

11859

SENATE

JUDICIARY

0012

1 been previously convicted of violating this section.

2 * Sec. 2. AS 12.55.015(a) is amended to read:

3 (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing
4 sentence on a defendant convicted of an offense, may singly or in combination

5 (1) impose a

6 (A) fine when authorized by law and as provided in
7 AS 12.55.055; or

8 (B) day fine when authorized by law and as provided in
9 AS 12.55.036 if the court does not impose a term of periodic or continuous
10 imprisonment or place the defendant on probation;

11 (2) order the defendant to be placed on probation under conditions
12 specified by the court that may include provision for active supervision;

13 (3) impose a definite term of periodic imprisonment;

14 (4) impose a definite term of continuous imprisonment;

15 (5) order the defendant to make restitution under AS 12.55.045;

16 (6) order the defendant to carry out a continuous or periodic program
17 of community work under AS 12.55.055;

18 (7) suspend execution of all or a portion of the sentence imposed under
19 AS 12.55.080;

20 (8) suspend imposition of sentence under AS 12.55.085;

21 (9) order the forfeiture to the commissioner of public safety or a
22 municipal law enforcement agency of a deadly weapon that was in the actual
23 possession of or used by the defendant during the commission of an offense described
24 in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

25 (10) order the defendant, while incarcerated, to participate in or
26 comply with the treatment plan of a rehabilitation program that is related to the
27 defendant's offense or to the defendant's rehabilitation if the program is made available
28 to the defendant by the Department of Corrections;

29 (11) order the forfeiture to the state of a motor vehicle, weapon,
30 electronic communication device, or money or other valuables, used in or obtained
31 through an offense that was committed for the benefit of, at the direction of, or in

1 association with a criminal street gang;

2 (12) order the defendant to have no contact, either directly or
3 indirectly, with a victim or witness of the offense until the defendant is
4 unconditionally discharged;

5 (13) if the court finds by clear and convincing evidence that the
6 defendant's conduct constituting the offense was substantially influenced by the
7 consumption of an alcoholic beverage, order the defendant convicted of a felony
8 under AS 11.41 to refrain from consuming alcoholic beverages for the lifetime of
9 the defendant, including during the term of any sentence, and as a condition of
10 probation, suspended sentence, and suspended imposition of sentence.

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

13 APPLICABILITY. This Act applies to offenses committed on or after the effective
14 date of this Act.

We Possession purchase

for a period up to the lifetime

The ACLU continues to pick the wrong side of nearly every issue it chooses to get involved in, whether it's defending the Nazis' right to march in Jewish neighborhoods or NAMBLA's right to advocate that adults commit crimes against children – raping young boys.

The ACLU now is arguing against legislation that would allow judges to sentence some dangerous offenders to a lifetime of sobriety ("Measure Bans Booze for Lifetime," Empire, Sunday, February 19, 2006). Negative comment by the ACLU probably is the best endorsement the bill's sponsor could ask for.

Senate Bill 284, introduced by Senator Gene Therriault, is an innovative approach to a difficult social problem. The bill would allow judges to impose a lifetime alcohol ban when they believe continued alcohol consumption will likely lead to more violent acts by the defendant. The primary point of the legislation, completely missed by the ACLU, is that the offender ultimately will have a better chance of staying out of prison and there will be fewer victims.

The ACLU takes the Murkowski administration, specifically the Department of Corrections, to task for 'gutting' programs. As usual, the ACLU has it wrong. Corrections only eliminated short-term, institutional substance abuse programs. These were one hour twice per week counseling sessions to discuss substance abuse issues. There was little 'treatment,' and there was no empirical evidence that these counseling sessions had any measurable impact on behavior.

Instead, Corrections chose to invest in long-term, intensive residential substance abuse treatment programs in its institutions. These are twelve to fourteen-month programs based on a therapeutic community model where offenders are in treatment 24-hours a day, rather than two-hours a week. Data shows that 80 per cent of prisoners completing these programs maintained sobriety six-months after release. Corrections recently added a third state-approved residential treatment program at the contract facility in Arizona.

I have no idea why the ACLU used legislation that would ban booze to dangerous offenders to comment on sex offenders, but in any case, here again the ACLU got it wrong. Corrections is implementing a comprehensive program considered best practice in the field of sex offender management. The "containment model" is designed to monitor, treat and contain sex offenders to reduce victimization and protect the public. Supervision by probation officers is combined with sex offender treatment and polygraph examination to better treat and monitor offenders. The goal of this enhanced program is to proactively manage sex offenders in order to reduce victimization, protect Alaska communities and to enable offenders to comply with conditions and to cease all criminal behavior.

The Murkowski administration is committed to a higher level of public safety for all Alaskans and has worked closely with this legislature to help enact some of the toughest criminal justice legislation in the state's history. It would be refreshing to have an

organization like the ACLU sign on and assist that effort. After all, victims have civil liberties, too.

Commissioner Marc Antrim
Alaska Department of Corrections

WORD COUNT: 493

SB

298

SENATE COMMITTEE REPORT

DATE: 2/27/06

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 298

SB 298 TRUSTS: CHALLENGES; CLAIMS; LIABILITIES

"An Act relating to loans from trust property; relating to a trustee's power to appoint the principal of a trust to another trust; relating to challenges to, claims against, and liabilities of trustees, beneficiaries, and creditors of trusts and of trusts and estates; relating to individual retirement accounts and plans; relating to certain trusts in divorce and dissolutions of marriage situations; and providing for an effective date."

and recommends:

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

CS Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
SCS House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	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
<i>[Signature]</i>	X			
<i>[Signature]</i>			X	
<i>[Signature]</i>	X			
<i>[Signature]</i>	X			
CHAIR: <i>Ralph Perkins</i>	✓			

ALASKA STATE SENATE



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Senator_Ralph_Seekins@legis.state.ak.us

Senator Ralph Seekins
District D

Senate Bill 298 Sponsor Statement

"An Act relating to loans from trust property; relating to a trustee's power to appoint the principal of a trust to another trust; relating to challenges to, claims against, and liabilities of trustees, beneficiaries, and creditors of trusts and of trusts and estates; relating to individual retirement accounts and plans; relating to certain trusts in divorce and dissolutions of marriage situations."

Senate Bill 298 revises Titles 13 and 34 pertaining to the administration of trust assets. Updates incorporated into Title 13 include the addition of clarifying language relating to: (1) the various powers conferred upon the trustee; (2) trustee reporting requirements, and; (3) claims made against trust assets.

Updates integrated into Title 34 include language pertaining to: (1) the exemption from transfer provisions for certain IRA trust assets; (2) technical corrections made to AS 34.40.110(b), and; (3) the handling of trust assets in cases of divorce or dissolution.

Since 1997, the Alaska State Legislature has consistently worked to update and improve laws regarding the use and administration of trusts. As a result, Alaska is considered one of the premier trust jurisdictions in the country.

But, it is a very competitive environment. In fact, at least seven other states – Delaware, Missouri, Nevada, Oklahoma, Rhode Island, South Dakota and Utah – have enacted legislation similar to our own.

The updates proposed in this Bill are in keeping with revisions made to Alaska's Trust Laws in 1997 and 2003. They are intended to preserve Alaska's leading position within the universe of trust products and services offered nationwide.

Our laws encourage Alaskan's to keep their trust assets here in the state. Moreover, capital is *attracted* to Alaska from all over the country creating greater job and investment opportunities for residents of our state.

Senate Bill 298 clarifies prior trust legislation, makes the administration of trusts in Alaska more efficient and cost effective, and will keep Alaska as the jurisdiction of choice for trust administration.

24-LS1113\Y
Bannister
2/28/06

**SPONSOR SUBSTITUTE FOR SENATE BILL NO. 298
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION**

BY SENATOR SEEKINS

**Introduced:
Referred:**

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to loans from trust property; relating to a trustee's power to appoint
2 the principal of a trust to another trust; relating to challenges to, claims against, and
3 liabilities of trustees, beneficiaries, and creditors of trusts and of trusts and estates;
4 relating to individual retirement accounts and plans; relating to certain trusts in divorce
5 and dissolutions of marriage situations; and providing for an effective date."

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

7 * Section 1. AS 13.36.109(21) is amended to read:

8 (21) to make loans out of trust property to an eligible [A] beneficiary
9 or an eligible third-party entity on terms and conditions the trustee considers to be
10 fair and reasonable under the circumstances and to guarantee loans to the eligible
11 beneficiary or eligible third-party entity by encumbrances on trust property; in this
12 paragraph.

13 (A) "eligible beneficiary" means a beneficiary of the trust

who is currently eligible for or entitled to a distribution of income or principal of the trust;

(B) "eligible third-party entity" means a third-party entity if more than 50 percent of the equity of the entity is owned by the trust or by one or more beneficiaries of the trust;

* Sec. 2. AS 13.36.157(a) is amended to read:

(a) Subject to (d) of this section, unless [UNLESS] the terms of the instrument expressly provide otherwise, a trustee who has authority [THE ABSOLUTE DISCRETION] under the terms of an [A TESTAMENTARY] instrument or irrevocable inter vivos agreement to invade the principal of a trust for the benefit of a [THE] beneficiary who is eligible or entitled to the income of the trust may exercise without prior court approval the trustee's authority [DISCRETION] by appointing, whether or not there is a current need to invade the principal under any standard stated in the governing instrument, part or all of the principal of the trust in favor of a trustee of another [A] trust under an instrument other than that under which the power to invade was created if the exercise of this authority [DISCRETION]

(1) does not reduce any fixed income interest of a [AN INCOME] beneficiary of the trust being invaded;

(2) is in favor of the beneficiary of the trust to which principal is appointed; and

(3) does not violate the limitations on validity under AS 34.27.051 or 34.27.100.

* Sec. 3. AS 13.36.157 is amended by adding a new subsection to read:

(d) The governing instrument of an appointed trust may provide that, after a time or an event specified in the governing instrument, the trust assets of the appointed trust remaining after the time or event shall be held for the benefit of the beneficiaries of the invaded trust on terms and conditions regarding the nature and extent of the beneficiaries of the invaded trust that are substantially identical to the terms and conditions governing the beneficial interests in the invaded trust. In this subsection,

(1) "appointed trust:" means the trust to which principal is appointed

1 under (a) of this section;

2 (2) "invaded trust" means the trust whose principal is invaded under
3 (a) of this section.

4 * Sec. 4. AS 13.16 is amended by adding a new section to article 8 to read:

5 Sec. 13.16.530. Application to trustees. Notwithstanding AS 13.16.450 -
6 13.16.525, the trustee of a trust may, under AS 13.36.368(b)(3), take the action a
7 personal representative may take under AS 13.16.450 - 13.16.525.

8 * Sec. 5. AS 13.36.100(a) is amended to read:

9 (a) Unless resolved or barred under (b) or (c) of this section, and
10 notwithstanding the lack of adequate disclosure, all claims against a trustee who has
11 issued a [FINAL] report received by the beneficiary and who has informed the
12 beneficiary of the location and availability of records for examination by the
13 beneficiary are barred unless a proceeding to assert the claims is commenced within
14 three years after the beneficiary's receipt of the [FINAL] report.

15 * Sec. 6. AS 13.36.100(b) is amended to read:

16 (b) If a trustee petitions a court for an order approving a report that adequately
17 discloses the existence of a potential claim, serves the report on all beneficiaries to be
18 bound by the report, [AND] gives the beneficiaries at least 60 [90] days' notice of the
19 court proceeding, and notifies the beneficiary that a claim must be begun within
20 45 days after the beneficiary is served with notice of the court proceeding, all
21 potential claims of the beneficiaries against the trustee are barred unless the claims are
22 served on the trustee and filed with the court within 45 [60] days after the beneficiaries
23 are served with notice of [RECEIVE THE REPORT, OR DURING] the court
24 proceeding.

25 * Sec. 7. AS 13.36.100(c) is amended to read:

26 (c) If a trustee serves a report on a beneficiary that adequately discloses the
27 existence of a potential claim against the trustee, the trustee informs the beneficiary
28 that a proceeding to assert any claim against the trustee must be commenced by the
29 beneficiary within [24 MONTHS AFTER RECEIPT OF THE REPORT IF IT IS AN
30 INTERIM REPORT OR WITHIN] six months after receipt of the report [IF IT IS A
31 FINAL REPORT], and the beneficiary fails to assert a claim against the trustee, all

1 claims of the beneficiary are barred.

2 * Sec. 8. AS 13.36.100 is amended by adding a new subsection to read:

3 (h) The report of a trustee under this section is considered to provide adequate
4 notice to the beneficiary that there is a time limitation for filing a claim against the
5 trustee if the cover page or top of the first page of the report contains the following
6 language in at least 14 point bold type: "BY RECEIPT OF THIS REPORT, ANY
7 ACTION YOU MAY HAVE AS A BENEFICIARY AGAINST THE TRUSTEE
8 FOR BREACH OF TRUST BASED ON ANY MATTER ADEQUATELY
9 DISCLOSED IN THIS REPORT MAY BE BARRED UNLESS THE ACTION IS
10 BEGUN WITHIN SIX MONTHS AFTER YOU RECEIVE THIS REPORT. IF YOU
11 HAVE ANY QUESTIONS, YOU MAY WISH TO OBTAIN PROFESSIONAL
12 ADVICE REGARDING THIS REPORT."

