

NO. 1
SENATE
BILLS

SCR-27

March 6, 1970

Mel J. Personett, Commissioner
Department of Public Safety
Pouch "N"
Juneau, Alaska 99801

Subject: SCR-27 - Hitchhiking

Dear Commissioner Personett:

After our meeting with you on Thursday, March 5, regarding SCR-27, it was the desire of the committee to relay our expression on this resolution. The committee wishes to see the Department of Public Safety reinstate the old regulation on hitchhiking. Based on your commitment to try and accomplish this, the committee has placed SCR-27 in a "Hold" status.

Sincerely,

Barry W. Jackson
Chairman
House Judiciary Committee


BWJ/mm

MEMORANDUM**State of Alaska**

SCR-27

TO: Representative Barry Jackson, Chairman
House Judiciary Committee

DATE : March 24, 1970

FROM:  Commissioner Mel J. Personett
Department of Public Safety

SUBJECT: Progress Report - SCR 27

We are currently reviewing all of 13 AAC in view of both SCR 27 and miscellaneous comments from the public and the legal profession.

We anticipate public notice and hearings within the next month or so.

As stated before, the hitchhiking section will be revised to read as previous to the 1969 revision.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

April 24, 1970

M E M O R A N D U M

TO : Rep. Mildred Banfield, Chairman
Subcommittee on Dept. of Public Safety Regulations
House Judiciary Committee

FROM : Arthur H. Peterson, Revisor of Statutes

SUBJECT: Recently proposed changes in regulations of the
Department of Public Safety

One of the main legislative concerns about the public safety regulations has been the new (as of December 31, 1969) hitchhiking regulation. This regulation, currently in effect, reads as follows:

"13 AAC 02.180. PEDESTRIAN SOLICITING RIDE OR BUSINESS. A person may not stand on or along a highway for the purpose of soliciting a ride, employment, business or a contribution from the occupant of a vehicle."

Since this is such a broad, flat prohibition of hitchhiking, it was suggested by the House Judiciary Committee that if any regulation on this matter is necessary the pre-December 31, 1969 provision should be re-adopted. That provision reads as follows:

"104.67 PEDESTRIANS SOLICITING RIDES OR BUSINESS. No person shall stand in a roadway in a manner that will distract a driver's attention for the purpose of soliciting a ride, employment or business from the occupant of any vehicle."

The proposed amendment would have 13 AAC 02.180 read as follows:

"13 AAC 02.180. PEDESTRIAN SOLICITING RIDE OR BUSINESS. A person may not stand on or along a roadway in a manner that will distract a driver's attention for the purpose of soliciting a ride, employment, business or a contribution from the occupant of a vehicle."

This amendment changes "highway" to "roadway", adds "in a manner that will distract a driver's attention" and retains

"or a contribution" which is in the current regulation. And it retains the words "or along", referring to the roadway. "Highway" is a broader term than "roadway" (see 13 AAC 10.115 and 13 AAC 10.280), with the latter meaning just the main traveled portion of a highway; so this part of the amendment is a step in the direction the legislature desired; however, this will have no effect because the words "or along" are retained, thus defeating the legislative intent. The "in a manner . . ." language was taken from the pre-December 31, 1969 provision, and would be helpful if it were not for the "or along". Why the "or a contribution" was put in the current regulation and retained in the proposed one I don't know.

The effect of the regulation, with the proposed amendments, would be to continue the prohibition on hitchhiking (because if you are standing "along" a roadway hitchhiking, your purpose is to attract [or "distract"?] a driver's attention to your need for a ride). It also prohibits such things as hailing a bus, setting up a roadside vegetable or lemonade stand, and soliciting contributions for the blind. It is my opinion, and I believe this was concurred in by Commissioner Personett in his testimony before the House Judiciary Committee (at least with regard to hitchhiking), that there is no need for such broad prohibitions in Alaska. The Department of Public Safety's determination to impose such prohibitions, in the face of the Senate's passage of SCR 27 and the House Judiciary Committee's recommendations on the matter, appears unjustifiable.

It might also be noted that the history note at the end of the proposed 13 AAC 02.180 identifies the amendments as being at the request of the legislature. This does not conform to the Drafting Manual for Administrative Regulations (to which adherence is required by AS 44.62.060(a)), and I don't know why this was done. It should, of course, be deleted before the regulation is printed for distribution in the Alaska Administrative Register.

Another main concern of the committee was the problem involving buses stopping on the highway, prohibited by 13 AAC 02.-340(a). The proposed amendments add an exemption in sec. 340(b) for school bus drivers loading or unloading school children, and add a new subsection establishing a presumption that it was the registered owner who left a vehicle stopped, parked or standing in violation of a statute or traffic regulation. It does not appear that any of the proposed amendments deals with the problem of buses other than school buses stopping on the highway, and the committee's intent in this regard does not appear to have been implemented.

Another matter that has been called to my attention is the group of regulations relating to motorcycles. It has been

suggested that some of these regulations were adopted for the purpose of harrassing motorcycle operators rather than meeting the legitimate needs of the public welfare and safety. For example, 13 AAC 04.280(a)(2) and 295 require motorcycles and motor scooters to be equipped with a windshield which rises at least 15 inches above the handlebars (unless the operator is wearing goggles or a face shield); when this is read in conjunction with 13 AAC 04.290, which prohibits handlebars from being more than 15 inches above the seat, we find that the top of the windshield of a motorcycle with handlebars on the same level as the seat would have to be 15 inches above the seat whereas the top of the windshield of a motorcycle with handlebars 15 inches above the seat would have to be 30 inches above the seat. It is not apparent how this promotes the public welfare or safety. Moreover, some of the requirements alone pose problems; goggles limit vision, as do helmets (13 AAC 04.280(a)(3)) which also muffle sound; a helmet requirement affects only the wearer and not the public, and thus is a criminal restriction serving no public interest; I have been told that, even with regard to the helmet wearer, safety experts do not agree that he is safer with one on, and some courts have held such a requirement invalid. (I have not researched the matter, but please see the attached Law Week notes which offer cases on both sides of the issue.) It seems likely that the safety experts would disagree about the 15-inch handlebar height requirement too. Also, 13 AAC 04.280(a)(1) requires motorcycles and motor scooters to have two rear-view mirrors whereas other vehicles (except for buses and certain large vehicles) need only have one (see 13 AAC 04.220). It is up to the legislature to decide whether regulations of such questionable necessity and even questionable validity should be allowed to stand; AS 44.62.320 provides for legislative annulment of administrative regulations.

AHP:hg
Enclosure

ute these defendants for an aggravated offense under 49 U.S.C. §322 (c), which adds the element of using any false or fictitious document or other fraudulent device to evade or defeat the Act or its regulations. The defendant contends that in order to show a violation of this aggravated provision, the government must prove fraudulent intent within the context of the common law elements of criminal fraud. However, it is the opinion of this court that Congress, in imposing an aggravated fine for the use of false documents in connection with infractions of I.C.C. rules and regulations, did not intend to create a statutory equivalent of common law fraud. Rather, as a malum prohibitum offense, proof is required to show that the defendants used false documents knowingly and willfully as part of a course of conduct which sought to evade or defeat an I.C.C. regulation. Proof of specific intent to defraud the I.C.C. is not prerequisite to a finding of guilt. A construction of the Act requiring proof of fraudulent intent, or other common law elements of the crime of fraud, would result in limitations neither expressed in the statute nor justified in the light of the purpose of the Act. See *United States v. Luxon*, 166 F.Supp. 25, 29 (E.D.Ky. 1958), for a similar construction of a statute penalizing the making of a false statement, knowing it to be false, to the Commodity Credit Corporation, for the purpose of influencing action or obtaining money and therefore defeating the statutory purposes of 15 U.S.C. §714. That provision was held not to evoke the common law elements of fraud. For these reasons, this court concludes that a specific intent to defraud the I.C.C. is not a required element of a 49 U.S.C. §322 (c) offense."

