SB

154

SENATE COMMITTEE REPORT

DATE: 4/8/05

FURTHER: Rules

DATE TURNED IN TO OFFICE: 4/18/05

Judiciary Committee considered SENATE BILL NO. 154

SB 154 JUVENILE DELINQUENCY PROCEEDINGS

"An Act relating to the jurisdiction for proceedings relating to delinquent minors and to telephonic and televised participation in those proceedings; amending Rules 2, 3, 4, 8, 12, 13, 14, 15, 16, 21, 22, 23, 24.1, and 25, Alaska Delinquency Rules; and providing for an effective date."

and recommends:

[✓] be **replaced** with _____ **CS** SB 154 (JUD)

[ ] adopt **previous** _____ **CS** CS Forthcoming (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ mittee

[ ] further referral to _____ e

CS Senate Bill:
[ ] Same Title
[ ] New Title

SCS House Bill:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
S. JUD	4/18			✓	4

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
LAW	4/6			✓	2
HSS	4/5			✓	3

[ ] **APPROPRIATION - no fiscal note**

	SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
French				X	
Guess				X	
Therriault		X			
Huggins		X			
Seekins	CHAIR:	L			

Alaska State Legislature

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GENE THERRIAULT
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Senate

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SENATE DISTRICT F

SPONSOR STATEMENT
SENATE BILL 154

"An Act relating to the jurisdiction for proceedings relating to delinquent minors and to telephonic and televised participation in those proceedings; amending Rules 2, 3, 4, 8, 12, 13, 14, 15, 16, 21, 22, 23, 24.1, and 25, Alaska Delinquency Rules; and providing for an effective date."

Senate Bill 154 addresses two concerns of juvenile justice in Alaska: first, improving the state's ability to hold juvenile offenders accountable for their conduct; and second, increasing the efficiency of the juvenile justice system by allowing telephonic hearings where personal appearance is not necessary for the fair determination of an issue.

Senate Bill 154 fills a serious gap in Alaska's statutes that allows young offenders to avoid prosecution if their role in a crime is not discovered until after the offender becomes 18 years of age, or if charges are not filed before the offender turns 18.

- Currently, when a person under 18 commits a delinquent act, the juvenile justice system is responsible for the matter; when a person over 18 commits a crime, the adult criminal system is responsible for prosecution;

- Recent court decisions have highlighted a loophole in the law: that is where a youth commits a delinquent act while under 18 years of age, but is not discovered or proceedings aren't filed until the person reaches 18. Neither the adult or juvenile system has clear jurisdiction.

- This gap is illustrated by a recent case that arose in Kenai: The State filed a Petition for Adjudication of Delinquency on a 19-year-old who was alleged to have committed a sexual assault when he was 17 years old. The Superior Court dismissed the petition, holding "there

Email: Senator_Gene_Therriault@legis.state.ak.us

is nothing in the statutes that suggests the legislature contemplated adjudication trials for adults who committed crimes as juveniles."

- Senate Bill 154 will fill this gap in jurisdiction by holding the juvenile accountable. The key change is found in proposed AS 47.12.020(b); it provid : that the delinquent minor statutes (AS 47.12) apply to a person who commits a violation of the criminal law of the state or a municipality while under 18 years of age, if the period of limitation under AS 12.10 has not expired.

Senate Bill 154 also amends Alaska's Delinquency Rules to allow for telephonic participation by juvenile offenders in certain proceedings. The law would still require a juvenile offender to be present for all hearings where personal presence is necessary for a fair determination of the issue. However, it would avoid expensive travel, where juveniles are transported to court appearances such as status hearings, when telephonic or televised appearance is adequate for the matter to be fairly decided.

CS FOR SENATE BILL NO. 154(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 4/8/05
Referred: Judiciary

Sponsor(s): SENATOR THERRIAULT

A BILL

FOR AN ACT ENTITLED

"An Act relating to the jurisdiction for proceedings relating to delinquent minors and to telephonic and televised participation in those proceedings; amending Rules 2, 3, 4, 8, 12, 13, 14, 15, 16, 21, 22, 23, 24.1, and 25, Alaska Delinquency Rules; and providing for an effective date."

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

*** Section 1.** AS 47.12.020 is amended by adding a new subsection to read:

(b) Except as otherwise provided in this chapter, proceedings relating to a person who is 18 years of age or over are governed by this chapter if the person is alleged to have committed a violation of the criminal law of the state or a municipality of the state, the violation occurred when the person was under 18 years of age, and the period of limitation under AS 12.10 has not expired.

*** Sec. 2.** AS 47.12 is amended by adding new sections to read:

Sec. 47.12.022. Applicability; inclusion of certain persons as minors. Except as provided in AS 47.12.025, the provisions of this chapter apply to a person

who is 18 years of age or older and who is subject to the jurisdiction of this chapter due solely to AS 47.12.020(b). To implement AS 47.12.020(b) and this section, the term "minor" as used in this chapter includes a person described in this section.

Sec. 47.12.025. Special provisions for certain persons considered to be minors. (a) Notwithstanding any other provision of law, the following special provisions apply to a person who is subject to the jurisdiction of this chapter due solely to AS 47.12.020(b):

(1) a petition filed under AS 47.12.040(b) must be styled as follows: "In the matter of . . . . . ., a person under the jurisdiction of this chapter under AS 47.12.020(b)"; the petition may not state the name of a parent, guardian, or other person;

(2) notice of an investigation, adjustment, hearing, or other procedure under this chapter to a parent, guardian, or foster parent is not required;

(3) participation by a parent, guardian, or foster parent in any part of the investigation, adjustment, hearing, or other procedure under this chapter is not required;

(4) agreement or consent by a parent or guardian to the terms and conditions of an informal adjustment under AS 47.12.060 is not required;

(5) an opportunity for a foster parent to be heard before informal adjustment under AS 47.12.060 is not required;

(6) the presence of a parent or guardian is not required, and the person does not have a right to have a parent or guardian present at an interview conducted during an investigation under this chapter;

(7) after a petition is filed and after further investigation that the court directs, if the person has not appeared voluntarily for proceedings under this chapter, the court may issue a summons or an arrest warrant for the person;

(8) a person who is taken into custody under this chapter may, in the discretion of the court and upon written promise to appear in court at the time specified by the court, be released; if not released, the person shall be detained under the provisions of (b) of this section;

(9) consent of a parent or guardian to waiver of the right to appointed

counsel or a guardian ad litem under AS 47.12.090 is not required;

(10) the appointment of a guardian ad litem under AS 47.12.090 is not required; the court may appoint a guardian ad litem under AS 47.12.090 only if special circumstances exist concerning the mental or physical capacity of the person who is named in the petition under (1) of this section;

(11) an order under AS 47.12.120(b) to release the person to a parent, guardian, or other person must be with the consent of the parent, guardian, or other person; a parent, guardian, or other person who consents does not assume any of the responsibilities described in AS 47.12.150 or retain any residual rights or responsibilities described in AS 47.12.150;

(12) a person released under AS 47.12.120(c) shall be released without conditions;

(13) a parent, guardian, or custodian may not apply for a review under AS 47.12.120(d); notice to a parent, guardian, custodian, or foster parent of a review under AS 47.12.120(a) is not required; a parent, guardian, custodian, or foster parent does not have a right to be heard at the review under AS 47.12.120(d);

(14) the person's parent or guardian may not file an appeal under AS 47.12.120(f);

(15) notice of the predisposition report under AS 47.12.130(b) to the person's parent or guardian is not required;

(16) unless part of a conditional release plan agreed to by a parent or guardian, a parent or guardian of the person may not be ordered to participate in or pay for treatment under AS 47.12.155(b)(1), (c), or (d) or to notify the department if the person violates a term or condition of a court order under AS 47.12.155(b)(2);

(17) an application to extend jurisdiction under AS 47.12.160(a) may not be made by a parent or guardian;

(18) the court may not order the parent of the person to pay for maintenance or care of the person under AS 47.12.230;

(19) the name of a parent or guardian of the person is not required to be disclosed in connection with the filing of a petition or informal adjustment under AS 47.12.315.

(b) At a hearing under AS 47.12.250(c) regarding a person who is subject to the jurisdiction of this chapter due solely to AS 47.12.020(b), if the court finds that probable cause exists, the court shall determine whether the person should be detained pending the hearing on the petition or released. The court may either order the person detained as provided in (c) of this section or released under the provisions of AS 12.30 as if the provisions of AS 12.30 were to apply to proceedings under this chapter. If the court finds no probable cause, the court shall order the person released and close the proceeding.

(c) If a person who is subject to the jurisdiction of this chapter due solely to AS 47.12.020(b) has been arrested by a peace officer or a probation officer under AS 47.12.245, detained under AS 47.12.250, or committed to the custody or supervision of the department under AS 47.12.120(b) or 47.12.240, the department, after consulting the peace officer or probation officer if appropriate, shall make arrangements for the detention, placement, or supervision of the person. In the discretion of the department, the person may be detained or placed in a juvenile facility or in an adult correctional facility.

*** Sec. 3.** AS 47.12.065(a) is amended to read:

(a) The department or the entity selected by it may refer to the appropriate district attorney the circumstances involving a minor who is subject to the provisions of this section because the minor is alleged to have violated a criminal law of the state. **Except as provided in (d) of this section, the** [THE] department or the entity selected by it may make the referral if the minor was 16 years of age or older at the time of the offense, and the offense is

(1) a felony that is a crime against a person and the minor has previously been adjudicated a delinquent under the laws of this state or substantially similar laws of another jurisdiction for a felony offense that is a crime against a person; or

(2) sexual abuse of a minor in the second degree.

*** Sec. 4.** AS 47.12.065 is amended by adding a new subsection to read:

(d) The department or the entity selected by it may refer to the appropriate district attorney a person who is subject to the jurisdiction of this chapter under

AS 47.12.020(b) and who is alleged to have committed a felony or other offense. If the district attorney elects to seek imposition of a dual sentence in the matter, the district attorney shall file notice of that election. If the alleged crime is a misdemeanor, the district attorney shall file a delinquency petition. If the alleged crime is a felony, the district attorney shall follow the procedure set out in (b) of this section.

*** Sec. 5.** AS 47.12.160(a) is amended to read:

(a) **Except as provided in (g) of this section, the** [THE] court retains jurisdiction over the case and may at any time stay execution, modify, set aside, revoke, or enlarge a judgment or order, or grant a new hearing, in the exercise of its power of protection over the minor and for the minor's best interest, for a period of time not to exceed the maximum period otherwise permitted by law or in any event extend past the day the minor becomes 19, unless sooner discharged by the court, except that the department may apply for and the court may grant an additional **one-year** [ONE- YEAR] period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it. An application for any of these purposes may be made by the parent, guardian, or custodian acting in behalf of the minor, or the court may, on its own motion, and after reasonable notice to interested parties and the appropriate department, take action that it considers appropriate.

*** Sec. 6.** AS 47.12.160(d) is amended to read:

(d) The department**, or the district attorney in a matter subject to the jurisdiction of this chapter under AS 47.12.020(b),** may petition the court for imposition of sentence pronounced under AS 47.12.120(j)(2) if the offender is still subject to the jurisdiction of the court and if the offender, after pronouncement of sentence under AS 47.12.120(j)(2),

(1) commits a subsequent felony offense;

(2) commits a subsequent offense against a person that is a misdemeanor and involves injury to a person or the use of a deadly weapon;

(3) fails to comply with the terms of a restitution order;

(4) fails to engage in or satisfactorily complete a rehabilitation

program ordered by a court or required by a facility or juvenile probation officer; or

(5) escapes from a juvenile **or other** correctional facility.

*** Sec. 7.** AS 47.12.160 is amended by adding a new subsection to read:

(g) If the department has filed a delinquency petition under AS 47.12.020 and 47.12.040 regarding a minor who is 18 years of age or older, the court has jurisdiction to adjudicate and dispose of the matter as provided in this chapter.