13 * Sec. 9. AS 13.36.310(a) is amended to read:

14 (a) Except as provided in AS 34.40.110(b) [AS 34.40.110], a trust that is
15 covered by AS 13.36.035(c) or that is otherwise governed by the laws of this state, or
16 a property transfer to a trust that is covered by AS 13.36.035(c) or that is otherwise
17 governed by the laws of this state, is not void, voidable, liable to be set aside,
18 defective in any fashion, or questionable as to the settlor's capacity, and the assets of
19 the trust are not subject to the claim of a creditor of the settlor or a creditor of a
20 beneficiary, on the grounds that the trust or transfer avoids or defeats a right, claim, or
21 interest conferred by law on a person by reason of a personal or business relationship
22 with the settlor or beneficiary or by way of a marital or similar right.

23 * Sec. 10. AS 13.36.310(b) is amended to read:

24 (b) If a trust or a property transfer to a trust is voided or set aside under
25 AS 34.40.110(b) [(a) OF THIS SECTION], then the trust or property transfer shall be
26 voided or set aside only to the extent necessary to satisfy the settlor's debt to the
27 creditor or other person at whose instance the trust or property transfer is voided or set
28 aside and the costs and attorney fees allowed under the rules of court.

29 * Sec. 11. AS 13.36 is amended by adding a new section to read:

30 **Sec. 13.36.368. Claims against revocable trusts.** (a) Whether or not the terms
31 of the trust contain a spendthrift restriction,

1 (1) during the lifetime of the settlor of a revocable trust, the property of
2 the trust is subject to claims of the settlor's creditors; and

3 (2) except as otherwise provided in (b) of this section, after the death
4 of the settlor of a trust that was revocable at the settlor's death, and subject to the
5 settlor's right to direct the source from which claims may be paid, the property of the
6 trust is subject to claims to the extent the settlor's estate is not adequate to satisfy the
7 claims.

8 (b) With respect to claims in connection with the settlement after the death of
9 the settlor of a trust that was revocable at the settlor's death,

10 (1) a creditor's claim that would be allowed or barred against a
11 decedent's estate under AS 13.16.450 - 13.16.525 shall be allowed or barred against
12 the trustee of the trust, the trust property, and the creditors and beneficiaries of the
13 trust;

14 (2) if the personal representative of the decedent's estate follows the
15 procedures provided by AS 13.16.450 - 13.16.525, then claims that are allowed or
16 barred against the decedent's estate shall also be allowed or barred against the assets of
17 the trust;

18 (3) if the personal representative of the decedent's estate fails to follow
19 the procedures stated by AS 13.16.450 - 13.16.525, the trustee of the trust may file a
20 petition with the superior court for a determination of claims and follow the
21 procedures established by AS 13.16.450 - 13.16.525, and claims against the trust and
22 against the decedent's estate shall be allowed or barred under those procedures.

23 (c) In (a)(2) and (b) of this section, "claim" means a claim

24 (1) of a creditor of the settlor;

25 (2) for the expenses of the administration of the settlor's estate;

26 (3) for the expenses of the settlor's funeral; and

27 (4) for the expenses of the disposal of the settlor's remains.

28 * Sec. 12. AS 34.40.110(b) is amended to read:

29 (b) If a trust contains a transfer restriction allowed under (a) of this section,
30 the transfer restriction prevents a creditor existing when the trust is created or a person
31 who subsequently becomes a creditor from satisfying a claim out of the beneficiary's

1 interest in the trust, unless the creditor is a creditor of the settlor and

2 (1) the settlor's transfer of property in trust was made with the intent to
3 defraud that creditor, and a cause of action or claim for relief with respect to the
4 fraudulent transfer complies with the requirements of (d) of this section;

5 (2) the trust, except for an eligible individual retirement account
6 trust, provides that the settlor may revoke or terminate all or part of the trust without
7 the consent of a person who has a substantial beneficial interest in the trust and the
8 interest would be adversely affected by the exercise of the power held by the settlor to
9 revoke or terminate all or part of the trust, in this paragraph, "revoke or terminate"
10 does not include a power to veto a distribution from the trust, a testamentary
11 nongeneral power of appointment or similar power, or the right to receive a
12 distribution of income, principal, or both in the discretion of a person, including a
13 trustee, other than the settlor, or a right to receive a distribution of income or principal
14 under (3)(A), (B), (C), or (D) [(3)(A) OR (B)] of this subsection;

15 (3) the trust, except for an eligible individual retirement account
16 trust, requires that all or a part of the trust's income or principal, or both, must be
17 distributed to the settlor; however, this paragraph does not apply to a settlor's right to
18 receive the following types of distributions, which remain subject to the restriction
19 provided by (a) of this section until the distributions occur:

20 (A) income or principal from a charitable remainder annuity
21 trust or charitable remainder unitrust; in this subparagraph, "charitable
22 remainder annuity trust" and "charitable remainder unitrust" have the meanings
23 given in 26 U.S.C. 664 (Internal Revenue Code) as that section reads on
24 October 8, 2003, and as it may be amended;

25 (B) a percentage of the value of the trust each year as
26 determined from time to time under the trust instrument, but not exceeding the
27 amount that may be defined as income under AS 13.38 or under 26 U.S.C.
28 643(b) (Internal Revenue Code) as that subsection reads on October 8, 2003,
29 and as it may be amended;

30 (C) the transferor's potential or actual use of real property held
31 under a qualified personal residence trust within the meaning of 26 U.S.C.

1 2702(c) (Internal Revenue Code) as that subsection reads on September 15,
2 2004, or as it may be amended in the future; or

3 (D) income or principal from a grantor retained annuity trust or
4 grantor retained unitrust that is allowed under 26 U.S.C. 2702 (Internal
5 Revenue Code) as that section reads on September 15, 2004, or as it may be
6 amended in the future; or

7 (4) at the time of the transfer, the settlor is in default by 30 or more
8 days of making a payment due under a child support judgment or order.

9 * Sec. 13. AS 34.40.110(l) is amended by adding a new paragraph to read:

10 (2) "eligible individual retirement account trust" means an individual
11 retireme: account under 26 U.S.C. 408(a) or an individual retirement plan under 26
12 U.S.C. 408A(b) (Internal Revenue Code), as those sections read on the effective date
13 of this paragraph or as they may be amended in the future, that is in the form of a trust,
14 if a trust company or bank with its principal place of business in this state is the trustee
15 or custodian.

16 * Sec. 14. AS 34.40.110 is amended by adding a new subsection to read:

17 (m) If a trust has a transfer restriction allowed under (a) of this section, in the
18 event of the divorce or dissolution of the marriage of a beneficiary of the trust, the
19 beneficiary's interest in the trust is not considered property subject to division under
20 AS 25.24.160 or 25.24.230 or a part of a property division under AS 25.24.160 or
21 25.24.230. Unless otherwise agreed to in writing by the parties to the marriage, this
22 subsection does not apply to a settlor's interest in a self-settled trust with respect to
23 assets transferred to the trust after the settlor's marriage.

24 * Sec. 15. AS 13.36.100(g)(1) is repealed.

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

27 TRANSITION. AS 13.36.157(a), as amended by sec. 2 of this Act, and
28 AS 13.36.157(d), as added by sec. 3 of this Act, apply to a trust that is created by a will or
29 another instrument before, on, or after the effective date of secs. 2 and 3 of this Act.

30 * Sec. 17. Sections 2 and 3 of this Act take effect immediately under AS 01.10.070(c).

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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MEMORANDUM

February 24, 2006

SUBJECT: Sectional analysis of SB 298 relating to trusts and estates
(Work Order No. 24-LS1113\F)

TO: Senator Ralph Seekins
Attn: Brian

FROM: *tb*
Theresa Bannister
Legislative Counsel

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

Section 1. Amends AS 13.36.109(21) to change that loans from trust property may be made to eligible beneficiaries and eligible third-party entities.

Section 2. Amends AS 13.36.157(a) to change the conditions under which a trustee may appoint the principal of a trust in favor of a trustee of another trust.

Section 3. Amends AS 13.36.157 to add another subsection. Provides that the governing instrument of a trust that receives principal from another trust may provide that the trust assets of the trust that receives the principal are to be held for the beneficiaries of the invaded trust on the same terms as the invaded trust.

Section 4. Adds a new section to the probate chapter to coordinate a new provision that is added in bill sec. 11 (sec. 13.36.368(b)(3)). States that a trustee may take under sec. 13.36.368(b)(3) the action a personal representative may take under certain statutes in the probate chapter.

Section 5. Amends AS 13.36.100(a) to expand the application of the subsection to more than just final reports.

Section 6. Amends AS 13.36.100(b) to change, for the purpose of barring claims against trustees, the notice period, the notification requirements, and the claim deadline.

Section 7. Amends AS 13.36.100(c) to change the claim commencement period to six months after receipt of a report.

Senator Ralph Seekins

February 24, 2006

Page 2

Section 8. Amends AS 13.36.100 to add a new subsection. Indicates what type of notice in a report is considered adequate to notify a beneficiary that there is a time limitation for filing a claim against the trustee.

Section 9. Amends AS 13.36.310(a). Adds that, except as provided in the new cross-reference, the assets of certain qualifying trusts are not subject to the claim of a creditor of the settlor or a creditor of a beneficiary on the grounds that the trust or a transfer to a trust avoids or defeats certain interests.

Section 10. Amends AS 13.36.310(b) to change a cross-reference in the section.

Section 11. Adds a new section that addresses claims against revocable trusts.

Section 12. Amends AS 34.40.110(b) to establish two exemptions (for eligible individual retirement account trusts) from the paragraphs that provide exceptions to the transfer restriction provision.

Section 13. Amends "eligible individual retirement account trust" for the previous bill section.

Section 14. Adds AS 34.40.110(m), a new subsection that provides that if a trust has a transfer restriction, the beneficiary's interest in the trust is not considered property subject to division (or part of a property division) in the event of the divorce or dissolution of the beneficiary's marriage. Limits the application of the section.

Section 15. Repeals the definition of "final report."

Section 16. States that AS 13.36.157(a) and 13.36.157(d) apply to a trust that is created by a will or another instrument before, on, or after the effective date of these subsections.

Section 17. Gives two sections of the bill an immediate effective date.

If I may be of further assistance, please advise.

TLB:ljw
06-094.ljw

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 298
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Trusts: Challenges; Claims; Liabilities RDU Banking & Securities (536)
 Component Banking & Securities
 Sponsor Seekins
 Requester Labor & Commerce Component No. 2808

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

Estimate of any current year (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation makes various changes to AS13.36 which covers the administration of trusts. Provisions in this legislation do not impact the operations of the division.

Prepared by: Mark Davis, Director Phone 907.465.2521
 Division: Banking and Securities Date/Time 2/22/06 5:07 PM
 Approved by: William C. Noll, Commissioner Date 2/22/2006
 Agency: Commerce, Community, and Economic Development

2/13/04

PERSONAL FINANCE

New IRA Protects Against Lawsuits, Bankruptcy

Two Delaware Trust Firms Offer Retirement Products Shielded by State's Statutes

By Rachel Emma Silverman

A NEW TYPE of individual retirement account aims to address an increasing concern among doctors, business executives and other professionals: how to protect your IRA if you're sued or have to file for bankruptcy.

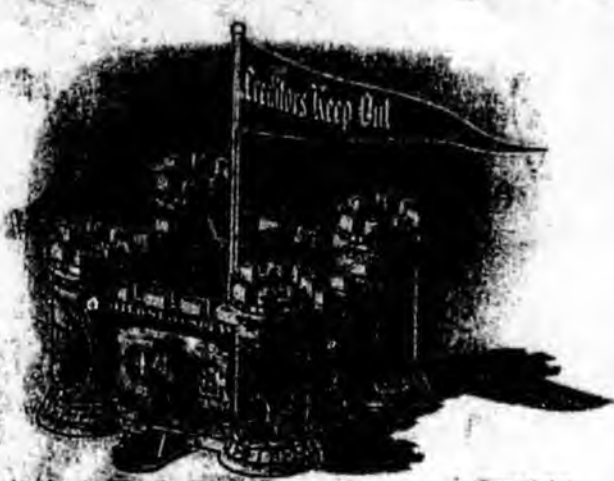
Unlike 401(k)s and other employer-sponsored retirement plans, IRAs generally aren't protected from creditors under federal law. Instead, IRA protection is covered by state laws, which vary. In recent years, a few states, such as Delaware, have also changed their trust laws to offer additional protections that may affect IRAs.

Two Wilmington, Del., trust companies, NatCity Trust Co., a unit of National City Corp. in Cleveland, and Capital Trust Co., now offer stepped-up IRAs that are structured to take advantage of the state's generous asset-protection and trust laws. These IRAs operate like typical custodial IRAs, where the money is held in a bank or investment firm, but they offer the protection of a trust, which can have special provisions to stave off creditors.

These "Delaware IRAs" are targeted at wealthy professionals who have big retirement accounts and are worried about professional liability. NatCity Trust's president, Jeffrey Getty, says the number of accounts has grown 60% since the start of the year, with the average account size at more than \$1 million. But how effective these IRAs are in keeping creditors away is still an open question.

Asset Protection

The Delaware IRAs are some of the latest offerings of the booming asset-protection industry. The growth of the industry is being driven by increasing concern among doctors, business executives and other professionals concerned about lawsuits and creditors. Financial services companies and specialized asset-protection lawyers have been rolling out sophisticated trusts, partnerships and other ve-



Limited Protection

Keeping individual retirement accounts from creditors is a growing concern, especially among doctors and other professionals worried about lawsuits and bankruptcy. IRA protection varies depending on where you live.

■ Unlike employer-sponsored 401(k)s and pensions, IRAs generally aren't protected from creditors under federal law.

■ IRA protection depends on state law, which varies. Most states, such as Delaware, have statutes that broadly protect IRAs from creditors, while others, such as Minnesota, have more limited exemptions.

■ Delaware also allows IRAs to have "spendthrift" provisions, which are another measure that might help protect the IRA.

hicles to keep up with the demand for asset protection.

