

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 15, 2011

1:51 p.m.

MEMBERS PRESENT

Representative Carl Gatto, Chair
Representative Steve Thompson, Vice Chair
Representative Wes Keller
Representative Bob Lynn
Representative Lance Pruitt
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Mike Chenault (alternate)

OTHER LEGISLATORS PRESENT

Senator Kevin Meyer

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 15(JUD)

"An Act relating to penalties for certain alcohol offenses involving persons under 21 years of age committed by certain sex offenders or child kidnappers."

- MOVED CSSB 15(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 22

"An Act prohibiting the use of a cellular telephone when driving a motor vehicle; and providing for an effective date."

- FAILED TO MOVE OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 15

SHORT TITLE: SEX OFFENDER/UNDERAGE ALCOHOL OFFENSE

SPONSOR(S): SENATOR(S) MEYER

01/19/11	(S)	PREFILE RELEASED 1/7/11
01/19/11	(S)	READ THE FIRST TIME - REFERRALS
01/19/11	(S)	HSS, JUD

03/16/11 (S) HSS AT 1:30 PM BELTZ 105 (TSBldg)
 03/16/11 (S) Moved CSSB 15(HSS) Out of Committee
 03/16/11 (S) MINUTE(HSS)
 03/18/11 (S) HSS RPT CS 4DP SAME TITLE
 03/18/11 (S) DP: DAVIS, MEYER, EGAN, DYSON
 03/18/11 (S) FIN REFERRAL ADDED AFTER JUD
 03/28/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 03/28/11 (S) Heard & Held
 03/28/11 (S) MINUTE(JUD)
 03/30/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 03/30/11 (S) Moved CSSB 15(JUD) Out of Committee
 03/30/11 (S) MINUTE(JUD)
 04/01/11 (S) JUD RPT CS 4DP NEW TITLE
 04/01/11 (S) DP: FRENCH, COGHILL, WIELECHOWSKI,
 PASKVAN
 04/06/11 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/06/11 (S) Heard & Held
 04/06/11 (S) MINUTE(FIN)
 04/08/11 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/08/11 (S) Moved CSSB 15(JUD) Out of Committee
 04/08/11 (S) MINUTE(FIN)
 04/08/11 (S) FIN RPT CS(JUD) 3DP 2NR
 04/08/11 (S) DP: HOFFMAN, EGAN, ELLIS
 04/08/11 (S) NR: STEDMAN, OLSON
 04/08/11 (S) TRANSMITTED TO (H)
 04/08/11 (S) VERSION: CSSB 15(JUD)
 04/09/11 (H) READ THE FIRST TIME - REFERRALS
 04/09/11 (H) JUD, FIN
 04/13/11 (H) JUD AT 1:00 PM CAPITOL 120
 04/13/11 (H) Heard & Held
 04/13/11 (H) MINUTE(JUD)
 04/15/11 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 22

SHORT TITLE: NO CELL PHONE USE WHEN DRIVING

SPONSOR(S): REPRESENTATIVE(S) MUNOZ, HERRON

01/18/11 (H) PREFILE RELEASED 1/7/11
 01/18/11 (H) READ THE FIRST TIME - REFERRALS
 01/18/11 (H) TRA, JUD, FIN
 03/01/11 (H) TRA AT 1:00 PM CAPITOL 17
 03/01/11 (H) Heard & Held
 03/01/11 (H) MINUTE(TRA)
 03/08/11 (H) TRA AT 1:00 PM CAPITOL 17
 03/08/11 (H) Moved CSHB 22(TRA) Out of Committee
 03/08/11 (H) MINUTE(TRA)
 03/09/11 (H) TRA RPT CS(TRA) 2DP 3DNP 1NR 1AM

03/09/11 (H) DP: MUNOZ, GRUENBERG
03/09/11 (H) DNP: JOHNSON, FEIGE, PRUITT
03/09/11 (H) NR: P.WILSON
03/09/11 (H) AM: PETERSEN
04/15/11 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

CHRISTINE MARASIGAN, Staff
Senator Kevin Meyer
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Addressed SB 15 on behalf of the sponsor,
Senator Meyer.

REPRESENTATIVE CATHY MUNOZ
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 22 as one of its joint prime
sponsors.