*** Sec. 8.** AS 47.14 is amended by adding a new section to read:

Sec. 47.14.025. Applicability; inclusions of certain persons as minors. The provisions of AS 47.14.010 - 47.14.050 apply to a person who is 18 years of age or older and who is subject to the jurisdiction of AS 47.12 due solely to AS 47.12.020(b). To implement this section, the term "minor" as used in AS 47.14.010 - 47.14.050 includes a person described in this section.

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

DIRECT COURT RULE AMENDMENT. Rule 3(e), Alaska Delinquency Rules, is amended to read:

(e) **Telephonic and Televised Participation.**

(1) The juvenile has the right to be physically present in court **for arraignment, adjudication, disposition, probation revocation, extension of jurisdiction, and waiver of jurisdiction hearings; however, the juvenile may waive the right to be present. At all other hearings the court, upon application of any party, may allow telephonic participation by the juvenile if the juvenile's personal appearance is not essential to the fair disposition of the matter. The** [. HOWEVER, THE] court has discretion to allow telephonic participation by other parties. The juvenile's waiver of the right to be physically present may be obtained orally on the record or in writing.

(2) The court may allow telephonic participation of witnesses only upon stipulation of the juvenile and the Department, except that the court may allow telephonic participation of witnesses without the consent of the parties at disposition, disposition review or temporary detention hearings.

(3) In those court locations in which a television system has been

approved by the supreme court and has been installed, juveniles in custody may appear by way of television with the consent of the juvenile and with the approval of the court **for hearings in which the juvenile has a right to be physically present under (1) of this section. If the court has allowed telephonic participation by the juvenile in a hearing, participation may also be by television**. Appearance by television shall not be allowed at adjudication trials or at any hearings in which sworn testimony is to be presented.

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

INDIRECT COURT RULE CHANGE. The changes made by secs. 1 - 8 of this Act have the effect of amending the following Alaska Delinquency Rules by requiring the court to conform the rules to the statutory changes to acknowledge the inclusion of certain persons 18 years of age or over as minors under AS 47.12 and AS 47.14 and to acknowledge the special statutory provisions contained in secs. 1 - 8 of this Act applicable to those persons:

(1) Rule 2(n), Alaska Delinquency Rules;

(2) Rule 3(b), Alaska Delinquency Rules;

(3) Rule 3(c), Alaska Delinquency Rules;

(4) Rule 4(f)(3), Alaska Delinquency Rules;

(5) Rule 8(b), Alaska Delinquency Rules;

(6) Rule 8(c), Alaska Delinquency Rules;

(7) Rule 12(b), Alaska Delinquency Rules;

(8) Rule 12(c), Alaska Delinquency Rules;

(9) Rule 12(d), Alaska Delinquency Rules;

(10) Rule 12(e), Alaska Delinquency Rules;

(11) Rule 13, Alaska Delinquency Rules;

(12) Rule 14(b), Alaska Delinquency Rules;

(13) Rule 15(a), Alaska Delinquency Rules;

(14) Rule 16(a), Alaska Delinquency Rules;

(15) Rule 16(b), Alaska Delinquency Rules;

(16) Rule 21(g), Alaska Delinquency Rules;

(17) Rule 22(c), Alaska Delinquency Rules;

(18) Rule 23(b), Alaska Delinquency Rules;

(19) Rule 24.1(d), Alaska Delinquency Rules;

(20) Rule 25(b), Alaska Delinquency Rules;

(21) Rule 25(c)(4), Alaska Delinquency Rules.

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

APPLICABILITY. (a) Sections 1 - 8 of this Act apply to offenses committed on or after the effective date of this Act.

(b) Section 9 of this Act applies to telephonic and televised participation for court proceedings conducted on or after the effective date of this Act regardless of whether the offense occurred before, on, or after the effective date of this Act.

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

CONDITIONAL EFFECT. Sections 1 - 8 of this Act take effect only if sec. 10 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

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

CONDITIONAL EFFECT. Section 9 of this Act takes effect only if sec. 9 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

*** Sec. 14.** If, under secs. 12 and 13 of this Act, this Act takes effect, it takes effect July 1, 2005.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 154(STA)
(S) Publish Date: 4/8/05

Revision Date/Time (Note if correction):
Dept. Affected: Administration

Title: An act relating to the jurisdiction of delinquency proceedings.
RDU: Legal and Advocacy Services
Component: Public Defender Agency

Sponsor: Senator Therriault
Requester: Senate State Affairs
Component No.: 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	•	•	•	•	•	•
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	•	•	•	•	•	•
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) 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 amends the juvenile delinquency statutes to broaden its jurisdiction to reach persons who are over 18 and no longer minors, but who are alleged to have committed a criminal offense or violation while a minor. The Public Defender Agency's operations will be fiscally impacted because it will increase its caseload with offenses that are currently not prosecuted. It is not possible to predict with any accuracy, however, the number of new cases that would be assigned to the Agency, that will be generated as a result of this broadened jurisdiction. This bill also provides for a Delinquency Rule change to allow the court, upon the application of any party, to allow telephonic or televised participation of the minor at certain court hearings. This will also have a fiscal impact on PD operations because it will require the minor's appointed attorney to take additional time to travel to the minor to be present with the minor for these permitted telephonic proceedings to facilitate adequate representation of the minor. For all of the above reasons an indeterminate note is submitted.

Prepared by: Linda K. Wilson, Deputy Director
Phone (907)334-4416
Division: Public Defender Agency
Date/Time 4/4/05 8:54 AM

Approved by: Mike Tibbles, Deputy Commissioner
Date 4/4/2005
Agency: Department of Administration

(Revised 9/23/2004 OMB)

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSB 154(STA)
(S) Publish Date: 4/8/05

Revision Date/Time (Note if correction):
Dept. Affected: LAW
Title "An Act relating to the jurisdiction for proceedings relating to delinquent minors and to telephonic..."
RDU CRIMINAL
Component Criminal Justice Litigation
Sponsor Senator Therriault
Requester Senate State Affairs
Component No.

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other - Regulatory Cost Charge						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) 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 amends AS 47.12 (Delinquent Minors) by expanding jurisdiction of the juvenile court to allow prosecution of people who commit crimes as juveniles but it is not discovered until they are adults, or the state is unable to file a petition case before the person turns 18. There are not many cases that will fall into this group. The bill also expands the use of telephonic hearings in juvenile cases. Currently a minor has the right to be present at almost every stage of the proceeding. The bill would expand those hearings (such as regular status hearings) where telephonic participation is allowed.

Passage of this legislation will have no fiscal impact on the Department of Law aside from some minor savings in the cost of transportation.

Prepared by: Kathryn Daughhetee, Director
Phone 465-3673
Division Administrative Services Division
Date/Time 4/6/05 2:40 PM
Approved by: Kathryn Daughhetee for David Marquez, Attorney General
Date 4/6/2005
Agency Department of Law

(Revised 9/23/2004 OMB)

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSSB 154(STA)
(S) Publish Date: 4/8/05
Revision Date/Time (Note if correction):
Dept. Affected: Health & Social Services
Title: JUVENILE DELINQUENCY PROCEEDINGS
RDU: Juvenile Justice
Component: McLaughlin Youth Center
Sponsor: THERRIAULT
Requester: SENATE (STA)
Component No.: 264

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (0)						

FUND SOURCE (Thousands of Dollars)						
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost:
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 fiscal note captures two different aspects of the bill. The first is related to juvenile jurisdiction. The bill would change the statute to allow for juvenile pro-roceedings for individuals over 18 years of age when the person is alleged to have committed a violation of the criminal law of the state, the violation occurred when the person was under 18 years of age, and the statute of limitations for the offense has not expired. Currently, there is no jurisdiction for this if the matter is not brought before the court before they turn 18. The second aspect of the bill is related to court appearances by juveniles. The bill would allow certain juvenile court hearings to be conducted through telephonic or televised participation of the juvenile.

The Division has determined that the fiscal impact of this bill will be zero. The potential savings in court appearances will be offset by the cost to the division to process additional referrals or offenders who fall under

Prepared by: Sherry Hill, Special Assistant
Phone 465-1618
Division: Office of the Commissioner
Date/Time 04/05/2005
Approved by: Joel S. Gilbertson, Commissioner
Date 04/04/2005
Agency: Department of Health and Social Services

(Revised 9/23/2004 OMB)

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSSB 154(STA)

ANALYSIS CONTINUATION
the jurisdictional provisions of the bill.

THERE IS ZERO FISCAL IMPACT ON ANY OF THE YOUTH FACILITES OPERATED BY THE DIVISION. THIS FISCAL NOTE FOR MCLAUGHLIN YOUTH CENTER SERVES AS A PROXY FOR THE OTHER FACILITIES AS WELL.

Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Senator Gene Therriault
Current Version: CSSB 154 (STA)
Contact: Heather Brakes, 465-4522

Fact Sheet for: Senate Bill 154

Short Title: JUVENILE DELINQUENCY PROCEEDINGS

Summary:

- Applies the State's juvenile delinquency laws to a person 18 years or older if the person is alleged to have committed a violation of criminal law that occurred when the person was under 18, and the period of limitation has not expired.
- Amends Court Rule 3(e), Alaska Delinquency Rules, to allow juvenile offenders to participate telephonically in certain proceedings in which personal appearance is not essential to the fair disposition of the matter. Court Rule changes require two-thirds vote of the legislature.
- Specifies that a juvenile has the right, and the ability to waive the right, to be physically present in court for: arraignment, adjudication, disposition, probation revocation, extension of jurisdiction and waiver of jurisdiction hearings.

Benefits:

- Improves the State's ability to hold juvenile offenders accountable for their conduct.
- Allowing juveniles to appear telephonically increases the efficiency of the juvenile justice system and avoids expensive and time-consuming travel.

Background:

- SB 154 fills a serious gap in Alaska statutes that allows young offenders to avoid prosecution if their role in a crime is not discovered or charges are not filed until after the offender becomes 18 years of age. Under current law, the juvenile justice system is responsible when a person under 18 commits a delinquent act, and the adult system is responsible when a person over 18 commits a crime. However, recent court decisions have exposed a loophole that gives neither the adult nor juvenile system clear jurisdiction when a minor commits a crime but it is not discovered, or proceedings are not filed, until the person reaches 18. In a recent case in Kenai, the State filed a Petition for Adjudication of Delinquency on a 19-year-old who was alleged to have committed a sexual assault when he was 17. The Superior Court dismissed the petition, holding "there is nothing in the statutes that suggests the legislature contemplated adjudication trials for adults who committed crimes as juveniles."

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT [redacted]

IN THE MATTER OF)
[redacted])
Date of Birth: [redacted]) Case No. [redacted]

MEMORANDUM OF DECISION ON MOTION TO DISMISS (LACK OF JURISDICTION)

On July 21, 2003 the State of Alaska, Department of Health and Human Services, Division of Juvenile Justice, filed a Petition for Adjudication of Delinquency in this case. The Petition alleges two counts of sexual assault in the second degree, class B felonies, two counts of sexual abuse of a minor in the fourth degree, class A misdemeanors, and one count of sexual abuse of a minor in the second degree, a Class B felony. At the time of the first four alleged offenses [redacted] the accused, was 15 years old. He was 17 years old at the time of the fifth alleged offense. At the time of the filing of the Petition he was 20 years old. At the same time as the filing of the Petition for Adjudication of Delinquency, the State filed a Petition to Waive Juvenile Jurisdiction, alleging that [redacted] is not amenable to treatment and cannot be rehabilitated before reaching the age of twenty. On August 14, 2003 [redacted] filed a Motion to Dismiss based on Lack of

Jurisdiction. The court heard oral argument on the motion to dismiss on September 2, 2003, and the matter is now ripe for decision.[1]

[redacted] alleges that since he was 20 years old at the time of the filing of the Petition for Adjudication of Delinquency, this court cannot obtain juvenile jurisdiction over him. [redacted] relies on AS 47.12.160 which reads in part:

> (a) The court retains jurisdiction over the case and may at any time stay execution, modify, set aside, revoke, or enlarge a judgment or order, or grant a new hearing, in the exercise of its power of protection over the minor and for the minor's best interest, for a period of time not to exceed the maximum period otherwise permitted by law or in any event extend past the day the minor becomes 19. . . .
>
> (c) If a minor is adjudicated a delinquent before the minor's 18th birthday, the court may retain jurisdiction over the minor after the minor's 18th birthday for the purpose of supervising the minor's rehabilitation, but the court's jurisdiction over the minor under this chapter never extends beyond the minor's 19th birthday, except that the department may apply for and the court may grant an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it. . . .