IRAs, however, are a thorny problem in asset-protection planning. Although retirement accounts make up a substantial portion of many people's wealth—there was more than \$3 trillion in IRA assets at the end of last year—the question of whether creditors can pierce IRAs is still an unsettled area of the law.

"It's a complicated area," says Richard Minto Jr., a Pittsburgh asset-protection lawyer, who has had four physician clients, all Pennsylvania residents, set up Delaware IRAs in the past year because of creditor fears.

The legal landscape for IRA creditor protection is expected to shift further next month, when the U.S. Supreme Court weighs in on the issue. The case, *Roth v. Jacoway*, involves whether funds in IRAs are subject to creditors under Chapter 7 bankruptcy proceedings.

IRAs aren't safe from creditors under the federal Employee Retirement Income Security Act which protects 401(k)s and pension plans. Many states, such as New York, Texas, Florida and Delaware, offer broad protections for IRAs. However, some states, such as California and Minnesota, provide more limited protection—accepting, for instance, only what is reasonably necessary to support IRA owners and their dependents or limiting the exemption to a specific dollar amount.

Some lawyers and financial advisers are urging clients with creditor concerns to use the Delaware IRA, which might offer stronger protection. These IRAs operate like other retirement accounts, but the trusts are in how they are structured. The IRAs are set up as trusts, rather than the typical custodial IRAs. The two vehicles are similar, but trusts are generally more complex and expensive structures to set up. Trusts also can offer greater legal protection against creditors, as well as

more estate-planning options. Individual retirement trusts are popular among the wealthy and are offered by numerous private banks and trust companies.

The Delaware IRAs stand out because they use special language called a spendthrift provision. This spendthrift provision is meant to limit the rights of creditors to reach the funds inside the account. Delaware is one of only a few states that permit these spendthrift provisions in trusts, such as IRAs, where the individual setting up the trust is also the beneficiary. Just a handful of financial-services companies, including NatCity and Capital Trust, offer IRA trusts with the spendthrift provision.

The spendthrift clause "puts extra obstacles before creditors, so it's not an easy snatch and grab," says Marc Singer, who has developed many asset-protection plans for clients as a partner at Singer Xenos, a Coral Gables, Fla., wealth-management firm.

The Cost

Fees for Delaware IRAs vary. NatCity charges roughly 1.1% of assets, which includes asset management and requires an account minimum of about \$750,000. (The fee is about half that for just an administrative trust.) Capital Trust, which sells its services through financial advisers, charges 0.2% on the first \$1 million, with a minimum fee of \$1,250. A typical Merrill Lynch custodial IRA is less expensive—0.25% of net assets, with a \$80 minimum annual fee.

But how well Delaware IRAs hold up as asset-protection vehicles is still unclear, since they haven't been tested in court yet. There is still a possibility that a court in another state could rule that the assets in a Delaware IRA are fair game to a creditor outside the state. That's because the U.S. Constitution mandates that each state should have "full faith and credit" in the legal judgments made in other states. So a plaintiff who wins a judgment in a California court might be able to grab funds in an IRA located in Delaware.

Moreover, a Delaware IRA, like all retirement accounts, is still vulnerable in divorce proceedings. Since family-court judges have wide discretion in divvying up marital assets, "In divorce, all bets are off," Mr. Singer says.

And since IRAs are already well protected in many states, setting up a Delaware IRA might not be worth the extra hassles or expense of having an out-of-state trustee for many individuals.

SB

301

ALASKA STATE SENATE



Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-2327
(907) 465-5241 Fax

Interim:
119 N. Cushman, Suite 201
Fairbanks, Alaska 99701
(907) 456-8161
Senator_Ralph_Seekins@legis.state.ak.us

Senator Ralph Seekins
District D

Senate Bill 301 Sponsor Statement

“An Act relating to granting certain defendants an absolute right to change venue in civil actions; setting venue for civil actions based on employment at the employer’s principal place of business; allowing multiple defendants to control venue by agreement; amending Rule 3, Alaska Rules of Civil Procedure.”

Senate Bill 301 re-establishes a necessary degree of state-wide consistency with respect to the incidence and size of judgments handed down in civil actions. Towards this end, the Bill provides that defendants in civil cases may elect a change of venue to a district in the state where the defendant lives or a district where the defendant’s principal place of business, or corporate office, is located.

Currently in the state of Alaska there are large disparities in the size of jury awards handed down for similar conduct thereby creating an inconsistency and, in fact, an inequity in the application of damages. What’s more, this irregularity is clearly a function of geography rather than fact-sets.

Simply put, this is an issue of consistency and fairness. The Bill does not seek to absolve businesses and employers of responsibility or to comment on what damages might be awarded for a particular action. Instead, it merely seeks to ensure that those damages are similarly awarded no matter where the action took place.

Defendants and plaintiffs, alike, possess the same reasonable expectation that the civil court process will result in a fair and just outcome. However, substantial dissimilarities in jury awards in some areas of the state suggest that this may not be the case today.

Senate Bill 301 intends to solve this growing concern by re-establishing a level playing field. Allowing the defendant an alternative with respect to venue does not, in any way, guarantee a favorable outcome. Nor is it intended to. It simply promotes consistency from one judgment to the next, *ceteris paribus*.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB301-Courts-2-21-06
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Change of Venue in Civil Cases RDU Alaska Court System
 Component Trial Courts
 Sponsor Senator Seekins Component No. _____
 Requester _____

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 ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 Senate Bill 301 grants defendants in civil cases the right to change venue in certain cases. Although this bill will likely result in the movement of cases from some court locations to others, and although this will likely result in a corresponding movement of court resources, the court system does not anticipate a need for additional funds should the legislature pass SB 301.

Prepared by: Doug Wooliver, Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 2-21-06 @ 10:45
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 2/21/2006
 Agency Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB301-Law-T&WC-2-21-
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to granting certain defendants an RDU CIVIL
absolute right to change venue in civil actions;..." Component Torts and Workers' Compensation
 Sponsor Senator Seekins
 Requester Senate Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is Included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends current law by granting a defendant the right to request a change of venue in civil actions under certain conditions. Under current law, the Superior Court has discretion to grant or deny requests for venue changes.

Passage of this legislation might have a fiscal impact on the Department of Law, but it is anticipated that there would be equal offsetting savings, and that overall the fiscal impact would net to zero.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division Administrative Services Division Date/Time 2/21/06 2:56 PM
 Approved by: Kathryn Daughhete for David Márquez, Attorney General Date 2/21/2006
 Agency Department of Law



Property Casualty Insurers Association of America

Shaping the Future of American Insurance

February 21, 2006

Sen. Ralph Seekins
Chairman, Senate Judiciary Committee
State Capitol, Room 125
Juneau, AK 99801-1182

Dear Senator Seekins:

On behalf of the Property Casualty Insurers of America (PCI), I write to express our support for proposed SB 301, allowing the right of change of venue for defendants and plaintiffs in civil actions in the State of Alaska.

PCI is an organization of more than 1,000 member insurance companies who write 40.7 percent of the nation's property/casualty insurance, 50.8 percent of the U.S. automobile insurance market, 39.6 percent of the homeowners market, 33.5 percent of the commercial property and liability market, and 41.6 percent of the private workers compensation market.

Among our member companies' primary duties as insurers is to defend policyholders in civil actions brought by plaintiffs. We do this every day, with in-house attorneys and outside counsel, in all 50 states. And in every state, we seek what every defendant seeks in court: access to justice – fair, swift and efficient.

We believe SB 301 promotes access to fair, swift and efficient justice for defendants and plaintiffs alike in the Alaska court system, by allowing defendants a right already granted to plaintiffs – the right to a change of venue for purposes of ensuring a fair and speedy civil trial. Here are some reasons why we support this legislation:

Prevents “gaming the system.” The current statute limiting the right of change of venue in most cases only to plaintiffs is unfair and open to being “gamed” and abused by plaintiffs. Some seek a “home court advantage” in a remote community of the state that may have a bias against a defendant from outside the immediate jurisdiction. This tends to force early settlements that do not accurately reflect the value of a case – and that in turn increases claims costs...and the cost of insurance overall.

Reduces defense costs, helps manage the cost of insurance. Cases in more remote areas of the state are often more costly to defend and are subject to delays in smaller court venues. Removing the “home court advantage” threat will reduce filing of marginal lawsuits and encourage fairer settlements.

- more -

Sen. Ralph Seekins
February 21, 2006
Page Two

Promotes equal access to a jury of peers. In the case of a commercial insurance issue, that may mean a business entity doing business in Anchorage would seek an Anchorage trial to settle a dispute. But it also might mean a Native corporation defending against a lawsuit could seek a change of venue to a more remote jurisdiction closer a native Alaskan community. This right exists today – but belongs, for all practical purposes, exclusively to plaintiffs.

Mirrors federal law on removal jurisdiction. In the federal system, removal jurisdiction allows out-of-state defendants to remove cases to a more neutral forum. This bill provides an analogous right in the state system, with the same purpose, to assure that defendants are not required to try cases in a forum where there is a possibility of bias.

Court authority, remedies retained in proposed HB 301. No party is left without a remedy where there is evidence of knowledge of the parties or events that would lead to an unfair trial. This bill does not override the court's traditional authority to supervise venue in such cases. But today, such change of venue motions based on the particularized facts of the case are hard to prove and rarely granted. This bill addresses issues of more generalized bias.

For these reasons, PCI supports SB 301 and urge this committee to give the bill a favorable recommendation.

Please do not hesitate to call or write if I can provide further information.

Regards,

Kenton Brine
NW Regional Manager
360.481.6539
kenton.brine@pciaa.net

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February 1, 2001

Alaska Claims Service
ATTN: Jim Wyckoff
PO Box 871169
Wasilla, AK 99687

Re: Nelson Lliaban
Elizabeth Fermoyle
Mary Brenneman
Oscar Sam
Alice Sam
Abe Friendly

Dear Mr. Wyckoff,

As you are aware, I represent Nelson Lliaban, Elizabeth Fermoyle, Mary Brenneman, Oscar Sam, Alice Sam, and Abe Friendly. This letter states the demand of all of the above except Mary Brennemen.¹

These claims result from a Frontier airplane crash that occurred on Frontier Flight #522 on _____ day, October 22, 2000. Your client may not wish to term the a "crash," as the landing occurred at a runway, but my clients definitely feel that it was a crash landing. The plane lost control immediately before, during and/or after touchdown, skidded horribly, sheared off 3 1/2 of its four props on the right and some of the props on the left, and eventually came to rest 80 or 100 feet off the edge of the runway, nose in the dirt. The incident was terrifying, and many aboard felt they were about to be torn apart and die. There will be no question in a Bethel jury's mind that this was a crash landing, and a serious one.

All of my clients have physical injuries resulting from the crash. However, having reached an expeditious settlement with your client previously in at least one other case, I am hopeful that

¹ Mary Erenneman's physical injuries are serious and ongoing to the extent that she is receiving care in Oregon. I will not be able to present Ms. Brenneman's demand until the extent and prognosis of her physical injuries becomes more clear. But as to the others, the physical and emotional injuries have plateaued to the point that they are ready and willing to settle their claims.

the instant claims are ones about which your client and I can discuss settlement fairly quickly. To that end, I have provided statements written by my clients describing their emotional and physical injuries. I will not belabor the point made in those statements, as the passengers speak about the crash and its aftermath far more eloquently than I could.

The crash apparently resulted from pilot error. The passengers claim that the plane was coming in way too fast, in windy conditions with low visibility. As your client is aware, the standard of liability for incidents such as this are essentially strict liability. As the Alaska Supreme Court has often repeated, "air crashes do not normally occur absent negligence, even in inclement weather." Widmyer v. Southeast Skyways, Inc., 584 P.2d 1, 14 (Alaska 1978). "Airline passengers are completely at the mercy of the carrier and are entitled to assume that the highest degree of care is being taken for their safety." Id. Moreover, a common carrier airline cannot escape liability for a crash attributable to an independent contractor's pilot error. Alaska Airlines, Inc. v. Sweat, 568 P.2d 916, 925-26 (Alaska 1977).

So liability will be clear. As to damages, each of the five claimants presents a slightly different picture. All have physical injuries and significant emotional distress claims.² As the attached statements verify, each has a different take on what happened, what physical injuries were suffered, and how the terror of the crash affect their lives. However, these are being presented together in order to facilitate a universal settlement figure (exclusive of Mary Brennemen), used to compensate each passenger.

1. Elizabeth Fermoyle.

Ms. Fermoyle suffered through the event with "the most terrifying and feeling that we were going crash with a big explosion and impact either onto the ground or into some building and explosion on impact." After the plane came to rest, "one of the passengers help (sic) me tight and told me to 'let it all out.' I started crying and screaming into his arm. I was terrified and in a state of shock." For the next few hours, "I would start crying -- I was filled with anxious feelings and I was still so terrified."

Physically, one week after crash, Elizabeth had "excruciating pain all along my lower back just over my buttocks" and a "bruise on leg." Also, "my back was in constant pain especially my left side till December."

Emotionally, the trauma persisted. "Whenever I talked to people I know I tell them what happened and I would start crying." As you are aware, to western Alaskan villagers, flying bush planes is an everyday part of life. Yet to Elizabeth, climbing into another plane forced her to relive the incident in a morbid and awful way. "I did meditations and prayed that's how I got on a

² Fortunately, none have a substantial lost income claim, with the exception of Nelson Lliaban and Alice Sam, discussed below. But each are willing to forego their lost income claims to settle the balance of their damages claims.

plane. But I was still terrified."