The contention that because freight bills are not required documents for contract carriers under ICC regulations there was no evasion of the regulations by the false bills is invalid. Section 322(c) proscribes any false or fictitious documents used to evade or defeat any ICC regulation. The failure of ICC audits of Indiana Trucking's books and records in 1957 and 1964 to uncover these irregularities has no bearing on this prosecution. There is no evidence that during those periods the practice of using East Chicago, Indiana, as point of origin on freight bills was being followed, and the audits were concerned with accounting rather than operational irregularities. Even if employees of the ICC had such knowledge and the defendants were misled by nonaction on the part of the ICC, neither principles of estoppel nor any other equitable consideration entitles the defendants to

immunity from statutory and regulatory proscriptions. A prior ICC proceeding which considered the conduct complained of in this prosecution is not binding in its finding of a "lack of subterfuge." That proceeding was a denial of Indiana Trucking's application for an extension of authority to cover the unauthorized transportation involved in this prosecution, and did not direct itself to the question of knowing and willful use of false documents to defeat or evade ICC regulation.

—USDC NII; *U.S. v. Indiana Trucking, Inc.*, 5/16/69.

Motor Vehicles

STATE REGULATIONS—

Illinois requirement that motorcyclists and passengers wear protective head gear unconstitutionally exceeds state's police powers since object of requirement is to protect persons riding motorcycles rather than public safety.

[Text] "If the evil sought to be remedied by the statute affects public health, safety, morals or welfare, a means reasonably directed toward the achievement of those ends will be held to be a proper exercise of the police power. . . ."

"However, the legislature may not, of course, under the guise of protecting the public interest, interfere with private rights." *People v. City of Chicago*, 413 Ill. 83, 91.

Statutes similar to the one in question have been tested in other jurisdictions. In *Rhode Island* (State ex rel. Colvin v. Lombardi, 241 A.2d 625), the court held that the legislation was justified in order to assure that flying stones or other wind-blown objects would not strike the operator and cause a momentary loss of control of the vehicle which could then endanger other traffic."

There have been similar decisions in Massachusetts, North Dakota and Connecticut.

[Text] "In Michigan, (*American Motorcycle Ass'n v. Davids*, 11 Mich. App. 351, 158 N.W.2d 72) the court held a statute requiring a "crash helmet" for both operator and passenger to be unconstitutional. Likewise in Louisiana, (*Everhardt v. City of New Orleans*, 208 So. 2d 423) the court struck down a statute calling for operators and passengers to wear "safety helmets."

Our statute requires both the operator and each passenger on a motorcycle to wear protective headgear. In the case of a passenger it is clear that the "protective headgear" serves no function of safeguarding the motoring public. The helmet would presumably prevent cranial injuries, or lessen their se-

verity, for the wearer; but its effect on other motorists is most obscure.

The appellant, however, was operating the motorcycle when arrested. In order to determine the purpose and function of the statute in regard to an operator, the entire statutory plan must be considered. . . .

"The Illinois statute contains two requirements: "protective headgear" and a transparent shield or goggles.

"When we consider both of these sections together, the legislative intent becomes clear. The manifest function of the headgear requirement in issue is to safeguard the person wearing it—whether it is the operator or a passenger—from head injuries. Such a laudable purpose, however, cannot justify the regulation of what is essentially a matter of personal safety.—Kluczynski, J.

—Ill Sup Ct; *Illinois v. Fries*, 5/23/69.

Municipal Corporations

TORTS—

Victims of police and mob action in Chicago riots have no statutory or common law remedies against city or county.

One plaintiff was allegedly shot by police suppressing mob action and another was injured when a car was set upon by a mob. More than two hundred actions are now pending against the city and the county based on the statutes involved here.

[Text] "In 1967 the General Assembly enacted statutes which expressly repealed section 1-4-8 of the Illinois Municipal Code and section 25-3 of the Criminal Code which are the two statutes upon which liability in these cases is predicated. Both of the repealing acts were approved by the Governor. (Laws of 1967, Vol. 2, pp. 3286, 2365.)"

However, the same sessions later enacted a bill amending the repealed section. This amending act was part of a package of 174 bills designed to make formal, technical changes in certain sections for the sake of consistency in publication. We do not think that the legislature intended, by a bill purporting to make no change of substance, to re-enact the repealed section. The legislative purpose of repeal is unmistakable.

The plaintiff nevertheless argued that the repeals can not apply retroactively to bar their actions. This state's Statutory Construction Act provides that no new law shall be construed to repeal a former law, "expressly repealed" or not, under which any right has accrued before the effective date of a new law.

[Text] "[T]he Statutory Construction Act does not apply to ex-

Motor Vehicles

STATE REGULATION—

North Dakota requirement that motorcyclist wear crash helmet does not unconstitutionally deprive him of personal freedom.

A motorcyclist who was charged with the offense of failing to wear a crash helmet while riding a motorcycle has asserted that the statute requiring the wearing of a crash helmet deprives him of his personal freedom and his rights guaranteed by the Due Process Clauses of both federal and state Constitutions.

Michigan, (*American Motorcycle Assn. v. Davids*, II Mich. App. 351, 36 LW 2707) and Louisiana have found similar statutes to involve an invalid exercise of the police power of the state based on a test whether there is a "real and substantial relationship between the exercise of those powers . . . and the public health, safety, morals, or the general welfare." This is the proper test, but as in *Commonwealth v. Howie* 238 N.E.2d 373, 36 LW 2770, and *Colvin v. Lombardi*, 241 A.2d 625, 36 LW 2732, we reach the opposite result. The safety factor of objects striking the operator of a motorcycle in such a manner as to momentarily cause him to lose control and to menace other vehicles on the highway makes the relationship between the police power and the public safety self-evident. Moreover, we are not convinced that the legislature may not take reasonable measures to prevent persons from becoming public charges in hospital as a result of their disregard of obvious safety precautions.—Erickstad, J.

Teigen, Ch.J., and Knudson, J., dissent.

—ND Sup Ct; *State v. Odegaard*, 2/25/69.

Negligence

CONTRIBUTORY NEGLIGENCE—

Oklahoma's requirement that auto seat belts be installed does not render injured passenger's failure to use belts contributory negligence.

(Text) "Exhaustive research by counsel, and independent research and investigation by the court, has disclosed no Oklahoma decision on the problem. . . ."

"For the reasons advanced in *Robinson v. Bone*, 285 F.Supp. 423 (D.C. Or. 1968), *Miller v. Miller*, 160 S.E. 2d 65 (N.C. 1968) and *Brown v. Kendrick*, 192 So.2d 49 (Fla. App. 1966), I conclude Oklahoma would not allow such failure to be presented either as evidence of contributory negligence, or in mitigation of damages. Such conclusion finds some support in Oklahoma's definition of proximate cause set forth in *Cheatham*

v. Van Dalsen, 350 P.2d 503 (1960)

"[T]here must be at least some indication that the plaintiff was under a duty to use a seat belt to provide for his own safety, and that failure to use it was a cause of plaintiff's injury, before the Court is required to submit the issue to the jury. The holding here is that, as a matter of law, there is no such duty, nor could such failure be a proximate cause of injury, and submission to the jury of the issue is not required."—Arnow, J.