AS 47.12.020 provides that proceedings involving a minor under 18 years of age are governed by AS 47.12, Delinquent Minors. The Alaska Supreme Court stated In the Matter of P.H. v. State of Alaska, 504 P. 2d 837 (Alaska 1972) that the age of 18 established by the statute refers to the age of the accused at the time of the alleged offense. Since [redacted] was under the age of 18 at the time of the offenses alleged in the Petition for Adjudication of Delinquency, the provisions of AS 47.12, including AS 47.12.020, apply. That statute reads:

---

[1] In his original Motion to Dismiss [redacted] claimed that the court lacked jurisdiction due to invalid service of process. Subsequent to that time [redacted] was personally served with process. At the September 2, 2003 hearing the court allowed [redacted] 5 days to file any challenge to service. None was filed. Accordingly, the court considers that issue to be moot.

> Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the minor is alleged to be or may be determined by a court to be a delinquent minor as a result of violating a criminal law of the state or a municipality of the state.

The specific wording of AS 27.12.020 makes AS 47.12.160 applicable to this case. By its specific wording, AS 47.12.160(a) terminates juvenile jurisdiction "the day the minor turns 19 . . ." Juvenile jurisdiction can extend past the age of 19 for an additional one year period only upon the minor's consent. AS 47.12.160 (c).[2] For this reason, the court concludes that since the Petition for Adjudication of Delinquency was filed after [redacted] 20th birthday, there is no juvenile jurisdiction. Since there is no juvenile jurisdiction, the court cannot waive jurisdiction under AS 47.12.100. The court cannot waive jurisdiction which it did not acquire.

The charge in Count V of the Petition must be analyzed differently. AS 47.12.030 makes the provisions of AS 47.12 inapplicable in some cases with respect to minors who were 16 years or older at the time of the alleged offense. As to certain offenses listed in AS 47.12.030, such minors shall be charged, sentenced and incarcerated as an adult. AS 47.12.030 (a) (1) (2) (3). None of the listed offenses include the charge contained in Count V of the Petition.[3] Since [redacted] is not charged with any of the offenses listed in AS 47.12.030 (a), the provisions of AS 47.12 apply to the charge in Count V of the Petition, including AS 47.12.160. Thus, by the same reasoning applicable to Counts I-IV

[2] AS 47.12.030 cannot apply to the first four counts of the Petition for Adjudication of Delinquency since [redacted] was under 16 years of age at the time of the alleged offenses.
[3] AS 47.12.030 (a) provides that if "the minor is convicted of an offense other than an offense specified" in subsection (a) (1), (2), (3), the minor may attempt to prove that the minor is amenable to treatment under AS 47.12.

of the Petition, Count V is not within the jurisdiction of the juvenile court. This conclusion is consistent with State v. T.M.860 P. 2d 1286 (Alaska App. 1993). In that case the superior court set aside a juvenile adjudication after the court's jurisdiction had expired. Addressing the predecessor of AS 47.12.160, the Court of Appeals stated:

> Under AS 47.10.100 (a), the superior court "retains jurisdiction over [a delinquent juvenile's] case . . . in any event [not to] extend past the day the minor becomes 19, unless sooner discharged by the court. . ."
>
> Because T.M. and J.B. filed their motions after this time limitation on the court's jurisdiction had expired, the superior court based its action, not on AS 47.10.100 (a), but on the court's "inherent" power to vacate any delinquency adjudication it had previously entered—even an adjudication it had previously entered--. . . We conclude that the superior court does not possess this kind of inherent authority.

In T.M. the Court of Appeals recognized that the court's jurisdiction had expired under the time limit of AS 47.10.100 (a). Moreover, the court had no inherent authority to exceed that time limit. The same reasoning applies to this case.

The court recognizes the state's concern that this interpretation can allow juvenile criminal activity to go unpunished if the crime did not come to light until after the juvenile's 18th (or 19th) birthday. This court shares Judge Coat's concern in State v. Jack, 67 P. 3d 673 (Alaska App. 2003):

> This case [is] very difficult for me because it seems obvious that the State should have jurisdiction. Id. at 677.

This result is not of the court's making. For whatever reason, the legislature has mandated that juvenile jurisdiction in all cases comes to an end at the time of the

---

This provision applies only if the defendant is convicted of a lesser offense included within the charged offense. Wilson v. State, 967 P. 2d 98 (Alaska App. 1998).

juvenile's 19th birthday unless the juvenile consents to a longer period. The resolution of this problem rests, not with the court, but the legislature.

For the foregoing reasons the Petition for Adjudication of Delinquency filed in this case is DISMISSED.

Dated at [redacted], Alaska this 15 day of September, 2003.

[redacted]
SUPERIOR COURT JUDGE

I certify that a copy of the foregoing was mailed/faxed/placed in box in the Clerk's Office to the following at their addresses of record:

Mino[redacted] DJJ, agd - faxed
Guardian - mail

Date: 9/15/03 Clerk: [redacted]

John D. or Royak

RECEIVED
AUG 18 2004
OFFICE OF ATTORNEY GENERAL
3RD JUDICIAL DISTRICT
ANCHORAGE, ALASKA

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT [redacted]

In the Matter of:

[redacted],

A Minor Under the Age of Eighteen (18) Years.
Date of Birth: [redacted]

Case No. [redacted] CP

ORDER

[redacted] filed a Motion to Dismiss Petition for Adjudication of Delinquency on June 9, 2004. The Motion states that [redacted] turned 19 years of age on [redacted] 2004, and argues that AS 47.12.160 does not permit the court to retain jurisdiction beyond a juvenile offender's 19th birthday. The state has opposed the Motion and argues that AS 47.12.160 applies to the disposition phase of juvenile cases. The state suggests that although [redacted] is no longer subject to disposition because of his age, the law still requires [redacted] to appear at an adjudication trial. The state's position is not supported by the applicable statutes, and the Petition for Adjudication of Delinquency is dismissed.

CHRONOLOGY

The state alleges that on the late evening of July 1, 2002, [redacted] (17 years old at the time) arrived at M.Y.'s Seward residence with a backpack full of alcoholic

beverages. M.Y. drank what [redacted] offered, became very intoxicated, and [redacted] digitally penetrated her vagina and anus.

[redacted] is from Wisconsin and was spending the summer with an uncle at the time of the alleged assault. When summer ended [redacted] returned to Wisconsin. The Division of Juvenile Justice filed a Petition for Adjudication of Delinquency based on the July 2002 events on January 14, 2003. [redacted] was apprehended and placed in the [redacted] County, Wisconsin jail on June 23, 2003 pending extradition. [redacted] was 18 when he was apprehended. The [redacted] court released [redacted] to his parents pending trial on July 18, 2003.

At the October 2, 2003, omnibus hearing, [redacted] attorney, [redacted], stated that he did not have discovery. According to [redacted], Chris Evenson from the Division of Juvenile Justice had been contacted and had promised to mail discovery.

At trial call on November 6th [redacted] stated he received a copy of a police report, but had not received copies of interview tapes. Chris Evenson said that he thought the Seward Police Department was going to send [redacted] a copy of the tapes when they sent the tapes to him. Mr. Evenson said that he would make copies of the tapes and get them to Mr. Montague. The trial was continued until January.

At the January 9, 2004, trial call, [redacted] stated that he had received the tapes from Mr. Evenson on December 4, 2004, but did not have the photographs taken by the nurse during the victim's Sexual Assault Response Team Examination. Assistant Attorney General John Darnell, appearing for the Division of Juvenile Justice, asked for a continuance. Mr. Darnell stated that the Division was having trouble getting the S.A.R.T.

photographs because they were in the custody of the Central Peninsula General Hospital. Mr. Darnall stated that he thought the Division would need an order to get the photographs. Trial was continued until March.

No motion for release of records was filed, and at the March 4, 2004, trial call, the S.A.R.T. photographs were still not in the Division of Juvenile Justice's hands. Aaron Poland, appearing for the Division, stated that he had talked to someone from Central Peninsula General Hospital that morning and he expected to have the S.A.R.T. photographs within one month. Trial call was continued until May.

On March 10, 2004, the Division submitted and the court signed orders requiring the hospital to produce the victim's S.A.R.T. records. At the May 6, 2004, trial call, [redacted] stated that he still did not have the photographs. Aaron Poland said that he had some difficulty getting the photographs from Central Peninsula General Hospital, but did get them in late April and had sent the photos to Copy Cats Printing to be copied, and the photos should be there for [redacted]

The trial was continued until June. At the June 3, 2004, trial call, [redacted] stated that he still had not received the S.A.R.T. photographs that the Division of Juvenile Justice said were available at Copy Cats. [redacted] also filed a Motion to Dismiss, based upon the fact that his client had turned 19 on May 16, 2004. Assistant Attorney General Karen Hawkins objected to the motion as untimely and objected to continuing the trial. On June 14, 2004, Ms. Hawkins filed a Notice of Expert.

DISCUSSION

[redacted] argues that AS 47.12.020 gives the court jurisdiction over minors under 18 years of age, and Alaska Statute 47.12.160 allows the court to retain jurisdiction until the minor's 19th birthday. Since he turned 19 before he was brought to trial, [redacted] argues that the petition filed against him should be dismissed.

The state argues that AS 47.12.160 applies to disposition orders and has no effect until a juvenile has been adjudicated a delinquent. The state is asking the court to allow [redacted]s trial so that if the jury finds he has committed the delinquent acts alleged in the petition, a record will exist to be considered if [redacted] commits a crime as an adult.

The state's position is not supported by the statutes governing juvenile delinquents. There is nothing in the statutes that suggests the legislature contemplated adjudication trials for adults who committed crimes as juveniles. Moreover, there is nothing in the statutes that suggests the legislature has authorized adjudication trials when the court has no jurisdiction to enter a disposition order. It may even be prejudicial to hold an adjudication trial when the court lacks authority to modify the judgment as soon as it is entered because of the age of the defendant. See AS 47.12.160; State v. T.M., 860 P.2d 1286 (Alaska App. 1993).

For the above-stated reasons, the Petition for Adjudication of Delinquency is dismissed.

Dated at Kenai, Alaska this 15th day of August, 2004.

CHARLES T. HUGUELET
SUPERIOR COURT JUDGE

I certify that a copy of the foregoing was mailed/faxed/placed in box in the Clerk's Office to the following at their addresses of record:

[redacted], DTS, Hawkins/Ago, parent

Date: 8/17/04 Clerk: [illegible]

SB

165

David Sanden
P.O. Box 210306
Auke Bay, AK 99821

Senate Judiciary Committee
State Capitol
Juneau, AK 99801

May 02, 2005

Chairman Seekins and members,

Please take into consideration a few points before taking action on SB 165 regardless of your position on gambling.

$25,000.00 non-refundable application fee. First come first served permitting.

- I can see the state recouping the expenses of its background investigation and application expenses and refunding any additional sum to the applicant. However this legislation specifically avoids this. Is this language simply a thinly veiled do not apply unless… sign?