KENDRA KLOSTER, Staff
Representative Cathy Munoz
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Assisted with the presentation of HB 22 on
behalf of one of its joint prime sponsors, Representative Munoz.

JEFF OTTESEN, Director
Division of Program Development
Department of Transportation & Public Facilities (DOT&PF)
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of
HB 22.

DON SMITH
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of
HB 22.

CINDY CASHEN, Administrator
Alaska Highway Safety Office (AHSO)
Division of Program Development
Department of Transportation & Public Facilities (DOT&PF)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of
HB 22.

RICKY D. DEISING
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of
HB 22.

ACTION NARRATIVE

[1:51:56 PM](#)

CHAIR CARL GATTO called the House Judiciary Standing Committee meeting to order at 1:51 p.m. Representatives Gatto, Lynn, Keller, Thompson, and Holmes were present at the call to order. Representatives Pruitt and Gruenberg arrived as the meeting was in progress. Senator Meyer was also in attendance.

SB 15 - SEX OFFENDER/UNDERAGE ALCOHOL OFFENSE

[1:52:27 PM](#)

CHAIR GATTO announced that the first order of business would be CS FOR SENATE BILL NO. 15(JUD), "An Act relating to penalties for certain alcohol offenses involving persons under 21 years of age committed by certain sex offenders or child kidnappers."

[1:52:52 PM](#)

CHRISTINE MARASIGAN, Staff, Senator Kevin Meyer, Alaska State Legislature, on behalf of the sponsor, Senator Meyer, recapped that SB 15 would increase the penalties for certain crimes of providing alcohol to a minor when the offense is committed by a person who is required to register as a sex offender or a child kidnapper.

CHAIR GATTO closed public testimony on SB 15.

CHAIR GATTO, in response to a query, offered his understanding that a sufficient standard of mens rea has been provided for via the bill's references to other provisions of AS 04.16. In response to comments, he mentioned that the initial fiscal note from the Department of Corrections (DOC) has been replaced with an indeterminate fiscal note.

[1:57:03 PM](#)

REPRESENTATIVE THOMPSON moved to report CSSB 15(JUD) out of committee with individual recommendations and the accompanying

fiscal notes. There being no objection, CSSB 15(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 1:58 p.m. to 2:03 p.m.

HB 22 - NO CELL PHONE USE WHEN DRIVING

[2:03:44 PM](#)

CHAIR GATTO announced that the final order of business would be HOUSE BILL NO. 22, "An Act prohibiting the use of a cellular telephone when driving a motor vehicle; and providing for an effective date." [Before the committee was CSHB 22(TRA).]

[2:04:12 PM](#)

REPRESENTATIVE CATHY MUNOZ, Alaska State Legislature, speaking as one of HB 22's joint prime sponsors, explained that for drivers 18 years of age or older, CSHB 22(TRA) would ban the use of a cellular ("cell") phone except by hands-free mode, and for drivers under the age of 18, CSHB 22(TRA) would ban the use of any cell phone.

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KENDRA KLOSTER, Staff, Representative Cathy Munoz, Alaska State Legislature, on behalf of Representative Munoz, one of HB 22's joint prime sponsors, indicated that the bill was introduced in part in response to anecdotal information about accidents that have occurred because people were using a cell phone while driving. She mentioned one example from Juneau involving a man on a motorcycle not being seen by a driver using a cell phone. Using a cell phone while driving raises a safety issue, and there are studies available from the University of Utah - one of them having been published in the Summer 2006 issue of, Human Factors: The Journal of the Human Factors and Ergonomics Society - which illustrate that individuals talking on a cell phone while driving are impaired in a fashion similar to that of "drunk drivers." Members' packets include written testimony; studies; various articles regarding people who've been killed because the driver of a motor vehicle was using a cell phone while driving; and a survey designed and implemented by the Alaska Injury Prevention Center (AIPC) titled, "Alaska 2010 Highway Safety Phone Survey" wherein 61 percent of respondents relayed that they talk on a cell phone while driving. She too noted that CSHB 22(TRA) allows drivers 18 years of age or older to use a cell phone by hands-free mode, and prohibits drivers

under the age of 18 from using any cell phone. She offered her understanding that many cell phones now have hands-free capability.