—USDC NFla; *Woods v. Smith*, 2/28/69.

Torts

CHARITABLE INSTITUTIONS—

North Carolina Supreme Court's prospective abolition of charitable hospital immunity does not preclude holding hospital liable, to extent of its insurance, for negligence predating abolition.

The complaint alleges that on June 6, 1964, a paying patient of the defendant James Walker Memorial Hospital was frightened when a rat ran across her feet and caused her to fall into a bathtub. Her action to recover for the resulting injuries is based on the hospital's negligence in allowing rats on its premises, and the Orkin Exterminating Company's negligence in failing to rid the premises of rats as required by its contract with the hospital. The district court granted the defendant's motions for summary judgment.

This cause of action arose before the Supreme Court of North Carolina overruled its long-standing doctrine of immunity for charitable hospitals in *Rabon v. Rowan Memorial Hospital, Inc.*, 260 N.C. 1, 152 S.E.2d 485, 35 LW 2485 (1967), limiting the decision's applicability to causes of action arising after January 20, 1967. The question is whether this action is barred by the charitable immunity doctrine or whether it may be prosecuted to the extent that the hospital's trust funds are protected by insurance. Insurance was not involved in *Rabon*, and no North Carolina court has been presented with the question subsequent to that case.

It is not to be supposed that the North Carolina courts have failed to take into account the underlying philosophy of *Rabon*, which is to compensate those injured by the negligence of employees of charitable hospitals while at the same time safeguarding these institutions from the dissipation of trust funds. The court refused full retroactive application of the new rule only after expressing concern over the danger

to the trust funds of inadequately insured hospitals. Surely this is a clear implication that the new rule of liability for employee's negligence should be operative where this hazard is not present. Nebraska and Illinois, which the *Rabon* court said it followed, make the immunity unavailable to the extent of insurance protection in causes of action arising prior to abolition of the immunity. Where the hospital has insured itself against the risk, the only possible beneficiary from preserving the immunity would not be the charitable hospital but the paid insurer.

The lack of privity between the plaintiff and Orkin is no defense. It is clear that the hospital was under a legal duty to exercise reasonable care in regard to the safety of its patients, and that Orkin, under its contract, had undertaken to perform a certain aspect of this duty in the hospital's behalf.—Sobeloff, J.

—CA 4; *Hill v. James Walker Memorial Hospital*, 3/11/69.

CONFLICT OF LAWS—

Indiana's Guest Statute is inapplicable to Missouri action by Missouri passenger against estate of Missouri driver for Indiana collision during their vacation trip.

The driver, her husband, and the passenger, all Missouri residents, were returning from a trip to New York City when the accident occurred on the Indiana turnpike. Missouri does not have a guest statute, but Indiana does. We remand to permit the passenger to submit her case against the driver's estate to the jury on the theory that the relationship between the parties was governed by Missouri law and that the Indiana Guest Statute was not applicable.

The passenger recognizes that Missouri has been following a so-called *lex loci delicti* rule in the choice of law to be applied. Under this rule, the court applies the law of the place where the tort was committed in everything except procedure, which is governed by the law of the forum. But the passenger claims that Missouri is the state which has the dominant interest in a host-guest relationship between Missouri residents arising from the operation of a Missouri automobile on a trip which began and which ended in Missouri.

The *lex loci* rule has the advantage of certainty and ease of application. The only exceptions have been where the forum court concluded that the law of the place of the wrong was against the established public policy of the forum state. There has also been an occasional tendency in difficult cases to construe a matter as procedural rather than substantive and on that basis

reference to § 84.01, allow the class of sub-subcontractors to be entitled to a mechanics' lien. . . .

"However, we must construe the Mechanics' Lien Act according to general equitable principles so as to best protect the interest of those enhancing realty, since it is that class for whose benefit the mechanics' lien exists. . . .

"[R]evisions of the Mechanics' Lien Act, § 84, Fla.Stat. F.S.A. (1961), omitted the term, "sub-subcontractor", or any reference to another provision containing such term, from the section defining those entitled to the mechanics' lien. However, the underlying reason for the subsequent revisions was not to change the scope of person entitled to the statutory protection; rather, the revisions were enacted to remedy procedural defects which had led to "hidden liens" being placed against an owner by persons not in privity, without notice to the owner.

"Moreover, the definition section[s] of all the foregoing statutes have continued to include 'sub-subcontractor' in their terminologies."—Henry, J.

—Fla CtApp 3rd Dist; *Ceco Corp. v. Goldberg*, 2/25/68.

Motor Vehicles

STATE REGULATION—

Wisconsin's ban on unusual handlebars and requirement that motorcyclists wear safety devices does not unconstitutionally interfere with cyclist's "right to be left alone."

[Text] "To the cycling enthusiast the freedom to drive or ride his cycle, hatless or helmetless, is meaningful. . . . Resistance to wearing a prescribed safety helmet is an understandable human reaction. Perhaps almost all of us have a secret admiration for the pint-sized guard on a major football team who, years ago, went out on the gridiron, sans helmet, to face giant-sized opponents. . . .

"It has been suggested that this leaves to the courts . . . essentially a balancing test between the rights infringed and the benefits to the general welfare with the balance strongly weighed in favor of the general welfare at the start."

"We are uneasy with this balancing and weighing concept of the judicial role in testing the constitutionality of a police power statute. . . . There is too much of a temptation to a putting of a judicial thumb on the scales with judges substituting their own evaluation of alternatives for that of the legislature. We would hold that, once within the area of proper exercise of police power, it is for the legislature to determine what regulations, re-

straints or prohibitions are reasonably required to protect the public safety and only the abrogation of a basic and substantial individual liberty would justify judicial intervention to set aside the legislative enactments. . . .

"Over and above the interest the state has in protecting other users of the highways from the danger of involvement in an accident, we further hold that other users of the highway have a definite and legitimate interest in seriousness of the consequences of accidents as well as in the frequency of such mishaps. . . .

"[Although] we do not reach the question of whether it is invariably and inescapably fatal to a public safety statute that it seeks only to protect persons against the consequences of their own actions . . . it is enough to observe that the concept that it is my neck and I have a right to risk it when and where I please has had some limitations placed upon its application." . . .

"There is in the law no sanction for self-destruction, and certainly there is no right on the part of anyone to use public highways for risking or courting or seeking such self-destruction. Protection of the safety of all users of the highway even against the consequences of their own actions is a legitimate use of the police powers of the state. . . .

"[The right of the individual to be left alone by government was] encapsulated by a great jurist, Louis Demitt Brandeis, in these words.

"The makers of the Constitution sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred as against the government, the right to be left alone—the most comprehensive of rights and the right most valued by civilized man."

"However, Justice Brandeis hardly intended that such right to be left alone would include the right to camp on a cloverleaf or do one's thing on an expressway. There is no place where any such right to be left alone would be less ascertainable than on a modern highway."—Hansen, J.

—Wis SupCt; *Bisenius v. Karns*, 3/7/69.

Physicians and Surgeons

ADVERTISING—

Optometrist's circulars to labor unionists promising optical services at volume discounts are not permissible information on "medical service plan," but health service advertising forbidden by California Business and Professions Code.

