to information for foreign brides. I am hopeful that the Alaska Legislature will pass similar legislation, ~~HB 402~~, this session.

<sup>v</sup>  
move forward w/  
Thank you very much.

return receipt

# ALASKA STATE HOUSE OF REPRESENTATIVES

716 W. 4<sup>th</sup> Ave  
Anchorage, AK 99501  
Room 610



Phone (907)-269-0265  
Fax# (907)-269-0264

## Representative Tom Anderson

### FACSIMILE

To: Legislative Legal

Fax: 2029

From: Josh Applebee

Date: 3/1/2006

Re: CS for HB 402

CC:

Urgent

For Review

Please Comment

Please Reply

Please Recycle

Good Afternoon,

Attached please find the Blank CS for HB 402 24-LS1432/Y. The House Labor and Commerce Committee adopted this version and passed it from committee unchanged. Please deliver the final to Room 408.

Thanks.

Please let me know if you have any questions or if there is anything else you need.

-Josh

465-4954

24-LS1432VY  
Mischel  
2/21/06

**CS FOR HOUSE BILL NO. 402( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FOURTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s)** REPRESENTATIVES KERTTULA, Lynn

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act relating to marriage brokers and advertisers and to dating and social referral**  
2 **services."**

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

4 **\* Section 1.** AS 08.02 is amended by adding a new section to read:

5 **Sec. 08.02.100. Marriage brokers and advertisers; dating and social**  
6 **referral services; criminal justice information.** (a) Except as provided in (f) of this  
7 section, a person may not provide or advertise services as a marriage broker in the  
8 state unless the person

9 (1) requires each client to provide in writing, certified under penalty of  
10 perjury,

11 (A) a complete criminal justice information report;

12 (B) a complete list of restraining orders and civil protective  
13 orders, if any, issued by any court that involve the client;

14 (C) a complete marital history;

1 (2) provides information to each recruit in the recruit's native language  
2 that explains

3 (A) the requirements and information provided under (1) of this  
4 subsection, with a notice that the information has not been verified for  
5 accuracy;

6 (B) the fiance or fiancée visa application process and marriage-  
7 based immigration status under federal law;

8 (C) that domestic violence is illegal in the United States and the  
9 penalties that attach under state and federal law;

10 (D) that assistance is available to victims of domestic violence,  
11 including protective orders, free legal advice, and shelter services;

12 (E) the emergency and assistance procedures, including the 911  
13 system, the national domestic violence hotline, the national sexual assault  
14 hotline, and the state assistance telephone numbers; and

15 (F) the rights of victims of domestic violence, sexual assault,  
16 human trafficking, and related crimes in the United States and in the state,  
17 including the right to petition for residency status independent of, and without  
18 the knowledge, consent, or cooperation of, the spouse.

19 (b) The criminal justice information required under (a)(1) of this section must  
20 be obtained by submitting the client's fingerprints and the required fees under  
21 AS 12.62.160 to the Department of Public Safety for criminal justice information and  
22 a national criminal history record check under AS 12.62.400. The Department of  
23 Public Safety shall submit the fingerprints to the Federal Bureau of Investigation for a  
24 national criminal history record check. The information obtained shall be submitted to  
25 the marriage broker or advertiser for compliance with this section.

26 (c) The marital history report required under (a)(1) of this section must include  
27 whether the client

28 (1) is currently married;

29 (2) has previously been married and, if so,

30 (A) how many times;

31 (B) how each marriage was terminated;

1 (C) when each marriage was terminated; and

2 (3) has previously sponsored a foreign national for purposes of  
3 marriage or engagement to be married.

4 (d) The Department of Law shall enforce this section and may institute a civil  
5 action against a person who violates this section.

6 (e) A person who violates the requirements of this section is subject to a civil  
7 penalty not to exceed \$20,000 for each violation. A penalty collected under this  
8 section shall be deposited in the general fund and accounted for separately. The  
9 legislature may appropriate money collected under this section to the crime victim  
10 compensation fund created in AS 18.67.162 to be used to compensate victims of  
11 violent crime under AS 18.67. In determining the amount of the civil penalty, the court  
12 shall consider

13 (1) any previous violation of AS 08.02.100;

14 (2) the seriousness of the violation, including the nature,  
15 circumstances, extent, and consequences of the violation;

16 (3) any evidence of good faith on the part of the marriage broker or  
17 advertiser; and

18 (4) the potential for deterrence.

19 (f) Nothing in this section prohibits a person or organization from engaging in  
20 traditional matchmaking of a cultural or religious nature that is not for profit and that  
21 is otherwise consistent with international, federal, state, and local laws.

22 (g) In this section,

23 (1) "client" means a person who resides in this state and contracts with  
24 or otherwise agrees to employ a marriage broker or advertiser for services related to  
25 marriage, engagement, dating, or another social referral;

26 (2) "marriage broker or advertiser" means a person who engages by  
27 Internet or other electronic means, in writing, or in person, in negotiating with,  
28 advertising to, publicizing to, or contracting with a state resident, for services related  
29 to marriage, engagement, dating, or another social referral with a person who resides  
30 outside of the United States;

31 (3) "recruit" means a person who resides outside of the United States

1 and who is contacted by or who contacts a marriage broker or advertiser for the  
2 purpose of providing or acquiring marriage, engagement, dating, or another social  
3 referral service.

4 \* **Sec. 2.** AS 12.62.400 is amended by adding a new paragraph to read:

5 (14) a position involving marriage brokering or advertising or dating or  
6 social referral services under AS 08.02.100.



## Representative Beth Kerttula

---

Alaska State Legislature, District 3  
State Capitol • Juneau, Alaska 99801-1182 • (907) 465-4766 • Fax (907) 465-4748  
E-mail: Representative\_Beth\_Kerttula@legis.state.ak.us • <http://www.kerttula.net>

### MEMORANDUM

**TO:** Representative Tom Anderson, Chair Labor & Commerce Committee  
**FROM:** Representative Beth Kerttula *Beth*  
**SUBJECT:** Changes made in CS for HB 402 Marriage Brokers And Advertisers  
**DATE:** February 21, 2006

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Committee Substitute 24-LS1432\Y for HB 402 has the following changes:

- 1) Section 1 (a) adds reference to exemption in (f).
- 2) Section 1 (f) adds exemption for traditional matchmaking of a cultural or religious nature that is not for profit.
- 3) Section 1 (g) adds additional language clarifying the definition of "marriage broker or advertiser." Adds language indicating that the marriage broker is contracting with a state resident for services related to marriage, etc. **with a person who resides outside of the United States.**

24-LS1432Y  
Mischel  
2/21/06

**CS FOR HOUSE BILL NO. 402( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FOURTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVES KERTTULA, Lynn**

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7 **section, a person may not provide or advertise services as a marriage broker in the**  
8 **state unless the person**

9 **(1) requires each client to provide in writing, certified under penalty of**  
10 **perjury,**

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12 **(B) a complete list of restraining orders and civil protective**  
13 **orders, if any, issued by any court that involve the client;**

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5 accuracy;

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9 penalties that attach under state and federal law;

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15 (F) the rights of victims of domestic violence, sexual assault,  
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18 the knowledge, consent, or cooperation of, the spouse.

19 (b) The criminal justice information required under (a)(1) of this section must  
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2 (3) has previously sponsored a foreign national for purposes of  
3 marriage or engagement to be married.

4 (d) The Department of Law shall enforce this section and may institute a civil  
5 action against a person who violates this section.

6 (e) A person who violates the requirements of this section is subject to a civil  
7 penalty not to exceed \$20,000 for each violation. A penalty collected under this  
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# Representative Beth Kerttula

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Alaska State Legislature, District 3

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E-mail: Representative\_Beth\_Kerttula@legis.state.ak.us • <http://www.kerttula.net>

## MEMORANDUM

**TO:** Representative Tom Anderson, Chair Labor & Commerce Committee  
**FROM:** Representative Beth Kerttula *Beth*  
**SUBJECT:** Changes made in CS for HB 402 Marriage Brokers And Advertisers  
**DATE:** February 9, 2006

---

Committee Substitute 24-LS1432\G for HB 402 has the following changes:

- 1) Section 1 (a)(1) – Replaces "verified" with "certified" in order to utilize the same language in AS 09.63.020, Certification of documents.
- 2) Section 1 (b) references AS 12.62.400 regarding criminal history checks. That statute states, "The department may submit the fingerprints to the Federal Bureau of Investigation to obtain a national criminal history record check of the person for the purpose of evaluating a person's qualifications for" and lists numerous statutes under which the history can be obtained. In Section 2 the new CS includes an amendment to AS 12.62.400 adding this potential new statute (AS 08.02.100) to the list of statutes covered.

24-LS1432G  
Mischel  
2/7/06

**CS FOR HOUSE BILL NO. 402( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FOURTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

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23 negotiating, advertising, publicizing, or contracting, by Internet or other electronic  
24 means, in writing, or in person, for services to state residents related to marriage,  
25 engagement, dating, or another social referral;

26 (3) "recruit" means a person who resides outside of the United States  
27 and who is contacted by or who contacts a marriage broker or advertiser for the  
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30 \* Sec. 2. AS 12.62.400 is amended by adding a new paragraph to read:

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1

social referral services under AS 08.02.100.



# Representative Beth Kerttula

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Alaska State Legislature District 3

## House Bill 402 Marriage Brokers And Advertisers Sponsor Statement

The International Marriage Brokers (IMB) industry has grown dramatically in recent years. It is now estimated that between 8,000 and 16,000 marriages a year take place between foreign women and American men as a result of marriage broker agency introductions. While there are no official national statistics on incidences of abuse in these arranged marriages, experts agree it is higher than the national average. One study of women in similar circumstances – immigrant women whose legal status depends on their spouse – found the rate of domestic violence to be as high as 77%.

HB 402 will require IMBs to provide several pieces of information to the foreign bride in their own languages. Marital history information must be provided and must include how many times the client has been married, how and when each marriage was terminated, and whether they have previously sponsored a foreign national for purposes of marriage. The required criminal justice information must be obtained by submitting the client's fingerprints for a national criminal history record check. This also includes a complete list of restraining orders and civil protective orders that involve the client.

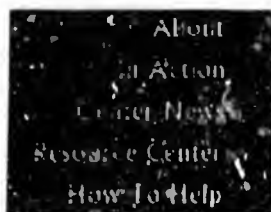
The marriage broker is also required to provide information explaining that domestic violence is illegal in the U.S. and where to obtain assistance for victims. Information must also be provided regarding the rights of victims of domestic violence including the right to petition for residency status independent of the spouse. Violations of any of these requirements are subject to a civil penalty of up to \$20,000.

IMBs often pair men with women who are extremely vulnerable, have limited English language skills, have no other resources or contacts in the U.S., and are unfamiliar with the U.S. legal system. By requiring full disclosure, HB 402 will make IMBs responsible for providing accurate information to educate each potential bride as to the risks associated with this type of arranged marriage and what their options are if they are abused.



Monday, February 6th 2006

## Campaign to Stop Exploitation by International Marriage Brokers:



The International Marriage Brokers (IMB) industry has grown dramatically in recent years. This growth is a reflection of demands by American men for "traditional wives," and concurrent worsening economic situations for women, particularly in Eurasia. Many of the men who use IMBs intentionally seek women who do not speak English and who were raised in cultures in which a married woman is expected to be subservient. Some of these men are violent predators who return to IMBs repeatedly to find their next victim. These women, unfamiliar with the US legal system and given, at best, incomplete information about their legal rights, can find themselves in grave danger. This rapidly growing industry is essentially unregulated.

The urgency of this problem became clear when the Tahirih Justice Center worked with a Ukrainian woman who suffered brutal abuse by a husband with whom she was paired through a Maryland-based IMB. The woman's efforts to seek help from the IMB president were futile; she minimized the abuse and assured the woman that such behavior was a "normal" part of American culture. She also gave her inaccurate information regarding her legal rights, leaving her with the clear impression that she had no choice but to endure the abuse or risk deportation—which is not true.

The new data we have compiled shows that the number of such marriages has at least doubled since an often-cited 1999 INS report. It is now estimated that 8,000-16,000 marriages a year—a number that reflects one third to one half of all foreign fiancés who enter the US—take place between

foreign women and American men as a result of "marriage broker" agency introductions.<sup>[1]</sup> While no official national statistics exist on the incidence of abuse in such marriages, experts agree it is "higher in this population than for the nation as a whole."<sup>[2]</sup> One study of women in an analogous circumstance—immigrant women whose legal status depends on their US citizen or legal permanent resident spouse—found the rate of domestic violence to be as high as 77%.<sup>[3]</sup>

### Newsflash:

- **Newsweek Article Highlights TJC and Mail-Order Bride Abuse:** [Click here for the article.](#)
- **International Marriage Broker (IMB) Held Liable for Negligence and Fraud: Case Summary**
- **Tahirih Justice Center and Arnold & Porter Win Landmark Case on Behalf of a Ukrainian IMB Recruit: Press Release**

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## International Marriage Broker Held Liable for Negligence and Fraud

*Fox v. Encounters International* (D. Md. 02-1563)



### Summary

On November 18, 2004, Nataliya Fox, a Ukrainian woman, won a landmark victory in a Maryland federal district court against Encounters International ("EI"), an international marriage broker ("IMB," also known as a "mail-order bride" agency) that had arranged her marriage to a violent American man. A unanimous jury held EI liable for failing to tell Nataliya—as they were legally required to do—about a federal law that allows foreign nationals to escape abusive marriages without fear of automatic deportation, and for actively misleading her about her legal options. The jury also found EI liable for misrepresenting that it screened male clients when it did not; and publicizing Nataliya's marriage to Mr. Fox as an EI "success" story, without her permission, even after she fled to a domestic violence shelter. EI and its President were ordered to pay Nataliya \$433,500 in damages, \$341,500 of which were punitive damages assessed for their egregious violations of their duty of care to Nataliya.

### Significance of the Case

1.) **The case marks the first time that an IMB has been held accountable for violating its obligations under federal law to tell a woman it recruited about legal protections that would allow her to escape domestic violence without facing automatic deportation.** EI not only withheld this information from Nataliya, but misled her by saying that she would be deported if she left her abusive husband.