2. Abe Friendly.

Like Elizabeth Fermoye, Abe Friendly has "not yet recovered, physically or emotionally." Abe describes, in even more vivid detail, the terror of this crash landing. His description is gripping:

A fraction of a second later, the whole aircraft began to shake. The shaking became extremely violent and had it not been for the seatbelt, I would have been thrown out of my seat. At that point, I thought... "This is it! This is it!" I thought that that moment was the last in my life. The shaking was so violent that I expected to see the aircraft torn to pieces and to see debris thrown about. I expected the aircraft to tumble over on-end. I shut my eyes, not wanting to witness what I believed to be the last moments of my life, seeing my limbs dismembered, pieces of the aircraft flung at my head, and other passengers being torn apart. As I squeezed my eyes closed, other passengers were screaming.

Like Elizabeth, Abe was "very shaken up." He did not even notice the cold of the evening and that his jacket was unzipped. He "had tears occasionally coming out my eyes." The accident was even more traumatic to Abe considering that years earlier, his own mother had been killed in a plane crash.

Displaying classic severe post traumatic stress symptomology, Abe reports, "I found that wasn't thinking right. . . . The remainder of the week was a shambles. I was trying my best to get about business, but I was upset. There were times when I would find myself seemingly unable to perform the simplest of tasks. I was not myself." Abe relates, as examples, losing his wallet, oversleeping, and missing his rent payment.

Abe has not completely recovered from his physical injuries "I still occasionally have pain in my lower back." But more significant is the emotional trauma he is left with:

Every time I get on a plane, the crash comes back in vivid detail. Every time I'm on a flight and feel the landing, I expect the worst; . . . I thought my life was ending on Flight 522. I was trapped in a plane that was crashing. I thought I was about to be dismembered, and believed I and the other passengers would be torn apart in the aircraft. I thought I was about to die. My life following the crash was in chaos. My ability to perform my work has been compromised because of my fear of flying. I have had difficulty conducting my personal affairs in a coherent fashion; I have been forgetful, inattentive, drifting emotionally, trouble sleeping, tormented by nightmares.

3. Nelson Lliaban.

Like the others, Nelson Lliaban has been severely traumatized by the crash. From the moment Nelson "looked up toward the cockpit and noticed that the nose of the plane was turning to the right, [and he] saw the pilot trying to turn the plane to the left with the stick," Nelson knew he was about to have a near-death experience.

In the last moments of the crash, as "the nose went down and hit the ground," Nelson began

thinking of my two children, Brenden who is five and Christian who is two years old. I thought of them growing up without a father, all I could see is their faces smiling at me, not knowing if I was going to ever see them again.

But it was not until Nelson left the plane, when he "saw the nose of the plane in the ground and the propellers bent backwards, one of them had broke completely off, that [] it hit me that we could have died, and then I started to cry." As is common with trauma survivors, Nelson replayed "the plane crash went over and over in my mind, thinking of the worst outcome." Returning home, "all that day I cried, happy to see my kids."

For entire week following the crash, Nelson was totally unable to attend work. Nelson is a school teacher at the Yupiit School District in Akiak. However, for the week following the accident, he could not rouse himself to face the children. He could not force himself to care, either, classic symptoms of the type of post-traumatic depression that sends veterans and catastrophe survivors into a spiral of depression and petulance: "I missed a week of work not caring if I lost my job."

Perhaps more distressing, Nelson has become withdrawn, emotionally fragile, morose and depressed since the accident. "Since the crash I am thankful that I am alive, but also wake up thinking will this be the day." Nelson shares the other passengers' near inability to board a plane since this crash: "I'm terrified of flying, knowing that I don't have control over anything that might happen during the flight, I've been on four flights since then, I have such severe panic attacks I have to restrain myself mentally."

4. Oscar Sam.

Oscar and Alice are true bush elders. As with the others, they experienced great distress both during, after, and ever since the crash. Not fluent in English, I had the Sams describe their feelings and experiences to me, sometimes using a translator, and put those thoughts down in affidavit form, which they read and signed.

From where 67-yr old Oscar was sitting in the plane (on the right), he looked out his window and was horrified to see "the prop blades being ripped off, and I was terrified that they

would come through the window and kill me and my wife." Understandably, after deplaning, he and his wife "huddled and cried with other passengers."

Physically, Oscar has suffered since the accident. He is a classic "eggshell skull plaintiff," as he came into the incident with an already-damaged back. However, the back had not been bothering him until the crash. In Oscar's words, "it had been feeling fine before this crash. After the crash, my back hurt me much worse. I cannot even pick up a honeybucket unless it is less than half full."

Perhaps most important to Oscar is his lost ability to engage in subsistence activities. His back pain makes it, in Oscar's words, "it harder or impossible for me to do subsistence activities." And, considering that, since I retired, subsistence activities are a main focus in my life," Oscar's lost enjoyment of life claim is significant. Moreover the lost food itself (salmon, moose, caribou) is of significant value, and estimating his life expectancy at 7 to 10 more years, our economist has opined that the economic loss alone of the subsistence foods is over \$10,000.

Emotionally, Oscar though a proud elder, still suffers, though perhaps more silently than his wife or others might. It is not in his way to complain loudly or cry. Still, he avers to "terrified of flying in small planes after this. Since the accident, my wife and I travel by hovercraft or by snowmachine."

5. Alice Sam.

60-yr old Alice suffered in the same sort of ways. She remembers herself "screaming" during impact. After deplaning, Alice recalls being "in shock. I felt numb all over, and as I waited with the other passengers, the terror of the experience really hit me. I was very upset."

At the hospital, Alice became even more terrified as she felt her own body in a state of uncontrolled stress. She felt her "heart racing very fast, and that frightened me. My blood pressure was high." But beginning the next day, Alice's

back started hurting, and it got worse and worse. My back was so knotted up in the upper part, that there were spasms and very painful cramps that hit me. It was terrible. I had to have my son-in-law, Robert, push the knots out every day. The pain spread around the front of me to my shoulders. The pain also spread up the back of my neck to the back of my head, and caused headaches, and caused me to feel nauseous and sickly. I could not sleep at nights, from the pain and flashbacks.

The pain was so bad that she had to quit her job at the clinic.

As verified in her affidavit, this amounts to a modest lost income claim. But she, and the other passengers, are willing at this time to forego this factor to settle in good faith the other elements of her damages claims. Like Oscar, Alice absolutely refuses to get on a plane since this

crash. When she and Oscar came to my office, they had to take the hovercraft to get to Bethel from Akiachuck.

Demand

Each claim in this case is significant. Physically, each claimant's pain and suffering has been grievous. The pain in these passengers' necks, backs and legs persists, and is exacerbated by activity. All have lost significant enjoyment of life, and some have been prevented, by pain, from performing certain activities altogether.

But the primary component of damages in this case is emotional damages. Out here in the bush where flying planes is a practical reality, plane crashes are taken very, very seriously. They are feared and loathed. Victims are known to experience drastically reduced mobility and are forced to forego countless excursions that are routine part to friends and family. The anxiety, panic, and macabre images that these crash victims will feel sitting in a plane, if they are ever able to re-enter one, will be indelible. The accumulated hours that they cannot sleep at night, or minutes spend lost in memory, rather than attending to a task at hand -- innumerable.

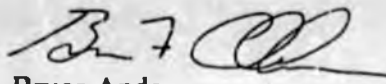
As you may be aware, Bethel is a town whose juries are used to awarding a lot of money for pain and suffering. For example, moved by subjective complaints of pain that allegedly disrupted their lives, a Bethel jury recently awarded five ladies \$75,000 each following an accident where a cab driver tapped the ladies' vehicle at under 5 mph; none of the ladies sought or received any medical treatment whatsoever, had no lost income, and were not claiming emotional distress. See, Gloria Anvil, et. al.

Myron Angstman is a pilot himself, and has been successfully litigating airplane crashes for 22 years. He estimates that a Bethel jury would award six figures each to these passengers for the emotional distress damages alone. However, in the interest of compromise and early settlement, five passengers listed above would be willing to settle all claims for \$75,000 each.

The power of the statements of these passengers will not be lost on either your client or a Bethel jury. States Nelson Lliaban: "every airline has a responsibility to every person getting on their planes to get them to and from their destinations without cause for fear of alarm. I didn't ask for this extra baggage, and I never asked for this to happen. All I know is that I'll never be the same." Or, Abe Friendly's conclusion: "It will be extremely difficult for me, if possible at all, to forgive Frontier Airlines for what it has done to me."

My clients' offer will remain open for 21 days.

Very truly yours,



Bruce Anders
Attorney At Law

Encls.

STATEMENT

DATE: 10/22/2000

TIME: 1353 Local

LOCATION: Bethel, Alaska Rnwy 36

INCIDENT: Mechanical Malfunction

PIC: F. David Bertrand

ATP# 2144087

SIC: Brian Parish

COMM# 569691750

AIRCRAFT: N575D BE1900D

WEATHER: VFR, RNWY DRY, Wind 310/15 G25

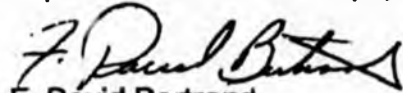
INJURIES: None (17 PAX)

DAMAGE: Nose Gear, Props, and Pressure Vessel/Exterior (Right Side)

On the above date and time, I Frederick David Bertrand (PIC) attempted to exit runway 36 at either taxiway "G" or "D" after the landing rollout. Because of the strong winds, it was necessary to engage the power steering to assist with the left turn, a normal procedure used.

As I engaged the power steering, which was armed by the First Officer at my request, the aircraft executed an immediate right turn of approximately 45 degrees. Both the First Officer and myself attempted to counter-respond the event with full left rudder and maximum left braking. All attempts were unsuccessful, causing us to exit the runway, collapsing the nose gear, and sheering the props.

Evacuation of all passengers was immediate and safely done. All passengers were asked if anyone was injured and all passengers responded that they were fine and that nobody was hurt. The passengers were routed away from the aircraft in a group to wait for airport emergency units to arrive. Approximately 12 to 15 minutes elapsed before the first units arrived. A State Trooper and an airport unit, but no fire equipment arrived on the scene.



F. David Bertrand

Date 10-22-2000 Time 1353 Local

Location: Bethel / Runy 36

Pic: F. David Bertrand
ATP 2144057

Sic: Brian Parish

Comm 520691750

Type of Accident: Runway Excursion

On the above date and time, I, Brian Parish acting as sic on NB750, was part of a runway excursion in Bethel, AK. After a normal crosswind landing and roll-out, I was instructed to arm the power steering. After Mr. Bertrand engaged the power steering, the aircraft made an uncommanded turn to the right. All of my attempts to reverse the situation were ineffective. After coming to a stop off the runway, I evacuated the cabin through the main door.

SUPPLEMENT

RE: 1900D ACCIDENT NS75D

DATE: 10-22-2000

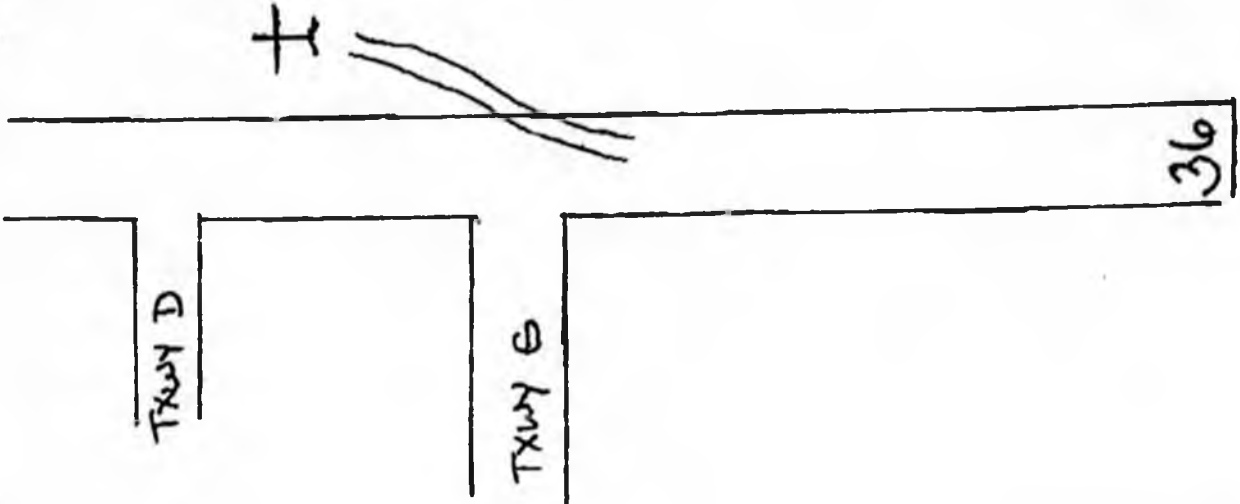
PILOT: F. DAVID BERTRAND

SIC: BRIAN PARISH

LOCATION: BETHEL

E
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N
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5
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F. David Bertrand

W
←

Manifest #

80160



Aircraft: 25 Station: AM AVE ROUTING = DET
 Date: 11-22-00 Flight No: 392
 Pilot: Beitroul Weight 2 Log No: 87508 Remarks:
 Copilot: Parry Weight 2 Manifest Prepared By: Jared

Load Computations	
From	Crew Weight
To	Pax Weight <u>311</u>
	Cargo Weight <u>552</u>
	BOW + Seats <u>10917</u>
	Fuel Weight <u>2000</u>
	Total Weight <u>16880</u>
From	Crew Weight
To	Pax Weight
	Cargo Weight
	BOW + Seats
	Fuel Weight
	Total Weight
From	Crew Weight
To	Pax Weight
	Cargo Weight
	BOW + Seats
	Fuel Weight
	Total Weight
From	Crew Weight
To	Pax Weight
	Cargo Weight
	BOW + Seats
	Fuel Weight
	Total Weight
From	Crew Weight
To	Pax Weight
	Cargo Weight
	BOW + Seats
	Fuel Weight
	Total Weight