- What happens if more applicants than the allotted number of allowable permits are received? Why is it that this bill does not set up a time line and due date for what will be a new legalized activity and permitting process? Who can possible benefit from first come first served permitting? What is the hurry and who stands to gain from rushing the process?

$500,000.00 CASH bond.

- Well, this certainly is not at all subtle. Lets see, the state collects its tax or fee up front in the form of a $10,000.00 fee per card table but wants a half million cash bond to fall back on? This is put into the smoke and mirrors process of only wanting "serious" applicants. However, this is certainly a do not pass go if not an outright slap in the face for the super majority of Alaskans who would otherwise be qualified to participate in the permitting process. If it is the intent of this legislation to run a tight ship why not make a felon out of anyone who tries to circumvent the permitting or actual process of this would be new form of gambling. Could it be that the intent of this legislation is to create a monopoly and limit access to that monopoly with wealth in the form of $500,000.00 cash being the most formidable hurdle and judgment gauge?

- This dangerously opens the door and creates opportunity to very deep pockets in the national gambling movement who may very well see this as a prime opportunity to get in on the ground floor in Alaska even if it comes with a short term loss. Does anyone hear the push and cry for off track paramutual betting at cards rooms in 2007, then the push for slot machines and other table games in the

card rooms in 2009 etc, etc., make no mistake about it these scenarios are very seriously on the minds of many. One could likely even make a very strong argument that this legislation is currently carefully worded to prevent opportunity for ordinary Alaskan's while providing such a step entry gate as to specifically encourage highly financed national gambling interests. The long-term stakes are enormous if you can eliminate the local competition early.

Politicized selection process.

- Why doesn't this legislation put forth a rigid yet certain set of criteria for what constitutes a qualified applicant? Then simply take all the qualified applicants and hold a lottery for the initial selection process? Who benefits from politicizing the initial permitting process? The Board appointed to carry out this selection process should be primarily concerned with the citizens of Alaska and the enforcement process not having to "pick" through the "qualified" applicants. This needless selection process opens these individual board members up to countless possible avenues of graft and corruption. I seriously wonder who would even consider taking one of these board seats considering the language of the current legislation.

- I am also most curious about how much money the state of Alaska is willing to spend in defense of its selections when many qualified applicants apply and one or two are selected over others equally qualified. Keep in mind you are legalizing and monopolizing a vice. It would be extremely naive to hope only a very few will apply.

Gambling expansion now and a platform for the future?

- Over and over you have heard that this legislation is nothing more than an effort to legalize an otherwise illegal process that is happening all across the state from back rooms to the kitchen table. After all it has been said "its on T.V." therefore it must be good? Well, if its no big deal why not simply de-criminalize gambling on card games and let the free market and the citizens of Alaska figure it out?

- The answer is laughing inside Pandora's box a controlled and monopolized platform for gambling expansion in Alaska. Beware of a bet that seems too good to be true.

Sincerely,

David Sanden

SENATOR
JOHN J. COWDERY
Anchorage

Alaska State Legislature

Senate

Committees
Chair: Rules
Chair: Transportation
Chair: World Trade &
State/Federal Relations
Legislative Council
State Affairs

January - May:
State Capitol, Suite 101
Juneau, Alaska 99801-1182
Tel: 907-465-3879
Toll Free: 888-269-3879
Fax: 907-465-2069

May - December:
716 W. 4th Avenue
Anchorage, Alaska 99501
Tel: 907-269-0222
Fax: 907-269-0223

Senator_John_Cowdery@legis.state.ak.us

MEMORANDUM

To: Senator Ralph Seekins
Chair, Senate Judiciary Committee

From: Senator John Cowdery

Date: April 22, 2005

Re: Request for Hearing, SB 165, "An Act relating to card rooms and card operations."

I respectfully request that SB 165, "An Act relating to card rooms and card operations." be scheduled for a hearing at your earliest convenience. I have attached the following for your information:

1. Sponsor Statement
2. SB 165
3. Legal Services Opinion
4. Legal Opinion (Donald C. Mitchell)
5. 25 USC § 2710 (Indian Gaming Regulation)
6. Possible gross sales & employee information for card room operations
7. Letters of Support

If you have any questions please feel free to contact me personally, or my staff, Ryan Makinster, at 3879. Thank you for your time and consideration.

SENATOR
JOHN J. COWDERY

Anchorage

Committees
Chair: Rules
Chair: World Trade &
State/Federal Relations
Vice-Chair: Transportation
Legislative Council

January – May:
State Capitol, Suite 101
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Senator_John_Cowdery@legis.state.ak.us

SB 165 – An Act Relating to Card Rooms and Card Operations

Sponsor Statement

Currently the citizens of Alaska can wager on poker, rummy, bridge, cribbage and many other card games at home without being in violation of the law. The intent of SB 165 is to allow these same social games to also be played in a tightly controlled public environment.

The growing popularity of poker is obvious to anyone who has recently turned on his or her television. Many networks, from ESPN to the Travel Channel, are regularly televising Texas Hold 'em tournaments and enjoying sky rocketing ratings and subsequent advertising revenues. Men, woman, old and young are all joining the "poker" trend, which shows no signs of slowing. As this popularity continues those seeking poker games will consistently seek out games legitimate or not. The state of Alaska is in the perfect situation to address the trend and bring this popular pastime into compliance with the safety and revenue laws of the state.

Under SB 165 card rooms would be limited to boroughs with a population of 30,000 or more unless a smaller borough votes to allow a card room. A maximum of three card rooms would be permitted under this act. These card rooms would also be limited to players 21 years of age or older and would only offer non-banked card games such as poker, cribbage, rummy, etc.

In addition to the taxable revenue generated by the card rooms, e.g. food and drink purchases and table charges, the establishments would also pay $10,000 per table yearly to the state and would be required to hold quarterly tournaments to benefit a non-profit educational institution or group. As part of the licensing procedure the card room operators would also be responsible for covering the administrative cost of licensing and subsequent enforcement through a $25,000 application fee.

In addition to the revenue and job creation, regulated card rooms would fill one very necessary function in a society that embraces poker and other non banked card games; it allows for players to enjoy their hobby in a safe regulated environment rather than playing in an unsavory, and often unsafe "back room". Currently many players, in addition to their friendly home game, play in underground games where the "house" takes in large profits with little assurance of "fair" play. Although not an everyday occurrence, players at these games have in the past been held up at gunpoint with little recourse because of the shady and illegal nature of the game.

By recognizing this trend and the fact that we already allow this type gaming in our homes, Alaska can address the issue head on and make card games a legitimate, safe, social activity that will increase revenue and job opportunities while minimizing the negative effects of underground gambling.

April 22, 2005

24-LS0767\Y

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 165 (L&C)
(S) Publish Date: 4/22/05

Revision Date/Time (Note if correction):
Dept. Affected: Revenue 04
Title: Card Rooms & Operations
RDU: Treasury and Tax
Component: Tax Division
Sponsor: Senator Cowdery
Requester: (S) L&C
Component No.: 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	•	•	•	•	•	•
CAPITAL EXPENDITURES	•	•	•	•	•	•
CHANGE IN REVENUES ( )	•	•	•	•	•	•

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0
Check 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)*
(see attached)

Prepared by: Larry Meyers & Brett Fried
Phone 465-2320
Division: Tax Division
Date/Time 4/18/05 4:15 PM
Approved by: Tom Boutin, Deputy Commissioner
Date 4/18/2005
Agency: Revenue

(Revised 9/23/2004 OMB)

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSSB 165 (L&C)

ANALYSIS CONTINUATION

Revenue Discussion

This bill would legalize non-banked card rooms in Alaska, with the caveat that "the total number of owner's licenses issued in a municipality may not exceed the total population of the municipality divided by 30,000". A non-banked card room is one in which players compete against each other rather than against the house and the house has no stake in the outcome of a game. Texas Hold-Em poker is an example of a game that might be played in a non-banked card room. It is not clear if "the most recent federal census information" refers to the Decennial Census or the most recent estimate by the U.S. Bureau of Census for purposes of determining the number of card rooms allowed. We used the April 1, 2000 U.S. Census to determine that a maximum of 13 card rooms would be possible under this bill: 8 in Anchorage, 2 in the Fairbanks North Star Borough, 1 in Juneau, 1 in the Kenai Peninsula Borough and 1 in the Matanuska-Susitna Borough. If we were instead to use the July 1, 2004 annual estimates of population from the Census Bureau, then 15 card rooms would be possible: 9 in Anchorage, 2 in the Fairbanks North Star Borough, 1 in Juneau, 1 in the Kenai Peninsula Borough and 2 in the Matanuska-Susitna Borough. We assume the definition of "municipality" in AS 29.71.800, which includes first-class and home-rule cities and boroughs.

There are three reasons why we did not include a revenue or cost estimate on the front page of this fiscal note. First, the decision to open and operate a card room is a business decision that will be made by potential licensees. Second, under this bill the department is given authority to set many rules and regulations that will affect this business decision. The department will set these rules and regulations after consulting the recommendations made by the advisory board appointed by the governor. Third, the fees imposed on card rooms in different states and localities vary widely and make comparisons to Alaska difficult. For example, the state of Montana charges a processing fee to cover the cost of determining whether to issue a license plus $250 for the first table and $500 for each additional table. Washington charges $3,650 for up to 5 tables and $1,050 per additional table up to a maximum of 15, plus any investigation costs exceeding the license fees. SB 165 imposes an owner's license fee of $25,000 to apply for a five-year license plus an annual $10,000 per table fee. Operators are also responsible for investigation costs that exceed the portion of the $25,000 fee that is assessed for the investigation, and the department is authorized to set occupational licensing fees.

Based on several assumptions, we estimate that the maximum of 13 card rooms in Alaska would generate about $2.5 million in fees for the state in the first year. During years 2-5, we estimate the maximum of 13 card rooms in Alaska would generate $2.1 million in annual fees for the state. These estimates assume that there will be the maximum of 13 card rooms with an average of 15 tables each (15 is the maximum allowed in Washington and in California the average is 14.3). All card rooms are assumed to pay their owner's license fees in the first year and would not transfer ownership over the 5-year license period. These estimates also assume an occupational licensing system similar to Washington, where annual licenses are $175 initially and $84 for renewals. We assume that Washington's average of 6.7 gaming employees per table will hold in Alaska and that after the first year, all of the licenses will be renewals. We assume that, like in Washington, all gaming employees will be covered but non-gaming employees such as bartenders will not require licenses. Of course, a significant variable affecting revenues is the actual number of tables any individual card room would have. This is difficult to estimate, as in California non-banked card rooms range from a single table to 243 in the Commerce Casino in Los Angeles with the average being 14.3 tables per card room. One or more very large card rooms in Alaska could significantly boost revenues. California and Washington are useful comparisons because both states have data available specifically for non-banked card rooms.

This bill stipulates that card rooms must hold at least one card tournament per quarter with proceeds donated to a nonprofit group. There are many variables that would help determine tournament proceeds, including the number of card rooms, the number of tables, rules and regulations adopted by the department, and other factors. In Michigan the average Texas Hold-Em tournament generates $1,099 in profit for charities, with a $500 per person per day prize limit. Any prize limits in Alaska would be determined by the department and may influence the profitability of tournaments. In an article in the Boston Globe, card tournament supplier Mike Sheehy estimated that "A well-run tournament will attract up to 200 players, each of whom pays a $100 entrance fee [...] A tournament of that size can offer pots of $5,000 for the first-place player and a few thousand for the second and third and still generate $10,000 for the charity after expenses."

Cost Discussion

The costs of implementing this bill are difficult to estimate because we do not know the number nor size of potential card rooms. Given the assumptions in our revenue discussion, we would anticipate $609,000 in total costs with $532,000 in personnel costs and related expenditures and $77,000 in RSAs to Public Safety for fingerprint background checks. The personnel costs are for an Investigator IV, four Investigator III's and an Admin Clerk III. Based on the experience of other states and our own experience, this staff should be sufficient to investigate, license and regulate up to 13 card rooms with an average of 15 tables each. Also having two teams of investigators would ensure that teams could be available during all hours of card room operations (assumed to be 12:00 noon to 2:00 am). If the card rooms are larger on average than the assumed 15 tables we would require additional staff and resources for investigation and regulation. We did not include any additional costs that would be incurred by municipalities as a result of this Bill.

