

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

February 19, 2003

1:39 p.m.

**MEMBERS PRESENT**

Senator Ralph Seekins, Chair  
Senator Scott Ogan, Vice Chair  
Senator Johnny Ellis  
Senator Hollis French

**MEMBERS ABSENT**

Senator Gene Therriault

**COMMITTEE CALENDAR**

SENATE BILL NO. 58

"An Act relating to permanent fund dividend program notice requirements and to the ineligibility for permanent fund dividends of certain persons sentenced for crimes involving mandatory motor vehicle liability insurance."

HEARD AND HELD

SENATE BILL NO. 59

"An Act relating to permanent fund dividend program notice requirements and to the ineligibility for permanent fund dividends of certain persons sentenced for driving while under the influence of an alcoholic beverage, inhalant, or controlled substance, or for refusal to submit to a chemical test."

HEARD AND HELD

**PREVIOUS ACTION**

SB 58 - No previous action to record.

SB 59 - No previous action to record.

**WITNESS REGISTER**

Senator John Cowdery  
Alaska State Capitol, Room 101  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Sponsor of SB 58 and SB 59

Crystal Moore  
Alaska State Capitol, Room 101

Juneau, AK 99801-1182

**POSITION STATEMENT:** Introduced SB 58 and SB 59

Linda Wilson

Deputy Director, Public Defender Agency

Department of Law

PO Box 110300

Juneau, AK 99811-0300

**POSITION STATEMENT:** Testified on SB 58 and SB 59

Diane Wendlandt

Assistant Attorney General,

Collections and Support Section

Department of Law

PO Box 110300

Juneau, AK 99811-0300

**POSITION STATEMENT:** Testified on SB 58 and SB 59

Larry Persily

Deputy Commissioner

Department of Revenue

PO Box 110400

Juneau, AK 99811-0400

**POSITION STATEMENT:** Testified on SB 58 and SB 59

Marti Greeson

Director, Anchorage Chapter MADD

Anchorage, AK 99510

**POSITION STATEMENT:** Testified on SB 58 and SB 59

John Main

Director, Child Support Enforcement

Department of Revenue

PO Box 110400

Juneau, AK 99811-0400

**POSITION STATEMENT:** Testified on SB 58 and SB 59

Al Near

No address provided

**POSITION STATEMENT:** Testified on SB 59

Jessica Paris

Juneau representative, MADD

Juneau, AK 99801

**POSITION STATEMENT:** Testified on SB 59

**ACTION NARRATIVE**

**TAPE 03-4, SIDE A**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at 1:39 p.m. Senators French, Ogan and Chair Seekins were present to constitute a quorum. Senator Ellis arrived momentarily.

He announced the committee would consider two bills sponsored by Senator Cowdery, SB 58 and SB 59. He asked Senator Cowdery to introduce his staff member who would give the introductory presentation.

**SB 58-PFD INELIGIBILITY/MOTOR VEHICLE INSURANCE**  
**SB 59-PERMANENT FUND INELIGIBILITY FOR DUI**

SENATOR JOHN COWDERY, sponsor of SB 58 and SB 59, introduced Crystal Moore and said she would present the bills.

CRYSTAL MOORE, staff to Senator Cowdery, described SB 58 as an act relating to the Permanent Fund Dividend Program that involves uninsured motorists. Following is her presentation.

Each year, hundreds of Alaskans fall victim to uninsured drivers and the state law is clear: drivers must maintain a minimum amount of liability insurance. Unfortunately, there is no way to keep track of that unless an accident occurs. This bill requires that if you are caught without insurance you have a one-year suspension of your permanent fund dividend [PFD] for a first offense. For a second offense it is a five year suspension of your PFD. It makes you ineligible, which means you do not have a dividend. You do not qualify so there is no money coming to you, no money necessarily that any other department can take either. Nobody can garnish those wages because they do not exist. Because the permanent fund dividend is a right, not a privilege, these penalties fall above and beyond all other penalties that are currently provided by for the law.

CHAIR SEEKINS asked whether members had questions for Ms. Moore.