Ticket Status-Remarks One Way - OW Roundtrip 1M - 1R Roundtrip 2ad - 2R	Ticket # or Airway Bill # Record Full Number	Passenger Name or Consignee	Pax Weight	Bags/Freight/Mail		FROM	TO
				Pcs	Weight		
2A 1 OW	276115	Blarberito, Michael	183	8	184	AM	DET
2C 2 OW	276131	Moham, Richard	183	1	1		
3A 3 OW	276134	Potts, Luke	183	5	87		
3C 4 OW	276133	Potts, Eric	183	1	16		
4A 5 OW	276135	Landard, James	183	1	35		
4C 6 OW	276134	Andrews, Kenneth	183	1	10		
5C 7 2A	275293	Nelson, Michael	183	3	54		
4C 8 OW	276137	Fermoy, Elizabeth	183	1	24		
6A 9 ROW	2220179831	Carly, Tom	183	3	69		
6C 10 RW	2220179832	Carl, Mary	183	1	16		
7A 11 OW	276138	Brennan, Mary	183	2	50		
7C 12 2A	275294	Katherine, Renaud	183	1	8		
8A 13 2A	276102	Nickmure, Tim	183	2	100		
8C 14 OW	276139	Bouyer, Marie Ellen	183	1	38		
9A 15 OW	276140	Freddy, Abe	183	1	20		
10A 16 2A	275290	Oscar, Sam	183	4	72		
10C 17 2A	275291	Alice, Sam	183	1	1		
PAT 001560		D+B Express		6	99		

FAX COVER SHEET
ANCHORAGE LEGISLATIVE INFORMATION OFFICE
 Office 907-269-0111 Fax 907-269-0229

To: Sen. Seekins

Attn: _____

Fax: 465-5241 Phone: 465-2327

From: Anc LIO Phone: _____

Instructions: _____

Want this passed out during
STUD if possible

Sent: Date _____ Time _____

Disposal of Original: Discard: _____ Pouch _____ Hold for Pickup _____

Number of Pages: 3 (counting cover sheet)

Transmitted by: Ruth

FAX COVER SHEET
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 Office 907-269-0111 Fax 907-269-0229

To: _____

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Fax: _____ Phone: _____

From: _____ Phone: _____

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Sent: Date _____ Time _____

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Transmitted by: _____

Position Paper on SB 301

**Prepared by Russ Winner, Chris Schluess, and Meg Simonian
on behalf of the Alaska Action Trust**

February 22, 2006

Alaska Civil Rule 3, which has been in place for many years, provides that venue is generally proper in the court that would best serve the convenience of the parties and witnesses. (Similar venue provisions appear by statute for the state superior and district courts at AS 22.10.40 and AS 22.15.080.) This means that suits are usually heard in courts close to where claims arise. Similar venue provisions exist in the federal courts and the courts of nearly all other states.

SB 301 would change this rule for Alaska. It would grant to most defendants in civil cases involving claims over \$10,000 the absolute right to change venue to their place of residence, the location of their principal place of business, or the location of their main corporate office, irrespective of where the claim arose. SB 301 is apparently intended to give urban defendants, who are sued by rural plaintiffs in rural courts, the absolute right to transfer venue to those defendants' "homo" courts, even for cases that arose in those rural communities.

This position paper is prepared on behalf of the Alaska Action Trust. For the following reasons, we urge that SB 301 not be enacted.

SB 301 falls victim to the law of unintended consequences. The bill would not just affect suits filed by rural plaintiffs in rural courts against urban defendants. It would also affect suits filed by urban plaintiffs in urban courts against rural defendants. For example, if a Fairbanks resident is injured in Fairbanks by a rural driver, and if that Fairbanks resident then brings suit in a Fairbanks court, the defendant would have an absolute right under SB 301 to transfer the case to a court near his village. Or, if an urban retailer sells a product worth more than \$10,000 to a rural purchaser who is visiting the retailer's city, and if that purchaser then fails to make payments, under SB 301 the purchaser would have an absolute right to have a collection suit transferred to a rural court. Or, if a bank loans more than \$10,000 to a rural resident who fails to repay the loan, and the bank then brings suit for payment, under SB 301 that bank will probably find itself prosecuting the case in the defendant's rural community. These results would be unfair to those plaintiffs. Instead, cases should generally be heard by juries from the communities where claims arise.

SB 301 is unconstitutional to the extent that it deprives rural Alaskans of access to courts in their communities. To the extent that SB 301 would deprive rural Alaskans of venue regarding civil claims arising in their communities, the bill would violate their constitutional right to due process, equal protection, and a jury of the peers.

In *Alvarado v. State*, the Alaska Supreme Court held that the constitution protects the right of rural Alaskans charged with crimes to trial before a jury picked from their communities:

The necessity for selection of juries from a source which truly represents a fair cross section of the community cannot be overemphasized. The jury is an essential institution in our democracy, and serves multifaceted purposes.

* * * *

The jury, like the right to vote, is fundamentally preservative of ideals which are essential to our democratic system. When the impartiality of jurors is neglected, '(t)he injury is not limited to the defendant--there is injury to the jury system, to the law as an institution, to the community at large, and to the democratic ideal reflected in the processes of our courts.' For this reason, we must be ever militant to protect the notion of our juries as bodies truly representative of the community.

* * * *

It is of paramount importance that the benefits conferred by the Constitutions of the United States and Alaska be extended with an even hand to the people of our state. When a large segment of the population lives in towns and villages scattered throughout the reaches of the state, we cannot afford to succumb to the temptation of convenience by allowing the machinery of justice to become inflexibly entrenched within the enclaves of our major cities. Instead we must tailor our system of justice to meet the needs of the people. It is our judicial system which must take the initiative to assure compliance with the mandates of the Constitution; we cannot simply neglect or ignore communities of individuals located in remote areas of the state. Justice must be made available to all of the people of Alaska.

486 P.2d 891, at 903-906 (1971).

This reasoning has been extended by the Alaska Supreme Court to civil cases. In *Malvo v. J. C. Penney Co., Inc.*, the court wrote:

[A]ny method of jury selection which is 'in reality a subterfuge to exclude from juries systematically and intentionally some cognizable group or class of citizens in the community' is clearly invalid.

512 P.2d 575, at 580 (1973).

Likewise, in *Wilson v. City of Kotzebue*, the court wrote:

Reduced to its essence the city's argument on this point was that a jury consisting primarily of Eskimos would probably be unfair in a civil case involving a government entity. In other words, Eskimos should be disqualified from jury service in this type of case. We believe that the court erred in accepting this position. There are now resident superior court judges in three Alaskan cities where Eskimos are the predominant ethnic group. Jury trials have for many years been conducted in these cities. There has emerged from these cases no pattern of jurors being unwilling to follow the court's instructions. To be sure, general community attitudes in these cities may well be different from those which might prevail elsewhere, but such differences can better justify retaining rather than changing venue. . . . In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at home.

627 P.2d 623, at 635 (1981).

SB 301 is unconstitutional to the extent that it deprives rural Alaskans of the right to a civil trial by a jury of their peers living in their community.

For the above reasons, we urge the Alaska legislature to not enact SB 301. Thank you for consideration of these views.



Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary
 committee name
 committee on SB 301, dated March 1, 2006
 bill/subject

6 pages - testimony

This fax: = 7 pages total

Signed: Richard Quinn

Testifier Alaska Air Carriers Assoc

Representing (Optional)

Address

Phone No.

Position Paper on SB 301 by the Alaska Air Carriers
Association -- Response to Arguments by Plaintiffs' Bar
Prepared by Richmond & Quinn

The Alaska Air Carriers Association supports SB 301 and urges that it be enacted. The Alaska Action Trust, the lobbying arm of the Alaska Trial Lawyers Association, filed a position paper opposing SB 301. The arguments made by the Trust are simply incorrect. Moreover, there are a number of other objections that have been raised with respect to the bill which do not withstand scrutiny.

I. Senate Bill 301 Does Not Amend the Civil Rules;
Therefore The Bill Need Not Be Enacted By A Super-Majority

Rule 3 of the Alaska Rules of Civil Procedure is unaffected by the proposed Senate Bill. Currently, there is both a statute and court rule regarding venue. Alaska Civil Rule 3 addresses where in the state a civil action may be brought initially. Senate Bill 301 does not change this. Specifically, Civil Rule 3(a) through (c) address in which Judicial District a case may be commenced. These sections allow, but do not require, that cases can be brought in the venue district where the claim arose, if the venue district has jurisdiction over such suits. None of these provisions are affected by Senate Bill 301.

Moreover, change of venue currently is and historically has been a legislative matter. Civil Rule 3(d) subordinates the court's authority to change venue to the legislature, stating that the authority of the court is "subject to a change of venue motion under AS 22.10.040." SB 301 merely adds a new subsection (b) to the current statute, a statute that the rule already directs the courts to follow with respect to change of venue issues. Accordingly, Senate Bill 301 also makes no change to the civil rules in this area.

Although the Civil Rules control the place of initial filing, through the incorporation by reference of the change of venue statute, AS 22.10.040, the rules grant the legislature primacy with regard to change of venue issues. Indeed, the Civil Rules do not even provide for change of venue between Judicial Districts. At most, Civil Rule 3(d) allows a court to move a case between venue districts within a judicial district. As stated above, however, that

right is subject to the right to control venue under AS 22.10.040.

Because the venue rule already provides for legislative control over change of venue issues, Senate Bill 301 does not change those rules. Indeed, given that the venue statute is already incorporated into the rule by reference, Senate Bill 301 does not require or contemplate changing any of the language or intent of the civil rules.

II. Plaintiffs In Civil Cases Have No Constitutional Right To A Choice of Forum, Or To Force Their Choice of Venue On Other Parties In A Lawsuit

The Trust argues that a plaintiff has the right to choose where a complaint is heard and decided, and in fact that this right is constitutionally protected. The contention that plaintiffs, but not defendants, have a constitutional right of forum selection in civil cases has never been accepted by the Alaska courts, and has no merit.

As noted above, the Trust argues that plaintiffs have a constitutional right to a civil trial by a jury of their peers living in their community. A necessary corollary of the Trust's position, of course, is that defendants do NOT have a right to a civil trial by a jury of their peers in their community, but that plaintiffs can force their choice of venue on defendants. Thus, under the Trust's view, only plaintiffs have a constitutional right to a civil jury of their peers, a position that is unreasonable on its face. This position cannot be supported; the constitution does not favor the rights of civil plaintiffs more than those of defendants.

The Trust cites Alvarado v. State,¹ a 1971 Alaska Supreme Court case, and Malvo v. J.C. Penney Co., Inc.,² a case from 1973, as support for its contention that SB 301 infringes on the Constitutional rights of Alaskans. A simple examination reveals that these cases do not support the Trust's position.

¹ 486 P.2d 891 (Alaska 1971).

² 512 P.2d 575 (Alaska 1973).

Alvarado v. State was a criminal case in which the trial of a man who had allegedly committed a crime in Chignik was venued in Anchorage. The Alaska Supreme Court found that he had a constitutional right to have the case tried as close as possible to the area in which he committed the crime. The criminal trial concept, adopted in Alvarado, that a trial should occur in the locale where a crime has occurred, has never been applied to civil cases.

The criminal defendant Alvarado challenged the selection of jurors from a 15 mile radius around Anchorage, claiming that there were not enough Alaska Natives to mirror his community of Chignik. The Supreme Court broadened its inquiry into why the case was tried in Anchorage at all, given the 6th Amendment right that all criminal defendants enjoy. The Supreme Court noted that it was not holding that "citizens from the town or village in which a *crime has been committed* may never be excluded from representation of the jury panel."³ However, as the court recognized, it was well-established that jurors from the area in which the crime had occurred should be excluded when "it appears that an unbiased jury could not be drawn therefrom."⁴ Alvarado has not been extended to and does not apply to civil cases, despite the Trust's unsupported statement to the contrary.

Nor does the Malvo v. J.C. Penney Co., Inc., case assist the Trust's position. Malvo does not even address issues of venue; rather it addresses the systematic exclusion of persons from juries. In Malvo, the plaintiff contended she had been deprived of a fair trial solely because there had been no blacks on the jury.⁵ The Alaska Supreme Court disagreed, holding that the jury composition was proper unless the plaintiff could prove a "systematic and intentional exclusion" of jurors.⁶ The Malvo case does not stand for the position that a case must be tried at a particular place, or to a particular jury.

³ Alvarado, 486 P.2d at 904 (emphasis added).

⁴ Alvarado, 486 P.2d at n. 38.

⁵ Malvo, 512 P.2d at 580.

⁶ Malvo, 512 P.2d at 580.

Finally, the Trust quotes Wilson v. City of Kotzebue.⁷ That case holds, at most, that a jury trial in a civil case may not be moved from a rural to an urban area only because the urban venue is more convenient or has better facilities than the rural venue.⁸ In Wilson, the defendant City of Kotzebue argued that its own citizens would not treat it fairly. The Supreme Court held that, under the then existing venue statute, a civil case by a citizen against the city in which the trial court resided should be tried within the city.⁹ Wilson did not even address issues of constitutionality, but was a decision addressing the venue statute.

Indeed, the civil venue statute already allows for change of venue out of the plaintiff's community, showing there is no constitutional protection for plaintiff's choice of venue. This statute has been repeatedly upheld.