LEGAL SERVICES

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

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

State Capitol
Juneau, Alaska 99801-11[illegible]
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM April 21, 2005

SUBJECT: Card Rooms and Indian Gaming (HB 272)

TO: Representative Pete Kott

FROM: Kathryn L. Kurtz KK
Legislative Counsel

You asked whether this bill would affect Indian gaming in Alaska. I do not think this bill will open the door to class three gaming.

The federal Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 et seq., gives Indian tribes the authority to conduct gaming and gambling on Indian lands. The Indian Gaming Regulatory Act divides gaming into three classes:

> (1) Class I gaming includes social gaming for minimal prizes and traditional Indian gaming conducted at ceremonies or celebrations;
> (2) Class II gaming includes bingo, lotto, pull-tabs, punch boards, tip jars and non banking card games, as well as banking card games operated on or before May 1, 1988;[1] and
> (3) Class III gaming includes casino-type gambling, pari-mutual horse and dog racing, lotteries, and all other forms of gaming that are not class I or II gaming.

Class I gaming on Indian lands is within the exclusive jurisdiction of the tribes and is excluded from the provisions of the IGRA. Class II gaming on Indian lands is within the jurisdiction of the tribes but is subject to the provisions of the IGRA, including oversight by the National Indian Gaming Commission. For example, an Indian tribe seeking to conduct bingo games could choose to do so under the authority of state law or could do

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[1] Class II gaming does not include:

> (i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or
> (ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

25 U.S.C. § 2703(b).

so separately under a permit from the National Indian Gaming Commission. Class III gaming activities are lawful on Indian lands only if authorized by a tribal ordinance or resolution, the activities are conducted on lands located in a state that permits such gaming for any purpose by any person, organization, or entity, and the activities are conducted in conformance with a tribal-state compact entered into by the tribe and state.

The Act provides a framework for negotiation of a tribal-state compact -- the tribe requests the state to enter into negotiations; upon receiving such a request, the state "shall" negotiate with the tribe in "good faith" to enter into such a compact.

There has been a good deal of litigation involving the various provisions of the IGRA since its passage. Some of that has involved the definition of "Indian lands." Although Alaska has only one remaining reservation, it is not safe to assume that there are no other "Indian lands" in Alaska. There certainly are parcels that are held in trust by the United States that might qualify for purposes of IGRA.

This underscores the significance of the difference between class II and class III gaming. If the legislature permitted class III gaming in state law, it would pave the way for tribes to conduct class III gaming on Indian lands under federal law. However, HB 272 permits only non-banking card games, specifically poker, pan, rummy, bridge, and cribbage games. Poker falls under IGRA's definition of class II games. 25 C.F.R. 502.3; National Indian Gaming Commission Opinion dated June 17, 1999, Re: Game Classification Opinion - "Poker Club."[2] House banked card games, such as blackjack and baccarat, as well as player banked games, such as chemin de fer, are class III games, 25 C.F.R. 502.4; National Indian Gaming Commission Bulletin No. 95-1, April 10, 1995, but those types of games are not permitted in card rooms under HB 272.

KLK:med
05-284.med

---

[2] According to this National Indian Gaming Commission opinion, "Banking games, as commonly understood and defined in the NIGC regulations, are games in which the banker (usually the house) takes on, that is, competes against, all players, collecting from losers and paying winners. *See* 25 C.F.R. 502.11(c). Conversely, non-banking card games are games where players play against each other. Poker is the typical example of a non-banking card game." The opinion went on to conclude that the proposed poker club would constitute class II, rather than class III gaming: "[A]s proposed, the players in the Nation's Club would play against each other in a non-banking format, not against the house or other banker. Turning Stone and its dealers would not have an interest, financial or otherwise, in the outcome of any poker game. Thus, the poker games to be played at the Club qualify as non-banking card games."

DONALD C. MITCHELL
Attorney at Law
1336 F Street
Anchorage, Alaska 99501
(907) 276-1881 dcraigm@aol.com

April 22, 2005

FACSIMILE TRANSMISSION

TO: Senator Ralph Seekins
Chairman, Committee on the Judiciary
Alaska Senate

FROM: Don Mitchell

SUBJECT: SB 165

Senator Seekins, on Tuesday we chatted briefly about how, if at all, the enactment of SB 165, Senator Cowdery's bill to authorize the operation of card rooms at which poker may be played, might alter the legal situation regarding the ability of Alaska Native groups to circumvent state law by conducting gaming activities pursuant to the federal Indian Gaming Regulatory Act (IGRA).

During that conversation, I indicated that my recollection was that the IGRA classified poker as Class III gaming. Having now checked the statute, I need to stand corrected. Section 4(7)(B) of the IGRA classifies card games such as baccarat and blackjack as Class III gaming. But, in pertinent part, section 4(7)(A)(ii) of the IGRA states:

> The term "class II gaming" means card games that are explicitly authorized by the laws of the State, or are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes.

As a consequence, for the purposes of the IGRA, poker is Class II, rather than Class III, gaming.

Notwithstanding that correction, I would continue to stand by the opinion I expressed during our conversation that, the more money that might be made from State-authorized gaming, the more likely it is that Alaska Native groups will be motivated to initiate new attempts to persuade, first the National Indian Gaming Commission, and then the federal courts, that they are "Indian tribes" for the purposes of the IGRA and that there are parcels of land in Alaska that are "Indian lands" as the IGRA defines that term on which such tribes may conduct gaming activities.

As I think I also stated, my personal view is that if such litigation is initiated, in the end, the State of Alaska will prevail. But assuming so, that result will take years to bring about, and the law regarding Alaska Native tribal status presently is so muddled that there is a risk that I may be wrong about that.

I hope this correction is helpful. Please let me know if I can be of any additional assistance regarding this subject.

Regards,

cc: Ted Popely

-CITE-

25 USC Sec. 2710 01/06/03

-EXPCITE-

TITLE 25 - INDIANS

CHAPTER 29 - INDIAN GAMING REGULATION

-HEAD-

Sec. 2710. Tribal gaming ordinances

-STATUTE-

(a) Jurisdiction over class I and class II gaming activity

(1) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this chapter.

(2) Any class II gaming on Indian lands shall continue to be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this chapter.

(b) Regulation of class II gaming activity; net revenue allocation; audits; contracts

(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if -

(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), and

(B) the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman.

§

SB 165 - "An Act relating to card rooms and card operations."

Possible gross sales & employee information for card room operations

$4 Rake							
Tables	5	10	15	25	50	100	150
$90/hr avg	$450.00	$900.00	$1,350.00	$2,250.00	$4,500.00	$9,000.00	$13,500.00
9hrs/day avg table use	$4,050.00	$8,100.00	$12,150.00	$20,250.00	$40,500.00	$81,000.00	$121,500.00
Yearly Gross Sales*	$1,478,250.00	$2,956,500.00	$4,434,750.00	$7,391,250.00	$14,782,500.00	$29,565,000.00	$44,347,500.00

*exclusive of non-card game operations

Avg # Employees Per Table	4.5	4.5	4.5	4.5	4.5	4.5	4.5
Total Number of Employees	22.5	45	67.5	112.5	225	450	675

Types of Employees

Dealer (Minimum Wage + Tips)	$250-300/day *
Cashiers (part-time)	$10/hr *
Janitorial/Maintenance	$8/hr *
Security	$10/hr *
Brushperson	$10/hr *
Shift Manager	$45,000/yr *
Card Room Manager	$65,000/yr *

*Plus Benefits

J. PATRICK BEATTIE
10700 PROSPECT DR.
ANCHORAGE, AK 99507

April 11, 2005

Senator John Cowdery
State Capitol Building
Juneau, Ak. 99801

Dear Senator Cowdery

I would like to voice my support for Senate Bill No. 165. As an accountant (now retired) for nearly thirty years, I believe the State should explore all reasonable and responsible avenues to raise State revenues. The legalization of card rooms has been successfully accomplished in other state. Properly regulated, I believe it can provide a proper means of entertainment in a positive environment, while still raising state revenues in a time of decline.

Sincerely,

J Patrick Beattie

E-Mail jpbeattie@griesfamily.com

April 11, 2005

Senator John Cowdery
State Capital Building
Juneau, AK 99801

Dear Senator Cowdery,

I wanted to communicate to you my support of Bill 165 and the effort to legalize card rooms in Alaska. It will provide employment and revenue for the state.

Yours truly,

Hari Z Regen MD

Hari Z. Regen M.D.

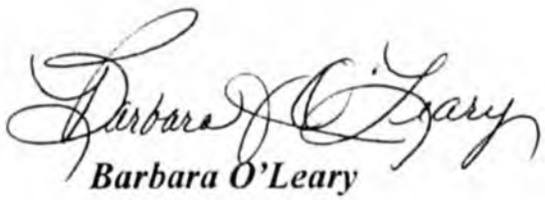
April 9, 2005

Senator Steve Cowdery
State Capital
Juneau, AK 99801

Dear Sir;

I was born and raised in Alaska and I am proud to be an Alaskan. I make on average at least four trips a year to Las Vegas to play the tables and the slots. I would love to have the opportunity to play games in my home state and not have to travel to Nevada!

I would like to see card rooms in the state of Alaska, and most especially in my hometown of Anchorage. I say let's keep our dividend dollars at home!



Barbara O'Leary
PO Box 90402
Anchorage, AK 99509
907-529-4204

April 9, 2005

To: Senator John Cowdery
State Capitol
Juneau Alaska 99801

Please consider providing a card room in Alaska. Poker is big entertainment and could provide a great activity for many.

Brenda O'Connor
7931 E 3rd - 99504

DAMON JORGENSEN
300 Hermit St. #8
Juneau, AK 99801
906/463-4615

April 13. 2005

Senator John Cowdery, Chairman
Senate Rules Committee
State Capitol Building Rm. 101
Juneau, AK 99801-1182

Dear Senator Cowdery:

I would like to write in support of SB 165 regarding the legalization of card rooms in Alaska.

Having observed the increase in the popularity of card games in recent history, it makes sense to allow the state of Alaska to participate in this lucrative pastime. It will bring revenue into the state from the nearly one million tourists who are already visiting Alaska, and will attract visitors who are now spending their money in Nevada and other states that allow this type of gaming.

I just read with interest the article in the Anchorage paper that reported that hundreds of Alaskans in the Mat-Su Valley are currently playing Texas Hold'em weekly for no cash at all. With the popularity of on-line cards games and TV programs relating to poker, now would seem the perfect time for Alaska to become involved with this lucrative pastime.

In addition to the revenue SB 165 would bring to state coffers, I would assume that many jobs would be created by this new industry. With legal card rooms operating, savings could also be realized by communities in which safety officers are currently spending time policing illicit activities which surround illegal card rooms.

Thank you for introducing SB 165 and you support for legal card rooms in Alaska.

Sincerely,

Damon Jorgensen

Ruth Keller

From: ltallman@petzoo.us
Sent: Wednesday, April 13, 2005 9:25 AM
To: Sen. John Cowdery
Subject: Card Rooms In Alaska

Email For: Senator John Cowdery
From: ltallman@petzoo.us
Name: Larry Tallman
Street: PO Box 871865
City: Wasilla
Zip Code: 99687

Subject: Card Rooms In Alaska

Dear Senator Cowdery,
This note is in support of the Card Room initiative for Alaska. Even though I am not a card player(or a gambler of any type) I feel that there is an opportunity here to do the righ thing for all concerned. This activity is going on without regard to it\'s leagl basis and bringing it under government control will make it safer and more fair for all participants. My hope is that the legislation passes and Alaskan\'s will be free to participate in fair and honest card games.