SENATOR HOLLIS FRENCH asked about a statement in the sponsor statement that reads, "...hundreds of Alaskans fall victim to uninsured drivers." Although he didn't dispute the statement, he noted he would be "out of luck" if he didn't carry uninsured

motorist insurance and his car was hit by an uninsured motorist. As the victim, he would like to be able to sue that uninsured motorist for all or part of his or her PFD because that is frequently the only asset a lower income individual has.

MS. MOORE said she understands Senator French's reaction but the intent of the bill is to make uninsured motorists aware that it is unacceptable to be uninsured.

SENATOR FRENCH advised the current criminal penalty for driving while uninsured is up to 90 days in jail, a \$500 fine and revocation of the driver's license. He asked whether more people couldn't be discouraged from driving without insurance if they were aware it could result in jail time.

SENATOR COWDERY agreed individuals could be encouraged, but if people do the math they'd learn that by spending \$400 or \$500 to buy liability insurance they wouldn't jeopardize their \$1,500 dividend. He thought incentive was built into the bill.

SENATOR SCOTT OGAN said Senator French brought up an interesting point and is probably correct in that the dividend is the only asset some individuals have. He wondered whether the state could stand second in line.

SENATOR COWDERY explained the way the bill is written, the entitlement is gone and the uninsured motorist doesn't get a PFD. The victim would have to "go after" any assets the driver or the owner of the car might have. He asked attorneys present whether he was correct to say the car owner is ultimately responsible for the driver.

SENATOR FRENCH replied children could be sued if their parents have engaged in negligent entrustment. "That is if you give your car over to someone who isn't licensed," he explained. In the drug underworld, it's not uncommon for someone to steal a car then claim to have loaned it to someone else. In this type of instance, the individual that runs into you has no insurance, doesn't own the car and has no assets. His concern with the bill is that individuals with no money don't buy insurance but still drive for a variety of legitimate reasons, such as getting to work or taking children to the doctor or going to the grocery store. If those individuals lose their PFD when busted for driving without a license, they're less likely to buy insurance in the future. It's also less likely that the victim who suffered a modest amount of damage would receive any restitution.

CHAIR SEEKINS commented he's been in the automobile business for quite awhile and has frequently been in the situation in which he or his companies owned a vehicle that was involved in an accident and were named in lawsuits under vicarious liability, negligent entrustment and other theories of law.

SENATOR COWDERY said 5,500 Alaskans were convicted of DUI in 1999. When he assumed a dividend of \$1,500, and that one-third of the 5,500 offenders would become second offenders, he calculated that between \$160 and \$180 million could be left in the fund at the end of ten years.

SENATOR FRENCH asked if this was the DUI portion of the bill.

SENATOR COWDERY said that was in SB 59.

CHAIR SEEKINS said the bills are similar but address different offenses. He asked for verification that the convicted individual would not be eligible for a PFD, which would mean that asset [PFD] could not be attached by the state or anyone because it wouldn't exist. That money would "stay in the pot" and be split among the people that are eligible to receive a dividend.

**1:50 p.m.**

SENATOR COWDERY announced he had "a command call from the Governor's office" and had to leave the meeting.

CHAIR SEEKINS advised the committee would continue to take testimony and would take action at another meeting. If there were many changes, they would prepare a committee substitute (CS) for consideration.

He then asked Ms. Moore to confirm retroactivity was not intended; everyone would begin with a "clean slate."

MS. MOORE replied they did not intend the bill to be retroactive.

CHAIR SEEKINS opined the language might need to be changed to clarify that point.

SENATOR OGAN asked whether anyone from the Department of Law was present to testify.

CHAIR SEEKINS asked whether Linda Wilson was available on teleconference.

LINDA WILSON, Deputy Director, Public Defender Agency, testified via teleconference and advised she was more prepared to testify on SB 59, but she had submitted the indeterminate fiscal note for SB 58 and was available to answer questions on that fiscal note.