The jury found that Nataliya's reliance on the misrepresentations that EI made to her was reasonable and that her lack of accurate information prolonged her abuse.

When Nataliya came to EI, she did not speak English well and knew little of U.S. laws and customs. The President of EI, a Russian woman, assured Nataliya that EI would provide immigration advice and services, counseling, and assistance in understanding and adjusting to American culture.

When Nataliya confided to the President of EI that Mr. Fox went into wild rages and beat her, the President told her that this was "normal," that American men were prone to violence, and that Nataliya should learn to defer to her husband. Additionally, the President told her that she had to stay in the marriage or would be deported. Since Nataliya did not know that domestic violence is a crime in the U.S. (it is not in Ukraine), and knew no one else in the U.S. upon whom she could rely for legal advice, she resigned herself to living with the abuse. The violence escalated. After a particularly vicious episode in which Mr. Fox's violence sent Nataliya to the emergency room, she finally learned of other options from an emergency room nurse and escaped. The jury found that EI's deliberate decision to withhold vital information from Nataliya about a law designed to protect her and her child, and EI's intentional misrepresentations about her legal options, violated EI's duty of care to Nataliya.

2.) **The case is also the first time that an IMB has been held liable for failing to screen its male clients for a violent or criminal history despite having said that it screened the men.** Although there is currently no legal requirement to screen men, EI publicly stated that it took that extra step and did screen its clients. Nataliya was told that Mr. Fox was "the best of the best," "financially and

mentally stable," and "serious about family." In fact, Mr. Fox had a history of domestic violence, and his abuse of Nataliya grew much worse after she became pregnant. EI's "screening" process involved chatting with Mr. Fox and taking his \$1850 membership fee. The process clearly was not intended to screen out clients with a violent past, and it did not do so in this case.

3.) **The case is the first time an IMB has been found liable for using a woman's name and photo, and falsifying her personal story, to promote its business without her permission.** Incredibly, EI continued to tout her marriage to Mr. Fox as a "success" story even after EI knew that Nataliya had fled to a battered women's shelter, Mr. Fox had flown to Haiti to obtain a divorce, and even throughout the trial.

#### **The Broader Issue**

Encounters International is part of a growing industry that profits from arranging marriages between American men and foreign women. These women often do not speak English, have no other resources or contacts in the United States other than the agency, and are unfamiliar with the United States legal system. These agencies have served as an easy, unregulated pipeline for predatory abusers to find their next victims. The IME industry may be responsible for annually bringing to the U.S. between one-third and one-half of all foreign fiancé(e)s, according to estimates in a 1999 study commissioned by the Immigration and Naturalization Service. Today, upwards of 14,000 women may enter the country each year to begin "mail-order marriages."

Some successful marriages undoubtedly result from matches arranged by IMBs. However, it is becoming increasingly clear that many IMBs (1) explicitly market their services to men seeking a domineering relationship with a promised docile, powerless woman, (2) ignore the violent histories of their male clients, (3) mislead women in abusive relationships into believing they must stay in the relationship or face deportation (without their children), and (4) repeatedly pair violent men with new foreign women who are unaware of the men's history.

While justice was done in this case, current laws are inadequate to provide women with the information they need about their potential U.S. husbands, and about the rights and resources available to domestic violence victims in this country, so that they can protect themselves and their children from abuse.

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Friday, January 27th, 2006

For Immediate Release

Contact: Layli Miller-Muro,

November 18, 2004

Executive Director Layli@tahirih.org

703-575-0070



**Abused Victim of International Marriage Broker Wins Historic Lawsuit**

*The Tahirih Justice Center and Arnold & Porter Win a  
Landmark Case on Behalf of a Ukrainian IMB Recruit*

Falls Church, VA. November 18, 2004. In a historic decision, a federal jury in Baltimore, MD today returned a verdict against an international marriage broker ("IMB") (also referred to as a "mail order bride" agency) for matching a Ukrainian woman with an abusive American man and for failing to tell the Ukrainian woman about vital domestic abuse remedies. An 8-person jury in *Fox v. Encounters International* (D. Md. 02-1563) took 9 hours to deliberate before returning the verdict on Wednesday.

The case marks the first time in the country that an IMB has been held responsible for the abuse of a client. It is also the first time that a 1996 law requiring IMBs to notify foreign women of their legal rights has been enforced.

Tahirih Justice Center and the law firm of Arnold & Porter LLP brought this case on behalf of Nataliya Fox against Encounters International *pro bono* in response to a disturbing trend of abuse among IMB recruits. Executive Director of the Tahirih Justice Center Layli Miller-Muro stated, "In the last few years, the Tahirih Justice Center has become alarmed by the extent and nature of the abuse against women who meet their abusive husbands through international marriage brokers." Ms. Miller-Muro added, "After consulting with other legal service providers throughout the country, we learned that over 50% had clients who were abused women who had met their husbands through IMBs. We find that many of the men are repeat abusers, habitually using these agencies to find their next victims."

Encounters International is one of the nation's leading IMBs and profits from arranging marriages between American men and women from economically impoverished former-Soviet countries. It is a part of a growing industry that is responsible for bringing in between one third and one half of all foreign fiancés to the United States, according to a 1999 study conducted by the Immigration and Naturalization Service. IMBs pair men with women who are extremely vulnerable, do not often speak English, have no other resources or contacts in the United States, and are unfamiliar with the United States legal system.

In 1996, Congress enacted federal legislation requiring IMBs to inform the foreign women who they recruit about their legal rights under the Violence Against Women Act. Not enforced until now, most agencies ignored the law.

This lawsuit was filed in April 2002. Since that time, Encounters International has filed numerous motions to have the case dismissed. "It was a hard fought battle to get here," said Arnold & Porter's Randy Miller, who served as trial counsel for Plaintiff. "But once we got our case to the jury, we knew that justice would be done for Nataliya, and for many other women who come to America through these agencies." Ms. Miller-Muro added, "This case marks a historic opportunity to protect a vulnerable group of women who, for too long, have gone ignored."

The Tahirih Justice Center is a non-profit organization that provides *pro bono* legal services and advocacy on behalf of women and girls fleeing human rights abuses. Motivated by the tragedies of its own clients and of women around the nation, the Tahirih Justice Center helped draft a federal bill to respond to abuses occurring in IMB-brokered marriages. "The International Marriage Broker Regulation Act" (S. 1455/H.R. 2949), introduced by Sen. Maria Cantwell (D-WA) and Rep. Rick Larsen (D-WA) in 2003, builds on the 1996 law by providing foreign women with vital information about the marital and criminal backgrounds of their prospective American husbands and about their full legal rights and resources available to them if they are abused. The Tahirih Justice Center is now working with a broad coalition of advocates nationwide, including Amnesty International USA, Legal Momentum, GABRIELA Network, and the National Asian Pacific American Women's Forum, to ensure the passage of critically needed protective legislation and to end the exploitation and abuse of women by international marriage brokers and their clients.

Arnold & Porter LLP is a national law firm of more than 650 lawyers practicing in Washington, DC, New York, London, Brussels, Los Angeles, Northern Virginia, and Denver.

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## Mail-Order Misery

Charging abuse, Imported brides are fighting back

By Daren Briscoe  
Newsweek

Feb. 7 issue - Nataliya Derkach just wanted a husband. In 1998, she was a 26-year-old college student in Kiev, divorced and disenchanted with the Ukrainian dating scene. Then she met Natasha Spivack, a Russian-American who runs Encounters International, an Internet matchmaking service that caters to American men seeking Russian and Ukrainian brides. Spivack had just the catch for Derkach: a handsome, successful businessman named James Fox. Derkach married him two months after they met in the United States, moving to Virginia and taking his last name. But James soon began beating her, says Fox. And when she turned to Spivack for help, Fox says Spivack told her that all American men were "crazy," and to deal with it or risk being sent back to Ukraine. Fox did as she was told, until one night in the summer of 2000, when Fox says her husband beat her as she breast-fed the couple's infant daughter. Fox wound up in the emergency room with her face bruised and swollen and a human bite mark on her hand.

Fox escaped to a women's shelter, then got radical: she sued Spivack and Encounters International, becoming the first to win a case against an Internet bride service. In December, a jury awarded her \$433,500. The verdict rattled the murky, often unregulated world of international matchmaking, shining a spotlight on some of its practices. The case "puts companies on notice," says Fox's lawyer, Randall Miller. "They can't operate in the shadows anymore." The court found that Spivack failed to tell Fox about a provision in the immigration law that protects foreign women from deportation if they leave abusive husbands. The jury also held Spivack liable for assuring Nataliya Fox that her husband had been carefully screened. Spivack denies wrongdoing. Her lawyer argues that any responsibility she might have had ended when the Foxes wed.

Each year, hundreds of Internet bride services recruit thousands of women--mostly from Eastern Europe, Southeast Asia and other economically depressed parts of the globe--to marry their American clients. Matchmaking Web sites feature glowing testimonials and pictures of smiling couples. The sites play off old stereotypes of foreign women as subservient, "traditional" wives. For \$1,850, Spivack, still in business, promises to connect clients with women who will "follow their husband's lead, and stick with the marriage even when times get tough and things stop being 'fun'." Many Internet brides settle into happy relationships; Encounters International claims a success rate of 86 percent, just 35 divorces out of 257 marriages. But Layli Miller-Muro, a lawyer who runs the Tahiri Justice Center, an international women's rights group based in Virginia, has tracked problems in the foreign-matchmaking industry for years. When she surveyed 175 legal-aid groups in the United States, more than half reported clients who'd been abused by men they'd met through marriage brokers. In 2001, Miller-Muro was looking for a test case when she met Fox. Miller-Muro turned to Randall Miller, a lawyer at Arnold & Porter, the powerful Washington law firm, who agreed to represent Fox free of charge.

Spivack and her company weren't Fox's only targets. She also sued her ex-husband, who settled the case for \$115,000. During Spivack's trial, James testified that Nataliya had attacked him. He had earlier been charged with attempted murder in the beating that sent Nataliya Fox to the emergency room, but that charge was later dropped. An assault charge was expunged from James's record after he completed an anger-management class. His lawyer, Thomas Peter Mann, told NEWSWEEK that his client had done nothing wrong and acted only in self-defense.

Miller-Muro predicts more lawsuits. "Our work on this issue has really just begun," she says. But Nataliya Fox hopes to put it all behind her. James Fox divorced her in 2001, then married another (Russian) Internet bride. Nataliya now lives in Virginia with her daughter, and works as a civil engineer. She also has a new boyfriend. She met him the old-fashioned way—in person.

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ENGROSSED SUBSTITUTE SENATE BILL 6412

AS AMENDED BY THE HOUSE

Passed Legislature - 2002 Regular Session

State of Washington                      57th Legislature                      2002 Regular Session

By Senate Committee on Labor, Commerce & Financial Institutions  
(originally sponsored by Senators Kohl-Welles, Costa, Prentice,  
Winsley, Long, Keiser and Benton)

READ FIRST TIME 02/06/2002.

1            AN ACT Relating to international matchmaking organizations;  
2 amending RCW 43.43.760; adding a new chapter to Title 19 RCW; and  
3 providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION. **Sec. 1.** The legislature intends to provide increased  
6 consumer awareness on the part of persons living abroad regarding  
7 Washington residents who utilize international matchmaking services for  
8 purposes of establishing relationships with those living abroad. The  
9 legislature recognizes that persons living abroad are already required  
10 to provide background information to the federal government during visa  
11 applications, but, unlike residents of the United States, are unlikely  
12 to have the means to access and fully verify personal history  
13 information about prospective spouses residing in the United States.  
14 The legislature does not intend to impede the ability of any person to  
15 establish a marital or romantic relationship, but rather to increase  
16 the ability of persons living abroad to make informed decisions about  
17 Washington residents.

1 The legislature does not intend to adversely impact in any way  
2 those businesses who offer international matchmaking services on a not  
3 for fee basis.

4 NEW SECTION. Sec. 2. (1) Each international matchmaking  
5 organization doing business in Washington state shall disseminate to a  
6 recruit, upon request, state background check information and marital  
7 history information relating to any Washington state resident about  
8 whom any information is provided to the recruit, in the recruit's  
9 native language. The organization shall notify all recruits that  
10 background check and marital history information is available upon  
11 request. The notice that background check and marital history  
12 information is available upon request shall be in the recruit's native  
13 language and shall be displayed in a manner that separates it from  
14 other information, is highly noticeable, and in lettering not less than  
15 one-quarter of an inch high.

16 (2) If an international matchmaking organization receives a request  
17 for information from a recruit pursuant to subsection (1) of this  
18 section, the organization shall notify the Washington state resident of  
19 the request. Upon receiving notification, the Washington state  
20 resident shall obtain from the state patrol and provide to the  
21 organization the complete transcript of any background check  
22 information provided pursuant to RCW 43.43.760 based on a submission of  
23 fingerprint impressions and provided pursuant to RCW 43.43.838 and  
24 shall provide to the organization his or her marital history  
25 information. The organization shall require the resident to affirm  
26 that marital history information is complete and accurate, and includes  
27 any information regarding marriages, annulments, and dissolutions which  
28 occurred in other states or countries. The organization shall refrain  
29 from knowingly providing any further services to the recruit or the  
30 Washington state resident in regards to facilitating future interaction  
31 between the recruit and the Washington state resident until the  
32 organization has obtained the requested information and provided it to  
33 the recruit.

34 (3) This section does not apply to a traditional matchmaking  
35 organization of a religious nature that otherwise operates in  
36 compliance with the laws of the countries of the recruits of such  
37 organization and the laws of the United States nor to any organization  
38 that does not charge a fee to any party for the service provided.

1 (4) As used in this section:

2 (a) "International matchmaking organization" means a corporation,  
3 partnership, business, or other legal entity, whether or not organized  
4 under the laws of the United States or any state, that does business in  
5 the United States and for profit offers to Washington state residents,  
6 including aliens lawfully admitted for permanent residence and residing  
7 in Washington state, dating, matrimonial, or social referral services  
8 involving citizens of a foreign country or countries who are not  
9 residing in the United States, by: (i) An exchange of names, telephone  
10 numbers, addresses, or statistics; (ii) selection of photographs; or  
11 (iii) a social environment provided by the organization in a country  
12 other than the United States.

