

1965-1966

HOUSE JUDICIARY COMMITTEE

LIST OF FILES (PAGE. 1)

1 FOLDER WITH MISCELLANEOUS INFORMATION
ON BILLS

HOUSE
JUDICIARY
1965/66
MISC.

A M E N D M E N T

Offered in the HOUSE

J. J. Higgins
BY ~~_____~~

To: _____ HOUSE Bill No. _____

_____ SENATE Bill No. _____

AMENDMENT: Page 1 Line 2d

*strike all matter after the word "passenger" and insert
and the operator has effective
liability coverage for the protection
of the passenger against bodily
injury in the sum of not less than
\$10,000 when the operator is riding on a
public highway.*

A M E N D M E N T

Offered in the HOUSE

By Judiciary

To: CS HOUSE Bill No. 295

SENATE Bill No. _____

AMENDMENT: Page _____ Line 14

14. after "of" insert "or passenger on"
15 after "operate" insert "or ride"

3 P.M. Friday April 8

Public Hearing on SB 151

Mr. Pomeroy - ^{Chairman, Borough} boundary com in 1964 said Igroek
can't be excluded from borough.

David Mathis - Sitka Borough include Igroek

English Bay

Port Graham

Seldovia 50%

all natives of the Cook Inlet area - Ex Ord.

Interior says Igroeks only get reserve.

Taylor - Igroek is a federal incorporated municipality.

title & real property is in US. but can tax
lease hold

cooperative store - sales tax doesn't apply.

Donna - In exclusion of borough - they are more related
to Anchorage Borough. They cannot look after themselves
& want to be separate governmental units.

Stevens

amendment so there will be hearing & inclusion
in another borough by Local Boundary Com.

Don Barry - Mayor of Alaska City

If anyone desires not equitable to all tax payers,

financial advantage to few

- special legislation -

Duffy quoted constitution on disclaimer - Stubbins Act.

Mr. Sheppard from Fairbanks Borough
Cedok Bow has Kalluk reservation.

Johns. Borough - Millsap

JUDICIARY COMMITTEE REPORT

on

HOUSE BILL NO. 353

1. GENERAL.

HB 353 is concerned with what is commonly called wire-tapping or eavesdropping. Section 280 pertains to the misuse, interception, and divulgence of messages sent by wire or radio and Section 290 is concerned with the recording or listening to oral conversations without the consent of at least one of the parties to the conversation. A violation of any one of the sections of the bill is made a misdemeanor with a maximum penalty of \$1,000 fine or imprisonment for one year, or both.

Under the federal act, in order to obtain a conviction, both interception and divulgence must be proved. This facet of the federal act has been extensively criticized by the U. S. Attorney General's office. Also, it is not clear under the federal act whether an innocent interception is a crime and the federal courts have split on the question. Section 280 of HB 353 avoids those problems.

2. SECTIONAL ANALYSIS.

Section 280(a) applies to the employees of a common carrier communications system. It prohibits the employee who takes the message for transmission, the employee receiving the message and any employees assisting in those operations, from divulging or releasing in any manner the meaning of the message, except to the persons listed in this section, through authorized channels. It should be noted that a court may order the divulgence of a message.

Section 280(b) deals with the initial acquisition of a message by persons through the interception of the message at any time. The section contemplates an intentional interception. It should be noted that under this section, the interception alone constitutes a prohibited activity. There is no need to prove interception and divulgence, although the latter activity is a violation.

Section 280(c) prohibits a person for whom the message is not intended, regardless of the means by which that person received the message, from using the information he has received for his own or another's benefit.

Section 280(d) prohibits a person from disclosing the meaning of the message when the person has actual knowledge or should reasonably be expected to know that the communication originally was obtained in violation of section 280. In this case, the person would, of course, also be violating section 280(c) if the person used the information obtained for his own or another's benefit.

Section 280(e) prohibits a person who is not entitled to information, but becomes aware of the contents of a message although not actually in physical receipt of a message, from in any way divulging the meaning of the contents of the message, or from using the information for his own or another's benefit.

ORIGIN OF SECTION 280. Sec. 280 is based primarily on section 605 of the Federal Communications Act. The bill does not make innocent interception a crime except in the case of a person using information obtained for his own or another's benefit or the person divulges any information he has obtained.

Section 290 makes it a criminal offense to listen to or record any oral conversation without the consent of one of the parties to the conversation. It covers not only a telephone conversation, but any oral conversation in an office, home, car, boat, or any other place a conversation might be held. It prohibits the illegal use of any type of eavesdropping device, electronic or otherwise.

Section 290(2) prohibits a person from using information obtained through illegal use of an eavesdropping device for his own or another's benefit.

Section 290(3) prohibits a person from revealing the meaning of any conversation heard by means of the illegal use of an eavesdropping device; and

Section 290(4) prohibits a person who becomes aware of the contents of a conversation from revealing the meaning of the conversation if he knows or reasonably should know that the information he has received was originally obtained by the illegal use of an eavesdropping device.

SUPPLEMENTARY COMMENT - EFFECT OF BILL ON POLICE AND ADMISSIBILITY OF EVIDENCE. Neither section 290 or section 300 (the exemption section) makes any exception for law enforcement officers. A law enforcement officer is subject to the same penalties as a private citizen who violates the provisions of

the bill. Law officers would be permitted under section 290(1) to record and listen to a conversation with the consent of one of the parties to the conversation. The most common examples of when this provision would be applicable would be in the case of a kidnapper who has told the victim's family he will call them or obscene phone calls.

Along this line, it is to be noted that only six states permit, by statute, law enforcement officers to obtain evidence by wiretap or other means. They are Maryland, Massachusetts, Louisiana, Nevada, New York and Oregon. Of these six states, only Louisiana does not specifically require a judicial order preceding the tap.

Six states prohibit, by statute, the admission of any evidence obtained in violation of a wiretap or eavesdropping statute. They are Maryland, Nevada, Illinois, Rhode Island, Oregon and Pennsylvania. Overall, 39 states, by statute, prohibit wiretapping or electronic eavesdropping, while 11 states prohibit only physical interference with wires. In regard to evidence obtained by wiretap or other eavesdropping devices being used in a court proceeding, the bill does not in any way change the existing law of Alaska. The admittance or rejection of such evidence is left to case law and the rules governing the admissibility of evidence as interpreted by the court.

Sec. 300 of the bill simply lists the activities which are not to be considered criminal under the provisions of the statute and is self-explanatory.

3. REPEALS.

Sec. 2 of the bill will repeal provisions in the present law that will duplicate provisions of the proposed bill if enacted. Sec. 2 amends AS 42.20.050 by deleting subsection 1 which makes it a crime for one to divulge the contents of a message to any person other than the party for which it was intended, his attorney, or agent. This is covered by section 280 of the proposed bill.

Sec. 3 repeals AS 42.20.100 which deals with persons taking messages from a telegraph wire or intercepting a message to which they are not entitled. This activity is covered in section 280 of the bill.

4. AMENDMENT.

The amendment offered by Mr. Josephson is almost identical to secs. 141.720 - 141.990 of the Oregon Revised Statutes. The amendment allows the presiding judge for the judicial district

in which the interception will take place to allow an interception of telecommunications, radio communications or conversations by peace officers if there are reasonable grounds to believe that a crime directly and immediately affecting the safety of human life or the national security has been committed or is about to be committed. Also, there must be reasonable grounds to believe that evidence will be obtained essential to the solution of the crime, or which may enable the prevention of the crime and there must be no other means readily available for obtaining the information.

The order must be applied for by the district attorney with the approval of the attorney general whether the interception is to be made by peace officers of the state or a political subdivision. The court may examine under oath the district attorney, a witness he produces, or anyone the court wishes to question. If the court issues the order for interception, it is effective for 10 days under this amendment. The Oregon law allows 60 days. The order may be renewed for 10 days at a time.

The amendment makes it a misdemeanor to use an expired order or to release any information about the application or any supporting documents or testimony. The presiding judge shall, however, report to the legislature the number of orders and renewals issued and also the nature of the reasons for issuance.

strued as modifying or limiting any other statute relating to the classification of information for reasons of national defense or security. (Sept. 9, 1950, ch. 936, § 5, 64 Stat. 824.)

§ 1156. Use of existing facilities.

(a) The Secretary may utilize any personnel, facilities, bureaus, agencies, boards, administrations, offices, or other instrumentalities of the Department of Commerce which he may require to carry out the purposes of this chapter.

(b) The Secretary is authorized to call upon other departments and independent establishments and agencies of the Government to provide, with their consent, such available services, facilities, or other cooperation as he shall deem necessary or helpful in carrying out the provisions of this chapter, and he is directed to utilize existing facilities to the full extent deemed feasible. (Sept. 9, 1950, ch. 936, § 6, 64 Stat. 824.)

§ 1157. Relation to other provisions.

Nothing in this chapter shall be construed to repeal or amend any other legislation pertaining to the Department of Commerce or its component offices or bureaus. (Sept. 9, 1950, ch. 936, § 7, 64 Stat. 824.)

Chapter 24.—TRANSPORTATION OF GAMBLING DEVICES

Sec.

1171. Definitions.

1172. Transportation of gambling devices as unlawful; exceptions; authority of Federal Trade Commission.

1173. Registration of manufactures and dealers.

- (a) Activities requiring registration; contents of registration statement.
- (b) Numbering of devices.
- (c) Records; required information.
- (d) Retention of records.
- (e) Dealing in, owning, possessing or having custody of devices not marked or numbered; false entries in records.
- (f) Authority of Federal Bureau of Investigation.

1174. Labeling and marking of shipping packages.

1175. Specific jurisdictions within which manufacturing, repairing, selling, possessing, etc., prohibited.

1176. Penalties.

1177. Confiscation of gambling devices and means of transportation; laws governing.

1178. Nonapplicability of chapter to certain machines and devices.

§ 1171. Definitions.

As used in this chapter—

(a) The term "gambling device" means—

(1) any so-called "slot machine" or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance,

any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(3) any subassembly or essential part intended to be used in connection with any such machine or mechanical device, but which is not attached to any such machine or mechanical device as a constituent part.

(b) The term "State" includes the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(c) The term "possession of the United States" means any possession of the United States which is not named in subsection (b) of this section.

(d) The term "interstate or foreign commerce" means commerce (1) between any State or possession of the United States and any place outside of such State or possession, or (2) between points in the same State or possession of the United States but through any place outside thereof.

(e) The term "intrastate commerce" means commerce wholly within one State or possession of the United States. (Jan. 2, 1951, ch. 1194, § 1, 64 Stat. 1134, Oct. 18, 1962, Pub. L. 87-840, §§ 2, 3, 76 Stat. 1075.)

AMENDMENTS

1962—Subsec. (a) (2), (3). Pub. L. 87-840, § 2 (a), (b), substituted provisions including machines and mechanical devices designed and manufactured primarily for gambling by the operation of which a person may become entitled to receive, as the result of chance, any money or property, for provisions which included machines or mechanical devices designed and manufactured to operate by inserting a coin, token, or similar object, in par. (2), and inserted ", but which is not attached to any such machine or mechanical device as a constituent part", in par. (3).

Subsec. (b). Pub. L. 87-840, § 8, substituted "the District of Columbia" for "Alaska, Hawaii."

Subsecs. (d) and (e). Pub. L. 87-840, § 3, added subsec. (d) and (e).

EFFECTIVE DATE OF 1962 AMENDMENT

Section 7 of Pub. L. 87-840 provided that: "The amendments made by this Act [enacting section 1173 of this title and amending this section and sections 1172 and 1173 of this title] shall take effect on the sixtieth day after the date of its enactment [Oct. 18, 1962]."

SHORT TITLE

Section 1 of Pub. L. 87-840 provided that Pub. L. 87-840, which enacted section 1173 of this title, and amended this section and sections 1172 and 1173 of this title, may be cited as the "Gambling Devices Act of 1962."

SEPARABILITY OF PROVISIONS

Section 8 of act Jan. 2, 1951, provided that: "If any provision of this Act [this chapter] or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act [this chapter] which can be given effect without the invalid provision or application, and to this end the provisions of this Act [this chapter] are declared to be severable."

CROSS REFERENCES

Numbering of gambling devices, see section 1173 of this title.

§ 1172. Transportation of gambling devices as unlawful; exceptions; authority of Federal Trade Commission.

It shall be unlawful knowingly to transport any gambling device to any place in a State, the District of Columbia, or a possession of the United States

from any place outside of such State, the District of Columbia, or possession: *Provided*, That this section shall not apply to transportation of any gambling device to a place in any State which has enacted a law providing for the exemption of such State from the provisions of this section, or to a place in any subdivision of a State if the State in which such subdivision is located has enacted a law providing for the exemption of such subdivision from the provisions of this section, nor shall this section apply to any gambling device used or designed for use at and transported to licensed gambling establishments where betting is legal under applicable State laws: *Provided, further*, That it shall not be unlawful to transport in interstate or foreign commerce any gambling device into any State in which the transported gambling device is specifically enumerated as lawful in a statute of that State.

Nothing in this chapter shall be construed to interfere with or reduce the authority, or the existing interpretation of the authority, of the Federal Trade Commission under the Federal Trade Commission Act. (Jan. 2, 1951, ch. 1194, § 2, 64 Stat. 1134; Oct. 18, 1962, Pub. L. 87-840, § 4, 76 Stat. 1075.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in the text, is classified to sections 41-46 and 47-58 of this title.

AMENDMENTS

1962—Pub. L. 87-840 excepted gambling devices used or designed for use at and transported to licensed gambling establishments where betting is legal under State laws, and provided that it shall not be unlawful to transport such devices into any State in which the device is specifically enumerated as lawful in a State statute.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section effective on the sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87-840, set out as note under section 1171 of this title.

CROSS REFERENCES

Penalty for violations, see section 1176 of this title.

§ 1173. Registration of manufacturers and dealers.

(a) Activities requiring registration; contents of registration statement.

(1) It shall be unlawful for any person engaged in the business of manufacturing gambling devices, if the activities of such business in any way affect interstate or foreign commerce, to manufacture any gambling device during any calendar year, unless, after November 30 of the preceding calendar year, and before the date on which such device is manufactured, such person has registered with the Attorney General under this subsection, regardless of whether such device ever enters interstate or foreign commerce.

(2) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others any gambling device, if in such business he sells, ships, or delivers any such device knowing that it will be introduced into interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30 of the preceding calendar year, and before the date such sale, shipment, or delivery occurs, such person has registered with the Attorney General under this subsection.

(3) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others any gambling device, if in such business he buys or receives any such device knowing that it has been transported in interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30 of the preceding calendar year and before the date on which he buys or receives such device, such person has registered with the Attorney General under this subsection.

(4) Each person who registers with the Attorney General pursuant to this subsection shall set forth in such registration (A) his name and each trade name under which he does business, (B) the address of each of his places of business in any State or possession of the United States, (C) the address of a place, in a State or possession of the United States in which such a place of business is located, where he will keep all records required to be kept by him by subsection (c) of this section, and (D) each activity described in paragraph (1), (2), or (3) of this subsection which he intends to engage in during the calendar year with respect to which such registration is made.

(b) Numbering of devices.

(1) Every manufacturer of a gambling device defined in paragraph (a) (1) or (a) (2) of section 1171 of this title shall number seriatim each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

(2) Every manufacturer of a gambling device defined in paragraph (a) (3) of section 1171 of this title shall, if the size of such device permits it, number seriatim each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

(c) Records; required information.

(1) Every person required to register under subsection (a) of this section for any calendar year shall, on and after the date of such registration or the first day of such year (whichever last occurs), maintain a record by calendar month for all periods thereafter in such year of—

(A) each gambling device manufactured, purchased, or otherwise acquired by him,

(B) each gambling device owned or possessed by him or in his custody, and

(C) each gambling device sold, delivered, or shipped by him in intrastate, interstate, or foreign commerce.

(2) Such record shall show—

(A) in the case of each such gambling device defined in paragraph (a) (1) or (a) (2) of section 1171 of this title, the information which is required to be affixed on such gambling device by subsection (b) (1) of this section; and

(B) in the case of each such gambling device defined in paragraph (a) (3) of section 1171 of

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this title, the information required to be affixed on such gambling device by subsection (b) (2) of this section, or, if such gambling device does not have affixed on it any such information, its catalog listing, description, and, in the case of each such device owned or possessed by him or in his custody, its location.

Such record shall also show (i) in the case of any such gambling device described in paragraph (1) (A) of this subsection, the name and address of the person from whom such device was purchased or acquired and the name and address of the carrier; and (ii) in the case of any such gambling device described in paragraph (1) (C) of this subsection, the name and address of the buyer and consignee thereof and the name and address of the carrier.

(d) Retention of records.

Each record required to be maintained under this section shall be kept by the person required to make it at the place designated by him pursuant to subsection (a) (4) (C) of this section for a period of at least five years from the last day of the calendar month of the year with respect to which such record is required to be maintained.

(e) Dealing in, owning, possessing or having custody of devices not marked or numbered; false entries in records.

(1) It shall be unlawful (A) for any person during any period in which he is required to be registered under subsection (a) of this section to sell, deliver, or ship in intrastate, interstate, or foreign commerce or own, possess, or have in his custody any gambling device which is not marked and numbered as required by subsection (b) of this section; or (B) for any person to remove, obliterate, or alter any mark or number on any gambling device required to be placed thereon by such subsection (b).

(2) It shall be unlawful for any person knowingly to make or cause to be made, any false entry in any record required to be kept under this section.

(f) Authority of Federal Bureau of Investigation.

Agents of the Federal Bureau of Investigation shall, at any place designated pursuant to subsection (a) (4) (C) of this section by any person required to register by subsection (a) of this section, at all reasonable times, have access to and the right to copy any of the records required to be kept by this section, and, in case of refusal by any person registered under such subsection (a) to allow inspection and copying of such records, the United States district court for the district in which such place is located shall have jurisdiction to issue an order compelling production of such records for inspection or copying. (Jan. 2, 1951, ch. 1194, § 3, 84 Stat. 1135; Oct. 18, 1962, Pub. L. 87-840, § 5, 76 Stat. 1075.)

REFERENCES IN TEXT

The effective date of the Gambling Devices Act of 1962, referred to in pars. (2) and (3) of subsec. (a), means the effective date of Pub. L. 87-840. See effective date note under this section.

AMENDMENTS

1962—Pub. L. 87-840 amended section generally. Prior to such amendment, section provided that: "Upon first engaging in business, and thereafter on or before the 1st day of July of each year, every manufacturer of and dealer in gambling devices shall register with the Attorney General his name or trade name, the address of his

principal place of business, and the addresses of his places of business in such district. On or before the last day of each month every manufacturer of and dealer in gambling devices shall file with the Attorney General an inventory and record of all sales and deliveries of gambling devices as of the close of the preceding calendar month for the place or places of business in the district. The monthly record of sales and deliveries of such gambling devices shall show the mark and number identifying each article together with the name and address of the buyer or consignee thereof and the name and address of the carrier. Duplicate bills or invoices, if complete in the foregoing respects, may be used in filing the record of sales and deliveries. For the purposes of this chapter, every manufacturer or dealer shall mark and number each gambling device, so that it is individually identifiable. In cases of sale, delivery, or shipment of gambling devices in unassembled form, the manufacturer or dealer shall separately mark and number the components of each gambling device with a common mark and number as if it were an assembled gambling device. It shall be unlawful for any manufacturer or dealer to sell, deliver, or ship any gambling device which is not marked and numbered for identification as herein provided; and it shall be unlawful for any manufacturer or dealer to manufacture, recondition, repair, sell, deliver, or ship any gambling device without having registered as required by this section, or without filing monthly the required inventories and records of sales and deliveries."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section effective on the sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87-840, set out as a note under section 1171 of this title.

CROSS REFERENCES

Penalty for violations, see section 1176 of this title.

§ 1174. Labeling and marking of shipping packages.

All gambling devices, and all packages containing any such, when shipped or transported shall be plainly and clearly labeled or marked so that the name and address of the shipper and of the consignee, and the nature (if the article) or the contents of the package may be readily ascertained on an inspection of the outside of the article or package. (Jan. 2, 1951, ch. 1194, § 4, 64 Stat. 1135.)

CROSS REFERENCES

Penalty for violations, see section 1176 of this title.

§ 1175. Specific jurisdictions within which manufacturing, repairing, selling, possessing, etc., prohibited.

It shall be unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device in the District of Columbia, in any possession of the United States, within Indian country as defined in section 1151 of Title 18 or within the special maritime and territorial jurisdiction of the United States as defined in section 7 of Title 18. (Jan. 2, 1951, ch. 1194, § 5, 64 Stat. 1135.)

CROSS REFERENCES

Penalty for violations, see section 1176 of this title.

§ 1176. Penalties.

Whoever violates any of the provisions of sections 1172—1174 or 1175 of this title shall be fined not more than \$5,000 or imprisoned not more than two years, or both. (Jan. 2, 1951, ch. 1194, § 6, 64 Stat. 1135.)

§ 1177. Confiscation of gambling devices and means of transportation; laws governing.

Any gambling device transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, or used in

violation of the provisions of this chapter shall be seized and forfeited to the United States. All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as applicable and not inconsistent with the provisions hereof: *Provided*, That such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of gambling devices under this chapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General. (Jan. 2, 1951, ch. 1194, § 7, 64 Stat. 1135.)

§ 1178. Nonapplicability of chapter to certain machines and devices.

None of the provisions of this chapter shall be construed to apply—

- (1) to any machine or mechanical device designed and manufactured primarily for use at a racetrack in connection with parimutuel betting,
- (2) to any machine or mechanical device, such as a coil-operated bowling alley, shuffleboard, marbel machine (a so-called pinball machine), or mechanical gun, which is not designed and manufactured primarily for use in connection with gambling, and (A) which when operated does not deliver, as a result of the application of an element of chance, any money or property, or (B) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money or property, or
- (3) to any so-called claw, crane, or digger machine and similar devices which are not operated by coin, are actuated by a crank, and are designed and manufactured primarily for use at carnivals or county or State fairs.

(Jan. 2, 1951, ch. 1194, § 9, as added Oct. 18, 1962, Pub. L. 87-840, § 6, 76 Stat. 1077.)

EFFECTIVE DATE

Section effective on the sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87-840, set out as a note under section 1171 of this title.

Chapter 25.—FLAMMABLE FABRICS

Sec.

- 1191. Definitions.
- 1192. Prohibited transactions.
- 1193. Standards of flammability; proposals for new standards.
- 1194. Administration and enforcement; law governing; rules and regulations; inspections, tests, etc.
- 1195. Injunction and condemnation proceedings.
 - (a) Temporary injunction; venue.
 - (b) Process of libel for seizure and confiscation; manner of procedure; consolidation of trials.
 - (c) Application by defendant for representative samples of seized materials.
 - (d) Disposal of condemned materials.

Sec.

- 1196. Penalties.
- 1197. Guaranties.
- 1198. Shipments from foreign countries, posting of bond.
- 1199. Chapter as additional legislation.
- 1200. Persons excluded from operation of chapter.

§ 1191. Definitions.

As used in this chapter—

(a) The term "person" means an individual, partnership, corporation, association, or any other form of business enterprise.

(b) The term "commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

(c) The term "Territory" includes the insular possessions of the United States and also any Territory of the United States.

(d) The term "article of wearing apparel" means any costume or article of clothing worn or intended to be worn by individuals except hats, gloves, and footwear: *Provided, however*, That such hats do not constitute or form part of a covering for the neck, face, or shoulders when worn by individuals: *Provided further*, That such gloves are not more than fourteen inches in length and are not affixed to or do not form an integral part of another garment: *And provided further*, That such footwear does not consist of hosiery in whole or in part and is not affixed to or does not form an integral part of another garment.

(e) The term "fabric" means any material (other than fiber, filament, or yarn) woven, knitted, felted, or otherwise produced from or in combination with any natural or synthetic fiber, film, or substitute therefor which is intended or sold for use in wearing apparel except that interlining fabrics when intended or sold for use in wearing apparel shall not be subject to this chapter.

(f) The term "interlining" means any fabric which is intended for incorporation into an article of wearing apparel as a layer between an outer shell and an inner lining.

(g) The term "Commission" means the Federal Trade Commission.

(h) The term "Federal Trade Commission Act" means the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 28, 1914, as amended. (June 30, 1963, ch. 164, § 2, 67 Stat. 111.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (h), is classified to sections 41-46 and 47-68 of this title.

EFFECTIVE DATE

Section 12 of act June 30, 1963, provided that this chapter shall take effect one year from June 30, 1963.

SHORT TITLE

Congress in enacting this chapter provided by section 1 of act June 30, 1963, that it should be popularly known as the "Flammable Fabrics Act."

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Testimony of Ernest H. Jones, Chairman,
for the Board of Christian Social Concerns
of the ALASKA MISSION of The METHODIST CHURCH

Presented to the House Judiciary Committee
March 16, 1966

Re: SB 282

We are opposed to this bill for all the reasons cited previously against the legalization of gambling activities. (See attached statements.) The obvious threats to the economic, political, and physical welfare of Alaska and its people make this particular bill especially undesirable. Whereas HB 419 was ostensibly designed to bring money into Alaska, SB 282 might tend to take money out of the state.

On August 19, 1965, the Supreme Court of Alaska ruled unanimously that the type of coin-operated machines referred to in SB 282 are gambling instruments, and therefore subject to seizure according to Alaska law. In spite of several attempts to have this decision set aside, it still stands today.

On February 24 SB 282 was introduced, apparently to nullify this decision of the Supreme Court. The bill was passed hurriedly through the Senate with no publicity, and without debate. It was noted that many telegrams had been received by various senators, expressing opposition to the bill, but they were not read to the Senate, and no heed was paid to them.

SB 282 seems to be aimed at the wording of the Supreme Court decision: "A pinball machine . . . cannot be operated without the three elements of price, chance and prize being present." This bill would make the law say there is no prize. By adding the clause, "but free plays shall not be construed as a thing of value," to the legal description of these machines, this bill seeks to make the law say that these machines are not gambling devices. As long as free plays are registered, however, they are gambling devices, since the operator can "pay off" and cancel the free games.

The machines are gambling devices. They are subject to outside control, or to unscrupulous control from within. They are designed for no other purpose than to take money from those who are weak enough to be tempted by this kind of "amusement."

We respectfully urge that this bill be defeated.

STATEMENTS ADOPTED BY THE ALASKA MISSION
of the Methodist Church
in its Annual Meetings and Printed in the Journals in the Years Indicated

1959

We recommend study, prayer and action . . . to be ever on the alert to head off schemes aimed at legalizing gambling. We must speak out against lotteries, raffles, and other gambling devices, often only thinly disguised, for this is the ever present threat that calls people to try to get something for nothing. (p. 60)

1960

We urge special caution to our people, that they may not aid and encourage gambling through their participation in, or approval of, any form of gambling and its associated events, and for these reasons: gambling becomes an addiction, it provides a productive climate for syndicate crime and common theft, it thrives on legislative corruption, and for us, personally, is contrary to any understanding of Christian Stewardship. A person who gambles does so in order to gain, at the expense and because of the weakness of others, wealth without labor exerted. (p. 63)

1961

Alaskans were warned nearly three years ago of efforts to whip up support for legalize gambling. This warning was sounded by the Alaska Council of Churches. The warning has not proved to be illusory. The "Alaska Citizens Economic Study Group" with information headquarters in Anchorage is issuing a publication urging that "Alaskans Need The Protection And Benefits of Regulated Legalized Gambling." . . .

The most authoritative studies made on the effects of gambling, legal and otherwise, have shown that gambling "neither hews wood nor draws water. It does not add to the total wealth of a state or nation. It simply drains the wallets of those addicted to gambling, whether they actually can afford such a drain or not." (the late Senator Richard Neuberger). To those who claim that gambling should be legalized because some will gamble anyway, we ask if legislation against homicide, crimes of violence, crimes against property, and other conduct viewed by our society as against the interest of our people should also be repealed. In the words of Congressman John D. Dingell, "Our laws create the social climate in which we live; they are both enunciate of our morals and beliefs, and creative of our mores and customs." (p. 52)

1962

Persistent and recurrent efforts have been made and probably will continue to be made, through innocent-seeming legislation, to further weaken Alaska's gambling laws. Such efforts, if successful, will invite the exploitation of Alaska by organized crime and gambling syndicates. (p. 57)

1963

Persistent efforts have been increased this year by powerful gambling interests to turn the new State of Alaska into another Nevada for their own sinister purposes. Alaskans were assured during the First State Legislature by those who were successful in legalizing the Nanana lottery and certain other types of gambling in the state that such a move would protect us from the syndicates. It was only intended, they said, to provide a measure of control for innocent "traditional games" in the state. Now it is becoming obvious to many Alaskans that what was thought to be control was actually incentive for expanded gambling activities of many kinds and a screen for large-scale illegal gambling activities. (pp. 52-3)

1964

Federal and State law enforcement officials have been successful in bringing indictments against a number of corporations and individuals in the state for illegal pin-ball gambling operations. Alaska Methodists should keep a watchful eye on all such activities and exert their influence on the side of persistent crackdowns whenever illegal gambling is detected. We commend Governor William A. Egan for his stand against increased gambling activities in the state. We urge the State Legislature to repeal the Alaska Statutes which legalize gambling. Legalized gambling encourages wage earners to gamble - businesses suffer and relief agencies require more funds to do their job. Legalized gambling increases police and government costs - losses drive bettors to embezzlement, burglary and other crimes. Legalized gambling spurs public interest in getting something for nothing and undercuts community responsibility - starts youth betting and breeds addicts or compulsive gamblers. Gambling taxes come high. Schemes of the gambling crowd to establish a state lottery or other "gimmick" in lieu of honest and equitable taxation must be vigorously resisted by all individuals who care about good government. (p. 65)

1965

Pressure continues in Alaska from those seeking to break down the laws controlling gambling. Advocates of all-out legalized gambling paint a rosy picture. They claim legalization will bring in tax revenues, but say nothing about the increased cost of crime control and social welfare. They claim that legalization is the answer to illegal gambling, but say nothing about the evidence that legal gambling brings about increased illegal gambling. They say nothing about the broken lives and distorted values gambling promotes. (p. 52)

- Compiled by Ernest H. Jones, Chairman,
Board of Christian Social Concerns
The Alaska Mission of The Methodist Church

Additional comments of Ernest H. Jones
before the HOUSE JUDICIARY COMMITTEE
March 27, 1966

Re: SB 282

1. Several of these are more pertinent to SB 282 than they were to HB 419. I call your attention especially to the statements of 1961, 1962, 1963, and 1964. I am prepared to elaborate on the 1963 quotation if you should desire it.

on March 16
2. You were told ~~last evening~~ that SB 282 would merely restore the circumstances that prevailed a year ago, before the Supreme Court decision, as though it was that decision which made these machines illegal. If they were not illegal before August 19, 1965, why were seven corporations and eighteen individuals indicted by a federal grand jury on November 5, 1963, for bringing pinball gambling devices into the state? If these machines were not illegal until August 19, 1965, why did at least two of these individuals decline to contest the charges, and submit to conviction in September, 1964?

on March 16
3. You were told ~~last evening~~ that there are only a few of these machines left in Alaska, and that they bring in very little money. If these allegations are true, why is there this constant plea for legalizing them; why the spending of considerable sums of money to keep applying pressure through such bills as SB 179 in the Third Legislature and SB 282 in the present Legislature?