Larry Tallman

Please Add My Email Address to your distribution list. Thank You.

Ruth Keller

From: tyu yui [noahschnitzel@yahoo.com]
Sent: Wednesday, April 13, 2005 9:53 AM
To: Sen. John Cowdery
Subject: card room proposal

Dear Sen. Cowdery,

A friend mentioned to me your proposed bill about card room gaming bill. Initially I wasn't for the full blown casino idea, but card rooms would be something I would enjoy seeing.

Hope you get it passed!

Sincerely,

Tyu Than

Ruth Keller

From: Kaden Mills [kadenmiriam@yahoo.com]
Sent: Wednesday, April 13, 2005 9:50 AM
To: Sen. John Cowdery
Subject: Card Room Proposal

Senator Cowdery,

Although I am not a gambler myslef, i love this bill as its a chance to get more taxes instead of raising taxes in other areas.
These people will play anyway, why let all those winnings be tax free?
Everybody wins!

Thanks for listening and kudos on the bill.

Kaden Miriam

LAW OFFICES
GROSS & BURKE
A PROFESSIONAL CORPORATION
224 FOURTH STREET, SUITE 3
JUNEAU, ALASKA 99801

SUSAN A. BURKE
AVRUM M. GROSS (RETIRED)

TELEPHONE: (907) 586-2777
FACSIMILE: (907) 586-3080

April 25, 2005

Perry Green
130 W. 4th Avenue
Anchorage, Alaska 99501

Re: Effect of HB 272/SB 165 (Card Rooms) on Indian Gaming in Alaska

Dear Mr. Green:

You have asked what effect, if any, the enactment of HB 272 or SB 165 would have on Indian gaming in Alaska. More specifically, you have asked me to address two questions:

(1) Would the enactment of HB 272 or SB 165 "open the door" to allow Indian tribes in Alaska to operate casino type gaming operations – referred to in the federal Indian Gaming Regulatory Act ("IGRA") as "Class III" games?

The answer is no. As discussed below, all of the card games authorized in HB 272 and SB 165 are Class II games for purposes of IGRA. IGRA authorizes Indian tribes to operate Class III games only if state law does not prohibit them. Alaska law currently prohibits all forms of Class III gaming, and nothing in either bill would authorize Class III games. So long as Alaska law continues to prohibit Class III games, IGRA would not authorize Indian tribes to operate them within Alaska.

(2) Would the enactment of HB 272 or SB 165 "open the door" to additional Class II Indian gaming in Alaska, beyond what is already authorized under existing law?

The answer is no. As discussed below, Alaska currently allows certain organizations and entities to conduct various types of Class II gaming under AS 05.15, including bingo, pull tabs, raffles, lotteries and various lottery type "classics," such as ice classics, rain classics, and salmon classics, among others. In addition, Alaska's criminal code exempts players engaged in social gambling, including players in social card games, from the criminal prohibitions against gambling in the state. Because Alaska currently allows Class II gaming, including card games, IGRA would allow Indian tribes to operate the types of

Class II card games allowed in HB 272 and SB 165 on Indian lands in Alaska – even if neither of those bills were enacted.

I. Brief overview of the Indian Gaming Regulatory Act.

The federal Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. 2701 et seq., provides authority for Indian tribes to conduct certain gaming operations on Indian lands.[1] There are three classes of games under the Act.

Class I games include social gaming for minimal prizes and traditional Indian gaming conducted at ceremonies or celebrations. Tribes may conduct Class I games on Indian lands without oversight by the Indian Gaming.

Class II games include bingo, lotto, pull-tabs, punch boards, tip jars and non-banking card games. Non-banking card games are games in which only the players may make wagers on the outcome, in contrast to "banked" card games such as blackjack, baccarat and chemin de fer, where the player effectively plays against the house or another banker and the house or banker collects money from losers and pays winners. Indian tribes may conduct Class II games on Indian lands if the tribe adopts an ordinance authorizing the activity and receives a permit from the Indian Gaming Commission. IGRA imposes various regulatory requirements on Class II gaming and restricts the uses of revenues from Class II gaming operations.

Class III games include casino type gambling, electronic or electromechanical facsimiles of any games of chance, slot machines, pari-mutuel horse and dog racing, and all other forms of gaming that are not Class I or Class II. For states located within the federal Ninth Circuit (including Alaska), Indian tribes may conduct a Class III game only if the state permits the particular type of game that the tribe seeks to operate. *Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 64 F.3d 1250 (9th Cir. 1995). Class III games, if they are allowed by the state, may be conducted only in conformity with a negotiated tribal-state compact entered into by the tribe and the state.

II. Enactment of HB 272 or SB 165 would not "open the door" to Class III Indian Gaming in Alaska.

HB 272 and SB 165 are identical bills that would authorize, under various limitations, the operation of card rooms in Alaska for the purpose of playing one or more

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[1] IGRA restricts Indian gaming to activities conducted on "Indian lands." This is a significant restriction, and is discussed briefly in Part IV of this opinion, beginning on page 4.

specified "non-banking" card games[2]. The specified games are poker, pan, rummy, bridge and cribbage. Since the only games allowed under the bills are non-banking games, they would be considered as Class II games and not Class III games.

IGRA allows Class III Indian gaming activity only if the activity is "located in a State that permits such gaming for any purpose by any person, organization, or entity." Alaska currently does not permit any type of Class III gaming activity, and nothing in either HB 272 or SB 165 would constitute such permission. Kathryn L. Kurtz, Legislative Counsel, recently provided an opinion to Representative Pete Kott in which she concluded that HB 272 would authorize only Class II games and would therefore not provide a basis for any Class III Indian gaming in Alaska. (Memorandum from Kathryn L. Kurtz to Representative Pete Kott, April 21, 2005.) I agree with her analysis, and rather than repeat it here, I have attached a copy of her opinion to this letter.

III. Authority of Indian Tribes to Conduct Class II Card Games under Existing Alaska Law.

IGRA, in 25 U.S.C. 2710(b)(A), allows an Indian tribe to engage in Class II gaming on Indian lands within the tribe's jurisdiction if

> such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law).

AS 05.15 currently allows charitable organizations and municipalities to conduct certain games that would be included within IGRA's definition of Class II games – specifically, bingo, pull tabs, raffles, lotteries and various lottery type "classics" such as the Nenana Ice Classic. Additionally, Alaska's criminal code exempts from prosecution for gambling offenses "a player in a social game." AS 11.66.200. "Social game" is defined in AS 11.66.280(9) as "gambling in a home where no house player, house bank, or house odds exist and where there is no house income from the operation of the game."

There are two alternative bases for concluding that IGRA would permit Indian tribes to operate the types of card games authorized under HB 272 and SB 165, even if neither bill were enacted. The first is that under the authorizing language quoted above, Alaska allows "such gaming" – that is, Class II gaming – of several types. It does snot matter that Class II gaming activity is limited to charitable organizations and municipalities. Alaska need only authorize these games for "any purpose by any person,

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[2] Both bills, at page 2, line 1, make it clear that the specified card games are "non-banking." The Senate Labor & Commerce Committee Substitute for SB 165 contains additional language to further emphasize that only "non-banking" games are allowed. The committee substitute, at page 2, lines 18 and 19, provides that wagers may be made only by a player with respect to his or her own game and that players may not make a wager on behalf of another individual.

organization or entity." As noted above, the Ninth Circuit Court of Appeals has ruled that for a Class III game, IGRA authorizes it only if state law permits the same type of game that the tribe seeks to operate. The Court has indicated however, that for Class II games, a less stringent standard will be applied, and a tribe may operate a Class II game if the state permits any person, organization, or entity to operate any Class II game. *See, Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 64 F.3d at 1258 n. 4. Under this analysis, IGRA would authorize Indian tribes to operate Class II card games solely by virtue of current law authorizing charitable organizations and municipalities to operate certain Class II games.

Alternatively, it may be argued that the *Rumsey* analysis should not be applied so broadly where Class II card games are at issue. That is because IGRA makes a distinction in its definition of Class II games between bingo, pull tabs and other bingo-like games on the one hand, and card games on the other. Specifically, IGRA defines Class II card games as games that "are explicitly authorized by the laws of the State" OR that "are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games." 25 U.S.C. 2703(7)(A)(ii)(I) and (II). Current Alaska law meets that definition.

While current Alaska law does not "explicitly" authorize non-banking card games, it clearly does not "explicitly" prohibit them, because of the exemption in AS 11.66.200(b) from prosecution for players in social games. Moreover, since non-banking gambling is allowed in Alaska by players in homes, existing law allows for gambling on card games "at any location in the State."

Thus, Indian tribes are authorized under IGRA to operate non-banking card games under Alaska law as it exists today. Enactment of either HB 272 or SB 165 would not be required as a prerequisite to that authorization.

IV. Territorial Restrictions on Indian Gaming in Alaska.

Even though IGRA would authorize Indian tribes to conduct Class II card games in Alaska under existing state laws, there are additional restrictions in IGRA that may serve to minimize the proliferation of such gaming in Alaska. Indian tribes may conduct Class II and Class III gaming operations only on "Indian lands." Indian lands are defined in IGRA, 25 U.S.C. 2703(4), as:

> (A) all lands within the limits of any Indian reservation; and
>
> (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the

United States against alienation and over which an Indian tribe exercises governmental power.

In Alaska, the only lands within an Indian reservation are those within the Metlakatla reservation. The Alaska Native Claims Settlement Act revoked all other reserves set aside for Native use and lands conveyed to regional and village Native corporations are held in fee simple by each corporation. Native corporation lands, then, do not fall within the definition of "Indian lands" because they are not within an Indian reservation, they are not held in trust by the United States, and they are not subject to any restrictions on alienation or sale.

Another category of lands that arguably might constitute "Indian lands" are various Alaska village town sites. While these lands were at one time held in trust, they have since been re-conveyed to the villages in fee simple and are now free of any prio restrictions on the sale of these lands. As a result, village town sites would not qualify as "Indian lands" for purposes of IGRA.

The last category of lands that may constitute "Indian lands" under IGRA are individual Native allotments. There are a number of parcels of land in this category scattered all over the state, and most, if not all, are held by individual Natives and are subject to federal restrictions against alienation. Thus, Native allotments would likely meet two of the three requirements needed to qualify as "Indian lands." What is less clear is whether Native allotments would meet the third requirement that the Tribe must "exercise governmental power" over the lands. This is a complex issue, however, and the result would depend on the facts surrounding the particular parcel in question and the extent to which a recognized tribe actually exercises any governmental powers within the boundaries of that particular parcel.

Please let me know if you have additional questions.

Very truly yours,

Susan A. Burke

Susan A. Burke

SAB:ps

Enclosure

SB

169

SENATE COMMITTEE REPORT

DATE: 4/27/06

FURTHER:

DATE TURNED
IN TO OFFICE:_____

Judiciary Committee considered SENATE BILL NO. 169

SB 169 WORKERS' COMPENSATION RECORDS

"An Act relating to release of information in individual workers' compensation records for commercial purposes."

and recommends:

[ ] be **replaced** with _____ **CS** _____ (_____)

[ ] adopt **previous** _____ **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to _____ Committee

CS Senate Bill:
[ ] Same Title
[ ] New Title

SCS House Bill:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
Stephen G. Green	✓			
[redacted]	✓			
Dave Thomasault	✓			
[redacted]			X	
CHAIR: Ralph Neilan	✓			

LEGAL SERVICES

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

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

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

MEMORANDUM April 28, 2006

SUBJECT: Concerns with CSSB 169(JUD) (Work Order No. 24-LS0890\L)

TO: Senator Ralph Seekins
Chair of the Senate Judiciary Committee
Attn: Brian

FROM: Dennis C. Bailey DCB
Legislative Counsel

As you may be aware, a similar approach to prohibiting disclosure of the names and addresses of injured persons who filed a workers compensation report of injury in current AS 23.30.107(c) was rejected by the superior court under a statutory construction analysis. The court noted a potential constitutional challenge to the current statute because the right to access public records is a fundamental right that would receive heightened scrutiny on constitutional grounds. While the new draft takes a new approach to protecting names, addresses, and telephone numbers of persons filing a report of injury, you should be aware that it is not clear that the new approach resolves the court's concerns with the former language. The new language may be subject to similar challenges.

