

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 14, 2001

2:27 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Jeannette James
Representative John Coghill
Representative Kevin Meyer
Representative Ethan Berkowitz

MEMBERS ABSENT

Representative Scott Ogan, Vice Chair
Representative Albert Kookesh

COMMITTEE CALENDAR

HOUSE BILL NO. 110

"An Act relating to driver's licenses and instructional permits;
and providing for an effective date."

- MOVED CSHB 110(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 4

"An Act relating to offenses involving operating a motor
vehicle, aircraft, or watercraft while under the influence of an
alcoholic beverage or controlled substance; relating to implied
consent to take a chemical test; relating to registration of
motor vehicles; relating to presumptions arising from the amount
of alcohol in a person's breath or blood; and providing for an
effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: HB 110

SHORT TITLE: SOCIAL SECURITY # & DRIVER'S LICENSES

SPONSOR(S): REPRESENTATIVE(S) COGHILL

Jrn-Date	Jrn-Page		Action
02/05/01	0241	(H)	READ THE FIRST TIME - REFERRALS
02/05/01	0241	(H)	STA, JUD

02/15/01		(H)	STA AT 8:00 AM CAPITOL 102
02/15/01		(H)	Heard & Held
02/15/01		(H)	MINUTE(STA)
02/20/01		(H)	STA AT 8:00 AM CAPITOL 102
02/20/01		(H)	Moved Out of Committee
02/20/01		(H)	MINUTE(STA)
02/21/01	0383	(H)	STA RPT CS(STA) 6DP 1NR
02/21/01	0384	(H)	DP: WILSON, STEVENS, CRAWFORD, JAMES,
02/21/01	0384	(H)	FATE, COGHILL; NR: HAYES
02/21/01	0384	(H)	FN1: ZERO(ADM)
03/13/01	0579	(H)	COSPONSOR(S): DYSON
03/14/01		(H)	JUD AT 2:15 PM CAPITOL 120

WITNESS REGISTER

SENATOR GENE THERRIAULT

Alaska State Legislature
 Capitol Building, Room 121
 Juneau, Alaska 99801

POSITION STATEMENT: Discussed an amendment to SB 102, the companion bill to HB 110.

RYNNIEVA MOSS, Staff
 to Representative John Coghill
 Alaska State Legislature
 Capitol Building, Room 102
 Juneau, Alaska 99801

POSITION STATEMENT: Assisted with presentation of HB 110 and answered questions.

DENNY WEATHERS
 PO Box 1791
 Cordova, Alaska 99574

POSITION STATEMENT: During discussion of HB 110, provided comments on requirements of social security numbers for licenses.

ERIC WEATHERS
 PO Box 1791
 Cordova, Alaska 99574

POSITION STATEMENT: During discussion of HB 110, provided comments on requirements of social security numbers for licenses.

MARY MARSHBURN, Director
 Division of Motor Vehicles

Department of Administration
3300B Fairbanks Street
Anchorage, Alaska 99503

POSITION STATEMENT: Answered questions on HB 110 and the proposed amendments.

JENNIFER RUDINGER, Executive Director
Alaska Civil Liberties Union
PO Box 201844

Anchorage, Alaska 99520
POSITION STATEMENT: Testified in support of HB 110 and proposed Amendment 1.

ACTION NARRATIVE

TAPE 01-32, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 2:27 p.m. Representatives Rokeberg, Coghill, Meyer, and Berkowitz were present at the call to order. Representative James arrived as the meeting was in progress.

HB 110 - SOCIAL SECURITY # & DRIVER'S LICENSES

[Contains discussion of SB 102, the companion bill.]

Number 0085

CHAIR ROKEBERG announced that the committee would hear HOUSE BILL NO. 110, "An Act relating to driver's licenses and instructional permits; and providing for an effective date." [Before the committee was CSHB 110(STA).]

