

ALASKA LEGISLATURE COMMITTEES, 2005-2006
11928 SENATE LABOR & COMMERCE

Community	2003 Population	Fairbanks
Farm Loop	1124	Y
Sutton-Alpine	1174	Y
Cohoe	1201	Y
Houston	1339	Y
Tok	1435	Y
North Pole	1646	Y
Deltana	1691	Y
Haines	1715	Y
Fritz Creek	1740	Y
Ester	1774	Y
Bear Creek	1823	Y
Anchor Point	1826	Y
Willow	1838	Y
Girdwood	1850	Y
Denali Borough	1914	Y
Ridgeway	2011	Y
Seward	2733	Y
Big Lake	2839	Y
Gateway	3292	Y
Soldotna	4059	Y
Valdez	4060	Y
Nikiski	4357	Y
Elson AFB	4437	Y
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Sterling	4888	Y
Homer	4893	Y
Palmer	5474	Y
Tanaina	5843	Y
Kalifornsky	6230	Y
Wasilla	6715	Y
Lakes	6980	Y
Kenai	7125	Y
North Slope Borough	7253	Y
Knik-Fairview	8488	Y
College	11929	Y
Fairbanks	29486	Y
Eagle River-Chugiak	30000	Y
Kenai Peninsula Borough	51220	Y
Matanuska-Susitna Borough	67473	Y
Fairbanks North Star Borough	82214	Y
Anchorage	274003	Y

Note: List includes Alaska Native Village Statistical Areas (ANVSAs), Censu

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT FOR HB 81

BY: Representative Tom Anderson

TITLE: "An Act establishing an administrative fine and procedure for construction contractors in certain circumstances; increasing the amount of a civil penalty for persons acting in the capacity of contractors or home inspectors; modifying the elements of a crime involving contractor registration and residential contractors; and exempting the administrative hearings for imposing an administrative fine on construction contractors from the hearings conducted by the office of administrative hearings in the Department of Administration."

Under current law, the State of Alaska investigates and enforces violations of construction contractor laws. Both the Department of Labor and Commerce and the Department of Community & Economic Development have authority to pursue violations of work performed by unregistered construction contractors. For the most part, they rely upon the public complaints, and follow up with investigations (depending on the availability of resources). Under current laws, these agencies enforce violation by issuing citations. After a citation is issued, the impetus falls to the Department of Law as to whether or not to prosecute the matter in Court.

With over 1,600 unregistered contractors operating under this exemption, numerous reports have been made about these unregistered businesses offering construction services in violation of the laws. Enforcement efforts have proven to be difficult and many consumers are unaware their contractor may not be qualified to provide construction services, and even worse, have little or no insurance and warranty protections.

HB 81 would amend the law to allow the Department of Labor and the Department of Commerce Community & Economic Development to issue civil penalties for violations. Instead of going through the Dept. of Law, a violator would either pay a fine (proposed at \$1,000 for the first violation and \$1,500 for subsequent violations) or appeal to an administrative hearing officer. This system would be much more effective toward penalizing first-time violations quickly and effectively. The Departments would retain the option of going through the current criminal violation process if the fines did not deter a violator.

A loophole in the contractor exemption statutes that allowed small contracting companies to operate without a license has also been closed. Previously an individual could file for an exemption and build a residential or commercial property every year. Under HB 81 the time limit between buildings is raised to 2 years of occupancy. Individuals who need to can file for a hardship waiver in order to build another property before the two-year minimum. I urge your support for this legislation.

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

Sectional Analysis for HB 81 BY: Representative Tom Anderson

Section 1. Amends AS 08.18.117. Adds: Except as provided for in AS 08.18.125 either removes [Either]. This change allows the Departments to also issue administrative fines as well as citations.

Section 2. Adds a new section to AS 08.18

AS 08.18.125

- (a) Allows the Department to impose a \$1000 fine for a first offense and a \$1500 fine for all subsequent offenses against a person who violates AS 08.18.011 or 08.18.025
- (b) The Department must issue a written notice of the fine as well as the reason, a copy of the applicable procedures and notice for an opportunity to request a hearing. The hearing must be made within 10 days after the notice on the fine
- (c) If the Department receives a hearing request within 10 days of the fine being noticed a hearing must be scheduled no earlier than 10 days after the request is made
- (d) The decisions of the hearing officer is final subject to review by a superior court
- (e) A fine may not be imposed on a contractor or home inspector operating in an area with a population of less than 1000 people that is not connected to Anchorage or Fairbanks by rail or road

Section 3. Amends AS 08.18.131. Adds: \$1,000 and removes [\$250]
This change increases the amount a superior court may fine a person from \$250 to \$1000.

Section 4. Adds language to the previous statute to include contractors who have been previously convicted of violations or who have been fined. Also makes all other violations of this chapter punishable under chapter 12

Section 5. AS 44.64.030 (a) is amended Adds: AS 08.18.125
Changes the contractor licensing exemption for people building personal use buildings to add an occupancy requirement of two years. Also provides for a hardship exemption to the two year requirement.

Section 6. AS 44.64.030(a)(6) is amended Adds: AS 08.18.125,
Places the Administrative Hearings created in Section 2 of the bill under the jurisdiction of the Office of Administrative Hearings

Section 7. Adds to the uncodified law of the State of Alaska. Violations discussed in Sections 2-4 of this bill apply after the effective date of this Act. Section 4 is retroactive.

Section 8. Revisor's note. The changes made in Section 5 of this bill must be rectified with Secs. 82 and 96 ch. 163 SLA 2004 so that both are given effect

HB

90

SENATE COMMITTEE REPORT

DATE: 2/10/05

FURTHER: State Affairs

DATE TURNED
IN TO OFFICE: _____

Labor and Commerce Committee considered HOUSE BILL NO. 90

HB 90 STATE TREASURY WARRANTS

in Act requiring warrants drawn by the Department of Administration against the state treasury to be negotiable instruments."

and recommends:

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

Senate Bill:

- Same Title
- New Title

House Bill:

- Same Title
- Technical Title 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>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
CHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>			

PO. Box 100600

Alaska Bankers Association
Anchorage, Alaska 99510-0800

(907) 265-2320

February 28, 2005

Senator Con Bunde
Chair, Senate Labor and Commerce Committee
State Capitol, Room 506
Juneau, AK 99801

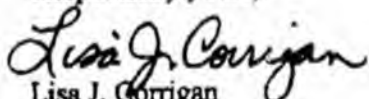
RE: House Bill 90

Dear Senator Bunde:

Thank you and the Senate Labor and Commerce Committee for reviewing this bill.

We understand that the bill is intended to codify existing law established by the Alaska Supreme Court as to the negotiable aspects of State Treasury Warrants. For this reason we support this legislation and urge its passage.

Respectfully yours,



Lisa J. Corrigan
President
Alaska Bankers Association

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 90
 (H) Publish Date: 2/4/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: An Act requiring warrants drawn on RDU: Centralized Administrative Services
the state treasury to be negotiable instruments Component: Finance
 Sponsor: House State Affairs Component No: _____
 Requester: House State Affairs Component No: 59

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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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 (FY2005) cost: 00

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact. It simply codifies in law a 1992 ruling by the Alaska Supreme Court (National Bank of Alaska vs. Univentures and the State of Alaska, Department of Administration, file #S-4087) that reversed a Superior Court ruling on the negotiability of warrants issued by the state. The Supreme Court held that state warrants are negotiable instruments subject to the UCC rules governing holders in due course.

Since that Supreme Court decision, the state has administered its warrants as negotiable instruments, so no administrative changes are necessary if this legislation passes. It will simply codify in statute the ruling of the Supreme Court.

Prepared by: Kim J. Garner, Director Phone: 465-3435
 Division: Finance Date/Time: 2/1/05 1:40 PM
 Approved by: Michael Tibbles, Deputy Commissioner Date: 2/1/2005
 Agency: Department of Administration

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HOUSE STATE AFFAIRS

REPRESENTATIVE PAUL SEATON, CHAIRMAN

Sponso. Statement

HB 90

Requiring state treasury warrants to be negotiable instruments.

House Bill 90 continues the committee's work last session on House Bill 373—State Dated Warrants. It clarifies existing statutes governing state treasury warrants by providing that warrants, like bank checks, are negotiable instruments under the Uniform Commercial Code.

During the 1980s, there was a long-standing dispute between commercial banks and the State of Alaska regarding the negotiability of state treasury warrants. This dispute was ultimately resolved by the Alaska Supreme Court in National Bank of Alaska v. Univentures 1231, 824 P.2d 1377 (Alaska 1992), which held that state treasury warrants were negotiable instruments under the Uniform Commercial Code and were therefore subject to the "holder in due course" defense. This was an important protection for businesses with financial dealings with the State. Although the Division of Finance amended its business practices to comply with the Supreme Court ruling, Alaska statutes have never been amended to incorporate this holding. HB 373 simply codifies the holding the National Bank of Alaska v. Univentures 1231.

The State Affairs Committee is introducing this legislation in order to clarify Alaska statutes and continue the modernization of the state treasury warrant system.

Contact: Peter Naoroz
465-2840

Released: January 21, 2005

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Session:
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HOUSE STATE AFFAIRS

REPRESENTATIVE PAUL SEATON, CHAIRMAN

Sectional Analysis

HB 90

Requiring state treasury warrants to be negotiable instruments.

Section 1. Payment of warrants.

Adds language that clarifies the nature of a warrant issued by the Department of Administration against the state treasury. The language originates in a 1992 Supreme Court decision, *National Bank v. Univentures*, and it states that state treasury warrants (those things that we think of as "checks") constitute a negotiable instrument, and they must be paid according to the terms of the Uniform Commercial Code § 3-104(1)(b).

Adds language stating that "negotiable instrument" has the meaning given in AS 45.03.104(a).

Title 45 TRADE AND COMMERCE
Chapter 45.03 NEGOTIABLE INSTRUMENTS

Sec. 45.03.104. Negotiable instrument.

(a) Except as provided in (c) - (d) of this section, "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if the unconditional promise or order

- (1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
- (2) is payable on demand or at a definite time; and
- (3) does not state any other undertaking or instruction by the person promising or ordering payment to do an act in addition to the payment of money, but the promise or order may contain an undertaking or power to give, maintain, or protect collateral to secure payment, an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or a waiver of the benefit of a law intended for the advantage or protection of an obligor.

P.O. Box 100600

Alaska Bankers Association
Anchorage, Alaska 99510-0600

(907) 265-2920

February 11, 2005

Representative Paul Seaton
Alaska State Legislature
House of Representatives
State Capitol, Room 112
Juneau, AK 99801

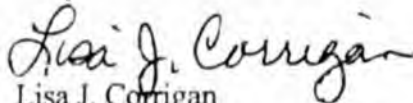
Re: HB 90

Dear Representative Seaton:

Thank you and the House State Affairs Committee for introducing and sponsoring HB 90.

We understand that the bill is intended to codify existing law established by the Alaska Supreme Court as to the negotiable aspects of State Treasury Warrants. For this reason we are supportive of the legislation and urge its passage.

Respectfully yours,



Lisa J. Corrigan

President

Alaska Bankers Association

Talking Points
HB 90

House Bill 90 continues the work of the House State Affairs Committee work last session on House Bill 373—Stale Dated Warrants.

It clarifies existing statutes governing state treasury warrants by providing that warrants, like bank checks, are negotiable instruments under the Uniform Commercial Code.

During the 1980s, there was a long-standing dispute between commercial banks and the State of Alaska regarding the negotiability of state treasury warrants.

This dispute was ultimately resolved by the Alaska Supreme Court in National Bank of Alaska v. Univentures in 1992, which held that state treasury warrants were negotiable instruments under the Uniform Commercial Code.

This was an important protection for businesses with financial dealings with the State. Although the Division of Finance amended its business practices to comply with the Supreme Court ruling, Alaska statutes have never been amended to incorporate this holding.

HB 90 simply codifies the holding the National Bank of Alaska v. Univentures 1231. The House State Affairs Committee introduced this legislation in order to clarify Alaska statutes and continue the modernization of the state treasury warrant system.

NATIONAL BANK OF ALASKA, National Banking Association, Appellants, v.
UNIVENTURES 1231 and STATE OF ALASKA, DEPARTMENT OF
ADMINISTRATION, Appellees.

No. 3799, Supreme Court File No. S-4087

SUPREME COURT OF ALASKA

824 P.2d 1377; 1992 Alas. LEXIS 10; 17 U.C.C. Rep. Serv. 2d (Callaghan) 482

January 24, 1992, Decided

PRIOR HISTORY:

[**1] Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage. J. Justin Ripley, Judge. Superior Court File No. 3AN-88-278 Civil

CASE SUMMARY

PROCEDURAL POSTURE: Appellants sought relief from an order by the Superior Court of the State of Alaska, Third Judicial District, Anchorage, that held the appellant was not a holder in due course under *Alaska Stat. § 45.03.302(a)* because the state treasury warrant was not a negotiable instrument.