An optometrist started an optical service for members of the Los

Angeles County Federation of Labor AFL-CIO and their families in which a specific price schedule for eye examination, glasses and contact lenses was adopted. The plan which the optometrist called Union Vision Service charged prices lower than the California Vision Service, a nonprofit corporation which also provided optometric service to unions. Under the schedule glasses would cost \$21 per pair less than the average cost in Los Angeles County. He then distributed literature to the union members highlighting the large savings to users of the service and stating that some eye examinations would even be free. He also advertised in a union newspaper. As a result, he obtained access to 515,000 union members and within 18 months attracted 71,000 patients.

The Board of Optometry charged the optometrist with violating the Business and Professions Code. The California Corporation Code does permit the formation of nonprofit corporations for the purpose of defraying or assuming the cost of professional services of licensees of the healing arts, but what is involved here is the method of operation of U.V.S.

Section 651 of the Code makes it unlawful for an optometrist to represent that his service is being rendered at a discount or "is otherwise less than the average fee or price then regularly charged under like conditions by persons so licensed or by other persons for such commodities or services." The optometrist argues that because his operation was like no other he could not be found to have made his offer at prices lower than those "regularly charged under like conditions." "It would be a perversion of the intent of Section 651 to permit advertising under the banner of 'equal treatment for less money' simply because the advertiser can show that in some fashion quite immaterial to the patient, the conditions which permit him to render less expensive service are unlike those of his fellow practitioners with whom he compares himself."

Section 651.3 of the Code prohibits a physician from advertising in any manner which refers to the cost of the price to be paid to him or for any commodities sold by him or for any services performed by him except when it involves "the furnishing of information regarding benefits available and charges therefor, under the coverage of any hospital or medical service of insurance plan." The optometrist claims that he was merely furnishing information concerning benefits and charges under the coverage of a medical service plan. "Neither this section as a whole nor the proviso has ever been construed. No statutory or judicial def-

Involved there, they are not analogous to the exclusion of Negroes from an all white union by a system of nepotism."—Dyer, J.

—CA 5; *Asbestos Workers v. Vogler*, 1/15/69.

Landlord and Tenant

EVICTION—

Pennsylvania Rent Withholding Act does not immunize from eviction tenants who failed to pay rent into escrow fund.

The Motion to quash the writ of eviction is refused.—Montgomery, J.

Concurrence. The Act provides that the right of the landlord to collect rent shall be suspended for a 6-month period after certification by the appropriate authority that the dwelling is unfit for human habitation. During this suspension period, the rent withheld shall be deposited by the tenant in an escrow account for repairs required to make the building habitable.

The Act specifically does not affect any of the terms of the landlord and tenant relationship save that the tenant need not pay rent to the landlord if he pays it into an escrow account. The duty of the tenant to pay his rent on a timely basis is undisturbed by the statute. Accordingly, the final sentence of the Act which reads "No tenant shall be evicted for any reason whatsoever while the rent is deposited in escrow" must be read to mean that during the 6-month period the tenant is protected against eviction under the Act only if he pays his rent into the escrow account in a timely manner specified by the lease arrangement.

Tenants who seek the protection of the Act in avoiding eviction must have consistently paid their rent into the escrow fund in a timely manner.

[Text] "This case leaves unresolved some of the very difficult questions raised by the statute. For example, it is unclear from the face of the statute:

"1) whether a landlord of a building certified as unfit for human habitation may refuse to renew the lease arrangement of a tenant who has paid his rent in a timely fashion.

"2) under what conditions and authority may moneys deposited in an escrow account pursuant to the statute be used to effect repairs of the dwelling premises.

"3) may escrow payments be made indefinitely until the dwelling is sufficiently repaired with periodic six months disbursements of the accumulated rents to the contributing tenants to the escrow account.

"These questions as well as others

bound to arise are best settled by future legislative amendment, although in the absence of such action, it will be the duty of the courts to frame a solution based upon their interpretation of the statute as written. C.f. Note, Rent Withholding in Pennsylvania, 30 Pitt. L. Rev. 148 (1968)."—Hoffman, J.

—Pa SuperCt; *National Council of Mechanics v. Roberson* 1/28/68.

Motor Vehicles

PARKING LOTS—

Operator of self-service Illinois parking lot is not bailee liable to patron whose car was stolen.

In recent years a new type of self-service parking lot has developed particularly at the larger airports, such as the one from which the car here was stolen. A motorist gains admission to the lot through an entrance gate where he takes a machine-dispensed ticket from an automatic dispenser. The motorist parks in an individual parking place of his choice. There is nothing to prevent his moving the car about within the parking lot. He retains the keys and upon his return drives to an exit gate where he sees the attendant for the first time and pays the parking fee.

This is a case of first impression in this court although there is a great variety of holdings in the area of the liability of operators of parking lot facilities. They usually resolve themselves into two categories, the first where the owner parks his car in a place designated by an attendant or chosen by himself retains the keys and does not actually deliver the car to the lot owner. This constitutes a lease of space. In the second classification a bailment is created where the keys are left in the parked vehicle and tickets are issued identifying the car for redelivery. Precise categorization is not easy. However, in this case it is apparent that no bail or bailee relationship has been established. There was no agreement, either express or by implication, that may be gathered from the circumstances surrounding this transaction. To establish it, there must not only be a delivery of possession but there must also be an acceptance, either actual or constructive, which did not exist here. True, temporary possession in the sense that the motorist leaves the vehicle on the lot may be said to have been given up, but the actual control is retained by taking the keys. There is no acceptance of the vehicle by the lot owner.—House, J.

—Ill SupCt; *Wall v. Airport Parking Co. of Chicago*, 1/25/69.

STATE REGULATION—

Connecticut's requirement that motorcyclist use crash helmet is not interference with individual's constitutionally-created "zone of privacy."

The gravamen of the argument is the statute is unconstitutional in that it has no relation to public health, welfare and safety, but merely to the health, welfare and safety of the individual.

The cyclist contends that the Fourteenth Amendment, taken in conjunction with the Third, Fourth and Fifth Amendments creates what has been called a "zone of privacy," and that by virtue of the Ninth Amendment, government power is limited by many unenumerated rights of the people. One of the unenumerated rights protected by the "zone of privacy" is the right of an individual to conduct his or her own affairs as he or she chooses as long as such action does not injure or offend other members of society. However, we are of the opinion that the purpose sought to be achieved by requiring protective headgear is a proper subject for legislation. The legislature may enact laws prohibiting that which is harmful to the welfare of the public as long as they are reasonable, even though they may interfere with the liberty of the individual. Whatever infringement of rights incidental to the valid exercise of police power is not unreasonable when the sole object of the legislation is to promote public welfare.

There is also a weakness in the contention that the state has no power to punish an act which harmed no one but the actor. We are of the opinion that the statute prevents a danger that is antisocial—the inherent danger of injury to others in the operation of a motorcycle.

The operation of a motor vehicle including a motorcycle is a privilege which may be denied, and not a right. The legislature may require the operator to waive certain rights and privileges for the protection of other motorists legally upon the highway.—Wise, J.

—Conn CirCt AppDiv; *Connecticut v. Burzycki*, 1/17/69.

Municipal Corporations

ZONING—

"Halfway House" for rehabilitation of ex-convicts does not qualify as "institution of educational, religious, or philanthropic nature" that would be permissible use in residential zone of Arkansas City.