III. SB 301 Is Neutral on Urban/Rural Issues.

SB 301 is neutral in its treatment of rural and urban parties. It provides rights to urban and rural defendants equally, and it affects the rights of both urban and rural plaintiffs to dictate the choice of forum. Under the new law, a business based in Nome would be able to defend a case against it in Nome. Businesses based in Bethel, Kotzebue, or Barrow would be able to defend themselves in their home communities. Under the law as it now stands, a rural defendant in an urban court is under the same disadvantage as an urban defendant in a rural court.

The Trust suggests that the even-handedness of the bill is somehow a "flaw." It is not. Rather, the bill rectifies the current statutory scheme, which greatly favors plaintiffs, and disfavors defendants. SB 301 will benefit urban and rural defendants alike. The example provided by the Trust, that of a bank being required to sue a rural resident on a bank loan in a local court, simply proves that the bill does not discriminate between rural

⁷ 627 P.2d 623 (Alaska 1981).

⁸ Wilson, 627 P.2d at 634-635.

⁹ Wilson, 627 P.2d at 636.

and urban populations. Of course, it is interesting to note that their bank example and most other contract cases would never be tried to a jury, but likely decided by the court on summary judgment. Thus, the contract plaintiff still has initial choice of venue, and the need for change of venue will not be present in most such cases.

IV. Federal Statutes and Rules Allow For Change of Venue

At one of the hearings, opponents of SB 301 were heard to argue that federal law did not allow the defendant to change venue. This is patently incorrect. Under the federal venue statute, venue may be changed for the convenience of the parties and witnesses, or in the interest of justice, to any other division or district where it could have been brought originally. 28 USC 1404(a). This statute allows for transfer of cases to any place in the United States.

Venue in a federal case may be changed within Alaska as well. Under 28 USC 1404(c), the federal court may change trial location to any place in the division in which it is pending. Alaska Local Rule 3.3(d) allows for this as well.

Moreover, under federal removal jurisdiction, a defendant has the right to change venue from state court to federal court in certain situations, e.g., where an out-of-state defendant is sued by a local plaintiff, or where the lawsuit involves a federal question. Thus, under federal law, even the choice of state versus federal venue is subject to change at the defendant's request.

Indeed, for 200 years federal law has allowed out-of-state defendants to remove cases from state courts to federal courts, where the plaintiff is local. The policy reason behind an out-of-state defendant's right of removal is to avoid the possibility that a state jury of plaintiff's choice would show bias toward the local plaintiff, or against the non-local defendant. This is a law and policy that has stood the test of time since the founding of this country, and remains in place and relevant today. SB 301, like the federal removal statute, is designed to provide protection to non-local defendants from bias.

In summary, the issues raised by this bill are not constitutional issues. They are issues which accord fairness to Alaskan business, corporation, and individual defendants.

SB

306

SENATE COMMITTEE REPORT

DATE: 3/9/06

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 306

SB 306 UNEMPLOYMENT INSURANCE FUND & TAXES

"An Act requiring an employing unit with a change in ownership, management, or control or similar change to notify the Department of Labor and Workforce Development of the change; relating to the unemployment contribution rate of an employing unit; defining 'business' for purposes of statutes setting unemployment contribution rates; establishing the crime of obtaining an unemployment rate by deception; and providing for an effective date."

and recommends:

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

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
<i>[Signature]</i>			X	
<i>[Signature]</i>	X			
<i>[Signature]</i>	X			
CHAIR: <i>[Signature]</i>	✓			



Alaska State Legislature

Senator Con Bunde
Senate District P

Vice Chair: Senate Finance Committee
Chair: Senate Labor & Commerce Committee

Sponsor Statement

Senate Bill 306 Unemployment Insurance Fund & Taxes

Senate Bill 306 addresses the issue of unemployment tax avoidance schemes by unscrupulous employers. This type of activity typically occurs when one business buys out another with a lower unemployment insurance tax rate, or when one business is transferred or taken over by another, solely to obtain a lower tax rate.

SB 306 is a crucial piece of legislation that is mandated by a federal law, the SUTA Dumping Prevention Act, which was passed in 2004. This Act amended the Social Security Act and established a nationwide minimum standard for curbing certain unemployment insurance tax avoidance activities by employers. Failure to pass this bill would result in the de-certification of the Alaska UI program and employers in this state would lose their federal offset credit of 5.4%, resulting in \$103.9 million in additional taxes to the employer. The state would lose \$30.8 million for administrative and operational funding for UI programs.

Tax avoidance schemes are damaging to Alaskans, inflate tax rates and unjustly shift the burden of unemployment insurance to other, law-abiding businesses. Passage of SB 306 would impose meaningful penalties on fraudulent businesses, and would maintain unemployment insurance taxes equally among Alaska businesses and would align our state with current, federally mandated law.

Sectional Analysis

Section 1. Adds a new section, AS 23.20.293 and requires an employer to notify the department in writing of any changes in ownership, management and control or when an employer acquires all or a part of another employer's trade or business. This provision will help the department detect tax avoidance and will help ensure employers are assigned the correct tax rate.

Section 2. Amends AS 23.20.295(d) to conform to federal law, which requires State laws to contain language which prevents unemployment insurance tax avoidance.

Section 3. Adds a new section, AS 23.20.297 to address transfers of payroll history and assignment of tax rates to conform to the tax avoidance prevention provisions, and establishes required civil and criminal penalties against persons who knowingly violate those provisions.

Section 4. Adds a new section that establishes criminal penalties against an employer or person(s) who knowingly or recklessly obtains or advises another person or employer to obtain an unemployment rate under false pretenses.

Section 5. Amends AS 23.20.310 to add new definitions to clarify the tax avoidance provisions.

Section 6. Adds new language to allow the department to adopt regulations necessary to implement the changes made by the above sections.

Section 7. Provides for an effective date of July 1, 2006 for Sections 1, 2, and 4 and for AS 23.20.297(a)-(c) enacted by Section 3.

Section 8. Provides for an immediate effective date for Sections 5 and 6 and for AS 23.20.297(d), enacted by Section 3.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: **SB306-DOLWD-UI-02-23-06**
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Department: **Labor and Workforce Development**
 Title: **Unemployment Insurance Fund & Taxes** RDU: **Employment Security**
 Sponsor: **Senate L&C** Component: **Unemployment Insurance**
 Requester: **Senate L&C** Component Number: **2276**

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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 legislation adds language to comply with federal legislation. Public Law 108-295 (42 U.S.C. 503) requires that a state's law contain language that will prevent state unemployment tax avoidance schemes and also requires that states apply meaningful civil and criminal penalties against persons who knowingly violate those provisions.

The anticipated fiscal impact as a result of this legislation is approximately \$60.0 to \$90.0 in data processing costs which will be absorbed by existing federal grant funds.

Prepared by: Thomas W. Nelson, Director Phone: 465-5933
 Division: Employment Security Division Date/Time: 2/23/06 2:21 PM
 Approved by: Greg O'Claray, Commissioner Date: 2/23/2006
 Agency: Department of Labor and Workforce Development



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Labor & Commerce
Current Version: SB 306
Contact: Jane Alberts, 465-3844

Fact Sheet for: Senate Bill 306

Short Title: UNEMPLOYMENT INSURANCE FUND & TAXES

Summary:

- Enacts measures to prevent the practice of State Unemployment Tax avoidance schemes, including:
 - Requires employers to notify the Department of Labor and Workforce Development of a business change or acquisition;
 - Implements standards addressing transfers of experience and assignment of rates;
 - Establishes the crime of obtaining an unemployment contribution rate by deception, and sets penalties.

Benefits:

- Maintains the integrity and equity of Alaska's tax rating system and trust fund.
- Helps keep employer unemployment insurance tax rates from increases due to under funding.
- Prevents tax rate avoidance schemes by imposing meaningful penalties in cases where a violation is detected.

Background:

- In August 2004, President Bush signed P.L. 108-295, amending the Social Security Act of 1935 and requiring states to enact legislation that will prevent the practice of State Unemployment Tax Avoidance schemes. This activity occurs when employers find ways to manipulate state unemployment insurance (UI) tax rating systems such that the employer pays UI taxes at an artificially low rate. If Alaska fails to enact required legislation, Alaska's UI program will be de-certified and all employers in the state would lose their federal offset credit of 5.4 percent, which would amount to \$103.9 million in additional taxes. Also, Alaska loses \$30.8 million in administrative and operational funding for supporting unemployment insurance programs.

U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210



The Honorable Frank Murkowski
Governor of Alaska
Box 110001
Juneau, Alaska 99811

Dear Governor Murkowski:

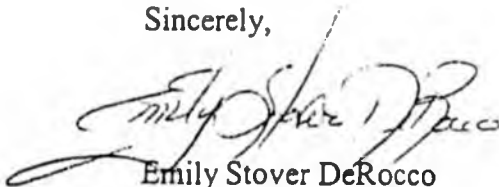
In my letter to you dated June 10, 2005, I called your attention to amendments to Alaska's unemployment compensation law that are needed for the state to remain eligible for Federal grants to administer its unemployment compensation (UC) program. Unfortunately, since that time there has been no action on this legislation, which must be in effect in Alaska on January 1, 2006, to conform with requirements of Federal UC law.

On August 9, 2004, the President signed P.L. 108-295, the SUTA Dumping Prevention Act of 2004. This legislation amended the Social Security Act to add a new Section 303(k), establishing a nationwide minimum standard for curbing certain practices that some employers have used to manipulate state unemployment insurance tax rates and avoid their fair share of unemployment taxes. All states are required to amend their UC laws to conform with the requirements of Section 303(k), SSA, as a condition for receiving grants for the administration of the state's UC law.

Labor and Workforce Development Commissioner O'Claray informed me by letter dated June 23, 2005, that Alaska is poised to secure enactment in the second session of the legislature. In order to hold in abeyance initiation of proceedings to withhold certification for the administrative grant, I must have your assurance that you will make every effort to secure enactment of legislation meeting the Federal requirements and making any transfers of experience that occur after January 1, 2006, until the effective date of the enactment, retroactive to January 1, 2006, to ensure conformity with Federal law.

Please provide this assurance before January 1, 2006, that Alaska will enact the required legislation expeditiously in the next legislative session.

Sincerely,


Emily Stover DeRocco

OFFICE OF THE GOVERNOR
MAILROOM
DEC 13 2005

Background

STATE OF ALASKA

Department Of Labor and Workforce Development

FRANK H. MURKOWSKI, GOVERNOR

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

OFFICE OF THE COMMISSIONER

December 22, 2005

Emily Stover DeRocco, Assistant Secretary
Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue, N.W., Room S-2307
Washington, D.C. 20210

Dear Assistant Secretary DeRocco,

Your letter of December 7, 2005, to Governor Frank Murkowski has been forwarded to me for response. As stated in earlier correspondence, I share your concern and continue to aggressively pursue the earliest possible enactment of the required legislation that your staff and mine have prepared for the Alaska legislature.

Alaska's Employment Security Act was amended in the mid-1960s to provide for a decline quotient employer rating system; therefore, current state law already requires the transfer of experience for rating purposes. Specifically, Alaska Statutes 23.20.280 through 23.20.295 and supporting regulations specify the administration of rate assignment and experience transfers. Moreover, our employer registration activities are designed to detect changes in ownership and changes in workforce that might be attempted for the sole purpose of rate reduction.

We recognize that our current statutes do not conform completely to P.L. 108-295. We are making every effort to secure speedy enactment of legislation which meets the federal requirements during the second half of Alaska's 24th Legislature.

Sincerely,


Greg O'Claray
Commissioner

cc: Tom Nelson, Director, Employment Security Division

Unemployment Insurance Federal Compliance

Recent federal law requires state law change:

In August 2004, President Bush signed P.L. 108-295, amending the Social Security Act of 1935 and requiring states to enact legislation that will prevent the practice of State Unemployment Tax Avoidance schemes. This activity occurs when employers find ways to manipulate state unemployment insurance (UI) tax rating systems such that the employer pays UI taxes at an artificially low rate.

State laws must include:

- Mandatory transfers of unemployment experience when a trade or business is acquired by or transferred to another employee.
- Prohibition of transfers when a transfer or an acquisition is solely or primarily for the purpose of obtaining a lower UI tax rate.
- Penalties when tax avoidance schemes are detected.
- Procedures for identifying tax avoidance schemes.

Penalty for Noncompliance:

- If Alaska fails to enact required legislation, Alaska's UI program will be de-certified and all employers in the state would lose their federal offset credit of 5.4 percent which would amount to \$103.9 million in additional taxes. Also, Alaska loses \$30.8 million in administrative and operational funding for supporting unemployment insurance programs.

UI Tax Avoidance Mainly Occurs in Two Ways:

- An employer sets up a new company and then transfers some or all of its workforce (and accompanying payroll) to the new company after it has earned a lower UI rate. The transferred payroll is then taxed at the lower rate.
- A new business entity purchases an existing business with a lower UI tax rate. Instead of being assigned the higher industry rate for a new business, the entity receives the existing lower rate. Typically, the new business ceases the activity of the purchased business and commences a different type of activity.

Harmful Effects of UI Tax Avoidance Schemes:

- Lost revenue will result in higher tax rates overall and unfairly shifts the cost of UI benefits to other employers.
- UI tax avoidance eliminates the incentive for employers to stabilize their workforce and keep employees working.

Benefits of State Unemployment Tax Avoidance Legislation:

- Maintains the integrity and equity of our tax rating system and trust fund.
- Helps keep employer UI tax rates from increases due to under funding.
- Prevents tax rate avoidance schemes by imposing meaningful penalties in cases where a violation is detected.



ALASKA

National Federation of Independent Business

Statement of Support for SB 306

Unemployment Insurance Federal Compliance Legislation

February 23, 2006

The Alaska Chapter of the National Federation of Independent Business has 2,500 members, making it the largest small-business advocacy group in the state.