OVERVIEW: Appellee government agency was directed to hold its rent in abeyance until a court-appointed receiver was named after a dispute arose among the partners of appellee business. The state treasury placed a stop-payment order on the state treasury warrant that was issued to pay the lease. Appellant paid appellee business on the warrant but did not debit the appellee government agency's account because of the stop-payment order. Appellant moved for summary judgment and claimed it was a holder in due course. The lower court denied the appellant's motion and held that the state treasury warrant was not a negotiable instrument. The supreme court reversed the lower court's holding. The court looked to *Alaska Stat. § 45.03.104(a)* and determined that the warrant met the statutory definition of a negotiable instrument. Therefore, the appellant's claim that it was a holder in due course under *Alaska Stat. § 45.03.302(a)* was valid.

OUTCOME: The supreme court reversed the lower court's decision and held that the state treasury warrant

met the statutory definition of a negotiable instrument, therefore entitling the appellant to claim itself as a holder in due course of the negotiable instrument.

CORE TERMS: holder, negotiable instrument, negotiability, stop-payment, state treasury, summary judgment, notice, non-negotiable, negotiable, statutory definition, definite time, cross-motion, warrant issued, transferee, unconditional promise, improvement district, general principles, payable to order, third person, order to pay, municipal, customer, sanitary, drawer, reasonable opportunity, simple contract, deference, evidenced, clearing, deposit

LexisNexis(TM) HEADNOTES - Core Concepts

Commercial Law (UCC) > Negotiable Instruments (Article 3) > Rights of a Holder

[HN1] *Alaska Stat. § 45.03.305* provides that the holder in due course of an instrument takes the instrument free of all but a very limited class of defenses that the original payor might have against the original payee

Commercial Law (UCC) > Negotiable Instruments (Article 3) > Rights of a Holder

[HN2] *Alaska Stat. § 45.03.302(a)* defines a holder in due course as one who takes a negotiable instrument for value, in good faith, and without notice that the instrument is overdue or has been dishonored or of any defense against or claim to it on the part of any person

Commercial Law (UCC) > Negotiable Instruments (Article 3) > Rights of a Holder

[HN3] If a holder of an instrument is not a holder in due course, the holder takes the instrument subject to all

valid claims to the instrument, as well as subject to several classes of defenses. *Alaska Stat. § 45.03.306.*

Civil Procedure > Appeals > Standards of Review > De Novo Review

Commercial Law (UCC) > Negotiable Instruments (Article 3)

[HN4] Whether a warrant is a negotiable instrument is a question of law, which the supreme court examines de novo.

Commercial Law (UCC) > Negotiable Instruments (Article 3)

[HN5] See *Alaska Stat. § 45.03.104(a)*.

Governments > Legislation > Interpretation

[HN6] See *Alaska Stat. § 45.01.102(a)*.

Commercial Law (UCC) > Negotiable Instruments (Article 3) > Discharge & Payment

[HN7] A promise or order otherwise unconditional is not made conditional by the fact that the instrument is limited to payment out of a particular fund if the instrument is issued by a government or governmental agency or unit. *Alaska Stat. § 45.03.105(a)(7)*.

Commercial Law (UCC) > Negotiable Instruments (Article 3) > Discharge & Payment

[HN8] See *Alaska Stat. § 45.03.109(a)(1)*.

Commercial Law (UCC) > Negotiable Instruments (Article 3) > Discharge & Payment

[HN9] An instrument is payable to order if by its terms it is payable to the order or assigns of a person specified in the instrument with reasonable certainty. *Alaska Stat. § 45.03.110(a)*.

Governments > Legislation > Interpretation

[HN10] While attorney general opinions are entitled to some deference in matters of statutory construction, they are not always correct.

COUNSEL:

Appearances: David Floerchinger and Deirdre D. Ford, Staley, DeLisio, Cook & Sherry, Inc., Anchorage, for Appellants.

Sally J. Kucko and Rick L. Owen, Groh, Eggers & Price, Anchorage, for Appellees Univentures 1231.

Jeffrey W. Bush, Assistant Attorney General, and Charles E. Cole, Attorney General, Juneau, for Appellee State of Alaska, Department of Administration.

JUDGES:

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton and Moore, Justices.

OPINIONBY:

MOORE

OPINION:

[*1377] OPINION

MOORE, Justice.

National Bank of Alaska (NBA) brought an action against the State of Alaska, Univentures 123, (Univentures), Charles D. LeViege, and Lee D. Garcia to recover the amount which NBA paid on a warrant issued by the state. The superior court held that the warrant is not a negotiable instrument under the Uniform Commercial Code as enacted in Alaska, and that NBA therefore could not recover as a holder in due course under the code. NBA appeals. The sole issue on appeal is whether the superior court was correct in finding that the state treasury [**2] warrant is a non-negotiable instrument under Article III of the Uniform Commercial Code. We reverse.

I.

The State of Alaska is a tenant in a large office building which is owned by Univentures. On November 24, 1987, the state made a lease payment of \$ 28,143.47 to Univentures with state treasury warrant No. 21045102. Charles LeViege, the managing partner of Univentures, assigned the warrant on behalf of Univentures to Lee Garcia.

As a result of a dispute which arose among the partners of Univentures, the state was notified on November 25, 1987 that it should no longer pay Charles LeViege the monthly rent due the partnership. The state was directed to hold the rent in abeyance pending the naming of a court-appointed receiver. On November 27, 1987, the state treasury placed a stop-payment order on warrant No. 21045102.

Garcia presented the warrant to NBA, the state's clearing bank, on November 30, 1987. NBA paid Garcia \$ 28,143.47 on the warrant but did not debit the state's account [*1378] because of the stop-payment order. On January 14, 1988, NBA filed an action against the State of Alaska, Charles LeViege, and Lee Garcia, to recover the sum of \$ 28,143.47 which NBA had paid [**3] to Lee Garcia in exchange for the warrant. The state deposited an equivalent sum with the court and moved to join Univentures as a party. Samuel and Catherine LeViege answered on behalf of Univentures.

NBA moved for summary judgment claiming that it is a holder in due course under *AS 45.03.302(a). NBA

argued that the warrant is a negotiable instrument and that it paid the warrant in good faith, without knowledge of facts which would indicate the instrument may not be payable as its terms provide. As such, NBA maintained that it took the warrant free from the defenses presented by Univentures and the state. The state and Univentures opposed NBA's motion, arguing that NBA is not a holder in due course because the warrant is not a negotiable instrument, and because NBA had notice of the stop-payment order when it paid Garcia on the warrant. Univentures filed a cross-motion for summary judgment.

The superior court granted Univentures' cross-motion for summary judgment and denied NBA's motion for summary judgment. Judge Ripley, in ruling for Univentures, specifically found that the warrant is not a negotiable instrument and that NBA therefore is not a holder in due course. Pursuant to [**4] the parties' stipulation, \$ 16,000.00 of the money deposited with the court was immediately disbursed to Univentures and NBA in equal amounts. The court ordered that the remaining \$ 12,143.47 be held by the court pending appeal of the court's determination that the warrant is not negotiable. This appeal followed.

II.

[HN1] Article III of the Uniform Commercial Code provides that the holder in due course of an instrument takes the instrument free of all but a very limited class of defenses that the original payor might have against the original payee. AS 45.03.305. n1 [HN2] The code defines a holder in due course as one who takes a negotiable instrument for value, in good faith, and "without notice that [the instrument] is overdue or has been dishonored or of any defense against or claim to it on the part of any person." AS 45.03.302(a) [HN3] If a holder of an instrument is not a holder in due course, the holder takes the instrument subject to all valid claims to the instrument, as well as subject to several classes of defenses. AS 45.03.306. n2

n1 AS 45.03.305 provides:

To the extent that a holder is a holder in due course the holder takes the instrument free from

- (1) all claims to it on the part of any person; and
- (2) all defenses of any party to the instrument with whom the holder has not dealt except
 - (A) infancy, to the extent that it is a defense to a simple contract;
 - (B) such other incapacity, or duress, or illegality of the transaction as renders the obligation of the party a nullity;

- (C) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms;
- (D) discharge in solvency proceedings; and
- (E) any other discharge of which the holder has notice when the holder takes the instrument. [**5]

n2 AS 45.03.306 provides:

Unless the person has the rights of a holder in due course, a person takes the instrument subject to

- (1) all valid claims to it on the part of any person;
- (2) all defenses of a party which would be available in an action on a simple contract;
- (3) the defenses of want or failure of consideration, nonperformance of a condition precedent, non-delivery, or delivery for a special purpose (AS 45.03.408); and
- (4) the defense that the person or a person through whom the person holds the instrument acquired it by theft, or that payment or satisfaction to the holder would be inconsistent with the terms of a restrictive endorsement; the claim of a third person to the instrument is not otherwise available as a defense to a party liable on the instrument unless the third person personally defends the action for the party.

The superior court held that NBA was not a holder in due course because the state treasury warrant involved is not a negotiable instrument to which the Uniform [**1379] Commercial Code applies. n3 As a result, the superior court concluded that NBA took the warrant [**6] subject to the state's defense that it had issued a valid stop-payment order pursuant to AS 45.04.403(a). n4 NBA argues that the warrant is a negotiable instrument, and that NBA is therefore a holder in due course [HN4] Whether the warrant is a negotiable instrument is a question of law, which we examine de novo. See *Hicklin v. Orbeck*, 565 P.2d 159, 163 n.6 (Alaska 1977) rev'd on other grounds, 437 U.S. 518, 57 L. Ed. 2d 397, 98 S. Ct. 2482 (1978).

n3 Univentures argued in its cross-motion for summary judgment that even if the warrant is a negotiable instrument, NBA is not a holder in due course because NBA had notice of the stop-payment order when it paid Garcia on the warrant. Univentures claimed that NBA was given notice of the stop-payment order on

November 27, 1987, in its role as the clearing bank for state treasury warrants. The superior court apparently found that NBA did not have knowledge of the stop-payment order when it accepted the warrant, for the final judgment provides that NBA is entitled to the funds on deposit with the court if this court determines warrant No. 21045102 is a negotiable instrument. We do not consider whether NBA had knowledge of the stop-payment order, for that issue is not a stated point on appeal, and was not briefed by either party. [**7]

n4 AS 45.04.403(a) provides:

A customer may, by order to the bank, stop payment of an item payable for the customer's account, but the order must be received at a time and in a manner which afford the bank a reasonable opportunity to act on it before an action by the bank with respect to the item described in AS 45.04.303.

[HN5] *Alaska Statute 45.03.104(a)* provides that for a writing to be a negotiable instrument it must:

- (1) be signed by the maker or drawer;
- (2) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation, or power given by the maker or drawer except as authorized by this chapter;
- (3) be payable on demand or at a definite time, and
- (4) be payable to order or to bearer.

[HN6] *Alaska Statute 45.01.102(a)* provides that the Code is to be "liberally construed and applied to promote the underlying purposes and policies." The underlying purposes and policies of the Uniform Commercial Code are:

- (1) to simplify, clarify, and modernize the law governing commercial transactions;
- (2) to permit the continued expansion of commercial practices through [**8] custom, usage, and agreement of the parties;
- (3) to make uniform the law among the various jurisdictions.

AS 45.01.102(b).

Warrant No. 21045102 satisfies all four elements of the definition of a negotiable instrument. First, the warrant is signed by the maker, Governor Steve Cowper. Second, the warrant contains an unconditional promise or order to pay a sum certain of \$ 28,143.47. [HN7] A

promise or order otherwise unconditional is not made conditional by the fact that the instrument is limited to payment out of a particular fund if the instrument is issued by a government or governmental agency or unit. AS 45.03.105(a)(7). Third, the warrant is payable at a definite time. Although the warrant states that it "will be deemed paid unless redeemed within two years after the date of issue," [HN8] AS 45.03.109 provides that an instrument is payable at a definite time if by its terms it is payable on or before a stated date. AS 45.03.109(a)(1). Finally, the warrant clearly indicates that it is payable to the order of Univentures. [HN9] An "instrument is payable to order if by its terms it is payable to the order or assigns of a person specified in the instrument with reasonable certainty." AS 45.03.110(a). [**9] Because the warrant meets the statutory definition in AS 45.03.104, we hold that the warrant is a negotiable instrument. n5

n5 AS 45.03.104(b) classifies certain writings which satisfy the definition of "negotiable instrument" as drafts, checks, certificates of deposit, and notes. We reject the state's argument that an instrument must fit within one of these categories before it can qualify as a negotiable instrument. Negotiability is determined by the four-pronged test of AS 45.03.104, not by the name affixed to a particular writing. If it were necessary to categorize the warrant at issue in this case, it would be a draft. An instrument is a draft if it is an order. AS 45.03.104(b)(1).