If I may be of further assistance, please advise.

DCB:ljw
06-222.ljw

Enclosure

24(G)-2
4/28/06
(12:26 P.M.)

AMENDMENT #1

OFFERED IN THE SENATE JUDICIARY COMMITTEE

BY Therriault

TO: CSSB 169(L&C)

Page 1, line 2:

Delete "**for commercial purposes**"

Page 1, lines 4 - 6:

Delete all material and insert the following:

"* **Section 1.** AS 23.30.107(b) is amended to read:

(b) Medical or rehabilitation records**, and the employee's name, address, social security number, and telephone number contained on any record,** in an employee's file maintained by the division or held by the board are not public records subject to public inspection and copying under AS 40.25. This subsection does not prohibit

(1) the reemployment benefits administrator, the division, the board, or the department from releasing medical or rehabilitation records in an employee's file, without the employee's consent, to a physician providing medical services under AS 23.30.095(k) or 23.30.110(g), a party to a claim filed by the employee, or a governmental agency; or

(2) the quoting or discussing of medical or rehabilitation records contained in an employee's file during a hearing on a claim for compensation or in a decision and order of the board.

* **Sec. 2.** AS 23.30.107 is amended by adding a new subsection to read:

(d) An employee may elect to authorize the disclosure of the employee's name, address, and telephone number contained in a record described in (b) of this section by

signing a declaration on a form provided by the division."

Renumber the remaining bill section accordingly.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **SB169CS-DOLWD-WC-04-27-06**
() Publish Date:

Revision Date/Time (Note if correction):
Title: **Workers' Compensation Records**

Department: **Labor and Workforce Development**
RDU: **Workers' Compensation**
Component: **Workers' Compensation**

Sponsor: **Senator Therriault**
Requester: **Senate JUD**

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill would prevent the division from compiling or providing information about individual workers' compensation files for commercial use. 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: **4/27/06 3:29 PM**
Approved by: **Greg O'Claray, Commissioner** Date: **4/27/2006**
Agency: **Department of Labor and Workforce Development**

(Revised 9/7/2005 OMB)

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

O'BRYAN BAUN COHEN KUEBLER,
Plaintiff,

vs.

PAUL F. LISANKIE, DIRECTOR OF DIVISION OF WORKERS' COMPENSATION, DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, STATE OF ALASKA, JOHN DOES 1-10, EMPLOYEES OF THE STATE OF ALASKA,
Defendants.

Case No. 1JU-05-557 CI

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

Factual and Procedural History

This lawsuit is brought by the O'Bryan law firm to obtain information from the State of Alaska Department of Labor about Workers' Compensation claims. The dispute arose when the State refused to provide information it had previously been providing.

Between June and November 2004 the State responded to requests by O'Bryan for Report of Injury by providing lists of claimants and their addresses and phone numbers.

However, in March 2005 when O'Bryan made a request for similar information the State refused to supply it.

When O'Bryan first asked the State in June 2004 to provide all Reports of Injury (ROI) listing Icicle Seafoods as the employer. The State notified O'Bryan that providing copies of 400 ROIs would be "a real burden" and attached a summary list of claimants, addresses and phone numbers with the hope that the summary would suffice. O'Bryan accepted the summary list in lieu of the 400 ROIs.

In August, September and November 2004, O'Bryan made three more requests for similar information. Although each request identified a different employer and employment period, the format of each request was essentially the same:

> Please provide at our expense a list of all workers compensation claimants . . . including names, addresses, and phone numbers.

Each time, O'Bryan requested a list of all workers compensation claimants against an employer, including "names, addresses, and phone numbers." And, each time the State satisfied the request by providing the summary lists.

O'Bryan made another request in March 2005. Like the previous requests, the firm asked for a summary of the information in the same format:

> Please provide at our expense a list of all workers compensation claimants for Icicle Seafoods and Trident Seafoods from the date of your last email attached. I would like their names, addresses, and phone numbers.

The State, however, advised O'Bryan that it would no longer supply any further claims information. The basis for this decision is unclear. O'Bryan says that the State explained that it would no longer do so because Richard Nielsen, an attorney representing seafood processors, had filed a complaint with the governor's office against the State.[1] The State denies that the sole basis of the denial was the Nielsen complaint letter.[2] The State says that "[t]he Director of the Division determined it was not appropriate to continue to create and provide summaries of information, and the request was denied."[3]

O'Bryan filed a letter of appeal on March 16, 2005. To date, the State has not responded to the appeal.[4]

O'Bryan filed a suit in superior court on June 6, 2005 seeking declaratory and injunctive relief. The State answered on July 25, 2005.

During the 2005 special session of the legislature, a new Workers Compensation scheme was considered and eventually enacted. That new scheme had a provision at AS 23.30.107(c) that said:

> "The division may not assemble, or provide information respecting, individual records for commercial purposes that are outside the scope of this chapter."

That provision was effective on November 7, 2005.[5]

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[1] Plaintiff's Ex. 7, p.2 and Ex. 8, p.1.
[2] Answer at 2.
[3] Defendants' Reply to Opposition to Defendants' Cross Motion for Summary Judgment at 7.
[4] Memorandum in Support of Motion for Summary Judgment at 4.

On November 23, 2005, O'Bryan's counsel sent the State's counsel a letter regarding the "Request for ROIs."[6] The letter declared that it was O'Bryan who accommodated the State – rather than vice-versa – in accepting the summary information rather than the ROI forms. The letter also outlined plaintiff's arguments that another statute, AS 23.30.260[7], is inapplicable to claims under federal law. The letter also contained the following statement:

> My client is perfectly willing to accept actual copies of the ROI pursuant to AS 40.25 et seq. seq. in order to resolve this dispute. It was the State's desire to produce the compilation in lieu of copying the ROI's but if the State is unwilling to turn over the compilation, Plaintiff hereby requests that the State produce the ROI's for Icicle Seafoods and Trident Seafoods for the period from June of 2004 to the present. Please advise when we can expect to receive these documents.[8]

O'Bryan moved for summary judgment on December 7, 2005. The State opposed and cross moved for summary judgment. Both motions are now ripe for decision. The parties agree that there is no genuine issue of fact and this is a question of law to be decided by the court.

Summary Judgment

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[5] Ch. 10, SLA 2005.
[6] Memorandum in Support of Motion for Summary Judgment, Exhibit H at 1 ("Letter").
[7] AS 23.30.260. Penalty For Receiving Unapproved Fees and Soliciting.
A person is guilty of a misdemeanor, and upon conviction is punishable for each offense by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both, if the person
(1) receives a fee, other consideration, or a gratuity on account of services rendered in respect to a claim, unless the consideration or gratuity is approved by the board or the court; or
(2) makes it a business to solicit employment for a lawyer or for oneself in respect to a claim or award for compensation.
[8] Letter, supra n. 9.

The court will grant summary judgment only if the record presents no genuine issues of material fact and "the moving party was entitled to judgment on the law applicable to the established facts."[9] Once the movant has established a prima facie case, the non-movant, in order to prevent entry of summary judgment, is required to set forth specific facts showing that it could produce admissible evidence reasonably tending to dispute or contradict the movant's evidence, and thus demonstrate that a material issue of fact exists.[10] The court construes facts offered in support of and in opposition to a motion for summary judgment in a light most favorable to the nonmoving party.[11]

Public Records

Alaska has two primary public records statutes, AS 40.25.110 and AS 40.25.120, which govern the release of records to the general public. AS 40.25.110 provides that public records are open to inspection and copying. It states in relevant part:

> "Unless specifically provided otherwise, the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours." [12]

The Alaska Supreme Court has noted that "[t]here is a strong public interest in disclosure of the affairs of government," and "[sections] .110 and .120 articulate a broad

[9] Newton v. Magill, 872 P.2d 1213, 1215 (Alaska 1994).
[10] McGlothlin v. Municipality of Anchorage, 991 P.2d 1273, 1277 (Alaska 1999).
[11] Beilgard v. State, 896 P.2d 230, 233 (Alaska 1995).
[12] AS 40.25.110 (a).

policy of open records."[13] Courts have characterized the right of citizen access to public records as a "fundamental right."[14]

Section 40.25.120 restates the general rule of availability, but also sets out the exceptions to the public's right to inspect a public record. It states these exceptions, including records made secret by law:

> Every person has a right to inspect a public record in the state, including public records in recorders' offices except:
>
> . . .
>
> (4) records required to be kept confidential by a federal law or regulation or by state law.[15]

To further the legislative policy of broad public access, courts narrowly construe any exceptions.[16] The term "state law" in AS 40.25.120 (4) refers to any statute protecting the confidentiality of records. It also covers any constitutional provision, including, most notably, the right to privacy,[17] as well as the executive privilege doctrine, and other privileges.[18] The Alaska Supreme Court also has indicated that the reference to state law includes common law. The common law on public inspection of government records, as developed in other jurisdictions and acknowledged in Alaska, provides that an

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[13] Gwich'in Steering Committee v. State, Office of the Governor, 10 P.3d 572, 578 (Alaska 2000).
[14] Id.
[15] AS 40.25.120 (4).
[16] See, e.g. Doe v. Alaska Superior Court, 721 P.2d 617, 622 (Alaska 1986).
[17] ALASKA CONST. art I, § 22.
[18] See, e.g. KNUTH, MARGO, INSPECTION AND DISCOVERY OF STATE RECORDS IN ALASKA, 4 ALASKA L. REV. 277, 280 (1987).

inspection should be denied when a demonstrable need for confidentiality outweighs the public interest in disclosure.[19]

Before November 7, 2005

The State has stated no credible reason for refusing to disclose the information requested prior to November 2005.

Without some legitimate reason under the law, the State cannot deny a request to provide information that it has granted in the past. The Division Director's decision, after the complaint to the Governor's office, has not been shown to have a legitimate basis. Indeed it hasn't been shown to have any basis.

O'Bryan had been using the names and addresses of persons injured on the job to send letters to the injured persons telling them that they may have claims for other than Workers Compensation and that they could receive additional information if they wanted by contacting O'Bryan.

The State's suggests that providing the information to O'Bryan would be unlawful because of prohibitions against lawyers engaging in solicitation. The U.S. Supreme Court disagrees.[20] Court Rules in Alaska and Michigan governing the practice of law do not prohibit this information being used in the manner that O'Bryan has used it. Rule 7 of the Alaska Rules of Professional Conduct for lawyers does not prohibit letters sent to persons

[19] Mun. of Anchorage v. Daily News, 794 P.2d 584, 590 (Alaska 1990).
[20] Shapero v Kentucky Bar Ass'n, 486 US 466 (1988).

giving them information of possible legal remedies as provided by O'Bryan in this case. Rule 7.3(a) of the Michigan Rules of Professional Conduct expressly provides that the term "solicit" does not include the sending of "truthful and non-deceptive letters to potential clients known to face particular legal problems as elucidated in Shapero v Kentucky Bar Ass'n, 486 US 466."[21]

The State argues that the November 23, 2005 letter from O'Bryan's counsel to the State's counsel constituted a new request, prohibited under the new law AS 23.30.107(c). The court finds that the letter is not a new request but rather it is an offer to compromise the lawsuit. In the letter, O'Bryan articulated the consideration that it would be willing to back to the original request and accept the ROI's "in order to resolve the dispute."[22] O'Bryan offered to accept the ROI if the State was unwilling to provide the summary lists of names, addresses and phone numbers.