The Arkansas Release Guidance Foundation, was incorporated as a nonprofit corporation. Thirteen property owners in the vicinity of the Foundations property filed petitions

June 1, 1970

Mel J. Personett, Commissioner
Department of Public Safety
Pouch "N"
Juneau, Alaska 99801

Dear Commissioner Personett:

After hearing testimony on both sides of the matter, and after reviewing the material you submitted, the House Judiciary Committee requests that the department hold hearings and consider revision or repeal of the following regulations pertaining to motorcycles. 13 AAC 04.280, 285(b), 290, 295, and 300.

While not taking a position on the constitutionality of any of these regulations, the committee is aware that there is a split of judicial opinion and that in some states the helmet requirement has been held invalid as an invasion of the right to privacy. Moreover, during the recent hearings held on these regulations by this committee, no evidence was presented which conclusively established that these requirements promoted either individual safety or the public safety. To the contrary, although examples were given of situations in which a helmet or face shield might be helpful, other examples were given of when they would be a definite hazard; also, windshields and mirrors on "trail bikes" appear to be hazards rather than safety features. There was testimony that a mirror on a motorcycle was of little utility because of vibration; and you agreed that the requirement of two mirrors in 13 AAC 04.280(a) (1) is unnecessary.

The regulation on the height of "handlebars or grips" (13 AAC 04.290) is ambiguous as well as being subject to criticism as an undue restriction on design variation. If there is a certainty that a design variation will result in motorcycles with a steering arrangement that poses a clear threat to the public safety, a regulation something like the following would be more appropriate: "No person may operate a motorcycle or motor scooter on which the handlebars are at a height which does not reasonably allow for safe control of the vehicle." When the present language is read in conjunction with the regulation on windshields (13 AAC 04.295) some ludicrous results can occur.

With regard to 13 AAC 04.300, the committee believes it is a good idea, and a proper action for the benefit of the public, to specify standards

June 1, 1970

for the construction of protective headgear, goggles, etc. When a person decides that he wants to wear a helmet, for example, he should be able to rely on the safety of those offered for sale or rent. Since this section refers to the requirement that these items be worn at all times and in all circumstances, this section should be re-written. Also, the reference to sec. 280(a) (3) in 13 AAC 04.285(a) should be deleted.

The committee notes that the federal safety standard on motorcycles (1) does not require a windshield, face shield or goggles—just "eye protection"; (2) does not specify handlebar height or windshield height; and (3) does not require two mirrors.

The committee is concerned about the fact that these regulations, of at least questionable validity, of questionable benefit to the safety of the public and even to the individual, may be selectively enforced to provide a means of harassing a particular segment of the population. We do not believe that this is sound state policy. We expect that the revised regulations will be clearly valid and protective of the public safety, and that to the extent they are designed to protect the individual, due consideration has been given to the right to privacy and the policy which underlies that constitutional right.

Yours truly,

Barry W. Jackson, Chairman
Judiciary Committee
Alaska House of Representatives

BWJ:tmc

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

April 27, 1970

MEMORANDUM

TO : Rep. Mildred Banfield, Chairman
Subcommittee on Dept. of Public Safety Regulations
House Judiciary Committee

FROM : Arthur H. Peterson, Revisor of Statutes

SUBJECT: Recently proposed changes in regulations of the
Department of Public Safety (addendum to April 24,
1970 memorandum)

This is a summary of the proposed changes accompanying the department's April 20 notice. My April 24 memorandum to you discusses Items (1), (2) and (3) (regarding hitchhiking, school buses, and a presumption as to certain violations, respectively).

Item (4), by inserting "may not be . . . state highway but" in the first line, prohibits operating a snow vehicle on the roadway, which is only an implication under the present language; it also changes "six feet" to "three feet", so that the vehicle may be operated three feet or more from the edge of the roadway.

Item (5) repeals the prohibition on persons under 14 from operating snow vehicles. AS 05.30 deals with snow vehicles.

Item (6) deletes "or have in his possession an open or unsealed receptacle containing an" which presently appears after the word "drink". Item (7) repeals a provision dealing with "open or unsealed receptacle".

Item (8) deletes the references to 13 AAC 04.155, which is repealed in Item (9). That section presently allows snow removal vehicles of the Department of Highways to use blue flashing lights.

Item (10) adds the words "or certified". That addition is legally unnecessary in light of AS 01.10.060(11), but perhaps it is helpful as a clarification in this regulation.

AHP:hg

Introduced: 2/16/70
Referred: Judiciary

1 IN THE SENATE

BY MILLER

2 SENATE CONCURRENT RESOLUTION NO. 27

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - SECOND SESSION

5 Annuling a regulation adopted by the
6 Department of Public Safety.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 WHEREAS under AS 44.62.320, the Legislature, by a concurrent resolution
9 adopted by a vote of both houses, may annul a regulation of an agency or
10 department;

11 BE IT RESOLVED that by this Resolution the Alaska Legislature annuls
12 the Department of Public Safety Regulation relating to a "pedestrian solicit-
13 ing ride or business," 13 AAC 02.180.

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NOTICE OF PROPOSED CHANGES
IN THE
REGULATIONS OF THE DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given that the Department of Public Safety, under authority vested by AS 18.60.175, proposes to amend regulations in Title 13 of the Alaska Administrative Code as follows:

Title 13, Chapter 20 Article 1. Rescue and Relief of Lost Persons, is amended in its entirety.

The regulations deal with the following topics:

- (a) Declaration of intent (of the regulations)
- (b) Expenditure limitations (for rescue and relief parties)
- (c) Approval of expenditures (what is required for approval)
- (d) Commissioner's designee (to authorize search)
- (e) Property purchased (becomes state property)
- (f) Report of search (requires written report of search operation)
- (g) Definitions (used in regulations)

Since it is not practical to print the entire regulations in this notice, interested persons may inspect them at a regional headquarters office of the State Troopers at Anchorage, Fairbanks, or Juneau or obtain a reasonable number of copies by a written request addressed to the Department of Public Safety, Pouch N, Juneau, Alaska.

Notice is also given that any person interested may present oral or written statements or arguments relevant to the action proposed at hearings to be held at Room 423, Capitol Building, Juneau, Alaska; 830 Water Street, Ketchikan, Alaska; 702 East 30th Avenue, Anchorage, Alaska; 1616 Cushman Street, Fairbanks, Alaska; and Alaska State Trooper Office, Nome, Alaska, at 9:00 a. m. on June 1, 1970.

The Department of Public Safety, upon its own motion or at the instance of an interested person, may at the hearing or after it adopt the above proposals substantially as above set out without further notice.

Date April 20, 1970



Mel J. Personett, Commissioner
Department of Public Safety

NOTICE OF PROPOSED CHANGES
IN THE
REGULATIONS OF THE DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given that the Department of Public Safety, under authority vested by AS 28.05.030 and AS 28.20.020 proposes to amend and repeal certain regulations in Title 13 of the Alaska Administrative Code as follows:

- (1) 13 AAC 02.180 is amended to read:

13 AAC 02.180. PEDESTRIAN SOLICITING RIDE OR BUSINESS. A person may not stand on or along a roadway in a manner that will distract a driver's attention for the purpose of soliciting a ride, employment, business or a contribution from the occupant of a vehicle. (Eff. before 7/28/59; am 12/15/61, reg. 3; am 8/10/66, reg. 22; am 12/31/69, reg. 31; at Leg. request, am. / / reg.)