13 (b) "Marital history information" means a declaration of the  
14 person's current marital status, the number of times the person has  
15 previously been married, and whether any previous marriages occurred as  
16 a result of receiving services from an international matchmaking  
17 organization.

18 (c) "Recruit" means a noncitizen, nonresident person, recruited by  
19 an international matchmaking organization for the purpose of providing  
20 dating, matrimonial, or social referral services.

21 NEW SECTION. **Sec. 3.** For purposes of establishing personal  
22 jurisdiction under this act, an international matchmaking organization  
23 is deemed to be doing business in Washington and therefore subject to  
24 specific jurisdiction if it contracts for matchmaking services with a  
25 Washington resident or if it is considered to be doing business under  
26 any other provision or rule of law.

27 NEW SECTION. **Sec. 4.** The legislature finds that the practices  
28 covered by this chapter are matters vitally affecting the public  
29 interest for the purpose of applying the consumer protection act,  
30 chapter 19.86 RCW. A violation of this chapter is not reasonable in  
31 relation to the development and preservation of business and is an  
32 unfair or deceptive act in trade or commerce and an unfair method of  
33 competition for the purpose of applying the consumer protection act,  
34 chapter 19.86 RCW.

35 **Sec. 5.** RCW 43.43.760 and 2001 c 217 s 3 are each amended to read  
36 as follows:

1 (1) Whenever a resident of this state appears before any law  
2 enforcement agency and requests an impression of his or her  
3 fingerprints to be made, such agency may comply with his or her request  
4 and make the required copies of the impressions on forms marked  
5 "Personal Identification". The required copies shall be forwarded to  
6 the section and marked "for personal identification only".

7 The section shall accept and file such fingerprints submitted  
8 voluntarily by such resident, for the purpose of securing a more  
9 certain and easy identification in case of death, injury, loss of  
10 memory, or other similar circumstances. Upon the request of such  
11 person, the section shall return his or her identification data.

12 (2) Whenever a person claiming to be a victim of identity theft  
13 appears before any law enforcement agency and requests an impression of  
14 his or ner fingerprints to be made, such agency may comply with this  
15 request and make the required copies of the impressions on forms marked  
16 "Personal Identification." The required copies shall be forwarded to  
17 the section and marked "for personal identification only."

18 The section shall accept and file such fingerprints submitted by  
19 such resident, for the purpose of securing a more certain and easy  
20 identification in cases of identity theft. The section shall provide  
21 a statement showing that the victim's impression of fingerprints has  
22 been accepted and filed with the section.

23 The statement provided to the victim shall state clearly in twelve-  
24 point print:

25 "The person holding this statement has claimed to be a victim of  
26 identity theft. Pursuant to chapter 9.35 RCW, a business is required  
27 by law to provide this victim with copies of all relevant application  
28 and transaction information related to the transaction being alleged as  
29 a potential or actual identity theft. A business must provide this  
30 information once the victim makes a request in writing, shows this  
31 statement, any government issued photo identification card, and a copy  
32 of a police report."

33 Upon the request of such person, the section shall return his or  
34 her identification data.

35 (3) Whenever any person is an applicant for appointment to any  
36 position or is an applicant for employment or is an applicant for a  
37 license to be issued by any governmental agency, and the law or a  
38 regulation of such governmental agency requires that the applicant be

1 of good moral character or not have been convicted of a crime, or is an  
2 applicant for appointment to or employment with a criminal justice  
3 agency, or the department, or is an applicant for the services of an  
4 international matchmaking organization, the applicant may request any  
5 law enforcement agency to make an impression of his or her fingerprints  
6 to be submitted to the section. The law enforcement agency may comply  
7 with such request and make copies of the impressions on forms marked  
8 "applicant", and submit such copies to the section.

9 The section shall accept such fingerprints and shall cause its  
10 files to be examined and shall promptly send to the appointing  
11 authority, employer, ~~((or))~~ licensing authority, or international  
12 matchmaking organization indicated on the form of application, a  
13 transcript of the record of previous crimes committed by the person  
14 described on the data submitted, or a transcript of the dependency  
15 record information regarding the person described on the data  
16 submitted, or if there is no record of his or her commission of any  
17 crimes, or if there is no dependency record information, a statement to  
18 that effect.

19 (4) The Washington state patrol shall charge fees for processing of  
20 noncriminal justice system requests for criminal history record  
21 information pursuant to this section which will cover, as nearly as  
22 practicable, the direct and indirect costs to the patrol of processing  
23 such requests.

24 Any law enforcement agency may charge a fee not to exceed five  
25 dollars for the purpose of taking fingerprint impressions or searching  
26 its files of identification for noncriminal purposes.

27 NEW SECTION. Sec. 6. Sections 1 through 4 of this act constitute  
28 a new chapter in Title 19 RCW.

29 NEW SECTION. Sec. 7. This act takes effect September 1, 2002.

--- END ---

**SUBSTITUTE HOUSE BILL 1826**

AS AMENDED BY THE SENATE

Passed Legislature - 2003 Regular Session

**State of Washington                      58th Legislature                      2003 Regular Session**

**By** House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Veloria, McMahan, O'Brien, Kenney, Boldt, Miclke, Santos, Hudgins, Upthegrove, Simpson and Conway)

READ FIRST TIME 03/04/03.

1            AN ACT Relating to trafficking in persons; and amending RCW  
2 19.220.010.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            **Sec. 1.** RCW 19.220.010 and 2002 c 115 s 2 are each amended to read  
5 as follows:

6            (1) Each international matchmaking organization doing business in  
7 Washington state shall disseminate to a recruit, upon request, state  
8 background check information and (~~marital~~) personal history  
9 information relating to any Washington state resident about whom any  
10 information is provided to the recruit, in the recruit's native  
11 language. The organization shall notify all recruits that background  
12 check and (~~marital~~) personal history information is available upon  
13 request. The notice that background check and (~~marital~~) personal  
14 history information is available upon request shall be in the recruit's  
15 native language and shall be displayed in a manner that separates it  
16 from other information, is highly noticeable, and in lettering not less  
17 than one-quarter of an inch high.

18            (2) If an international matchmaking organization receives a request  
19 for information from a recruit pursuant to subsection (1) of this

1 section, the organization shall notify the Washington state resident of  
2 the request. Upon receiving notification, the Washington state  
3 resident shall obtain from the state patrol and provide to the  
4 organization the complete transcript of any background check  
5 information provided pursuant to RCW 43.43.760 based on a submission of  
6 fingerprint impressions and provided pursuant to RCW 43.43.838 and  
7 shall provide to the organization his or her (~~marital~~) personal  
8 history information. The organization shall require the resident to  
9 affirm that (~~marital~~) personal history information is complete and  
10 accurate(~~(, and includes any information regarding marriages,~~  
11 ~~annulments, and dissolutions which occurred in other states or~~  
12 ~~countries))~~). The organization shall refrain from knowingly providing  
13 any further services to the recruit or the Washington state resident in  
14 regards to facilitating future interaction between the recruit and the  
15 Washington state resident until the organization has obtained the  
16 requested information and provided it to the recruit.

17 (3) This section does not apply to a traditional matchmaking  
18 organization of a religious nature that otherwise operates in  
19 compliance with the laws of the countries of the recruits of such  
20 organization and the laws of the United States nor to any organization  
21 that does not charge a fee to any party for the service provided.

22 (4) As used in this section:

23 (a) "International matchmaking organization" means a corporation,  
24 partnership, business, or other legal entity, whether or not organized  
25 under the laws of the United States or any state, that does business in  
26 the United States and for profit offers to Washington state residents,  
27 including aliens lawfully admitted for permanent residence and residing  
28 in Washington state, dating, matrimonial, or social referral services  
29 involving citizens of a foreign country or countries who are not  
30 residing in the United States, by: (i) An exchange of names, telephone  
31 numbers, addresses, or statistics; (ii) selection of photographs; or  
32 (iii) a social environment provided by the organization in a country  
33 other than the United States.

34 (b) "~~(Marital)~~ Personal history information" means a declaration  
35 of the person's current marital status, the number of (~~times~~)  
36 previous marriages, annulments, and dissolutions for the person (~~has~~  
37 ~~previously been married~~), and whether any previous marriages occurred  
38 as a result of receiving services from an international matchmaking

1 organization; founded allegations of child abuse or neglect; and any  
2 existing orders under chapter 10.14, 10.99, or 26.50 RCW. Personal  
3 history information shall include information from the state of  
4 Washington and any information from other states or countries.

5 (c) "Recruit" means a noncitizen, nonresident person, recruited by  
6 an international matchmaking organization for the purpose of providing  
7 dating, matrimonial, or social referral services.

--- END ---

**Fact Sheet**  
on  
**State Anti-Trafficking Laws**  
from  
**National Institute on State Policy on Trafficking of Women and Girls**  
A Program of the  
**Center for Women Policy Studies**  
July 2005

**State Legislative Initiatives**

The Center for Women Policy Studies works with state legislators to develop legislative initiatives:

- to make trafficking a **state felony offense** with appropriately harsh punishments for traffickers and protections for the women and girls who have been trafficked into our communities; we urge states to pass criminalization statutes and also to provide for **victim protection and assistance** programs;
- to create **statewide interagency task forces on human trafficking**, with a mandate to determine the nature and extent of trafficking in each state and make recommendations for legislative, policy, and programmatic initiatives;
- to regulate **"bride trafficking"** by commercial "international marriage brokers" (also called "mail order bride" or "international matchmaking" organizations) that operate in the state; and,
- to regulate **sex tourism** by travel services providers that operate in the state.

The following summary of all state laws addressing trafficking in persons is current as of July 2005 and will be revised following the 2006 state legislative sessions. States are listed below in alphabetical order rather than in order of passage of the legislation.

We honor the sponsors of these bills for their leadership and commitment and have listed them at the end of the **Fact Sheet**.

**Summary of State Anti-Trafficking Laws**

**Criminalization Statutes**

Legislatures in **Arizona, Arkansas, Florida, Illinois, Kansas, Louisiana, Minnesota, Missouri, New Jersey, Texas, and Washington** have enacted laws to make trafficking a state felony offense. Similar legislation is pending in **Alaska, California, Delaware, Indiana, Maine, Montana, New Mexico, New York, Oregon, Pennsylvania, South Carolina, and Wisconsin**.

**Arizona:** SB 1372 establishes the first degree felony of sex trafficking of a minor under the age of 15 and the second degree felony of attempted sex trafficking of a minor. The bill further establishes two class 2 felonies: sex trafficking; and, trafficking of persons for forced labor or services, and one class 4 felony: unlawfully obtaining labor or services. Additionally, the court is required to order victim restitution. **Effective Date:**

August 12, 2005.

**Arkansas: HB 2979** establishes the class A felony of trafficking in persons for the purposes of involuntary servitude, peonage, debt bondage, slavery, marriage, adoption or sexual conduct. The bill also creates the class A felony of benefiting financially from trafficking. **Effective Date:** August 11, 2005.

**Florida: SB 1962** establishes the first degree felony of sex trafficking for parents, legal guardians, or other persons having custody of a minor who sell, transfer custody, or offer to sell or transfer custody of the minor for the purpose of sex trafficking or prostitution. The bill further establishes two second degree felonies: obtaining forced labor; and, sex trafficking and human trafficking for anyone who knowingly participates in trafficking for purposes of forced labor or prostitution. Any sex trafficking activity that results in death or is committed against a person who is under the age of 14 is considered a first degree felony. **Effective Date:** October 1, 2004.

**Illinois: HB 1469** establishes the felony offenses of involuntary servitude, involuntary servitude of a minor, and trafficking of persons for forced labor or services. Such factors as causing or threatening physical harm; destroying, concealing, removing, confiscating or possessing any actual or purported immigration document; and, using intimidation can be used to determine the severity of the charge. The trafficker's behavior – including commission of sexual assault, extreme violence, or bodily injury – and the number of victims can be considered in sentencing. In addition to sentencing, the court must order restitution to the victim and the forfeiture of any assets obtained as a result of the involuntary servitude or trafficking offenses. **Effective Date:** January 1, 2006.

**Kansas: SB 72** establishes the level 2 felony offense of trafficking and the level 1 felony offense of aggravated trafficking. Trafficking is defined as aggravated if it includes kidnapping or attempted kidnapping; the sexual gratification of the defendant or another person; death of the victim, or, trafficking of a person under the age of 18. **Effective Date:** July 1, 2005.

**Louisiana: HB 56** establishes the crime of human trafficking, which is punishable by a maximum fine of \$10,000 and a maximum sentence of 10 years in prison. If the trafficking is committed for the purposes of commercial sexual activity, the maximum fine is \$15,000 and the maximum prison sentence is 20 years. Trafficking of a minor carries a maximum fine of \$25,000 and a prison sentence of five to 25 years. **Effective Date:** August 15, 2005.

**Minnesota: HB 1** establishes the felonies of labor trafficking; sex trafficking, and unlawful conduct with respect to documents in furtherance of labor or sex trafficking. Labor trafficking is punishable by up to 15 years in prison or a \$30,000 fine, or both. Depending on the age of the victim, sex trafficking is punishable by a maximum prison sentence of either 15 or 20 years. The document offense carries a maximum punishment of five years in prison, a \$10,000 fine, or both. **Effective Date:** August 1, 2005.

**Missouri: HB 1487** makes changes to the laws regarding crimes against persons, establishing: a class A felony of sexual trafficking of a child; class B felonies of abusing an individual through forced labor and of trafficking for either forced labor or sexual exploitation; and, a class D felony of contributing to human trafficking through the misuse of documentation. As part of the sentencing for a human trafficking offense, the court must order the perpetrator to pay restitution to the victim. Victims of any one of these five crimes also shall be afforded the rights and protections provided in the federal *Trafficking Victims Protection Act of 2000*. **Effective Date:** August 28, 2004.

**New Jersey: AB 2730** establishes the first degree felony offense of human trafficking for the purposes of engaging in sexual activity or providing labor or services. The maximum punishment for a trafficking offense is 20 years without parole, or up to life in prison with the possibility of parole after 20 years. The court also must sentence the perpetrator to make restitution to the victim and may order forfeiture of any assets related to the trafficking violation. The Office of Victim-Witness Advocacy or the county prosecutor's office must ensure that the trafficked individual obtains assistance in receiving any available benefits or services to trafficking victims. **Effective Date:** April 26, 2005.

