HB

125

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

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May, 1988

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

Mary Van Nimwegen

H. JUD.	3-6-87	1:30p.m.
H. JUD.	2-23-87	1:30p.m.

Introduced: 2/11/87
Referred: Judiciary and Finance

Human Rights Commission

wo1037hb

Number 1 priority

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

IN THE HOUSE

HOUSE BILL NO. 125

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to a cause of action for certain conduct involving discriminatory harassment."

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

* Section 1. AS 09.55 is amended by adding a new section to read:

ARTICLE 8. DISCRIMINATORY HARASSMENT.

Sec. 09.55.650. DISCRIMINATORY HARASSMENT ACTION. (a) A person may maintain an action for discriminatory harassment against another person, or against the parent or legal guardian of a minor, who has caused physical injury to the person or damage to the property of the person, with the intent to intimidate or harass the person because of the person's sex, sexual orientation, race, color, religion, national origin, or physical or mental disability.

age
political beliefs

(b) Actual and punitive damages may be awarded to a prevailing plaintiff in an action brought under this section. An award of damages against the parent or legal guardian of a minor under this section must be predicated upon conduct of the parent or legal guardian that is at least negligent. An award of damages under this section does not preclude a person from seeking other remedies available under law.

(c) A party filing a complaint or an answer under this section, shall serve an informational copy on the executive director of the Alaska State Commission for Human Rights.

Amend Court Rules??

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM March 6, 1987

SUBJECT: Existing remedies for conduct under HB 125 (Cause of action for discriminatory harassment)

TO: Representative John Sund
Chairman, House Judiciary Committee

FROM: Teresa B. Cramer TBC
Legislative Counsel

You have requested a brief review of state civil and criminal laws that could apply to conduct that gives rise to a cause of action under HB 125.

Under HB 125, a plaintiff may bring a cause of action against a defendant who caused physical injury to the plaintiff or who damaged the plaintiff's property if the defendant acted with intent to intimidate or harass the plaintiff because of the plaintiff's status as a member of a listed class. The classes listed include sex, sexual orientation, race, color, religion, national origin, and physical or mental disability. They are similar to the classes protected under AS 18.80, the state human rights law. The bill permits the award of actual and punitive damages to a prevailing plaintiff, and also imposes liability on the parent or legal guardian of a minor who commits the conduct that forms the basis of the cause of action if the parent or guardian's conduct was at least negligent.

The human rights chapter, AS 18.80, prohibits discrimination because of membership in a protected class in the areas of employment, credit and financing, public accommodations, and housing. The protected classes are based on race, religion, color, national origin, age, sex, marital status, changes in marital status, pregnancy or parenthood and, for employment discrimination only, physical handicap. Under AS 18.80.130(a), the commission may order hiring, reinstatement or upgrading

an employee with or without back pay, restoration to membership in a labor organization, and the like, in cases of employment discrimination. In housing discrimination cases, the commission may order the sale, lease or rental of the housing accommodation or a comparable one and actual damages that include expenses for alternate housing, storage, moving, and other actual costs.

Under AS 18.80.130(e) the commission may order payment of attorney fees to a private party if the commission determines the payment to be appropriate.

Under AS 18.80.270, a person who willfully engages in an unlawful discriminatory conduct prohibited by the chapter is guilty of a misdemeanor.

CRIMINAL MATTERS

Criminal law clearly prohibits conduct that intentionally injures a person or damages the property of another.

Under AS 11.81.900(a)(1), a person is considered to intend a specific result under the criminal laws of the state when the person's conscious objective is to cause that result. When intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective. Under AS 11.81.610(c), a person who acts intentionally will satisfy a requirement that an offense be committed with criminal negligence, recklessly, or knowingly.

The following list summarizes some of the criminal statutes that might apply to harassment or intimidation under HB 125. Copies of some of the statutes are attached for your information.

Under AS 11.61.120, a defendant is guilty of the crime of harassment if, with intent to harass or annoy another person, the defendant insults, taunts or challenges the victim in a manner likely to provoke an immediate violent response, improperly uses the telephone in certain listed ways, or subjects the victim to offensive physical contact. Conduct within the scope of HB 125 as it relates to physical injury to the plaintiff would clearly fall within the offensive physical contact paragraph.

Under 11.76.110, a defendant is guilty of interference with constitutional rights if the defendant injures the victim,

or oppresses, threatens, or intimidates the victim, intent to deprive the victim or a right, privilege, or immunity granted by the state constitution or laws or because the victim has exercised or enjoyed a right, privilege, immunity granted by the state constitution or laws. This law covers some of the same ground as HB 125.

The assault statutes, AS 11.41.200 - 11.41.250, would apply to conduct of which HB 125 is concerned. Note that under the bill, the intent required is to harass or intimidate, not to injure, while under the assault statutes, the intent requirement relates to the injury to the victim.