Number 0102

REPRESENTATIVE COGHILL, speaking as the sponsor, said that HB 110 would take social security numbers off of the face of driver's licenses. He added that he had been dealing with this issue in a number of ways because of reluctance, on his part, to have social security numbers continually used as an identification number. He pointed out that though the social security number would still have to be given on the application, individuals would not have to have it on the face of driver's licenses, thus providing a certain amount of security to those individuals. Furthermore, HB 110 will allow for an affidavit

for those who don't have a social security number so that those folks could pursue a driver's license. He noted that the legislation is to become effective immediately. He also noted that this would also apply to identification cards. The Department of Motor Vehicles (DMV) has assured him that the policy for a driver's license would be directly related to those identifications.

REPRESENTATIVE COGHILL informed the committee that Senator Therriault is the sponsor of a similar bill. Therefore, he had requested Senator Therriault's presence so that he could discuss an amendment [to SB 102] that occurred in the Senate.

Number 0249

SENATOR GENE THERRIAULT, Alaska State Legislature, said that he and Representative Coghill had been coordinating on this issue. Before he discussed the amendment, he asked if the proposed commercial driver's license (CDL) language is going to be considered as an amendment or a committee substitute (CS).

REPRESENTATIVE COGHILL answered that it would be considered a friendly amendment.

SENATOR THERRIAULT provided the committee with the language adopted by the Senate committee, which he said should also work for HB 110. Senator Therriault informed the committee that a Juneau man had related the following story to him. This man had a CDL that had his social security number on the face of it, and he lost his wallet a few years ago. Shortly after recovering his wallet, he realized that someone was using his social security number to assume his identity. At the time, Senator Therriault told the man that although he thought the social security number on the CDL was a federal requirement, he would look into the issue.

SENATOR THERRIAULT explained that according to the Federal Motor Carrier Safety Administration regulations [Section 383.153] (d)(1), a driver applicant must provide his or her social security number on the application of a CDL, and [under Section 383.153 (d)(2)] the state must provide the social security number to the CDL information system. Further clarification came from a publication, used by states seeking direction from the federal government, which said, according to [Section] 383.153, that a social security number did not have to be on the CDL, simply on the application if the applicant is domiciled in the United States. Senator Therriault said it is clear that the

federal government requires a social security number to be provided on the application, which then gets submitted to the federal tracking system, but the social security number does not have to be on the CDL.

Number 0510

SENATOR THERRIAULT referred to Amendment 1, 22-LS0556\C.1, Ford, 3/12/01, and said it was intended to clarify, in Alaska Statute, what would be required on a CDL by the federal government. Like on a regular driver's license, a social security number must be provided on the application but does not have to be printed on the face of the license. Amendment 1 reads as follows:

Page 2, following line 20:

Insert a new bill section to read:

"* **Sec. 3.** AS 28.33.100(b) is amended to read:

(b) In addition to the information required under AS 28.15.111, a commercial driver's license shall include information determined by the United States Secretary of Transportation to be appropriate to identify the licensee [, INCLUDING THE LICENSEE'S SOCIAL SECURITY NUMBER]."

Renumber the following bill sections accordingly.

SENATOR THERRIAULT said he would provide the committee with the written information from the federal government.

REPRESENTATIVE COGHILL, on another point, referred to page 2, lines [15-16], and inquired if the exception language should be deleted.

SENATOR THERRIAULT said he did not think that would be necessary. He explained that inclusion of the exception language would allow flexibility; should the federal government change its policy and require a social security number on CDLs, then Alaska Statute would not have to be changed to accommodate new federal regulations.

CHAIR ROKEBERG suggested that keeping the aforementioned exception language in would make the statute more confusing for the public.

Number 0725

SENATOR THERRIAULT countered that letting the exception language remain would allow Alaska to stay in compliance with federal regulations even if those regulations changed in the future. If Alaska did not remain in compliance because of federal regulation changes, then Alaska's CDLs might not be recognized in other states. The legislature would then have to convene and alter the statute in order to comply with new federal regulations.