**Texas: HB 2096** establishes the first degree felony of trafficking or transporting of persons who are younger than 14 at the time of the offense or if the commission of the offense results in the death of the person who is trafficked. Otherwise, the offense is a second degree felony. According to the Texas Criminal Justice Policy Council, the punishment range for a first degree felony offense is five to 99 years imprisonment; the range for a second degree felony offense is two to 20 years imprisonment. **Effective Date:** September 1, 2003.

**Washington: HB 1175** establishes the class A felony offenses of first and second degree sex trafficking and labor trafficking in the state of Washington. Under standard sentencing guidelines, a first degree offense carries a maximum punishment of 14 years in prison; in the second degree, the maximum sentence is nine years. Such factors as the age of the victim and whether the victim was kidnapped or killed are considered in determining the severity of the charge. Victims of trafficking also may sue for damages and for the cost of bringing the suit; a civil fine of up to \$250,000 may also be levied by the court. **Effective Date:** July 27, 2003.

#### **Statewide Interagency Task Forces on Human Trafficking**

State task forces have been established by statute in **Colorado**, **Connecticut**, and **Washington**. **Idaho** passed a resolution to authorize the creation of a legislative committee to study human trafficking in that state. **Minnesota's** Commissioner of Public Safety is required by statute to conduct an annual trafficking study and submit a report of the findings to the legislature.

**California** took a different approach. In 2004, at the request of Assemblywoman Sally Lieber, Assembly Speaker Fabian Nunez created the **Select Committee on Human**

**Trafficking in California**, which held informational hearings in the state that were co-sponsored by the California Commission on the Status of Women, the California Women's Law Center, and the California Women's Legislative Caucus.

In addition, advocacy efforts are underway in several states – led by state women's organizations, violence against women programs and providers, and anti-trafficking groups – to study the nature and extent of trafficking in the state and make policy recommendations.

**Colorado: HB 1143** creates an interagency task force on trafficking in persons to: collect and organize data on the nature and extent of trafficking in the state; investigate collaborative models for protecting victims; measure and evaluate the progress of the state in preventing trafficking, protecting victims, and prosecuting traffickers; identify available federal, state, and local programs that provide services to victims; evaluate approaches to increase public awareness of trafficking; analyze existing criminal statutes for their adequacy in addressing trafficking and make recommendations; and, consult with governmental and non-governmental organizations in developing recommendations. The task force is required to report its findings and recommendations to the Judiciary Committees of the House and Senate by January 15, 2007. **Effective Date:** April 5, 2005.

**Connecticut: HB 5358** establishes an interagency task force on trafficking in persons to: collect data on the nature of trafficking in the state and evaluate the state's progress on trafficking; identify available federal, state, and local programs that provide services to trafficking victims; evaluate approaches to increase public awareness of trafficking; analyze and make recommendations regarding existing state criminal statutes' ability to address trafficking; and, make recommendations on preventing trafficking, assisting victims, and prosecuting traffickers. The task force is required to report its findings and recommendations to the General Assembly by January 1, 2006. **Effective Date:** October 1, 2004.

**Idaho: HCR 18** authorizes the Legislative Council to appoint a legislative committee to complete a study on human trafficking. The co-chairs of the committee will appoint non-legislative members of the committee. The committee shall: collect data and present findings on the nature and extent of human trafficking in Idaho, identify available federal, state and local programs that provide services to victims; analyze and make recommendations regarding the ability of existing criminal statutes to address trafficking; and, make recommendations regarding the prevention of trafficking, the prosecution of offenses, and victim assistance. The committee is required to report its findings and recommendations to the Legislature, the Governor, and the Idaho Supreme Court by January 1, 2006. **Adopted:** April 1, 2005.

**Minnesota: HB 1** appropriates money for an annual statewide human trafficking assessment, which will be led by the Commissioner of the Department of Public Safety with the assistance of government agencies and nongovernmental organizations. The study will include: the numbers of arrests, prosecutions, and successful convictions of traffickers; statistics on the number of trafficking victims, including demographics,

method of recruitment, and method of discovery; trafficking routes and patterns; method of transportation; and, social factors that contribute to and foster trafficking, especially trafficking of women and children. The Commissioner must submit the first report to the Legislature by September 1, 2006. **Effective Date:** July 1, 2005.

**Washington:** **HB 2381** created the *Washington State Task Force Against the Trafficking of Persons* in 2002 to: measure and evaluate the progress of the state in trafficking prevention activities; identify available federal, state, and local programs that provide services to victims of trafficking; and, make recommendations on methods to provide a coordinated system of support and assistance to victims of trafficking. **Effective Date:** June 13, 2002. The *Task Force* expired on March 1, 2003 but was extended until June 30, 2004 (**HB 1090**). **Effective Date:** May 14, 2003.

**HR 4707** recognizes and honors the Office of Crime Victims Advocacy and the *Washington State Task Force Against the Trafficking of Persons* for its accomplishments in leading the country in taking action against human trafficking. **Adopted:** March 4, 2004.

**International Marriage Brokers/International Matchmaking Organizations (IMOs)  
Regulation of "Bride Trafficking" by Commercial Enterprises**

Legislatures in **Hawaii, Missouri, Texas, and Washington** have passed laws to regulate "international matchmaking organizations" (IMOs) that operate in the state.

**Hawaii:** **HB 135** allows persons living abroad who use for-profit matchmaking services to gain access to criminal conviction and marital history information from prospective spouses residing in the United States ("clients"). Each IMO must notify all foreign women ("recruits") in their native language that criminal history records and marital history information about any Hawaii resident is available upon request. The IMO also must disseminate this information upon request in the recruit's native language and refrain from providing any further services that facilitate interaction between the recruit and the client until the information has been submitted to the IMO. The punishment for a violation of the law is a fine of up to \$500 and up to 30 days imprisonment. **Effective Date:** January 1, 2004.

**Missouri:** **HB 353** requires IMOs to notify each potential recruit that the criminal history information and marital history information of clients are available, upon request, in the recruit's own language. Basic rights information -- including information about human rights, immigration, emergency assistance and resources, and the legal rights of and resources for victims of domestic violence -- also must be made available to recruits. The IMO must distribute this information no later than 30 days after receiving it, and IMOs that fail to provide the information or willfully provide incomplete or false information are guilty of a class D felony. **Effective Date:** August 28, 2005.

**Texas:** **HB 177** requires IMOs to provide each foreign recruit with the criminal history record information and marital history information of the IMO's clients and with basic rights information in the recruit's native language. The IMO must disseminate this information no later than the 30<sup>th</sup> day after the date it receives the information from the

client and must pay the costs incurred to translate this information into the recruit's native language. The IMO may not provide any further services to the client or recruit until it has obtained the requested information from the client and provided it to the recruit. An IMO that violates the law is subject to a civil penalty not to exceed \$20,000 for each violation. **Effective Date:** September 1, 2003.

**Washington: SB 6412** requires IMOs to provide information to foreign women, upon request, on state background checks and personal histories of Washington residents seeking to meet foreign women (potential recruits). The IMO must notify all potential recruits that background check and personal history information is available upon request. Once the resident is notified of the recruit's request for background information, the IMO must refrain from providing any further services that facilitate future interaction between the recruit and the resident until the IMO has obtained the requested information from the resident. **Effective Date:** September 1, 2002. The language of the bill was slightly amended in 2003 (**HB 1826**). **Effective Date:** July 27, 2003.

### Sex Tourism

**Hawaii: HB 2020** makes it a class C felony to knowingly sell or offer to sell travel services that include or facilitate travel for the purpose of engaging in prostitution. It authorizes the suspension or revocation of travel agency registration for engaging in these acts. The bill emphasizes that prostitution and sex tourism contribute to the trafficking of persons, and seeks to discourage sex tourism as a way to reduce the demand for sex trafficking. **Effective Date:** May 19, 2004.

### Sponsors

#### Criminalization Statutes

##### Arizona

**SB 1372 Sponsors:** Senators Jarrett, Aguirre, Bee, Blendu, Gould, L. Gray, Huppenthal, Johnson, R. Miranda, Waring, Arzberger, Brotherton, R. Burns, Chevront, J. Garcia, Hellon, R. Rios, Soltero, Verschoor; Representatives Anderson, Nelson, Paton, Pearce, Pierce, Burges, C. Gray, Lopes, McClure, P. Rios, Robson.

Related bill **HB 2539 Sponsors:** Representatives Paton, Alvarez, J. Burns, Farnsworth, Lopez, McClure, Pearce, Rosati, Biggs, Gallardo, Hershberger, Meza, Pierce, Sinema, Tully; Senator Bee.

Related bill **SB 1357 Sponsors:** Senators Bee, Jarrett, Waring, Harper, Tibshraeny, Verschoor; Representative Paton.

Related bill **HB 2657 Sponsors:** Representatives Gallardo, L. Lopez, Lujan, Sinema, A. Aguirre, Alvarez, Bedford, Chase, Downing, M. Garcia, Davis, Meza, Reagan.

Related bill **HB 2708 Sponsors:** Representatives Sinema, A. Aguirre, Chase, Alvarez, Bradley, Gallardo, M. Garcia, Kirkpatrick, Lujan, Meza, Tom.

## Arkansas

**HB 2979 Sponsor:** Representative Elliott.

## Florida

**SB 1962 Sponsors:** Senators Wasserman Schultz, Smith, Aronberg, Haridopolos.

Related bill

**HB 865 Sponsors:** Representatives Gannon, Brandenburg, Bullard, Fiorentino, A. Gibson, Harrell, Hasner, Holloway, Joyner, Kravitz, Stargel, Zapata.

Related bill **HB 1977 Sponsors:** Representatives Barreiro, Bucher, Fiorentino, Gannon, Joyner, Kallinger, Kottkamp, Rich, Roberson, Sobel.

## Illinois

**HB 1469 Sponsors:** Representatives Chavez, Bailey, Soto, Mendoza, Gordon, Delgado, Berrios, Jefferson, Churchill, Daniels, Saviano, McAuliffe, Sullivan Jr., Stephens, Rose, Myers, Lang, D'Amico, Giles, Davis, Flowers, Mautino, Reis, Mitchell, Poe, Brauer, Leitch, Bost, Winters, Tenhouse, Pihos, Krause, Burke, Osterman, Franks, Younge, Granberg, Kelly, Reitz, Molaro, Schock, Smith, Beiser, McGuire, Verschoore, Ryg, Munson, Bellock, Mulligan, Washington, Hamos, Nekritz, Acevedo, Howard, Patterson, Lyons, Bradley, Colvin, Jakobsson, May, Dunkin, Graham, Froehlich, Moffitt, Millner, Lyons, Fritchey, Miller, Rita, Turner, Coulson, Pritchard, Mathias, Meyer; Senators Cullerton, Collins, Martinez, Haine, Althoff.

Related bill **SB 477 Sponsors:** Senators Cullerton, Haine, Dillard, Raoul, Sandoval, Harmon, Collins; Representatives Mathias, Froehlich, Chavez, Bailey, Delgado, Franks, LaVia, Soto.

## Kansas

**SB 72 Sponsor:** Senator Journey. **SB 151 (amendment to SB 72) Sponsor:** Senator Jordan.

Related bill **HB 2004 Sponsor:** Representative Ju. Morrison.

## Louisiana

**HB 56 Sponsors:** Representatives Katz, Doerge, St. Germain, Winston, Scalise, Alexander, Badon, Baldone, Barrow, Baudoin, Bruce, Burns, Cravins, Curtis, Dartez, Dorsey, Dove, Downs, Durand, Erdey, Fannin, Farrar, Frith, Gallot, Glover, Greene, Hammett, Hebert, Hill, Hunter, Hutter, Jackson, Jefferson, Johns, Kennard, Kenney, LaBruzzo, LaFonta, Lancaster, McDonald, Montgomery, Morrell, Morrish, Pierre, Pitre, M. Powell, T. Powell, Quezaire, Schneider, Smiley, G. Smith, Strain, Thompson, Townsend, Trahan, Tucker, Waddell, Walker, Walsworth, White, Wooton.

Senator Broome filed the motion to vote on the House bill in the Senate.

## Minnesota

**HB 1 Sponsors:** Representatives Smith, Zellers, Meslow, Gazelka, Brod, Lesch, Severson, Cybart, Peppin, Emmer, Gunther, Ruth, Penas, Abeler, Paulsen, Beard, Holberg, P. Nelson, Hoppe, Finstad, Bradley, Erickson, Dill, Kohls, Demmer, Sykora, Tinglestad, Lanning, Wilkin, Samuelson, J. Johnson, Magnus, Simpson, Garofalo, Cornish. Companion bill **SB 609 Sponsors:** Senators Ranum, Kleis, Fischbach, Reiter, Ruud.

**SB 1689 (amendment to HB 1) Sponsors:** Senators Pappas, Foley, McGinn, Ranum, Limmer.

Companion bill **HB 1760 Sponsors:** Representatives Tingelstad, Knoblach, Clark, Thao, Smith, Murphy, Loeffler, Abeler, Gunther, Mariani, Ellison, Holberg, R. Johnson, Walker, Hornstein, Larson, Dorman, Soderstrom, Meslow, Brod, McNamara, Moc, Liebling, Kahn, Greiling.

#### **Missouri**

**HB 1487 Sponsor:** Representative Tom Self.

**SB 1210 (amendment to HB 1477) Sponsors:** Senators Bray, Bland, Champion, Coleman, Days, Steelman, Yeckel.

#### **New Jersey**

**AB 2730 Sponsors:** Assemblymembers Stender, Cohen, Chivukula, Greensteir, Green, Diegnan, Mayer, Eagler, Connors, Payne, Gusciora.

Related bill **SB 1848 Sponsors:** Senators Gill, Inverso, Lance, Kyrillos, Kean, Connors, Allen, Turner. Related bill **AB 3213 Sponsor:** Assemblymember Baroni. Related bill **SB 1877 Sponsors:** Senators Inverso, Lance, Kyrillos, Kean, Connors.