She explained that although the agency doesn't have many cases in which an individual is charged with one of three identified misdemeanors in Title 28, the comments made previously by committee members echo her concerns. The PFD is a primary source of income for indigent individuals and making them potentially ineligible for one to five years takes away a pool of money that is often attached and used for restitution and other financial obligations, including child support.

SENATOR OGAN asked for clarification that the affected individuals would be those charged with not having insurance.

MS. MOORE said that is correct.

SENATOR OGAN asked if there would be an additional jury trial expense to take away the PFD.

MS. MOORE thought all court fees would be combined.

SENATOR OGAN asked for legal concurrence.

CHAIR SEEKINS called Diane Wendlandt to respond.

DIANE WENDLANDT, Assistant Attorney General, Collections and Support Section, testified via teleconference and asked for the question to be restated.

SENATOR OGAN asked if a separate trial would be required to eliminate the dividend.

ASSISTANT ATTORNEY GENERAL WENDLANDT explained her understanding is a criminal judgment would be entered, which would automatically disqualify the individual from receiving the PFD; it would not have to be included in an order. Her office collects criminal fines, the cost of incarceration and, restitution on behalf of DUI victims. When the agency receives criminal judgments, collections are made through a cost effective, electronic PFD attachment. The judgments are

generally small, ranging from \$50 to \$2,000, so traditional collection methods, such as garnishing income, cost more than the judgment. The exception is the PFD; because the collection is done electronically, the per-judgment cost is very small.

SENATOR FRENCH commented it might have the unintended consequence of forcing more cases to trial if the permanent fund dividend was at stake on top of the criminal penalties.

SENATOR OGAN noted his question was whether elimination of an individual's PFD would be adjudicated in the same trial as the criminal proceedings: Would this happen automatically on conviction?

SENATOR FRENCH interpreted it to mean the criminal conviction would be transmitted to the permanent fund office and the individual would become ineligible for a dividend.

CHAIR SEEKINS asked whether anyone from the Department of Law was on line.

MR. LARRY PERSILY, Deputy Commissioner, Department of Revenue, informed the committee that the Department of Revenue administers the Permanent Fund Dividend program. According to current law, an individual convicted of, or serving time for a felony, a third misdemeanor or a misdemeanor on a prior felony, becomes ineligible for the PFD for the following year. Every year the Departments of Public Safety and Corrections submit an electronic database of individuals meeting the ineligibility criteria. The Department of Revenue matches the database against past dividend application data back to 1988. Although somewhat arbitrary, the assumption is that individuals who would have qualified in past years would qualify in the current year if it weren't for the prohibition in state law that makes them ineligible. Statute requires PFDs that would have gone to the individuals deemed ineligible to go to the Council on Domestic Violence and Sexual Assault, Legislative Office of Victims Rights, Violent Crimes Compensation Board, and the Department of Corrections for offender treatment programs. The dividends replace general fund money in those budget categories.

In October 2002 data matches were found for 8,270 individuals who met the statutory criteria for ineligibility who had received past dividends. If each dividend is calculated at \$1,500, \$12.74 million will be available to those programs in the FY04 budget. Each year the money is electronically

transferred from the dividend fund to those programs through the appropriation process.

In response to Senator Ogan's question he explained that most individuals who are ineligible for a dividend due to the statutory prohibition don't apply for one because they know they won't receive one. If they apply and are denied, they have the right to a formal hearing. If denied at that level, they may appeal to superior court. A prioritization list for dividend garnishment and collection is set in statute: child support is first, court ordered restitution is second, state student loans are third, court ordered fines are fourth, judgments against minors come next, followed by other state debt and then private debt.

He said he was available for questions and someone from CSED was on line from Anchorage and available to answer questions as well.

**2:00 p.m.**

SENATOR OGAN observed the methods for garnishing dividends that weren't applied for are creative.

DEPUTY COMMISSIONER PERSILY agreed the state is taking those dividends as though the individuals had applied, but he didn't write the law he is simply carrying it out. Money is budgeted to the programs that are impacted by the crimes the individuals committed.

SENATOR OGAN said, "The way this bill is written, they don't get one, period, so you couldn't really take it for anything else. Yes, no?"