REPRESENTATIVE COGHILL noted that he was not opposed to that scenario, should it need to occur.

Number 0752

RYNNIEVA MOSS, Staff to Representative John Coghill, Alaska State Legislature, assisted with the presentation of HB 110. She said she thought Senator Therriault's interpretation of the aforementioned exception language was correct. Currently, the Secretary of Transportation does not require a social security number on CDLs; therefore, the exception language could remain without violating the intent of HB 110.

CHAIR ROKEBERG commented that the federal regulations document provided by Senator Therriault appeared to require a social security number on the CDL if the applicant had an air brake restriction.

SENATOR THERRIAULT explained that that interpretation was not correct. The language in the federal regulations document merely required that a social security number had to be supplied on the application, and it was [the air brake restriction that must be indicated on the CDL].

REPRESENTATIVE COGHILL added that a social security number was required to be provided on the application for a regular state driver's license as well.

CHAIR ROKEBERG returned to the point of the exception language [on page 2, lines 15-16]. He inquired if Senator Therriault recommended keeping it in HB 110.

SENATOR THERRIAULT advised that keeping the aforementioned exception language would be prudent. If the exception language was removed from HB 110, and the federal government started requiring social security numbers on CDLs, Alaska's Division of Motor Vehicles (DMV) would not be able to comply; thus Alaska's CDLs would be valid only in Alaska. This scenario would

negatively impact long-haul truck drivers who routinely use the Alaska-Canada Highway (Alcan) because their CDLs would not be valid in the Lower 48. In response to a query from Chair Rokeberg, Senator Therriault said that he thought CDL holders would understand the requirements on the CDL application regarding social security numbers, though he suspected that probably no one reads the entire statute prior to applying.

REPRESENTATIVE COGHILL explained that given the current high-tech methods of information transfers, "identity theft" was becoming a bigger issue. He said he thought the [social security] number has become too much of an identifier, and philosophically, he would not mind standing up to the federal government, although he acknowledged the need to go in incremental steps. Getting [the social security number] off the face of [driver's] licenses and fishing licenses would assist in protecting an individual's identity. He also noted that even his legislative ID card included his social security number on it, and he would be taking up this same issue with the Legislative Affairs Agency. He concluded by saying his intent with HB 110 was to protect the public from identity theft.

REPRESENTATIVE BERKOWITZ commented that his social security number was not on the face of his driver's license because he expressly asked DMV not to include it.

REPRESENTATIVE COGHILL acknowledged that people can make that request but most people do not know of that option.

Number 1059

DENNY WEATHERS testified via teleconference. She said that she and her husband had wanted to participate in the meeting [on SB 102] held yesterday, but were precluded from doing so because her husband had been arrested for not having a driver's license and, therefore, had to go to court. She said that when she and her husband went to go renew their driver's licenses, they were denied because they "did not have a social security [number], or would not give a social security [number]." She added that they had been fighting this [situation] since HB 344 went into effect in 1998. She said that in 1999 they were denied their licenses when they went to renew them because the legislature created HB 344 under duress from the federal government. She also said that she felt that the legislature had taken away her rights and had tried to force her to get a federal ID number.

MS. WEATHERS referred to SB 19 and HB 41 and said that although they appeared to be good legislation, they were both going to extend the sunset provisions regarding social security [number] requirements. She said she felt that the legislature did not seem to care about the public; instead, the legislature wanted the federal dollars. She expressed the opinion that while the legislature was supposed to represent the people, the legislature was only [in Juneau] to make money for itself. She concluded by saying that although she has never received any response to her inquiries, she still wanted to know how many people owe child support versus how many people don't. She added that she knows very few people who actually owe child support, and she felt that the legislature was causing problems for those who do not owe child support in order to get additional funds through the court system. She also said she felt that what the legislature was doing was a treasonable offense.