[*1380] The purposes for which the Uniform Commercial Code was enacted support the conclusion that warrants which satisfy the statutory definition of negotiability must be deemed negotiable. Univentures claims that state warrants should be deemed non-negotiable because the state must retain its rights to assert the defenses of a [**10] maker in order to maintain and protect its fiscal policies, practices, and procedures. This argument is directly contrary to the Code's policy of promoting commercial transactions by allowing a party to ascertain the negotiability of an instrument from its face. 5 R. Anderson, *Uniform Commercial Code*, § 3-104:4 (1984) ("The whole idea of the facilitation of easy transfer of notes and instruments requires that a transferee be able to trust what the instrument says, and be able to determine the validity of the note and its negotiability from the language in the note itself."). To carve out an exception to the statutory definition of negotiability would jeopardize Article III's purposes of clarifying and modernizing commercial transactions by allowing

reliance on written instruments. The transferee of an instrument must be able to rely on the negotiability of the instrument as evidenced by the instrument's terms, so that the transaction is not stalled while the transferee verifies its rights on the instrument. n6

n6 If the state truly believes that the non-negotiability of treasury warrants is essential to maintain and protect its fiscal policies, the state could make its warrants non-negotiable simply by printing "non-negotiable" on the face of the warrants.

[**11]

No Alaska case law addresses the issue of whether a state treasury warrant constitutes a negotiable instrument. Prior to the enactment of the Uniform Commercial Code, warrants issued by states, local governments, and municipalities were almost universally deemed non-negotiable. See, e.g., *Negotiability of County, Municipal, School, State, or Town Warrants*, 36 A.L.R. 949, 949 (1925); *Hamilton Nat'l Bank v. Pool*, 144 S.W.2d 670, 671 (Tex. App. 1940); *State v. Liberty Nat'l Bank & Trust Co.*, 414 P.2d 281, 283 (Okla. 1966). The drafters of the Uniform Commercial Code apparently intended to change this body of law, however, as evidenced by the Official Code Comment to § 3-105, 5 R. Anderson, *Uniform Commercial Code*, § 3-105-1, at 228 (1984) ("[Section 3-105(1)(g)] will permit some municipal warrants to be negotiable if they are in proper form."). n7

n7 All of the cases cited by Univentures and the state are distinguishable from the present case for the reason that all were based upon the "law merchant" which has now been replaced in Alaska by the Uniform Commercial Code. See *Prince v. LeVan*, 486 P.2d 959, 962 (Alaska 1971) ("By legislative declaration the code is the law, and if general principles appear inconsistent, they must be considered displaced under [this section]. Moreover, even where inconsistency does not exist, the code must be regarded as supreme; general principles even when consistent with the code are merely supplementary.").

[**12]

Those courts which have considered the negotiability of government warrants have generally found those warrants to be negotiable so long as they satisfy the codes requirements. The Louisiana Court of Appeals held that a warrant issued by a levee district to

pay a construction company was a negotiable instrument. *St. James Bank & Trust Co. v. Board of Comm'rs*, 354 So. 2d 233 (La. App. 1978). The construction company in that case had negotiated the warrant to a bank. After the levee's Board of Commissioners stopped payment on the warrant, the warrant was returned to the bank unpaid. The court found that the warrant was a negotiable instrument because it satisfied the requirements of § 10:3-104 of the Louisiana statutes. That section is identical to AS 45.03.104. *Id.* at 234.

Similarly, the Supreme Court of Nebraska held that a warrant issued by a county sanitary and improvement district was a negotiable instrument. *Sanitary & Improvement Dist. v. Continental Western*, 215 Neb. 843, 343 N.W.2d 314 (Neb. 1983). In that case, the sanitary and improvement district which had issued capital and improvement warrants sought [**13] a judicial declaration of the invalidity of the warrants. After examining the warrants in light of § 3-104 of the Nebraska Uniform Commercial [**1381] Code, which is almost identical to AS 45.03.104, the Supreme Court of Nebraska held that they were negotiable instruments.

We are mindful of a 1987 attorney general opinion which concluded that state treasury warrants are not negotiable. [HN10] While attorney general opinions are entitled to some deference in matters of statutory construction, they are not always correct. n8 In this instance we are unconvinced by the attorney general's opinion. It fails to consult the language and policies of the Uniform Commercial Code, and it relies mainly on cases examining the negotiability of warrants arising prior to the enactment of the Uniform Commercial Code.

n8 *Carney v. State Board of Fisheries*, 785 P.2d 544, 548 (Alaska 1990) ("Opinions of the attorney general, while not controlling on matters of statutory interpretation, are entitled to some deference."); *Girves v. Kenai Peninsula Borough*, 536 P.2d 1221, 1225 (Alaska 1975) ("We hold that the 1962 Attorney General's opinion is in error insofar as it concludes that the territorial government of Alaska had no power to accept the right-of-way granted in 43 U.S.C. § 932 (1964).").

[**14]

The decision of the superior court is REVERSED. The \$ 12,143.47 on deposit with the court is awarded to NBA. n9

824 P.2d 1377, *, 1992 Alas. LEXIS 10. **;
17 U.C.C. Rep. Serv. 2d (Callaghan) 482

n9 The parties to this appeal stipulated that if we reverse the superior court's determination that the warrant is a negotiable instrument, Univentures waives all other claims to the interpled money against NBA and the state,

including the claim that NBA was not a holder in due course of the instrument.

LEGISLATIVE REFERENCE LIBRARY

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STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 400
Juneau, Alaska 99801-2105

Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

HB 90

House Labor & Commerce 2/2/05

HB

102

SENATE COMMITTEE REPORT

DATE: 2/28/05

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

Labor and Commerce Committee considered HOUSE BILL NO. 102 am

HB 102 FOREIGN MEDICAL SCHOOL GRADUATES

"An Act relating to the licensure of foreign medical graduates and to applications for a license to practice medicine; and providing for an effective date."

and recommends:

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

Senate Bill:
 Same Title
 New Title

House Bill:
 Same Title
 Technical Title 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>Ralph Seeman</i>	✓			
CHAIR: <i>[Signature]</i>	✓			

Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (907) 562-0304 • (907) 561-2063 (fax)

March 7, 2005

Honorable Con Bunde
Senate Labor and Commerce Committee
State Capitol, Room 506
Juneau AK 99801

Re: HB 102am – Licensure of Foreign Medical Students

Dear Senator Bunde:

The Alaska State Medical Association (ASMA), represents physicians throughout Alaska, and is primarily concerned with the health care for Alaska's patients.

ASMA urges you to support HB 102 and provide another tool to help us attract well trained doctors in sufficient numbers in order to provide the timely and quality care all Alaskans deserve.

Alaska has a chronic shortage of physician as evidenced by:

1. According to the American Medical Association, in 2002 only 6 states had fewer physicians per capita than Alaska (AM News 1/19/04).
2. Molly Southworth, MD, in her July 2004 Masters of Public Health thesis, stated that Alaska has from 17% to 30% fewer physicians than the U.S. average; ("Alaska's Physician Workforce: An Overview, a Summary of Training Backgrounds, and the Impact of the WWAMI Program," July 2004, Molly B. Southworth, MD pp. 26-33.) ; and
3. In the Fall of 2002, Providence Health Systems did a physician workforce analysis for Anchorage, which showed specialty physician shortages of 43 general internists, 12 radiologists, 14 pathologists, 5 neurologists, 20 general surgeons, 29 ENTs, and 50 psychiatrists, for example. (2002 Anchorage Physician Workforce, Providence Health System Alaska, pp. 17-18.)

Also, it has been reported that the number of general internists in Anchorage has dropped from 33 in 2002 to 17 today. Primarily, this is due to the aging of our physician workforce.

Currently, the State Medical Board has no discretion in determining credentials for licensure of foreign medical school graduates in Alaska, other than completion of a 3 year U. S. graduate medical education program (residency). However, there are graduates of foreign medical schools that are well trained, licensed to practice medicine in other states, and are certified in an area of specialty practice by the American Board of Specialty Boards. But, those with less than a three year residency can not currently be licensed in Alaska.

HB 102 provides the State Medical Board the discretion, to adopt by regulation, other proof of competency that would warrant licensure in Alaska. Those requirements could include current licensure and active practice in another state for at least 3 years; or current board certification in a specialty practice area.

ASMA supports giving the State Medical Board more discretion in licensing qualified foreign medical school graduates and urges your support as well.

Regards,

A handwritten signature in black ink, appearing to be 'J. Jordan', written in a cursive style.

By: James Jordan, Executive Director
For: The Alaska State Medical Association

cc: Representative Bill Stoltze
Senator Ralph Seekins
Senator Ben Stevens
Senator Bettye Davis
Senator Johnny Ellis

**The 2 changes in the amended version of HB
102 are:**

1. Sec. 2 AS 08.64.200(a)(4). Added the word "country" in the list of places where a physician cannot have a suspended license in order to apply for a medical license in Alaska.
2. Sec. 3 AS 08.64.225(2)B). Gives the the board the power to set other requirements

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 102
 (H) Publish Date: 2/9/05

Revision Date/Time (Note if correction): _____ Dept Affected: Commerce
 Title: Foreign Medical School Graduates RDU: Occupational Licensing (117)
 Component: Occupational Licensing
 Sponsor: Stoltze
 Requester: House Labor and Commerce Component No: 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1156)	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 102 grants the State Medical Board authority to use discretion in licensing foreign medical graduates. New funds are not required to implement the provisions of this bill.

Prepared by: Jennifer Strickler, Administrative Manager Phone: (907) 465-2144
 Division: Occupational Licensing Date/Time: 2/2/05 5:40 PM
 Approved by: Edgar Blatchford Date: 2/2/2005
 Agency: Commerce, Community & Economic Development

Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (907) 562-0304 • (907) 561-2063 (fax)

January 25, 2005

Honorable Bill Stoltze
State Capitol Room 501
Juneau Alaska, 99801

Transmitted by Fax:
907-465-4928

Re: HB 102 – Licensure of Foreign Medical Graduates

Dear Representative Stoltze:

The Alaska State Medical Association (ASMA) represents physicians throughout Alaska, and is primarily concerned with the health care for Alaska's patients.

Alaska has a chronic shortage of physicians with a continuing need to recruit more. Alaska has one of the lowest numbers of physicians per capita in the country, coupled with an aged physician workforce. With no medical school, only 10 WWAMI medical students graduating each year, and only one residency program (a family practice residency), Alaska has been and will probably always be a net importer of physicians.

Currently, the State Medical Board has no discretion in determining credentials for licensure of foreign medical graduates in Alaska, other than completion of a 2 year, U. S. graduate medical education program. However, there are physicians who are graduates of foreign medical schools that are well trained, licensed to practice medicine in other states, and are certified in an area specialty practice by the American Board of Specialty Boards. Such graduates have exhibited appropriate training and skills to effectively and safely practice medicine in the U. S. However, those with less than a two-year U.S. residency can not currently be licensed in Alaska.

HB 102 provides the State Medical Board with the discretion, to adopt by regulation, other proof of competency that would warrant a license to practice in Alaska. Those requirements may include current licensure and active practice in another state for at least 3 years or current board certification in a specialty practice area.

ASMA supports HB 102 in order to give the State Medical Board more discretion in licensing qualified foreign medical school graduates. This is another tool that is needed to help attract well trained physicians in sufficient numbers to provide timely and appropriate care.

Sincerely,



By: Paul Worrell, MD President
For: The Alaska State Medical Association

ALASKA STATE LEGISLATURE

Vice Chair:
House Finance Committee

Chair:
House Finance Subcommittees for,
Department of Public Safety
Department of Law



Session:
Alaska State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-4958
Fax: (907) 465-4928

Interim:
PO Box 464
Chugiak, AK 99567

REPRESENTATIVE BILL STOLTZE

Representative_Bill_Stoltze@legis.state.ak.us

House Bill 102 am

Foreign Medical School Graduates

"An act relating to the licensure of foreign medical graduates; and providing for an effective date."

There is a chronic shortage of physicians in Alaska. This shortage is acute, even in Anchorage, and in the specialty fields of general internal medicine, psychiatry, and general surgery, to name a few.

An option to help ease this shortage is to provide the State Medical Board discretion in defining the training and qualifications required of licensure for foreign medical school graduates. Currently, the State Medical Board has no discretion. An increase in qualified, well trained physicians would help Alaskans receive the care they need when they need it.

HB 102 provides the State Medical Board with the authority to adopt regulations that provide for alternatives to the current inflexible licensing requirements.

The provisions of HB 102:

- Provide the mechanism for the State Medical Board to adopt competency requirements for foreign medical school graduates.
- In lieu of the two year U.S. residency training requirement, the State Medical Board is allowed adopt alternative requirements that could include licensure in another state with a history of active practice for at least 3 years or being board certified in a certain specialty area of practice.