The criminal trespass and burglary statutes, AS 11.46.300 - 11.46.350, might also be violated by conduct that HB 125 makes the basis for liability.

In addition to these more logically connected criminal statutes, other criminal statutes might apply, depending on the nature of the defendant's actions. These include kidnapping, various degrees of sexual assault, and arson.

CIVIL CAUSES OF ACTION

The most significant change that HB 125 would make to existing civil liability is the imposition of liability on parents or guardians for the torts of minors in certain circumstances. Under AS 34.50.020, the parent or guardian of a minor is liable to a person for civil damages not to exceed $2,000 and court costs if the minor maliciously or willfully destroys real or personal property belonging to the person. There is no statute imposing liability for injury to the person, nor is liability created in case law. HB 125 would impose liability on a negligent parent or guardian for the minor's discriminatory harassment that caused personal injury or property damage.

Under HB 125, a person's sexual orientation is specifically the basis for protection. Under AS 18.80, which protects a person from discrimination on the basis of sex, right to protection on the basis of sexual orientation is not clearly set out, although the chapter may be interpreted to do so.

There are a variety of torts that might form the basis for a cause of action for conduct under HB 125. The following list is drawn from Prosser, Handbook of the Law of Torts, 5th ed.

Battery - harmful or offensive contact with a person resulting from an act intended to cause the plaintiff or a third person to sufter such contact, or apprehension that such contact is imminent. Plaintiff may recover compensation for resulting mental disturbance and for punitive damages usually.

Assault - apprehension of harmful or offensive contact where no actual contact is necessary. (Note that this conduct would be outside the scope of HB 125)

Infliction of mental distress - conduct that exceeds all bounds usually tolerated by decent society, of a nature that is especially calculated to cause and does cause mental distress of a very serious kind. This is a cause of action in transition; the limits are ill-defined.

Trespass to land - entry or casting objects or causing a third person to enter plaintiff's land or remaining on the land after permission to be there is withdrawn. No proof of damage is required.

Trespass to chattels - a direct and immediate intentional interference with a chattel in the possession of another.

Defamation - invasion of interest in reputation and good name. Statement must be communicated to another (if not, the tort of infliction of emotional distress may apply); a statement that tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him is defamatory under the Restatement (2d) of Torts. Group defamation on the basis of racial, religious or political minority membership has generally not been actionable under a defamation cause of action.

Invasion of privacy - intentional interference with another's interest in solitude or seclusion, either as to his person or to his private affairs or concerns (extends to eavesdropping) that is offensive or objectionable to a reasonable person.

If I may be of further assistance, please advise.

TC:csh
c7/081

Enclosure

Sec. 11.61.120. HARASSMENT. (a) A person commits the crime of harassment if, with intent to harass or annoy another person, that person

(1) insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response;

(2) telephones another and fails to terminate the connection with intent to impair the ability of that person to place or receive telephone calls;

(3) makes repeated telephone calls at extremely inconvenient hours;

(4) makes an anonymous or obscene telephone call or a telephone call that threatens physical injury;

(5) subjects another person to offensive physical contact; or

(6) violates a provision of an order issued under AS 25.35.010(b) or 25.35.020 restraining the respondent from communicating directly or indirectly with the petitioner.

(b) Harassment is a class B misdemeanor.

Sec. 11.76.110. INTERFERENCE WITH CONSITTUTIONAL RIGHTS. (a) A person commits the crime of interference with constitutional rights if

(1) the person injures, oppresses, threatens, or intimidates another person with intent to deprive that person of a right, privilege, or immunity in fact granted by the constitution or laws of this state;

(2) the person intentionally injures, oppresses, threatens, or intimidates another person because that person has exercised or enjoyed a right, privilege, or immunity in fact granted by the constitution or laws of this state; or

(3) under color of law, ordinance, or regulation of this state or a municipality or other political subdivision of this state, the person intentionally deprives another of a right, privilege, or immunity in fact granted by the constitution or laws of this state.

(b) In a prosecution under this section, whether the injury, oppression, threat, intimidation, or deprivation concerns a right, privilege, or immunity granted by the constitution or laws of this state is a question of law.

(c) Interference with constitutional rights is a class A misdemeanor.

Sec. 11.41.200. ASSAULT IN THE FIRST DEGREE. (a) A person commits the crime of assault in the first degree if

(1) that person recklessly causes serious physical injury to another by means of a dangerous instrument;

(2) with intent to cause serious physical injury to another, the person causes serious physical injury to any person; or

(3) the person intentionally performs an act that results in serious physical injury to another under circumstances manifesting extreme indifference to the value of human life.

(b) Assault in the first degree is a class A felony.