Senate Bill 306 makes a number of changes in state law to conform with a federal law passed in 2004 to stop deceptive practices in obtaining a lower UI rate. If Alaska fails to enact required legislation, Alaska's UI program will be de-certified and all employers in the state would lose their federal offset credit of 5.4 percent.

Passing legislation this year is essential for Alaska businesses to continue to receive the 5.4 percent credit on their federal income tax. It is our understanding that all 49 other states have already passed similar legislation.

Vote YES on Senate Bill 306

Submitted by Thyas Shaub on behalf of NFIB/Alaska.

SB

307

SENATE COMMITTEE REPORT

DATE: 3/31/06

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 307

SB 307 LANDLORD REMEDIES; LATE FEE

"An Act relating to a fee provided for in the rental agreement for late payment of rent under the Uniform Residential Landlord and Tenant Act."

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
<i>[Signature]</i>			x	
<i>[Signature]</i>			x	
<i>[Signature]</i>			x	
CHAIR: <i>[Signature]</i>	✓			

24-LS1726V
Cook
4/27/06

CS FOR SENATE BILL NO. 307()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to notice by the landlord to the tenant of intention to terminate a rental**
2 **agreement for nonpayment of rent under the Uniform Residential Landlord and Tenant**
3 **Act."**

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

5 *** Section 1. AS 09.45.090(a) is amended to read:**

6 (a) For property to which the provisions of AS 34.03 (Uniform Residential
7 Landlord and Tenant Act) apply, unlawful holding by force includes each of the
8 following:

9 (1) when, for failure or refusal to pay rent due on the lease or
10 agreement under which the tenant or person holds, and after service, under
11 AS 09.45.100(b), of the written notice required by AS 34.03.220(b) by the landlord for
12 recovery of possession of the premises if the rent is not paid, the tenant or person in
13 possession fails or refuses to vacate or pay the rent within 10 [SEVEN] days;

14 (2) when,

1 (A) after a violation of a condition or covenant set out in
2 AS 34.03.120(a), other than a breach of AS 34.03.120(a)(5) due to the
3 deliberate infliction of substantial damage to the premises, or after a breach or
4 violation of a condition or covenant in a lease or rental agreement and
5 following service of written notice to quit, the tenant fails or refuses to remedy
6 the breach or to deliver up the possession of the premises within the number of
7 days provided for termination under AS 34.03.220(a)(2);

8 (B) after a violation of AS 34.03.120(a)(5) by deliberate
9 infliction of substantial damage to the premises, following service of written
10 notice to quit, the tenant fails or refuses to deliver up the possession of the
11 premises by the date set out in the written notice to quit under
12 AS 34.03.220(a)(1);

13 (C) after a violation of AS 34.03.220(e) following
14 discontinuance of a public utility service, following service of written notice to
15 quit, the tenant fails or refuses to deliver up the possession of the premises by
16 the date set out in the written notice to quit under AS 34.03.220(e);

17 (D) the landlord requires the tenant to vacate the premises for a
18 reason set out in AS 34.03.310(c)(2) or (c)(4) - (7), following service of
19 written notice to quit, the tenant fails or refuses to deliver up the possession of
20 the premises within the longer of 30 days or the period of notice for the
21 landlord's recovery of possession of the premises set out in the rental
22 agreement;

23 (E) in a mobile home park, there is to be a change in the use of
24 land for which termination of tenancy is authorized by AS 34.03.225(a)(4),
25 following service of written notice to quit, the mobile home dweller or tenant
26 fails or refuses to vacate within the number of days provided for termination
27 under AS 34.03.225(a)(4);

28 (F) after termination of a periodic tenancy as prescribed by
29 AS 34.03.290(a) or (b), following service of written notice to quit, the tenant
30 remains in possession without the landlord's consent after expiration of the
31 term of the rental agreement or after the date of its expiration;

1 (G) after the tenant has violated AS 34.03.120(b) or the tenant
2 has used the dwelling unit or allowed the dwelling unit to be used for an illegal
3 purpose in violation of AS 34.03.310(c)(3) other than a breach of
4 AS 34.03.120(b), following service of written notice to quit, the tenant fails or
5 refuses to deliver up the possession of the premises within five days; or

6 (H) following service of written notice to quit, a person in
7 possession continues in possession of the premises without a valid rental
8 agreement, as that term is defined in AS 34.03.360, and without the consent of
9 the landlord; or

10 (3) when, without a notice to quit, a tenant or person in possession
11 continues in possession of the premises after the tenancy has been terminated by
12 issuance of an order of abatement under AS 09.50.210(a).

13 * Sec. 2. AS 34.03.220(b) is amended to read:

14 (b) If rent is unpaid when due and the tenant fails to pay rent in full within 10
15 [SEVEN] days after written notice by the landlord of nonpayment and the intention to
16 terminate the rental agreement if the rent is not paid within that period of time, the
17 tenancy terminates unless the landlord agrees to allow the tenant to remain in
18 occupancy, and the landlord may terminate the rental agreement and immediately
19 recover possession of the rental unit. Only one written notice of default need be given
20 the tenant by the landlord as to any one default. A landlord who has given written
21 notice to the tenant under this subsection may accept a partial payment of the rent due
22 under the rental agreement and extend the date for the eviction accordingly.

24-LS1726\G
Cook
4/24/06

CS FOR SENATE BILL NO. 307()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a fee provided for in the rental agreement for late payment of rent
2 under the Uniform Residential Landlord and Tenant Act."

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

4 * Section 1. AS 09.45.090(a) is amended to read:

5 (a) For property to which the provisions of AS 34.03 (Uniform Residential
6 Landlord and Tenant Act) apply, unlawful holding by force includes each of the
7 following:

8 (1) when, for failure or refusal to pay rent due on the lease or
9 agreement under which the tenant or person holds, and after service, under
10 AS 09.45.100(b), of the written notice required by AS 34.03.220(b) by the landlord for
11 recovery of possession of the premises if the rent, and, if applicable, the late fee, is
12 not paid, the tenant or person in possession fails or refuses to vacate or pay the rent,
13 and, if applicable, the late fee, within seven days;

14 (2) when,

1 (A) after a violation of a condition or covenant set out in
2 AS 34.03.120(a), other than a breach of AS 34.03.120(a)(5) due to the
3 deliberate infliction of substantial damage to the premises, or after a breach or
4 violation of a condition or covenant in a lease or rental agreement and
5 following service of written notice to quit, the tenant fails or refuses to remedy
6 the breach or to deliver up the possession of the premises within the number of
7 days provided for termination under AS 34.03.220(a)(2);

8 (B) after a violation of AS 34.03.120(a)(5) by deliberate
9 infliction of substantial damage to the premises, following service of written
10 notice to quit, the tenant fails or refuses to deliver up the possession of the
11 premises by the date set out in the written notice to quit under
12 AS 34.03.220(a)(1);

13 (C) after a violation of AS 34.03.220(e) following
14 discontinuance of a public utility service, following service of written notice to
15 quit, the tenant fails or refuses to deliver up the possession of the premises by
16 the date set out in the written notice to quit under AS 34.03.220(e);

17 (D) the landlord requires the tenant to vacate the premises for a
18 reason set out in AS 34.03.310(c)(2) or (c)(4) - (7), following service of
19 written notice to quit, the tenant fails or refuses to deliver up the possession of
20 the premises within the longer of 30 days or the period of notice for the
21 landlord's recovery of possession of the premises set out in the rental
22 agreement;

23 (E) in a mobile home park, there is to be a change in the use of
24 land for which termination of tenancy is authorized by AS 34.03.225(a)(4),
25 following service of written notice to quit, the mobile home dweller or tenant
26 fails or refuses to vacate within the number of days provided for termination
27 under AS 34.03.225(a)(4);

28 (F) after termination of a periodic tenancy as prescribed by
29 AS 34.03.290(a) or (b), following service of written notice to quit, the tenant
30 remains in possession without the landlord's consent after expiration of the
31 term of the rental agreement or after the date of its expiration;

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(G) after the tenant has violated AS 34.03.120(b) or the tenant has used the dwelling unit or allowed the dwelling unit to be used for an illegal purpose in violation of AS 34.03.310(c)(3) other than a breach of AS 34.03.120(b), following service of written notice to quit, the tenant fails or refuses to deliver up the possession of the premises within five days; or

(H) following service of written notice to quit, a person in possession continues in possession of the premises without a valid rental agreement, as that term is defined in AS 34.03.360, and without the consent of the landlord; or

(3) when, without a notice to quit, a tenant or person in possession continues in possession of the premises after the tenancy has been terminated by issuance of an order of abatement under AS 09.50.210(a).

* Sec. 2. AS 34.03.040(a) is amended to read:

(a) A rental agreement may not provide that [THE TENANT OR LANDLORD]

(1) the tenant or landlord agrees to waive or to forego rights or remedies under this chapter;

(2) the tenant or landlord authorizes a person to confess judgment on a claim arising out of the rental agreement;

(3) the tenant or landlord agrees to the exculpation or limitation of any liability of the landlord or tenant arising under the law or to indemnify the landlord or tenant for that liability or the costs connected with it;

(4) the tenant agrees to pay the landlord's attorney fees;

(5) if rent is unpaid when due, the tenant agrees to pay a late fee that exceeds 10 percent of the amount that is due and unpaid.

* Sec. 3. AS 34.03.220(b) is amended to read:

(b) If rent is unpaid when due and the tenant fails to pay rent in full, together with any fee provided for in the rental agreement for late payment of rent, within seven days after written notice by the landlord of nonpayment and the intention to terminate the rental agreement if the rent, and, if applicable, the late fee is not paid within that period of time, the tenancy terminates unless the landlord agrees to allow

1 the tenant to remain in occupancy, and the landlord may terminate the rental
2 agreement and immediately recover possession of the rental unit. Only one written
3 notice of default need be given the tenant by the landlord as to any one default. A
4 landlord who has given written notice to the tenant under this subsection may accept a
5 partial payment of the rent due under the rental agreement, together with payment of
6 any fee provided for in the rental agreement for late payment of rent, and extend
7 the date for the eviction accordingly.

Alaska State Legislature



DURING SESSION
STATE CAPITOL
JUNEAU, AK 99801-1182
(907) 465-4843 (800) 892-4843
FAX: (907) 465-3871

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716 W. FOURTH AVE.
ANCHORAGE, AK 99501-2133
(907) 269-0181
FAX: (907) 269-0184

E-MAIL
Senator.Con.Bunde@legis.state.ak.us

SENATOR CON BUNDE

District P

VICE-CHAIR: SENATE FINANCE COMMITTEE
CHAIR: SENATE LABOR & COMMERCE COMMITTEE
MEMBER: LEGISLATIVE BUDGET & AUDIT COMMITTEE

MEMORANDUM

DATE: March 31, 2006
TO: Senator Ralph Seekins, Chair, Senate Judiciary Committee
FROM: Senator Con Bunde *CBunde*
RE: Hearing Request for SB 307 Landlord Remedies: Late Fees

I respectfully request a hearing before the Senate Judiciary Committee on SB 307, Landlord Remedies: Late Fees. at your earliest convenience.

SB 307 addresses a problem in the landlord/tenant relationship that has become more apparent since 2002 when a Superior Court decision was handed down that changed the status quo of collection of late rent and late fees. What SB 307 does is return that notification process back prior to that 2002 ruling.

Prior to 2002, including the late fee on the same 7-day notice to quit with the nonpayment of rent was an accepted practice. The 2002 Superior Court case ruled that this was illegal under current law, and required a 7-day notice to quit for non-payment of rent and a 10-day notice to quit for the non-payment of the late fee. In essence, the court ruled that two separate notices needed to be sent to the tenant.

Simple, clear language between landlord and tenant is essential. Replacing one notice with two notices, both with different due dates and amounts owed has caused problems that invariably have ended up in court.

SB 307 addresses the discrepancy in State law and allows landlords to return to the same 7-day notice requirement for non-payment of both rent and the late fee.

Please find SB 307, Sponsor Statement, sectional summary, letters of support, sample documents, comments from the Dept. of Law and fiscal note attached. Please contact Jane Alberts at 465-3844 if you have any questions.

SENATE BILL NO. 307

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Introduced: 2/23/06

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a fee provided for in the rental agreement for late payment of rent
2 under the Uniform Residential Landlord and Tenant Act."

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

4 * Section 1. AS 09.45.090(a) is amended to read:

5 (a) For property to which the provisions of AS 34.03 (Uniform Residential
6 Landlord and Tenant Act) apply, unlawful holding by force includes each of the
7 following:

8 (1) when, for failure or refusal to pay rent due on the lease or
9 agreement under which the tenant or person holds, and after service, under
10 AS 09.45.100(b), of the written notice required by AS 34.03.220(b) by the landlord for
11 recovery of possession of the premises if the rent, and, if applicable, the late fee, is
12 not paid, the tenant or person in possession fails or refuses to vacate or pay the rent,
13 and, if applicable, the late fee, within seven days;

14 (2) when,

"reasonable" late fee?