Just a few days more than two years ago the House Finance Committee held a hearing on HB 296. This bill was defended by the operators as an attempt to be allowed to "phase out" their investments over a three-year period. Now you have been told that all these machines are two years older (for no new ones have been brought in since 1961 or 1962, they say), and they want to use them "until they wear out" - possibly five more years - so they can pay off their mortgages - from the proceeds of the "unprofitable" machines!

TESTIMONY GIVEN BEFORE THE HOUSE JUDICIARY COMMITTEE
by Rev. Richard K. Heacock, Jr., Chairman, Committee
on Christian Social Relations of the Alaska Council
of Churches at Juneau, Alaska, March 16, 1966, re SB NO. 282

A statement of the nature and purpose of the Alaska Council of Churches was given to this committee on March 1, 1966, at the hearing on HB No. 419. Included in that statement were excerpts from statements adopted by the Council since its formation in 1959 opposing any weakening of Alaska's gambling laws.

A paper entitled "The Legal Aspects of the Fight Against Gambling" and prepared by James N. Wanamaker, Attorney at Law, was adopted by the Eighth Annual Assembly of the Alaska Council of Churches for distribution to the churches of the State. A copy of this paper is submitted with this testimony for the committee's file.

As Mr. Wanamaker points out, the State of Alaska now has the power to eliminate pinball machines which are classified as gambling devices under the existing laws. An essential feature of such machines which causes them to be classed as gambling devices is its ability to register "free plays". The Supreme Court of Alaska has now ruled that such machines are gambling machines in themselves, subject to seizure and destruction under the law.

We have been informed that Senate Bill No. 282, should it become law, would have the effect of removing pinball machines from the gambling device category by the simple insertion of the phrase, "but free plays shall not be construed as a thing of value", into the language of existing law. If this is so, it would, in effect, legalize all such gambling devices. It would also deprive Alaska of the protection of federal law enforcement of 15 U.S.C. 1171-1177 (as amended) which prohibits the use of interstate or foreign commerce for the shipment of gambling machines into states where they are outlawed.

It is well known that the churches oppose further weakening of Alaska's gambling laws on theological and moral grounds. It needs to be shown, however, that the position of the churches is reinforced by the findings of the most prominent authorities who are experienced in criminal law and enforcement.

For example, in The Annals of the American Academy of Political and Social Science of May, 1963, the following findings of experts were published:

"There exists in the United States at this time a powerful group of persons who are specializing in the pursuit of crime on an organized scale. They utilize the latest technologies and scientific know-how in the conduct of their operations, which span the continent from coast to coast. Until recently, the most important underworld tycoons came from an older generation which won fame during the era of Prohibition. At this time, a younger group of persons is striving to gain greater influence in criminal circles as some of the older criminals are dying out...The area of activity which made up for the income that was lost to organized crime as a result of the repeal of Prohibition was gambling...The turnover of business due to illegal gambling has been estimated at anywhere from twenty-two to fifty billion dollars a year...In 1960 the Senate Committee on Improper Activities in the Labor or Management Field under the chairmanship of Senator McClellan drew the following conclusions, among others: 'The coin-operated machine industry, particularly in the music, amusement, and cigarette vending segments, has been victimized by an astounding number of racketeers...The early experience with pinball and slot machine gambling...has enabled criminals to extend their operations into nongambling amusement games, automatic phonographs and, to a minor extent, in vending machines...' If these laws and standards are consistently violated by millions of Americans and if criminals are able to exploit the demand for immoral and illegal products and to rise to prominence and

"power in various areas of the country, then the very basis of the society is in danger, because the values people profess no longer command their respect or compliance." (Robert K. Woetzel, Ph.D., J.D., New York City, Associate Professor in the Department of Government of New York University and Adjunct Associate Professor of Political Science at Fordham.)

"The Capone syndicate has been particularly interested in almost all phases of the coin-machine business. Following the enactment of federal legislation prohibiting the interstate shipment of slot machines, the underworld began concentrating on the operation of the multiple-play pinball machines equipped with devices to record the number of free games won by the players. The location owner makes cash payments to the winners of free games, and the recording device enables the underworld operator to know exactly how much money has been paid in winnings when he makes regular settlements on a percentage basis with the location owner. These pinball machines are merely subterfuges for the old one-arm-bandit type of slot machines and are actually more lucrative." (Virgil W. Peterson, A.B., J.D., LL. D., Operating Director, Chicago Crime Commission since 1942; previously served with the FBI; author of Gambling: Should It Be Legalized?; contributor to popular, legal and professional journals and to Encyclopaedia Britannica.)

"The end of the war saw Chicago companies manufacturing a new type of gambling machine--pinballs--which appeared in New England. It was a fast playing machine with high odds and special features too lucrative to be overlooked by the professional gambling operator...In 1949 the Massachusetts legislature passed a bill sponsored by Senator John E. Powers of South Boston whereby these pinball machines offering free play were permitted to be licensed, thereby negating a 1948 Supreme Judicial Court decision (Commonwealth v. Rivers, 323 Mass. 379) which held that the free-play feature was in violation of the gaming statutes. No other state had such a law. The Commonwealth soon became flooded with pinballs--some 4,000 of them in variety stores, barber shops, lunchrooms, taverns, and amusement centers. All the exciting features of other forms of gambling became easily available to the workingman, young people, and children as young as eight and nine years of age. Some of the pinball machines operating in Boston were taking in a total of \$800 a week. One machine in a twenty-four-hour diner was reported to take in \$1,200 a week. A sum of \$41,600 to \$62,400 a year is a very substantial take on a machine costing \$700...Soon after a machine was approved, it would be found on location with added equipment installed by the local operators. The knockoff switch and recording meters assisted the store owner and the operator to keep the count on the cash pay-offs for unused free plays. The added equipment made these gambling machines very attractive to players of all ages. Massachusetts soon became well organized with numerous vending-machine companies who found these machines a ready source of easy money, in coins, not always reported in full according to the gross business operation. Persons known as operators in organized crime became more than interested in 'locations' for this lucrative setup... But organized gambling is political poison, as ten years of intensive investigation undertaken by the New England Citizens Crime Commission has pointed out with a parallel intensive campaign to eliminate it. 'The National Association of Citizens' Crime Commissions called for remedial Federal legislation to eliminate loopholes in the Internal Revenue laws which exclude pinball machines designed or used as subterfuges for slot machines from the slot machine provisions of the Revenue Laws.' Although over forty Massachusetts cities and towns with pinballs banned them during the 1950's, the real blow came after the 1959 federal court decision which ruled the multiple-coin machine a gambling machine per se... Overnight, some 3,000 machines were shipped out of Massachusetts--many to Japan.

"...Legalized...gambling, since the early Thirties, has contributed greatly to the growth of illegal...gambling...Second, legalized organized gambling tends to educate people to gambling and to soften a community for many forms of illegal gambling, major and minor, whether operated by bookies in the form of organized crime or by religious, veterans', and other organizations, presumably for worthy causes but often for the benefit of members...Third, the huge sums of money gained from illegal, organized, criminal gambling puts into the hands of the underworld operators a power used to corrupt candidates for public office and to negate law-enforcement officials. These huge sums also make possible the racketeer's entrance into and investment in legitimate business, causing unfair competition to honest investors and businessmen... Fourth, there follows in the wake of organized gambling and general crime a more widespread attitude of indifference toward laws, the courts, and the police. Some public officials and business concerns devise unscrupulous ways to seek personal gain. There is a lack of public morality. Corruption grows. Although steps are taken by the federal government to control corruption and crime, these measures are often canceled by that same government in other areas of unexpected leniency. This pattern, imitated at the state level, which in turn is imitated at the local level, looks like the wave of corruption in the future. Throughout our entire democratic structure, local, state, and federal, there is hope that corrective measures can and will be taken when exposures are made by concerned citizens. This is the only hope of democracy." (Dwight S. Strong, Boston, Massachusetts, Executive Secretary of the New England Citizens Crime Commission; Secretary of the National Association of Citizens' Crime Commissions.)

"The findings of the Kefauver and the McClellan committees of the United States Senate offer ample evidence of the extent of criminal power in America--a power based largely on the revenues of national gambling networks. As the United States Attorney-General said, organized crime in America is financed to a great degree by the two dollar bet placed by the otherwise law-abiding citizen. The social policy which underlays the early attempts at the suppression of gambling in this country is set out explicitly in 'Marvin v. Trout' wherein the United States Supreme Court in 1905 stated: 'It is well settled that the police power of the state may be exerted to preserve and protect the public morals. It may regulate or prohibit any practice or business, the tendency of which as shown by experience, is to weaken or corrupt the habits of those who follow it, or to encourage idleness instead of habits of industry. Whether or not gambling is demoralizing in its tendencies is no longer an open question. Gambling is injurious to the morals and welfare of the people, and it is not only within the scope of the state's police power to suppress gambling in all its forms, but it is its duty to do so.'

"It is submitted that today, however, the greater harm is not the slight pecuniary loss to the average citizen or any subsidiary idleness but, rather, the criminal empires which the revenues of gambling support and the resultant corruption of many law-enforcement and elected officials across the nation by these criminal elements." (Alvin J. T. Zumbrun, M.A., Executive Director of the Maryland Crime Investigating Committee.)

Mr. Chairman, I believe the testimony of these experts supports our position of opposition to Senate Bill No. 282 and any similar legislation which give the sanction and protection of law to gambling activities which are now operating illegally under Alaska laws.

Nevada

463.410 GAMBLING LICENSING AND CONTROL

and collected in the same manner as other charges, licenses and penalties under this chapter.

[Part 10e:99:1931; added 1945, 492; A 1947, 734; 1949, 114; 1955, 760]

**TRANSPORTATION OF GAMBLING DEVICES
IN INTERSTATE COMMERCE**

463.410 Declaration of state's exemption from operation of provisions of 15 U.S.C. § 1172. Pursuant to section 2 of that certain Act of the Congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951, being c. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. §§ 1171-1177, the State of Nevada, acting by and through its duly elected and qualified members of its legislature, does hereby in this section, and in accordance with and in compliance with the provisions of section 2 of such Act of Congress, declare and proclaim that it is exempt from the provisions of section 2 of that certain Act of the Congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951, being c. 1194, 64 Stat. 1134.

[1:97:1951]

463.420 Legal shipments of gambling devices, slot machines into State of Nevada. All shipments of gambling devices, including slot machines, into this state, the registering, recording and labeling of which has been duly had by the manufacturer or dealer thereof in accordance with sections 3 and 4 of that certain Act of the Congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951, being c. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. §§ 1171-1177, shall be deemed legal shipments thereof into this state.

[2:97:1951]

**LICENSING AND REGULATION OF DISSEMINATION
OF HORSE RACING INFORMATION**

463.430 Unlawful to disseminate horse racing information without license; public utility exception.

1. It shall be unlawful for any person, firm, corporation or association in this state to supply or disseminate in this state by any means information received from any source outside of this state concerning horse racing, when such information is to be used by the user for the purpose of maintaining and operating any gambling

only that upon the facts and circumstances of the instant case, the prosecutor's statement did not deprive defendant of a fundamentally fair trial.

The writ is denied.



UNITED STATES of America,
 Libelant,
 v.
 TWO COIN-OPERATED PINBALL MACHINES, Nos. B-1107 and B-1878,
 Respondents.

Civ. A. No. 4727.

United States District Court
 W. D. Kentucky,
 at Louisville.
 March 26, 1965.

Libel against coin-operated pinball machines as gambling devices under federal statute. The District Court, Brooks, Chief Judge, held that the record established that the machines were gambling devices in that they were designed and manufactured primarily for use in connection with gambling and by operation of which a person could become entitled to receive as a result of application of element of chance money or property.

Decree of forfeiture accordingly.

1. Gaming § 61

Record, in libel action, established that coin-operated pinball machines were gambling devices as defined in federal statute, in that they were designed and manufactured primarily for use in connection with gambling and by operation of which person could become entitled to receive as result of application of element of chance money or property. Gambling Devices Act of 1962, § 1 et seq., 15 U.S.C.A. § 1171 et seq.; KRS 486-230(5).

2. Gaming § 2

Coin-operated pinball machines, involved in libel against them as gambling devices under federal statute, were not specifically enumerated as lawful devices in Kentucky statute. Gambling Devices Act of 1962, § 1 et seq., 15 U.S.C.A. § 1171 et seq.; KRS 486.230(5).

3. Gaming § 58

Coin-operated pinball machines, as involved in libel against them as gambling devices under federal statute, were not exempted from application of federal statute by virtue of any exception contained in that statute. Gambling Devices Act of 1962, §§ 1 et seq., 9, 15 U.S.C.A. §§ 1171 et seq., 1171, 1178.

4. Gaming § 52

Federal statute, under which coin-operated pinball machines may be condemned and forfeited if gambling devices within statute, as applied to devices involved in libel against them, was constitutional exercise of legislative power. Gambling Devices Act of 1962, § 1 et seq., 15 U.S.C.A. § 1171 et seq.

5. Gaming § 62

Transportation of coin-operated pinball machines in interstate commerce is prohibited, if gambling devices, under federal statute. Gambling Devices Act of 1962, § 2, 15 U.S.C.A. § 1172.

6. Gaming § 61

Coin-operated pinball machines would be condemned and forfeited to United States, as gambling devices, pursuant to statute, in libel brought for purpose. Gambling Devices Act of 1962, § 7, 15 U.S.C.A. § 1177.

Boyce F. Martin, Jr., U. S. Atty., for W. D. Ky., Wm. E. Scent, former U. S. Atty., Louisville, Ky., for W. D. Ky., for libelant, United States of America.

Ben T. Cooper, Louisville, Ky., and Paul R. Connolly, Washington, D. C., for respondents and claimants.

BROOKS, Chief Judge.

This matter having come on regularly for hearing before the Court and a Jury,

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 20208, 2d Cir.

420-27, 438,
 887 (1903);
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 870 U.S. 448,
 4, 408 (1905).
 Wright, 800 F.
 . 1902), cert.
 S.Ct. 878, 9 L.

located two additional meters referred to as the total plays meter and the replays meter. The total plays meter records the number of coins inserted in the device and the number of free plays used in the play of the machine. The replays meter records the total number of free plays which have been won on the play of the machine. Subtracting the total registered on the replays meter and the total of coins in the coin box from the total registered on the total plays meter will result in the number of free games eliminated from the machine without being used in play. The devices are so equipped that the replay meter may be readily rewired in order to record only the number of free games so eliminated.

3. The great number of free games which can be achieved by players, the provision for multiple coin insertion in order to increase the reward for successful play, the facility with which free plays can be eliminated from the free play register and the ease by which free plays so eliminated can be counted renders these devices peculiarly and uniquely suited for gambling purposes.

4. Successful play of these devices cannot be achieved by the application of skill and depends upon the result of the application of an element of chance.

5. The successful player of these devices will win not only a right to replay the devices but also the opportunity to have free games redeemed for cash or merchandise.

CONCLUSIONS OF LAW

[1] 1. The respondent machines are gambling devices as defined in 15 U.S.C. § 1171 in that they are designed and manufactured primarily for use in connection with gambling and by the operation of which a person may become entitled to receive as a result of an application of an element of chance money or property.

[2] 2. The respondent machines are not specifically enumerated as lawful devices in Section 436.230(5), Kentucky Revised Statutes.

[3] 3. The respondent devices are not exempted from the application of Chapter 24 of Title 15, U.S.C. by virtue of any exception contained in 15 U.S.C. § 1178 or any other section of Chapter 24.

[4] 4. Chapter 24 of Title 15, U.S.C. as applied to the respondent devices is a constitutional exercise of the legislative power.

[5] 5. Transportation of respondent devices in interstate commerce is prohibited by Section 1172 of Title 15 U.S.C.

[6] 6. The respondent devices are guilty and subject to be condemned and forfeited to the United States, pursuant to the provisions of Section 1177 of Title 15.

7. The libellant is entitled to a decree of forfeiture.



Carl MASSEY, Plaintiff,

v.

Anthony J. CELEBREZZE, Secretary of Health, Education and Welfare, Defendant.

No. 671.

United States District Court
E. D. Kentucky,
Pikeville Division.

Oct. 18, 1963.

Action for review of decision denying social security disability benefits. The District Court, Swinford, Chief Judge, held that denial of benefits was not supported by substantial evidence in absence of showing of employment opportunities available to person who could do only what claimant could do in the general area where claimant lived.

Motion of plaintiff for summary judgment sustained; motion of defendant therefor overruled.

Marshall McKEE, Respondent,
v.

FOSTER, District Attorney of Polk
County, and Robert Y. Thornton, Attorney
General of the State of Oregon, Appellants.

Supreme Court of Oregon,
En Banc.

Filed and Submitted Sept. 10, 1959.

Decided Dec. 9, 1959.

Appeal for decree declaring free play
pinball machines not to be gambling devices.
The Circuit Court, Polk County, Arlie
Rossman, J., entered a decree permanently
injunction against defendants from curtailing,
seizing, or confiscating plaintiff's ma-
chines, and defendants appealed. The Su-
preme Court, Rossman, J., held that ma-
chines were not gambling devices, and were
not outlawed by lottery statute or any other
law.

Affirmed.

100-60(3)
100-60(3)

Free play pinball machines were not
gambling devices, and were not outlawed by
lottery statute or any other state law. ORS
167.310, 167.305, 167.505, 167.535
and Const. art. 15, § 4.

John D. Sullivan, Asst. Atty. Gen., for
appellant. On the brief were Robert Y.
Thornton, Atty. Gen., and John D. Nichols,
Asst. Atty. Gen., and Walter W. Foster,
Attorney of Polk County, Dallas.

W. Williams, Salem, for respond-
ent. On the brief were Otto R.
Thornton, and Paul Burris, Salem.

ROSSMAN, Justice.

Appeal by the state from a de-
cree entered by the circuit court in a cause
brought by the plaintiff, Marshall McKee, insti-
tuted against the District Attorney of Polk

347 P.2d-5714

County, Mr. Walter Foster, and the Attor-
ney General of this state, Mr. Robert Y.
Thornton, for the purpose of securing a de-
claratory decree determining whether or not
free play pinball machines are gambling de-
vices. Attached to the complaint as an ex-
hibit and forming a part of it is an opinion
of the defendant Attorney General dated
March 20, 1958, which declares "It is my
opinion that these so-called 'free play' ma-
chines violate both ORS 167.535 and 167.
555." The complaint alleges that the plain-
tiff owns and operates "certain free play
pinball machines." Although it gives an ex-
tensive description of the manner in which
machines of that kind operate, we will, in
lieu of quoting it, take the following from
the answer of the two defendants which sets
forth the process whereby the machines in-
dicate the right of a winning player to a
free play.

" * * * Scores are credited to the
player if he causes a ball to roll into the
holes on the board. When a ball rolls
into the hole it causes an electronic cir-
cuit to be activated which lights one of
the squares in the panel on the back-
board corresponding to the number as-
signed the hole. The object of the
player is to light three, four or five
lights in a row horizontally, vertically
or diagonally on the backboard by caus-
ing the ball to roll into the appropriate
hole on the board. Free plays are scored
upon principles similar to Bingo by the
lighting of three, four or five lights in
a row. * * *"

The complaint avers that "it is just and
equitable under the existing circumstances
that the Court * * * determine by de-
claratory judgment that the machine herein
is not a gambling device as defined by Ore-
gon Revised Statutes 167.535 and 167.555
and that the legal opinion of the defendant
Thornton and its directive be held for
naught * * *." The prayer sought a de-
cree holding that "free play pinball ma-
chines of the type herein described and
proof of operation offered are not gambling
devices as defined by ORS 167.535 and 167.
555."

We have quoted parts of the answer which the two defendants filed jointly. Other parts admitted that the defendant Attorney General issued in his "official capacity" the opinion dated March 20, 1958, in which he expressed the belief that "these so-called 'free play' machines violated both ORS 167.535 and 167.555." The answer further alleged that on October 4, 1947, Mr. Thornton's predecessor issued an opinion which declared that "free-play pinball machines were gambling devices as defined by §§ 23-935 and 23-939 O.C.L.A., now compiled in Oregon Revised Statutes as ORS 167.535 and 167.555 respectively." Going on, it alleged that "on or about March 20, 1958, defendant Thornton caused to be issued an Opinion No. 3976, affirming the aforesaid opinion and conclusion reached by Attorney General Neuner." The answer further set forth:

"Plaintiff contends that the free-play pinball machines owned and operated by him in the manner above described are not prohibited nor subject to seizure and destruction under the provisions of ORS 167.405, 167.535 to 167.540 or 167.555."

It continues:

"* * * a real and substantial dispute exists between plaintiff and defendants herein over the lawfulness of free-play pinball machines as herein described under the provisions of ORS 167.405, 167.535 and 167.555."

The cause was submitted to the court upon stipulated facts. The part of the findings of fact which recites the manner in which the machine indicates the player's right to a free play is couched in the same language as the above quoted excerpt of the answer. The findings contain no assertion that the machine issued to the player anything except a free play. Nor do they contain any recital that there comes to the player something of a tangible or physical nature such as a token, slug or card. The conclusions of law state:

"The machine as described in the Findings of Fact does not dispense

money, checks, slugs, tokens, credit or other representative of value or evidence of winning capable of being exchanged or redeemed for anything of value, when it returns to the player free plays upon securing a designated score."

There is no claim that the statement just quoted is at variance with the record. The illumination of a part of the machine in the manner indicated by the excerpt which we took from the answer signifies to the player that he has won the right to a free play. In order to avail himself of the right he pushes a button but does not deposit in the machine a coin, slug or anything else. The brief filed by the defendants-appellants (Attorney General and District Attorney) says:

"It is this distinctive 'free game' feature which is involved in this case and which incidentally gives this and other similar machines the generic term 'free-play pinball machines.' Such machines thus stand apart from machines dispensing coins, tokens, mints or similar items. Cf., State v. Coats, 138 Or. 122, 124-127, 74 P.2d 1102."

In other words, the machine with which this case is concerned issues to the player a slug, coin or other item. Likewise, it awards to the player nothing whatever except occasionally a free play.

The findings of fact, after mentioning ORS 167.405, 167.535 and 167.555 which are cited in the answer, state:

"* * * Provided, however, that the parties through their attorneys have agreed that the applicable statute to be interpreted is 167.535."

No one claims that the finding just quoted misstates the agreement of the parties. ORS 167.535 reads as follows:

"Any person, firm or corporation who possesses, sets up, conducts, maintains, operates, or is in control of the operation, either as owner, proprietor, lessee, employe or agent, or plays or uses any nickel-in-the-slot machine or other device of like character, which operates as described in this section

which may or may not indicate before the deposit of a coin what it will vend or dispense, shall be punished upon conviction by a fine of not less than \$10 nor more than \$100, and in default of payment of the fine shall be imprisoned in the county jail one day for each \$2 thereof:

"(1) Upon deposit therein of a coin, slug, token or other thing representative of value, the machine may vend or dispense any merchandise, money, check, token, slug, credit or other representative of value or evidence of winning in varying quantities or values, depending upon chance.

"(2) In exchange for a deposit therein, there may be received at occasional or uncertain intervals or in varying quantities or value, from time to time, depending upon chance, any money, check, slug, token, credit or other representative of value or evidence of winning which:

"(a) May be exchanged or redeemed for anything of value.

"(b) May be deposited in such machine or device for further operation or play with the chance of winning or receiving additional merchandise, money, check, token, slug, credit or other representative of value or evidence of winning."

The appellants (defendants) present only one assignment of error. It follows:

"The court erred in entering its decree permanently enjoining the defendants from curtailing, molesting or confounding the plaintiff's free-play pinball machines inasmuch as such decree was based upon an incorrect Conclusion of Law that the operation of such machines was not prohibited by ORS 167.535, which was not supported by the undisputed facts."

Terry v. City of Portland, 204 Or. 478, P.2d 514, held that since free play pinball machines lend themselves to gambling purposes the police power of the state may suppress them. The question

remains, however, as to whether or not the plaintiff's machines come within the terms of the statute just quoted.

It will be noticed that ORS 167.535 provides that any person who possesses "any nickel-in-the-slot machine * * * which operates as described in this section" is guilty of the crime proscribed by that section of our laws. That provision is followed by two subsections which contain many similar words but which are concerned with machines of three different kinds. Subsection (1) begins this way, "Upon deposit therein of a coin, slug, * * *" and subsection (2) begins, "In exchange for a deposit therein * * *." Although the latter omits the words "coin, slug * * *" the two provisions mean the same. The deposit activates the machine and thereupon the play begins. From that point on subsection (1) describes a machine which is different from that described in subsection (2). Subsection (1) in specifying the machine with which it is concerned uses these words, "may vend or dispense any merchandise, money, check, token * * *." Thus, the machine to which it is applicable vends or dispenses merchandise, money, checks, etc. Subsection (2) omits the words "vend or dispense" and, accordingly, the device to which it is applicable is not a vending machine. Subsection (1) renders a machine which vends or dispenses merchandise, etc. "in varying quantities or values, depending upon chance" unlawful. Although one who patronizes a machine of that kind is certain to receive something, however small or great in value it may be, yet because of the fact that the "quantities or values" which come to him are "depending upon chance" the machine is rendered by subsection (1) a gambling device.

We now turn to the machine which subsection (2) outlaws. The first part of that subsection does not employ the term "merchandise." Likewise, subsection (2), as we have already noted, does not use the words "vend or dispense." The player who resorts to the machine described in subsection (2) activates it by depositing in it a

normal, but it is possible that at the end of the play the machine may issue to him absolutely nothing. Or, it is possible that at "occasional or uncertain intervals or in varying quantities or values, from time to time, depending upon chance," there may come to him "money, check, slug, token, credit or other representative of value or evidence of winning." Subsection (2), however, does not stop there. If it did, its language in that phase of the matter would be somewhat similar to that of subsection (1). Subsection (2) goes on to say that the thing received must be of a kind which "may be exchanged or redeemed for anything of value," or if it is not of that kind, it must be something which "may be deposited in such machine or device" for replay bringing to the player upon replay "the chance of winning or receiving additional merchandise, money, check, token * * *."

The defendants-appellants argue that the plaintiff's machines fall within subsection (1). They point out that when a player deposits his nickel in a machine the latter may dispense for him only a single play or, if he is lucky, it may give him a sequence of two or more plays. He may thus keep the machine operating upon the deposit of a single nickel as long as his luck continues, or, stated differently, as long as he continues to obtain high scores and win free replays. The defendants-appellants argue that the plaintiff's machines therefore come within this language: "may vend or dispense any * * * other representative of value or evidence of winning in varying quantities or values, depending upon chance." The length of play and hence the "quantities or values" of the play vary in plaintiff's machines, so the defendants argue, according to chance. We may safely assume, since other courts have so held, that a free play is a "representative of value or evidence of winning."

The contention that a free play machine violates subsection (1) is fundamentally unsound in our belief. The words "vend or dispense" found in that subsection, if we employ their nonplace meanings (ORS 161.050), describe an ordinary vending machine

into which the player inserts a coin and then stands by while the machine goes through the operation of issuing to him an item of merchandise. The subsection, however, appears to be aimed at machines which, in dispensing mints, gum balls or other items, do so "in varying quantities or values, depending upon chance." Thus, upon one play the patron of the machine may receive a piece of chewing gum and on the next not only gum but also some trinket. The patron of a vending machine stands by idle while the machine goes through the operation incidental to the delivery to him of the desired item. The ordinary "one-arm bandit" slot machine clearly comes under the terms of this subsection. On the other hand, in a pinball game the player actively participates after he has inserted his nickel. And in order to obtain his free play, if one is awarded to him, he must depress a button on the machine so that the play will continue.

Although the observations just made indicate that the plaintiff's machines are not embraced in subsection (1) another distinction of a more persuasive nature will now receive mention. It consists of the fact that replay machines are the specific subject matter of subsection (2) (b) of ORS 167.535. It seems unreasonable to believe that the legislature, after making specific provision for them in subsection (2) intended that they should also be deemed within subsection (1) which, as we have seen, appears to take as its province vending machines.