Sec. 11.41.210. ASSAULT IN THE SECOND DEGREE. (a) A person commits the crime of assault in the second degree if

(1) with intent to cause physical injury to another person, that person causes physical injury to another person by means of a dangerous instrument; or

(2) that person recklessly causes serious physical injury to another person.

(b) Assault in the second degree is a class B felony.

Sec. 11.41.220. ASSAULT IN THE THIRD DEGREE. (a) A person commits the crime of assault in the third degree if that person recklessly

(1) places another person in fear of imminent serious physical injury by means of a dangerous instrument; or

(2) causes physical injury to another person by means of a dangerous instrument.

(b) Assault in the third degree is a class C felony.

Sec. 11.41.230. ASSAULT IN THE FOURTH DEGREE. (a) A person commits the crime of assault in the fourth degree if

(1) that person recklessly causes physical injury to another person;

(2) with criminal negligence that person causes physical injury to another person by means of a dangerous instrument; or

(3) by words or other conduct that person recklessly places another person in fear of imminent physical injury.

(b) Assault in the fourth degree is a class A misdemeanor.

Sec. 11.41.250. RECKLESS ENDANGERMENT. (a) A person commits the crime of reckless endangerment if the person recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

(b) Reckless endangerment is a class A misdemeanor.

Sec. 11.46.300. BURGLARY IN THE FIRST DEGREE. (a) A person commits the crime of burglary in the first degree if the person violates AS 11.46.310 and

(1) the building is a dwelling; or

(2) in effecting entry or while in the building or immediate flight from the building, the person

(A) is armed with a firearm;

(B) causes or attempts to cause physical injury to a person; or

(C) uses or threaten to use a dangerous instrument.

(b) Burglary in the first degree is a class B felony.

Sec. 11.46.310. BURGLARY IN THE SECOND DEGREE. (a) A person commits the crime of burglary in the second degree if the person enters or remains unlawfully in a building with intent to commit a crime in the building.

(b) Burglary in the second degree is a class C felony.

Sec. 11.46.320. CRIMINAL TRESPASS IN THE FIRST DEGREE. (a) A person commits the crime of criminal trespass in the first degree if the person enters or remains unlawfully

(1) on land with intent to commit a crime on the land; or

(2) in a dwelling.

(b) Criminal trespass in the first degree is a class A misdemeanor.

Sec. 11.46.330. CRIMINAL TRESPASS IN THE SECOND DEGREE. (a) A person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully

(1) in or upon premises; or

(2) in a propelled vehicle.

(b) Criminal trespass in the second degree is a class B misdemeanor.

Sec. 11.46.350. DEFINITION. (a) As used in AS 11.46.300 - 11.46.350, unless the context requires otherwise, "enter or remain unlawfully" means to

(1) enter or remain in or upon premises or in a propelled vehicle when the premises or propelled vehicle, at

the time of the entry or remaining, is not open to the public and when the defendant is not otherwise privileged to do so;

(2) fail to leave premises or a propelled vehicle that is open to the public after being lawfully directed to do so personally by the person in charge; or

(3) enter or remain upon premises or in a propelled vehicle in violation of a provision in an order issued under AS 25.35.010(b) or 25.35.020.

(b) For purposes of this section, a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, is privileged to do so unless

(1) notice against trespass is personally communicated to that person by the owner of the land or some other authorized person; or

(2) notice against trespass is given by posting in a reasonably conspicuous manner under the circumstances.

Sec. 11.46.480. CRIMINAL MISCHIEF IN THE FIRST DEGREE. (a) A person commits the crime of criminal mischief in the first degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) with intent to cause a substantial interruption or impairment of a service rendered to the public by a utility or by an organization which deals with emergencies involving danger to life or property, the person damages or tampers with property of that utility or organization and causes substantial interruption or impairment of service to the public;

(2) with intent to damage property of another by the use of widely dangerous means, the person damages property of another in an amount exceeding $100,000 by the use of widely dangerous means;

(3) the person intentionally damages an oil or gas pipeline or supporting facility; or

(4) with intent to cause physical injury to another person, the person:

(A) tampers with an item that is a food, drug, or cosmetic or a container for the item; or

(B) delivers, dispenses, or distributes an item described in (A) of this paragraph knowing that a person has tampered with the item.

(b) Criminal mischief in the first degree is a class B felony.

(c) In (a)(4) of this section,

(1) "deliver" means the actual, constructive, or attempted transfer from one person to another of an item;

(2) "dispense" means to deliver a drug to an ultimate user or research subject by or under the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery;

(3) "distribute" means to deliver an item, whether or not there is any money or other item of value exchanged; it includes sale, gift, or exchange;

(4) "drug" has the meaning given in AS 11.71.900(9);

(5) "tamper" means to interfere with something improperly, meddle with it, or make unwarranted alterations to its existing condition.