1 (A) after a violation of a condition or covenant set out in
2 AS 34.03.120(a), other than a breach of AS 34.03.120(a)(5) due to the
3 deliberate infliction of substantial damage to the premises, or after a breach or
4 violation of a condition or covenant in a lease or rental agreement and
5 following service of written notice to quit, the tenant fails or refuses to remedy
6 the breach or to deliver up the possession of the premises within the number of
7 days provided for termination under AS 34.03.220(a)(2);

8 (B) after a violation of AS 34.03.120(a)(5) by deliberate
9 infliction of substantial damage to the premises following service of written
10 notice to quit, the tenant fails or refuses to deliver up the possession of the
11 premises by the date set out in the written notice to quit under
12 AS 34.03.220(a)(1);

13 (C) after a violation of AS 34.03.220(e) following
14 discontinuance of a public utility service, following service of written notice to
15 quit, the tenant fails or refuses to deliver up the possession of the premises by
16 the date set out in the written notice to quit under AS 34.03.220(e);

17 (D) the landlord requires the tenant to vacate the premises for a
18 reason set out in AS 34.03.310(c)(2) or (c)(4) - (7), following service of
19 written notice to quit, the tenant fails or refuses to deliver up the possession of
20 the premises within the longer of 30 days or the period of notice for the
21 landlord's recovery of possession of the premises set out in the rental
22 agreement;

23 (E) in a mobile home park, there is to be a change in the use of
24 land for which termination of tenancy is authorized by AS 34.03.225(a)(4),
25 following service of written notice to quit, the mobile home dweller or tenant
26 fails or refuses to vacate within the number of days provided for termination
27 under AS 34.03.225(a)(4);

28 (F) after termination of a periodic tenancy as prescribed by
29 AS 34.03.290(a) or (b), following service of written notice to quit, the tenant
30 remains in possession without the landlord's consent after expiration of the
31 term of the rental agreement or after the date of its expiration;

1 (G) after the tenant has violated AS 34.03.120(b) or the tenant
2 has used the dwelling unit or allowed the dwelling unit to be used for an illegal
3 purpose in violation of AS 34.03.310(c)(3) other than a breach of
4 AS 34.03.120(b), following service of written notice to quit, the tenant fails or
5 refuses to deliver up the possession of the premises within five days; or

6 (H) following service of written notice to quit, a person in
7 possession continues in possession of the premises without a valid rental
8 agreement, as that term is defined in AS 34.03.360, and without the consent of
9 the landlord; or

10 (3) when, without a notice to quit, a tenant or person in possession
11 continues in possession of the premises after the tenancy has been terminated by
12 issuance of an order of abatement under AS 09.50.210(a).

13 * Sec. 2. AS 34.03.220(b) is amended to read:

14 (b) If rent is unpaid when due and the tenant fails to pay rent in full, together
15 with any fee provided for in the rental agreement for late payment of rent, within
16 seven days after written notice by the landlord of nonpayment and the intention to
17 terminate the rental agreement if the rent, and, if applicable, the late fee, is not paid
18 within that period of time, the tenancy terminates unless the landlord agrees to allow
19 the tenant to remain in occupancy, and the landlord may terminate the rental
20 agreement and immediately recover possession of the rental unit. Only one written
21 notice of default need be given the tenant by the landlord as to any one default. A
22 landlord who has given written notice to the tenant under this subsection may accept a
23 partial payment of the rent due under the rental agreement, together with payment of
24 any fee provided for in the rental agreement for late payment of rent, and extend
25 the date for the eviction accordingly.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 307
 (S) Publish Date: 3/31/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Landlord Remedies; Late Fees RDU Corp, Bus & Prof Licensing (117)
 Component Corp, Bus & Prof Licensing
 Sponsor Labor and Commerce
 Requester Labor and Commerce Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

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

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

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2006) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation allow landlords to include the late fees and rent due on the same 7-day "notice to quit" for non payment of rent under AS 34.03 (Uniform Residential Landlord and Tenant Act.) It does not impact the operations of the division.

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

Phone 907.465.2572
 Date/Time 3/8/06 3:56 PM
 Date 3/8/2006

LEGAL SERVICES

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

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FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM

March 8, 2006

SUBJECT: Late fees; ~~sectional summary~~ (SB 307)

TO: Senator Con Bunde
Chair of the Senate Labor and Commerce Committee
Attn: Jane Alberts

FROM: Tamara Brandt Cook
Director

TBC

Sec. 1. For property subject to the Uniform Residential Landlord and Tenant Act, makes failure to pay the late fee, if applicable, unlawful holding by force when, after service of a written notice, the tenant fails to pay rent due together with the late fee. The existing provision does not address a late fee.

Sec. 2. Provides that a tenancy terminates if the tenant fails to pay rent, together with any late fee provided for in the rental agreement, within seven days after notice of nonpayment and intention to terminate the rental agreement is provided by the landlord. A landlord may accept partial payment of rent, together with the payment of the late fee, and extend the date for eviction. The existing provision does not address a late fee.

TBC:ljw
06-118.ljw



Alaska State Legislature

Senator Con Bunde
Senate District P

Vice Chair: Senate Finance Committee
Chair: Senate Labor & Commerce Committee

Sponsor Statement

Senate Bill 307 Landlord Remedies: Late Fees

Historically in the State of Alaska the 'late fee' was allowed to be included along with the 'rent' on the same 'seven day notice to quit' for non-payment of rent under AS 34.03 (Uniform Residential Landlord and Tenant Act). In 2002 a Superior Court decision correctly ruled that under current law this was illegal. Hence what is now required is a seven-day notice to quit for non-payment of rent and a ten-day notice to quit for the non-payment of the late fee.

Simplistic language is essential for undisputed communication between landlord and tenant. Replacing one notice to quit with two, both with different 'due dates' and 'amounts of money owed' has caused unnecessary problems and confusion. What SB307 does is restore the situation to as it was prior to the courts ruling. Nothing else.

The entire Rental and Leasing Services Industry statewide will benefit from this change in State of Alaska statute. The Alaska State Chamber of Commerce has included the passage of this amongst their list of 2006 legislative priorities. The costs of this legislation to state and / or local governments will be zero with a cost savings to be realized by businesses and individuals due to the efficiencies generated by the enactment of this legislation.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK MURKOWSKI, GOVERNOR

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907) 269-5100
FAX: (907) 276-8554

March 14, 2006

The Honorable Con Bunde
Chair
Senate Labor and Commerce Committee
State Capitol (MS 3100)
Room 101
Juneau, AK 99801-1182

Re: SB 307 -- Landlord Remedies

Dear Senator Bunde:

The Department of Law ("Department") has reviewed SB 307 and offers the following comments for consideration by the committee. SB 307 will fundamentally change the rights of landlords under Alaska Landlord Tenant Act, AS 34.03. SB 307 will change the law so that late payment fees will be treated exactly like rent, allowing landlords to collect late payment fees in the same manner as overdue rent. To illustrate this change, a comparison between current law and the changes proposed by SB 307 are helpful.

Current Landlord Remedies under AS 34.03.220. AS 34.03.220 provides several remedies to landlords when a tenant fails to comply with the terms of a rental agreement. Two of these remedies are important for this discussion. The statute makes a distinction between "rent" and all other fees and charges owed as follows:

All fees and charges other than rent. AS 34.03.220(a)(2) provides that if there is a material noncompliance by the tenant with the rental agreement, the landlord can issue a "notice to quit" under AS 09.45.100 -- .110 indicating that the agreement will terminate in 10 days if the breach is not remedied. This is called a "10 day notice to quit." If the breach is not cured within this 10 day period, the landlord can request a hearing. At the hearing, the court must find that there is a **material breach of the rental agreement** before eviction can continue.

Failure to pay rent. Rent is treated differently from all other fees and charges owed by a tenant. AS 34.03.220(b) provides that if a tenant fails to pay rent when due, the landlord can issue a "seven day notice to quit." If rent is not paid within this time, the landlord can proceed to a hearing. At the hearing, the court must consider whether rent

was actually due considering offsets for diminution of services and other potential defenses by the tenant. If the court finds the tenant has not paid rent in accordance with the rental agreement, eviction can proceed. There is no analysis by the court regarding whether a material breach of the rental agreement occurred. Failure to pay rent is "automatically" considered a material breach of the agreement.

The effects of SB 307 on the current law. SB 307 attempts to merge the process for paying late fees and rent into one category for purpose of eviction. Proponents of the change argue this will "streamline" the process and allow landlords to issue one notice to quit instead of two, and have one hearing to consider both rent and late fees. SB 307 has another significant consequence. Tenants could be evicted for failing to pay a late fee, even though failure to pay a late fee by itself would not constitute a "material noncompliance" of the rental agreement. Here is an example of how this might affect tenants if SB 307 passes:

Assume tenant fails to pay rent of \$1,000 when due. Landlord charges a late fee of \$250 for every five days rent is late. Landlord issues a single seven day notice to quit, noting that tenant owes \$1,250 or will be evicted. Tenant offers to pay \$1,000 which is rejected by the landlord. A hearing is held and the landlord establishes the tenant failed to pay \$1,250 within the seven day period. The court is not required to consider whether the late fee is reasonable. The court also cannot consider whether failure to pay the late fee would constitute a material noncompliance with the rental agreement. It is now considered past due "rent" for all practical purposes.

Under this scenario, the court is authorized to approve eviction even though the tenant offered to pay rent. The tenant had no opportunity to challenge the late fee as either unreasonable, or as not constituting a material noncompliance with the rental agreement. In effect, the late fee is treated just like rent.

Under current law, rent is treated differently than late fees for a reason. Late fees and other surcharges can be extremely unreasonable and unenforceable. Some fees can also be de minimus, and not rise to the level of becoming a "material noncompliance" of the agreement. Landlords also have other remedies available to deal with problem tenants. A landlord can terminate a rental agreement for any reason with a 30 day notice. If a tenant commits the same breach within six months, the landlord can give a five day notice to quit. One reasonable interpretation of the law is that landlords can simply provide a single 10 day notice to quite for both rent and late fees, allowing the court to decide if failure to pay or the other constitutes grounds for eviction.

Senator Con Bunde

March 14, 2006

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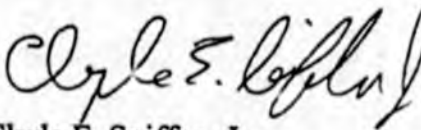
Any amendment to AS 34.03.220 should consider the different judicial analysis required for failure to pay rent and failure to pay late fees. Tenants will be deprived of significant rights if both are treated the same.

The department is available to answer any question you have about these comments.

Sincerely,

DAVID W. MÁRQUEZ
ATTORNEY GENERAL

By:



Clyde E. Sniffen, Jr.
Assistant Attorney General

cc: Kevin Jardell, Legislative Director
Office of the Governor

Randy Ruaro, AAG
Deborah Behr, AAG
Department of Law

CES/sjm

ALASKA MANUFACTURED HOUSING ASSOCIATION

Post Office Box 100254 Anchorage, Alaska 99510-0254

March 22, 2006

Senator Con Bunde
Senate Labor and Commerce Committee
State Capitol; Room 506
Juneau, Alaska 99801

Dear Senator Bunde,

Having reviewed the letter dated March 14, 2006 from the Attorney General's office concerning Senate Bill 307 I would like to make the following comments.

The letter centers on the belief that 'late fees' will now be considered 'rent' if SB307 passes. The facts are that under current law this is already practice. Please consider the following example.

Before the Superior Court decision, a Landlord and Tenant enter into a rental agreement for an apartment. The 'rent' is \$500.00 per month due on the first of the month with a \$50.00 late fee to be added on if the 'rent' is not received by the fifth of the month. Since the Superior Court decision all the Landlord need now state is that the 'rent' is \$550.00 per month and if paid before the fifth of the month the Tenant will receive a \$50.00 discount. Amazingly no 'late fee' even enters into the picture.

Under this scenario the 'late fee' is considered 'rent' and is legal under current law. There are also other mechanisms for the collection of late fees going on out there which have evolved since this Superior Court decision. All show the need for SB307. What SB307 does is unify and restore the process and the communication between Landlord and Tenant to historically it always has been.

The Attorney General's letter also refers to the 'fact' and please note that I quote directly "... that landlords can simply provide a single 10 day notice to quite (sic) for both rent and late fees ...". Doing this would swing the balance of the law between the Landlord and Tenant to far to the Landlord's side and would be a disaster for the Tenant. The rules for a 'ten day notice to quit' are different than they are for a 'seven day notice to quit'. When the violation listed on a 'ten day notice' is cured, the Tenant can stay. But under the rules if the Tenant reoffends within a six month period the Tenant is easily evicted. In other words if the Tenant fails to pay the 'late fee' only one other time within a six month period the 'presiding judge' can evict. Under a 'seven day notice to quit' this six month reoccurrence provision does not engage and the Tenant can reoffend each and every month.

Thank you for this opportunity to respond. Again, Senate Bill 307 will simplify the communication concerning 'late fees' between Landlord and Tenant and restore the written notification process to historically it always has been.

Wishing you and your staff the best,

Bob Maier
Executive Director
Alaska Manufactured Housing Association
Post Office Box 100254
Anchorage, Alaska 99510-0254
(1)-(907)-337-4961 – Phone / bobmaier@gci.net

SB 307 would allow usage of this one notice for rent and late fee.

**NOTICE TO RESIDENT OF TERMINATION OF RESIDENCY
FOR NON-PAYMENT OF RENT**

(7 DAY EVICTION NOTICE)

TO: _____

DATE: _____

You are notified that you owe RENT in the amount of \$_____ plus a LATE FEE of \$_____. If you do not pay the total amount due within SEVEN (7) DAYS of receipt of this notice, your residency is terminated and you **MUST MOVE**. You must pay your rent with a money order or cashier's check. No cash or checks will be accepted. **YOU MUST CONTACT THE OFFICE IMMEDIATELY.**

If you have not paid the rent or moved within SEVEN DAYS, a lawsuit will be filed to evict you. If you deliver your rent to me on or before the end of the SEVEN DAY period, you may stay. If your account is turned over to an ATTORNEY, you will have Attorney fees, court costs, and delinquent rent's due.

If you would like to pay all monies due before the SEVEN (7) DAYS expire, CONTACT THE MANAGER during regular business hours.

Signed,

Manager

THIS NOTICE WAS DELIVERED ON THE _____ DAY OF _____ 20____
AT _____ a.m./p.m.