Number 1259

ERIC WEATHERS testified via teleconference. He said he felt he was being made a criminal over the social security [number] issue. He said he believed it was directly due to the Child [Support] Enforcement Agency and over the \$70 million. He added that he will have been in court three times as of tomorrow for the charge of driving without a license. He postulated that the \$70 million would be used up in trial cases. He said he would really like to see "you throw it out and take this oppression off of it." Mr. Weathers clarified, for Representative Rokeberg, that he was arrested for driving without a license, and he was denied a license because "I didn't have a social security number." He added that Representative Coghill's office had a copy of everything and all his prior testimony.

Number 1394

MARY MARSHBURN, Director, Division of Motor Vehicles, Department of Administration, testified via teleconference. She said Senator Therriault was correct: federal law requires the collection and retention of social security numbers for both commercial and non-commercial driver's licenses. However, there are not any federal requirements to display the social security number on either license. She also said that neither HB 110 nor proposed Amendment 1 would have any effect on either DMV or DMV's zero fiscal note. She added that the division's collection of social security numbers, as required by federal law, would not be prohibited.

MS. MARSHBURN clarified that it is a federal requirement, not a state requirement, to collect a social security number on a driver's license application. The collection of the number on the application was required, but the display of the number on the face of the license was not. She said this federal requirement came from the child support law. She explained that if someone had never been issued a social security number, then that person could complete a sworn affidavit to that effect and would be issued a driver's license or be allowed to renew one. If, however, a person has ever been issued a social security number, then DMV is required by the federal government to collect it. The Social Security Administration does not rescind social security numbers, she noted.

Number 1491

REPRESENTATIVE BERKOWITZ inquired whether the requirement of the sworn affidavit could be fulfilled at the DMV office.

MS. MARSHBURN said yes, it could. In addition, every DMV office has a sign that informs the public that display of the social security number on the face of the license is optional.

REPRESENTATIVE BERKOWITZ referred to [paragraph] (4). He said he thought that the objective of the statement "this paragraph does not apply to a person who affirms by a sworn [affidavit]" could be accomplished by saying: "this paragraph only applies to a person who has been issued a social security number". He questioned why the burden was on people who do not have a social security number to come forward and affirm that fact. He suggested amending HB 110 [on page 1, line 14, and page 2, lines 1-2] to read: "this paragraph only applies to a person who has been issued a social security number". The same end would be accomplished, and it would avoid the problem of affirmatively requiring somebody who does not have a social security number to do something.

MS. MARSHBURN responded that this issue would be best posed to the Department of Law. She had, however, received communications from the federal government on this very issue, which directed DMV to do just the opposite of Representative Berkowitz's suggestion. In order for DMV to issue a license, the applicant must sign a sworn affidavit, under penalty of perjury, that he or she has never had, has never been issued, and has never used a social security number. She said

affidavits are to be kept on file with DMV, although to date, no affidavits have been filed.

CHAIR ROKEBERG added that according to a letter from David Gray Ross, Commissioner, Office of Child Support Enforcement, United States Department of Health and Human Services, states were advised to require the sworn affidavits. He acknowledged that he did not know exactly what that meant, whether it was just the commissioner's opinion, or if there was a regulatory foundation.

Number 1637

REPRESENTATIVE BERKOWITZ argued that the interpretation language in the aforementioned letter suggested a course of action that was distinctly different from requiring someone who does not have a social security number to affirmatively do something. He also noted that the legislature did not have to follow the advice of the federal government.

CHAIR ROKEBERG commented that had Mr. Weathers used the sworn affidavit, he might not have found himself before the bar. On another point, he asked Ms. Marshburn if any DMV systems required social security numbers.

MS. MARSHBURN explained that social security numbers were another piece of information. The key pieces of information for use in the DMV systems were the names and driver's license numbers.

SENATOR THERRIAULT presented the following scenario: a person had already supplied his or her social security on a prior driver's license application, and when he or she came into the office to renew the license, refused to provide the social security number again. Senator Therriault asked if the DMV had the flexibility to use information already on file, rather than deny the renewal.