I ask for your consideration and support of HB 102 to help alleviate the shortage of physicians in Alaska.

DISTRICT 16

BIRCHWOOD
KNIK RIVER

VIEW LOOP
TERS CREEK

Sponsor Statement

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska

ALASKA STATE LEGISLATURE

Vice Chair:
House Finance Committee

Chair:
House Finance Subcommittees for,
Department of Public Safety
Department of Law



Session:
Alaska State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-4958
Fax: (907) 465-4928

Interim:
PO Box 464
Chugach, AK 99567

REPRESENTATIVE BILL STOLTZE

Representative_Bill_Stoltze@legis.state.ak.us

House Bill 102 am

Foreign Medical School Graduates

"An act relating to the licensure of foreign medical graduates; and providing for an effective date."

There is a chronic shortage of physicians in Alaska. This shortage is acute, even in Anchorage, and in the specialty fields of general internal medicine, psychiatry, and general surgery, to name a few.

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HB 102 provides the State Medical Board with the authority to adopt regulations that provide for alternatives to the current inflexible licensing requirements.

The provisions of HB 102:

- Provide the mechanism for the State Medical Board to adopt competency requirements for foreign medical school graduates.
- In lieu of the two year U.S. residency training requirement, the State Medical Board is allowed adopt alternative requirements that could include licensure in another state with a history of active practice for at least 3 years or being board certified in a certain specialty area of practice.

I ask for your consideration and support of HB 102 to help alleviate the shortage of physicians in Alaska.

DISTRICT 16

BIRCHWOOD
KNIK RIVER

VIEW LOOP
ERS CREEK

Sponsor Statement

HB

120

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

DATE: 4/28/0

FURTHER
DATE TURNED
IN TO OFFICE

Labor and Commerce Committee considered HOUSE BILL NO. 120

HB 120 HEALTH CARE EMPLOYEE PROTECTION

"An Act relating to safety devices and sharp instruments for the prevention of the spread of bloodborne pathogens in health care employees; 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>Bettye Davis</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Ben Fenn</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CHAIR: <i>Ralph Deekin</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

FISCAL NOTE

**STATE OF ALASKA
2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1
 Bill Version: HB 120
 (H) Publish Date: 2/25/05
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title: RELATING TO SAFETY DEVICES AND SHARP INSTRUMENTS AND BLOODBORNE PATHOGENS RDU Public Health
 Component: Public Health Admin Svcs

Sponsor: WILSON
 Requester: HOUSE (HES)

Component No. 292

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (0)						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation does not affect procedures and practices already in place in public health nursing centers. It has no fiscal impact on the Division of Public Health.

Prepared by: Richard Mandsager, M.D.
 Division: Public Health
 Approved by: Joel S. Gilbertson, Commissioner
 Agency: Department of Health and Social Services

Phone 465-3090
 Date/Time 02/18/2005
 Date 02/18/2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 120
 (H) Publish Date: 2/25/05

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: Health Care Employee Protection RDU: Labor Standards and Safety
 Component: Occupational Safety and Health
 Sponsor: Representative Wilson
 Requester: House HES Component Number: 970

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: None

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is no anticipated fiscal impact as a result of this legislation

Prepared by: Grey Mitchell, Director Phone: 465-4855
 Division: Labor Standards and Safety Date/Time: 2/4/05 9:43 AM
 Approved by: Greg O'Claray, Commissioner Date: 2/4/2005
 Agency: Department of Labor and Workforce Development

Other Speaking Points/Issues:

AS 18.60.880 and AS 16.60.890 were enacted in 2000. The federal regulations on this same subject (29 CFR 1910.1030) were printed in the Federal Register on January 18, 2001 and, in accordance with 8 AAC 61.1010(b), the State of Alaska adopted these federal regulations by reference in June of 2001.

The federal regulations on bloodborne pathogens contain requirements for annual protective device evaluation and require the employer to seek input from front-line health care employees. The Alaska standard for product evaluation is more specific in terms of the degree of front-line health care participation. The Alaska Nurse's Association did not support completely repealing the current statutes and wanted to maintain some of the state-specific requirements that they had worked hard to achieve. Consequently, this proposal only repeals the two exemptions causing a conflict with federal standards.

AS 18.60.880(h) and AS 18.60.890(3)(B), as they currently stand, are in direct conflict with AS 18.60.030(6) and Section 18 of the Occupational Safety and Health Act of 1970 (29 USC § 667), which mandate the Alaska Occupational Safety and Health (AKOSH) program to be "at least as effective as" the U.S. Department of Labor, Occupational Safety and Health Administration program. The state of Alaska currently receives grant funding from federal OSHA to fund the majority of the AKOSH program. Failure to abide by federal minimum standards jeopardizes federal grant funds for the AKOSH program.

The impact of this legislative proposal is not expected to be significant for two reasons. Many of the businesses currently exempt under Alaska law are already complying with the federal requirements. The participation required for front line health care workers in evaluating protective devices should not pose a significant impact.

In addition to the Department of Labor and Workforce Development's support, there is other support for this legislative repeal. Camille Soleil and John Bitney of the Alaska Nurse's Association and Royann Royer of the Alaska Dental Hygienists Association have pledged support for this bill. Jim Towle of the Alaska Dental Society has been provided with a copy of the proposed legislation and has not voiced opposition. Richard Terrill, Regional Administrator for federal OSHA, is willing to testify in support of the bill due to the conflict created by the current statute and the need to safeguard all health care workers from injuries related to the use of sharps and needles.



Alaska Dental Society, Inc.

9170 Jewel Lake Road, Suite 203
Anchorage, Alaska 99502-5390
(907) 563-3003 • FAX: 563-3009
akdental@alaska.net

The Honorable Norman Rokeberg
House of Representatives
State Capitol – Rm. 241
Juneau, AK 99801+1182

30 March 2005

Dear Rep. Rokeberg:

Thank you for your concern regarding the impact of HB-120 on the dentists and dental offices of Alaska.

Compliance with OSHA standards regarding the safe handling of "sharps" has been a concern of organized dentistry for many years. As you know, in the daily practice of dentistry, it is the dentists who are most at risk from injury by sharp instruments that can spread blood borne pathogens. Whereas physicians often delegate procedures that entail the use of hypodermics and other "sharp" instruments to nurses, physicians' assistants, phlebotomists and others, it is the dentist who must use needles, drills and other surgical instruments in the treatment of patients.

The federal OSHA standards recognize this reality and organized dentistry has worked diligently to ensure compliance with federal OSHA standards by dentists.

After reviewing HB-120, the officers of the Alaska Dental Society have instructed me to inform you that the society will not oppose this bill. This is based upon the belief that State of Alaska OSHA officials will recognize that it is the dentist who is the front-line provider most at risk in the dental office. In most dental offices in Alaska, the dentist who owns and manages the practice is the front-line provider most at risk and therefore has the most compelling interest in maintaining full compliance with reasonable standards that respect the ability of the doctor to provide treatment in an environment that is safe for the patient, the doctor and auxiliary staff.

Respectfully yours,

A handwritten signature in black ink, appearing to read "James R. Towle".

James R. Towle
Executive Director

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

March 29, 2005

The Honorable Peggy Wilson
Alaska State Legislature
Capitol Building, Room 104
Juneau, AK 99801

Dear Representative Wilson:

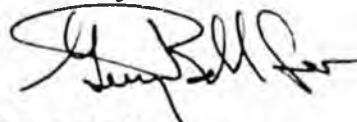
During the March 22, 2005, House Labor and Commerce Committee hearing regarding HB 120, Representative Rokeberg asked whether dental instruments used for cleaning teeth would be required to have protective devices under this proposed legislation. I discussed this question with the Labor Standards and Safety Division, Occupational Safety and Health Industrial Hygienists who specialize in health care.

It is important to note that there are several common sense reasons why engineered protective devices are not required as listed in AS 18.60.880(b)(1)(A)-(E) (copy enclosed). There are some dental instruments used for cutting that would require evaluation on an annual basis to determine if there are appropriate protective devices available for use. These instruments are currently equipped with a plastic cover to minimize the risk of exposure and there is no other known protective device on the market for these types of instruments.

Most teeth cleaning instruments are scrapers and do not have sharp points or cutting surfaces that would present a recognized sharps injury risk. Consequently, these scraping instruments would not need to be evaluated for use of engineered sharps injury protective devices. The types of devices that must be evaluated are listed in AS 18.60.880(a)(1)-(8) (copy enclosed).

I hope this resolves the question posed by Representative Rokeberg. If you need any additional assistance with this bill, please let me know.

Sincerely,



Greg O'Claray
Commissioner

Enclosure

cc: Grey Mitchell, LSS Director

Sec. 18.60.880. Needle stick and sharps injury protections for health care workers.

(a) An employer shall conduct product evaluations of needleless systems and sharps with engineered sharps injury protections. The product evaluations shall include the categories of devices that are used in the employer's facilities. For each category of device, the product evaluations shall be performed by front-line health care workers representing all wards and medical specialties where the devices are used. The evaluation committee described in (g) of this section shall determine the amount of time necessary for the front-line health care workers to perform product evaluations under this subsection. **The categories of devices to be evaluated under this subsection include**

- (1) IV catheters;
- (2) IV access devices and IV connectors;
- (3) vacuum-tube blood collection devices;
- (4) blood-drawing devices including phlebotomy needle and tube holders, butterfly-type devices, and syringes and other similar devices;
- (5) syringes used for purposes other than blood drawing;
- (6) suture needles;
- (7) scalpel devices; and
- (8) any other category of device used at the employer's facilities where there is a sharps injury risk.

(b) The department shall, by regulation, adopt a standard concerning the use of needleless systems and sharps with engineered sharps injury protections for devices listed in (a) of this section. The regulations must provide that

(1) needleless systems and sharps with engineered sharps injury protections must be included as engineering and work practice controls; however, the needleless systems and sharps with engineered sharps injury protections are not required if

- (A) the devices are not available in the marketplace;
- (B) the evaluation committee described in (g) of this section determines by means of objective product evaluation criteria that use of the devices may jeopardize patient safety if used for
 - (i) a class or type of procedure; or
 - (ii) a class or type of procedure when performed on a certain type of patient;
- (C) a certified or licensed health care worker directly involved in the patient's care determines, in the reasonable exercise of clinical judgment, that use of the devices will jeopardize the patient's safety or the success of the particular medical procedure involving the patient; a health care worker who makes this determination shall file a report with the employer, in writing, including the date, time, patient, and procedure involved, and a statement of the reasons why the employee failed to use an approved needleless system or sharp with engineered sharps injury protections;
- (D) the employer can demonstrate by means of objective product evaluation criteria that use of the devices is not more effective in preventing exposure incidents than the alternative used by the employer; or
- (E) the employer can demonstrate, with respect to an engineering control that has not been available in the marketplace for at least 12 months, that reasonably specific and reliable information is not available regarding the safety performance of the engineering control for the employer's procedures, and that the employer is actively determining by means of objective product evaluation criteria whether the use of the engineering control will reduce the risk of exposure incidents occurring in the employer's workplace;

Sectional Analysis
House Bill 120 Health Care Employee Protection

Sectional Analysis

Section 1 repeals AS 18.60.880(h), which exempts operations where the primary use of needles and other sharps is for intraoral procedures from requirements to use safety devices. Removing this exemption will help ensure that the risk of spreading bloodborne pathogens in dentist and oral surgery offices is minimized.

Section 2 repeals AS 18.60.890(3)(B), which exempts employers with fewer than 25 full-time employees from the requirements to use safety devices to help ensure that the risk of spreading bloodborne pathogens in health care occupations is minimized in Alaska.

Sections 1 and 2:

These exemptions conflict with federal regulations (29 CFR 1910.1030) governing occupational protections associated with the use of needles and other sharp devices, as the federal regulations do not contain similar exemptions.

AS 18.60.880(h) and AS 18.60.890(3)(B), as they currently stand, are in direct conflict with AS 18.60.030(6) and Section 18 of the Occupational Safety and Health Act of 1970 (29 USC § 667), which mandate the Alaska Occupational Safety and Health (AKOSH) program to be "at least as effective as" the U.S. Department of Labor, Occupational Safety and Health Administration program. Not only does this conflict create confusion for employers who are not sure which standard to follow, it also jeopardizes federal grant funds for the AKOSH program.

Section 3 establishes an immediate effective date.