Subsection (2) describes machines from which "there may be received at occasional or uncertain intervals, * * * depending upon chance, any money, check * * * which * * * May be deposited in such machine or device for further operation or play with the chance of winning or receiving additional merchandise, money, check, token, slug, credit or other representative of value or evidence of winning." Since replay machines are clearly singled out by this subsection as the latter's province, and since subsection (1) is applicable to vending and dispensing machines, we

are satisfied that subsection (1) does not embrace replay machines.

The same difficulty is encountered if one attempts to apply subsection (2) (a) of ORS 167.535 to the plaintiff's machines. This section is applicable to coin-operated machines from which "there may be received at occasional or uncertain intervals or in varying quantities or value * * * depending upon chance, any money, check, slug, token * * * which * * * May be exchanged or redeemed for anything of value * * *." It may seem that this provision contemplates a situation where the machine issues to the player something which he may hand to the machine's owner and surrender for a prize. But when one takes into view the broad language of the statute he will conclude that the "something" received need not be a tangible item. Very likely, a mere light flashing in the machine or other mechanical indication of a high score would be enough to qualify as a "credit or other representative of value or evidence of winning" capable of redemption or exchange. See *People v. Gravenhorst*, Sp.Sess., Bronx County, 1912, 32 N.Y.S.2d 760; *Prickett v. State*, 1918, 88 Okl.Cr. 213, 200 P.2d 457, 201 P.2d 798. But here again it does violence to the scheme of the statute to apply subsection (2) (a) to a replay machine. ORS 167.535(2) (b) occupies the field. Since subsection (2) (b) describes with particularity the kind of replay machine prohibited by the state, it is reasonable to conclude that subsection (2) (a) does not apply to replay machines.

ORS 167.535(2) (b) apparently does not prohibit pinball machines which give free plays if no coin or token is dispensed by the machine. The subsection outlaws only coin-operated machines from which "there may be received" some tangible object which "May be deposited in such machine" for a replay. Although "credit or other representative of value or evidence of winning" are among the prohibited class of objects which "May be deposited" in the machine for a replay, we must conclude, if we construe words in their normal sense, that

for the purposes of this subsection these things must be of a tactile, tangible character; that is, they must be of a sufficiently corporal nature so that they may be physically "deposited" in the machine. The defendants argue that it would be an absurdity to say that the statute prohibits a machine which dispenses checks or tokens for replay but does not prohibit a machine which permits replays without the use of checks or tokens. If we assume that the argument is unanswerable, the absurdity lies in the statute and not in our interpretation of it. A replay machine which does not issue checks, slugs or tokens is simply *casus omnisus*.

The rule that penal statutes are to be strictly construed has been abrogated by ORS 161.050. In lieu of that rule ORS 161.050 provides:

"* * * Their provisions shall be construed according to the fair import of their terms with a view to effect their objects and to promote justice."

We cannot give to ORS 167.535(2) (b) the meaning sought by defendants without wrenching from the legislative language its "fair import."

It is our belief that since the plaintiff's machine issues nothing to the player which he may deposit in it, ORS 167.535 is not applicable to it. This disposes of the appellants' (defendants') assignment of error.

Notwithstanding the fact that the single assignment of error (previously quoted) is based exclusively upon ORS 167.535, the appellants make the following request in their brief:

"If the court should determine that ORS 167.535 does not prohibit free-play pinball machines, then it should enter judgment that such machines are prohibited by ORS 167.405 or 167.505."

Even though the parties "agreed that the applicable statute to be interpreted is 167.535," as the findings of fact state, we will go on and determine whether or not any of the other sections of our laws which the defendant pleads, apart from ORS 167.535, outlaw the plaintiff's machines. The second

tions which the defendants cite are Article XV, section 4, Constitution of Oregon; ORS 161.310, 167.405 and 167.505.

Article XV, section 4 of the state's constitution, follows:

"Lotteries, and the sale of Lottery tickets, for any purpose whatever, are prohibited, and the Legislative Assembly shall prevent the same by penal laws."

The defendants render it clear that in their belief ORS 167.535 and none of the other enactments is applicable to pinball games. Their brief, referring to the specially concurring opinion which Mr. Justice Bailey filed in *State v. Coats*, 158 Or. 122, 74 P.2d 1102, 1119, says:

"* * * Justice Bailey's reasoning, we believe, is clear. Because it represents the view we urge here, we will have occasion to comment more fully on Justice Bailey's view later."

In his specially concurring opinion Justice Bailey stated:

"If we are to pursue the intention of the Legislature in the instant case, we must conclude that it was intended that any one guilty of the crime with which the defendant is charged must be prosecuted under the provisions of section 14-746, supra. It surely was not the intention of the Legislature that the defendant could be prosecuted under both the lottery act and the nickel-in-the-slot machine statute, or that of numerous offenders guilty of similar acts: some might be prosecuted under a statute making the violation thereof a felony, while others could be charged with the violation of some other statute making the crime charged a misdemeanor. * * *

Section 14-746, Oregon Code 1930, cited in the language just quoted, as subsequently amended, is now ORS 167.535. There are two cases which are entitled *State v. Coats*, 158 Or. 102, 74 P.2d 1120, and *State v. Coats*, 158 Or. 122, 74 P.2d 1102. According to 158 Or. 102 at page 103, 74 P.2d 1120,

the facts in that case "are identical with those in the pinball machine case (*State v. Coats*) this day held to constitute a lottery." Those words and a re-examination of the record in our clerk's office seem to indicate that both charges were based upon a single machine possessed by Coats, but it may be that he had more than one machine and we will so assume. The patron of Coats' machine or machines, upon inserting a nickel in the device and pulling a lever, set the machine in operation. If chance favored him he could win as much as ten nickels which the machine paid out to him automatically. We see from those facts that the device which was the subject matter of the Coats decision was a pay-off machine. It granted no replays. In the first of the two cases (158 Or. 102, 74 P.2d 1120) the information filed against the accused mentioned no section of our laws, but the opinion stated:

"* * * we assume from the briefs that the charge was brought under section 14-746, Oregon Code 1930, prohibiting the operation of nickel in-the-slot machines. * * *

In the other Coats case (158 Or. 122, 74 P.2d 1102, 1103) the information, referring to the defendant, stated that he "wrongfully, unlawfully and feloniously promote[d] and set up a certain lottery for money" by operating the machine. Each information was challenged by demurrer which the circuit court sustained. In each of the two decisions the majority opinion of this court, written by Mr. Justice Belt, held that the circuit court erred when it sustained the demurrer. The majority opinion ruled that each information charged the defendant with the operation of a lottery.

The decisions in the two cases of *State v. Coats* recognized that the term "lottery" has no technical or established legal meaning. They held that the essential elements of a lottery are prize, chance and consideration. Neither of the prevailing opinions undertook to define the word "prize." As we have said, Coats' machine issued to the winner as a prize as much

ten nickels. Section 14-801, Oregon Code, which was in effect when the Coats decisions were written, stated:

"If any person shall promote or set up any lottery for money or other valuable thing, or shall dispose of any property of value, real or personal, by way or means of lottery * * * or suffer the setting up, management, or drawing of any such lottery, or the sale of any lottery tickets, share of a ticket, or any writing, token, or other device purporting or intended to entitle the holder or bearer thereof * * * to any prize * * * such person, upon conviction thereof shall be punished * * *"

Section 14-802, Oregon Code, stated:

"If any person shall sell * * * a ticket or share of a ticket in any such lottery, or any writing, token, or other device as is mentioned in section 14-801, such person, upon conviction thereof, shall be punished * * *"

Section 14-803, Oregon Code, repeated much of the phraseology of which we have just taken note. Those sections, apart from minor alterations in language, are now ORS 167.405, 167.410 and 167.415.

Although the opinions written by Mr. Justice Belt in the Coats cases did not define the word "prize" Mr. Justice Bailey, in his specially concurring opinion of which we have already taken note, set forth a number of definitions of lottery which indicated that the prize must be greater in value than the amount hazarded. The majority opinion expressed no disagreement with that view. It remained silent upon the subject. The machine in the Coats cases paid to the winner, as we have said, ten times the sum which he deposited in it when he placed it in operation. In view of that fact the majority may have felt that since the winner received something of a tangible nature and of measured worth the situation did not call for a definition of the word "prize." A free play, on the other hand, is intangible and, in a sense, of immeasurable

value. The manufacturer of the plaintiff's machine assigned the arbitrary value of a nickel to the replay, but in the market place the replay has no such value. The replay cannot be sold. It cannot be carried away. It is intangible in nature and after the mechanics of the replay have been undergone the replay has disappeared for all time. It may appeal to the gambling instincts of some and perhaps is the kind of prize which is a "representative of value or evidence of winning" within the prohibition of ORS 167.535(2) (b). But there is no reason to believe that *State v. Coats* contemplates "prize" as including a free game within its interpretation of the lottery statute.

The lottery statute appears to exclude free games from its coverage. We have in mind the language of the lottery statute which prohibits promoting or setting up lotteries for "money or other valuable thing" and then reiterates that same idea by prohibiting the disposal by lottery of any property of value, real or personal. It seems clear that it is tangible property which is contemplated by those provisions. They cannot be construed reasonably in any other way. The words of the lottery statute of which we have just taken notice are very different from those which we find in ORS 167.535(2), that is "credit or other representative of value or evidence of winning." Since "lottery" has no fixed legal definition it was within the province of the legislature, acting under the constitutional mandate, to provide a reasonable definition of the "prize" element of a lottery. We believe that the prize must be tangible in nature and have a value in the market place.

The defendants' (appellants') brief says:

"No Oregon case has construed and applied ORS 167.535, which we believe to be applicable, in its present form. *State v. Coats*, (1938) 158 Or. 102, 74 P.2d 1120, and *State v. Coats*, (1938) 158 Or. 122, 74 P.2d 1102, construed this section as it read prior to its amendment chapter 210, Oregon

Laws 1937, and chapter 185, Oregon Laws 1943. Parenthetically, it should be noted that although chapter 210, Oregon Laws 1937, was enacted by the Legislature prior to the time the Coats cases arose, the statute was referred to the people upon petition and therefore did not apply. * * *

We believe that the amendments which gave ORS 167.535 its present form render it clear that that section of our laws is the enactment which determines the validity of plaintiff's machines. In our opinion the machines are not outlawed by that provision of our laws. No other enactment has any application to them.

The challenged decree is affirmed.



STATE of Oregon, Appellant,

v.

Charles George JOY, Respondent.

STATE of Oregon, Appellant,

v.

Sam GILGUS, Respondent.

Supreme Court of Oregon,
En Banc.

Argued and Submitted Sept. 10, 1950.

Decided Dec. 9, 1950.

Prosecutions for illegal possession and operation of nickel-in-the-slot machines. The Circuit Court, Multnomah County, Alfred T. Sulmonetti, J., sustained demurrers to the indictment, and appeals were taken. The Supreme Court, Rossman, J., held that pinball game machine which does not issue any tangible objects and requires deposit of none upon replay is not a gambling device and is not rendered unlawful by

statute pertaining to setting up of lotteries or any other law of state.

Affirmed.

Gaming \Leftrightarrow 68(3)

Lotteries \Leftrightarrow 3

Pinball game machine which does not issue any tangible objects and requires deposit of none upon replay is not a gambling device and is not rendered unlawful by statutes pertaining to setting up of lotteries or any other law of state; and indictment charging possession and operation of replay pinball machines were demurred ORS 167.535.

Robert M. Christ, Deputy Dist. Atty. Multnomah County, Portland, for appellant. With him on the briefs were Leo S. Sullivan, Dist. Atty. of Multnomah County, and Donald D. Sullivan, Deputy Dist. Atty. Multnomah County, and Charles E. Hammond, Dist. Atty. of Multnomah County, Portland.

Francis E. Harrington, Portland, for respondents.

ROSSMAN, Justice.

These are two appeals which have been consolidated by order of this court.

One of the two defendants-appellants, Charles George Joy, was indicted by grand jury of Multnomah County for the crime of possessing and operating a nickel-in-the-slot machine in violation of ORS 167.535. To the indictment he filed a demurrer which, referring to the statute recited: "The facts stated do not constitute a crime." The demurrer was sustained.

The challenged indictment alleged that the defendant possessed and operated

"* * * a nickel-in-the-slot machine, to-wit, one 'Bally Variety' pinball game, which said machine operated in a manner so that in exchange for deposit therein of a coin there was

received at once
depending upon
or other repre-
presence of win-
which free play
the said ma-
part of an ad-
to the Statutes
provided, and
agency of the S-
The defendant-
by the gr-
County and was
of possessing
the machin-
To the in-
which, refer-
"The facts
"The de-
The challenged
defendant pos-
* * * a nick-
to-wit, one 'Bal-
which said
in a manner so that
deposit therein of
received at
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or other repre-
presence of winni-
which may be de-
for further
with the chance
additional
representati-
of winning
* * *"
167.535 read
Any person,
who possesses, sets
up, operates, or
operates, either a
employee of
any nickel-in-
device of like
operates as descri-
which may o-
167.535-33

Taylor Amendments

Introduced: 2/24/66
Referred: Judiciary

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IN THE SENATE

BY MONEALY

SENATE BILL NO. 282

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to coin-operated devices."

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

* Section 1. AS 43.35.090(2) is amended to read:

(2) "coin-operated device class 2" means a pinball machine, including a bingo type coin-operated device, horse race machine or other apparatus or device which operates by means of insertion of a coin, token, or similar object and which, by embodying the elements of chance or skill, awards free plays and which contains a device for releasing free plays and a meter for registering or recording the plays so released, but free plays shall not be construed as a thing of value, or with a provision for multiple coin insertion for increasing the odds; class 2 does not include bona fide vending machines in which gaming or amusement features are not incorporated;

* Sec 2

It is the intention of the Legislature that this bill shall in no way be deemed an attempt or intent to liberalize or to exempt the State of Alaska from the limitations imposed in 15 U. S. Code ~~1171, et. seq.~~ ¹¹⁷⁸.

* Sec 3

shall not remain in force beyond June 30, 1971.

McKee

15 USC Sec 1171 - 1172 347 P 2d 5-85-
(1959) 219 Or 322

Marshall McKee v Foster, Hot Rock County
1965 - Oregon Supreme Ct.

thing of value - same statute
free play same as Oregon statute
~~same as Oregon statute~~
gambling ^{title} same as Oregon

Oregon case says free play
167.535

410, 415
167.405 "Lottery" contemplates a prize,
tangible in nature and having a value in
the market place, but does not include the
"free-play" feature of a replay pinball machine.

4505
167.535 - This section does not prohibit
the operation of "free play" pinball
machines. McKee v Foster

If its a gambling device under fed statute,
it can't be transported in interstate commerce.

Conclusions of law

(2) The machines are not specifically enumerated
as lawful devices in sec 436.230(5) Kentucky
Revised Statutes. US v Two Coin-operated
Pinball Machines, 241 F. Supp 57 (1965)

(1) The machines are gambling devices as
defined in 15 USC 1171...

(5) Transp. of devices in interstate commerce is
prohibited by sec 1172, 15 USC

✓
11/19/52

✓

11.60.110
167.505

Chaff
167.505

S.B. 282

Wed March 16 7:30pm.

Meeting absent

Supporting

Proponents

Kalamazoo:

1933 - first slot machine.

1941 - ch 76 sec 3138 amended by adding (20)

1946 - ch 40 Repealed ch 76/41 legalize

1947 ch 92 This Act does not ~~legalize~~ gambling.

This was year of first Johnson Act, ch 24 title 15

Sec 9 Organic Act no gambling act allowed.

49-3-8 ACLA 1949 - does not legalize gambling

1960 ch 142 Sec 8

nor the possession of a gambling device.

1940 - army asked for arcades. Arcades opened with first coin devices which came here on military transports. Then operators brought in their own machines. Machines sold for \$500 for 10 or 20 machines. Machines legal when brought in + taxed

Kenfauer said (52) no gambling syndicate in Alaska. Too small population. Alaska can't get 25,000, ^{more} that Nevada has.

S.B. 282 does not open Alaska to Nevada gambling.
15 USC 1171 et seq also have anti-~~recruitment~~ act can't bring in ~~machines~~ ^{gambling equipment} illegally.

1962 - 15 USC as amended - 1965 Sup Ct decides case. Between 62+65 no machines were allowed to be transported in interstate commerce.

Reads Nevada law.

cites Oregon law case.

Says McKee case is 1965 case. WRONG !!

Removed element of free play from
Spit as prizes.

Machines don't last longer than 5 years.

Were 1200 machines new less than 270

5 yrs maximum life of them.

current phase out program

class 1 & 2 brought in 32,000

year before 38,000

1955 or 56 high 4 year.

If 3 elements appear on a class II device
it is gambling implement per se. Remove
one element & it is not - per se.

Joe

Did not talk of "money or property" so free
play is not either.

Machines continue without free games. They
wear out & they don't pay them off.

Opponents

Mr David Free, Citizens opposed to further
legalization of gambling laws.

don't oppose amusement type pinball machine
quoted from last pg of Sup Ct opinion

also from op. pinball machines gambling device per se.
free games is the prize.

" free play is a prize

US v Kemp 4335.090(2) says op^{pg 7} impliedly approved
gambling implements. Op says this isn't so
US v O, The burden of the tax can be imposed on
an illegal implement.

pg 11 - 43.35.070 says doesn't legalize gambling.

11.45.040 says can't have gambling devices.

~~MMMM~~

Congressional Record re pinball machines

999 games can be won.

1962 Congress Record pg 11,447

Eastland broadens definition of gambling device

~~MMMM~~

US v Korwin, US Sup Ct

pinball machine is a slot machine under
internal revenue code. Successor to slot machine.

MMMM

Journal of ^{criminal law etc.} Vol 55 June 1964 pg 206

MMMM

White v Oxlone, 2d Pt Dist

pg 1, coin machine gambling

PM
2

2pm

say probably more than 270.

Get Dept of Revenue to get no from
Treasury Dept,

March 14, 1966 Internal Revenue Service

each location must have fuel stamps,

154 locations 300 machines at \$100 a week.

crime in Nevada 1st in nation.

Greenfelt jungle pg 178[↑] 179

crime begets crime.

The fact that the law says it is not a thing of value
may be sufficient.

Steering Committee - 10 members

February 19, 1966

M E M O R A N D U M

TO: William A. Egan
Governor

FROM: Warren C. Colver
Attorney General

RE: Nonprofit Corporation Law

Alaska's present nonprofit corporation law has remained basically unchanged since its enactment in 1913. At the urging of a number of Alaska attorneys the Department of Law made a study of the law. The Department concluded that our present law is inadequate and the State should adopt the Model Nonprofit Corporation Act drafted by the American Bar Association. The attached bill is an Alaska Nonprofit Corporation Act based on the Model Nonprofit Corporation Act, 1964 Edition.

In 1957 Alaska adopted the Model Business Corporation Act, which covers stock corporations. In that year the American Bar Association issued a revised version of its Model Nonprofit Corporation Act which had first been drafted in 1952. This model act had been revised primarily to bring it into accord with the Model Business Corporation Act. Again in 1964 the American Bar Association published a new edition of the nonprofit act. This latest edition follows as closely as possible the corresponding provisions of the business corporation act.

Adoption of the Model Nonprofit Corporation Act would result in these significant changes in Alaska law:

(1) The new law will enlarge the purposes for which nonprofit corporations may be formed. (10.20.005)

(2) It provides that a nonprofit corporation may make incidental income or profit in carrying on its primary nonprofit functions; for example, a nonprofit

William A. Egan
Governor

February 10, 1966
- 2 -

hospital may run a small gift shop. This incidental profit may not be distributed to members but must be devoted to the primary purposes of the corporation. (10.20.135)

(3) The law allows a nonprofit corporation to pay reasonable compensation to its members and directors for services rendered. This is not considered a prohibited distribution of income. (10.20.135)

(4) A nonprofit corporation which holds assets subject to limitations permitting their use only for charitable or similar purposes must, upon its dissolution, transfer these assets to an organization engaged in similar activities. (10.20.295)

The Model Nonprofit Corporation Act is designed to give an organization its basic authority and corporate status and to provide a method of administering the organization. It is not a regulatory statute which imposes controls. The major purpose of the law is to provide nonprofit organizations with a clear, orderly method of conducting its internal affairs and its relations with the State.

The American Bar Association has designed a set of official forms to accompany the act. If the act is adopted, these forms will be useful both to lawyers who must draft documents in compliance with the act and to the Department of Commerce which would administer the act.

As of 1964 the Model Nonprofit Corporation Act had been adopted, either as a whole or in large part, by the following jurisdictions:

Wisconsin - 1953	North Dakota - 1959
Alabama - 1955	Oregon - 1959
North Carolina - 1956	Texas - 1959
Virginia - 1956	District of Columbia - 1962
Nebraska - 1959	

In addition, Illinois, Missouri and Ohio have nonprofit laws substantially similar to the Model Act.

Attached to the bill is a chart which gives parallel sections. This may be of use to legislative committees which study the law.

WCC:jt
tef

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

February 10, 1966

MEMORANDUM

TO: William A. Fran
Governor

FROM: Warren Selver
Attorney General

RE: Nonprofit Corporation Law

Alaska's present nonprofit corporation law has remained basically unchanged since its enactment in 1913. The drafting of a new law for Alaska by the Department of Law made a study of the law. The Department concluded that our present law is inadequate and the State should adopt the Model Nonprofit Corporation Act drafted by the American Bar Association. The attached bill is an Alaska Nonprofit Corporation Act based on the Model Nonprofit Corporation Act, 1954 Edition.

In 1957 Alaska adopted the Model Business Corporation Act, which was revised in 1963. In that year the American Bar Association revised a portion of its Model Nonprofit Corporation Act which had first been drafted in 1951. This model act had been revised primarily to bring it into accord with the Model Business Corporation Act. In 1964 the American Bar Association published a new edition of the nonprofit act. This latest edition contains as far as possible the corresponding provisions of the business corporation act.

Adoption of the Model Nonprofit Corporation Act would result in these significant changes in Alaska law:

(1) The new law will enlarge the purposes for which nonprofit corporations may be formed. (10.20.005)

(2) It provides that a nonprofit corporation may make incidental income or profit in carrying on its primary nonprofit functions; for example, a nonprofit

William A. Egan
Governor

February 10, 1966
- 2 -

hospital may run a small shop. This incidental profit may not be distributed to anyone but must be devoted to the primary purposes of the corporation. (10.20.195)

(3) The law allows a nonprofit corporation to pay reasonable compensation to its members and directors for services rendered. This is not considered a prohibited distribution of income. (10.20.195)

(4) A nonprofit corporation which holds assets subject to limitations restricting their use only for charitable or similar purposes must, upon its dissolution, transfer these assets to an organization engaged in similar activities. (10.20.195)

The Model Nonprofit Corporation Act is designed to give an organization a legal identity and corporate status and to provide a framework for governing the organization. It is not a rigid law which imposes controls. The major purpose of the law is to provide nonprofit organizations with a clear, orderly method of conducting its internal affairs and its relations with the State.

The American Bar Association has designed a set of optional provisions which may be added to the act. It also provides for the possibility of a special high level board to advise the State on matters which would administer the law.

As of 1965, the Model Nonprofit Corporation Act has been adopted, in whole or in large part, by the following jurisdictions:

- | | |
|-------------------------|-------------------------------|
| ✓ Wisconsin - 1953 | ✓ North Dakota - 1959 |
| ✓ Alabama - 1955 | ✓ Oregon - 1959 |
| ✓ North Carolina - 1956 | ✓ Texas - 1959 |
| ✓ Virginia - 1955 | — District of Columbia - 1962 |
| ✓ Nebraska - 1959 | |

In addition, Illinois, Missouri and Ohio have nonprofit laws substantially similar to the Model Act.

Attached to the bill is a chart which gives parallel sections. This may be of use to legislative committees which study the law.

WAC:jc
tc

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

ALASKA NONPROFIT CORPORATIONS ACT

<u>AS Section</u>	<u>Model Nonprofit Act</u>	<u>Alaska Business Corporations Law</u>
Article 1. Substantive Provisions.		
10.20.005	<u>Sec. 4</u>	<u>10.05.008</u>
10.20.010	<u>Sec. 5</u>	<u>10.05.009</u>
10.20.015	<u>Sec. 6</u>	<u>10.05.018</u>
10.20.020	<u>Sec. 7</u>	<u>10.05.021</u>
10.20.025	<u>Sec. 8</u>	<u>10.05.045</u>
10.20.030	none	<u>10.05.048</u>
10.20.035	<u>Sec. 9</u>	<u>10.05.051</u>
10.20.040	<u>Sec. 9</u>	<u>10.05.054</u>
10.20.045	<u>Sec. 10</u>	<u>10.05.057</u>
10.20.050	<u>Sec. 11</u>	none
10.20.055	<u>Sec. 12</u>	<u>10.05.135</u>
10.20.060	<u>Sec. 13</u>	<u>10.05.138</u>
10.20.065	<u>Sec. 14</u>	<u>10.05.141</u>
10.20.070	<u>Sec. 15</u>	none
10.20.075	<u>Sec. 16</u>	<u>10.05.153</u>
10.20.080	<u>Sec. 17</u>	<u>10.05.174</u>
10.20.085	<u>Sec. 18</u>	<u>10.05.177</u>
10.20.090	<u>Sec. 18</u>	<u>10.05.180</u>
10.20.095	<u>Sec. 18</u>	<u>10.05.183</u>
10.20.100	<u>Sec. 19</u>	<u>10.05.189</u>
10.20.105	<u>Sec. 20</u>	<u>10.05.192</u>
10.20.110	<u>Sec. 21</u>	<u>10.05.195</u>
10.20.115	<u>Sec. 22</u>	<u>10.05.198</u>
10.20.120	<u>Sec. 23</u>	<u>10.05.228</u>
10.20.125	<u>Sec. 24</u>	<u>10.05.234</u>
10.20.130	<u>Sec. 25</u>	<u>10.05.237 - 240</u>
10.20.135	<u>Sec. 26</u>	none
10.20.140	<u>Sec. 27</u>	none

AS SectionModel Nonprofit ActAlaska Business
Corporation Law

Article 2. Formation of Corporations.

10.20.145	Sec. 28	<u>10.05.252</u>
10.20.150	Sec. 29	<u>10.05.253</u>
10.20.155	Sec. 30	<u>10.05.254</u>
10.20.160	Sec. 31	<u>10.05.261</u>
10.20.165	Sec. 32	<u>10.05.267</u>

Article 3. Amendment.

10.20.170	Sec. 33	<u>10.05.270</u>
10.20.175	Sec. 34	<u>10.05.276</u>
10.20.180	Sec. 35	<u>10.05.285</u>
10.20.185	Sec. 36	<u>10.05.288</u>
10.20.190	Sec. 36	<u>10.05.291</u>
10.20.195	Sec. 37	<u>10.05.294</u>
10.20.200	Sec. 37	<u>10.05.297</u>
10.20.205	Sec. 37	<u>10.05.300</u>
10.20.210	Sec. 37	<u>10.05.303</u>

Article 4. Merger, Consolidation, and Sale of Assets.

10.20.215	Sec. 38	<u>10.05.375</u>
10.20.220	Sec. 38	<u>10.05.378</u>
10.20.225	Sec. 39	<u>10.05.381</u>
10.20.230	Sec. 39	<u>10.05.384</u>
10.20.235	Sec. 40	<u>10.05.387 - 390</u>
10.20.240	Sec. 40	<u>10.05.393</u>
10.20.245	Sec. 41	<u>10.05.396</u>
10.20.250	Sec. 41	<u>10.05.399</u>
10.20.255	Sec. 41	<u>10.05.402</u>
10.20.260	Sec. 42	<u>10.05.405</u>
10.20.265	Sec. 43	<u>10.05.408</u>
10.20.270	Sec. 43	<u>10.05.411</u>
10.20.275	Sec. 43	<u>10.05.414</u>
10.20.280	Sec. 43	<u>10.05.393</u>
10.20.285	Sec. 44	<u>10.05.438 - 444</u>

AS SectionModel Nonprofit ActAlaska Business
Corporation Law

Article 5. Dissolution.