MS. KLOSTER - in response to a question regarding CSHB 22(TRA)'s definition of the term, "hands-free mode" - explained that the bill's exemption for hands-free cell phone use by drivers 18 years of age or older was included in order to accommodate the needs of commercial-vehicle drivers; proposed AS 28.35.165(c)(2) defines the term, "hands-free mode" as meaning the use of a cellular telephone for listening or talking by means of a speaker function, headset, or earpiece without holding the telephone.

CHAIR GATTO commented on the bill's unequal treatment of the same behavior - that of talking on a cell phone - when committed by different classes of people and depending on the form of technology that's being used.

[2:12:13 PM](#)

REPRESENTATIVE HOLMES referred to proposed AS 28.35.165(a), which says, "A person may not use a cellular telephone when driving a motor vehicle on a highway or vehicular way or area", and asked whether that language would include parking lots.

REPRESENTATIVE MUNOZ indicated that she would have to research that issue further.

REPRESENTATIVE HOLMES expressed concern about drivers who talk on a cell phone while navigating a parking lot.

REPRESENTATIVE MUNOZ, in response to further questions, explained that from the perspective of law enforcement, the phrase, "driving a motor vehicle" refers to a moving vehicle, not a parked vehicle, and that for purposes of the bill, the concept of "using" a cell phone also includes dialing and otherwise manipulating the device; these issues were discussed in the bill's previous committee of referral. In response to another question, she explained that the bill is intended to focus on the telephone functions of cellular telephones, not on the other capabilities that many cellular telephones now have.

REPRESENTATIVE KELLER surmised that some of those other functions are probably more distracting than a device's telephone functions.

MS. KLOSTER offered her understanding that the representative from the Alaska Highway Safety Office (AHSO) has documentation regarding the different aspects of the brain that are used while performing different tasks, and documentation illustrating that more accidents are caused by the use of a cell phone than are caused by the use of a car radio or a Global Positioning System (GPS), and that it is more distracting to talk on a cell phone than to talk to someone in person.

REPRESENTATIVE PRUITT concurred that testimony offered in the bill's last committee of referral indicated that the proposed prohibition against using a cell phone while driving includes manually dialing or otherwise manipulating the phone.

REPRESENTATIVE MUNOZ acknowledged that obtaining further clarity on that point was warranted.

2:20:55 PM

CHAIR GATTO pointed out that it makes no difference whether one touches one's cell phone to hang up a call or touches a button on the car or on a headset in order to hang up - both activities require the use of one's hands and both can be distracting.

REPRESENTATIVE MUNOZ noted that she herself has found it to be easier to manipulate a device designed to be hands-free than one that isn't so designed, and ventured that it would be acceptable under the bill to manipulate a hands-free device.

REPRESENTATIVE LYNN offered his hope that he would be allowed under the bill to at least manipulate the volume control on his hands-free device.

[Members then briefly discussed previously-passed legislation from 2008 pertaining to video monitors/screens in motor vehicles, and the facts that that 2008 legislation specifically exempted cellular telephones and that in Alaska it is currently illegal to "text" while driving.]

REPRESENTATIVE MUNOZ, in response to comments, said it is not the intent of HB 22 to preclude a driver from using a cell phone as part of his/her stereo system.

REPRESENTATIVE KELLER asked whether there were any studies illustrating that prohibiting [cell phone use while driving] reduced the number of accidents.

MS. KLOSTER said she would research that issue.

CHAIR GATTO expressed interest in studies that compared various types of distracted driving.

REPRESENTATIVE GRUENBERG offered his belief that under the bill, a driver using a cell phone by hands-free mode would be permitted to dial or hang up, that such incidental manipulation of a cell phone was not what was meant with regard to the term, "use"; instead, that term is meant to refer to the act of holding the phone in one's hand while speaking on or listening to it.

[2:32:03 PM](#)

JEFF OTTESEN, Director, Division of Program Development, Department of Transportation & Public Facilities (DOT&PF), acknowledged that the issue of distracted driving is a complicated one, particularly given the ongoing advances in technology. On a personal note, he relayed that since 2008, he has been in two motor vehicle accidents, both caused by the driver of the other car talking on a cell phone and rear-ending him. In response to comments and questions, he pointed out that for purposes of constituting a "motor vehicle" under the bill, the vehicle must be one that would be driven on a highway or a vehicular way or area. He added, however, that he is not sure what constitutes a "vehicular area".