Evidence of offers to compromise a claim "which was disputed as to either validity or amount is not admissible to prove liability for or invalidity of the claim or its amount."[23] The letter from O'Bryan's counsel does not convert the March 2005 request into a new request that would fall under the prohibitions of AS 23.30.107(c), passed 8 months later.

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[21] MICHIGAN RULE OF PROFESSIONAL CONDUCT, Rule 7.3(a) (2002).
[22] See Letter, supra n. 9.
[23] Alaska R. Evid. 408.

The State also argues that AS 40.25.110 does not require it to create documents in response to a request if those documents are not in existence at the time of the request. [24] The court agrees. However, the past practice the State adopted of providing the summary lists rather than the actual ROI forms cannot be used to refuse the information requested. If the State chooses to no longer provide a summary list for its own convenience rather than the actual ROI forms, it must satisfy the March, 2005 request by releasing the underlying ROI forms. The State must provide the ROI requested in the March 2005 request or a summary as provided in the past

After November 7, 2005

Much of the 2005 special session of the Alaska legislature was taken up with the consideration of a new Workers Compensation scheme. That scheme was originally submitted by the governor and introduced as Senate Bill 130. A conference substitute for SB 130 was eventually enacted as 10 SLA 2005. That law had a provision at AS 23.30.107(c) that said:

> "The division may not assemble, or provide information respecting, individual records for commercial purposes that are outside the scope of this chapter."[25]

Constitutional Challenge

[24] See Opposition to Plaintiff Motion for Summary Judgment and Cross Motion in Support of Summary Judgment at 4.
[25] Section 39 of the SLA

O'Bryan argues that the statute is unconstitutional if it is interpreted to prevent O'Bryan from having access for a commercial purpose. The State argues that the statute is not unconstitutional. It would be an interesting proposition if the State's interpretation would not allow a newspaper access to this information to support a story on safety in the workplace because it was a "commercial purpose". The State's interpretation would not allow an insurance company to obtain this information to find out how potential customers were dealing with their employees. Yet a citizen with a casual interest, just being nosy, could find out all things requested here by O'Bryan. Fortunately the court feels that it does not have to decide the constitutional question. The court is to decide cases on constitutional grounds only when the cases cannot be decided fairly on statutory or other grounds.[26] Whether the constitutional challenge is equal protection or free speech, the issues need not be decided here. The court believes that the correct analysis is statutory construction.

Statutory Interpretation

A statute is to be interpreted according to its plain meaning and if it is ambiguous the court is to look at the intent of the legislature.[27] The court is to interpret laws

[26] State Department of Health and Social Services v. Valley Hospital Association Inc., 116 P.3d 580 (Alaska 2005)
[27] North Slope Borough v. Sohio Petroleum Corp. 585 P.2d 534 (Alaska 1978)

restricting the public's access to state records strictly. "Doubtful cases should be resolved by permitting public inspection."[28]

The court finds the statute ambiguous in several ways. Nearly anything today can be characterized as a "commercial purpose" including government itself sometimes. There has been much discussion in a variety of forums through the years on whether the practice of law is a profession or a commercial venture.[29] The statute does not define "commercial purpose" as meant in the framework of this scheme. The decision to release information or not, depending on how the recipient is going to use the information would be a continuing conundrum for the State and recipients.

The prohibition in the statute on providing information is only applicable for "purposes that are outside the scope of this chapter."

Neither party provided the court with any legislative history of AS 23.30.107(c).

The court's review of the legislative history of the statute shows nothing in the legislative history to make the phrase "commercial purpose" more definite. This sub-section was Section 28 of the original bill that was introduced at the request of the governor. The transmittal letter from the governor included the stated purpose of the legislation to "enhance the efficiency of the current system by expanding workers access

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[28] City of Kenai v. Kenai Peninsula Newspapers, Inc., 642 P.2d 1216 (Alaska 1982) at 540.

[29] See e.g. ABA v. FTC, 430 F.3d 457 (C.A.D.C. 2005); Bailey v. State, 424 S.E. 2d 503 (S. C. 1992 at 504 reh'g denied (1993); Samuel J. Levine, Professionalism with Parochialism, 71 Fordham L. Rev. 1339 (2002-2003)

to legal counsel". There was testimony before the legislature that there was a dearth of lawyers for those injured on the job.

> "We need access to legal counsel. There are only eight attorneys assisting claimants and some are choosing not to represent injured workers in favorable profitable types of litigation. "[30]

A provision was put into the bill allowing the State to contract to pay lawyers to help injured workers. The Director of the Division of Workers Compensation in explaining a section that was meant to encourage lawyers to be involved said the statute was allowing attorneys to charge for an initial consultation with injured workers because ...there are a limited number of private attorney who are willing to provide the service. [to workers][31] The only references found in the legislative history relating directly to sub-section 107(c) were statements made by the Director of the Division. He said

> ... We would maintain, in section 27, the confidentiality of medical and rehabilitation records that are held by the division or the new appeals commission. And, in Section 28, it would ban the division from assembling or providing individual records for commercial purposes. We've got a number of folks that ask us to give them information. We are getting more and more information into our system that we request because we are trying to get electronically filed and now we getting this intercession where people recognize that there is more and more information about employers, employees, anybody you can think of. They asked us to stratify this data and give them some kind of report that they can use

[30] Testimony of Barbara Williams, of the Alaska Injured Workers Alliance, on March 8 before Labor & Commerce Committee.
[31] Paul Lisankie at 8:56:51 AM before Senate Judiciary on April 5, 2005.

> for a commercial purpose. We want to be able to give information to people that need it so they can get good health care, so that they can get paid for providing that health care, so that an insurance company or an employer or an employee can get information they need to settle, or resolve, or if necessary, have a hearing on a disputed claim. We're trying to restrict the scope of information that we give out for purely commercial purposes.[32]

On April 5, 2005 he testified:

> Section 28 is a new provision, which would ban the Division of Workers Compensation from assembling or providing individual records for commercial purposes. The Division of Workers Compensation is asking people to file online so as to speed up the process. However, they are getting requests from other people to provide information that may be used for other purposes. People have legitimate privacy concerns.[33]

The court has to recognize that providing those injured on the job with accurate information about their legal rights is an important public interest recognized by the legislature. It is also clear that attorneys are more willing to represent persons in Workers Compensation cases if there are related, more profitable tort claims that can be pursued for the client. Clearly other legal remedies may help workers "settle or resolve" Workers Compensation claims as the Director wanted. The court finds that making it possible for lawyers to tell injured workers of their rights is not "outside the purposes of this chapter".

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[32] Paul Lisankie at 2:16:54 PM on March 10, 2005 before the Senate Labor and Commerce Committee
[33] Senate Judciary Committee Minutes at 9:26:25 AM

In weighing the privacy interests of access to names, addresses and phone numbers against the benefit of providing workers with legal information about their rights, the court believes the legislation provides for access to legal rights information. It is not clear whether the privacy concerns the Director referred to are the concerns of the employer or the employee nor is it clear what those concerns are. The new law specifically controls medical and rehabilitation information and release of that information is clearly prohibited. The privacy interest in that information is strong. Any privacy rights must be legitimate to be protected. The State has articulated no privacy interest of either the employee or employer about name, address and phone number that would justify keeping that information secret.

The stated goals of the legislation to provide counsel, and the ambiguity of the statute, and the requirement that laws limiting access to state records be strictly construed results in the court finding no need to address the constitutionality of the statute. The court believes that a reading of the statute that allows access to only names, addresses and phone numbers of claimants injured at particular employers is not "outside the scope of the chapter". The legislation is aimed at protecting workers injured on the job and O'Bryan's efforts to give workers information about their possible legal rights accomplishes that aim.

The court grants O'Bryan's motion for summary judgment.

The court denies the State's motion for summary judgment.

Dated this 7th day of April, 2006, at Juneau, Alaska.

Larry R. Weeks
Superior Court Judge

CERTIFICATION OF SERVICE
I certify that I served the following parties on the _____ day of _____, 2006:

Daniel Bruce
By Courtbox.

Judith Crowell
Assistant Attorney General
Department of Law
Office of the Attorney General
Anchorage Branch
1031 W. Fourth Avenue, Suite 200
Anchorage, AK 99501

Tracy Ver Velde
Professional Assistant to Judge Weeks

April 15, 2005

Senator Con Bunde, Chair,
Senate Labor & Commerce Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Senator Bunde and Committee Members,

My name is Hyo R. Kim and I have been an Alaska resident for over 27 years. Approximately 5 months ago, I received a letter from an out of state attorney that somehow learned of an injury I had at work. He indicated in his letter that if I contacted his firm, they could possibly get me more money for my injury.

I called the attorney to find out what this was about and how he had access to my personal information. During our conversation, the attorney asked me many questions about how I was injured, what the injury was, etc. After talking, the attorney indicated that he could not do anything for me since the injury was not substantial. I got the feeling he thought there was not enough money for him to get involved.

I asked him how he was able to get my personal information and he basically said he had his sources in the State of Alaska. This really bothered me since I really don't want people other than those that I approve of having access to my personal and private information This especially concerns me the most now that there are so many cases in the news of identity theft and fraud.

After discussing with my friends the conversation I had with this attorney, I learned that he most likely got my personal information from the Workers Compensation Board and the Alaska Dept. of Labor. If this is the case, it irritates me a lot as I do not want people to have access to my private information and I assumed that what I filled out on the Alaska Workers Compensation forms was confidential.

I am very surprised the State of Alaska would allow this information to be released about its residents. My injury is my private concern and should only involve me, my employer, my doctor, my family and not an out of state attorney. I ask you to please take the appropriate steps to make sure this does not happen again in the future.

Sincerely,

Hyo R. Kim

Hyo R. Kim
P.O. Box 705
Petersburg, Alaska 99833

ICICLE

April 18, 2005

Senator Con Bunde, Chair
Senate Labor and Commerce Committee
Alaska State Legislature
Juneau, Alaska 99801

Dear Senator Bunde and Members,

On behalf of Icicle Seafoods, Inc., I wish to express our support for SB 169, an act relating to the release of information in individual workers' compensation records for commercial purposes.

It came to our attention this past winter that personal information regarding employees who file workers' compensation claims has been released by the Alaska Dept. of Labor for commercial purposes. A private party outside of Alaska has been requesting the names and addresses of injured workers. They then use this private information for direct marketing purposes.

Knowing the Alaska Dept. of Labor has been releasing personal information from their database of injured workers is incredibly disturbing. With the onslaught of identity theft and increasing concern over our right to privacy, this information should not be disclosed without the consent of the person the information is about.

We find this practice objectionable, as do some of our employees who have contacted us after receiving solicitation letters from a Michigan law firm. The administration has since ceased this practice but a change in statute is clearly needed to ensure sustained protection.

I urge you to support SB 169. Thank you for your consideration.

Sincerely,

Kris Norosz

Kris Norosz
Government Affairs

PETERSBURG FISHERIES
A DIVISION OF ICICLE SEAFOODS, INC.
P.O. Box 1147 • Petersburg, AK 99833 • Tel: 907-772-4294 • Fax: 907-772-4472

SENATE COMMITTEE REPORT
First Committee of Referral

ATE: 4/11/05

FURTHER:

)ate of 5-Day Notice: _____
in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

.abor and Commerce Committee considered SENATE BILL NO. 169

SB 169 WORKERS' COMPENSATION RECORDS

"An Act relating to release of information in individual workers' compensation records for commercial purposes."

and recommends:

[ ] be **replaced** with _____ **CS** _____ (_____)

[ ] adopt **previous** _____ **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to _____ Committee

CS Senate Bill:
[ ] Same Title
[ ] New Title

SCS House Bill:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
Bettye Davis	X			
[illegible] Ellis	X			
[illegible]	✓			
CHAIR: [illegible]	✓			