10.20.290	<u>Sec. 44</u>	10.05.465
10.20.295	<u>Sec. 46</u>	10.05.561
10.20.300	<u>Sec. 47</u>	none
10.20.305	<u>Sec. 48</u>	10.05.498 - 501
10.20.310	<u>Sec. 49</u>	10.05.468
10.20.315	<u>Sec. 50</u>	10.05.468
10.20.320	Sec. 50	<u>10.05.516</u>
10.20.325	Sec. 51	<u>10.05.519</u>
10.20.330	Sec. 52	<u>10.05.522</u>
10.20.335	Sec. 52	<u>10.05.525</u>
10.20.340	Sec. 52	<u>10.05.528</u>
10.20.345	Sec. 52	<u>10.05.531</u>
10.20.350	Sec. 53	<u>10.05.534</u>
10.20.355	Sec. 54	<u>10.05.537</u>
10.20.360	Sec. 54	<u>10.05.540</u>
10.20.365	Sec. 54	<u>10.05.543</u>
10.20.370	Sec. 54	<u>10.05.546</u>
10.20.375	Sec. 54	<u>10.05.549</u>
10.20.380	Sec. 54	<u>10.05.552</u>
10.20.385	Sec. 55	<u>10.05.555</u>
10.20.390		<u>10.05.558</u>
10.20.395	<u>Sec. 55</u>	10.05.561
10.20.400	Sec. 55	<u>10.05.564</u>
10.20.405	Sec. 55	<u>10.05.567</u>
10.20.410	Sec. 55	<u>10.05.570</u>
10.20.415	Sec. 55	<u>10.05.573</u>
10.20.420	Sec. 56	<u>10.05.576</u>
10.20.425	Sec. 57	<u>10.05.579</u>
10.20.430	Sec. 58	<u>10.05.582</u>
10.20.435	Sec. 59	<u>10.05.585</u>

AS SectionModel Nonprofit ActAlaska Business
Corporation Law

10.20.440	Sec. 60	<u>10.05.588</u>
10.20.445	Sec. 61	<u>10.05.591</u>
10.20.450	Sec. 62	<u>10.05.594</u>
Articles 6.	Foreign Corporations.	
10.20.455	Sec. 63	<u>10.05.597</u>
10.20.460	Sec. 63	<u>10.05.600</u>
10.20.465	Sec. 64	<u>10.05.603</u>
10.20.470	<u>Sec. 65</u>	10.05.600
10.20.475	Sec. 66	<u>10.05.609</u>
10.20.480	Sec. 67	<u>10.05.612</u>
10.20.485	<u>Sec. 67</u>	10.05.615
10.20.490	Sec. 67	<u>10.05.618</u>
10.20.495	Sec. 68	<u>10.05.621</u>
10.20.500	Sec. 69	<u>10.05.624</u>
10.20.505	Sec. 70	<u>10.05.627</u>
10.20.510	none	<u>10.05.630</u>
10.20.515	Sec. 71	<u>10.05.633</u>
10.20.520	Sec. 71	<u>10.05.636</u>
10.20.525	Sec. 72	<u>10.05.639</u>
10.20.530	Sec. 72	<u>10.05.642</u>
10.20.535	Sec. 72	<u>10.05.645</u>
10.20.540	Sec. 72	<u>10.05.648</u>
10.20.545	Sec. 73	<u>10.05.651</u>
10.20.550	Sec. 74	<u>10.05.654</u>
10.20.555	Sec. 75	<u>10.05.657</u>
10.20.560	Sec. 76	<u>10.05.660</u>
10.20.565	Sec. 76	<u>10.05.663</u>
10.20.570	Sec. 76	<u>10.05.666</u>
10.20.575	Sec. 77	<u>10.05.669</u>
10.20.580	Sec. 77	<u>10.05.672</u>

<u>AS Section</u>	<u>Model Nonprofit Act</u>	<u>Alaska Business Corporation Law</u>
10.20.585	Sec. 78	<u>10.05.675</u>
10.20.590	Sec. 78	<u>10.05.678</u>
10.20.595	Sec. 79	<u>10.05.681</u>
10.20.600	Sec. 79	<u>10.05.684</u>
10.20.605	Sec. 80	<u>10.05.690</u>
10.20.610	Sec. 80	<u>10.05.693</u>
10.20.615	Sec. 80	<u>10.05.696</u>
Article 7. Annual Reports.		
10.20.620	Sec. 81	<u>10.05.699</u>
10.20.625	Sec. 81	<u>10.05.702</u>
10.20.630	Sec. 82	<u>10.05.705</u>
Article 8. Fees and Charges.		
10.20.635	<u>Sec. 83</u>	10.05.708
10.20.640	<u>Sec. 84</u>	10.05.762
Article 9. Penalties.		
10.20.645	<u>Sec. 85</u>	10.05.771, 783
10.20.650	Sec. 85	<u>10.05.786</u>
Article 10. Miscellaneous Provisions.		
10.20.655	Sec. 87	<u>10.05.777</u>
10.20.660	Sec. 88	<u>10.05.780</u>
10.20.665	Sec. 90	<u>10.05.789</u>
10.20.670	Sec. 90	<u>10.05.792</u>
10.20.675	Sec. 91	<u>10.05.795</u>
10.20.680	Sec. 92	<u>10.05.798</u>
10.20.685	<u>Sec. 93</u>	10.05.801
10.20.690	Sec. 94	<u>10.05.804</u>
10.20.695	<u>Sec. 95</u>	10.05.807
10.20.700	Sec. 96	<u>10.05.810</u>
Article 11. General Provisions.		
10.20.705	Sec. 89	<u>10.05.813</u>
10.20.710	<u>Sec. 3</u>	10.05.816

<u>AS Section</u>	<u>Model Nonprofit Act</u>	<u>Alaska Business Corporation Law</u>
10.20.715	none	<u>10.05.819</u>
10.20.720	Sec. 2	<u>10.05.825</u>
10.20.725	Sec. 1	10.05.828

LAW OFFICES OF
GUESS, RUDD & HAVELOCK
202 CRAWFORD BUILDING
P. O. BOX 1332
ANCHORAGE, ALASKA 99501

W. EUGENE GUESS
JOSEPH RUDD
JOHN E. HAVELOCK
HERBERT D. SOLL
DAVID B. RUSKIN
SIDNEY R. BIXLER
MICHAEL G. BRIGGS

TELEPHONE
272-4577

March 22, 1966

*Ted
please give me your
address on this -
D.H.L.*

Representative W. Eugene Guess,
Alaska State Legislature
P.O. Box 2199
Juneau, Alaska

Dear Gene:

The OEO sponsored a meeting here on March 9th and 10th to determine the possibilities of the development of a statewide legal aid program. An OEO lawyer flew up from San Francisco and participants were brought from Bethel, Ketchikan, Fairbanks and Juneau. Stan Howitt was the Juneau representative, but weather prevented him from flying here. Tom ~~Stewart~~ was able to fill us in on the needs of the Juneau area during the portion of the hearing set aside for testimony of local residents.

The plans for the legal services were well formulated, but much remains to be done before the official application can be submitted. The entire proposal is at least as complicated as a large SBA loan application. It was finally decided that we should have eight attorneys. The administrative chief and most experienced attorney would be stationed in Anchorage. In addition there would be three staff attorneys here. Fairbanks would have two attorneys responsible for most of the Fourth Judicial District and all of the Second. Juneau and Ketchikan offices would divide the Southeast responsibility.

The financial arrangements allow for a 90% federal contribution. The 10% to be provided by the state can come from a number of sources. It can be in a cash appropriation by the government, or it can be in contributions of facilities and services. Some of the ideas that were developed at the meeting were as follows:

Annual time commitments by private attorneys.

Office space donations by municipalities,
state government, churches, or private parties.

Representative W. Eugene Guess
March 22, 1966
Page 2

Secretarial assistance from women's organizations.

Bush transportation furnished by State Police and Fish & Game.

The most expensive part of the transportation would no doubt be in the numerous charters needed to cover the many bush villages where legal assistance would be the only form of representation available to the subsistence dwellers. I could envision thousands of dollars spent each year in flying charters out of Bethel. If the State Police were permitted to transport the attorney when they are on their regular charter trips, we could use that as a credit toward our 10% contribution. In addition, the Fish & Game Department has flights to many of the villages and a sizable contribution could be made there without inconveniencing the schedule of the Department. I have not bothered to write to the commissioners of these Departments because of the sensitive situation existing since the investigations conducted by the legislature. I believe that we could get some valuable credits toward our 10% contribution if a legislative resolution were passed to encourage the cooperation of state agencies with the new legal services program. This would take the pressure off of the department heads.

The legal services program would not be a federal or state agency. We would be required to establish a nonprofit corporation and the agency would be a federally funded, independent institution. It would be governed by a board of directors to be composed of members of the Bar Associations, the court system and representatives of those persons poor enough to receive benefits under the program. Part of the problem is to be found in the nongovernmental nature of the employees of this program. Without authorization from the legislature it is very doubtful if these private individuals would be flown on state charters or state aircraft.

We should submit our application on April 1st. If it is at all possible, we would appreciate your getting together with the other lawyer members from Anchorage and pushing something through. The Anchorage Bar has heard a full proposal at the last weekly meeting. They voted almost unanimously to endorse the program and Russ Arnett, our new president, was instructed to write a letter expressing our endorsement. This letter has already been submitted.

Representative W. Eugene Guess

March 22, 1966

Page 3

If any of the other lawyer members should worry about this program spreading socialized law practice, they need not worry. We have taken steps in our proposal to ensure the constant control of the program by lawyers and to do without staff attorneys unless Alaska lawyers with experience can be found. A system has been partially developed to provide for the constant referral of fee generating cases back to the private bar. If anything, the program will stimulate the private practice of law.

I should mention the express idea of having a part time office in Nome to be used by the Fairbanks attorney designated to cover that area. It has been proposed that the space now rented from the federal government in the court house could be partially allocated to this attorney. Without some action by the legislature I don't think that we will be successful. *by Alaska*

Very truly yours,

Herb

REPORT ON CSHB NO. 296

Sec. 1 of CSHB 296 increases the amounts to be paid into the second injury fund by the employer or his insurance carrier.

Sec. 2 of the bill leaves in the law that the Workmen's Compensation Board may approve lump-sum settlements when it appears to be in the best interest of the beneficiaries. It deletes the limitation that in death cases the lump-sum settlement shall be approved only in cases where the deceased leaves a spouse and more than five years have elapsed since the death of the employee.

Sec. 3 substantially rewrites AS 23.30.215 to improve the benefits of the spouse and children of a deceased employee. Paragraph (a)(1) is the same as present law. Paragraph (a)(2) - (4) should be compared to present law to determine the changes. Generally, (a)(2) raises the lump-sum settlement upon the widow's remarriage from two years' compensation (which amounted to a maximum of \$2,948.40) to \$10,000 and at the same time limits the amount of the total compensation to \$20,000 in the aggregate. In the past the total compensation has usually averaged around \$8,000 or \$9,000 but the insurance companies have kept \$37,000 in reserve. The \$20,000 limit closes the open end that has existed under this section except as to the situation covered by (e) of this section.

(a)(3) is reworded but there seems to be no substantive change, except for the age change which will be discussed later.

In (a)(4), on line 20, page 3, after "children", the words "or if the amount payable to a surviving wife or dependent husband and to children is less in the aggregate than 65 per cent of the average wages of the deceased" have been dropped. A \$20,000 limitation is also added in this paragraph in place of the dropped language.

(b) Fixes the method of computing death benefits and a new method is created by this bill based on the determination of the average weekly wage of the employee as set out in AS 23.30.220 and subject to the same weekly maximum limitation in the aggregate as temporary total disability compensation under AS 23.30.175(a). Subsection (b) changes the maximum and minimum average weekly wage from the present \$27 and \$81 to a minimum of \$45 for a widow or widower, \$15 for a child or \$30 for children.

(c) is the same except the words "or death" are added at the end of the sentence.

(d) is the same except that on page 4, line 14, the word "may" that is after "board" in the present law has been deleted and inserted on line 15 after "carrier" and the word "shall" has been deleted after "carrier". On lines 16 and 17, the words "who is not a resident of the United States or Canada" have been added.

(e) is a new sub-section. It provides that regardless of anything else in this section, that the surviving widow or widower who was dependent upon the deceased employee at the time of death and incapable of self-support by reason of mental or physical disability or otherwise not employable and who has not remarried shall continue to receive death benefits until conditions change. Whether a person is unemployable is left to the determination of the board.

Sec. 4 of the bill amends AS 23.30.265 (7) to raise the age from 18 to 19 years for those minors who may receive support as dependents of the deceased.

Saturday

March 26 10am

all present

Andrew Stancoff

SB 262

Hux, Stevens, Lellon, Metcalf, Taylor, Hellstrom, Johnson.

Mr. Stancoff

Ocean Mining a subsidiary of Ocean Sciences Engineering Inc.

have options on permits held by individuals, 5,120 acres

1. several ~~the~~ permits he locked in for 6 or 8 years.

2. for many years, couldn't get permits under for submerged lands.

submerged lands - mean low tide pulling in tide lands makes it easier to put in land.

Sec 2 of bill - discretion of com to keep the permit for an addition of 6 or 8 years.

See Hearst. letter to resource committee in Journal.

possible overlapping permits prospecting must be done -

aylor Motion for sub-committee

~~pg 23-25~~

The Dir would have right to issue a new permit ^{of the existing permittee.} at the end of four years for good cause - extending it 4 years.

or requirement that so much work has to be done,

suffi showing that he has done enough work.

if president man would continue the exploration.

Mon March 28 10am

2 PM
3 PM
3 PM 386

Stevens, Miteroff & Taylor, Josephson
(Telling about) Kellstrand

Mike Holmes speaks on 368-370

~~* Ask Bruce Campbell about primary & secondary highways in Alaska.~~

384 & 386 - Holdsworth & Edwards,

~~386~~ Stevens moved adaption^{CS}, Kellstrand seconded,
Josephson objected.
Stevens "may" for "shall" at end of line. 23 pg 2

~~that should~~
work for
~~the way~~
As of this
morning
wey going

X/O/X
X/X/O
O/X/O

X/O/X
O/O/X
X/O/O
X/X/O
O/X/X
O/X/O

**STATEMENT ON COMMITTEE SUBSTITUTE
FOR HOUSE BILL 138
SENATE STATE AFFAIRS & COMMERCE COMMITTEES**

March 8, 1966

SUBMITTED BY DON M. BERRY, EXECUTIVE DIRECTOR, ALASKA MUNICIPAL LEAGUE

Chairman Harrison; Chairman Nolan;

Pursuant to the request of members of your respective committees, I am submitting written testimony on C S HB 138 which will include the remarks I made when appearing before your committees, Tuesday, February 8, 1966. I will also expand those remarks in this written brief.

The Alaska Municipal League has been consistent during a long line of legislative sessions opposing regulation and control of municipally-owned utilities by the state Public Service Commission. Our objection has always been based on the sound principle that the municipality-on the local level - can best regulate its own utility. Certainly, nothing has been proved over the years which would cause us, in all good conscience, to alter our opinion. State legislatures in all but 15 states have evidently shared in the belief that municipally-owned utilities are best regulated on the local level since only 15 states have enacted laws regulating such utilities at the state level. CSHB 138 proposes that municipally-owned water and sewer systems should be regulated by the P. S. C. We would like to call your attention to the fact that only 3 states have seen fit to regulate water systems and none has tried to include sewer systems. In Alaska there is no municipality which operates sewers as a utility. No sewer rates are charged and costs are funded from general revenues of the municipality. Therefore, any reference to sewers should be completely deleted from the bill.

There are several general areas of CSHB 138 which we do not feel are in the best interests of the state nor do they tend toward improving utility regulation. Basically, we can see no advantage to increasing the membership of the commission from 3 to 5 members. We feel that no quorum problem is presented by a 3 man commission. Eighty per cent of the states operate with 3, and we feel the smaller body will be able to operate more quickly and effectively.

We strongly oppose the provision that the commission serve at the pleasure of the governor. Since the commission is a quasi-judicial body the members should be as free as possible to exercise their judgement as they think best and this is not statutorily possible if they are subject to being removed whenever the governor fancies to do so. We also oppose the deletion of any qualifications for the members of the commission. They should, at least, have adequate backgrounds in regulatory matters by reason of education or experience.

The League desires a full-time commission, technically competent, and we feel that the commissioners should be paid at least as much as the highest paid commissioner of a department of the state. We also feel that if the commission is to be an independent, quasi-judicial organ it must be able to hire its own personnel. We feel that this is particularly true in the case of the executive Director. Neither the governor nor the commissioner of Commerce should have anything at all to do with this appointment.

It is our opinion that any reference to the Administrative Procedure Act should be deleted from CSHB 138. The APA was not drawn with the P. S. C. in mind and the structure of the P. S. C. will suffer if it must conform to APA criteria which are ill-suited to rate-making purposes.

Since the administration has proposed and strongly urged enactment of this bill as being in the best interests of all the people of Alaska, we feel

it is unfair to levy the type tax as proposed in CSHB 138. It is, actually, a state sales tax levied discriminatorily against only the users of a utility. With certain basic and important changes in the legislation the P. S. C. should become a body of experts who will be able to offer advice and help; who will promote the industries and areas it regulates; who will point the way to more efficient methods of operation. This type of activity, if achieved, promotes the general welfare and should be funded from general revenues.

One other reference to the tax as proposed in CSHB 138 should be made. If municipally-owned utilities are regulated by the P. S. C. as is mandatory in the bill and would be possible under the proposed amendments which the League will subsequently submit, the suggested tax is the first instance of the state's taxing an agency of a municipality. The very constitutionality of such a tax is highly questionable. The inequality of the tax is even now apparent when you consider the number of utilities which are exempted under provisions of this bill.

We strongly appose that portion of CSHB 138 which bases short-term financing on 10% of the total debt of the utility. We feel that borrowing should be based on the total net worth of the utility. Otherwise, relatively debt free utilities could borrow little while those with a huge indebtedness would have a much greater borrowing ability.

Under this bill the P. S. C. would be given the power to dictate how a utility should distribute its profit. Although a commission may regulate the amount of profit to be received, we feel it is invading a province which is not contemplated in the regulatory scheme when it also attempts to distribute the profit.

While the League has not deviated one iota from its position that municipally-owned utilities are best regulated by locally-elected officials, we do recognize the problems created by those utilities which extend beyond the municipal boundaries. With this in mind, the League has suggested a new Article 8 in CSHB 138 entitled Original Local Jurisdiction. The rest of this testimony will deal specifically with this proposal.

Briefly, the League advocates the establishment of a municipal utility agency of not less than 5 members. The utility agency would be appointed by the assembly and the council and be apportioned by borough population thus assuring representation to those people residing outside the city. The municipal utility agency would retain original and exclusive jurisdiction over municipally owned water and sewer systems. The agency shall also have original and exclusive jurisdiction over other municipally-owned utilities except that the P. S. C. would have the power to resolve conflicts by delineating service areas between utilities. A great deal of testimony has been given to the effect that the public service commission is needed primarily to solve service area problems. Under the League's proposal, this would be a definite responsibility of the commission since our proposed utility agency would have to have this delineation before it could assume jurisdiction. We have also provided that the P. S. C. would retain the authority to order the joint use and interconnection of facilities.

We propose that if the municipally-owned utility lies wholly within the city, the city has original and exclusive jurisdiction and the council acts as the municipal utility agency.

In those instances where the municipally-owned utility extends outside the boundaries of the borough or outside the boundaries of a city where there is no organized borough, the municipal utility agency must include at least one consumer member residing outside the borough or city. This member would be elected by the consumers residing in the area outside the city or borough. When more than 25% of the consumers reside in the area outside the borough or city, the membership shall include at least two outside consumer members. If a majority of the utilities consumers live outside a borough or in an area outside a city not within an organized borough, the P. S. C. would have jurisdiction over the entire utility.

Appeals from decisions of the municipal utility agency can be made by any interested party to the borough assembly. Further appeal from the decision of the assembly would then be taken to the superior court. In the case of a party residing outside a borough or city not within an organized borough, the appeal from the decision would be made to the commission.

The League proposal also provides that jurisdictional disputes between a public utility or any city or borough shall be decided by the commission. A municipal utility agency may also get permission from the municipality to relinquish all or any part of its jurisdiction to the commission.

Basic to this concept of a municipal agent is the League's proposed section that the borough and the city must provide an agreement, by borough ordinance, for the operation, powers, and duties of the agency. If no agreement is reached by April 1, 1967, the public service commission shall assume all jurisdiction vested by this chapter in the agency.

Gentlemen, this has been a comparatively brief and non-technical explanation of the Municipal League's proposal for municipally-owned utilities.

These recommendations were submitted to you on Feb. 8 and I have additional copies available if any committee member desires one. In view of the Committee's apparent tendency to try to treat separately the regulation of the various parties subject to jurisdiction under CSHB 138, we respectfully request that you seriously consider our proposal as the basis for legislation to regulate municipally-owned utilities. We feel it leaves responsibility where it can be handled best - on the local level, by locally-elected officials who are responsive to local problems. But if this response is not forthcoming the jurisdiction will be vested in a state public service commission.

Thank you very much.

Respectfully Submitted,

Don M. Berry
Don M. Berry
Executive Director
Alaska Municipal League

Sec 705. Venue, gone

810(4) slightly changed,
new (b) & (c).

815 Prerequisite designation
of parties & notice.

Sec. 825 - some at first gone &

(7) eliminated

Sec 730 - gone, summons.

835 = "

840 " = some in 820.

845 "

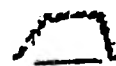
895 - Procedure applicable

(17)
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under this section shall forfeit any license to hunt obtained under the laws of this state and shall be ineligible to obtain a license to hunt for a period of ~~10~~ years following the date of his conviction.

*Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

This bill is Sec. 163.310 of the Oregon Revised Statutes. Sec. 163.520 is like AS 11.15.200 in that it relates to pointing a firearm at a person without intent to harm them. For other statutes relating to use of firearms, see AS 11.55.



LAW OFFICES OF
FAULKNER, BANFIELD, BOOCHEVER & DOOGAN

HERBERT L. FAULKNER
NORMAN C. BANFIELD
ROBERT BOOCHEVER
FRANK M. DOOGAN
DONALD L. CRADDICK
AVRUM M. GROSS

P. O. BOX 1121
JUNEAU, ALASKA 99601

311 FRANKLIN ST.
TEL. 586-2210
AREA CODE 907

February 16, 1966

Mr. Gene Guess, Chairman
House Judiciary Committee
State of Alaska
Juneau, Alaska

Committee

Re: House Bill 306 - Comparative
Negligence

Dear Mr. Guess:

1. In accordance with the suggestion contained in your letter of February 6, 1966, I am furnishing you with sufficient copies of information on the above subject to distribute them to all members of the Judiciary Committee.

2. As an introduction to the subject I am enclosing a copy of BUT IS IT JUSTICE, which should be especially valuable to your non-attorney members. This article covers the following points:

- a. It explains the present rule which bars recovery by anyone who is contributorily negligent and how the comparative negligence rule would replace it under certain circumstances.
- b. How the rule would work in negligence actions, and since H.B. 306 is taken from the Wisconsin statute, how it works in that state.
- c. It explains the most common arguments for and against the rule of comparative negligence.
- d. It shows by a map, the six states which each have the rule in one of various forms at the present time, three states which adopted and then abandoned it, the twelve states which considered the adoption of it in either 1963 or 1964 and rejected it, and the 44 states which have the comparative negligence rule.

3. The few surveys which have been made as to the effect of adopting the comparative negligence rule are quite

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Mr. Gene Guess, Chairman
House Judiciary Committee
Juneau, Alaska

February 16, 1966
Page Two

inadequate and inconclusive. No exhaustive survey has ever been made. Many of the statements made for and against the doctrine are simply wild statements made with the author's special interest as the sole motivating factor. The only thing of which we are certain is that the comparative negligence doctrine allows recovery by plaintiffs who are obviously partly to blame for an accident whereas under the contributory negligence doctrine they could not recover. In other words more lawsuits could be started and recoveries made than under the present system. This means more cases for the insurance companies and uninsured motorists to defend. It also follows that since recoveries can be made in more instances, the amount of money paid in damages will increase. The more the insurance companies are required to pay defense costs and damages, the higher the rates. This is admitted by proponents of the bill as will be shown hereinafter. It is also borne out by a comparison of the rates in Wisconsin and in Alaska. In 1961 the Alaska Legislative Council tried to get some factual comparisons on the two systems. The National Bureau of Casualty Underwriters quoted to Mr. Howitt, then with the Legislative Council, on October 16, 1961, rates for a liability policy in Wisconsin which varied for \$10,000/20,000 bodily injury from \$49.20 to a low of \$30.00 depending on the Wisconsin city in which the insured resided. It quoted Alaska rates from \$22.00 in Anchorage down to \$17.00 for the balance of the State. If this is indicative of what our rates will be after adopting the comparative negligence doctrine, then it should be opposed.

4. The American Trial Lawyers Association is actively trying to have comparative negligence adopted. Its members are engaged in promoting several bills which would have the tendency to raise the number of lawsuits and the amounts of the recoveries because they are claimant's attorneys and generally take such suits on a contingent fee basis. The more business they generate and the bigger the verdicts, the more they make. The members recently changed the association's name which was formerly: National Association of Claimants Compensation Attorneys. While under that name they had a president named James A. Dooley who is very prominent in several associations to promote the interests of "plaintiff's attorneys". Later he was so well thought of that the association had him address its Miami convention in 1958. He started out by telling them his remarks would not be popular with those present but he proceeded to detail the reasons why comparative negligence should not be adopted. A copy of his speech is attached. I have underlined the more important remarks on this subject and summarize them as follows:

Mr. Gene Guess, Chairman
House Judiciary Committee
Juneau, Alaska

February 16, 1966
Page Three

- a. The public is becoming alarmed at "the large verdict".
- b. The cost of automobile liability insurance is being priced out of the market by such verdicts.
- c. "With comparative negligence statutes there will be more lawsuits, and more meritless lawsuits, since comparative negligence gives a higher nuisance value. The courts will be even more crowded . . ."
- d. Such legislation in other countries such as England has led to abolition of the jury system in civil cases. "But try to get a jury trial in any one of them".
- e. In Wisconsin where comparative negligence is in force, the legislature failed by a single vote in 1953 to put in a plan to compensate all persons for automobile injuries, without regard to fault, as under Workmen's Compensation plans, but there is no employer to pay the cost and it would have to be a state run system, financed by taxation or automobile license fees.
- f. Any weakening of our present system will lead to a "liability without fault doctrine".

If you will read only the highlights of that speech you will see that there are valid social reasons for retaining the present system, and the plaintiff's attorneys who are after bigger verdicts may force us to abandon the whole system of damages from the persons at fault and put it on another basis where an injured person gets paid regardless of fault by the State.

5. Although the Wisconsin form of the statute is preferable to the others, H.B. 306 leaves out an important part of the Wisconsin statute. That statute protects the defendant who may be negligent, if the driver of the other vehicle is negligent but is not the owner or the person suing for loss of property. The Wisconsin statute provides that if a member of the owner's family is negligent while driving the owner's car, the negligence of the driver is imputed to the owner so his recovery is limited by a comparison of the driver's negligence to that of the defendant.

Mr. Gene Guess, Chairman
House Judiciary Committee
Juneau, Alaska

February 16, 1966
Page Four

6. The main argument of the proponents for this type of legislation is that a person who is only slightly at fault is barred from recovery because of contributory negligence. Actually as every lawyers knows, the jury disregards slight negligence and ordinary negligence is no defense to gross negligence. Nevertheless, if the committee decides to report favorably a comparative negligence bill, it should not allow a person who is only 45% to blame to recover 55% of the damages. It is more reasonable and equitable to deduct the 45% from the 55% negligence of the other party and limit the recovery to 10% of the damages.

7. I am pleased to know that I will be afforded an opportunity to present a more complete review of this subject when the Bill is being considered by your committee. I will appreciate having you distribute copies of this material to your committee members.

8. In the 1962 legislature, S.B. 192 on comparative negligence failed to pass the House.

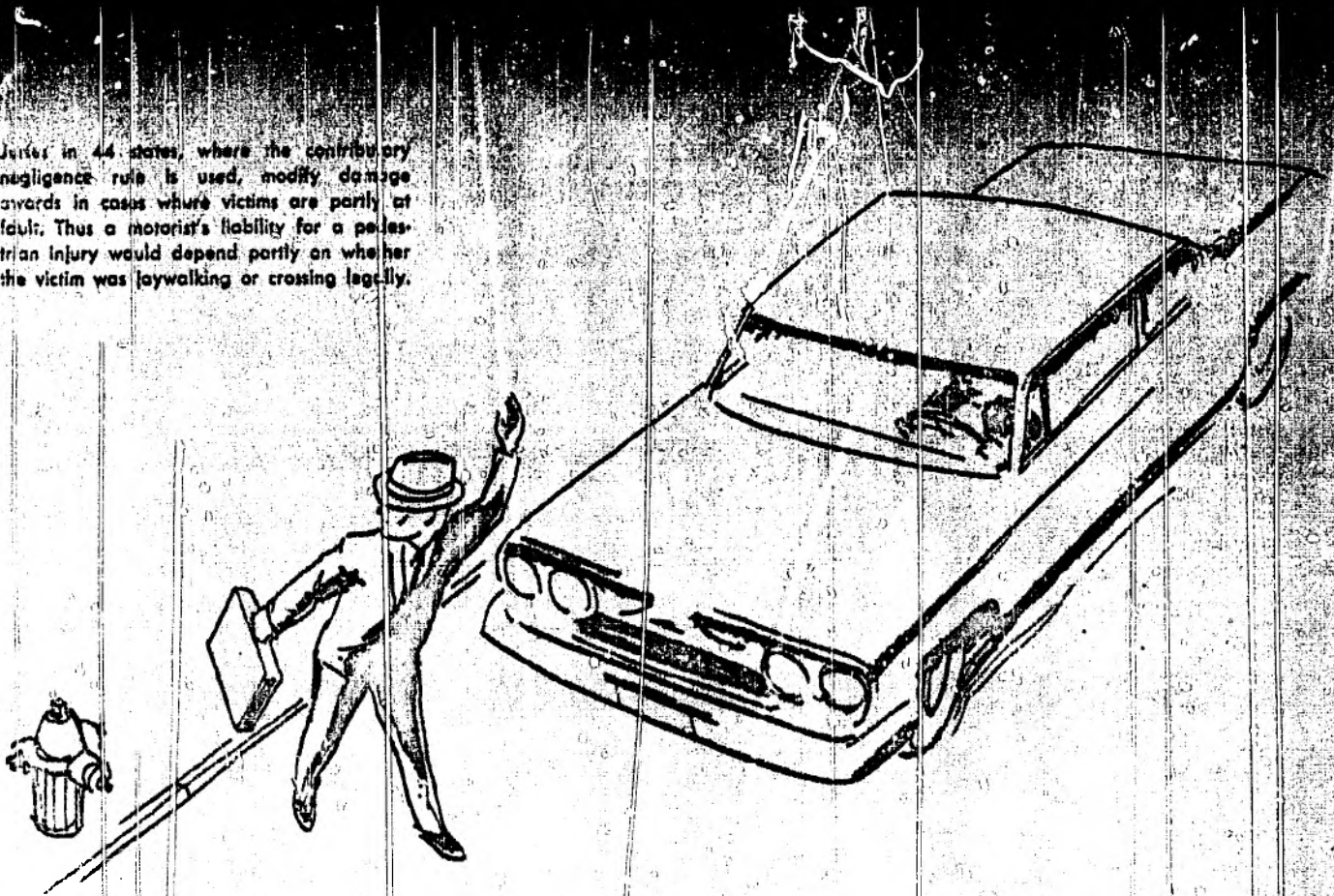
Yours very truly,



Attorney for
American Mutual Insurance Alliance

NCB:db

Juries in 44 states, where the contributory negligence rule is used, modify damage awards in cases where victims are partly at fault. Thus a motorist's liability for a pedestrian injury would depend partly on whether the victim was jaywalking or crossing legally.