ALASKA STATE LEGISLATURE

Interim:
P.O. Box 109
Wrangell, AK 99829
Phone: (907) 874-3088
Fax: (907) 874-3055

Session:
State Capitol, Room 108
Juneau, AK 99801-1182
Phone: (907) 485-3824
Fax: (907) 485-3175

**REPRESENTATIVE PEGGY WILSON
HOUSE DISTRICT 2**

Sponsor Statement HB 120

" An Act relating to safety devices for needles and sharp instruments to prevent the spread of bloodborne pathogens in Alaska's health care workers and establishing an effective date. "

This bill repeals two exemptions from Alaska's bloodborne pathogen protection standards to bring Alaska standards into compliance with federal standards. The bill removes exemptions for intraoral procedures and for health care organizations with fewer than 25 full-time employees. Removing these exemptions is not expected to have a significant impact, as most of these organizations have already made the necessary efforts to minimize exposure to bloodborne pathogens by complying with state and federal standards. The risks associated with bloodborne pathogen exposure demand clear and consistent standards throughout health care organizations in Alaska.

SSHB 18 1/18/05

Sponsor Statement

HB

122

SENATE COMMITTEE REPORT

TE: 4/15/05

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

For and Commerce Committee considered CS FOR HOUSE BILL NO. 122(FIN)

HB 122 NATIONAL GUARD INSURANCE & OTHER RELIEF

Act relating to certain relief concerning motor vehicle leases, telephone services, education, utilities, state lands, and hunting, fishing, and trapping licenses for members of the Alaska National Guard deployed to a combat zone; relating to reimbursement of premiums for Servicemembers' Group Life Insurance paid by members of the Alaska National Guard deployed to a combat zone; and providing for an effective date."

Committee recommends:

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

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>Bettye St. James</i>	X			
<i>Del Allen</i>	X			
<i>Admiral Veckins</i>			✓	
<i>Sen Steens</i>	X			
CHAIR: <i>Del Allen</i>			✓	

SENATE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Introduced:

Referred:

A RESOLUTION

1 **Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State**
2 **Legislature, concerning House Bill No. 122, relating to payment of premiums for**
3 **Servicemembers' Group Life Insurance on behalf of members of the Alaska National**
4 **Guard deployed to a combat zone and to certain other monetary relief for those**
5 **members.**

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

7 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of
8 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding
9 changes to the title of a bill, are suspended in consideration of House Bill No. 122, relating to
10 payment of premiums for Servicemembers' Group Life Insurance on behalf of members of the
11 Alaska National Guard deployed to a combat zone and to certain other monetary relief for
12 those members.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 122 (FIN)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
 Title An act relating to certain relief concerning RDU Administration and Support
motor vehicle leases, telephone services, Component Administrative Services
 Sponsor Representatives Dahlstrom, Berkowitz
 Requester Senate Labor and Commerce Committee Component No. 479

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 (1024)	(7.1)	(7.1)	(7.1)	(7.1)	(7.1)	(7.1)
----------------------------------	--------------	--------------	--------------	--------------	--------------	--------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	7.1	7.1	7.1	7.1	7.1	7.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	7.1	7.1	7.1	7.1	7.1	7.1

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)

Assumptions:

- Approximately 300 members of the Alaska National Guard have been deployed in a combat zone.
- Of the 300 deployed, based upon license statistics, 50% will purchase fishing licenses, 28% will purchase hunting licenses and 10% will purchase sport fishing/small game hunting licenses.

License type	Cost	# Purchased	Amount
Resident Sport Fishing	\$24.00	150	\$3,600.00
Resident Hunting	\$25.00	84	\$2,100.00
Resident Sport Fish/Hunting	\$48.00	30	\$1,440.00
Total		264	\$7,140.00

Prepared by: Sarah A. Gilbertson, Legislative Liaison Phone 465-6137
 Division: Commissioner's Office Date/Time 4/27/06 7:44 AM
 Approved by: Commissioner McKie Campbell Date 4/27/2006
 Agency: Alaska Department of Fish and Game

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB122(FIN)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Military and Veterans' Affairs
Title National Guard Insurance and Other Relief RDU Military and Veterans Affairs
Component National Guard Military Headquarters
Sponsor Military & Veterans Affairs
Requester _____ Component No. 2135

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	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	40.1	32.8	32.8	32.8	32.8	32.8
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	267.3	218.7	218.7	218.7	218.7	218.7
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	307.4	251.5	251.5	251.5	251.5	251.5
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	307.4	251.5	251.5	251.5	251.5	251.5
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	307.4	251.5	251.5	251.5	251.5	251.5

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	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

\$400,000 Life Insurance Coverage - \$26.00 per month per soldier

Traumatic Injury Coverage - \$1.00 per month per soldier

Calendar Year 2006 (pd in FY07) Rates for Servicemembers Life Insurance:

750 Army Guard Soldiers (12 mo deployment) \$243,000.00
300 Air Guard Soldiers (3 mo deployment) 24,300.00
15% Administrative cost 40,095.00
\$307,395.00

Calendar Year 2007 Estimates for Servicemembers Life Insurance (pd in FY08):

600 Army Guard Soldiers (12 mo deployment) \$194,400.00
300 Air Guard Soldiers (3 mo deployment) 24,300.00
15% Administrative cost 32,805.00
\$251,505.00

No Fiscal Impact for Complimentary Fishing and Hunting Licenses, Motor Vehicle Leases, Telephone Services, Education, Utilities or State Loans.

Prepared by: John Cramer
Division: Administrative Services Division
Approved by: Craig E. Campbell, Commissioner
Agency: Department of Military & Veterans' Affairs

Phone (907) 465-4602
Date/Time 4/6/2006 @ 4:30 pm
Date 4/6/2006

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 122(FIN)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title National Guard Insurance RDU Insurance (116)
& Other Relief Component Insurance Operations
 Sponsor Dahlstrom, Berkowitz, et al
 Requester Senate Labor & Commerce Component No. 354

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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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 (FY2005) cost. 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would among other things create and fund the service members' life insurance premium fund to provide benefits to members of the Alaska National Guard deployed to a combat zone. This legislation does not impact the operations of the division.

Prepared by: Linda S. Hall, Director Phone 907.269.7900
 Division Insurance Date/Time 4/7/06 5:15 PM
 Approved by: William C. Noll, Commissioner Date 4/7/2006
 Agency Commerce, Community, and Economic Development

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB122(FIN)-EED-ACPE-4-11-06
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Education
Title An Act relating to certain relief concerning n or RDU ACPE
vehicle leases, telephone services, education, utilities, state loans... Component Program Administration & Operations
Sponsor Rep. Dahlstrom
Requester (S)L&C Component No. 2738

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)

FUND SOURCE	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
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 proposes to, among other things, offer a period of deferment of payments on state loans for Alaska National Guard members deployed to a combat zone. Interest on the state loan shall continue during the period of deployment. ACPE currently provides for this deferment of payments on its state and federal education loans, and, therefore, this bill does not alter our current processes.

Prepared by: Diane Barrans, Executive Director Phone 465-6740
Division: Executive Office Date/Time 4/11/06 10:00 AM
Approved by: Diane Barrans, Executive Director Date 4/11/2006
Agency: Alaska Commission on Postsecondary Education

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 122 (FIN)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
 Title An act relating to certain relief concerning RDU Administration and Support
motor vehicle leases, telephone services, Component Administrative Services
 Sponsor Representatives Dahlstrom, Berkowitz
 Requester Senate Labor and Commerce Committee Component No. 479

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 (1024)	(7.1)	(7.1)	(7.1)	(7.1)	(7.1)	(7.1)
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 CF/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)

Assumptions:

- Approximately 300 members of the Alaska National Guard have been deployed in a combat zone.
- Of the 300 deployed, based upon license statistics, 50% will purchase fishing licenses, 28% will purchase hunting licenses and 10% will purchase sport fishing/small game hunting licenses.

License type	Cost	# Purchased	Amount
Resident Sport Fishing	\$24.00	150	\$3,600.00
Resident Hunting	\$25.00	84	\$2,100.00
Resident Sport Fish/Hunting	\$48.00	30	\$1,440.00
Total		264	\$7,140.00

Prepared by: Sarah A. Gilbertson, Legislative Liaison Phone 465-6137
 Division: Commissioner's Office Date/Time 4/7/06 3:06 PM
 Approved by: Commissioner McKie Campbell Date 4/7/2006
 Agency: Alaska Department of Fish and Game

24-LS0446\O
Bullock
4/24/06

SENATE CS FOR CS FOR HOUSE BILL NO. 122(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION
BY THE SENATE LABOR AND COMMERCE COMMITTEE

new changes

Offered:
Referred:

Sponsor(s): REPRESENTATIVES DAHLSTROM, Berkowitz, Kott, Lynn, Hawker, Gruenberg, Wilson, Elkins, Thomas, Kerttula, Foster, Chenault, Croft, Olson, McGuire, Gara, Ramras, Guttentberg, LeDoux

SENATOR Elton

A BILL
FOR AN ACT ENTITLED

1 "An Act providing for the issuance of complimentary fishing and hunting licenses to
2 certain members of the Alaska National Guard returning from active duty deployment;
3 relating to tuition relief and academic status protection for members and dependents of
4 members of the Alaska National Guard deployed to a combat zone; relating to
5 reimbursement of premiums for Servicemembers' Group Life Insurance paid by
6 members of the Alaska National Guard deployed to a combat zone; and providing for an
7 effective date."

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

9 * Section 1. AS 16.05.335 is amended by adding a new subsection to read:

10 (b) The commissioner shall, at the request of the governor, authorize the
11 issuance, by the department or by agents appointed under AS 16.05.380, of a
12 complimentary one-year license for sport fishing or hunting, or both, to qualified
13 members of the Alaska National Guard. To qualify for a complimentary license under

1 this subsection, a member of the Alaska National Guard must produce to the
2 department or agent the member's United States Department of Defense certificate of
3 release or discharge from active duty and the member's deployment orders
4 demonstrating that the member was called to active duty and deployed for 30 or more
5 consecutive days in a combat zone, as that term is defined in AS 26.05.263. However,
6 a member who was so deployed for less than 30 consecutive days due to an injury
7 related to the member's deployment is qualified for the complimentary license if the
8 member provides documentation to verify that status. The complimentary license for
9 sport fishing or hunting, or both, is valid for the license year in which the member
10 applies or for the subsequent license year. To receive the complimentary license under
11 this subsection, the member must apply to the commissioner requesting the license and
12 provide the information required by this subsection within two years after the date the
13 member returns to the state following deployment. Information pertaining to
14 complimentary licenses issued under this subsection shall be available to the public.

15 * **Sec. 2.** AS 26.05 is amended by adding new sections to read:

16 **Sec. 26.05.261. Tuition relief.** (a) Upon request by a member of the Alaska
17 National Guard deployed to a combat zone for not less than 30 days, the University of
18 Alaska or the Alaska Vocational Technical Center

19 (1) shall grant the member and a dependent of a military member a
20 military leave of absence from the institution;

21 (2) shall credit any tuition and fees paid that are applicable to an
22 academic term during a military leave of absence toward tuition and fees due for an
23 academic term beginning within 12 months following the return of the member from
24 deployment;

25 (3) may not change the educational status or degree requirements for a
26 member accepted in a degree program before the date of deployment.

27 (b) In this section, "combat zone" has the meaning given in AS 26.05.263.

28 **Sec. 26.05.263. Payment of Servicemembers' Group Life Insurance**
29 **premiums; establishment of fund.** (a) The Servicemembers' Group Life Insurance
30 premium fund is established as a separate fund in the state treasury. The fund consists
31 of appropriations by the legislature to it. Money appropriated to the fund does not

1 lapse. The state shall hold the principal and earnings of the fund for the purpose of
2 reimbursing eligible members of the Alaska National Guard deployed to a combat
3 zone for premiums paid under 38 U.S.C. 1965 - 1980 (Servicemembers' Group Life
4 Insurance Program).

5 (b) The adjutant general may make expenditures from the fund to reimburse
6 eligible members of the Alaska National Guard deployed to a combat zone for
7 premiums paid under the program during the period of

8 (1) deployment if the eligible member applies for reimbursement
9 within two years after returning to the state following deployment:

10 (2) up to one year of convalescence following the return from
11 deployment; and

12 (3) with the approval of the adjutant general, up to one year of
13 convalescence in addition to the year under (2) of this subsection.

14 (c) Subject to appropriation, the fund may be used to pay the expenses
15 incurred by the commissioner of revenue in managing the fund and administrative
16 expenses incurred by the Department of Revenue in administering this section.

17 (d) Except as provided in (c) of this section, money in the fund is available for
18 expenditure without further appropriation.

19 (e) Nothing in this section creates a dedicated fund.

20 (f) The Department of Revenue may adopt regulations necessary to carry out
21 the provisions of this section.

22 (g) In this section,

23 (1) "combat zone" means an area of hostile fire or imminent danger
24 that entitles a member on duty in that area to special pay;

25 (2) "convalescence" means hospital, outpatient, or rehabilitation
26 treatment for an injury suffered while deployed to a combat zone;

27 (3) "fund" means the Servicemembers' Group Life Insurance premium
28 fund;

29 (4) "program" means the Servicemembers' Group Life Insurance
30 program established by 38 U.S.C. 1965 - 1980.