REPRESENTATIVE THOMPSON surmised, then, that the question of whether the bill's proposed prohibition would also apply to activity occurring in a parking lot still needs to be addressed.

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DON SMITH - after mentioning that from 2003 to 2005, he served as the administrator of the Alaska Highway Safety Office (AHSO) - provided some information about Alaska's seatbelt law, its development, and its subsequent reduction in highway fatalities, in order to illustrate how changing the behavior of Alaska's motorists - regardless of how controversial any such change may seem at first - can save a lot of lives. He posited that the current administrator of the AHSO has data regarding the use of cell phones while driving, and suggested that the committee ask the administration to compile more such data so that the committee can consider this issue in depth. He then offered his understanding that the "school board" supports the concept of HB 22, particularly as it relates to children. In conclusion,

he mentioned that although he thinks HB 22 needs more work, he supports the bill, predicting that its passage and implementation will save a lot of lives.

[2:45:32 PM](#)

CINDY CASHEN, Administrator, Alaska Highway Safety Office (AHSO), Division of Program Development, Department of Transportation & Public Facilities (DOT&PF), in response to questions and comments, offered her understanding of HB 22's proposed changes and of the current statutory prohibitions against texting or watching a video screen while driving; suggested that law enforcement personnel could best address the possible interplay between current law and the proposed law; mentioned that traffic-safety-resource prosecutors have reported that there is a problem with some judges misinterpreting current law and thereby dismissing traffic citations issued for texting while driving; and surmised that the Department of Law (DOL) could best provide further information about that problem.

REPRESENTATIVE GRUENBERG predicted that prosecuting a driver for cell phone use while driving would be easier under the proposed law than it currently is under existing law because the behavior in and of itself would then be illegal; currently, in order to prosecute someone for particular driving behavior - in this case, using a cell phone while driving - there would first have to be an accident, and then the prosecution would have to prove that it was that behavior which caused the accident.

[2:53:12 PM](#)

RICKY D. DEISING, mentioning that he rides a motorcycle and a bicycle and that he's submitted written testimony, recounted incidents in which cars have suddenly pulled out in front of him - requiring him to either take extreme evasive action or be killed - because the drivers of those cars were on their cell phones and had their view of other traffic blocked by their hand holding the cell phone. In conclusion, he urged the committee to take this issue very seriously because a lot of people have been killed because someone was using a cell phone while driving.

CHAIR GATTO, after ascertaining that no one else wished to testify, closed public testimony on HB 22.

REPRESENTATIVE KELLER opined that HB 22 won't fix the perceived problem and instead goes overboard and disrespects drivers.

CHAIR GATTO pointed out that lives have been saved because someone used a cell phone.

REPRESENTATIVE LYNN characterized HB 22 as well intended, and surmised that everyone is in favor of safe driving, but pointed out that driving is inherently dangerous and involves multitasking. Therefore, if one can't multitask while driving, then perhaps one shouldn't be driving at all. Furthermore, he remarked, legislation such as HB 22 raises the question of how much other, what he termed, "nanny-state" legislation, would then be coming before the committee. In conclusion, he said he could not support HB 22 in its current form.

REPRESENTATIVE THOMPSON, noting that drivers face many distractions, said he doesn't support HB 22 at this time and would only support it if it applied only to drivers under the age of 18.

REPRESENTATIVE HOLMES, opining that the bill needs more work, expressed a preference for not moving it from committee at this time.

[3:00:33 PM](#)

REPRESENTATIVE THOMPSON moved to report CSHB 22(TRA) out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE KELLER objected.

A roll call vote was taken. Representative Gruenberg voted in favor of reporting CSHB 22(TRA) from committee. Representatives Holmes, Lynn, Keller, Pruitt, Thompson, and Gatto voted against it. Therefore, CSHB 22(TRA) failed to be reported from the House Judiciary Standing Committee by a vote of 1-6.

[3:01:37 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:01 p.m.