#### **Texas**

**HB 2096 Sponsors:** Representatives Pickett, Lucio. **HB 869 (amendment to HB 2096) Sponsors:** Representatives Burnam, Peña, Wohlgemuth, Keel, Riddle, Chavez, Christian, Guillen, Hupp, Madden, Menendez, Seaman, Telford, Truitt, Wong.

Companion bill **SB 1953 Sponsors:** Senators Van de Putte, Armbrister, Averitt, Barrientos, Bovins, Brimer, Carona, Deuell, Duncan, R. Ellis, Estes, Fraser, Gallegos, Harris, Iltinajosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Ratliff, Shapiro, Shapleigh, Staples, Wentworth, West, Whitmire, Williams, Zaffirini.

#### **Washington**

**HB 1175 Sponsors:** Representatives Voloria, Roach, O'Brien, Conway, Clements, Lantz, Linville, Moeller, Delvin, Benson, Darneille, Kenney, Kessler, Simpson, Chase, McMahan, Upthegrove.

Companion bill **SB 5670 Sponsors:** Senators Fraser, Kohl-Welles, Brandland, Kline, Hargrove, Esser, Thibaudeau, Jacobsen, Prentice, B. Sheldon, Winsley.

#### **Statewide Interagency Task Forces on Human Trafficking**

##### **Colorado**

**HB 1143 Sponsors:** Representatives Eorodkin, T. Carroll, Curry, Frangas, Lindstrom, Madden, Marshall, Merrifield, Pommer, Todd, Benefield, Berens, Boyd, Cloer, Green, Harvey, Hefley, M. May, McFadyen, McGihon, Riesberg, Romanoff, Solano.

Senators Fitz-Gerald, Bacon, Gordon, Groff, Grossman, Hanna, Isgar, Jones, Sandoval, Shaffer, Tapia, Tochtrop, Tupa, Veiga, Williams, Windels.

##### **Connecticut**

**HB 5358 Sponsors:** Representatives Stillman, Berger, Boucher, Conway, Crisco, Currey, Godfrey, Gonzalez, Googins, Guerrero, Kerensky, Leone, Lewis, Malone, Martinez,

Nafis, Peters, Prague, Roy, Sullivan, Tercyak, Thompson, Willis, Winkler.  
Senators Crisco, Sullivan, Prague, Ciotto.

#### **Idaho**

**HCR 18 Sponsors:** State Affairs Committee members -- Representatives Deal, Smylie, Stevenson, Ellsworth, Black, Edmunson, Miller, Ring, Snodgrass, Jones, Garrett, Loertscher, Anderson, Andrus, Hart, Shepherd, Smith, Pasley-Stuart.

**Contacts:** Representatives Boe, Pasley-Stuart, Miller, Field, Wills.

#### **Minnesota**

**HB 1 Sponsors:** Representatives Smith, Zellers, Meslow, Gazelka, Brod, Lesch, Severson, Cybart, Peppin, Emmer, Gunther, Ruth, Penas, Abeler, Paulsen, Beard, Holberg, P. Nelson, Hoppe, Finstad, Bradley, Erickson, Dill, Kohls, Demmer, Sykora, Tingelstad, Lanning, Wilkin, Samuelson, J. Johnson, Magnus, Simpson, Garofalo, Cornish.

Companion bill **SB 609 Sponsors:** Senators Ranum, Kleis, Fischbach, Reiter, Ruud.

**SB 1689** (amendment to **HB 1**) **Sponsors:** Senators Pappas, Foley, McGinn, Ranum, Limmer. Companion bill **HB 1760 Sponsors:** Tingelstad, Knoblach, Clark, Thao, Smith, Murphy, Loeffler, Abeler, Gunther, Mariani, Ellison, Holberg, R. Johnson, Walker, Hornstein, Larson, Dorman, Soderstrom, Meslow, Brod, McNamara, Moe, Liebling, Kohn, Greiling.

#### **Washington**

**HB 2381 Sponsors:** Representatives Veloria, Van Iuven, Kenney, Dunshee, Romero, O'Brien, Darneille, Schual-Berke, Chase, Tokuda, Upthegrove, Edwards, Santos, Kagi, Haigh.

Companion bill **SB 6407 Sponsors:** Senators Costa, Kohl-Welles, Kline, Kastama, Thibaudeau.

**HB 1090 Sponsors:** Representatives Veloria, Roach, O'Brien, Bush, Lantz, Clements, Linville, Kenney, Boldt, Sullivan, Upthegrove, Chase, Darneille, Hudgins, Edwards.

**HR 4707 Sponsor:** Representative Veloria.

#### **International Marriage Brokers/International Matchmaking Organizations (IMOs)**

##### **Hawaii**

**HB 135 Sponsors:** Representatives Lee, Sonson, Arakaki, Luke, Morita, Leong, Karamatsu, Abinsay, Shimabukuro, Thielen, Ching, Kawakami, Marumoto, Finnegan, Kahikina, Hale, Pendleton.

Companion bill **SB 875 Sponsors:** Senators Chun, Oakland, Baker, Fukunaga.

##### **Missouri**

**HB 353 Sponsors:** Representatives Lipke, Page, J. Brown, Nieves.

**SB 437** (amendment to **HB 353**) **Sponsor:** Senator Bray.

##### **Texas**

**HB 177 Sponsors:** Representatives McCall, Castro. Senator West.

**Washington**

**SB 6417 Sponsors:** Senators Kohl-Welles, Costa, Prentice, Winsley, Long, Keiser, Benton.

Related bill **HB 2667 Sponsors:** Representatives Veloria, Darnelle, Haigh, Delvin, Tokuda, Chase, Santos.

**HB 1826 Sponsors:** Representatives Veloria, McMahan, O'Brien, Kenney, Boldt, Mielke, Santos, Hudgins, Upthegrove, Simpson, Conway.

Companion bill **SB 5532 Sponsors:** Senators Kohl-Welles, Benton, Fraser, Prentice, Carlson, Keiser, Winsley, Schmidt.

**Sex Tourism**

**Hawaii**

**HB 2020 Sponsors:** Representatives Arakaki, Chang, Evans, Hale, Karamatsu, Kawakami, Lee, Leong, Luke, Magaoay, Marumoto, Morita, Shimabukuro, Thielen.

Companion bill **SB 2227 Sponsors:** Senators Chun Oakland, Baker, Fukunaga, Kim.

**HB**

**409**

# ALASKA STATE HOUSE OF REPRESENTATIVES

716 W. 4<sup>th</sup> Ave  
Anchorage, AK 99501  
Room 610



Phone (907)-269-0265  
Fax# (907)-269-0264

## Representative Tom Anderson

### FACSIMILE

To: Legislative Legal Fax: 2029  
From: Josh Applebee Date: 2/27/2006  
Re: Amendment to HB 409  
CC:

Urgent  For Review  Please Comment  Please Reply  Please Recycle

Good Afternoon,

Attached is the Amendment #2 adopted by the House Labor & Commerce  
Committee to HB 409 24-LS0118/F.

Please make the change and provide the final to Room 408

Please let me know if you have any questions or if there is anything else you need.

-Josh

465-4954

Amendment #2

Offered by: Rep. Rokeberg

Page 2, Line 15

strike "employee"  
insert "working"



# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 409  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title No Workers' Comp for Real Estate Licensee RDU Corp, Bus & Prof Licensing (117)  
 Component Corp, Bus & Prof Licensing  
 Sponsor Lynn, Rokeberg  
 Requester Labor & Commerce Component N 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (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 excludes real estate licensees from workers' compensation coverage. It does not impact the operations of the division.

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

Phone (907) 465-2572  
 Date/Time 2/24/06 5:17 PM  
 Date 2/24/2006

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB409-DOLWD-WC-02-23-06  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: Labor and Workforce Development  
 Title: No Workers' Compensation For Real Estate RDU: Workers' Compensation  
           Licensee Component: Workers' Compensation  
 Sponsor: Representative Lynn  
 Requester: House L&C Component Number: 344

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

FUND SOURCE	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: None  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

POSITIONS	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Full-time						
Part-time						
Temporary						

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

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

Prepared by: Paul F. Lisankie, Director Phone: 465-6059  
 Division: Workers' Compensation Date/Time: 2/23/06 12:01 PM  
 Approved by: Greg O'Claray, Commissioner Date: 2/23/2006  
 Agency: Department of Labor and Workforce Development

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define:INDEPENDENT CONTRACTOR

Search

Advanced Search  
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## Web

Related phrases: independent contractor services independent contractor status

## Definitions of INDEPENDENT CONTRACTOR on the Web:

- A legal term for a person who is hired to do work for another person but who is not an employee or agent of that person. The hiring person is not responsible for the actions of the Independent Contractor nor does she owe that Independent Contractor the same legal duties owed by an Employer to an Employee under labor and employment laws.  
[www.tillecorockies.com/dictionary\\_i.htm](http://www.tillecorockies.com/dictionary_i.htm)
- A person or company retained to perform work for another, often under a written contract, whereby control is subjected to the end result and not as to how the work is performed. As opposed to an employee who receives direction on what, when and, to some degree, how to do a job. Care must be used in the classification of workers as either employees or independent contractors. What distinguishes them is the degree of control the employer has over the activities being performed.  
[www.faststart.state.nj.us/bts\\_glossary.html](http://www.faststart.state.nj.us/bts_glossary.html)
- The term is most important as used to describe the relationship of broker and salesperson, employee or independent contractor. If employee, the broker must withhold income tax and pay social security, provide workmen's compensation, and may be liable for some negligent acts of the salesperson while on the job. All of this is avoided by the broker if salesperson is an independent contractor.  
[www.ashcroftescrow.com/P19.cfm](http://www.ashcroftescrow.com/P19.cfm)
- An independent contractor relationship exists when the University has the right to control only the result of the service, not the manner of performance. Service is useful labor performed for another that may or may not produce a tangible commodity. Service includes, but is not limited to:  
[www.nmatmgt.ucsf.edu/ICA\\_Definitions.htm](http://www.nmatmgt.ucsf.edu/ICA_Definitions.htm)
- One who is retained to perform a certain act, but is subject to the control and direction of another, only as to the end result, and not as to the way they performs the act. This person normally sets their own working hours, pays their own expenses, receives no employee benefits, and pays for their own social security and income tax to the government, but not as a withholding from their paycheck. The majority of real estate salespeople work as independent contractors.  
[www.ronayneteam.com/Resources/Glossary.htm](http://www.ronayneteam.com/Resources/Glossary.htm)
- Both parties acknowledges that NP11 is an independent contractor; that it alone retains control of the manner of conducting its activities in furtherance of this Agreement; that it as well as any persons or agents as it may employ are not employees of You; and that neither this Agreement, nor the administration thereof, shall operate to render or deem either party hereto the agent or employee of the other. ...  
[www.naturalproductsinsider.com/ibg/terms.asp](http://www.naturalproductsinsider.com/ibg/terms.asp)
- A person who is not employed by a company but does work for it.  
[www.caltia.com/education/terms.html](http://www.caltia.com/education/terms.html)
- an individual who is hired to complete a specific project but who is free to do that work as he or she wishes; it is not based on how the person is paid, how often the person is paid, or whether the person works part-time or full-time. An independent contractor is not an employee; thus, he or she cannot sue an employer for

a wrongful act or injury suffered on the job. The independent contractor will receive a 1099 form.  
[www.jaamonline.com/pt/r.../jaamt/fulltext.01179370-200506000-00010.htm](http://www.jaamonline.com/pt/r.../jaamt/fulltext.01179370-200506000-00010.htm)

- Vendor and Vendor's Staff are independent contractors and not employees of Legacy. Vendor's Staff are not eligible for and may not participate in any Legacy benefit and retirement plan or leave program. Vendor's Staff are not covered by Legacy's workers' compensation insurance. ...  
[www.legacyhealth.org/body.cfm](http://www.legacyhealth.org/body.cfm)
- An independent contractor is someone who performs a job for another, but is free from the control of the other regarding the details of the work to be done.  
[www.samakowlaw.com/articles7.html](http://www.samakowlaw.com/articles7.html)
- A taxpayer who contracts to do work according to his own methods and who is not subject to control except as to the results of such work. An employee, by contrast, is subject to the control of the employer as to the methods to be used to obtain the desired results.  
[www.bookkeeperlist.com/definitions1.shtml](http://www.bookkeeperlist.com/definitions1.shtml)
- A person who works for him-, or herself in a governmental or private capacity.  
[wps.prenhall.com/chet\\_nathe\\_dental\\_2/0,9128,1352887-content,00.html](http://wps.prenhall.com/chet_nathe_dental_2/0,9128,1352887-content,00.html)
- A contractor who is self-employed.  
[www.mtgmortgages.com/glossary1.htm](http://www.mtgmortgages.com/glossary1.htm)
- A person who is hired by a company, but works for himself/herself. The company is a client, rather than an employer.  
[www.marketconscious.com/dict2.htm](http://www.marketconscious.com/dict2.htm)
- Person who agrees with a party to undertake the performance of a task for which the person is not expected to be under the direct supervision or control of the party. Ordinarily this arrangement and relationship shields the party from liability for negligent acts of the independent contractor that occurred during the performance of the work. For example, a medical consultant is an independent contractor for whose negligent acts the attending doctor is not liable.  
[www5.aaos.org/oko/vb/online\\_pubs/professional\\_liability/glossary.cfm](http://www5.aaos.org/oko/vb/online_pubs/professional_liability/glossary.cfm)
- A person who acts for another but who sells final results and whose methods of achieving those results are not subject to the control of another.  
[www.sanderco.com/Glossary%20Pages/1.htm](http://www.sanderco.com/Glossary%20Pages/1.htm)
- means an individual contractor or an employee of a contractor who provides personal services and who is not an employee of the state of Michigan.  
[www.state.mi.us/midcs/Rules2002/crule9.htm](http://www.state.mi.us/midcs/Rules2002/crule9.htm)
- One who is hired to do a particular job and is subject to the direction of the person in charge. Independent contractors pay for their own expenses and taxes and are not viewed as employees with benefits.  
[www.peakagents.ca/glossary/i3.htm](http://www.peakagents.ca/glossary/i3.htm)
- An independent contractor is a person or business which provides goods or services to another entity under terms specified in a contract. Unlike an employee, an independent contractor does not work regularly for a company.  
[en.wikipedia.org/wiki/Independent\\_contractor](http://en.wikipedia.org/wiki/Independent_contractor)

define:INDEPENDENT CONTRACT

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# Alaska State Legislature



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*A Communication From*  
**REPRESENTATIVE BOB LYNN**  
**District 31 Anchorage**

**E-Mail:** [Representative\\_Bob\\_Lynn@legis.state.ak.us](mailto:Representative_Bob_Lynn@legis.state.ak.us)  
**"Bob Lynn's Alaska Blog"** [AlaskaDistrict31.blogspot.com](http://AlaskaDistrict31.blogspot.com)

## Sponsor Statement

### HB 409

## Exempt Qualified Real Estate Licensees from Worker's Compensation Coverage

Most real estate licensees in Alaska are independent contractors. They are licensed under a broker because that is state law, but they operate their individual business as "independent contractors."