Authority: AS 28.05.030

- (2) 13 AAC 02.340 (b) is amended to read:

(b) This section does not apply to the driver of a school bus stopped to load or unload a school child or to the driver of a vehicle which is disabled while on a highway in a manner and to an extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in that position; provided, if the vehicle is left unattended, the operator shall leave a notice in or on the vehicle which is visible to a person outside the vehicle or leave the hood of the vehicle in a raised position either of which indicates the vehicle is temporarily disabled. This section does not allow a vehicle to be left unattended in or on a bridge, causeway or tunnel or in a hazardous position on a roadway.

- (3) 13 AAC 02.340 is amended by adding a new subsection to read

(c) A vehicle that is stopped, parked or standing in violation of a statute or traffic regulation is considered to have been stopped, parked or left standing by the registered owner of the vehicle, unless at the time of the violation a police officer observes the vehicle being stopped, parked or left standing by a driver who is not the registered owner, in which case any action by the officer shall be directed to that driver. (Eff. before 7/28/59; am 12/15/61, reg. 3; am 8/10/66, reg. 22; am 12/31/69, reg. 31; am / / , reg.)

Authority: AS 28.05.030

Cross Reference: 14 AAC 04.790g
(parking at airports)

- (4) 13 AAC 02.455 (c) is amended to read:

(c) A snow vehicle may not be operated on the roadway of a state highway but may be operated on a path or shoulder adjacent to the roadway of a state

highway, provided the snow vehicle is driven three feet or more from the extreme edge of the roadway.

(5) 13 AAC 02.455(g) is repealed.

(6) 13 AAC 02.545(a) is amended to read

13 AAC 02.545. DRINKING WHILE DRIVING. A person may not drink an intoxicating beverage while operating a motor vehicle.

(7) 13 AAC 02.545(b) is repealed.

(8) 13 AAC 04.145(b) and (c) are amended to read

(b) Except as required or authorized in §§ 90, 100 and 150(b) of this chapter, a person may not drive or move a vehicle or equipment with a lamp or device displaying a red or blue light visible from directly in front of the center of the vehicle or equipment.

(c) A flashing light is prohibited except as required or authorized in §§ 35, 90, 95, 100(a), 105, 110(d) and 150(b) of this chapter. (Eff. before 7/28/59; am 12/15/61, reg. 3; am 8/10/66, reg. 22; am 12/31/69, reg. 31; am. / / , reg.)

Authority AS 28.05.030

(9) 13 AAC 04.155 is repealed, and existing 13 AAC 04.160 is repositioned as 13 AAC 04.155.

(10) 13 AAC 08.105 is amended to read:

13 AAC 08.105. FORM OF NOTICE. A written notice, including a notice of suspension, is considered delivered to that person 10 days after it is registered or certified and deposited in the United States mail, postage prepaid, addressed to that person at his last known address as shown by the most recent records of the department. (Eff. 12/31/69, reg. 31; am. / / , reg.)

Authority: AS 28.20.020

Cross Reference: AS 28.20.050(c) & (d)

AS 28.20.090(a)

AS 28.20.400(c)

Notice is also given that any person interested may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at Room 423 of the Capital Building, Juneau, Alaska; 830 Water Street, Ketchikan, Alaska; 702 East 30th Avenue, Anchorage, Alaska; 1616 Cushman Street, Fairbanks, Alaska; and the Alaska State Trooper office, Nome, Alaska, at 9:00 a.m. on June 1, 1970.

The Department of Public Safety, upon its own motion or at the instance of any interested person, may at the hearing or after it adopt the above proposals substantially as above set out without further notice.

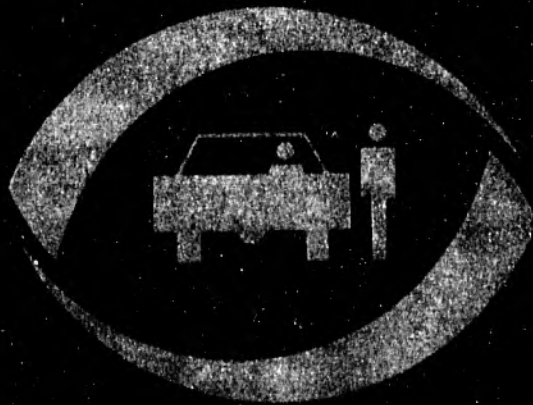
Date April 20, 1970

A handwritten signature in dark ink, appearing to read "Mel J. Personett", written over a horizontal line.

Mel J. Personett, Commissioner
Department of Public Safety

15-00000-208
1979

Highway Safety Program Standards



HIGHWAY SAFETY PROGRAM STANDARDS

HIGHWAY SAFETY PROGRAM STANDARD 1 PERIODIC MOTOR VEHICLE INSPECTION

Each State shall have a program for periodic inspection of all registered vehicles or other experimental, pilot, or demonstration program approved by the Secretary, to reduce the number of vehicles with existing or potential conditions which cause or contribute to accidents or increase the severity of accidents which do occur, and shall require the owner to correct such conditions.

I. The program shall provide, as a minimum, that:

A. Every vehicle registered in the State is inspected either at the time of initial registration and at least annually thereafter, or at such other time as may be designated under an experimental, pilot, or demonstration program approved by the Secretary.

B. The inspection is performed by competent personnel specifically trained to perform their duties and certified by the State.

C. The inspection covers systems, sub-systems, and components having substantial relation to safe vehicle performance.

D. The inspection procedures equal or exceed criteria issued or endorsed by the National Highway Safety Bureau.

E. Each inspection station maintains records in a form specified by the State, which include at least the following information:

1. class of vehicle
2. date of inspection
3. make of vehicle
4. model year
5. vehicle identification number
6. defects by category
7. identification of inspector
8. mileage or odometer reading

F. The State publishes summaries of records of all inspection stations at least annually, including tabulations by make and model of vehicle.

II. The program shall be periodically evaluated by the State and the National Highway Safety Bureau shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD 2 MOTOR VEHICLE REGISTRATION

Each State shall have a motor vehicle registration program, which shall provide for rapid identification of each vehicle and its owner; and shall make available pertinent data for accident research and safety program development.

I. The program shall be such that every vehicle operated on public highways is registered and the following information is readily available for each vehicle:

- A. Make
- B. Model year
- C. Identification number (rather than motor number)
- D. Type of body
- E. License plate number
- F. Name of current owner
- G. Current address of owner
- H. Registered gross laden weight of every commercial vehicle

II. Each program shall have a records system that provides at least the following services:

- A. Rapid entry of new data into the records or data system.
- B. Controls to eliminate unnecessary or unreasonable delay in obtaining data.
- C. Rapid audio or visual response upon receipt at the records station of any priority request for status of vehicle possession authorization.
- D. Data available for statistical compilation as needed by authorized sources.
- E. Identification and ownership of vehicle sought for enforcement or other operation needs.

III. This program shall be periodically evaluated by the State, and the National Highway Safety Bureau shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD 3 MOTORCYCLE SAFETY

For the purposes of this standard a motorcycle is defined as any motor-driven vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding tractors and vehicles on which the operator and passengers ride within an enclosed cab.

Each State shall have a motorcycle safety program to insure that only persons physically and mentally qualified will be licensed to operate a motorcycle; that protective safety equipment for drivers and passengers will be worn; and that the motorcycle meets standards for safety equipment.

I. The program shall provide as a minimum that:

A. Each person who operates a motorcycle:

1. Passes an examination or reexamination designed especially for motorcycle operation.

2. Holds a license issued specifically for motorcycle use or a regular license endorsed for each purpose.

B. Each motorcycle operator wears an approved safety helmet and eye protection when he is operating his vehicle on streets and highways.