Sec. 11.46.482. CRIMINAL MISCHIEF IN THE SECOND DEGREE. (a) A person commits the crime of criminal mischief in the second degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) with intent to damage property of another, the person damages property of another in an amount of $500 or more;

(2) the person tampers with an oil or gas pipeline or supporting facility or an airplane or helicopter with reckless disregard for the risk of harm to or loss of the property;

(3) the person recklessly creates a risk of damage in an amount exceeding $100,000 to property of another by the use of widely dangerous means; or

(4) the person drives, tows away, or takes the propelled vehicle of another and the vehicle or any other property of another is damaged or the owner incurs reasonable expenses as a result of the loss of use of the vehicle in a total amount of $500 or more.

(b) Criminal mischief in the second degree is a class C felony.

Sec. 11.46.484. CRIMINAL MISCHIEF IN THE THIRD DEGREE. (a) A person commits the crime of criminal mischief in the third degree if, having no right to do so or any reasonable ground to believe the person has such a right

(1) with intent to damage property of another, the person damages property of another in an amount of $50 or more but less than $500;

(2) the person drives, tows away, or takes the propelled vehicle of another;

(3) having custody of a propelled vehicle under a written agreement with the owner of the vehicle that includes

an agreement to return the vehicle to the owner at a specified time, the person knowingly retains or withholds possession of the vehicle without the consent of the owner for so long a period beyond the time specified as to render the retention or possession of the vehicle an unreasonable deviation from the agreement;

(4) the person tampers with a fire protection device in a building that is a public place;

(5) the person knowingly accesses a computer, computer system, computer program, computer network, or any part of a computer system or network; or

(6) the person uses a device to descramble an electronic signal that has been scrambled to prevent unauthorized receipt or viewing of the signal unless the device is used only to descramble signals received directly from a satellite or unless the person owned the device before September 18, 1984.

(b) Except as provided in (c) of this section, criminal mischief in the third degree is a class A misdemeanor.

(c) A person convicted under (a)(2) of this section is guilty of a class C felony if, within the preceding seven years, the person was convicted under

(1) the provisions of (a)(2) of this section;
(2) former AS 28.35.010;
(3) the provisions of AS 11.46.482(a)(4);
(4) an offense involving the theft of a propelled vehicle under AS 11.46.120 - 11.46.140; or
(5) a law or ordinance of this or another jurisdiction with elements substantially similar to those of the offenses described in (1) - (4) of this subsection.

Sec. 11.46.486. CRIMINAL MISCHIEF IN THE FOURTH DEGREE. (a) A person commits the crime of criminal mischief in the fourth degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) with reckless disregard for the risk of harm to or loss of the property or with intent to cause substantial inconvenience to another, the person tampers with property of another;

(2) with intent to damage property of another, the person damages property of another in an amount less than $50; or

(3) the person rides in a propelled vehicle knowing it has been stolen or that it is being used in violation of AS 11.46.482(a)(4) or 11.46.484(a)(2).

(b) Criminal mischief in the fourth degree is a class B misdemeanor.

HB125

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 10, 1987

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that addresses the problem of discriminatory harassment -- that is, wrongful acts committed with the intent to intimidate or harass another person because of that person's sex, sexual orientation, race, color, religion, national origin, or physical or mental disability.

The bill creates a statutory private right of action under which a person can sue another for physical harm or property damage caused with the intent to intimidate or harass another person because of the factors just listed. The court may award actual and punitive damages to a prevailing plaintiff. Creating a special civil action such as this gives specific statutory authority for such an action, rather than relying on the broad authority of the common law. It also allows for easier tracking of lawsuits involving discrimination harassment, because an informational copy of a complaint filed under this statute along with the answer to it is to be served on the executive director of the Alaska State Commission for Human Rights. This service is the responsibility of the plaintiffs and defendants.

As is the Human Rights Commission, I am committed to the passage of legislation that seeks to discourage acts of malicious harassment based on discriminatory motivation. Human rights agencies nationwide are taking note of the significant number of racial incidents, of hate groups advocating violence and extremism, and of other instances of harassment motivated by various types of bigotry. We must all remain steadfast in our resolve to protect Alaskans from such offensive conduct and the odious intolerance that it represents. This bill will help.

Sincerely,

Steve Cowper
Governor

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill version: HB 125
Publish Date: 2/11/87

REQUEST:

Revision Date:
Title: Discriminatory Harrassment 773-87-0103
Sponsor: Governor
Requestor: Human Rights Commissioner

Agency Affected: Office of the Governor
BRU: Commissions/Special Offices
Components: Human Rights Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Michael A. Nizich, Director
Division: Administrative Services
Phone: 465-3616
Date: 2-10-87

Approved by Commissioner: Carol P. Kastelic
Agency: Office of the Governor
Date: 2-10-87

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