In the real world, this means that these licensees do not receive a wage, salary or benefits. They control and decide what days and hours they will work in order to achieve the goals they set for themselves. Business expenses paid by the licensee include: licensing fees, continuing education, advertising, long-distance phone calls, and business insurance on their vehicles. They often pay for their own computer, printer, and other office equipment, and create and pay for their own individual websites. Independent Contractors pay quarterly estimated income tax and pay, not only for their own social security taxes, but that portion of the social security tax that an employer would normally pay.

In short, real estate licensees operate an independent business within a business. For these reasons, it is an unnecessary financial hardship and inappropriate for the business owner to pay workers compensation for these independent contractors.

In fact, the Federal Government IRS recognizes qualified real estate licensees as independent contractors and the state should likewise.

Your support of this bill is respectfully requested.

# STATE OF ALASKA

Department Of Labor and Workforce Development

FRANK H. MURKOWSKI, GOVERNOR

P. O. Box 21149  
Juneau, AK 99802-1149  
Phone: (907)465-2700  
Fax: (907)465-2784

## OFFICE OF THE COMMISSIONER

February 7, 2006

The Honorable Thomas Anderson, Chair  
House Labor and Commerce Committee  
State Capitol, Room  
Juneau, Alaska 99801-1182

Dear Chairman Anderson:

My staff and I have reviewed the provisions of HB 409 currently before your committee. As you know HB 409 would amend AS 23.30.230 to specifically exempt certain real estate professionals from workers' compensation coverage. The exemption is limited to professionals licensed (under the provisions of AS 08.88.161) as real estate brokers, associate real estate brokers, or real estate salespersons. In order for the exemption to apply, those licensed professionals will have to be working under a written employment contract that provides they will not be treated as "employees" for either workers' compensation or federal income taxation purposes. As well, their pay will have to be directly related to sales or output rather than hours worked.

As workers' compensation benefits are a vital part of our social safety net, I usually speak against new exemptions from the Workers' Compensation Act. However, it is only fair to acknowledge that much of the real estate sales industry has consistently chosen to organize in ways that already allow licensed professionals to work without workers' compensation coverage. Those organizations include sole proprietorships, partnerships, limited liability companies, corporations whose officers waive workers' compensation coverage, and properly established "independent contractor" relationships. Unfortunately, a definitive determination whether an independent contractor relationship has been properly established can only be obtained on a case-by-case basis from the Workers' Compensation Board after an injury. That leads to uncertainty, frequent disagreements about the employer's insurance coverage and premiums, and considerable frustration throughout the real estate sales industry.

There is no easy way to remove that general uncertainty because it arises from the need to apply a fact-specific, twelve-point "relative nature of

the work" test developed by the Alaska Supreme Court to define the "independent contractor" relationship. In light of that fact, I support the focused exemption for licensed real estate professionals contained in HB 409 in order to relieve the current unacceptably uncertain situation.

Thank you for the opportunity to address this legislation.

Sincerely,



Greg O'Claray  
Commissioner

**Nancy Manly**

---

**From:** Mark Korting [markkorting@remax.net]  
**Sent:** Monday, February 06, 2006 5:51 PM  
**To:** Rep. Bob Lynn  
**Subject:** Thank you Bob...  
**Follow Up Flag:** Follow up  
**Flag Status:** Yellow

Representative Lynn, (Bob)

I am sending you a copy of an email I will be sending to all the Representatives on the Labor & Commerce Committee. I have only sent this to you and Rep. Tom Anderson so far. Any comments?

*Dear Representative*

*A bill sponsored by Rep. Bob Lynn will be headed toward your Labor & Commerce Committee soon. The Bill is HB 409. I support this bill and would encourage you to do the same. I've been fighting this issue for years and there was a time, not all that long ago, when real estate licensees were exempted from Workers Compensation Insurance as we were considered "independent contractors" by insurers as well as the Board. We would like the option to be able to have, or not have, coverage for our independent contractors. They could also purchase coverage for themselves if they chose to do so.*

*We, real estate licensees, have been, and still are, considered by the Internal Revenue Service to be acting as independent contractors. Our licensees here at RE/MAX Properties, Inc. execute a very complete and thorough 11 page Independent Contractor Agreement and pay for all their services. I have owned and operated this business since 1980. I also have the franchise for RE/MAX offices throughout the State.*

*I would be glad to answer any questions you may have and may be able to testify in person a little later in the session.*

*Also, I would like to take a moment to "Thank you for serving"! I appreciate all your sacrifice to try to make Alaska a better place to live.*

*Thank you Tom, for your attention to this matter. I don't ask for much and try to ask for things that seem reasonable. There are a lot of complicated issues here in the Workers Comp Statutes.*

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## Authors Row

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## Employee or Contractor? "The Definition Is Changing-- Again!"

© by [Greta P. Hicks, CPA](#)

"For nearly 20 years the IRS has been prohibited by law from issuing any guidance regarding employment tax status," Commissioner Richards said. In 1986 and in 1995, when this author attended the White House Conference on Small Business, the employee versus contractor issue was discussed at length by irate businesses owners. It appears that the IRS has at last heard our complaint. In a March 18 announcement, IRS Commissioner Richardson stated, "People have complained about the uncertainty that results from worker classification under the (20) common law standard(s), yet we (the IRS) are prohibited from issuing guidance that is more up to date. I believe that these initiatives we are announcing today will help ease some pressures that both the business community and the IRS face."



The IRS announced on March 18, 1996 that they are suspending employee-independent contractors audits for the next few months and they have developed new audit training manuals and employment tax audit guidelines. Also included in this announcement is a "let's make a deal" settlement offer.

Whether a worker is defined as an employee or independent contractor is a matter of a complex set of 20 common law factors plus interpretations by numerous court cases. Back in the late 70's the courts and IRS audit teams were overwhelmed with mountains of audits related to the definition of an employee. A cry went from businesses to Capital Hill and Congress passed Section 530 of the Revenue Act of 1978. Companies received a brief reprieve from employment tax audits until the late 80's and early 90's when the IRS began re-attacking the employee versus contractor issue. Now with the IRS audit teams again being in a quagmire over the issue, the IRS has taken the initiative to more clearly define employee and to offer those businesses already under audit an alternative to bankruptcy.

The most recent suspension of employee versus contractor audits is to give the IRS time to train auditors in field on the new manual procedure related to worker reclassification. The training materials will focus on defining an employee by determining the control the company has over the workers. The materials discuss the control factors under the 20 common law standards and guides auditors in determining which of those 20 factors are relevant. The IRS defines control as:

Anyone who performs services is an employee if you, as an employer, can control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the legal right to control the method and result of the services.

A draft copy of the new manual on worker reclassification can be obtained free. Write Dean, IRS School of Taxation, CD TX, 2221 S. Clark St., Arlington, VA 22202.

### Safe Harbor Rules

Section 530 of the Revenue Act of 1978, prohibited the IRS by law from issuing any guidance regarding employment tax status and proposed several "safe-harbor rules" for companies who

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were under employment tax audits. Roughly, Section 530 passed by Congress in 1978 said, "IRS lay off until we (Congress) defines an employee." Here 18 years later, Congress has not define employee and has prohibited the IRS from issuing any regulations on the subject.

Over the years, the IRS interpretation of the "safe-harbor rules" has gone from liberal to conservative. In 1979 and 1980 on most employment tax audits, the IRS allowed company's to fall under the safe-harbor rules. But during the era of the "no new taxes," the IRS began an ultra conservative interpretation of Section 530 and it was near impossible for any company under IRS employment tax audit to claim the safety of Section 530.

On March 18 the IRS announced that they are establishing new procedures that will ensure that auditors properly apply the taxpayer relief provisions under Section 530 of the Revenue Act of 1978. The new policy on application of the safe-harbor rules will be more liberal and allow more companies to rely upon Section 530 safe havens.

#### Let's Make A Deal

The most significant aspects of the March 18 announcement details the two new expedited procedures for companies whose existing worker classifications are being questioned by the IRS.

First, the IRS is establishing new procedures under an optional classification settlement program that will allow companies and auditors to resolve contractor versus employee issues earlier in the audit process.

For example, companies that filed Form 1099, Information Returns, but failed to meet the other two requirements under Section 530 safe-harbor rules, could reclassify their workers to employees prospectively and pay only a specified tax assessment not exceeding one year's liability. The amount of the assessment would depend on the extent to which the company has satisfied the safe-harbor requirements under Section 530.

Secondly, the IRS has expanded procedures developed last year to allow companies to, at their option, to appeal employee versus contractor issues to the IRS Appeals function even while an audit is in progress. This procedure, which is a part of the taxpayer rights initiatives the IRS announced earlier this year, is designed to resolve employee versus contractor issues earlier in the audit process.

#### Time Line

On March 5, 1996, the IRS began a two year test period of the classification settlement program. A one year test of the early referral to Appeals procedures begins on March 18, 1996.

During the suspension of the employee versus independent contractors audits, the IRS will be training field office personnel on the new expedited procedures for companies currently under audit. This author believes that because the training has not been budgeted for during the current fiscal year, the training will not take place until after October 1, 1996, the beginning of the next fiscal year's budget. The effect of budget constraints will be to put on hold any existing audits or appeals until after the training of field personnel. The date of the training will vary across the country depending upon other budgetary demands of local offices.

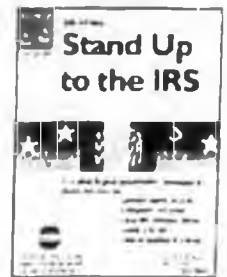
#### Bottom Line

Under this new policy, the IRS will waive much of the back taxes it asserts that companies owe. For many companies that have been consistent in how they classify their workers, the IRS will let them to shift to employee status without penalties for prior years. This policy is consistent with other recent policy changes which focus on future compliance of companies rather than concentrating heavily on punishment for past non-compliance with the laws. Although not a solution for every company, it is a beginning step to settlement.

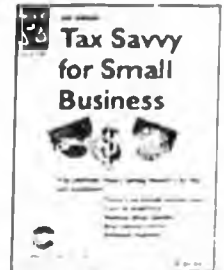
For More Information

 **Contesting IRS Penalties**

By Holmes F. Crouch



By Frederick W. Daily



By Frederick W. Daily

Call the IRS at 1-800-TAX-FORM and ask for Publication 937, Business Reporting, and for Form SS-8, Information for Use in Determining Whether a Worker is an Employee for Federal Employment Taxes and Income Tax Withholding. The purpose of the SS-8 is for workers and companies to answer the questions, mail the SS-8 to their Service Center, and receive back a Private Letter Ruling from the IRS on the status of the company's worker(s). Do not take these questions lightly. Secure a copy of the SS-8 for yourself. The questions are worded in such a way that most all workers are employees. Occasionally, the IRS Revenue Officers requests that companies complete SS-8. Professional tax advise should be sought before submitting this or other forms to the IRS.

## Who Is An Employee?

### The IRS Definition

The Internal Revenue Service uses these criteria to determine whether an individual is an employee or an independent contractor. The worker is an employee if

- You or your representative tells the worker where, when, and how to work
- You train the worker
- The business performance depends on the worker
- The worker has a continuing relationship with the company
- The worker's services must be personally rendered by the him/her
- You set the worker's work hours
- The worker works on the employer's premises
- You are paid by the hour, weeks, or month
- You furnish tools and materials
- You can fire the worker without violating a contract
- The worker has a right to quit without incurring a liability
- The worker does not offer the worker's services to the public at large
- The worker has no opportunity for profit or loss as a result of the worker's service
- The worker has no significant investment in the business
- You require the worker to submit oral or written reports
- The worker is a corporate officer

### Section 530 Safe Harbor Rules

Section 530 provides certain safe-harbor rules. If you could fall under these safe-harbor rules, the IRS could not re-define the worker as a employee. In general if, the

- company treated in individuals consistently as a contractor, and the
- company was in full compliance by filing all required forms such as Form 1099, and if the
- company could rely on one of three basis for their practice of carrying the worker as a contractor
  - Judicial precedent (A court case in the company's favor)
  - Past IRS Audit (A past IRS audit determine the worker to be a contractor)
  - Industry Practice (There is a long-standing recognized practice of treating such workers as contract)
- then, the IRS could not change the status of the worker to employee

### 20 Common Law Factors

- 1 Instructions
- 2 Training
- 3 Integration
- 4 Service rendered personally

- 5 Hiring, supervising, and paying assistants
- 6 Continuing relationship
- 7 Set hours of work
- 8 Full-time work required
- 9 Doing work on business owner's premises
- 10 Accomplishing work in certain order or sequence
- 11 Submission of oral or written reports
- 12 Method of payment
- 13 Payment of business or traveling expenses
- 14 Furnishing tools and equipment
- 15 Significant investment
- 16 Realization of profit or loss
- 17 Work for one employer at a time
- 18 Offer their services to the general public
- 19 Right to discharge
- 20 Right to terminate

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[List of Articles by Greta P. Hicks, CPA](#)

GRETA P. HICKS, CPA and former IRS manager, concentrates in solutions to IRS problems and advises business and tax professional on IRS policies and procedures. Ms Hicks is owner of TAX SOLUTIONS, Inc., a company providing educational materials and programs on solutions to IRS problems and is a nationally known speaker and writer on solutions to IRS problems. To arrange for consultation contact [gretahickscpa@yahoo.com](mailto:gretahickscpa@yahoo.com) *Greta's web site* <http://www.gretahicks.com>

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## **Statutory Independent Contractor (Non-Employee)**

Due in part to the difficulty that frequently arose in the application of the 20 factors by the Internal Revenue Service, in 1982, under the Tax Equity and Fiscal Responsibility Act (TEFRA), Congress created a new category of independent contractor for federal tax purposes known as a "statutory non-employee" or "statutory independent contractor." It is contained in Section 3508 of the Internal Revenue Code.