But Is It Justice?

'Comparative negligence' concept allows wrongdoers to collect, and adds to congested court calendars.

A PROLONGED AND SOMETIMES strident argument is raging among lawyers over relative merits of "contributory" and "comparative" negligence rules in lawsuits involving accidents. The public, though keenly affected by the outcome, knows little of the issues involved. Nor is the public participating in the struggle. It is a controversy generated and kept boiling before bar associations and state legislatures by plaintiffs' attorneys interested in more and bigger fees in personal injury suits.

Factors in the dispute might be pointed up by this hypothetical accident, one that could happen anywhere: Two drivers collide at an intersection, causing injuries to both and damage to their vehicles. Investigation shows that one was drunk and ran a stop sign; the other was a hot rodder who could not avoid the crash because he was speeding.

In 44 states that apply the contributory negli-

gence rule, the probability is that neither could successfully sue the other because he contributed substantially to making his own misfortune. However, both could collect insurance benefits under their own accident and health, auto collision and medical payments policies.

In six other states that apply the comparative negligence rule to auto liability cases, the results would not be so clear-cut. For these states allow many more plaintiffs to collect if there has been negligence on the part of the defendant. Damages may be allocated between parties, with the plaintiff's recovery reduced according to the degree of his own negligence. And at least one comparative negligence state (Mississippi) would permit each driver to sue the other, bringing about the possibility that both would get substantial settlements from each other's auto liability insurers.

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AMERICAN MUTUAL INSURANCE ALLIANCE
20 North Wacker Drive
Chicago, Illinois 60606

But Is It Justice?

In Wisconsin, which applies a "modified" comparative negligence rule, the plaintiff could recover only if his degree of negligence was less than that of the defendant. But even there the comparative negligence doctrine would impose complications by requiring "interrogatories" or questionnaires to be answered by jurymen. Wisconsin juries are thereby required to weigh the negligence of the drivers, but final appraisal of the effect of degrees of negligence on the amount of the award is reserved to the judge.

In all comparative negligence states, moreover, the certainty of some recovery increases the tendency to file insurance claims, thereby increasing insurance premiums and potentially adding to court congestion.

These are some of the myriad pitfalls and complications inherent in the comparative negligence rule, a doctrine that has been tried off and on for 140 years to erase supposed inequities in the contributory negligence rule. Proponents of comparative negligence argue that the contributory negligence rule is harsh because it prevents recovery by those who have been negligent in the slightest degree. This, the argument goes, imposes a standard of 100 per cent perfect conduct upon the plaintiff while defendants must exercise only the degree of care expected of a prudent man. In practice, minor negligence by the plaintiff seldom results in loss of recovery.

A law professor answers plaintiffs' lawyers who advocate comparative negligence rules by pointing out that, "Comparative negligence is a drastic proposal, disproportionate to the evils it seeks to remedy. In short, it violates the maxim in equity that one should never, never shoot down a mouse with an elephant gun." Lawyers admit they seldom, if ever, lose cases in which the plaintiff's negligence was slight and that of the defendant great.

Contributory negligence as a defense first appeared in England in 1809 in a case involving a claimant who was barred from recovering damages after he struck a pole that lay over a highway. In subsequent years, England, Canada and most countries on the Continent adopted the comparative negligence doctrine. But in England, for example, application of the comparative negligence rule became so complicated that in 1945 it ended the use of juries in tort cases. This placed the determination of damages in the hands of judges.

As early as 1825 Louisiana experimented with this country's first comparative negligence rule but later dropped it, as did Illinois and Kansas. Georgia in 1861 permitted use of the comparative negligence

rule, followed in 1910 by Mississippi and in 1913 by Nebraska. These states have been joined by South Dakota, Arkansas and Wisconsin. Florida permits application of the rule in cases involving railroads and hazardous occupations.

Wisconsin merits special attention because its modified comparative negligence rule calls for the use of "special verdicts" from juries. Jurymen simply answer questions prepared by the court. Such special verdicts enable courts to apply jurors' appraisals of degrees of negligence chargeable in fixing awards. But Wisconsin lawyers are among the first to question the feasibility of comparative negligence and jury interrogatories in states with large metropolitan areas, high numbers of auto accidents and severely crowded court calendars. Defenders of the Wisconsin system claim that the comparative negligence rule has served in that state to reduce the volume of litigation, particularly trials of tort actions. Yet one authority on court congestion points out that Wisconsin has a relatively high ratio of auto damage claims to registered vehicles, commenting, "One is tempted to speculate whether that state's comparative negligence rule has anything to do with this."

It is no mere speculation, however, that the comparative negligence principle enhances opportunities for recovery in every suit involving accidents. By giving certain cases higher nuisance value, comparative negligence may provide a bonanza for plaintiffs' counsel, thereby increasing the tendency to file insurance claims. It presents also the possibility of collusion between uninjured and slightly injured persons if both are insured.

Resultant increases in claims consciousness, litigation and collusion would inevitably increase insurance rates. Some who oppose comparative negligence point out that insurance rates for some liability policies in Wisconsin are as much as 40 per cent higher than those in some neighboring states. Increased litigation and trial complexities under comparative negligence may boost the tax burden to pay for more extensive court operations. Trial intricacies, moreover, augment chances of error and misjudgment.

Another key pitfall of comparative negligence is the compensation of persons for their own wrongdoing, overturning the entire concept of tort recovery. "To inform a person that he may recover damages in spite of his own negligence seems to be a decided step in the wrong direction," says one veteran lawyer. "It's a step toward a compensation-without-fault system where the reckless and careful

COMPARATIVE NEGLIGENCE -- WHETHER WILL IT LEAD?

Address by James A. Dooley*
at NACCA Convention
Miami Beach, 1958

SECTION

- 7.1 Introduction
- 7.2 Apportionment of damages
- 7.3 Objectives of NACCA, making clear to public
- 7.4 Will comparative negligence statutes weaken judicial structure?
- 7.5 Public sentiment against large verdicts and delays
- 7.6 Personal injury -- plaintiff does not always collect
- 7.7 Broadening horizon of tort litigation
- 7.8 Danger seen in comparative negligence statutes
- 7.9 United States last stronghold of contributory negligence
- 7.10 Comparative negligence in United States
- 7.11 Comparative negligence is socialistic
- 7.12 Liability without fault doctrine or compensation system
- 7.13 Alternative compensation coverage endorsement
- 7.14 Insurance policy offered in settlement of court case
- 7.15 Casualty compensation system -- only state could operate
- 7.16 Casualty compensation system compared to workmen's compensation
- 7.17 Serve public by protecting present system

§7.1 INTRODUCTION

Our thoughts concerning comparative negligence may be unorthodox to a plaintiff's lawyer. We know they will not be popular here. But we wish to examine that oft-debated doctrine in the climate of today's realities.

§7.2 APPORTIONMENT OF DAMAGES

NACCA has been referred to "as the highly articulate minority who are pressing for this reform,"¹ referring, of course, to a doctrine whereby damages are apportioned. Then, too, there have been multiple expressions of thought that the proponents of the doctrine are actually lawyers who are interested in both opening new vistas in tort litigation, and in guaranteeing their contingent fees.

§7.3 OBJECTIVES OF NACCA, MAKING CLEAR TO PUBLIC

But with us, as members of the legal profession, it is basic that our

* Of the Illinois Bar; A.B. Loyola Univ., J.D. Loyola Univ. Law School, LL.D. Clarke College; member Chicago Law Institute, American Jurisprudence Society, Scribes, International Academy of Trial Lawyers, past-President NACCA, Founder and past-President Association of Plaintiffs' Lawyers of Illinois.

- 2 -

concern be not with our own interests, but with the good of the law, and what is good for the law is good for the people. Lawyers, as a whole, must bring home to the public that our profession is not a profession of interests, with the plaintiff's lawyer, but insurance company's lawyer, the labor relations' lawyer, all seeking what is good for their particular phase of the practice. Indeed, NACCA has a peculiar duty in this respect. Why? Because it has been marked as a group with selfish interests, so frequently and in so many quarters that the public is beginning to regard it as such. Witness, if you will, the recent article in a nationwide publication recognized for its objectivity in reporting.²

Believe us, there never was a time when we were more pressed to demonstrate that our objectives are for the common good, which means everyone's good.

§7.4 WILL COMPARATIVE NEGLIGENCE STATUTES WEAKEN JUDICIAL STRUCTURE?

Should we, as lawyers, press for adoption of comparative negligence statutes? As a preface to any answer to that query, let us say every lawyer with any experience in lawyering recognizes that today the prime problem in our legal world is the preservation of the jury system. This, we admit, is a condition which has been chronic for many years. Today its acuteness is such that it is a matter of its life and death. The system can be extirpated just as easily as it can be fortified.

And this acuteness is accentuated no end by the apathy of many members of the profession towards it. Whether it is because they believe the abolition of trial by jury will not affect their practice or because they do not recognize the full meaning of this important right, we cannot say. And, worse yet, there are amongst the profession those who find it fashionable to criticize the jury system.

We might more correctly state the issue thus: Will comparative negligence statutes weaken our judicial structure? It is from this aspect only do we wish to examine this doctrine. We are not undertaking to consider its desirability in the abstract.

§7.5 PUBLIC SENTIMENT AGAINST LARGE VERDICTS AND DELAYS

Today's society is ready to accept some substitute for the courts. It has awakened to the wrongs wrought by delay, and particularly to the hardships and injustices resulting from the protracted lapse between filing and trial time in metropolitan areas. It wants to know why it must tolerate these conditions. It is aroused. It is casting about for a substitute.

Again, whether you wish to face it or not, the public has become sensitive to what is termed "the large verdict." And why not? Multiple articles have appeared in all vehicles of print during the last decade. They have made their impression. They are being made to fear such verdicts.

And the man on the street who did not read any such propaganda has

² Wall Street Journal, July 7, 1958

brought home to him a fear of verdicts in personal injury cases in a way that pinches, namely, the rising price of insurance on his automobile. Rates have risen so high that automobile insurance in some communities comes close to pricing itself outside of the market, even for persons of moderate income. These fears have already been reflected in an epidemic of grossly inadequate verdicts in many sections of the country.

§7.6 PERSONAL INJURY -- PLAINTIFF DOES NOT ALWAYS COLLECT

Again, many say we now have in effect a system where almost everyone recovers in a common law personal injury action. With this contention, we cannot agree. As a matter of fact, in Cook County, Illinois, each year there are more not guilty verdicts than findings for the plaintiff in personal injury actions.

§7.7 BROADENING HORIZON OF TORT LITIGATION

But we recognize that today actions can be brought which were impossible yesterday. Thus, eleemosynary institutions, governmental agencies, such as schools, are subject to suit so long as there are policies of insurance providing against the contingency out of which the particular tort arises. Even actions can be brought between husband and wife for personal injury. Then, too, the wife in many jurisdictions can maintain a suit for loss of consortium of her husband.

There is likewise the Federal Tort Claims Act, the classical illustration of the broadening horizon of tort litigation.

Thus the crowded court calendars and increasing costs of protection against claims and suits give real impetus to the movement against our courts. But many of you will say we do not have these conditions where we live and practice. True, but they exist in metropolitan areas. And reforms undertaken to cope with problems peculiar to large areas are soon adopted throughout the country.

§7.8 DANGER SEEN IN COMPARATIVE NEGLIGENCE STATUTES

With comparative negligence statutes there will be more lawsuits and more meretricious lawsuits. Since comparative negligence gives a higher nuisance value, the courts will be even more crowded. The delay between filing and trial time will be increased as well by the antipathy toward the existing system. Indeed, it would not be improbable that there might be a public indifference, or even antipathy, to injury cases.

Thus we say any attempt at this time to increase the periphery of tort litigation will be a Paul Bunyan step toward a casualty compensation system.

§7.9 UNITED STATES LAST STRONGHOLD OF CONTRIBUTORY NEGLIGENCE

Look at the world about you. Dean Prosser says the United States is virtually the last stronghold of contributory negligence.³ That is no doubt

³ Vol. 51 Mich. Law Review, 465.

true. Research indicates that we have had apportionment of damage statutes in Australia, France, Germany, Italy, Japan, Norway, Persia, Portugal, Sweden and Russia for many years. For over the last quarter century, it has been present in all the Canadian provinces.

Yes, these countries do have laws whereby the damages are apportioned. But try and get a jury trial in any one of them.

England, the mother country of the common law, passed the Reform Act of 1945 providing, in substance, in case of mutual fault, a claim for damages shall not be defeated by the presence of negligence on the part of the injured, but the damage shall be apportioned as the Court thinks just and equitable.

But shortly after the comparative negligence statute had been passed in 1949, England abolished jury trials in practically all civil cases. When it is considered that our common law has been adopted from the English, and that in many phases of the law we have followed the English, are not these events and their weaknesses a warning to us?

§7.10 COMPARATIVE NEGLIGENCE IN THE UNITED STATES

It is true that in six states⁴ in this country where there are comparative negligence statutes, there are still jury trials. These, however, are not large communities with a great volume of litigation. They retain the jury system, despite their comparative negligence statutes. The jury system is still a part of the American scene. However, in Wisconsin, a state which has had a comparative negligence statute since 1953, failed by a single vote in its legislature to adopt an automobile compensation plan in 1953.

§7.11 COMPARATIVE NEGLIGENCE IS SOCIALISTIC

The thought underlying the doctrine of comparative negligence is, if we may use an unpopular term, socialistic. That law is to make certain that every injured person should get something -- not too much -- but something -- for his injury. And if you make some recovery for an injured person, the amount recovered in any single case is certain to be diminished. Usually this means the verdict does not represent a true reflection of the elements for which recovery may be had. Whether this is due to the fact that jurors partake of the socialistic concept of the doctrine, or because even the most innocent can be rationalized to be guilty, or because they realize there is a limitation of funds available for payment of claims, we do not know.

The hard cold fact of the matter is that verdicts in these six jurisdictions are very low, with the exception of Georgia and Mississippi. On the other hand, South Carolina, in which the standard of living is probably as low as any state in the country, has verdicts returned and affirmed far in excess of those in any of the comparative negligence areas.

⁴ Arkansas, Georgia, Mississippi, Nebraska, South Dakota and Wisconsin.

§7.12 LIABILITY WITHOUT FAULT DOCTRINE OR COMPENSATION SYSTEM

That comparative negligence is a move towards liability without fault is not difficult to understand. Both doctrines have similar foundations, namely, the social need for adjusting "conflicting rights" as they are called. Under comparative negligence, there is economic protection against one's own negligence and even against defects of character. Under liability without fault, rights are distributed and thinned out so that one questions whether they have in fact been extirpated. Duties, on the other hand, are proportionately distributed. All pay for the wrongs of each individual. It is a rather communal life. Why? Because the concern is not with this given case, or whether the particular litigants have an opportunity for a result reached after a system of due process as we know it. The issue is one of social policy such like crime. In fact, one advocate of the liability without fault doctrine says the distinction between tort and crime is only one of scope.⁵ Moreover, it is interesting to note some of the most vociferous advocates of the comparative negligence doctrines openly admit that they favor it as a palliative for their panacea, namely, the liability without fault doctrine or compensation system.

We stated that any weakening of our present system would, in our opinion, eventually lead to the adoption of the liability without fault doctrine. Actually, it seems that at least one insurance company has already undertaken such a program.

§7.13 ALTERNATIVE COMPENSATION COVERAGE ENDORSEMENT

The Nationwide Insurance Company has developed an endorsement to their insurance policy. It is termed "alternative compensation coverage." It gives the injured person fifteen months in which to elect to take the compensation available of payments, regardless of fault, or to sue. If he elects to take compensation, he must, within fifteen months, release the insured and the company. There is a provision for medical expenses incurred within a year after the accident up to \$2,000. He can likewise obtain \$5 per day indemnity within eighteen days after injury while confined and under the care of a doctor. If he is killed, the compensation awarded is \$5,000, providing he is over 18; if under 18, \$2,000. (These figures themselves demonstrate the injustice of this program.) This endorsement has been approved in such states as Connecticut, Delaware, Indiana, Maryland, Michigan, New York, Ohio, Pennsylvania, North Carolina and Vermont. In New York it was filed, not as alternative compensation coverage, but as a variation in medical payments.

Roger Kenney, the lay writer most universally read and quoted by insurance company executives, in an article entitled: "Why this sudden consternation about automobile compensation insurance?"⁶ predicts that "payment certain" will cause a drastic revision in the entire concept of rate making. He further comments that the real stake in the preservation of the present system is that of the lawyers.

These comments are so succinct, with your permission we shall read them:

⁵ I.L.S. Ann. 1954, 527

⁶ United States Investor, May 17, 1956

"If you were to ask the average insurance lawyer a few years ago what he thought of the chances of automobile liability compensation insurance ever becoming a far-flung reality in this country, like as not, you'd get a knowing wink and be asked whether you ever stopped to think that the state legislatures are made up in part, of lawyers. And lawyers, as a group, or individually for that matter, have never shown any great disposition to liquidate themselves professionally.

"Of course, the implication in such a remark is that so long as the legal profession is in the driver's seat, it is just plain foolhardy to believe that a law would pass any state legislature which would set up a definite schedule of benefits to be paid to those injured in automobile accidents and thus reduce, or eliminate, the fertile field now open to lawyers under what the latter like to call the 'adversary system.' But what the lawyers haven't been counting upon is the fact that there is more than one way to bring about a compensation scheme in the automobile liability field -- and the simplest of all is through an insurance policy, akin to the old-fashioned and time-honored accident contract."

He continues:

"What our friends, the lawyers, seem to have forgotten is that the driving of automobiles upon the public highways has become such a social and economic problem as to place quite a strain upon many of our long-established customs and procedures -- including our revered system of justice about which they had so much to say at their gathering in New York."

This makes good reading, does it not? How many lay persons would be able to detect that this new policy is merely an effort to obviate our system of law whereby only the legally liable are made to respond in damages?

Worse yet, this policy will sell. It will be copied by other companies. It is not a matter of superior logic, but of economics, marketing skill, salesability and ultimately the thought processes of the insurance buying public.

§7.14 INSURANCE POLICY OFFERED IN SETTLEMENT OF COURT CASE

There is another wrinkle. The Continental Casualty Company has offered an insurance policy to be used in the settlement of court cases involving future illness or disability. The main customers for the policy will be other insurance companies attempting to settle claims. Under this system, the claimant will get reimbursement for past expenditures and obtain a policy under which he will be indemnified for future costs, whether for medical care or disability. It was first employed in the settlement of a child's case. A small amount of cash was paid, and the child was given a \$25,000 policy providing for future medical or surgical care until the child was 21 years of age.

Through the scheme of giving policies of insurance in settlement of claims an insurance company may pyramid its profits through saving a loss on the initial policy by settling the claim with a second policy. This system, however,

- 7 -

will not be acceptable to most of the public. The fact, however, remains that this is another case in which the insurance industry, which virtually depends for existence upon our present system, states that the system is inadequate.

87.15 CASUALTY COMPENSATION SYSTEM -- ONLY STATE COULD OPERATE

The insurance industry has thus demonstrated its own shortsightedness. In the preservation of the present system lies the life of the industry. It is a business operating under the free enterprise system which makes possible a collection of capital to pay claims and judgments. Making it a welfare agency to dispense social benefits is incompatible with its foundation. The insurance industry has assigned regimentation and politics as its big reasons against compulsory insurance. But better yet the insurance companies realize they could not operate under a casualty compensation system. Why? Simply because the cost would be beyond them. Only the State could afford such an operation. Here would be some of the problems. Would each death be worth the same price? Would there be certain schedules of benefits similar to the Workmen's Compensation Acts? What provision would there be for complete payment for medical and hospital expenses? What about the problem of lost earnings?

87.16 CASUALTY COMPENSATION SYSTEM COMPARED TO WORKMEN'S COMPENSATION

And remember, a casualty compensation system is not similar to Workmen's Compensation, with a business paying the premiums and the periphery injured receiving benefits to occurrences associated with his working life.

If a sufficient number of American people decide to safeguard themselves to liability without fault policies, there will be multiple suits on a contractual basis concerning whether the claimant has the injury complained of, whether the decedent died as the result of the occurrence, and as many questions as the inclusions and exclusions of a policy give rise to.

Consider our experience under Workmen's Compensation laws where payment instead of being automatic, was met with such defenses as acts of God, street risk cases, scope of employment, assaults and others.

87.17 BEING TUBED BY PROTECTING PRESENT SYSTEM

Such policies must perforce lead to a compensation system of casualty insurance. Indeed, by writing such policies, the Nationwide Insurance Company is telling the public that it does not believe in the present system. Its profits, however, from this alternative compensation venture will be short lived.

Our existing system is now hanging in the balance. Any movement might swing the balance against the judicial system. Our interest must be that of the public. We can only serve the public by protecting our present system. Remember, a bird flying through the air may be tempted to think that since he must labor to do so, the air is holding him back and that he would be better off without it -- and, of course, without flying.

We consider it a great privilege to address so many outstanding practitioners in the most challenging area of the law. We do not expect your agreement with our thoughts, but we know in some idle moment you will consider this problem in this limited light.

You have been a delightful audience.

* * * *

JUDICIARY COMMITTEE REPORT ON 24 CS FOR HOUSE BILL NO. 249

24 CS for HB 249 requires that a national or international labor organization having one hundred or more members residing or working in Alaska to have at least one local or subsidiary organization in Alaska. Each violation of this requirement may result in the labor organization being fined from \$1,000 to \$10,000. This bill contains the exact language of Chapter 164 of the Kentucky Acts of 1932.

An international union brought action against the Attorney General of Kentucky seeking a declaration of rights concerning the meaning and validity of the Kentucky statute. The lower court held against the Attorney General and the case was appealed to the Court of Appeals. On appeal, the court said in Hamilton et al. v. International Union of Operating Engineers et al., 262 S. W. 2d 695 (Court of Appeals of Kentucky, 1953) that it was the purpose of the statute to give all union members the opportunity for membership in a Kentucky local or subsidiary organization that has jurisdiction to represent them in Kentucky. The court said that the Kentucky statute was a valid exercise of the police power of the state and that it does not invade constitutional freedoms of speech and assembly, and does not conflict with federal labor laws guaranteeing freedom of choice in selection of bargaining agents.

almost even with the east curb line of Fifteenth Street.

[1,2] The trial court, in directing verdicts for the defendant, stated that plaintiffs had failed to show any negligence on the part of defendant's driver. We agree. Since the car struck the side of the bus after the bus had almost cleared the intersection, the conclusion is inescapable that the bus entered the intersection first. That being so, the bus driver had the right to assume that plaintiffs' driver would yield the right of way. There is no material dispute about the facts, and the only inference which reasonably can be drawn is that the accident was caused solely by the negligence of plaintiffs' driver. Consequently, there was no issue to submit to the jury. The cases cited by plaintiffs are not applicable to this situation.

The judgment is affirmed.



H. R. Wilhoit, Grayson, R. T. Kennard, Olive Hill, for appellants.

O. F. Duval, Olive Hill, R. C. Littleton, Grayson, for appellee.

PER CURIAM.

Motion for an appeal from the Carter Circuit Court. John A. Keck, Judge.

There was sufficient evidence on the question of an illegal arrest to warrant the submission of the case to the jury. We find no errors on the trial which were prejudicial to the appellants' substantial rights.

Judgment affirmed.



HAMILTON et al.

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS et al.

Court of Appeals of Kentucky.

Dec. 4, 1953.

DICKISON et al. v. SHUMATE.

Court of Appeals of Kentucky.

Dec. 4, 1953.

Action was brought involving question of alleged illegal arrest. The Carter Circuit Court, John A. Keck, J., entered judgment, and motion was made for an appeal. The Court of Appeals held that there was sufficient evidence on question of an illegal arrest to warrant submission of case to jury.

Judgment affirmed.

False Imprisonment ⇐ 39

Evidence on question of illegal arrest was sufficient to warrant submission of case to jury.

International union brought action against the Commonwealth's Attorney of Jefferson County and the Attorney General of Kentucky seeking a declaration of rights concerning the meaning and validity of statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state. The Jefferson Circuit Court, Chancery Branch, First Division, Macauley L. Smith, J., entered judgment adverse to Commonwealth's Attorney and Attorney General, and they appealed. The Court of Appeals, Cullen, C., held that statute is not unconstitutional.

Judgment reversed with directions.

1. Labor Relations ⇨141

Branch offices in Louisville, Kentucky and Paducah, Kentucky of local union, which had its headquarters in Evansville, Indiana, were not "subsidiary organizations" within meaning of Kentucky statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or "subsidiary organizations" in the state, since word "organization" contemplates an organizational unit with a governmental structure of its own, and something that is capable of some degree of independent existence as an entity. KRS 336.170.

See publication *Words and Phrases*, for other judicial constructions and definitions of "Organization" and "Subsidiary Organization".

2. Labor Relations ⇨141

Where international union had a large number of members residing and working in Kentucky, and most of them were under jurisdiction of local unions with headquarters outside the state, and the only local maintained was one with headquarters in Louisville and which had jurisdiction only over members residing or working in Louisville area, Louisville local did not constitute compliance with statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing who reside or work in Kentucky not to have at all times one or more duly chartered and established local or subsidiary organizations in the state. KRS 336.170.

3. Labor Relations ⇨141

Statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established "local" or subsidiary organizations in the state, means not merely a "local organization" from standpoint of union terminology and

custom, but an organization that is localized in Kentucky. KRS 336.170.

See publication *Words and Phrases*, for other judicial constructions and definitions of "Local Organization".

4. Labor Relations ⇨141

Statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, means that there must be a local organization available for all members of the union in Kentucky. KRS 336.170.

5. Evidence ⇨6(1)

Statutes ⇨215

The Court of Appeals is entitled to recognize matters of common knowledge and to give consideration to contemporaneous circumstances throwing light on legislature's intent when Court of Appeals construes a statute.

6. Evidence ⇨11

The Court of Appeals, in construing a statute, may take judicial notice of the historical setting and conditions out of which statute was promulgated.

7. Evidence ⇨11

The Court of Appeals, in construing a statute, may take notice of the economic conditions existing at the time of enactment of the statute.

8. Statutes ⇨181(2)

Statutes must be given a practical construction.

9. Statutes ⇨181(2)

A statute will not be construed so as to lead to an absurd conclusion.

10. Statutes ⇨212.3

It will not be presumed that the legislature, in enacting a statute, intended a useless or futile thing.

11. Labor

Purpose shall be international more members or work in times one established local the state, union have a Kentucky that has j Kentucky.

12. Labor

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13. Labor

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14. Labor

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11. Labor Relations ⇨141

Purpose of statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, is to require that all members of union have opportunity for membership in a Kentucky local or subsidiary organization that has jurisdiction to represent them in Kentucky. KRS 336.170.

12. Labor Relations ⇨141

A national or international union, which establishes one local union with state-wide jurisdiction, or several locals which, collectively, have state-wide jurisdiction, does not violate statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state. KRS 336.170.

13. Labor Relations ⇨141

If a national or international union carries on activities in Kentucky, through its locals and membership, without having the kind of local organizations required by statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, the national or international union has violated the statute. KRS 336.170.

14. Labor Relations ⇨1057

Under statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the

268 S.W.2d-446

state, and that any national or international labor organization which violates the statute shall for each offense be fined not less than \$1,000 nor more than \$10,000, there may be one prosecution, for period covered by indictment, in each county in which the offense is committed. KRS 336.170.

15. Criminal Law ⇨13

Statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, and that any national or international labor organization which violates the statute, shall, for each offense, be fined not less than \$1,000 nor more than \$10,000 is not void for uncertainty, on ground that it does not define with sufficient certainty what constitutes an offense. KRS 336.170.

16. Constitutional Law ⇨277(1)

Labor Relations ⇨83

Statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, did not deprive local unions, which were located outside Kentucky, and which had members in Kentucky, of property rights without due process of law. KRS 336.170.

17. Constitutional Law ⇨277(1)

The due process clause of the constitution is not designed to protect monopolies.

18. Labor Relations ⇨83

Statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, is a valid exercise of the police power. KRS 336.170.

19. Constitutional Law ¶90

Labor Relations ¶45, 83

Statute providing that it shall be unlawful for any national or international labor organization having 100 or more members in good standing, who reside or work in Kentucky, not to have at all times one or more duly chartered and established local or subsidiary organizations in the state, does not invade constitutional freedoms of speech and assembly, and does not conflict with federal labor laws guaranteeing freedom of choice in selection of bargaining agents. KRS 336.170.

A. Scott Hamilton, Louisville, J. D. Buckman, Atty. Gen., H. D. Reed, Jr., Asst. Atty. Gen., for appellants.

Hubert T. Willis, John L. Richardson, Jr., Louisville, for appellees.