DEPUTY COMMISSIONER PERSILY replied, "This just adds it to the list." Individuals who are denied eligibility for the next year because of DUI or driving without insurance would have their dividends go into the pool and provide more money to pay for those programs.

CHAIR SEEKINS said statute sets forth specific uses and directional flow for dividends of statutorily ineligible applicants.

DEPUTY COMMISSIONER PERSILY agreed.



CHAIR SEEKINS questioned whether the definition of ineligible "starts it down this course, so if we didn't want it to do that we'd have to address the other statute?"

DEPUTY COMMISSIONER PERSILY replied that is correct; if the committee wants the money for those deemed ineligible to stay in the dividend fund, other statutory changes would need to be made.

MS. MOORE explained the bill states the money can stay in the permanent fund unless the Legislature approves that it be put into the programs mentioned previously.

SENATOR FRENCH asked for confirmation that the bill says the money in question can stay in the dividend fund and doesn't have to move with the other ineligible funds.

MS. MOORE said that was correct.

SENATOR FRENCH asked which portion of the bill addresses where the money can go.

MS. MOORE referred him to page 3, lines 13 through 26 and added: "The funds that are collected from this, from SB 58 and SB 59, they stay in the permanent fund dividend division."

SENATOR FRENCH asked for verification they would be treated differently from all other ineligible PFD recipients and whether that was spelled out in subsection (C) on page 3 and in paragraphs (5) (A) and (B) on that page.

MS. MOORE said that was correct.

**2:08 p.m.**

SENATOR JOHNNY ELLIS asked what happens to creditors who might otherwise benefit from the PFDs if this becomes law.

MS. MOORE replied this bill says that convicted individuals are ineligible. She stated they don't have a PFD, "there is no money there that can be given to any other department, that can be taken for any reason."

SENATOR ELLIS asked what the social benefit would be.

MS. MOORE replied the intention is to leave the money in the fund for the rest of Alaska's citizens.

SENATOR ELLIS asked if that is because everyone would receive a larger dividend.

MS. MOORE replied she could look into that further and get back to him.

CHAIR SEEKINS thought the intent was to add incentive to purchase automobile insurance as required by state law by imposing a penalty of losing eligibility.

MS. MOORE replied that is true.

SENATOR OGAN asked if legislation passed last year that makes it a misdemeanor for not carrying insurance on vehicles that are driven.

SENATOR ELLIS asked whether someone from the Child Support Enforcement Agency was available to answer questions.

CHAIR SEEKINS called Marti Greeson to testify.

MARTI GREESON, Director of the Anchorage chapter of Mothers Against Drunk Drivers (MADD), testified via teleconference and expressed gratitude for the work that went into drafting the bill. She said that MADD works with victims of motor vehicle accidents and does not see the need to increase each individual's permanent fund dividend. However, MADD would like financial assistance to be more readily available to victims of uninsured motorist and/or alcohol related accidents.

SENATOR OGAN said he wasn't clear on her position on the legislation.

MS. GREESON replied MADD supports the bill, but would like to hear continuing discussion about whether the money would go back into the permanent fund or go with other forfeited money to support programs, such as one for victims of motor vehicle crashes.

SENATOR OGAN asked her if she was referring to SB 58.

MS. GREESON replied she was referring to SB 58, the bill that deals with driving without insurance.

CHAIR SEEKINS asked whether the committee could assume she had a position on SB 59 as well.

MS. GREESON agreed she did.

CHAIR SEEKINS asked whether there were any additional questions for Ms. Greeson regarding SB 58.

SENATOR ELLIS asked whether the Chair would take testimony on both bills.

CHAIR SEEKINS replied that was correct, but testimony was not all inclusive at that time.

SENATOR ELLIS asked Ms. Greeson for specific written suggestions relating to the use of the dividends in the battle against drunk driving and the after effects.

MS. GREESON agreed to do so.

MR. JOHN MAIN, Director of the Child Support Enforcement Division (CSED), Department of Revenue, testified via teleconference to advise members his division had submitted a fiscal note, but did not take a position on the bill at this time.