31 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 **APPLICABILITY.** The reimbursement of premiums paid by members of the Alaska
3 National Guard deployed to a combat zone under 38 U.S.C. 1965 - 1980 (Servicemembers'
4 Group Life Insurance Program) under AS 26.05.263, enacted in sec. 2 of this Act, applies to
5 premiums due on or after January 1, 2005.

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

8 **RETROACTIVITY.** AS 26.05.263, enacted by sec. 2 of this Act, is retroactive to
9 January 1, 2005, and applies to authorize reimbursement of premiums paid by eligible Alaska
10 National Guard members after December 31, 2004.

11 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).

ALASKA STATE LEGISLATURE

Interim:

716 West 4th Avenue
Anchorage, AK 99501-2133
Phone: (907) 622-3783
Fax: (907) 622-3784



Session:

Alaska State Capitol
Juneau, AK 99801-1182
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REPRESENTATIVE NANCY DAHLSTROM

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Representative_Nancy_Dahlstrom@legis.state.ak.us

SPONSOR STATEMENT SCS CSHB 122 ()

At a time when the federal government is considering action to better serve our military men and women in foreign countries, Alaska's guardsmen deserve the state's support as well.

As many of you know, guardsmen don't serve in the military full time; they are our co-workers and next-door neighbors. Providing a little extra security for their dependents affords them a little extra assistance while away on duty.

The legislation affects guardsmen who are deployed for a minimum of 30 days and qualify for hostile fire or imminent danger duty pay in a combat zone. CSHB 122 (MLV) includes the following provisions:

- **Fishing and Hunting Licenses:** at the request of the Governor, the department may issue a complementary license for sport fishing and/or hunting to qualified members of the Alaska National Guard who was called to active duty and deployed for 30 or more consecutive days in a combat zone.
- **Life Insurance premium reimbursement:** allows any person who is deployed on active duty to submit a reimbursement claim form for all life insurance premiums paid during time of deployment.

It is the guardsmen's mission to support United States National Security objectives, and passing this legislation allows us to honor and support them in that role. HB 122 has bipartisan support and I ask for the committee's favorable consideration. Thank you.

24-LS0446T
Bullock
3/27/06

SENATE CS FOR CS FOR HOUSE BILL NO. 122()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES DAHLSTROM, Berkowitz, Kott, Lynn, Hawker, Gruenberg, Wilson, Elkins, Thomas, Kerttula, Foster, Chenault, Croft, Olson, McGuire, Gara, Ramras, Guttenberg, LeDoux

SENATOR Elton

A BILL

FOR AN ACT ENTITLED

1 "An Act providing for the issuance of complimentary fishing and hunting licenses to
2 certain members of the Alaska National Guard returning from active duty deployment;
3 relating to reimbursement of premiums for Servicemembers' Group Life Insurance paid
4 by members of the Alaska National Guard deployed to a combat zone; and providing for
5 an effective date."

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

7 * Section 1. AS 16.05.335 is amended by adding a new subsection to read:

8 (b) The commissioner shall, at the request of the governor, authorize the
9 issuance, by the department or by agents appointed under AS 16.05.380, of a
10 complimentary license for sport fishing or hunting, or both, to qualified members of
11 the Alaska National Guard. To qualify for a complimentary license under this
12 subsection, a member of the Alaska National Guard must produce to the department or
13 agent the member's United States Department of Defense certificate of release or

1 discharge from active duty and the member's deployment orders demonstrating that
2 the member was called to active duty and deployed for 30 or more consecutive days in
3 a combat zone, as that term is defined in AS 26.05.263. However, a member who was
4 so deployed for less than 30 consecutive days due to an injury related to the member's
5 deployment is qualified for the complimentary license if the member provides
6 documentation to verify that status. The complimentary license for sport fishing or
7 hunting, or both, is valid for the license year in which the member applies or for the
8 subsequent license year. To receive the complimentary license under this subsection,
9 the member must apply to the commissioner requesting the license and provide the
10 information required by this subsection within two years after the date the member
11 returns to the state following deployment. Information pertaining to complimentary
12 licenses issued under this subsection shall be available to the public.

13 * **Sec. 2.** AS 26.05 is amended by adding a new section to read:

14 **Sec. 26.05.263. Payment of Servicemembers' Group Life Insurance**
15 **premiums; establishment of fund.** (a) The Servicemembers' Group Life Insurance
16 premium fund is established as a separate fund in the state treasury. The fund consists
17 of appropriations by the legislature to it. Money appropriated to the fund does not
18 lapse. The state shall hold the principal and earnings of the fund for the purpose of
19 reimbursing eligible members of the Alaska National Guard deployed to a combat
20 zone for premiums paid under 38 U.S.C. 1965 - 1980 (Servicemembers' Group Life
21 Insurance Program).

22 (b) The adjutant general may make expenditures from the fund to reimburse
23 eligible members of the Alaska National Guard deployed to a combat zone for
24 premiums paid under the program if the eligible member applies for reimbursement
25 within two years after returning to the state following deployment.

26 (c) Subject to appropriation, the fund may be used to pay the expenses
27 incurred by the commissioner of revenue in managing the fund and administrative
28 expenses incurred by the Department of Revenue in administering this section.

29 (d) Except as provided in (c) of this section, money in the fund is available for
30 expenditure without further appropriation.

31 (e) Nothing in this section creates a dedicated fund.

1 (f) The Department of Revenue may adopt regulations necessary to carry out
2 the provisions of this section.

3 (g) In this section,

4 (1) "combat zone" means an area of hostile fire or imminent danger
5 that entitles a member on duty in that area to special pay;

6 (2) "fund" means the Servicemembers' Group Life Insurance premium
7 fund;

8 (3) "program" means the Servicemembers' Group Life Insurance
9 program established by 38 U.S.C. 1965 - 1980.

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

12 **APPLICABILITY.** The reimbursement of premiums paid by members of the Alaska
13 National Guard deployed to a combat zone under 38 U.S.C. 1965 - 1980 (Servicemembers'
14 Group Life Insurance Program) under AS 26.05.263, enacted in sec. 2 of this Act, applies to
15 premiums due on or after January 1, 2005.

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

18 **RETROACTIVITY.** AS 26.05.263, enacted by sec. 2 of this Act, is retroactive to
19 January 1, 2005, and applies to authorize reimbursement of premiums paid by eligible Alaska
20 National Guard members after December 31, 2004.

21 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).

ALASKA STATE LEGISLATURE

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SPONSOR STATEMENT CS HB 122 (FIN)

At a time when the federal government is considering action to better serve our military men and women in foreign countries, Alaska's guardsmen deserve the state's support as well.

As many of you know, guardsmen don't serve in the military full time; they are our co-workers and next-door neighbors. Providing a little extra security for their dependents affords them a little extra assistance while away on duty.

The legislation affects guardsmen who are deployed for a minimum of 30 days and qualify for hostile fire or imminent danger duty pay in a combat zone. CSHB 122 (MLV) includes the following provisions:

- **Termination of a motor vehicle lease:** allows any person, or spouse of a person, who is deployed on active duty to terminate any motor vehicle lease that is entered into on or after the effective date of the bill and is executed by or on behalf of the person deployed.
- **Termination of a cellular phone contract:** allows any person, or spouse of a person, who is deployed on active duty to terminate, without penalty, a cellular phone contract that is entered into on or after the effective date of the bill and is executed by or on behalf of the person deployed.
- **Military education leave of absence:** requires institutions of higher to grant a student "military leave of absence" from the institution should he/she be deployed under this legislation. Requires these institutions, upon request of the individual to credit tuition and fees (without any penalty) paid towards a subsequent academic term within one year of return from deployment. Also, requires institutions to allow students, already accepted in a degree program, to maintain their student status and degree requirements.

- **Utility Protection:** prohibits a regulated company who provides gas, electric or other heating source from ceasing to provide gas, electric or other heating source to the residential premises of any residential consumer who is deployed under this legislation for nonpayment for gas supplied or electricity provided to the residential premises.

Requires the utility company to work out a payment plan for any past due amounts.

Prohibits any late payments fees or interest from being charged to the residential consumer during the deployment.

- **State loan deferment:** allows any person who is deployed on active duty under this legislation to defer any state loan payment that is due on or after the effective date and is entered into by or on behalf of the person deployed.
- **Fishing and Hunting Licenses:** requires the Department of Fish and Game to reissue any fishing or hunting licenses obtained for the year in which the person is deployed under this legislation, for the year following the return of the guardsman.
- **Life Insurance premium reimbursement:** allows any person, or spouse of a person, who is deployed on active duty to submit a reimbursement claim form within six months of returning for all life insurance premiums paid during time of deployment.

It is the guardsmen's mission to support United States National Security objectives, and passing this legislation allows us to honor and support them in that role. HB 122 has bipartisan support and I ask for the committee's favorable consideration. Thank you.

Local News

Patriot plan helps soldiers

By Bridget Tharp
GUEST REPORTER
January 20, 2005

In Kosovo, he was just a soldier. After graduation, he'll have to fight as a father.

Army Cadet Sgt. Maj. Aaron Keighley, a University senior in ROTC, enrolled in the ROTC program after he returned from active duty in Kosovo.

"I know what it's like to be away. But I was only 18-years-old, and I didn't have as much responsibility as I have now," Keighley said.

State lawmakers created a plan to help military families like Keighley's.

"Ohio's Patriot Plan" offers nine ways for active-duty soldiers to prevent potential debt and stress for their families during their deployment overseas.

When he finishes college, Keighley will return to combat as an officer. Keighley said he hopes that his unit will trust him as an officer because he's been in combat before. But more than Keighley's rank will change when he is deployed a second time.

"I haven't really experienced what the military is like with a child," he said.

Now, Keighley is the father of 13-month-old son.

Keighley said the Ohio Patriot Plan gives him confidence.

"There is always a lot of stress getting deployed," Keighley said. "This will alleviate some of the stress and some of the worries that you have while you're away from your family."

The Ohio Patriot plan would rewrite the Ohio Human Rights Law to prevent discrimination against soldiers when they apply for jobs, housing or credit.

In addition, the plan would let soldiers end a cell phone contract or a car lease if called to active duty.

Known to lawmakers as Sub. House Bill 426, the non-partisan plan was passed unanimously in the Ohio Senate and House of Representatives last year.

Sponsor of the plan was Democratic Rep. Peter Ujvagi of the 47th District, which is located about 25 miles, or 30 minutes, from the city of Bowling Green. Ujvagi represents the southern and eastern sides of Toledo.

The bill won't go into effect until 90 days after Gov. Bob Taft signs it. Ujvagi said he hopes the bill will be effective by May 2005, at the latest.

"The sacrifices our military men and women make while serving on active duty should not be compounded by their families having to make additional sacrifices at home," Ujvagi said in a press release.

Ohio soldiers might not have to wait that long to see the effects of the plan. Ujvagi said a cell phone company begrudgingly ended the contract of an Ohio soldier based on knowing the legislation was already in the governor's hands.

Ujvagi said he is hoping "service members are going to be able to start using [the Ohio Patriot Plan already] if they have any problems that the legislation covers."

The Ohio Patriot Plan mimics a pair of bills that have been around in the state of New York since 2003. Rep. Ujvagi said he is already drafting the second Ohio Patriot Plan. He hopes to include items that were dropped from the original plan. Among the priorities of Plan 2, Ujvagi described a discount card for military families "similar to the Buckeye card."

Several provisions of the plan focus on families, but single soldiers also benefit.

Senior Ben Alvarez is an Army ROTC cadet who expects that he will be deployed when he graduates.

"I haven't put too much thought into family yet," Alvarez said. "But reading the plan, they're all things that I myself hadn't even thought of. Then I read it, and I'm like, 'Wow, that's a great idea!'"

Alvarez said deployment could last about a year.

"It does not make sense to have to pay for a car lease for a car that you can't drive for a year, and a cell phone that you can't use for a year. I think those two really stood out to me as being helpful to single soldiers," Alvarez said.

For soldier and father, Keighley, this plan will simplify life in general when he's away from home.

"It's good to know that even if you fall behind on your bills," Keighley said, "that you are protected by the government from them shutting off your power or kicking you out of your place."

Posted on Tue, Feb 15, 2005, MercuryNews.com

Law Would Help Troops Get Out of Contracts

CONNIE MABIN

Associated Press

CLEVELAND - A law called the Ohio Patriot Plan, which Gov. Bob Taft was expected to sign Tuesday, is meant to spare Ohio families such stress. The legislation would make it illegal to evict financially struggling immediate family of military service members who have been deployed.

The law also makes it easier for service members to get out of long-term contracts for things such as car leases and cell phones, and it prohibits disconnection of utilities either during deployment or while injured soldiers recuperate.

When Lisa Spencer's Marine husband was called for duty in Iraq, it was hard enough to find the strength to comfort their three small children. But then the bills came for the car, for the rent.