CULLEN, Commissioner.

The International Union of Operating Engineers brought this action against the Commonwealth's attorney of Jefferson County and the Attorney General of Kentucky, seeking a declaration of rights concerning the meaning and validity of Chapter 161 of the Acts of 1952 KRS 336.170, which reads as follows:

"Section 1. It shall be unlawful for any national or international labor organization having one hundred or more members in good standing who reside or work in Kentucky not to have at all times one or more duly chartered and established local or subsidiary organizations in this State.

"Section 2. Any national or international labor organization which violates section 1 of this Act, shall for each offense, be fined not less than one thousand dollars nor more than ten thousand dollars."

The circuit court adjudged that the Union was complying with the Act, as interpreted by the court, and therefore did not pass

upon the question of whether the Act would be constitutional if so interpreted as to place the Union in the status of noncompliance. The Commonwealth's attorney and the Attorney General have appealed.

The first question before us is whether the Union is complying with the Act, as correctly construed. If that question is answered in the negative, we must determine whether the Act as we construe it, is valid and enforceable.

The Union has a large number of members residing and working in the vicinity of Paducah, Kentucky. These workers are under the jurisdiction of Local No. 181, which has its headquarters at Evansville, Indiana, but which has branch offices at Louisville and Paducah. Local 181 has jurisdiction over stationary, hoisting, and portable engineers residing or working in southern Indiana and in all counties of Kentucky except four northern counties. These four counties are under the jurisdiction of Local No. 18, which has its headquarters in Cincinnati, Ohio. The Union also has Local No. 930, with headquarters in Louisville, which has jurisdiction only over stationary engineers residing or working in the Louisville area.

The lower court found that Local No. 930 was a local chartered and established in this state, within the meaning of the 1952 Act, and therefore adjudged that the Union, by maintaining this local, was complying with the Act. The Union contends that not only does Local No. 930 constitute a compliance with the Act, but that the branch offices of Local No. 181, in Paducah and Louisville, constitute "subsidiary organizations" in Kentucky within the meaning of the Act. The Commonwealth's attorney and the Attorney General maintain that a reasonable interpretation of the Act requires the Union to establish in Kentucky one or more autonomous locals of such character that each Kentucky member of the union could have membership in a Kentucky local which would have jurisdiction to represent its membership in labor matters in Kentucky.

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[1] We have no difficulty in concluding that the branch offices of Local No. 181 in Paducah and Louisville are not "subsidiary organizations" within the meaning of the statute, for the simple reason that they are not "organizations". We think it is clear that the word "organization" as used in the statute contemplates an organizational unit with a governmental structure of its own—something that is capable of some degree of independent existence as an entity.

[2] Whether Local No. 930 constitutes a compliance with the Act is a question somewhat more troublesome. However, it is our opinion that a reasonable construction of the Act requires something more than is supplied by this local.

[3,4] As we construe the Act, when it requires a "local" organization "in this State" it means not merely a "local" from the standpoint of union terminology and custom, but an organization that is *localized* in Kentucky. And we think the Act means that there must be a local organization available for all members of the union in Kentucky.

[5-7] As has been said, the Court is not required to act in a vacuum. We are entitled to recognize matters of common knowledge, and to give consideration to contemporaneous circumstances throwing light on the legislature's intent. *Baker v. White*, 251 Ky. 691, 65 S.W.2d 1022. The court may take judicial notice of the historical setting and conditions out of which an Act was promulgated. *Martin v. Louisville Motors*, 276 Ky. 696, 697, 125 S.W.2d 241. It may take notice of the economic conditions existing at the time of enactment of a statute. *Grieb v. National Bank of Ky.'s Receiver*, 252 Ky. 753, 68 S.W.2d 21.

In *Green v. Moore*, 281 Ky. 305, 135 S.W.2d 682, 683, we said:

"In the search for the legislative will, we start with the pertinent conditions existing when the law was enacted, with their background and development, and look toward the object intended to be reached or accomplished. * * *

Those attendant circumstances, the context of the act and its consequences are controlling, even though it may be necessary to modify the language used in order to make it consistent. * * *

[8-10] Other pertinent rules of construction are: Statutes must be given a practical construction. *Commonwealth v. Randolph*, 277 Ky. 724, 127 S.W.2d 398; *Reeves v. Fidelity & Columbia Trust Co.*, 293 Ky. 544, 169 S.W.2d 621; a statute will not be construed so as to lead to an absurd conclusion. *Reeves v. Fidelity & Columbia Trust Co.*, 293 Ky. 544, 169 S.W.2d 621; *Swift v. Southeastern Greyhound Lines*, 294 Ky. 137, 171 S.W.2d 49; it will not be presumed that the legislature intended a useless or futile thing. *Washburn v. Paducah Newspapers*, 275 Ky. 527, 121 S.W.2d 911.

The situation that existed in the Paducah area, with respect to foreign control of union affairs, was a matter of common knowledge at the time of enactment of the statute here in question. It had received wide newspaper publicity and was a subject of general public discussion. In addition, some of the problems connected with this situation were brought before this Court in *International Union of Operating Engineers v. J. A. Jones Const. Co.*, Ky., 240 S.W.2d 49, and in *International Union of Operating Engineers v. Bryan*, Ky., 255 S.W.2d 471. The big issue was local representation and voice in union affairs.

[11,12] To so construe the 1952 Act as contended by the union would be to render the Act completely useless and futile. No conceivable purpose could be accomplished by requiring a union merely to maintain a local in one small area of Kentucky, with its membership limited to those who worked in one branch of the craft in that area. The obvious purpose of the Act was to require that all members of the union have the opportunity for membership in a Kentucky local or subsidiary organization that would have jurisdiction to represent them in Kentucky. Since the Act refers to "one or more" such organizations, it appears that

the union might establish one local with state-wide jurisdiction, or several locals which, collectively, would have state-wide jurisdiction. To so construe the Act does no violence to its language, and we do so construe it.

[13-15] The union contends that, in providing a penalty for "each offense," the Act does not define with sufficient certainty what constitutes an offense, and the Act therefore is void for uncertainty. It is true that the Act itself does not define what constitutes "each" offense, but it does make clear what constitutes a violation, and the rule governing the number of penalties that may be imposed, and the places in which prosecutions may be maintained, is well established by our case law. It is clear from the Act that if a national or international union carries on activities in this state, through its locals and membership, without having the kind of local organizations required by the Act, it has committed a violation of the Act. See *International Union of Operating Engineers v. J. A. Jones Construction Co., Ky.*, 240 S.W.2d 49. Under the rule defined in *International Harvester Co. of America v. Commonwealth*, 144 Ky. 403, 138 S.W. 248, there may be one prosecution, for the period covered by the indictment, in each county in which the offense is committed. The claim of uncertainty cannot be maintained.

[16, 17] The union further maintains that Locals Nos. 18 and 181 have property rights in or by virtue of their present membership, and the Act will deprive them of these property rights without due process of law. As we interpret the Act, it does not of itself deprive these locals of any of their membership. It merely requires that one or more Kentucky locals be established to which Kentucky workers will have the privilege of transferring their membership, if they so desire. Certainly the due process

clause was not designed to protect monopolies.

[18] It also is argued that the Act is not a valid exercise of the police power, because there is no public evil or abuse sought to be remedied, but only the conferring of private benefits. We think that the public has a protectable interest in the accessibility of labor organizations to the processes of law of this state. Furthermore, it has long been recognized that the protection of labor is a proper objective for exercise of the police power, since the economic interests of the public are directly and substantially affected by labor disputes. It would seem that the public should have as great an interest in the protection of labor from labor, as in the protection of labor from capital.

[19] Finally, it is contended that the 1952 Act invades the constitutional freedoms of speech and assembly, and conflicts with federal labor laws guaranteeing freedom of choice in the selection of bargaining agents. We find no basis for these arguments. The Act does not purport in any way to restrict the activities of any labor organization, or to impose conditions upon the free exercise of the rights of speech and assembly. It does not limit any worker in the selection of a bargaining agent of his own choice. Locals Nos. 18 and 181 may continue to function in Kentucky just as they have in the past, the only restriction being that a union member cannot be compelled by the union to choose any of them as his bargaining agent, but must be given the choice of selecting a Kentucky local as his bargaining agent. As we view it, the Act promotes rather than impedes, the exercise of those rights guaranteed by the Constitution and by the federal labor laws.

The judgment is reversed, with directions to enter a judgment in conformity with this opinion.

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JUDICIARY COMMISSION REPORT ON CS FOR NB 304

CS for NB 304 requires that the Alaska State Development Corporation maintain public records which contain the names of the business concerns to whom contracts are let and for whom financing is arranged by the corporation and the nature of the business and the amount involved.

Chairman Cross called the meeting to order. Present were members Stevens, Metcalf, Taylor, Josephson and Hillstrand.

The committee took up HB 299 and the requested report on the bill by committee counsel. After discussion, Mr. Stevens moved that the bill be amended to (1) amend AS 09.43.070 to allow application for issuance of subpoenas to be made to the superior court; and (2) exclude from the application of the bill contracts of insurance and agreements between employers and employees, as set out in sec. 7.04.010 of the Wash. Revised Statutes, and that the amended bill "Do Pass". Seconded by Mr. Josephson and passed.

The committee then considered HB 374. After discussion, the committee agreed to delete "work" from page 2, line 5 and to insert "under sec. 10 or 20 of this chapter or" at the end of line 11, page 2 and after "restricted" on page 2, line 15. Mr. Taylor moved that HB 374 as amended "Do Pass". Mr. Stevens seconded and the motion passed.

Meeting adjourned.

JUDICIAL COMMITTEE REPORT ON HB 299

HB 299 is the Uniform Arbitration Law adopted by the National Conference of the Commissioners on Uniform State Laws and approved by the House of Delegates of the American Bar Association. It has been adopted in five states according to the "Book of the States", 1964-65. They are Arizona, Illinois, Massachusetts, Minnesota and Wyoming. Approximately 20 other states also have a modern arbitration law.

If a state does not have an arbitration law, as is the case in Alaska at this time, a voluntary contract provision to arbitrate subsequent controversies between the parties can be ignored by one party and the other party has no legal remedy for enforcement of that contract provision.

Amendment No. 1 amends Sec. 09.43.010 of HB 299 to make this Act inapplicable to (1) contracts of insurance, and (2) agreements between employers and employees or employers and associations of employees. The language relating to (2) was taken from sec. 7.04.010 of the Washington Revised Statutes.

Amendment No. 2 amends sec. 09.43.070 of HB 299 to allow the court and not the arbitrators to issue subpoenas.

JUDICIARY COMMITTEE REPORT ON HB 374

HB 374 requires that a government agency responsible for the operation of a public building shall notify the public by the posting of a sign when and under what conditions the building is open to the public, what areas are not open, and who can be contacted about entering on a day or time when the building is not open to the public.

The government agency may prohibit or restrict access by the public so that the health and safety of the public will not be endangered or where the presence of the public would obstruct the efficient performance of duties by the employees of the agency. However, public access to or public activities in the public corridors may not otherwise be prohibited or restricted by the government agency except under a statute or ordinance.

The last section of the bill defines "government agency" and "public building".

JUDICIARY COMMITTEE -- MINUTES -- FEBRUARY 23, 1966

Chairman Guess called the meeting to order at 2:00 p.m. Members present were Messrs. Stevens, Taylor, Hillstrand and Metcalf.

The committee discussed CS for HB 311 which the committee had adopted at the February 18th meeting and asked that a new committee substitute be prepared by the committee counsel.

The committee discussed HB 372 and Mr. Stevens moved that it "Do Pass" and asked unanimous consent. There were no objections and 372 was reported out of committee.

The committee took up HB 359 and Mr. Taylor moved "Do Pass". Seconded and passed.

The committee discussed HB 52 and Mr. Taylor moved "Do Pass". Seconded and passed.

Meeting was adjourned.

JUDICIARY COMMITTEE REPORT ON CSHB 311

CSHB 311 allows the court to impound a vehicle for not more than 30 days if it is owned by a person under 21 years of age who is in possession, control, etc. of the motor vehicle at the time he violates a law, ordinance or regulation relating to being under the influence of intoxicating liquor or to possession, control or consumption of alcoholic beverages.

ALASKA
STATE LEGISLATURE

LEGISLATIVE COUNCIL

BOX 2199-JUNEAU

TO: House Judiciary Committee, Chairman Guess

FROM: Jane Asher

RE: House Bill No. 311

California has a law somewhat similar to HB 311. Under the California law, the vehicle may be impounded if it is owned by the minor. The California law is as follows:

§23123.5. Possession by Minor.

(a) No person under the age of 21 years shall knowingly possess, transport, or have under his control in any motor vehicle any alcoholic beverage, unless such person is accompanied by a parent or legal guardian or is employed by a licensee under the Alcoholic Beverage Control Act (Division 9, commencing with Section 23000, of the Business and Professions Code), and is possessing, transporting or has such alcoholic beverage in a motor vehicle under his control during regular hours and in the course of his employment.

(b) If the vehicle used in any violation of subdivision (a) is registered to such person under the age of 21 years, the vehicle may be impounded at the owner's expense for not less than one day nor more than 30 days for each violation.

(c) Any such person under 21 years of age found guilty under this section shall also have his driver's license suspended for not less than 15 days nor more than 30 days. [Added by Stats 1965 ch 1662 § 2.]

JUDICIARY COMMITTEE REPORT ON HB 378

HB 378 includes in the Public Employees' Retirement System any deputy magistrate whose annual salary is at least \$1,500.

The salaries of deputy magistrates are prescribed by the supreme court and are governed by the duties and responsibilities involved as to the particular office (AS 22.15.220(b); Court Rules of Administration No. 34). There are presently 39 deputy magistrates receiving annual salaries of \$1,500 or more.

JUDICIARY COMMITTEE REPORT ON HB 359

Under present law, a person may bring an action for injury to personal property for six years after the injury occurs. HB 359 requires that the action be brought within two years.

JUDICIARY COMMITTEE REPORT ON HB 62

Under AS 29.10.456 - 29.10.540, a municipal corporation may enforce a lien for delinquent taxes on real property by the sale of the property in the special foreclosure proceeding set out in those sections. The present law requires notice of the proceeding by publication, or if there is no newspaper in the municipality by posting and notice by mail. There must be publication or posting in two instances, (1) when the petition for foreclosure is filed (AS 29.10.465); and (2) shortly before the expiration of the period of redemption (AS 29.10.522).

HB 62 amends the law to require that notice be given to the last-known owner of the property by registered or certified mail, in addition to the publication or posting in the above two instances. H. B. 62 further requires that notice be given in the same manner of any intended sale by the municipal corporation of the foreclosed property and that the notice contain the fact that the record owner of the property at the time of tax foreclosure has a right of repurchase under AS 29.10.528.

In sec. 3 of the bill, obsolete references to school district and public utility districts are deleted.

The committee met with the Senate Judiciary Committee and the Board of Governor's of the Alaska Bar Association at 2:30 p.m. Present were Chairman Guess and members Stevens, Taylor, Metcalf and Josephson.

The Board of Governors gave the Judiciary Committees their views on legislation affecting the Alaska Bar. The Board felt many provisions of Ch 47 SLA 1965 would not improve the Bar. They did not think that a person should be admitted without examination simply because they had done legal work in Alaska for three years as set out in AS 08.08.130(6) (D). They were not in favor of the clerkship provisions and stated further that the law provided no standards for the work to be accomplished or method of reporting, etc. and required no background education such as a high school diploma. They felt that the reason for clerkship, as advanced by those in favor of it, was not justified by those applying under the clerkship provisions. Those in favor of it feel that since we have no law school in Alaska, there should be a way for a person to study law in this state if they are not financially able to do so otherwise. The Board says that the people applying under the clerkship provisions are persons coming here from other states and wives, children and secretaries of attorneys.

The Board said that approximately 18 persons a year have been admitted to the Bar since statehood. They said that an average of 62.4 per cent of those taking the bar have passed since statehood. The national average is under 67 per cent which includes some states which nearly always pass 100 per cent of their applicants.

It was suggested that the attorney who supervises the law clerk be licensed by the Bar, and that they cannot supervise anyone employed in their office or related to them.

The Board also said that the Anchorage Bar has taken no position on HB 329 giving another superior court judge to the Juneau area. They are in favor of HB 317 which amends the law relating to bail, and HB 306 relating to comparative negligence; although they pointed out that it was not a true comparative negligence statute. The Anchorage Bar supports HB 279 relating to disqualification of judges, but the Supreme Court is not in favor of it because of the additional travel and per diem which will be required if the bill passes.

HB 275 relating to young adult advisory panels in certain misdemeanor cases was discussed. Some Board members were in favor of it and others were not. The general consensus was that it was a good bill.

There was discussion of election of magistrates. The Supreme Court is not in favor of it and no conclusion was reached by the Board. However, the Board felt that magistrates should be members of the Alaska Bar and particularly so if their salaries are increased.

Meeting was adjourned.

Chairman Guess called the meeting to order at 3 p.m. Present were Messrs. Taylor, Metcalf and Tillion.

The committee discussed SB 17 and without objection the bill passed out of committee "Do Pass".

HB 408 was discussed by the committee and passed from the committee "Do Pass".

The committee discussed HB 300 which changes the date of the primary election. It was decided to refer it to State Affairs since that committee has CSSB 50 which also changes the date of the primary election so that the two bills may be considered together.

Meeting adjourned.

JUDICIARY COMMITTEE REPORT ON SB 17

AS 09.10.010 says that a civil action must be commenced within the periods prescribed by statutes of limitation and Rule 3 of the Rules of Civil Procedure says that a civil action is commenced by the filing of a complaint. AS 09.10.020, which is repealed by SB 17, says that an action is commenced by the filing of a complaint and the issuance of a summons.

In Silverton v. Marler, Sup. Ct. Op. No. 156, January 30, 1964, the court held that AS 09.10.020 was in conflict with and superseded by Rule 3 of the Rules of Civil Procedure since the action contained procedure.

SB 17 repeals AS 09.10.020, which the Supreme Court has declared invalid, so that the statutes will not mislead persons as to what constitutes commencement of a civil action.

JUDICIARY COMMITTEE REPORT ON HB 408

HB 408 amends the law of vagrancy to include a person who, without legitimate reason, loiters about a school where children are in attendance, or who loiters about a nearby public place frequented by school children.

Chairman Guess called the meeting to order at 2 p.m.
Members present were Stevens, Tillion, Taylor and Metcalf.

Mr. McCombe, the sponsor of HB 419, appeared and spoke in favor of the bill. Rev. Boesser spoke against the bill. Mr. Stevens moved that HB 419 "Do Not Pass". Seconded by Mr. Guess and passed.

The committee discussed HB 279. Mr. Stevens suggested several amendments to the bill. Mr. Stevens was asked to prepare them for the next meeting.

HB 487 was discussed by the committee. Mr. Tillion moved that HB 487 "Do Pass". Seconded by Mr. Taylor and passed.

Meeting adjourned.

JUDICIARY COMMITTEE REPORT ON HB 419

HB 419 establishes an Alaska Lottery Authority in the Department of Revenue. Under the terms of the bill, there will be three or more drawings a year. One half of the gross proceeds from each drawing shall be paid out as prizes. The other half of the gross proceeds goes into the general fund as unrestricted receipts. The cost of the lottery is paid out of the general fund.

The Alaska Lottery Authority is composed of five members appointed by the Governor for overlapping terms of five years including one member from the Senate and one from the House of Representatives. Members are entitled to the usual travel and per diem for members of boards. The Authority will promulgate regulations to carry out the provisions of the Act.

Ticket sellers must comply with the provisions of AS 43.17.080, such as having resided in the state for a year, filing a bond to cover tickets received, etc.

HB 419 would take effect on January 1, 1967, if in the general election of 1966, the voters vote in favor of the establishment of a state-operated lottery in Alaska.

JUDICIARY COMMITTEE REPORT ON HB 467

Under HB 467, a person who provides financial programming or marketing assistance to the state or a political subdivision in connection with the issuance or sale of general obligation bonds may not bid on those bonds or negotiate for their purchase. If such a person purchased the bonds, the sale would be void as against public policy.

JUDICIARY COMMITTEE

MINUTES OF

March 3, 1966

Chairman Guess called the meeting to order at 2:00 p.m. Present were Stevens, Taylor, Josephson, Hillstrand, and Metcalf.

The committee considered the three amendments to HB 279 offered by Mr. Stevens. Mr. Taylor moved "do pass" with the amendments; seconded and passed. The committee agreed to refer it to the Finance Committee with the Supreme Court comments on the cost of the bill.

HB 302 was considered by the committee. The committee counsel was asked to draft a committee substitute based on the discussion.

The committee took up HB 402. Mr. Guess moved that HB 402 "do pass". Mr. Taylor seconded and the motion passed.

HB 418 was discussed by the committee. Mr. Taylor moved "do not pass"; Mr. Stevens seconded; the motion passed.

Mr. Stevens moved that House Resolution No. 6 "do pass"; seconded and carried.

Mr. Guess moved that House Concurrent Resolution No. 42 "do pass"; seconded and carried.

Meeting was adjourned.

JUDICIARY COMMITTEE REPORT ON HB 279

HB 279 changes the present law relating to the disqualification of a judge in the following manner:

Page 1, line 18: A new reason for disqualification is added.

Page 1, lines 21 - 23: Compare (5) with AS 22.20.020(4) to see how this reason for disqualification has been changed.

Page 1, between lines 23 and 24: Amendment No. 1 allows the judge to disqualify himself.

Page 1, lines 27 - 29 and page 2, lines 1 - 5: This is a new subsection which requires that another judge determines the matter of disqualification and not the one who may be disqualified.

Page 2, lines 7 - 19: This subsection is approximately the same as AS 22.20.020(5). However, under present law, the bias or prejudice must be proved to the judge who is considered biased or prejudiced. Under this bill, the action is immediately transferred to another judge. Under present law and under this bill only one affidavit of bias or prejudice is allowed. This approach is similar to a preemptory challenge to a juror.

Page 2, lines 20 - 22: This is a new subsection which is taken from the Arizona law.

Page 2, lines 23 - 27: This is a similar provision to the one presently in the law in AS 22.20.020(5). Compare the two for the slight differences.

Page 2, lines 28 - 29: This is the exact language now found in AS 22.20.020(5).

Page 3, lines 1 and 2: This bill might be considered to affect only those suits filed after it became law. This section applies it to actions pending on the date it becomes law.

You will note that the word "action" was used throughout the bill. Under AS 01.10.060(1) in the laws of this state "action" includes any matter or proceeding in a court, civil or criminal.

"Judicial officer" is defined in AS 22.20.010 as a supreme court justice, including the chief justice, a judge of the superior court, a district magistrate, and a deputy magistrate.

California (CCP 170), Arizona (ARS 12-409-411), and Oregon (ORS 14.210 - 270) law was used in the preparation of this bill.

H13 279



Supreme Court

State of Alaska

941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

BUELL A. NESBETT, CHIEF JUSTICE

JOHN H. DIMOND, ASSOCIATE JUSTICE

JAY A. RABINOWITZ, ASSOCIATE JUSTICE

February 21, 1966

Honorable W. E. Guess, Chairman
House Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Re: H.B. #279, Disqualification of Judicial Officers.
Discussion of Undesirable Aspects - Estimate of
Annual Cost Approximately \$22,000.00.

Dear Representative Guess:

In accordance with your request we have prepared a statement of views on the effects H.B. #279, re the disqualification of judges, would have on the operation of the superior court if enacted.

The net effect of this measure would be to remove the control of court calendars from the presiding judges of the superior court and actually to make impossible any orderly regulation of the court calendars. It would have a seriously damaging impact on the availability of judges for the trial of cases and a like impact on the court budget as it relates to travel and per diem for judges.

The bill allows any party or attorney in any action to disqualify a judge peremptorily. This means that in every case there are at least four peremptory challenges that can be made to disqualify a judge, and as many more as there are additional parties or attorneys involved. It is obvious that in every case there is a potential for every resident judge in each of the superior court locations to be summarily prevented from hearing the case and that a judge from another district or location may have to be brought in to hear the case. The seriousness of this problem can be recognized only when it is realized that in many instances there are either attorneys or litigants who are disgruntled with relation to one or more judges before whom they have lost a previous case or whose judicial reputation or other attributes are disliked. On the other hand there are some judges simply

more "popular" than others, and attorneys or parties can be expected to exercise peremptory disqualifications solely in order to have their cases heard by such judges when no substantial basis for disqualification of another actually exists.

With all of these factors at work in determining the assignment of cases, it is apparent that some judges may have very few cases to hear, and others may have so many that they cannot possibly keep up with the workload. The inefficiency and wasted use of available judicial manpower under such a system would create impossible working conditions for the superior court judges and their clerical assistants. This would be particularly true in the multi-judge courts at Anchorage and Fairbanks, but the problems would also exist in the single-judge courts, where the arrangements for bringing in other judges would become extremely complicated if disqualifications were made with any appreciable frequency.

The high cost of providing visiting judges is also apparent, and a great deal more money for their travel and per diem would have to be provided if this bill were enacted. It is impossible to determine how much more should be provided when there is no basis of experience on which to estimate the number of cases in which disqualifications as allowed by the bill would result in the necessity of travel. In the initial year we could be sure of meeting the needs only if sufficient per diem funds were appropriated for every judge to travel the limit of 90 days, and this would require \$17,000. The transportation costs would be in addition to this sum in the approximate amount of \$5,000.

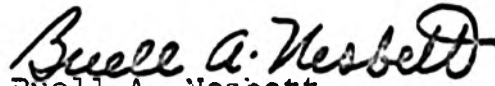
Until recently the calendars in the largest multi-judge court, at Anchorage, were prepared by the presiding judge keeping a continuing check on the caseload of each judge and assigning new cases and other duties to judges as appropriate to maintain an equitable load for all. Under this system different judges were often assigned different phases of the proceedings in any given case, and this can create problems in obtaining consistent results. Recently this system has been altered to a plan under which, in general, each new case is assigned to the respective judges in turn, and each judge thereafter handles all aspects of all cases assigned to him. Under either of these systems the workload is fairly evenly established among all the judges, and the presiding judge can make adjustments as necessary where disparities appear.

No such methods for control of calendars could operate under the proposals of H.B. #279. On the contrary, AS 22.20.020(c) and .022(a) as proposed in the bill provide a positive method by which counsel could cooperate to pick their judge and thus circumvent the assignment judge and calendar clerk who are responsible for the orderly assignment of cases and scheduling of all matters to be heard.

February 21, 1966

In our view chaotic calendaring conditions would result under a system where individual attorneys and parties can effect the assignment of cases according to their individual desires and without regard to the workload already borne by the judges. The harm that would result to the public interest in securing the speedy handling of cases would be a severe blow to efficient and effective administration of justice.

Very truly yours,



Buell A. Nesbett
Chief Justice

cc: Representative Kerttula
Representative Gravel
Senator Ziegler
Senator Bradshaw
Senator McNealy

JUDICIARY COMMITTEE REPORT ON HB 418

HB 418 allows the state or a first or second class city to use a declaration of taking in acquiring property for off-street parking.

JUDICIARY COMMITTEE REPORT ON HB 402

HB 402 was introduced at the request of the governor, and his letter of explanation which fully describes the bill is found in the February 10th supplement to the House Journal.

"February 10, 1966

HB
402

Honorable Warren A. Taylor
Chairman, House Rules Committee
Alaska State Legislature
Juneau, Alaska

Dear Mr. Chairman:

Pursuant to State law and the Uniform Rules of the Legislature, I am submitting a bill which would bring agencies of the State and its political subdivisions under coverage of the Human Rights Act of 1963.

The Federal Civil Rights Commission has advised the Department of Health and Welfare that our Human Rights Act is not sufficiently inclusive of the State agencies in providing a hearing procedure for those who are served by public agencies in the disbursement of Federally-assisted welfare funds. In order to comply with Federal requirements, the State may either amend the Human Rights Act so that it will be available to members of the public for the purposes of registering and obtaining a hearing on their complaints of discrimination, or establish a separate and independent hearing procedure to provide these services for those who obtain Federally-assisted welfare payments from the agencies. The former is the most efficient means of satisfying the Federal requirement.

Since State personnel rules already furnish protection against discrimination in employment practices, it is only in the area of dealing with the general public that an amendment is needed. We believe that this new section will complete the Civil Rights protection now required by the Federal Government.

Sincerely,

/s. William A. Egan

William A. Egan
Governor"

" February 9, 1966

Honorable Warren A. Taylor
Chairman, House Rules Committee
Alaska State Legislature
Juneau, Alaska

HB
401

Dear Mr. Chairman:

Pursuant to State law and the Uniform Rules of the Legislature, I am submitting a bill which would provide a pay increase of three per cent for permanent employees assigned to duty stations located over 100 miles from the key cities of Anchorage, Fairbanks, Juneau and Ketchikan and which are connected by road, railroad or ferry to these key cities. It provides a pay increase of six per cent for permanent employees assigned to any duty station which is not connected to one of the key cities by surface transportation.

The increased cost in operating programs, if this bill is adopted, is estimated at \$161,000 from the State General Fund, \$2,400 from State Special Funds and \$8,000 from federal funds. These amounts have been included in the appropriation bill for Fiscal 1967. It is proposed to make this increase effective July 16, 1966, the beginning of the first pay period in Fiscal 1967.

This bill recognizes the lack of community facilities which exist at many of the duty stations affected, the isolation factor present and the cost of living in the more remote areas of the State.

Sincerely,

/s/ William A. Egan

William A. Egan
Governor"

JUDICIARY COMMITTEE -- MINUTES -- MARCH 4, 1966

The meeting was called to order at 3:00 p.m. by Chairman Guess. Present were members Stevens, Josephson, Taylor and Hillstrand.