C. Each motorcycle passenger wears an approved safety helmet, and is provided with a seat and footrest.

D. Each motorcycle is equipped with a rear-view mirror.

E. Each motorcycle is inspected at the time it is initially registered and at least annually thereafter, or in accordance with the State's inspection requirements.*

II. The program shall be periodically evaluated by the State for its effectiveness in terms of

*See Periodic Motor Vehicle Inspection Standard

reductions in accidents and their end results, and the National Highway Safety Bureau shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD 4 DRIVER EDUCATION

Each State, in cooperation with its political subdivisions, shall have a driver education and training program. This program shall provide at least that:

I. There is a driver education program available to all youths of licensing age which:

A. Is taught by instructors certified by the State as qualified for these purposes.

B. Provides each student with practice driving and instruction in at least the following:

1. Basic and advanced driving techniques including techniques for handling emergencies.

2. Rules of the road, and other State laws and local motor vehicle laws and ordinances.

3. Critical vehicle systems and sub-systems requiring preventive maintenance.

4. The vehicle, highway and community features:

a. that aid the driver in avoiding crashes,

b. that protect him and his passengers in crashes,

c. that maximize the salvage of the injured.

5. Signs, signals, and highway markings, and highway design features which require understanding for safe operation of motor vehicles.

6. Differences in characteristics of urban and rural driving including safe use of modern expressways.

7. Pedestrian safety.

C. Encourages students participating in the program to enroll in first aid training.

II. There is a State research and development program including adequate research, development and procurement of practice driving facilities, simulators, and other similar teaching aids for both school and other driver training use.

III. There is a program for adult driver training and retraining.

IV. Commercial driving schools are licensed and commercial driving instructors are certified in accordance with specific criteria adopted by the State.

V. The program shall be periodically evaluated by the State, and the National Highway Safety Bureau shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD 5 DRIVER LICENSING

Each State shall have a driver licensing program: (a) to insure that only persons physically and mentally qualified will be licensed to operate a vehicle on the highways of the State, and (b) to prevent needlessly removing the opportunity of the citizen to drive. The program shall provide, as a minimum, that:

I. Each driver holds only one license, which identifies the type(s) of vehicle(s) he is authorized to drive.*

II. Each driver submits acceptable proof of date and place of birth in applying for his original license.

III. Each driver:

A. Passes an initial examination demonstrating his:

1. Ability to operate the class(es) of vehicle(s) for which he is licensed.

2. Ability to read and comprehend traffic signs and symbols.

3. Knowledge of laws relating to traffic (rules of the road) safe driving procedures, vehicle and highway safety features, emergency situations that arise in the operation of an automobile, and other driver responsibilities.

4. Visual acuity, which must meet or exceed State standards.

B. Is reexamined at an interval not to exceed four years, for at least visual acuity and knowledge of rules of the road.

IV. A record on each driver is maintained which includes positive identification, current address, and driving history. In addition, the record system shall provide the following services:

*See Motorcycle Safety Standard

A. Rapid entry of new data into the system.

B. Controls to eliminate unnecessary or unreasonable delay in obtaining data which is required for the system.

C. Rapid audio or visual response upon receipt at the records station of any priority request for status of driver license validity.

D. Ready availability of data for statistical compilation as needed by authorized sources.

E. Ready identification of drivers sought for enforcement or other operational needs.

V. Each license is issued for a specific term, and must be renewed to remain valid. At time of issuance or renewal each driver's record must be checked.

VI. There is a driver improvement program to identify problem drivers for record review and other appropriate actions designed to reduce the frequency of their involvement in traffic accidents or violations.

VII. There is:

A. A system providing for medical evaluation of persons whom the driver licensing agency has reason to believe have mental or physical conditions which might impair their driving ability.

B. A procedure which will keep the driver license agency informed of all licensed drivers who are currently applying for or receiving any type of tax, welfare or other benefits or exemptions for the blind or nearly blind.

C. A medical advisory board or equivalent allied health professional unit composed of qualified personnel to advise the driver license agency on medical criteria and vision standards.

VIII. The program shall be periodically evaluated by the State and the National Highway Safety Bureau shall be provided with an evaluation summary. The evaluation shall attempt to ascertain the extent to which driving without a license occurs.

HIGHWAY SAFETY PROGRAM STANDARD 6 CODES AND LAWS

Each State shall develop and implement a program to achieve uniformity of traffic codes and laws throughout the State. The program shall provide at least that:

I. There is a plan to achieve uniform rules of the road in all of its jurisdictions.

II. There is a plan to make the State's unified rules of the road consistent with similar unified plans of other States. Toward this end, each State shall undertake and maintain continuing comparisons of all State and local laws, statutes and ordinances with the comparable provisions of the Rules of the Road section of the Uniform Vehicle Code.

HIGHWAY SAFETY PROGRAM STANDARD 7 TRAFFIC COURTS

Each State in cooperation with its political subdivisions shall have a program to assure that all traffic courts in it complement and support local and statewide traffic safety objectives. The program shall provide at least that:

I. All convictions for moving traffic violations shall be reported to the State traffic records system.

II. Program Recommendations

A. All individuals charged with moving hazardous traffic violations are required to appear in court.

B. Traffic courts are financially independent of any fee system, fines, costs, or other revenue such as posting or forfeiture of bail or other collateral resulting from processing violations of motor vehicle laws.

C. Operating procedures, assignment of judges, staff and quarters insure reasonable availability of court services for alleged traffic offenders.

D. There is a uniform accounting system regarding traffic violation notices, collection of fines, fees and costs.

E. There are uniform rules governing court procedures in traffic cases.

F. There are current manuals and guides for administration, court procedures, and accounting.

HIGHWAY SAFETY PROGRAM STANDARD 8 ALCOHOL IN RELATION TO HIGHWAY SAFETY

Each State, in cooperation with its political subdivisions, shall develop and implement a program to achieve a reduction in those traffic accidents arising in whole or in part from

persons driving under the influence of alcohol. The program shall provide at least that:

I. There is a specification by the State of the following with respect to alcohol related offenses:

A. Chemical test procedures for determining blood-alcohol concentrations.

B. (1) The blood-alcohol concentrations, not higher than .10 percent by weight, which define the terms "intoxicated" or "under the influence of alcohol," and

(2) A provision making it either unlawful, or presumptive evidence of illegality, if the blood-alcohol concentration of a driver equals or exceeds the limit so established.

II. Any person placed under arrest for operating a motor vehicle while intoxicated or under the influence of alcohol is deemed to have given his consent to a chemical test of his blood, breath, or urine for the purpose of determining the alcohol content of his blood.

III. To the extent practicable, there are quantitative tests for alcohol:

A. On the bodies of all drivers and adult pedestrians who die within four hours of a traffic accident.

B. On all surviving drivers in accidents fatal to others.

IV. There are appropriate procedures established by the State for specifying:

A. The qualifications of personnel who administer chemical tests used to determine blood, breath, and other body alcohol concentrations.

B. The methods and related details of specimen selection, collection, handling, and analysis.

C. The reporting and tabulation of the results.

V. The program shall be periodically evaluated by the State, and the National Highway Safety Bureau shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD 9 IDENTIFICATION AND SURVEILLANCE OF ACCIDENT LOCATIONS

Each State, in cooperation with county and other local governments, shall have a program

for identifying accident locations and for maintaining surveillance of those locations having high accident rates or losses.