MS. MARSHBURN confirmed that the DMV would be able to use information already on file. She added that the only people who risk being denied a driver's license are people that are getting an Alaskan driver's license for the first time or people whose social security number cannot be located in the database. She noted that most people of her generation (mid-fifties) would have a social security number, but people of her children's generation might be more likely to not have one.

REPRESENTATIVE BERKOWITZ pointed out that if a person had a social security number but claimed to not have one, then that person would be guilty of "unsworn falsification," a criminal offense.

MS. MARSHBURN noted that in such a case, the DMV would ask the person to sign the affidavit. If the person signs the affidavit, a license is issued; if the person does not sign the affidavit, a license is denied. She added that both the federal government and the Office of the Attorney General advised the DMV to take this course of action. She also acknowledged that the DMV did have ways of determining if a person had committed unsworn falsification.

Number 1896

JENNIFER RUDINGER, Executive Director, Alaska Civil Liberties Union (AkCLU), testified via teleconference. She simply said that she was in support of HB 110 and proposed Amendment 1.

CHAIR ROKEBERG referred to language [on page 2, lines 15-16] and inquired of Ms. Marshburn if there was any prospect that the federal government would change its policy anytime soon and start requiring social security numbers on the face of CDLs. He wanted to know how stable the federal regulations were in this area.

MS. MARSHBURN explained that there was not any prospect at this time for change in the federal regulation regarding CDLs. She added, however, that she wouldn't rule such a change completely out, and the language [on page 2, lines 15-16] was designed to allow flexibility in case such a change occurred. If that language were removed and such a change did occur in federal regulations, Alaska would be found out of compliance. She added that noncompliance meant decertification of the state's CDL program, which would, in turn, prevent CDL holders from driving in other states, and would also cause about a 5 percent loss of highway funds, or approximately \$17 million.

CHAIR ROKEBERG noted that typically, the [U.S.] Department of Transportation gives states a transition period in which to implement changes in state statute in order to comply with new federal regulations.

MS. MARSHBURN confirmed that that would be the case, but cautioned that the length of the notification period can vary. She mentioned that the [federal] Drivers Privacy Protection Act

[of 1994] had a seven-month notification period, which required the legislature to act quite quickly.

Number 2080

CHAIR ROKEBERG announced that the public hearing on HB 110 was closed.

Number 2147

REPRESENTATIVE COGHILL made a motion to adopt the aforementioned Amendment 1. There being no objection, it was so ordered.

REPRESENTATIVE BERKOWITZ made a motion to adopt Conceptual Amendment 2, which is as follows:

Page 2, line 1,

delete: "does not apply to a person who affirms
by sworn affidavit that the person has not"

insert: "only applies to a person who has"

[The result would be that paragraph (4), starting on page 1, line 14, and continuing on page 2, lines 1-2, would read: "(4) contain the applicant's social security number; this paragraph only applies to a person who has been issued a social security number; and".]

REPRESENTATIVE COGHILL, as the sponsor, stated he had no objection to Conceptual Amendment 2. He added that notwithstanding the federal government's advice regarding the sworn affidavit, he agreed with the concept of "putting the burden where it belongs."

REPRESENTATIVE BERKOWITZ added that in the aforementioned letter from David Gray Ross, paragraph 3 says that Section 466(a)(13) of the Social Security Act is interpreted "to require that States have procedures which require an individual to furnish any social security number...." He argued that Conceptual Amendment 2 was just such a procedure. He added that as long as [the legislature] complied with the intent, nothing more was needed.

REPRESENTATIVE COGHILL noted that although he agreed with the remarks of Representative Berkowitz, he also acknowledged that the federal government intended to require an affidavit from individuals who do not have a social security number. He added

that he thought the [DMV] could continue to collect affidavits without the requirement being in statute.