Mr. Jackson, the sponsor of HB 462, appeared and spoke in favor of the bill. The committee decided to ask the bar and the Judicial Council for their comments on the bill before taking further action.

Mr. Norman Banfield representing American Mutual Insurance Alliance appeared and spoke on HB 373. Mr. Banfield will draft a bill covering his proposals and Commissioner Underwood will be asked to appear before the committee takes further action on the bill.

The committee considered HB 309. Mr. Taylor moved that HB 309 "Do Pass". Mr. Stevens seconded. Motion passed.

Meeting was adjourned.

JUDICIARY WRIGHT'S REPORT ON HB 309

If a court has jurisdiction over the subject matter in an action, then under HB 309 the court can obtain jurisdiction over a person who is served in the manner set out in the court rules of procedure provided that the action and person served are as set out in (a)(1) --(11) of the bill. Subsection (b) states that when an action is brought in reliance upon (a)(2)--(10) of the section, that there can be no joining of any other claim or cause in the same action against the defendant unless grounds exist under (a) for personal jurisdiction over the defendant as to the claim or cause to be joined.

HB 309 is taken from Sec. 262.05 of the Wisconsin Statutes (1963) and beginning on page 1228 of the 1960 Wisconsin Annotations there is set out the objectives, scope, and annotations on Sec. 262.05. It is stated therein that the primary objective sought in the section is to expand the exercise of personal jurisdiction over nonresidents in cases having substantial contacts with Wisconsin. It is further stated that "Revised Chapter 262, relying upon these legislative and judicial materials from other states, attempts to provide a means for trying in Wisconsin all personal actions which, in a due process sense, it is reasonable to try here against the named defendant."

JUDICIARY COMMITTEE -- MINUTES -- MARCH 5, 1966

Chairman Guess called the meeting to order at 10:00 a.m. All members were present.

The committee took up HB 383 - 387 and 389 and 390 which are bills introduced by the Legislative Council as a result of the recommendations in the January 1966 Council report "Legislative Oversight of the Administration of Statutes". Mr. Kent Edwards of the Council staff who prepared the Council report described each bill to the committee. Commissioner Holdsworth of the Department of Natural Resources appeared on HB 383 - 387 to answer committee questions as to how the bills would effect the present procedure of his department.

Mr. Stevens moved that HB 383 and 385 "Do Pass" and Mr. Taylor seconded. Both bills passed out of committee.

Mr. Stevens moved that HB 387 "Do Pass" with the following amendment:

On page 1, line 17, after "by" insert "purchase, exchange, condemnation,"

Mr. Taylor seconded and motion passed.

Mr. Guess moved that HB 389 "Do Pass". Motion passed without objection.

Mr. Taylor moved that HB 390 "Do Pass". Motion passed without objection.

The committee asked Mr. Edwards to prepare drafts of committee substitutes for HB 384 and 386 and asked that Mr. Edwards and Commissioner Holdsworth return on Monday, March 7th at 3:00 p.m. to discuss them.

Meeting was adjourned.

JUDICIARY REPORT ON HB 383

HB 383 amends AS 38.05.150(e) by adding the requirement that "a satisfactory mining plan for the coal's recovery" be submitted to the Department of Natural Resources before a coal prospecting permit may be changed into a lease. Presently the law simply requires a showing that the land contains coal in commercial quantities.

The purpose of the amendment is explained in detail on page 1 of the Legislative Council's Legislative Oversight of the Administration of Statute's" report.

JUDICIARY REPORT ON HB 385

Presently "agricultural and grazing lands" is a single classification for land. HB 385 would enable the division of lands to treat "agricultural lands" and "grazing lands" as two separate types of land classifications.

HB 385 also amends the homestead provision of the Alaska Land Act (AS 38.05) so that homestead entry may be permitted on either agricultural land or grazing land.

The proposal contained in HB 385 is a product of the Legislative Council's "1966 Legislative Oversight of the Administration of Statutes" and a more detailed explanation of its purpose is contained on page 4 of that report.

JUDICIARY REPORT ON HB 387

The Statehood Act requires that Alaska reserve the mineral rights to all lands which it obtains from the federal government by selection. Failure to do so results in forfeiture of the land to the federal government. AS 38.05.125 was designed to protect the state from the possibility of losing land to the federal government through such forfeiture by making the mineral right reservation contained in AS 38.05.125 automatically a part of every contract involving the sale of state land which has been selected from the federal government. However, through an apparent oversight, the present wording of AS 38.05.125 fails to protect the state where the Department of Natural Resources has failed to place a mineral reservation in a contract involving the sale of land which was acquired by escheat or foreclosure after having been originally acquired from the federal government and later sold. Insertion of the word "originally" into AS 38.05.125, as proposed by HB 387, would remedy the department's oversight in such a situation.

The Statehood Act does not require that mineral rights be reserved in sales of state land acquired by means other than selection from the federal government. However, under the present wording of AS 38.05.125 only land acquired by escheat or foreclosure can be sold with mineral rights. HB 387 would expand the power to sell mineral rights to include land acquired by gift. By way of amendment the Judiciary Committee also proposes to add lands acquired by "purchase, exchange or condemnation" to the category of lands which may be sold with mineral rights.

The proposal contained in HB 387 is a product of the Legislative Council's "1966 Legislative Oversight of the Administration of Statutes" and a more detailed explanation of its purpose is contained on page 8 of that report.

JUDICIARY REPORT ON HB 389

In Liberty National Insurance Co. v. Eberhart, Sup. Ct. Op. No. 281 (February 8, 1965) the state supreme court declared that AS 21.10.160 "attempts to regulate a matter of procedure which is within the province of this court, and is therefore ineffective".

Since there is a supreme court rule containing a provision substantially similar to that in AS 21.10.160, HB 389 proposes a repeal of the statutory provision.

A detailed explanation of the Liberty National Insurance case and the reason for repealing AS 21.10.160 can be found on page 17 of the Legislative Council's "1966 Legislative Oversight of the Administration of Statutes" report.

JUDICIARY REPORT ON HB 390

In Thrift Shop v. Alaska Mutual Savings Bank, Sup. Ct. Op. No. 277, (January 29, 1965) the Alaska supreme court concluded that AS 09.45.070(b) attempts to regulate a matter of practice and procedure governed by Civil Rule 18(a) of the supreme court.

Since there is a supreme court rule containing a provision substantially similar to that in AS 09.45.070(b), HB 390 proposes a repeal of the statutory provision.

A detailed explanation of the Thrift Shop case can be found on page 19 of the Legislative Council's "1966 Legislative Oversight of the Administration of Statutes" report.

JUDICIARY COMMITTEE MINUTES

March 7, 1966

Chairman Guess called the meeting to order at 10:00 a.m.
All members were present.

Mr. Banfield appeared with a draft of a committee substitute for HB 373. Commissioner Underwood also appeared at the request of the committee. The committee discussed the draft and by agreement made some changes. Mr. Stevens moved that the committee substitute as agreed upon by the committee "Do Pass". Motion passed without objection.

The committee discussed HB 436. Mr. Stevens moved that HB 436 be prepared as a committee substitute with an effective date of January 1, 1967 and that the language be clarified by changing "it" to "ordinance" in both paragraphs of the bill. Motion passed without objection.

The committee discussed drafts of committee substitutes for HB 384 and 386 with Mr. Edwards and Commissioner Holdsworth. It was decided to continue work on the two committee substitutes and take them up at a later meeting.

Meeting adjourned.

JUDICIARY COMMITTEE REPORT ON CSHE NO. 373.

Under present law, no accident report may be used in evidence in a criminal or civil action arising out of the accident that is the subject of the report. Under CSHE 373, an accident report may be used in any court or other proceeding subject to the rules of the court (1) by the person who submitted the report while testifying to refresh his recollection of matters contained in the report; (2) to impeach the credibility of the person who submitted the report; and (3) in evidence subject to all valid objections to the admissibility of the report.

It would be unconstitutional to allow an accident report to be used in evidence in a criminal action against the person who made the report and this exception is noted in (b) of the bill.

Under (c) a person involved in the accident, including the insurers or attorneys of those persons, may inspect and copy the reports. The department shall furnish these persons with copies or certified copies of the reports on demand and a reasonable charge can be made for the copies.

JUDICIARY COMMITTEE REPORT ON CASE 436

When laws are codified, they are brought together and arranged according to subject matter in one or more books, either under an alphabetical arrangement or some other plan of classification. CASE 436 requires that all cities codify their ordinances and have copies of the ordinances available to the public or they cannot impose criminal penalties for violation of the ordinances.

Many cities have already codified their ordinances but in order that there will be time for the other cities to do so, the effective date of this bill is January 1, 1967.

JUDICIARY COMMITTEE MINUTES

MARCH 8, 1966

Chairman Guess called the meeting to order at 2:00 p.m.
All members were present.

The committee discussed SB 267. Mr. Josephson moved "Do Pass". Motion passed without objection.

The committee considered House Resolution No. 2. Mr. Taylor moved "Do Pass". Motion passed without objection.

The committee discussed a draft of a bill to have coroners decide to what mortuary a body shall be sent if there are no instructions from the next of kin. The committee counsel was asked to draft the bill for introduction by the committee based on the discussion.

The committee considered HB 353 on which they had previously held a public hearing. Mr. Guess moved "Do Pass" and the motion passed without objection. Mr. Josephson signed "Do Pass" with attached amendment.

The committee discussed HB 263. Mr. Stevens moved that the bill be amended to state that it would only take effect when the U. S. or Alaska Supreme Court extended the rule in Gideon v. Wainwright, 372 U.S. 335, to misdemeanors and that HB 263 as amended "Do Pass". Motion passed without objection.

Meeting adjourned.

JUDICIARY COMMITTEE REPORT ON HB 263 as Amended

The United States Supreme Court has ruled (*Gideon v. Wainwright*, 372 US 335) that indigent defendants charged with felonies must be provided counsel by the states. This doctrine has been extended at the lower federal court level to include the defense of indigents charged with misdemeanors.

HB 263 as amended will not take effect unless the United States or the Alaska Supreme Court extends the rule of *Gideon v. Wainwright* to cover misdemeanors. If this extension of the rule takes place, then under HB 263 as amended an Agency for Public Defense will be established in the Office of the Governor. The agency will provide legal counsel to an indigent accused of committing a misdemeanor.

The agency will be administered by the public defender and two assistant attorneys. Their qualifications are set out in Sec. 44.19.740 of the bill.

The bill does not preclude a court, either on its own motion or upon application of the agency or an indigent defendant, from appointing an attorney other than an Agency attorney to represent or to assist in representing an indigent defendant at any stage of the proceedings or on appeal.

JUDICIARY COMMITTEE REPORT

on

HOUSE BILL NO. 353

1. GENERAL.

HB 353 is concerned with what is commonly called wire-tapping or eavesdropping. Section 280 pertains to the misuse, interception, and divulgence of messages sent by wire or radio and Section 290 is concerned with the recording or listening to oral conversations without the consent of at least one of the parties to the conversation. A violation of any one of the sections of the bill is made a misdemeanor with a maximum penalty of \$1,000 fine or imprisonment for one year, or both.

Under the federal act, in order to obtain a conviction, both interception and divulgence must be proved. This facet of the federal act has been extensively criticized by the U. S. Attorney General's office. Also, it is not clear under the federal act whether an innocent interception is a crime and the federal courts have split on the question. Section 280 of HB 353 avoids those problems.

2. SECTIONAL ANALYSIS.

Section 280(a) applies to the employees of a common carrier communications system. It prohibits the employee who takes the message for transmission, the employee receiving the message and any employees assisting in those operations, from divulging or releasing in any manner the meaning of the message, except to the persons listed in this section, through authorized channels. It is to be noted that a court may order the divulgence of a message.

Section 280(b) deals with the initial acquisition of a message by persons through the interception of the message at any time. The section contemplates an intentional interception. It should be noted that under this section, the interception alone constitutes a prohibited activity. There is no need to prove interception and divulgence, although the latter activity is also prohibited by this section.

Section 280(c) prohibits a person for whom the message is not intended, regardless of the means by which that person received the message, from using the information he has received for his own or another's benefit.

Section 280(d) prohibits a person from disclosing the meaning of the message when the person has actual knowledge or should reasonably be expected to know that the communication originally was obtained in violation of section 280. In this case, the person would, of course, also be violating section 280(c) if the person used the information obtained for his own or another's benefit.

Section 280(e) prohibits a person who is not entitled to information, but becomes aware of the contents of a message although not actually in physical receipt of a message, from in any way divulging the meaning of the contents of the message, or from using the information for his own or another's benefit.

ORIGIN OF SECTION 280. Sec. 280 is based primarily on section 605 of the Federal Communications Act. The bill does not make innocent interception a crime except in the case of a person using information obtained for his own or another's benefit or the person divulges any information he has obtained.

Section 290 makes it a criminal offense to listen to or record any oral conversation without the consent of one of the parties to the conversation. It covers not only a telephone conversation, but any oral conversation in an office, home, car, boat, or any other place a conversation might be held. It prohibits the illegal use of any type of eavesdropping device, electronic or otherwise.

Section 290(2) prohibits a person from using information obtained through illegal use of an eavesdropping device for his own or another's benefit.

Section 290(3) prohibits a person from revealing the meaning of any conversation heard by means of the illegal use of an eavesdropping device; and

Section 290(4) prohibits a person who becomes aware of the contents of a conversation from revealing the meaning of the conversations if he knows or reasonably should know that the information he has received was originally obtained by the illegal use of an eavesdropping device.

SUPPLEMENTARY COMMENT - EFFECT OF BILL ON POLICE AND ADMISSIBILITY OF EVIDENCE. Neither section 290 or section 300 (the exemption section) makes any exception for law enforcement officers. A law enforcement officer is subject to the same penalties as a private citizen who violates the provisions of

the bill. Law officers would be permitted under section 290(1) to record and listen to a conversation with the consent of one of the parties to the conversation. The most common examples of when this provision would be applicable would be in the case of a kidnapper who has told the victim's family he will call them or obscene phone calls.

Along this line, it is to be noted that only six states permit, by statute, law enforcement officers to obtain evidence by wiretap or other means. They are Maryland, Massachusetts, Louisiana, Nevada, New York and Oregon. Of these six states, only Louisiana does not specifically require a judicial order preceding the tap.

Six states prohibit, by statute, the admission of any evidence obtained in violation of a wiretap or eavesdropping statute. They are Maryland, Nevada, Illinois, Rhode Island, Oregon and Pennsylvania. Overall, 39 states, by statute, prohibit wiretapping or electronic eavesdropping, while 11 states prohibit only physical interference with wires. In regard to evidence obtained by wiretap or other eavesdropping devices being used in a court proceeding, the bill does not in any way change the existing law of Alaska. The admittance or rejection of such evidence is left to case law and the rules governing the admissibility of evidence as interpreted by the court.

Sec. 300 of the bill simply lists the activities which are not to be considered criminal under the provisions of the statute and is self-explanatory.

3. REPEALS.

Sec. 2 of the bill will repeal provisions in the present law that will duplicate provisions of the proposed bill if enacted. Sec. 2 amends AS 42.20.050 by deleting subsection 1 which makes it a crime for one to divulge the contents of a message to any person other than the party for which it was intended, his attorney, or agent. This is covered by section 280 of the proposed bill.

Sec. 3 repeals AS 42.20.100 which deals with persons taking messages from a telegraph wire or intercepting a message to which they are not entitled. This activity is covered in section 280 of the bill.

4. AMENDMENT.

The amendment offered by Mr. Josephson is almost identical to secs. 141.720 - 141.990 of the Oregon Revised Statutes. The amendment allows the presiding judge for the judicial district

in which the interception will take place to allow an interception of telecommunications, radio communications or conversations by peace officers if there are reasonable grounds to believe that a crime directly and immediately affecting the safety of human life or the national security has been committed or is about to be committed. Also, there must be reasonable grounds to believe that evidence will be obtained essential to the solution of the crime, or which may enable the prevention of the crime and there must be no other means readily available for obtaining the information.

The order must be applied for by the district attorney with the approval of the attorney general whether the interception is to be made by peace officers of the state or a political subdivision. The court may examine under oath the district attorney, a witness he produces, or anyone the court wishes to question. If the court issues the order for interception, it is effective for 10 days under this amendment. The Oregon law allows 60 days. The order may be renewed for 10 days at a time.

The amendment makes it a misdemeanor to use an expired order or to release any information about the application or any supporting documents or testimony. The presiding judge shall, however, report to the legislature the number of orders and renewals issued and also the nature of the reasons for issuance.

A M E N D M E N T

Offered in the HOUSE

By Mr. Josephson

To HB 353

Page 4, between lines 7 and 8 insert new sections to read:

Sec. 11.60.320. ORDER FOR INTERCEPTION OF TELECOMMUNICATIONS, RADIO COMMUNICATIONS OR CONVERSATIONS.

(a) An ex parte order for the interception of telecommunications, radio communications or conversations by peace officers of the state or of a political sub-division, may be issued by the presiding judge for the judicial district in which the interception will take place, upon application of a district attorney with the approval of the Attorney General, setting out fully the facts and circumstances upon which the application is based and stating that:

(1) there are reasonable grounds to believe that a crime directly and immediately affecting the safety of human life or the national security has been committed or is about to be committed;

(2) there are reasonable grounds to believe that evidence will be obtained essential to the solution of such crime, or which may enable the prevention of such crime;

(3) there are no other means readily available for obtaining such information.

(b) Where statements are solely upon the information and belief of the applicant, the precise source of the information and the grounds for the belief must be given.

(c) The applicant must state whether any prior application has been made to obtain telecommunications, radio communications or conversations on the same instrument or from the person and, if such prior application exists, the applicant shall disclose

the current status thereof.

(d) The application and any order issued under this section shall identify fully the particular telephone or telegraph line, or other telecommunication or radio communication carrier or channel from which the information is to be obtained and the purpose thereof.

(e) The court shall examine upon oath or affirmation the applicant and any witness the applicant desires to produce or the court requires to be produced.

(f) Orders issued under this section shall not be effective for a period longer than 10 days, after which period the court which issued the warrant or order may, upon application of the officer who secured the original warrant by application, in its discretion, renew or continue the order for an additional period not to exceed 10 days. All further renewals thereafter shall also be for a period not to exceed 10 days.

Sec. 11.60.330. PROCEEDING UNDER EXPIRED ORDER PROHIBITED. An officer who knowingly proceeds under an order which has expired and has not been renewed as provided in sec. 320 of this chapter is considered to act without authority under sec. 320 of this chapter and shall be subject to the penalties provided in sec. 350 of this chapter, as though he had never obtained the order or warrant.

Sec. 11.60.340. RECORDS CONFIDENTIAL. The application for any order under sec. 320 of this chapter and any supporting documents and testimony in connection with it shall remain confidential in the custody of the court, and these materials shall not be released or information concerning them in any manner disclosed except upon written order of the court. No person having custody of any records maintained under

secs. 320 - 340 of this chapter may disclose or release any materials or information contained therein except upon written order of the court.

Sec. 11.60.350. PENALTY FOR VIOLATION OF SECS. 330 or 340. Violation of sec. 330 or 340 of this chapter is punishable, upon conviction, by a fine of not more than \$3,000 or by imprisonment in the penitentiary for not more than three years, or by both.

Sec. 11.60.360. REPORT TO LEGISLATURE. Each presiding judge shall make a report to the legislature at the beginning of each session giving the number of orders issued under sec. 320 of this section and any renewals of those orders and the nature of the reasons for issuance.

Page 4, line 3 - Insert after section number "PENALTY FOR VIOLATION OF SECS. 280 and 290."

Page 4, line 8 - Change "Sec. 11.60.320" to "Sec. 11.60.370."

Chairman Guess called the meeting to order at 3:00 p.m.
All members were present.

The committee considered three senate bills, SB 234, 209 and 310.
After discussion of the bills, Mr. Stevens moved that they "Do
Pass" and asked unanimous consent. There were no objections.

The committee then considered HB 490 and the bill was moved
"Do Pass" without objection.

The committee discussed HB 450. The committee amended the
bill in the following manner:

Page 1, line 19 and 20: add "minority" before "member"
on both lines.

Page 2, delete lines 5 and 6 and renumber accordingly.

Page 6, delete lines 24 - 28 and insert:

Sec. 24.55.200. PUBLICATION OF RECOMMENDATIONS.
After a reasonable time has elapsed, the public examiner
shall present his opinion and recommendations in writing
to the governor. If the situation is not remedied
within a reasonable time, the public examiner shall submit
his opinion and recommendations in writing to the members
of the legislature. The public examiner shall include with
his opinion any reply made by the agency.

Mr. Stevens moved that it "Do Pass" as amended. There were
no objections.

Meeting adjourned.

JUDICIAL COMMISSION REPORT ON SB 134

AS 09.35.090 exempts a homestead from judicial sale for the satisfaction of any liability or judgment up to \$8,000 and AS 34.15.140(b) exempts a homestead up to \$5,000 from the debts of either or both tenants when it is held by tenants by the entirety. SB 134 changes the \$5,000 to \$8,000 so that the two homestead exemptions will be in the same amount.

JUDICIALY CONSTITUTE REPORT ON LB 209

Under AS 20.10.020 written consent to adopt a minor of illegitimate birth who has not been legitimized shall be filed before a hearing on the petition by the mother but the consent of the natural father need not be obtained or notice given him.

AS 20.10.040 says "Consent for adoption of a minor is not required" from an insane parent, a parent who abandoned the child, etc. SB 209 adds to AS 20.10.040 the exact language from AS 20.10.020 that consent is not required by the natural father so that the two sections are consistent.

JUDICIARY COMMITTEE REPORT ON HB 450

HB 450 creates in the legislative branch the office of public examiner. The examiner is selected by a committee composed of the president of the senate, a minority member of the senate appointed by him, the chairman of the senate judiciary committee and the same members from the house. The name of the person selected is placed before the legislature for appointment.

The public examiner cannot be a candidate for or hold any other state office or be engaged in any other occupation for reward or profit. His term is four years but he can be removed by a two-thirds vote in each house of the legislature for neglect of duty, misconduct or disability. He receives \$20,000 a year.

The public examiner may investigate the administrative acts of agencies as set out in Sec. 24.55.150 of the bill. He shall investigate any complaint which is an appropriate subject for investigation under that section unless there is a reason why he should not as set out in Sec. 24.55.110 or he may investigate on his own motion.

The concept of the public examiner is modeled after the Swedish ombudsman. Ombudsman legislation has also been adopted in Denmark, Norway, Finland and New Zealand. A bill to establish an office similar to that of the ombudsman at the federal level was introduced in Congress last session by Rep. Reuss of Wisconsin. Because of the tremendous growth in scope and power of administrative agencies at both the state and federal levels, the ombudsman concept is currently receiving much attention and study. The concept is based upon the premise that an independent investigator, with access to official information, may, by acting upon citizen complaints, improve the fairness and efficiency of government operations by bringing to official and public attention the errors and weaknesses of agencies.

Sec. 2 of this bill sets out that there is a rule change in this bill. The section containing the change must be approved by a two-thirds vote.

JUDICIARY COMMITTEE REPORT ON SB 310

Under the Alaska Business Corporation Act, there is a procedure for registering a corporate name. (AS 10.05.033--042) SB 310 sets out that the registration of a corporate name gives the exclusive right to the use of the name and that the use by another of the same or a deceptively similar name may be enjoined and a cause of action for damages exists.

JUDICIARY COMMITTEE REPORT ON HB 490

At the present time, we cannot have workmen's compensation hearings outside the state. HB 490 allows the Alaska Workmen's Compensation Board to arrange to have hearings in other states or territories of the U.S. or the District of Columbia. The hearing would be conducted by the board or officer having authority to hear workmen's compensation cases in that state, etc. The testimony and proceedings would be reported to the Alaska board and be a part of the record in the case. Evidence taken at the hearing outside the state would be subject to rebuttal upon final hearing before the Alaska Board.

Chairman Guess called the meeting to order at 3:00 p.m.
All members were present.

The committee discussed CSSB 213 and HB 363. The committee asked that a committee substitute be prepared for HB 363 to incorporate the following amendments:

Page 1, line 15, delete ", when considered advisable,"

Page 1, delete lines 19 and 20 and insert "installment. If the employer agrees, the installment is forwarded by the employer to the clerk of the superior court which entered the judgment or the court trustee, if there is one, and the amount of the installment is exempt from execution."

Mr. Stevens moved that CSSB 213 and CSHB 363 "Do Pass". There were no objections.

The committee discussed a bill to have coroners decide to what mortuary a body should be sent which was prepared according to the committee instructions of March 8th. Mr. Stevens moved that the committee introduce the bill. There were no objections.

The committee discussed CSHB 302 which they had instructed be prepared at the meeting of March 3rd. Mr. Guess moved that CSHB 302 "Do Pass". There were no objections.

The committee then considered HB 220. Mr. Guess moved "Do Pass". Motion passed without objection.

The committee discussed HB 424 and Mr. Stevens moved "Do Pass". Motion passed without objection.

Meeting adjourned.

JUDICIARY COMMITTEE REPORT ON CS FOR SB NO. 213

Under present law there is some confusion about the meaning of AS 09.35.080 (1) which sets out what property is exempt from execution. It says that the earnings of a person received for his personal services rendered at any time during the 30 days preceding the levy on the earnings are exempt from execution up to a set amount. Does this mean that if the person has earned the money but not actually received it, that it is not exempt under this section? In order to improve and clarify this law on exemptions, sec. 1 of CS for SB No. 312 exempts all income of a person which is due to him or received by him from any source at any time during the 30 days before the levy up to a set amount. The exempt amount is not changed by this bill. The result is that any income, not just earnings, which has been received by the person or which is due to the person in the 30 day period preceding the levy is all considered and when the person has received the exempt amount, the rest is subject to the execution.

Sec. 2 of the bill sets out a new exemption for child support payments which a person has been ordered to pay to a court trustee.

JUDICIARY COMMITTEE REPORT ON CS FOR HB 363

Under CS for HB 363, if the court orders a person to pay child support, the court may also order the party to arrange with his or her employer for an automatic payroll deduction. If the employer agrees to the automatic deduction, he forwards the sum to the clerk of the court which entered the judgment or to the court trustee, if there is one. If this procedure is followed, the amount of the child support is exempt from execution.

HB 363 was discussed by the four Anchorage superior court judges at a meeting January 24th and they felt that the bill "would accomplish the purpose intended".

REPORT OF JUDICIARY COMMITTEE ON CSHB 302

Under present law, a person under 21 years of age cannot enter premises licensed to sell alcoholic beverages unless he is accompanied by his parent or guardian or spouse who has attained the age of 21 years.

CSHB 302 would allow a nineteen or twenty year old to enter a restaurant for dining even though the restaurant was licensed to sell alcoholic beverages. The Alcoholic Beverage Control Board would designate the premises which could be considered as restaurants under this bill. If the premises were inside a city, the designation would have to have the approval of the city council and if the premises were outside a city but within a borough, then the borough assembly would have to give their approval.

JUDICIARY COMMITTEE

REPORT

Under this bill the coroner must keep a list of all morticians within a radius of 20 miles from his court. If a person dies and there is a police investigation or pending notification of next of kin, the coroner shall assign the body to a mortician who is chosen from the area list in rotation.

A mortician owning more than one mortuary shall be listed only once on the area list. If there are no morticians within the area, the coroner shall make other suitable arrangements.

JUDICIARY COMMITTEE REPORT ON HB 220

HB 220 deletes the word "proposed" on page 1, line 10, because there are no provisions for imposing the standards to anyone. The commission creates the standards, it does not propose them.

HB 220 relates to stop annexation. The bill requires that the local boundary commission obtain voter approval from the area to be annexed before beginning stop annexation. Under the present regulations of the commission (Title 6, Sec. 2051) relating to stop annexation, the commission may allow the vote proposed by HB 220 but the commission is not bound by the vote.

JUDICIARY COMMITTEE REPORT ON HB 424

A person who is accused of violating certain laws and regulations relating to motor vehicles may have his vehicle impounded. This results in an impounding fee and perhaps storage costs. Regardless of whether or not the accused person is found innocent or guilty of the charges, he is still required to pay the cost of impounding and storage. Under HB 424, if the person is found innocent of the charge, he is not liable for these costs.

Chairman Guess called the meeting to order at 2:00 p.m. Members present were Metcalf, Tillion, Taylor, Josephson and Stevens.

Mr. Don Kane, Assistant Attorney General, and Mr. Bruce Campbell representing the Department of Highways appeared on HB 368, 369 and 370.

Mr. Stevens moved that HB 370 "Do Pass" with the word "condemnation" removed on page 1, line 23 and with the words "on the state highway system" changed to read "under the federal aid primary and secondary system as defined in Title 23 of the United States Code" on page 1, lines 25 and 26, and with the definition of state highway system deleted from page 2, lines 4 - 7. Motion passed without objection. The committee recommended referral to the Finance Committee.

The committee discussed HB 368 but decided to hold the bill until such time as it obtained additional information relating to the necessity for the bill, a comparison with existing law on the subject in AS 08.60 and its effect on city and borough powers now existing under AS 08.60.

The committee then considered HB 369. Committee counsel was asked to draft a committee substitute on the basis of the discussion.

Meeting was adjourned.



An Act

79 STAT. 1028

To provide for scenic development and road beautification of the Federal-aid highway systems.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Highway Beau-
tification Act
of 1965.

TITLE I

SEC. 101. Section 131 of title 23, United States Code, is revised to read as follows: 72 Stat. 904.

“§ 131. Control of outdoor advertising

“(a) The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

“(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State. 72 Stat. 889.