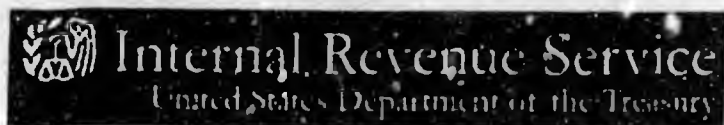
In order to qualify as a statutory independent contractor, the following three criteria must be met:

1. The sales associate must be a licensed real estate agent.
2. Substantially all of the sales associate's remuneration for the services performed as a real estate agent must be directly related to sales or other output rather than to the number of hours worked.
3. A written agreement must exist between the sales associate and the person for whom he or she works, which agreement must provide that the sales associate will not be treated as an employee with respect to such services for federal tax purposes.

This three-part test is far less complicated than the application of multiple factors under the common law.

### **Licensure**

The licensure requirement should be easily satisfied by all real estate salespeople in view of the license law requirements in all states, territories, and the District of Columbia.



## Licensed Real Estate Agents - Real Estate Tax Tips

Most real estate professionals operate their business as a sole proprietorship. This means that you are not someone's employee, you haven't formed a partnership with anyone, and you have not incorporated your business.

### Statutory Nonemployees

Licensed real estate agents are statutory nonemployees and are treated as self-employed for all Federal tax purposes, including income and employment taxes, if

- Substantially all payments for their services as real estate agents are directly related to sales or other output, rather than to the number of hours worked
- Their services are performed under a written contract providing that they will not be treated as employees for Federal tax purposes

This category includes individuals engaged in appraisal activities for real estate sales if they earn income based on sales or other output.

### Additional Resources

Publication 15-A, Employer's Supplemental Tax Guide (Supplement to Circular E, Employer's Tax Guide, Publication 15)

# INDEPENDENT CONTRACTOR OR EMPLOYEE?



SECTION 530 PROVIDES  
BUSINESSES WITH  
RELIEF FROM FEDERAL  
EMPLOYMENT TAX  
OBLIGATIONS IF CERTAIN  
REQUIREMENTS ARE MET.

## SECTION 530 RELIEF REQUIREMENTS

**Y**our business has been selected for an employment tax examination to determine whether you correctly treated certain workers as independent contractors. However, you will not owe employment taxes for these workers, if you meet the **relief requirements** described below. If you do not meet these **relief requirements**, the IRS will need to determine whether the workers are independent contractors or employees and whether you owe employment taxes for those workers.

**Section 530 Relief Requirements:**  
To receive relief, you must meet all three of the following requirements:

### I. Reasonable Basis

First, you had a reasonable basis for not treating the workers as employees. To establish that you had a reasonable basis for not treating the workers as employees, you can show that:

- You reasonably relied on a court case about Federal taxes or a ruling issued to you by the IRS; or
- Your business was audited by the IRS at a time when you treated similar workers as independent contractors and the IRS did not reclassify those workers as employees, or

- You treated the workers as independent contractors because you knew that was how a significant segment of your industry treated similar workers; or
- You relied on some other reasonable basis. For example, you relied on the advice of a business lawyer or accountant who knew the facts about your business.

If you did not have a reasonable basis for treating the workers as independent contractors, you do not meet the **relief requirements**.

### II. Substantive Consistency

In addition, you (and any predecessor business) must have treated the workers, and any similar workers, as independent contractors. If you treated similar workers as employees, this relief provision is not available.

### III. Reporting Consistency

Finally, you must have filed Form 1099-MISC for each worker, unless the worker earned less than \$600. Relief is not available for any year you did not file the required Forms 1099-MISC. If you filed the required Forms 1099-MISC for some workers, but not for others, relief is not available for the workers for whom you did not file Forms 1099-MISC.

*The IRS examiner will answer any questions you may have about your eligibility for this relief.*





This Employment Tax Resource Courtesy Of  
*The Independent Contractor Report*  
James R. Uvichart III, Esq.  
Editor

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Full Text, as Amended  
of  
**Section 530**  
of the  
**Revenue Act of 1978**  
entitled  
**Controversies Involving Whether Individuals are Employees  
for Purposes of Employment Taxes**

---

Section 530 Table of Contents

- (a) Termination of Certain Employment Tax Liability.
  - (b) Prohibition Against Regulations and Rulings on Employment Status.
  - (c) Definitions.
  - (d) Exception.
  - (e) Special Rules For Application of Section.
- 

*Section 530 of the Revenue Act of 1978, 26 U.S.C.A. Sec. 3401 note, Pub. L. 95-600, as amended by Pub. L. 96-167, Sec. 9(d), Dec. 29, 1979, 93 Stat. 1278, Pub. L. 96-541, Sec. 1, Dec. 17, 1980, 94 Stat. 3204, Pub. L. 97-248 [Tax Equity and Fiscal Responsibility Act of 1982], title II, Sec. 269(c)(1), (2), 96 Stat. 552, Pub. L. 99-514, Sec. 2, title XVII, Sec. 1706(a), Oct. 22, 1986, 100 Stat. 2095, 2781, Pub. L. 104-188 [Small Business Job Protection Act of 1996] Sec. 1122, August 20, 1996, provides that*

**(a) Termination of Certain Employment Tax Liability. [Top]**

**(1) In general.**

- If -

**(A)** for purposes of employment taxes, the taxpayer did not treat an individual as an employee for any period, and

**(B)** in the case of periods after December 31, 1978, all Federal tax returns

(including information returns) required to be filed by the taxpayer with respect to such individual for such period are filed on a basis consistent with the taxpayer's treatment of such individual as not being an employee,

then, for purposes of applying such taxes for such period with respect to the taxpayer, the individual shall be deemed not to be an employee unless the taxpayer had no reasonable basis for not treating such individual as an employee.

**(2) Statutory standards providing one method of satisfying the requirements of paragraph (1).**

- For purposes of paragraph (1), a taxpayer shall in any case be treated as having a reasonable basis for not treating an individual as an employee for a period if the taxpayer's treatment of such individual for such period was in reasonable reliance on any of the following:

(A) judicial precedent, published rulings technical advice with respect to the taxpayer, or a letter ruling to the taxpayer;

(B) a past Internal Revenue Service audit of the taxpayer in which there was no assessment attributable to the treatment (for employment tax purpose) of the individuals holding positions substantially similar to the position held by this individual; or

(C) long-standing recognized practice of a significant segment of the industry in which such individual was engaged.

**(3) Consistency required in the case of prior tax treatment.**

- Paragraph (1) shall not apply with respect to the treatment of any individual for employment tax purposes for any period ending after December 31, 1978, if the taxpayer (or a predecessor) has treated any individual holding a substantially similar position as an employee for purposes of the employment taxes for any period beginning after December 31, 1977.

**(4) Refund or credit of overpayment.**

- If refund or credit of any overpayment of an employment tax resulting from the application of paragraph (1) is not barred on the date of the enactment of this Act (Nov. 6, 1978) by any law or rule of law, the period for filing a claim for refund or credit of such overpayment (to the extent attributable to the application of paragraph (1)) shall not expire before the date 1 year after the date of the enactment of this Act (Nov. 6, 1978).

**(b) Prohibition Against Regulations and Rulings on Employment Status.**  
**[Top]**

- No regulation or Revenue Ruling shall be published on or after the date of the enactment of this Act (Nov. 6, 1978) and before the effective date of any law hereafter enacted clarifying the employment status of individuals for purposes of the employment taxes by the Department of the Treasury (including the Internal Revenue Service) with respect to the employment status of any individual for purposes of the employment taxes.

**(c) Definitions. [Top]**

- For purposes of this section -

**(1) Employment tax.** - The term 'employment tax' means any tax imposed by subtitle C of the Internal Revenue Code of 1986 (formerly I.R.C. 1954, section 3101 et seq. of this title).

**(2) Employment status.** - The term 'employment status' means the status of an individual, under the usual common law rules applicable in determining the employer-employee relationship, as an employee or as an independent contractor (or other individual who is not an employee).

**(d) Exception. [Top]**

- This section shall not apply in the case of an individual who, pursuant to an arrangement between the taxpayer and another person, provides services for such other person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work.

**(e) Special Rules For Application of Section. [Top]****(1) NOTICE OF AVAILABILITY OF SECTION**

- An officer or employee of the Internal Revenue Service shall, before or at the commencement of any audit inquiry relating to the employment status of one or more individuals who perform services for the taxpayer, provide the taxpayer with a written notice of the provisions of this section.

**(2) RULES RELATING TO STATUTORY STANDARDS**

- For purposes of subsection (a)(2) -

**(A)** a taxpayer may not rely on an audit commenced after December 31, 1996, for purposes of subparagraph (B) thereof unless such audit included an examination for employment tax purposes of whether the individual involved (or any individual holding a position substantially similar to the position held by the individual involved) should be treated as an employee of the taxpayer,

**(B)** in no event shall the significant segment requirement of subparagraph (C) thereof be construed to require a reasonable showing of the practice of more than 25 percent of the industry (determined by not taking into account the taxpayer), and

**(C)** in applying the long-standing recognized practice requirement of subparagraph (C) thereof-

**(i)** such requirement shall not be construed as requiring the practice to have continued for more than 10 years, and

**(ii)** a practice shall not fail to be treated as long-standing merely because such practice began after 1978.

**(3) AVAILABILITY OF SAFE HARBORS**

- Nothing in this section shall be construed to provide that subsection (a) only applies where the individual involved is otherwise an employee of the taxpayer.

**(4) BURDEN OF PROOF-****(A) IN GENERAL**

- If-

(i) a taxpayer establishes a prima facie case that it was reasonable not to treat an individual as an employee for purposes of this section, and

(ii) the taxpayer has fully cooperated with reasonable requests from the Secretary of the Treasury or his delegate,

then the burden of proof with respect to such treatment shall be on the Secretary

**(B) EXCEPTION FOR OTHER REASONABLE BASIS**

- In the case of any issue involving whether the taxpayer had a reasonable basis not to treat an individual as an employee for purposes of this section, subparagraph (A) shall only apply for purposes of determining whether the taxpayer meets the requirements of subparagraph (A), (B), or (C) of subsection (a)(2)

**(5) PRESERVATION OF PRIOR PERIOD SAFE HARBOR**

- If -

(A) an individual would (but for the treatment referred to in subparagraph (B)) be deemed not to be an employee of the taxpayer under subsection (a) for any prior period, and

(B) such individual is treated by the taxpayer as an employee for employment tax purposes for any subsequent period,

then, for purposes of applying such taxes for such prior period with respect to the taxpayer, the individual shall be deemed not to be an employee.

**(6) SUBSTANTIALLY SIMILAR POSITION**

- For purposes of this section, the determination as to whether an individual holds a position substantially similar to a position held by another individual shall include consideration of the relationship between the taxpayer and such individuals.

[ End of Section 530, as amended ]

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*Editor's Note:*

1. Section 530(d), added by Section 1706(b) of Pub. L. 99-514, applies to remuneration paid and services rendered after December 31, 1986. Source: Pub. L. 99-514.
2. In general, amendments made by Section 530(e), added by Section 1122 of Pub. L. 104-188 [Small Business Job Protection Act of 1996] shall apply to periods after December 31, 1996. **NOTICE BY INTERNAL REVENUE SERVICE** - Section 530(e)(1) shall apply to audits which commence after December 31, 1996. **BURDEN OF PROOF - IN GENERAL** - Section 530(e)(4) shall apply to disputes involving periods after December 31, 1996. **NO INFERENCE** - Nothing in the amendments made by this section shall be construed to infer the proper treatment of the burden of proof with respect to disputes involving periods before January 1, 1997. Source: Pub. L. 104-188.

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\*\*\* CURRENT THROUGH P.L. 109-160, APPROVED 12/30/05 \*\*\*  
\*\*\* WITH A GAP OF 109-155 \*\*\*

TITLE 26 INTERNAL REVENUE CODE  
SUBTITLE C EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX  
CHAPTER 25 GENERAL PROVISIONS RELATING TO EMPLOYMENT TAXES AND COLLECTION OF  
INCOME TAXES AT SOURCE

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

26 USCS § 3508 (2005)

§ 3508 Treatment of real estate agents and direct sellers

(a) General rule For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller

- (1) the individual performing such services shall not be treated as an employee, and
- (2) the person for whom such services are performed shall not be treated as an employer

(b) Definitions For purposes of this section:

(1) Qualified real estate agent The term 'qualified real estate agent' means any individual who is a sales person if—

(A) such individual is a licensed real estate agent

(B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes

(2) Direct seller The term "direct seller" means any person if—

(A) such person

(i) is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment,

(ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment, or

(iii) is engaged in the trade or business of the delivering or distribution of newspapers or shopping news (including any services directly related to such trade or business),

(B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for Federal tax purposes

(3) Coordination with retirement plans for self-employed This section shall not apply for purposes of subtitle A [26 USCS §§ 1 et seq.] to the extent that the individual is treated as an employee under section 401(c)(1) [26 USCS § 401(c)(1)] (relating to self-employed individuals)

**HISTORY:**

(Added Sept. 3, 1982, P.L. 97-248, Title II, § 269(a), 96 Stat. 551, Aug. 20, 1996, P.L. 104-188, Title I, § 1118(a), 110 Stat. 1764.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES****Amendments**

In 1996, P.L. 104-188, Sec. 1118(a) (applicable to services performed after 12/31/95, as provided by Sec. 1118(b), which appears as a note to this section), amended subsec. (b)(2)(A) by deleting "or" at the end of cl. (i), inserting "or" at the end of cl. (ii), and adding cl. (iii).

In 1982, P.L. 97-248, Sec. 269(a), added Code Sec. 3508, effective for services performed after 12/31/82.