REPRESENTATIVE BERKOWITZ commented that he did not want the state to be collecting affidavits from people who are exercising their rights. He referred to Mr. Weathers' case and suggested that requiring people to affirm that they do not have a social security number is making criminals out of people who are simply doing what they feel is right.

Number 2300

CHAIR ROKEBERG countered that if Conceptual Amendment 2 were adopted, anyone could claim that he or she did not have a social security number and, therefore, would not be required to furnish it on the application.

REPRESENTATIVE BERKOWITZ added that there was not any way to check on the validity of claims made by people that they do not have a social security number.

CHAIR ROKEBERG noted that that did not seem to be problem currently, but cautioned that if statutory permission were given, then it could become a problem.

REPRESENTATIVE BERKOWITZ said that he could see three classes of people that would not provide a social security number: those that did not wish to divulge it, those who did not have one, and those that were trying to evade the law. He added that individuals who were trying to evade that law would be caught some other way, not through a sworn affidavit. He noted that unsworn falsification is a crime with far reaching effects.

CHAIR ROKEBERG said that the state would be running afoul of federal law by not providing the social security number, if in fact an individual did have a social security number but did not divulge it on the application. He added that with the adoption of Conceptual Amendment 2, the DMV clerk who would have no recourse if a person lied about having a social security number.

REPRESENTATIVE BERKOWITZ countered that honest people would be breaking the law by not providing a social security number if they had been issued one.

REPRESENTATIVE COGHILL added that it appears to him that the federal government is requiring people to swear, by affidavit, that they do not have a social security number, and he said he

believes that to be coercive. He also said he did not believe the burden of proof should be there because it could be construed as coercing people to get a social security number.

[CHAIR ROKEBERG maintained his objection to Conceptual Amendment 2. This statement is not found on the tape but was recorded in the log notes.]

TAPE 01-32, SIDE B
Number 2499

A roll call vote was taken. Representatives Coghill, Meyer, and Berkowitz voted for Conceptual Amendment 2. Representative Rokeberg voted against it. Representatives James, Ogan, and Kookesh were absent during the vote. Therefore, Conceptual Amendment 2 was adopted. [After the roll call vote, the committee questioned quorum requirements. Chair Rokeberg's staff confirmed that according to Legislative Legal Services, Conceptual Amendment 2 was adopted.]

Number 2427

CHAIR ROKEBERG made a motion to adopt Conceptual Amendment 3, which is as follows:

Page 2, lines 15-16,
delete: "Except as provided under AS
28.33.100(b) for commercial driver's license, a"

insert: "A"

Number 2344

REPRESENTATIVE BERKOWITZ objected for the purpose of clarification

CHAIR ROKEBERG explained that notwithstanding Senator Therriault's arguments, he did not want to create additional confusion within the statute by putting in an exception for a situation that did not as yet exist. Chair Rokeberg further explained that the adoption of Amendment 1 made the exception language listed in proposed Conceptual Amendment 3 superfluous.

MS. MOSS commented that the exception language, if left in HB 110, would allow the DMV to comply with any changes imposed by the federal government regarding CDLs. She added that if the exception language was removed, as is proposed by Conceptual

Amendment 3, the state would still have time to comply with any forthcoming changes from the federal government because a notification period would be given.

Number 2240

CHAIR ROKEBERG noted there was no further objection. Therefore, Conceptual Amendment 3 was adopted.

CHAIR ROKEBERG explained, for the benefit of Representative James, who had recently arrived, the amendments made to HB 110 thus far.

Number 2129

REPRESENTATIVE JAMES commented that she agreed with Representative Rokeberg's reasons for objecting to Conceptual Amendment 2. She said [the legislature] should not open the door for people to lie and cheat.

Number 2101

REPRESENTATIVE BERKOWITZ moved to report CSHB 110(STA), as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 110(JUD) was reported from the House Judiciary Standing Committee.

[Blank tape for approximately 2 seconds.]

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:25 p.m.