“(c) Effective control means that after January 1, 1968, signs, displays, and devices shall, pursuant to this section, be limited to (1) directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning the lighting, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, and (3) signs, displays, and devices advertising activities conducted on the property on which they are located.

“(d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by agreement between the several States and the Secretary, may be erected and maintained within six hundred and sixty feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the

purposes of this Act. Nothing in this subsection shall apply to signs, displays, and devices referred to in clauses (2) and (3) of subsection (c) of this section.

"(e) Any sign, display, or device lawfully in existence along the Interstate System or the Federal-aid primary system on September 1, 1965, which does not conform to this section shall not be required to be removed until July 1, 1970. Any other sign, display, or device lawfully erected which does not conform to this section shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

"(f) The Secretary shall, in consultation with the States, provide within the rights-of-way for areas at appropriate distances from interchanges on the Interstate System, on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. Such signs shall conform to national standards to be promulgated by the Secretary.

"(g) Just compensation shall be paid upon the removal of the following outdoor advertising signs, displays, and devices—

"(1) those lawfully in existence on the date of enactment of this subsection,

"(2) those lawfully on any highway made a part of the interstate or primary system on or after the date of enactment of this subsection and before January 1, 1968, and

"(3) those lawfully erected on or after January 1, 1968.

The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

"(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

"(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

"(h) All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

"(i) In order to provide information in the specific interest of the traveling public, the State highway departments are authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable.

"(j) Any State highway department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State highway department shall be entitled to such payments unless the State maintains the control required under such agreement or the control required by this section, whichever control is stricter. Such payments shall be paid only from appropriations made to carry out this section. The provisions of this subsection shall not be construed to exempt any State from controlling outdoor advertising as otherwise provided in this section.

"(k) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section.

Information
centers.

Bonus payments.

"(l) Not less than sixty days before making a final determination to withhold funds from a State under subsection (b) of this section, or to do so under subsection (b) of section 136, or with respect to failing to agree as to the size, lighting, and spacing of signs, displays, and devices or as to unzoned commercial or industrial areas in which signs, displays, and devices may be erected and maintained under subsection (d) of this section, or with respect to failure to approve under subsection (g) of section 136, the Secretary shall give written notice to the State of his proposed determination and a statement of the reasons therefor, and during such period shall give the State an opportunity for a hearing on such determination. Following such hearing the Secretary shall issue a written order setting forth his final determination and shall furnish a copy of such order to the State. Within forty-five days of receipt of such order, the State may appeal such order to any United States district court for such State, and upon the filing of such appeal such order shall be stayed until final judgment has been entered on such appeal. Summons may be served at any place in the United States. The court shall have jurisdiction to affirm the determination of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the United States court of appeals for the circuit in which the State is located and to the Supreme Court of the United States upon certiorari or certification as provided in title 28, United States Code, section 1254. If any part of an apportionment to a State is withheld by the Secretary under subsection (b) of this section or subsection (b) of section 136, the amount so withheld shall not be reapportioned to the other States as long as a suit brought by such State under this subsection is pending. Such amount shall remain available for apportionment in accordance with the final judgment and this subsection. Funds withheld from apportionment and subsequently apportioned or reapportioned under this section shall be available for expenditure for three full fiscal years after the date of such apportionment or reapportionment as the case may be.

Notice of final determination.

62 Stat. 928.

"(m) There is authorized to be appropriated to carry out the provisions of this section, out of any money in the Treasury not otherwise appropriated, not to exceed \$20,000,000 for the fiscal year ending June 30, 1966, and not to exceed \$20,000,000 for the fiscal year ending June 30, 1967. No part of the Highway Trust Fund shall be available to carry out this section."

Appropriation.

Sec. 102. The table of sections of chapter 1 of title 23 of the United States Code is amended by striking out

"131. Areas adjacent to the Interstate System."

and inserting in lieu thereof

"131. Control of outdoor advertising."

TITLE II

Sec. 201. Chapter 1 of title 23, United States Code, is amended to add at the end thereof the following new section:

23 USC 101 et seq.

"§ 136. Control of junkyards

"(a) The Congress hereby finds and declares that the establishment and use and maintenance of junkyards in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

"(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made pro-

Apportioned funds, withholding.

79 STAT. 1091

vision for effective control of the establishment and maintenance along the Interstate System and the primary system of outdoor junkyards, which are within one thousand feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

Reapportionment of withheld funds.

"(c) Effective control means that by January 1, 1968, such junkyards shall be screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the system, or shall be removed from sight.

Definitions.

"(d) The term 'junk' shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

"(e) The term 'automobile graveyard' shall mean any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

"(f) The term 'junkyard' shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

"(g) Notwithstanding any provision of this section, junkyards, auto graveyards, and scrap metal processing facilities may be operated within areas adjacent to the Interstate System and the primary system which are within one thousand feet of the nearest edge of the right-of-way and which are zoned industrial under authority of State law, or which are not zoned under authority of State law, but are used for industrial activities, as determined by the several States subject to approval by the Secretary.

"(h) Notwithstanding any provision of this section, any junkyard in existence on the date of enactment of this section which does not conform to the requirements of this section and which the Secretary finds as a practical matter cannot be screened, shall not be required to be removed until July 1, 1970.

Landscaping and screening costs. Junkyards. Costs of relocation, etc.

"(i) The Federal share of landscaping and screening costs under this section shall be 75 per centum.

"(j) Just compensation shall be paid the owner for the relocation, removal, or disposal of the following junkyards—

"(1) those lawfully in existence on the date of enactment of this subsection,

"(2) those lawfully along any highway made a part of the interstate or primary system on or after the enactment of this subsection and before January 1, 1968, and

"(3) those lawfully established on or after January 1, 1968.

The Federal share of such compensation shall be 75 per centum.

"(k) All public lands or reservations of the United States which are adjacent to any portion of the interstate and primary systems shall be effectively controlled in accordance with the provisions of this section.

"(l) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to outdoor junk-

(5)

(2)

Handwritten signature

effective change

Comma

yards on the Federal-aid highway systems than those established under this section.

"(m) There is authorized to be appropriated to carry out this section, out of any money in the Treasury not otherwise appropriated, not to exceed \$20,000,000 for the fiscal year ending June 30, 1966, and not to exceed \$20,000,000 for the fiscal year ending June 30, 1967. No part of the Highway Trust Fund shall be available to carry out this section."

Appropriation.

SEC. 202. The table of sections of chapter 1, title 23, United States Code, is amended by adding at the end thereof the following:

72 Stat. 917.

"186. Control of junkyards."

TITLE III

SEC. 301. (a) Section 319 of title 23, United States Code, is revised to read as follows:

"§ 319. Landscaping and scenic enhancement

"(a) The Secretary may approve as a part of the construction of Federal-aid highways the costs of landscape and roadside development, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities reasonably necessary to accommodate the traveling public.

"(b) An amount equivalent to 3 per centum of the funds apportioned to a State for Federal-aid highways for any fiscal year shall be allocated to that State out of funds appropriated under authority of this subsection, which shall be used for landscape and roadside development within the highway right-of-way and for acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to such highways, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to the highway right-of-way reasonably necessary to accommodate the traveling public, without being matched by the State. The Secretary may authorize exceptions from this requirement, upon application of a State and upon a showing that such amount is in excess of the needs of the State for these purposes. Any funds not used as required by this subsection shall lapse. There is authorized to be appropriated to carry out this subsection, out of any money in the Treasury not otherwise appropriated, not to exceed \$120,000,000 for the fiscal year ending June 30, 1966, and not to exceed \$120,000,000 for the fiscal year ending June 30, 1967. No part of the Highway Trust Fund shall be available to carry out this subsection."

Appropriation.

(b) The table of sections of chapter 3 of title 23 of the United States Code is amended by striking out

"319. Landscaping."

and inserting in lieu thereof

"319. Landscaping and scenic enhancement."

SEC. 302. In order to provide the basis for evaluating the continuing programs authorized by this Act, and to furnish the Congress with the information necessary for authorization of appropriations for fiscal years beginning after June 30, 1967, the Secretary, in cooperation with the State highway departments, shall make a detailed estimate of the cost of carrying out the provisions of this Act, and a comprehensive study of the economic impact of such programs on affected individuals and commercial and industrial enterprises, the effectiveness of such programs and the public and private benefits realized thereby, and alternate or improved methods of accomplishing the objectives of this

Estimate and study.

Highway

Report to
Congress.

Act. The Secretary shall submit such detailed estimate and a report concerning such comprehensive study to the Congress not later than January 10, 1967.

Rules and reg-
ulations.
Ante, pp. 1028,
1030.

Sec. 303. (a) Before the promulgation of standards, criteria, and rules and regulations, necessary to carry out sections 131 and 136 of title 23 of the United States Code, the Secretary of Commerce shall hold public hearings in each State for the purpose of gathering all relevant information on which to base such standards, criteria, and rules and regulations.

Report to
Congress.

(b) The Secretary of Commerce shall report to Congress, not later than January 10, 1967, all standards, criteria, and rules and regulations to be applied in carrying out sections 131 and 136 of title 23 of the United States Code.

Appropriation.

Sec. 304. There is authorized to be appropriated the sum of \$500,000 to enable the Secretary of Commerce to carry out his functions under section 135 of title 23 of the United States Code relating to highway safety programs.

Sec. 305. Nothing in this Act or the amendments made by this Act shall be construed to authorize the use of eminent domain to acquire any dwelling (including related buildings).

TITLE IV

Sec. 401. Nothing in this Act or the amendments made by this Act shall be construed to authorize private property to be taken or the reasonable and existing use restricted by such taking without just compensation as provided in this Act.

Appropriation.

Sec. 402. In addition to any other amounts authorized by this Act and the amendments made by this Act, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Secretary of Commerce not to exceed \$5,000,000 for administrative expenses in carrying out this Act (including amendments made by this Act).

Short title.

Sec. 403. This Act may be cited as the "Highway Beautification Act of 1965".

Approved October 22, 1965, 2:30 p. m.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 1084 (Comm. on Public Works).
SENATE REPORT No. 709 (Comm. on Public Works).
CONGRESSIONAL RECORD, Vol. 111 (1965):

Sept. 15: Considered in Senate.

Sept. 16: Considered and passed Senate.

Oct. 7: Considered and passed House, amended.

Oct. 13: Senate concurred in House amendment.

JUDICIARY COMMITTEE MINUTES

MARCH 14, 1966

Chairman Guess called the meeting to order at 2:00 p.m. Present were members Metcalf, Tillion, Hillstrand, Taylor and Stevens.

The committee considered HB 435. The bill will be considered further when more material is available on it.

The committee discussed SB 4 and SB 238. No action was taken.

Meeting was adjourned.

February 19, 1966

M E M O R A N D U M

TO: William A. Egan
Governor

FROM: Warren C. Colver
Attorney General

RE: Nonprofit Corporation Law

Alaska's present nonprofit corporation law has remained basically unchanged since its enactment in 1913. At the urging of a number of Alaska attorneys the Department of Law made a study of the law. The Department concluded that our present law is inadequate and the State should adopt the Model Nonprofit Corporation Act drafted by the American Bar Association. The attached bill is an Alaska Nonprofit Corporation Act based on the Model Nonprofit Corporation Act, 1964 Edition.

In 1957 Alaska adopted the Model Business Corporation Act, which covers stock corporations. In that year the American Bar Association issued a revised version of its Model Nonprofit Corporation Act which had first been drafted in 1952. This model act had been revised primarily to bring it into accord with the Model Business Corporation Act. Again in 1964 the American Bar Association published a new edition of the nonprofit act. This latest edition follows as closely as possible the corresponding provisions of the business corporation act.

Adoption of the Model Nonprofit Corporation Act would result in these significant changes in Alaska law:

(1) The new law will enlarge the purposes for which nonprofit corporations may be formed. (10.20.005)

(2) It provides that a nonprofit corporation may make incidental income or profit in carrying on its primary nonprofit functions; for example, a nonprofit

William A. Egan
Governor

February 10, 1966
- 2 -

hospital may run a small gift shop. This incidental profit may not be distributed to members but must be devoted to the primary purposes of the corporation. (10.20.135)

(3) The law allows a nonprofit corporation to pay reasonable compensation to its members and directors for services rendered. This is not considered a prohibited distribution of income. (10.20.135)

(4) A nonprofit corporation which holds assets subject to limitations permitting their use only for charitable or similar purposes must, upon its dissolution, transfer these assets to an organization engaged in similar activities. (10.20.295)

The Model Nonprofit Corporation Act is designed to give an organization its basic authority and corporate status and to provide a method of administering the organization. It is not a regulatory statute which imposes controls. The major purpose of the law is to provide nonprofit organizations with a clear, orderly method of conducting its internal affairs and its relations with the State.

The American Bar Association has designed a set of official forms to accompany the act. If the act is adopted, these forms will be useful both to lawyers who must draft documents in compliance with the act and to the Department of Commerce which would administer the act.

As of 1964 the Model Nonprofit Corporation Act had been adopted, either as a whole or in large part, by the following jurisdictions:

Wisconsin - 1953	North Dakota - 1959
Alabama - 1955	Oregon - 1959
North Carolina - 1956	Texas - 1959
Virginia - 1956	District of Columbia - 1962
Nebraska - 1959	

In addition, Illinois, Missouri and Ohio have nonprofit laws substantially similar to the Model Act.

Attached to the bill is a chart which gives parallel sections. This may be of use to legislative committees which study the law.

WCC:jt
tef

Chairman Guess called the meeting to order at 10 a.m.
Present were Stevens, Metcalf, Tillion and Taylor.

Vic Carlson, Assistant City Attorney of Anchorage,
spoke on HB 427, HB 493 and SB 282. Mr. Don Berry,
Alaska Municipal League, spoke on HB 494.

3

Meeting was adjourned.

Chairman Guess called the meeting to order at 10:00 a.m. Present were Messrs. Metcalf, Tillion, Taylor and Stevens. Mr. Don Berry of the Alaska Municipal League and Rep. William Moran appeared on HB 493. Mr. Moran spoke in favor of the bill and Mr. Berry against it. No action was taken on the bill.

The committee next considered HB 9 and Mr. Taylor moved "Do Pass" and asked unanimous consent. There were no objections.

The committee considered SB 66 and the following two amendments to the bill were discussed:

On page 1, beginning on line 24, insert:

(c) Any zoning done by the division of lands, Department of Natural Resources, under (b) of this section, is not final until approved by concurrent resolution at the next regular session of the legislature.

On page 1, line 19, after "power" insert "within federal lands"

Mr. Stevens moved it "Do Pass with the amendments". Motion passed.

The committee then considered HB 279. The committee decided to limit sec. 2 of the bill to superior court judges and to make the following amendments:

Page 1, line 29, delete everything after "to" and on page 2, line 1, delete everything before "the".

Page 2, line 13, delete everything after "to" and delete all of line 14 and line 15 delete "then to"

Mr. Stevens moved that it "Do Pass with amendments". Motion passed.

The committee discussed SB 4 and the committee counsel was asked to prepare a committee substitute along the lines of the discussion.

Meeting was adjourned.

JUDICIARY COMMITTEE REPORT ON HB NO. 9

Since the 1960 presidential election, there have been numerous articles pointing out that many citizens, otherwise eligible to vote, were disfranchised because they changed their state of residence during the preceding year. When a person moves to a new state with the intention of taking up residence, he loses his legal residence in the state from which he has moved and usually loses the right to vote by absentee ballot in that state.

The 1963 program of Suggested State Legislation published by The Council of State Governments contains a discussion of "Loss of Voting Rights in Presidential Elections" beginning on page 212 and a "Uniform Act for Voting by New Residents in Presidential Elections" beginning on page 250. HB 9 is based on that Act.

HB 9 would allow new resident voters to vote for president and vice president of the United States if they have not been a resident of Alaska for a year if they would otherwise be qualified to vote. HB 9 contains safeguards against fraudulent and "double" voting in Sec. 15.30.140(2) and 15.30.150.

The philosophy underlying this bill is that residence in a state for a reasonable period of time might be essential to enable a voter to pass upon state and local candidates and issues, but that since the president is the representative of the entire nation, a change of residence from one state to another should not in any way detract from the voter's ability to make a choice for president.

JUDICIARY COMMITTEE REPORT ON SB 66

Under Public Law 88-608, which was passed by Congress on September 19, 1964, the Secretary of the Interior is required, 90 days before offering lands for sale, to notify the head of the government body of the political subdivision of the state having jurisdiction over zoning in the geographic areas within which the lands are located of the proposed sale so that the body has the opportunity of zoning in accordance with local land use and development. No sale may be conducted under the authority of Public Law 88-608 until zoning regulations have been enacted by the appropriate local authority.

In the absence of a political subdivision having zoning authority, the governor must be notified and the land to be sold must be zoned. In the unorganized borough outside of cities, there is presently no body having authority to zone lands. SB 66 is necessary to provide an agency with a zoning power in the unorganized borough where no political subdivision with a zoning power exists.

Under Sec. 6. of Art. X of the state constitution, the legislature "may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough". Under SB 66, the legislature delegates its power of zoning under certain circumstances. The legislature may nullify a zoning regulation promulgated under this bill in the usual manner, and the zoning which is done by the Division of Lands does not become final until approved by resolution of the Legislature under the judiciary committee amendment.

JUDICIARY COMMITTEE REPORT ON HCSSB NO. 4

Under sec. 1 of HCSSB No. 4, a candidate who loses in the primary election may not be elected to the same office by write-in votes in the general election unless the party nominee for the office has died, withdrawn, become disqualified or incapacitated.

Under sec. 2 of the bill, if an incumbent candidate for renomination dies, becomes disqualified or incapacitated between June 1 of the election year and 10 days before the primary election, his place on the ballot may be filled by party petition. If he dies, becomes disqualified or incapacitated in the 10 days before the primary election, then his name remains on the ballot and his votes are counted. If he is nominated at the party primary, then the vacancy is filled by party petition.

Chairman Guess called the meeting to order at 4:30 p.m. Members present were Messrs. Stevens, Josephson, Hillstrand, Metcalf and Taylor.

Rev. Richard Heacock, representing the Alaska Council of Churches and Rev. Ernest Jones, representing the Alaska Mission of the Methodist Church, appeared and spoke against SB 282.

Meeting was adjourned.

Vice-Chairman Josephson called the meeting to order at 2 p.m. Present were members Tillion, Metcalf, Taylor and Hillstrand.

The following persons appeared and spoke in favor of the Labor and Management Committee Substitute for HB 296: Bruce Monroe, Deputy Commissioner of Labor; Lewis Dischner, Alaska Teamsters Local 959; Mark Hensen, Coal Operators Assoc.; and Newton Cutler, D. K. MacDonald Co. of Alaska.

Mr. Taylor moved that CSHB 296 "Do Pass". Motion carried.

Meeting was adjourned.

I recommend the passage of SB 282 with the following amendments:

Amendment No. 1 Page 1. Add "Sec. 2. It is the intention of the legislature that this bill shall in no way be considered an attempt or intent to liberalize or to exempt the state from the limitations imposed by 15 U.S.C. Secs. 1171 - 1178."

Amendment No. 2 Page 1. Add "Sec. 3. This Act shall not remain in existence beyond June 30, 1971."

SB 282 amended as proposed above, would set out a limitation and a closing date in order to allow this type of pinball machine to phase out, and would also express the intention of the legislature not to exempt the state from the limitations imposed by 15 U.S.C. Secs. 1171 - 1178.

The majority committee report sets out the arguments for ~~and~~ against SB 282, and correctly states the position of the proponents of SB 282. There are, however, comments I feel should be made in support of proponent's position.

Our state statute prohibiting gambling, AS 11.60.140, is exactly the same as the Oregon statute prohibiting gambling, which is not surprising since Alaska took this statute from Oregon many years ago. Under the McKee case mentioned in the majority committee report, the Supreme Court of Oregon determined that free plays are not a thing of value. This is directly contrary to the finding of our Supreme Court. If these two courts differ, there must be a decided split in the determination as to whether or not free plays are a thing of value.

In U. S. v. 2 Coin-operated Pinball Machines, also cited in the majority committee report, the court determined that although pinball machines giving free plays are authorized by Kentucky state statute, they ~~may~~ not be exempted from the provisions of the federal law making it illegal to ship

them into a state. This would be similar to our position in SB 282 passed. It should be noted that the position of the opponents of the SB 282 that it ^{will} allow shipment of pinball machines into the state is not supported by case law.

Although the suggested amendment makes the question moot as to whether SB 282 exempts the state from 15 U.S.C. Secs. 1171 - 1178, the United States Attorney for Alaska received a letter from William G. Hunley, Chief of the Organized Crime and Racketeering Section of the Department of Justice in which Mr. Hunley sets out specifically that he does not feel that the enactment of SB 282 would authorize the importation of class 2 devices or replacement parts into the state through interstate or foreign commerce.

It is therefore clear that SB 282 does not legalize gambling nor does it allow new pinball machines or parts for the existing machines to come into Alaska. It merely allows pinball machines now in Alaska, which are less than 300, to be put back into a free play status, the same as they have been for years before the 1965 decision of the Alaska Supreme Court.

Emotionalism should play no part in the determination as to whether SB 282 should be passed. However, I feel that it is proper for the legislature to consider the economic effect of the supreme court decision on people who were for years in what was a legal business by law and who were suddenly caused to lose not only anticipated income but property rights and interests to their great financial detriment. I refer not only to the distributors and operators but also to the loss to be encountered by the ^(Sawyer) locations, the maintenance people, the warehousemen who handle the storage and moving of these machines and all other individuals who have annual

earnings incidental to the operation of pinball machines.
None of these people are part of a criminal syndicate.
They are Alaskans, many of whom have been here for 20 years
or more. They do not ask that the legislature legalize
gambling. They simply want the right to use the few pinball
machines now in Alaska with free plays until these machines
are worn out but not later than June 30, 1971. This is
very little to ask of the legislature. It should be granted
to them by the passage of SB 282.

I recommend the passage of SB 282 with the following amendments:

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them into a state. This would be similar to ~~our~~ position if SB 282 passed. It should be noted that the position of the opponents of the SB 282 that it will allow shipment of pinball machines into the state is not supported by case law.

Although the suggested amendment makes the question moot as to whether SB 282 exempts the state from 15 U.S.C. Secs. 1171 - 1178, the United States Attorney for Alaska received a letter from William G. Hunley, Chief of the Organized Crime and Racketeering Section of the Department of Justice in which Mr. Hunley ~~sets out~~ ^{advises} specifically that he does not feel that the enactment of SB 282 would authorize the importation of class 2 devices or replacement parts into the state through interstate or foreign commerce.

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Emotionalism should play no part in the determination as to whether SB 282 should be passed. However, I feel that it is proper for the legislature to consider the economic effect of the supreme court decision on people who were for years in what was a legal business by law and who were suddenly caused to lose not only anticipated income but property rights and interests to their great financial detriment. I refer not only to the distributors and operators but also to the loss to be encountered by the ^{business} locations, the maintenance people, the warehousemen who handle the storage and moving of these machines and all other individuals who have annual

earnings incidental to the operation of pinball machines. None of these people are part of a criminal syndicate. They are Alaskans, many of whom have been here for 20 years or more. They do not ask that the legislature legalize gambling. They simply want the right to use the few pinball machines now in Alaska with free plays until these machines are worn out but not later than June 30, 1971. This is very little to ask of the legislature. It should be granted to them by the passage of SB 282.

MAY 1967

For many years, Alaska has had a law which would allow the state to seize and destroy gambling implements (AS 11.45.040), and a law taxing coin-operated devices (AS 43.35). The taxation law contains a section stating that it shall not be construed in any way to legalize gambling or the possession of any gambling device. Pinball machines have long been used and Alaska taxes paid on them under AS 43.35, which is the law amended by SB 282. AS 43.35.090(2) describes what constitutes a pinball or coin-operated device for the purposes of taxation. It states that a pinball machine, among other things, is one which awards free plays. SB 282 adds the language "but free plays shall not be construed as a thing of value".

~~Requested for this amendment arises because~~ the Alaska Supreme Court decided in State v. Pinball Machines, Sup. Ct. Op. No. 298, August 19, 1965, that pinball machines are gambling implements which are subject to seizure and destruction under the law. According to the court, the essential elements of gambling are (1) price, (2) chance and (3) prize, and whenever some tangible thing is "used or mainly designed or suited for gambling" it is a gambling implement. The court concluded that free plays were a "prize" and said, "It is not the essence of gambling that the element of prize have a monetary value. If that which one seeks to attain, regardless of whether it has value in money, may be attained by chance after the payment of a price, then one is gambling." Under this case, pinball machines are gambling implements if the three essential elements are present.

The proponents of this bill feel that the ~~statement in the bill that free plays shall not be construed as a thing of value~~ will indicate ^{leave in} the legislative intent that pinball machines are not gambling implements ^{by eliminating the} since they do not give a "prize" which is one of the three essential elements of gambling.

This may or may not be so. As already stated, AS 43.35 taxes coin-operated devices and contains a section stating that it does not legalize gambling. It is established law in the United States that you ^{MAY} ~~can~~ tax things which are illegal. The law ^{reference and prohibition of} ~~on what is gambling and prohibiting it~~ is found in Title 11, Criminal Law. Therefore, SB 282 by amending AS 43.35 instead of Title 11 creates further litigation to determine whether the amendment of the taxation law changes the effect of the supreme court case which was decided on the sections found in the criminal law.

If ^{our} ~~the~~ court should find that ~~the~~ enactment of SB 282 means that pinball machines are legal in Alaska because they do not give a prize since free plays have no value, then this raises the question as to whether new pinball machines or parts for existing ones can be brought into the state. In October, 1962, the federal law in Title 15, of the United States Code, Secs. 1171 - 1178 was amended so that transportation of gambling devices or parts for them in interstate commerce is not legal. Since that time, no new machines or parts have entered Alaska.

However, under sec. 1172 of Title 15 USC, the transportation of gambling devices into a state is possible if the state has enacted a law (1) providing for the exemption of the state from the provisions of the Sec. 1172 or (2) in which the gambling device is specifically enumerated as lawful in a statute of the state. The question arises as to whether SB 282 would exempt Alaska from this federal law and allow the importation of pinball machines or their parts *into the state.*

The proponents of this bill state that the bill does not allow pinball machines or their parts to be brought into the state. Their position is as follows: McKee v. Foster, 347 P2d 585, decided by the Supreme Court of Oregon in December 1959, states that free play pinball machines are not gambling devices, and are not outlawed by any state law.

supreme court, and SB 282 would put Alaska in the same position as Oregon. Since Oregon is not exempted from the federal law previously discussed and therefore cannot import pinball machines, Alaska would not be exempted.

Another case cited in support of proponent^s position is United States v. Two Coin-Operated Pinball Machines, 241 F. Supp. 57 (United States District Court, 1965).^{In that case} it was held that pinball machines are not specifically enumerated as lawful devices in Sec. 436.230 (5) Kentucky Revised Statutes and therefore are not exempted from the application of 15 U.S.C. Secs. 1171 - 1178, Title 15 USC. The Kentucky statute, Sec. 436.230 (5) describes a pinball machine which gives free plays and says that "playing such device, shall not be considered as gambling, and subsection (1) of this section shall not apply to any person keeping, managing, operating, conducting, or owning such device which only gives a free game or games for the skill of the player playing such machine or device." Subsection (1) makes it illegal for a person to operate, conduct, etc. enumerated types of gambling.

The proponents of SB 282 point to the Nevada law as the only one which exempts a state from the provisions of 15 U.S.C. Sec. 1171 - 1178, Sec. 463.410 of the Nevada Statutes is entitled "Declaration of state's exemption from operation of provisions of 15 U.S.C. Sec. 1172"; and Sec. 463.420 is entitled "Legal shipments of gambling devices, slot machines into State of Nevada".

The opponents of SB 262 state that if it is enacted, it ^{may} ~~will~~ exempt Alaska from the federal law, and pinball machines and parts can be brought into Alaska. In a memorandum to Mr. Guess dated March 16, 1966,^{Memorandum} General Colver stated "If the courts were to take the view that SB 282 did in effect legalize the kind of pinball machine described in AS 43.35.090 (2),

federal law" ... because the federal law says "it shall not be unlawful to transport in interstate ... commerce any gambling device into any state in which the transported gambling device is specifically enumerated as lawful in a statute of that state."

The opponents of the bill feel that this bill opens the state to a form of gambling which will continue until prohibition by some future legislature. The proponents state that the bill will allow those people who have large investments in pinball machines to operate these machines with the hope that they will pay for themselves before they are worn out. The life of these machines has been stated to be about five years.

The Department of Revenue taxation records shows that taxes were paid on 614 machines in 1962, 462 in 1963, 327 in 1964 and 311 in 1965. The proponents of SB 282 state that this bill affects less than 300 machines and that some machines are being used as parts for other machines and that within five years all the machines will be worn out. The opponents of the bill feel this statement is unimportant since new machines and parts can be imported if the bill passes.

This report does not attempt to go into the pros and cons of gambling but only to recognize the legal and factual arguments for and against SB 282.

For many years, Alaska has had a law which would allow the state to seize and destroy gambling implements (AS 11.45.040), and a law taxing coin-operated devices (AS 43.35). The taxation law contains a section stating that it shall not be construed in any way to legalize gambling or the possession of any gambling device. Pinball machines have long been used and Alaska taxes paid on them under AS 43.35, which is the law amended by SB 282. AS 43.35.090(2) describes what constitutes a pinball or coin-operated device for the purposes of taxation. It states that a pinball machine, among other things, is one which awards free plays. SB 282 adds the language "but free plays shall not be construed as a thing of value".

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This report does not attempt to go into the pros and cons of gambling but only to recognize the legal and factual arguments for and against SB 282.