SENATOR COWDERY stated, with regard to the fiscal note, no one can know how many children might be involved. He said he was sure CSED has attached a number of dividends from individuals who might become ineligible in the future because of DUI and driving without insurance convictions. The intent of the bill is that those individuals lose their dividends.

SENATOR OGAN asked about the fiscal note from CSED, which says by statute child support takes priority over all other garnishments against a dividend and noted this bill eliminates rather than garnishes the dividend. Because of the large number of delinquent child support cases, he wondered whether Senator Cowdery would consider language to allow child support to stand first in line.

SENATOR COWDERY stated the individuals whose dividends are garnished for child support would receive no dividend. Therefore, if they were convicted for driving without having insurance on their vehicle, there would be no dividend to garnish. He pointed out, "This should give them incentive to get insurance. You can get insurance for a lot less than at the present day dividend."

SENATOR OGAN said he understood that, but this bill would penalize the children because they would no longer receive child support from the garnished dividend.

SENATOR COWDERY asked Ms. Moore to explain the reasoning for the bill.

MS. MOORE explained the child would still get his or her own PFD.

**2:17 p.m.**

CHAIR SEEKINS restated Senator Ogan's concern that if an individual's PFD was already garnished for child support, and that person became ineligible to receive a dividend, the dependent child would be the one who would lose the support.

SENATOR OGAN agreed that was his concern.

SENATOR COWDERY replied, "But they're eligible now if they live right."

CHAIR SEEKINS advised care should be taken to ensure that a third and possibly innocent party isn't diminished because a parent didn't buy insurance.

SENATOR COWDERY replied he understood the concern and said "I put some thought into it when I eliminated it."

CHAIR SEEKINS said he appreciated the point.

SENATOR ELLIS commented they could be confusing the Division of Family and Youth Services and the Child Support Enforcement Division. He remembered that CSED has always opposed bills that diminish the ability to recover for dependent children through child support. He asked Mr. Main to comment on the change in policy on this bill.

MR. MAIN replied CSED hasn't had a change in policy, but it might have to live with this change. If the legislation passes, the children will feel the impact.

CHAIR SEEKINS asked for an estimate of the number of dividends that are currently garnished for child support.

MR. MAIN replied about 16 percent of CSED's collections came from garnished dividends.

CHAIR SEEKINS then asked what percentage of those people are indigent.

MR. MAIN replied CSED doesn't have that information.

CHAIR SEEKINS asked if individuals didn't pay and had their dividend garnished because they were indigent or because they were obstinate.

MR. MAIN laughed and said it's because they don't pay or because they are in arrears. Anytime parents are in arrears, their dividend is collected.

CHAIR SEEKINS noted that just as the fiscal note is indeterminate, the impact of this bill is indeterminate as well.

MR. MAIN said last year CSED estimated roughly 36 percent of the corrections population was affected by dividend collections. He thought this amounted to about 5,400 individuals.

CHAIR SEEKINS asked if anyone else wanted to testify.

SENATOR COWDERY asked whether convicted felons were entitled to a PFD because he thought felons lost that right.

CHAIR SEEKINS advised ineligibility follows a felony conviction. There are formulas by which individuals lose eligibility and this legislation adds to the formula. He noted information from the Department of Corrections and the public defenders office categorizes 80 percent of the people in jail as indigent.

SENATOR OGAN asked Mr. Main whether there is any way to collect a felon's dividend for child support purposes.

MR. MAIN replied there was no way.

SENATOR COWDERY commented the dividend is likely to be diminished in the future.

CHAIR SEEKINS asked whether there was further testimony. [There was none.]

SENATOR COWDERY said the first offense referred to in the bill carries only a one-year penalty.

CHAIR SEEKINS replied they understand.

He held SB 58 in committee.

**SB 59-PERMANENT FUND INELIGIBILITY FOR DUI**

CHAIR SEEKINS asked Ms. Moore to introduce SB 59.