"There was a problem with the military checks and we didn't get paid right away," she said. "I had to tell my landlord that I had no money and he would have to wait for the rent."

When Spencer explained that money was on the way, the landlord let her stay. But the ordeal created stress that Spencer could have done without.

"It's hard for all of us to adjust to him not being here," said Spencer, of Salem. "To deal with all that and to have financial problems, it's hard. It's not that I don't want to pay my bills. It would be nice to have that cushion if something goes wrong."

The bill sponsored by Rep. Peter Ujvagi, a Democrat, was modeled after a New York law. Several other states, including Alabama, Pennsylvania, New Jersey, Rhode Island, Illinois and Iowa are now working on similar legislation.

The legislation creates new rules but does not establish penalties for companies that don't follow them. Ujvagi's office said the law would allow military families to sue to seek monetary damages from people or companies that don't comply.

Michael Adelman, a lobbyist with the Ohio Bankers' League, said the lending and leasing industry supports the bill. "The last thing you want to do is create additional hurdles for these fine people who are putting their lives on the line," Adelman said.

The measure doesn't exempt military families from paying for things like rent and utilities, but gives them time to work out payment arrangements. For services such as cell phones and car leases, businesses would be barred from collecting early termination fees.

The service members must work through military attorneys to take advantage of the law.

Some businesses expressed concern about the bill as it moved through the Legislature, including a fear of too much paperwork and complicated rules. But those concerns were worked out during hearings, lobbyists said.

Among other things, the bill also prohibits soldiers' life insurance policies from being canceled. Also, military members' children could continue going to school in their home districts even if a parent is assigned to serve in another community.

Elizabeth Henderson, director of the United Service Organizations in Cleveland, said she's heard from dozens of military families who are pleased with the bill.

"For them to know that while they're overseas or even serving here in the U.S. that they don't have to worry about their car being taken away or their mortgage being taken away, that gives them such a sense of relief so that they can really focus," she said.

ON THE NET

Ohio Legislature: <http://www.legislature.state.oh.us>



Press Release

July 21, 2004

States Providing Range of Benefits for Military Families

Newly Released Survey Shows Governors Lending Helping Hand to Men and Women in Uniform

 Survey: State Support for National Guard and Regular Military Members And Their Families

WASHINGTON--With more than 40 percent of the National Guard and Reserves currently engaged in overseas military operations, the nation's governors are supporting these men and women, as well as their families, with a variety of benefits and services, a new survey has found.

Overall, according to the report, governors and their states have been stepping forward to assist families of men and women called to active duty, both regular military and National Guard and Reserves. The survey, conducted jointly by the National Governors Association (NGA) and the U.S. Department of Defense Office of Military Community and Family Policy, surveyed states to see the varied strategies that governors are employing to make life easier for deployed reservists and their families.

According to the report, states have responded to the unique challenges by, among other things, extending hiring preferences for state jobs to spouses of military personnel, offering childcare services, protecting families from foreclosure, facilitating easy access of professional licenses, and providing health and life insurance while activated.

Testifying today before the Senate Committee on Health, Education, Labor and Pensions, Subcommittee on Children and Families, NGA Executive Director Raymond Scheppach presented the results of the survey, and praised the work that states like **Florida, Idaho, Indiana** and **North Carolina** are doing to accommodate military members and their families.

To alleviate the heavy burden facing deployed military members and their families, many states have initiated plans, like a pilot program in several Florida counties, which forgives the property taxes of its deployed men and women. "Florida is proud of the men and women who serve courageously and honorably from our state," said Florida Gov. Jeb Bush, who also addressed the Senate subcommittee today. "We've made serving these military personnel, National Guardsmen and Reservists one of our top priorities. We are committed to creating a supportive environment for United States military missions based in our state, and for the military families who live among us."

Full tuition assistance for state universities, tax deductions and filing extensions are just some of the ways Indiana supports deployed military members and their families, said Indiana Gov. Joe Kernan in his remarks to the subcommittee today. Kernan also spoke about the Indiana National Guard Family Program, its focus on family readiness and the valuable involvement of volunteers. "The cornerstone of our service to Guard members and their families is a strong volunteer network," Kernan said. In particular, he noted that the program's youth services, led by a five-member council made up of sons and daughters of Guard members, works with parents and teachers on ways to help children deal with anxiety and fears that are the

result of a family member's deployment.

"I commend our nation's governors for stepping forward to provide necessary support to our servicemen and women and their families," said U.S. Sen. Lamar Alexander (R-Tenn.). "As our soldiers are away fighting to defend our freedom, it is our responsibility to make sure we support their spouse and help take care of their children.

"In the Senate we have held a series of seven hearings over the past year to identify ways we can respond to the unique challenges facing our military families. We learned that much can be done at the state level through executive orders by the governors and action by state legislatures. I am proud that today almost every state has a plan in place and is providing needed support to our troops and their families."

The NGA survey places these benefits into six categories:

- **Family Support**, including credit counseling, family survivor benefit plans, and support groups;
- **Education Benefits**, including tuition assistance and scholarships for spouses and children;
- **Licensing and Registration Benefits**, including extended deadlines for professional licenses;
- **Tax and Financial Benefits**, including tax relief and extension of filing deadlines;
- **State Employees Benefits**, including health care and life insurance benefits; and
- **Other Support Benefits**, including reemployment protection and hiring preferences.

Although states are required to enforce the Uniformed Services Employment and Reemployment Rights Act, and the Soldiers and Sailor Civil Relief Act, the benefits currently being offered by states go far beyond these basic requirements. In North Carolina, for example, the state has provided assistance to its National Guardsmen during deployment in Iraq by supplying them with hand held radios, body armor and laptop computers.

"Our brave men and women in the military have answered our country's call to duty and it is our responsibility here at home to support them and do what we can to help," North Carolina Gov. Mike Easley said. "Being away from your home and your loved ones is extremely difficult. We are reaching out to members of the military, their families and their communities to ease that burden."

In related news, Easley was one of two governors, Idaho Gov. Dirk Kempthorne being the other, who was recently appointed to lead NGA's efforts on National Guard-related issues. The announcement came during the NGA's recently completed 2004 Annual Meeting in Seattle. At that meeting, David Chu, the Defense Department's Under Secretary of Defense for Personnel and Readiness, and Gen. Ralph E. Eberhart, Commander of the North American Aerospace Defense Command and Commander of the U.S. Northern Command, met with the nation's governors to discuss states' efforts to accommodate the growing numbers of deployed Reservists and National Guardsmen and the thousands of regular military personnel overseas.

"This recent call-up of Idaho National Guard members completed the most extensive mobilization of Idaho's National Guard for overseas military deployment in our state's history," said Kempthorne. "It's possible these men and women could be away from home for up to two years and it's critical that we do everything within our means to support these fine soldiers abroad while taking care of their families here at home. The work we do here at NGA will help all governors as they struggle to adjust to these new realities."

For a copy of the complete report and a copy of Raymond Scheppach's testimony, log on to the NGA Web site at [NGA Web site](#).



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BILLS IN THE KNAPSACK: A LAW GETS LOST

Some Creditors Make Illegal Demands on Active-Duty Soldiers

By DIANA B. HENRIQUES

Published March 28, 2005

Sgt. John J. Savage III, an Army reservist, was about to climb onto a troop transport plane for a flight to Iraq from Fayetteville, N.C., when his wife called with alarming news: "They're foreclosing on our house."

Sergeant Savage recalled, "There was not a thing I could do; I had to jump on the plane and boil for 22 hours."

He had reason to be angry. A longstanding federal law strictly limits the ability of his mortgage company and other lenders to foreclose against active-duty service members.

But Sergeant Savage's experience was not unusual. Though statistics are scarce, court records and interviews with military and civilian lawyers suggest that Americans heading off to war are sometimes facing distracting and demoralizing demands from financial companies trying to collect on obligations that, by law, they cannot enforce.

Some cases involve nationally prominent companies like Wells Fargo and Citigroup, though both say they are committed to strict compliance with the law.



David Maxwell

Boatswain's Mate Kevin Cornell is readjusting the credit card through but had trouble another.

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The problem, most military law specialists say, is that too many lenders, debt collectors, landlords, lawyers and judges are unaware of the federal statute or do not fully understand it.

The law, the Servicemembers Civil Relief Act, protects all active-duty military families from foreclosures, evictions and other financial consequences of military service. The Supreme Court has ruled that its provisions must "be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation."

Yet the relief act has not seemed to work in recent cases like these:

¶At Fort Hood, Tex., a soldier's wife was sued by a creditor trying to collect a debt owed by her and her husband, who was serving in Baghdad at the time. A local judge ruled against her, saying she had defaulted, even though specialists say the relief act forbids default judgments against soldiers serving overseas and protects their spouses as well.

¶At Camp Pendleton, Calif., more than a dozen marines returned from Iraq to find that their cars and other possessions had been improperly sold to cover unpaid storage and towing fees. The law forbids such seizures without a court order.

¶In northern Ohio, Wells Fargo served a young Army couple with foreclosure papers despite the wife's repeated efforts to negotiate new repayment terms with the bank. Wells Fargo said later that it had been unaware of the couple's military status. The foreclosure was dropped after a military lawyer intervened.

Little-Known Legislation

The relief act provides a broad spectrum of protections to service members, their spouses and their dependents. The interest rate on debts incurred before enlistment, for example, must be capped at 6 percent if military duty has reduced a service member's family income.

The law also protects service members from repossession or foreclosure without a court order. It allows them to terminate any real estate lease when their military orders require them to do so. And it forbids judges from holding service members in default on any legal matter unless the court has first appointed a lawyer to protect their interests.

The law is an updated version of the Soldiers' and Sailors' Civil Relief Act, which was adopted on the eve of World War II and remained largely unchanged through the Persian Gulf war of 1991. But in July 2001, a federal court ruled that service members could sue violators of the relief act for damages. And the terrorist attacks on Sept. 11 prompted Congress to take up a long-deferred Pentagon proposal to update the old act. The revised statute, clearer and more protective than the old one, was signed into law in December 2003.

But the news was apparently slow in reaching those who would have to interpret and enforce the law.

(December 7

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John Loomis I

Sgt. John J. Sav wife fought an on their house the ability of lei against active-d members.

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RESEARCH

"There are 50,000 judges in this country and God knows how many lawyers," said Alexander P. White, a county court judge in Chicago and the chairman of one of the American Bar Association's military law committees. "Are people falling down on the job - the judges, the bar, the military? Probably." And broad understanding of the law "is not going to happen overnight."

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TOP NATIONAL ARTICLES

States shore up support for troops



Thu Feb 17, 9:38 AM ET

From life insurance to utility bills and tuition, there's a surge of support for part-time soldiers.

By Sara B. Miller, Staff writer of The Christian Science Monitor

This April, when Rhode Island residents file their tax returns, they'll be able to check off a box to donate part of their tax refund to an assistance fund for the state's National Guard and Reserve families.



Earlier this month, the governor of New Mexico signed a bill making his state the first to buy life-insurance policies - worth \$250,000 - for all its active-duty Guard members.

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And from South Dakota to Alabama, states have introduced or passed legislation ranging from tuition assistance, to free hunting licenses, to extensions on renewal periods for driver's licenses. Some of the perks apply to the military at large, but many are intended specifically for part-time soldiers.

Across the country, experts say, state aid to military personnel is growing. It reflects the increasingly critical role of the National Guard in Iraq ([news - web sites](#)) and the broader war on terror, and the mounting frustration with what some politicians see as Congress's insufficient contribution to the welfare of troops.

Legislation on behalf of military personnel has flourished since 2002, according to the National Conference of State Legislatures (NCSL). In New Mexico, Gov. Bill Richardson (D) says 24 states have contacted his office about the life-insurance bill since he signed it into law Feb 2. "I believe this is spreading like wildfire because this is the right thing to do," he says. "There is so much frustration with Congress doing so little."



AP Photo

War, experts point out, strikes closer to home when entire units are called to the front from a single state. "States are kicking in because the use of the National Guard is more extensive than they are accustomed [to]," says David Segal, director of the Center for Research on Military Organization at the University of Maryland. "It is their sons and daughters that are being called up."

The last major mobilization of the Guard for overseas deployments was during World War II, he says, when the draft was also in effect. "What's different now is that in World War II everyone went.... There was no major perception of inequity."

That perception, coupled with extended tours of duty and a mounting death toll in Iraq, have contributed to drops in recruitment numbers for the National Guard. Yet Guard and Reserve troops comprise about half of those fighting in Iraq.

Compounding their personal hardship, deployment often translates into financial strain: Forty percent of them earn less while serving abroad than in their civilian jobs, according to a Pentagon ([news - web sites](#)) study, and experts suggest the real number of troops with a salary gap may be still higher - even without the inclusion of other costs, such as childcare when one parent is abroad.