**Other provisions**

**Rules and regulations.** Act Sept. 3, 1982, P.L. 97-248, Title II, § 269(c)(3), 96 Stat. 553, provides: "Nothing in section 520 of the Revenue Act of 1978 [26 USCS § 3401 note] shall be construed to prohibit the implementation of the amendments made by this section [enacting this section, amending 42 USCS § 410 and 26 USCS § 3401 note]."

**Application of Aug. 20, 1996 amendments.** Act Aug. 20, 1996, P.L. 104-188, Title I, Subtitle A, § 1118(b), 110 Stat. 1764, provides: "The amendments made by this section [amending subsec. (b)(2)(A) of this section] shall apply to services performed after December 31, 1995."

**NOTES:****Related Statutes & Rules**

This section is referred to in 42 USCS § 410.

**Research Guide****Am. Jur.**

35 Am. Jur. 2d, Federal Tax Enforcement § 163.

33A Am. Jur. 2d, Federal Taxation (2005) §§ 9161, 9506, 9516, 9810, 9813.

70A Am. Jur. 2d, Social Security and Medicare §§ 286, 288, 289, 291.

**Labor and Employment**

10 Labor and Employment Law (Matthew Bender), ch. 261, Terms, Conditions, Privileges of Employment, and Independent Contractor Status § 261.06.

**Interpretive Notes and Decisions**

1. Generally 2. "Consumer products"

**1. Generally**

Telemarketers and delivery personnel who market gourmet food products by telephone or personal sales, are compensated solely on commissions and serve under written agreement that they are not treated as employee for employment tax purposes, are direct sellers. It is not necessary that copies of each written contract be produced, and it is sufficient that the taxpayer have samples of contracts and evidence that telemarketers and delivery personnel executed such agreements. *Smoky Mt. Secrets v. United States* (1995, ED Tenn.) 910 F. Supp. 1316, 95-2 USTC ¶ 50573, 76 AFTR 2d 6974, 95 TNT 210-18, reported in full (1995, ED Tenn.) 1995 US Dist LEXIS 20348.

**2. "Consumer products"**

"Consumer products" for purposes of § 3508 include both tangible consumer goods and intangible consumer services. Consumer products include home study educational courses for instruction-by-mail educational institute, accordingly, direct sellers of home study educational courses who meet other § 3508 requirements can be considered independent contractors. *Cleveland Inst. of Electronics v. United States* (1992, ND Ohio) 787 F. Supp. 741, CCH Unemployment Ins. Rep. P 16583A, 92-1 USTC ¶ 50182, 69 AFTR 2d 1015.

Definition of "consumer product" includes both tangible consumer goods and intangible consumer services, and

accordingly persons who sell home study educational courses sell consumer products. *Cleveland Inst. of Electronics v United States* (1992, ND Ohio) 787 F Supp 741. *CCH Unemployment Ins Rep P 16583A* 92-1 USTC P 50182, 69 AFTR 2d 1015.

Sales personnel who sell cable television subscriptions qualify as direct sellers and are properly treated as independent contractors since cable television subscriptions qualify as consumer products. *R Corp v United States* (1994, MD Fla) *CCH Unemployment Ins Rep P 14033B*, 94-2 USTC P 50380, 74 AFTR 2d 5620, 94 TNT 156-34, magistrate recommendation, costs/fees proceeding (1996, MD Fla) 77 AFTR 2d 855.

Specialty advertising products, such as pens, key chains, coffee mugs, and like distributed by business as form of advertising are not consumer products since personal or household use of item is subordinate to its purpose of conveying advertising message. *Private Letter Ruling 9143046*.

18. **Making Service Available to General Public.** Does the worker offer services to the public? The fact that a worker makes his or her services available to the general public on a regular and consistent basis indicates an independent contractor relationship.
19. **Right to Discharge.** Can the worker be fired? The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is the employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired as long as the independent contractor produces a result that meets the contract specifications.
20. **Right to Terminate.** Can the worker quit without incurring liability? If the worker has the right to end his or her relationship with the person for whom the services are performed at any time without incurring liability, an employer/employee relationship exists.

These are the factors the IRS has used when determining whether a real estate salesperson is an employee or common-law independent contractor. Some examples of how these factors have been applied can be found in the summaries of relevant case decisions and private letter rulings in the Appendix.

## **The Federal "Safe Harbor" Rule**

Also of interest to real estate brokers who desire to maintain a common-law independent contractor relationship with salespeople is the "safe harbor" provision under Section 530 of the Revenue Act of 1978.

Under this section, the IRS exempts independent contractors from the 20 common law factors if all of the following three criteria are met:

1. Individuals doing similar work have been consistently treated like independent contractors since December 31, 1977.
2. The independent contractor never has been treated like an employee, and since December 31, 1978, 1099s have been filed for the independent contractor.

10 *Independent Contractors in Real Estate: A Guide for Risk Management* \_\_\_\_\_

3. There was a reasonable basis for treating the worker as an independent contractor based on:
- Similar judicial rulings, IRS rulings, or an IRS technical advice memorandum;
  - Previous audits, in which a broker was not fined for treating workers doing similar work as independent contractors; or
  - Practice in the industry to treat such workers as independent contractors.

This exemption does not apply to state law requirements such as state income tax withholding, workers' compensation, and unemployment compensation. Nor does it apply to legal liability: for example, for tortious acts of the sales associate.

and third statements into evidence was not error.

[3, 4] As to the second issue, we hold that the probative value of the evidence of the previous uncharged offenses outweighed any possible prejudicial impact. This evidence, was, therefore, properly admitted. The evidence tended to show Dulier's control and domination of the other occupants of the apartment. It proved his complicity in the unlawful killing. Because the evidence completed the picture and set the stage for the offense being tried, it was admissible. *Kuzrul v. State*, 436 P.2d 902, 967 (Alaska 1968). *McKee v. State*, 488 P.2d 1039 (Alaska 1971). As to the testimony about a sexual assault on Morlan, somewhat less relevance is demonstrated. But we note that the sexual assault, which was touched upon, briefly in the testimony of Morlan, was not emphasized by the prosecution, and the judge cautioned the jury not to consider that evidence except for the limited purpose of determining the state of mind of the witness Morlan. We find no abuse of discretion, and no error.

[5] As to the sentence appeal, we do not agree with Dulier that the sentence was excessive. The trial court considered the brutal nature of the crime, the defendant's character and attitude, and the need for the protection of society. The court had the benefit of psychiatric evidence which indicated that Dulier is a psychopath and is probably not amenable to treatment. In our opinion Dulier falls within the category of the worst type of offender for the crime of which he was convicted. We uphold the sentence. *Galaktionoff v. State*, 486 P.2d 919 (Alaska 1971). *Meyers v. State*, 486 P.2d 713 (Alaska 1972).

Affirmed.

ful police procedures, may be operating under coercive pressure of the original confession in his subsequent confession. *United States v. Buyer*, 331 U.S. 532,

Curtis OSTREM, Appellant,

v.

ALASKA WORKMEN'S COMPENSATION BOARD et al., Appellees.

No. 1809.

Supreme Court of Alaska

July 9, 1973

Workmen's compensation case. The Superior Court, Fourth Judicial District, Gerald J. VanHoomissen, J., determined that claimant was independent contractor and not entitled to compensation, and claimant appealed. The Supreme Court, Boochever, J., held that where issue was raised before workmen's compensation board with respect to whether claimant was emergency employee, but no findings or conclusions were made by board, remand was necessary for determination of issue.

Remanded.

1. Workmen's Compensation ⇨ 1457

Evidence, including evidence that claimant who was engaged to install certain equipment performed work requiring high degree of skill, that claimant established his own rate of pay and his own minimum hours, that claimant could be expected to carry his own accident burden, that work performed by claimant was not regular part of work of company which engaged his services, and that work involved not more than 5 1/2 working hours, was sufficient to establish that claimant was independent contractor and not employee of company which engaged his services.

2. Workmen's Compensation ⇨ 314

Independent contractor could not be loaned servant, but could be emergency employee.

3. Workmen's Compensation ⇨ 234

Not every service at request of another creates emergency employee situation.

540-541, 67 S.Ct. 1394, 91 L.Ed. 1654 (1947). *Martel v. State*, 511 S.W.2d 1055, 1973 (Alaska 1973)

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Digest

#### 4. Workmen's Compensation $\text{C}\text{--}1949$

Where issue was raised before workmen's compensation board with respect to whether claimant was emergency employee, but no findings or conclusions were made by board, remand was necessary for determination of issue.

Stephen C. Cowper, Fairbanks, for appellant.

James R. Blair and Lloyd I. Hoppner of Rice, Hoppner, Blair & Associates, Fairbanks, for appellees Burgess & Employers Commercial Union.

Dennis Cook, Fairbanks, for appellees Cummins & Insurance Co. of America.

Before RABINOWITZ, C. J., and CONNOR, ERWIN, BOOCHEVER and FITZGERALD, JJ.

#### OPINION

BOOCHEVER, Justice.

In this case we are confronted with the question of whether Curtis Ostrem was an employee of either Cummins Alaska Service (Cummins) or Burgess Construction Company (Burgess), or both, so as to be entitled to benefits under the Alaska Workmen's Compensation Act.<sup>1</sup> The Alaska Workmen's Compensation Board (the Board) found that he was an independent contractor and not entitled to compensation.

On February 20, 1970 Cummins secured the services of Ostrem, to install a rebuilt diesel engine pursuant to warranty into a piece of heavy equipment owned by Burgess Construction Company, and located at Burgess' camp 50 miles north of Livenood, Alaska. While he was on the job, appellant, Ostrem, lived in the Burgess camp since there was no other place available.

Ostrem testified at the hearing that on this and similar jobs, he was paid on what is referred to as a "portal to portal" basis at the rate of \$10 per hour with a mini-

imum of 12 hours per day, plus room, board and travel expenses. On such jobs, Ostrem was normally paid after submitting an invoice. He supplied his own tools, except for one of a specialized nature for the particular machine which was supplied by Cummins.

Ostrem had an Alaska business license, but not a top of his own. Appellant was a member of Local 302 and was hired out of the union hall at times although not on this occasion. His hourly rate of pay on this job was equivalent to union scale.

On February 21, 1970 Ostrem worked on the engine all day in the Burgess shop until a helper furnished by Burgess had to leave and Ostrem could do no more work alone. While Ostrem was picking up his tools, a Burgess driller entered the shop and stated that a fitting had broken off from a piece of equipment, that fuel was leaking on the ground, and that he needed it fixed right away. Ostrem began to chip out a broken bushing and in the process a small piece of steel came loose and entered his eye.

Ostrem sought compensation from both Cummins and Burgess, and the matter was heard before the Board in Fairbanks on March 9, 1972. The Board found that Ostrem was an independent contractor and not an employee of either Burgess or Cummins, and concluded that he was not entitled to any workmen's compensation benefits.

On appeal to the superior court, the Board's order was affirmed by summary judgment in favor of the Alaska Workmen's Compensation Board, Burgess Construction Company, Cummins Alaska Service, Inc., and their respective insurance companies. Ostrem then filed this appeal.

The test to be used in reviewing the decision of the Board was most recently stated by us in *Anderson v. Employers Liability Assurance Corp.*,<sup>2</sup> as follows:

Our review of determinations of the Alaska Workmen's Compensation Board

<sup>1</sup> AS 23.30.005-270.

<sup>2</sup> 498 P.2d 288, 289-290 (Alaska 1972).

is limited by the substantial evidence test. A decision of the board may not be overturned unless it is unsupported by substantial evidence on the record taken as a whole. It is not important that the particular situation before the board is subject to more than one inference. What matters is whether the determination of the board is supported by substantial evidence on the whole record. (Citations omitted.)

This test is limited by the language of *Laborers & Hod Carrier Union Local 541 v. Groothuis*,<sup>3</sup> which stated:

The local is correct in noting that the reviewing court is not to "weigh the evidence or choose between competing inferences reasonably to be drawn from the evidence." But when the decision "rest[s] on erroneous legal foundations," it cannot be supported on appeal to this court. (Footnotes omitted.)

[1] This court then must review the record of the Board to determine whether there was substantial evidence on the record taken as a whole to support the conclusion that appellant, Ostrem, was an independent contractor, and to determine whether the Board applied the proper legal tests.

In *Searfus v. Northern Gas Co.*, we set forth the test to be applied in determining whether an injured claimant was to be considered as an employee under the provisions of the Alaska Workmen's Compensation Act, stating:

Professor Larson states that the theory of compensation legislation is that the costs of all industrial accidents should be borne by the consumer as a part of the cost of the product. From this principle, Professor Larson infers that "the nature of the claimant's work in relation to the regular business of the employer" should be the test for applicability of workmen's compensation, rather than the master-servant test of control which has been

developed to delimit the scope of a master's vicarious liability to third persons for torts committed by his servants.

It follows that any worker whose services form a regular and continuing part of the cost of that product and whose method of operation is not such an independent business that it forms in itself a separate route through which his own costs of industrial accident can be channelled, is within the presumptive area of intended protection.

Terming this approach the "relative nature of the work" test, Larson would have the trier of fact determine "employee" status through consideration of the character of the claimant's work or business, and the relationship of the claimant's work or business to the purported employer's business. (Footnotes omitted.)<sup>4</sup>

The "relative nature of the work" test has two parts: first, the character of the claimant's work or business, and second, the relationship of the claimant's work or business to the purported employer's business. Larson urges consideration of three factors as to each of these two parts. With reference to the character of claimant's work or business the factors are: (a) the degree of skill involved, (b) the degree to which it is a separate calling or business, and (c) the extent to which it can be expected to carry its own accident burden. The relationship of the claimant's work or business to the purported employer's business requires consideration of: (a) the extent to which claimant's work is a regular part of the employer's regular work, (b) whether claimant's work is continuous or intermittent, and (c) whether the duration is sufficient to amount to the hiring of continuing services as distinguished from contracting for the completion of the particular job.

In ascertaining whether there was substantial evidence on the record taken as a whole to justify the Board's finding that

3 491 P.2d 808, 812 (Alaska 1972).

Alaska App. 504-511 P.2d-49

4 472 P.2d 968, 969 (Alaska 1970).