MS. CRYSTAL MOORE, staff to Senator Cowdery, sponsor of SB 59, explained that it addresses permanent fund ineligibility for driving under the influence (DUI) [of alcohol]. An individual's dividend would be suspended for one year if convicted on a first offense and for five years after a second offense. This is in addition to any penalties already set forth for driving while intoxicated.

SENATOR OGAN commented all the questions asked about SB 58 would probably apply to this bill.

CHAIR SEEKINS agreed committee members would have the same concerns. He asked Marti Greeson if her testimony would be the same in content for SB 59 as it was for SB 58.

MARTI GREESON, representative from the Anchorage chapter of MADD, replied her testimony was the same.

CHAIR SEEKINS asked Mr. Main the same question.

MR. JOHN MAIN, Director of Child Support Enforcement, Department of Revenue, replied he did have some information regarding DUI. Of the 5,800 DUI's from last year, CSED estimates about 2,400 would have child support collections.

CHAIR SEEKINS asked Ms. Wendlandt whether her testimony was similar to that given for SB 58.

MS. DIANE WENDLANDT, Department of Law, replied it is fairly similar; her main point is this money would otherwise go to collect criminal fines, criminal judgments and restitutions.

CHAIR SEEKINS asked Ms. Wilson the same question.

MS. LINDA WILSON, Deputy Director, Public Defender Agency, replied she had a few additional comments. The bill might cause more people to choose to go to trial when faced with the additional penalty for conviction of a DUI or refusal to submit to a chemical test and this would increase the workload for the agency. The rest of her comments were the same.

SENATOR OGAN referred to page 3, lines 12, 13 and 21 and asked the sponsor to explain the inserted language, "in this state." He wondered if individuals lose their PFD if they are convicted of a felony in any state or just convicted of a felony in Alaska.

SENATOR COWDERY replied his intention is for this to apply to felony convictions in the state to "commingle city ordinances and city laws with state law."

CHAIR SEEKINS said the sponsor's intention is that the penalty is the same whether the individual is convicted under state law or municipal law.

SENATOR OGAN again asked whether an individual who was convicted of a felony in another state would lose their PFD.

SENATOR COWDERY said he didn't believe so, but he didn't know the law.

CHAIR SEEKINS informed Senator Ogan he interpreted the bill that way; ineligibility would follow a felony conviction in the State of Alaska.

SENATOR FRENCH expressed concern regarding where the money would go because the Department of Revenue fiscal note indicates dividend collections are diverted to various programs, but the bill doesn't address a different routing mechanism for that money.

CHAIR SEEKINS advised the sponsor he reviewed AS 43.25.05 (D) and 43.23.028 (A) and it appears that if an individual becomes ineligible under the law, those funds would be diverted to the Department of Corrections, the Department of Public Safety Council on Domestic Violence and Sexual Assault, the Crime Victim's Compensation Fund, and the Legislative Office of Victim's Rights. If the sponsor intends to reroute the money, language would have to be added to each of the bills specifically stating ineligibility as defined by SB 58 and SB 59 means the money isn't diverted from the fund.

CHAIR SEEKINS asked whether there was additional testimony.

MR. MAIN estimated that if SB 59 were approved, the amount collected for child support would be reduced by about \$1

million, a one million dollar loss to the children of the State of Alaska.

CHAIR SEEKINS asked Mr. Main to forward the information to his office and he would direct it to committee members and the sponsor. [See bill file.]

He asked Ms. Greeson to forward her written testimony for distribution. [See bill file.]

SENATOR COWDERY asked Mr. Main to include information as to how CSED estimates the number of future violators.

CHAIR SEEKINS asked whether there was additional testimony.

AL NEAR testified from the Fairbanks LIO in support of SB 59 and SB 58. He said he didn't think the money should be rerouted. The dividends from individuals made ineligible under SB 58 and SB 59 should be distributed as currently set forth in statute with victim compensation of primary importance.

JESSICA PARIS, Juneau MADD representative, spoke in support of SB 59.

CHAIR SEEKINS announced SB 59 would be held in committee.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at 2:42 p.m.