That's where the Rhode Island Military Relief Fund comes in, says Lt. Col. Robert Behm, director of the Rhode Island National Guard State Family Program. Contributions of \$140,000 have funded grants of \$1,000 for families with a loved one injured or killed on duty, and up to \$2,000 for emergencies, such as avoiding evictions and paying overdue utility bills.

Yet the greatest challenge, says Colonel Behm, isn't finding donations; rather, it's getting families to accept them. "Our biggest problem is that most of the time, we get families who are embarrassed; they don't want their spouse to know they couldn't handle the situation."

Officials expect Rhode Island residents to contribute even more money to the assistance fund come Tax Day. "There's almost not a week that goes by that we don't have some deployment or return," says Lt. Gov. Charles Fogarty. "We have a state responsibility to do this."

Other state lawmakers feel the same way, according to the NCSL:

- Missouri is one of many states trying to match Rhode Island's tax-form donation technique.
- Delaware grants veterans with 90 or more consecutive days on active duty one year of free access to state parks.
- Alabama exempts active-duty troops from hunter-safety education requirements.

State support is, of course, good public policy: States look to the National Guard to help with everything from riots to natural disasters. Now, as residents see neighbors and co-workers being deployed, there is a heightened awareness of the Guard's sacrifices in Iraq. "The National Guard is more integrated into the civilian community, in a way that active-duty personnel are not, says Mady Wechsler Segal, a military sociologist at the University of Maryland.

In some ways, the state efforts are an extension of federal moves to boost compensation. The Pentagon recently announced plans to increase the tax-free federal death gratuity from \$12,420 to \$100,000 for survivors of military members killed in the line of duty.

Still, the federal government can play a larger role for National Guard and Reserve troops, says US Sen. Evan Bayh ([news](#), [bio](#), [voting record](#)) (D) of Indiana. In his state, he says, some of them have had to file for bankruptcy. That's why he's proposed a measure to eliminate the "patriot penalty" - the difference between civilian and combat pay.

The measure would provide a tax credit of up to \$15,000 a year to companies that pay the salary difference, and would directly pay those service members whose companies do not make up the difference, up to \$50,000 a year. "States have stepped forward with insurance policies" and other programs, he says. "But many states are really strapped financially."

It's a dilemma felt across the country. John Goheen, spokesman for the National Guard Association of the United States, notes the difficulty of setting state financial priorities. "Money is not endless; hard choices need to be made," he says. "How do you balance buying hardware with the supporting of service members and their families?"

The type of support that's needed - and increasingly expected - has shifted since 9/11, just as the nation's demands on its troops have changed. And with longer, more frequent deployments, many of those affected are pushing for a greater acknowledgment of how critical families - both their support of the troops and the military's support of them - really are.

"The whole family concept is something that, during the last few years, they realize there is a need for," says Behm.

But there is still much to do, says Amy Palmer, an Air Force veteran and the eastern region director for Operation Homefront, which provides day-to-day assistance to military families. "Because [the military] is more terrorist-oriented, it means a lot of frequent deployment," she says. "They are not looking at the transforming of the family to meet those needs.... And it gets harder every time."

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Bill Analysis

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Legislative Service Commission

Am. Sub. H.B. 426
125th General Assembly
(As Passed by the House)

Reps. Ujvagi, McGregor, Harwood, Book, Perry, Price, Carano, Strahorn, Skindell, Brown, DeGeeter, Collier, Miller, Reidelbach, Mason, Domenick, Sferra, D. Stewart, S. Patton, Allen, Woodard, Distel, Hartnett, Redfern, Barrett, S. Smith, Driehaus, Wilson, Key, DeBose, Yates, Jerse, Schaffer, Seaver, Cirelli, Otterman, Wolpert, Beatty, Hoops, Koziura, Kearns, Olman, C. Evans, Sykes, Flowers, Latta, Fessler, Daniels, Hollister, Cates, Trakas, Cancy, Aslanides, Calvert, Combs, D. Evans, Gilb, Grendell, Hagan, Hughes, Kilbane, Niehaus, Oelslager, T. Patton, Peterson, Schlichter, Schmidt, Setzer, Slaby, J. Stewart, Taylor, Webster, Widener, Widowfield, Willamowski

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CONTENT AND OPERATION

Overview

The bill makes changes to numerous laws in order to provide protection for and benefits to military personnel and members of their immediate family as follows:

Use of bulk long distance telephone services

(R.C. 125.021(B))

- Requires the Department of Administrative Services to enter into a contract to purchase bulk long distance telephone services and make them available at cost, or to make bulk long distance telephone services available at cost under any existing contract the Department has entered into, to members of the immediate family of persons deployed on active duty so that those family members can communicate with the persons so deployed.
- Requires these telephone contracts to be entered into under the State Purchasing Law and in a nondiscriminatory manner that does not place any potential vendor at a competitive disadvantage.
- Requires the Department to adopt rules under the Administrative Procedure Act to implement the provisions discussed in this section of the analysis.
- Defines "immediate family," in this context, as a person's spouse residing in the person's household, brothers and sisters of the whole or of the half blood, children, including adopted children and stepchildren, parents, and grandparents.
- Defines "active duty," for this context, as active duty pursuant to (1) an Executive Order of the President of the United States, (2) an act of the Congress of the United States, (3) an order of the Governor, as its commander in chief, to the Ohio National Guard to perform any training or duty under certain circumstances, or (4) an order of the Governor to the Ohio organized militia to aid civil authorities in (a) executing the laws of this state (b) suppressing insurrection, (c) repelling invasion, (d) acting in the event of a disaster within Ohio, or (e) promoting the health, safety, and welfare of Ohio citizens.¹

Armed Forces members filing a military power of attorney

(R.C. 317.322)

- Prohibits a county recorder from charging a fee to a United States Armed Forces member who presents for recording a military power of attorney executed pursuant to federal law.

¹ Items (3) and (4) are the orders covered by the bill's cross-references to R.C. 5919.29 and 5923.21, respectively.

Retail installment contracts

(R.C. 1317.06(D) and 1317.061(B))

- Prohibits a retail seller in connection with a retail installment contract that is entered into *on and after* the bill's effective date from charging or collecting from a retail buyer who is deployed on active duty interest or finance charges exceeding an annual percentage rate of 6% during the period that the retail buyer is deployed on active duty. This is in lieu of the statutorily set interest and finance charges, or alternative interest and finance charges, a seller and buyer can contractually agree to under continuing law. (See **COMMENT** for key definitions.)

- Provides that, in order for a retail installment contract to be subject to the interest rate limitation, the retail buyer must provide the retail seller with written notice of and a copy of the military or gubernatorial orders calling the retail buyer to active duty and of any orders further extending active duty, not later than 180 days after the date of the retail buyer's termination of or release from active duty.

- Defines "active duty" in the same manner as described under "Use of bulk long distance telephone services," above.

Termination of a motor vehicle lease

(R.C. 1349.02)

- Allows any person, or spouse of a person, who is deployed on active duty to terminate any motor vehicle lease that (1) is entered into *on or after* the bill's effective date and (2) is executed by or on behalf of the person who is deployed on active duty.

- Provides that termination of the motor vehicle lease is not effective until (1) 15 days after the person who is deployed on active duty or the person's spouse gives notice by certified mail, return receipt requested, of the intention to terminate the lease, and (2) the motor vehicle is returned to the lessor's custody or control.

- Defines "active duty" in the same manner as described under "Use of bulk long distance telephone services," above.

- Defines "motor vehicle," for this context, as any automobile, car, minivan, passenger van, sport utility vehicle, pickup truck, or other self-propelled vehicle not operated or driven on fixed rails or track.

Termination of a cellular phone contract

(R.C. 1349.03)

- Allows any person, or spouse of a person, who is deployed on active duty to terminate, without penalty, a cellular phone contract that (1) is entered into *on or after* the bill's effective date and (2) is executed by or on behalf of the person who is deployed on active duty.

- Provides that termination of the cellular phone contract is not effective until (1) 30 days after the person who is deployed on active duty or the person's spouse gives notice by certified mail, return receipt requested, of the intention to terminate the contract, and (2) unless the person who is deployed on active duty owns the phone, it is returned to the custody or control of the cellular telephone company or the person or person's spouse agrees in writing to return the phone as soon as practicable after the deployment is completed.

- Defines "active duty" in the same manner described under "Use of bulk long distance telephone services," above.

Military leave of absence from institutions of higher education

(R.C. 1713.60, 3332.20, and 3345.53)

- Requires (1) private nonprofit institutions of higher education that hold a certificate of authorization from the Ohio Board of Regents, (2) state institutions of higher education, and (3) institutions that hold a certificate of registration from the State Board of Career Colleges and Schools to grant a student a "military leave of absence" from the institution while the student is serving on active duty, and for one year after the conclusion of that service, if the student is (a) a member of the National Guard or other Armed Forces reserve component and called to active duty, or (b) a member of the Armed Forces in a retired status and called to active duty. The student must not suffer an academic penalty as a result of the leave of absence.

- Requires these institutions, upon request of a student granted a military leave of absence not later than one year after the student's release from active duty to (1) *credit* tuition and fee charges toward a subsequent academic term in an amount that is 100% of what the student paid the institution for the academic term in which the student withdraws or (2) *refund* 100% of the tuition and fees paid for the academic term provided the student withdraws before the withdraw date established by the institution. Items (1) and (2) are actions an institution must take at the election of a student granted a military leave of absence. However, for

purposes of item (2), if the student withdraws after the withdraw date established by the institution, the student is ineligible for a refund.

- Defines the "withdraw date" for purposes of the credit and refund provisions as the same date as that set by an institution for its general student population to withdraw from the institution or a course or class without academic penalty.

- Requires these institutions, upon request of a student granted a military leave of absence not later than one year after the student's release from active duty, to restore the student to the educational status attained prior to being called to active duty without loss of academic credits earned, scholarships or grants awarded, or (except as provided above) tuition and other fees paid prior to the commencement of active duty.

- If an institution fails to comply with the foregoing requirements, allows an aggrieved student to commence an action against the institution to enforce the requirements in the court of common pleas of the county in which the student resides or, in the case of a state institution of higher education, in the Court of Claims. If the student resides outside Ohio, the action instead must be commenced in the court of common pleas of the county in which the campus of the institution previously attended by the student is located or, in the case of a state institution of higher education, in the Court of Claims. The court may award reasonable attorney's fees and expenses if the student prevails in the action.

- Defines "active duty," as used in this context, as full-time duty in the active military service of the United States, including full-time training duty, annual training duty, and active state duty for members of the National Guard.

Determination of school district

(R.C. 3313.64(A)(9), (B)(1), (C), (F)(14), and (M))

- For purposes of continuing law that generally requires for admittance to kindergarten or first grade that a child (who is at least five years old but under 21 years old or who is a handicapped preschool child) be admitted to the schools of the school district *in which the child's parent resides* without payment of tuition, provides that a child whose parent is a member of the National Guard or a reserve unit of the United States Armed Forces and called to active duty, or a child whose parent is a member of the Armed Forces and ordered to a temporary duty assignment outside of the district, may continue to attend school in the district in which the child's parent lived before being so called or ordered, as long as the child's parent continues to be a resident of that district, and regardless of where the



child lives as a result of the parent's active duty status or temporary duty assignment.

- Specifies that the school district is not responsible for providing transportation for a child who lives outside of the district as a result of the parent's active duty status or temporary duty assignment.

- Provides that a child under the age of 22 who resides with a person *other than the child's parent* is entitled to attend school in the school district in which *that person resides* if both of the following apply: (1) that person has been designated, through a military power of attorney executed under federal law or comparable document necessary to complete a family care plan, as the parent's agent for the care, custody, and control of the child while the parent is on active duty as a member of the National Guard or a reserve unit of the United States Armed Forces or because the parent is a United States Armed Forces member and is on duty assignment away from the parent's residence and (2) the military power of attorney or comparable document includes at least the authority to enroll the child in school.

- Provides that the entitlement to attend school in the district in which the parent's agent under the military power of attorney or comparable document resides applies until the end of the school year in which the military power of attorney or comparable document expires.

- Defines "active duty" in the same manner as described under "Use of bulk long distance telephone services." above.

Forcible Entry and Detainer Law

(R.C. 1923.062)

- Provides that, in an action brought under the Forcible Entry and Detainer (Eviction) Law for possession of residential premises of a tenant or manufactured home park resident who is deployed on active duty or of any member of the tenant's or resident's immediate family, if the tenant or resident entered into the rental agreement *on or after* the bill's effective date, the court may, on its own motion, and must, upon motion made by or on behalf of the tenant or resident, do either of the following if the tenant's or resident's ability to pay the agreed rent is materially affected by the deployment on active duty: (1) stay the proceedings for a period of 90 days unless, in the opinion of the court, justice and equity require a longer or shorter period of time or (2) adjust the obligation under the rental agreement to preserve the interest of all parties to it.