I. The program shall provide, as a minimum, that:

A. There is a procedure for accurate identification of accident locations on all roads and streets.

1. To identify accident experience and losses on any specific sections of the road and street system.

2. To produce an inventory of:

a. High accident locations.

b. Locations where accidents are increasing sharply.

c. Design and operating features with which high accident frequencies or severities are associated.

3. To take appropriate measures for reducing accidents.

4. To evaluate the effectiveness of safety improvements on any specific section of the road and street system.

B. There is a systematically organized program:

1. To maintain continuing surveillance of the roadway network for potentially high accident locations.

2. To develop methods for their correction.

II. The program shall be periodically evaluated by the State and the National Highway Safety Bureau shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD 10 TRAFFIC RECORDS

Each State, in cooperation with its political subdivisions, shall maintain a traffic records system. The statewide system (which may consist of compatible sub-systems) shall include data for the entire State. Information regarding drivers, vehicles, accidents, and highways shall be compatible for purposes of analysis and correlation. Systems maintained by local governments shall be compatible with, and capable of furnishing data to the State system. The State system shall be capable of providing summar-

ies, tabulations and special analyses to local governments on request.

The record system shall include: (a) certain basic minimum data and (b) procedures for statistical analyses of these data.

The program shall provide as a minimum that:

I. Information on vehicles and system capabilities includes (conforms to Motor Vehicle Registration Standard):

A. Make

B. Model year

C. Identification number (rather than motor number)

D. Type of body

E. License plate number

F. Name of current owner

G. Current address of owner

H. Registered gross laden weight of every commercial vehicle

I. Rapid entry of new data into the records or data system

J. Controls to eliminate unnecessary or unreasonable delay in obtaining data

K. Rapid audio or visual response upon receipt at the records station of any priority request for status of vehicle possession authorization

L. Data available for statistical compilation as needed by authorized sources

M. Identification and ownership of vehicles sought for enforcement or other operational needs

II. Information on drivers and system capabilities includes (conforms to Driver Licensing Standard):

A. Positive identification

B. Current address

C. Driving history

D. Rapid entry of new data into the system

E. Controls to eliminate unnecessary or unreasonable delay in obtaining data which is required for the system

F. Rapid audio or visual response upon receipt at the records station of any priority request for status of driver license validity

G. Ready availability of data for statistical compilation as needed by authorized sources

- H. Ready identification of drivers sought for enforcement or other operational needs
- III. Information on types of accidents includes:
 - A. Identification of location in space and time
 - B. Identification of drivers and vehicles involved
 - C. Type of accident
 - D. Description of injury and property damage.
 - E. Description of environmental conditions
 - F. Causes and contributing factors, including the absence of or failure to use available safety equipment.
- IV. There are methods to develop summary listings, cross tabulations, trend analyses and other statistical treatments of all appropriate combinations and aggregations of data items in the basic minimum data record of drivers and accident and accident experience by specified groups.
- V. All traffic records relating to accidents collected hereunder shall be open to the public in a manner which does not identify individuals.
- VI. The program shall be periodically evaluated by the State and the National Highway Safety Bureau shall be provided with an evaluation summary.

**HIGHWAY SAFETY PROGRAM
STANDARD 11 EMERGENCY MEDICAL
SERVICES**

Each State, in cooperation with its local political subdivisions, shall have a program to insure that persons involved in highway accidents receive prompt emergency medical care under the range of emergency conditions encountered. The program shall provide, as a minimum, that:

- I. There are training, licensing, and related requirements (as appropriate) for ambulance and rescue vehicle operators, attendants, drivers, and dispatchers.
- II. There are requirements for types and numbers of emergency vehicles including supplies and equipment to be carried.
- III. There are requirements for the operation and coordination of ambulances and other emergency care systems.

- IV. There are first aid training programs and refresher courses for emergency service personnel, and the general public is encouraged to take first aid courses.
- V. There are criteria for the use of two-way communications.
- VI. There are procedures for summoning and dispatching aid.
- VII. There is an up-to-date, comprehensive plan for emergency medical services, including:
 - A. Facilities and equipment
 - B. Definition of areas of responsibility
 - C. Agreements for mutual support
 - D. Communications systems
- VIII. This program shall be periodically evaluated by the State and the National Highway Safety Bureau shall be provided with an evaluation summary.

**HIGHWAY SAFETY PROGRAM
STANDARD 12 HIGHWAY DESIGN,
CONSTRUCTION AND MAINTENANCE**

Every State in cooperation with county and local governments shall have a program of highway design, construction, and maintenance to improve highway safety. Standards applicable to specific programs are those issued or endorsed by the Federal Highway Administrator.

- I. The program shall provide, as a minimum that:
 - A. There are design standards relating to safety features such as sight distance, horizontal and vertical curvature, spacing of decision points, width of lanes, etc., for all new construction or reconstruction, at least on expressways, major streets and highways, and through streets and highways.
 - B. Street systems are designed to provide a safe traffic environment for pedestrians and motorists when subdivisions and residential areas are developed or redeveloped.
 - C. Roadway lighting is provided or upgraded on a priority basis at the following locations:
 - 1. Expressways and other major arteries in urbanized areas.
 - 2. Junctions of major highways in rural areas.

3. Locations or sections of streets and highways having high ratios of night-to-day motor vehicle and/or pedestrian accidents.

4. Tunnels and long underpasses.

D. There are standards for pavement design and construction with specific provisions for high skid resistance qualities.

E. There is a program for resurfacing or other surface treatment with emphasis on correction of locations or sections of streets and highways with low skid resistance and high or potentially high accident rates susceptible to reduction by providing improved surfaces.

F. There is guidance, warning and regulation of traffic approaching and traveling over construction or repair sites and detours.

G. There is a systematic identification and tabulation of all rail-highway grade crossings and a program for the elimination of hazards and dangerous crossings.

H. Roadways and the roadsides are maintained consistent with the design standards which are followed in construction, to provide safe and efficient movement of traffic.

I. Hazards within the highway right-of-way are identified and corrected.

J. There are highway design and construction features wherever possible for accident prevention and survivability including at least the following:

1. Roadsides clear of obstacles, with clear distance being determined on the basis of traffic volumes, prevailing speeds, and the nature of development along the street or highway.

2. Supports for traffic control devices and lighting that are designed to yield or break away under impact wherever appropriate.

3. Protective devices that afford maximum protection to the occupants of vehicles wherever fixed objects cannot reasonably be removed or designed to yield.

4. Bridge railings and parapets which are designed to minimize severity of impact, to retain the vehicle, to redirect the vehicle so that it will move parallel to the roadway, and to minimize danger to traffic below.

5. Guardrails, and other design features which protect people from out-of-control vehicles at locations of special hazard such as playgrounds, schoolyards and commercial areas.

K. There is a post-crash program which includes at least the following:

1. Signs at freeway interchanges directing motorists to hospitals having emergency care capabilities.

2. Maintenance personnel trained in procedures for summoning aid, protecting others from hazards at accident sites, and removing debris.

3. Provisions for access and egress for emergency vehicles to freeway sections where this would significantly reduce travel time without reducing the safety benefits of access control.

II. This program shall be periodically evaluated by the State for its effectiveness in terms of reductions in accidents and their end results, and the National Highway Safety Bureau shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD 13 TRAFFIC CONTROL DEVICES

Each State, in cooperation with its county and local governments, shall have a program relating to the use of traffic control devices (signs, markings, signals, etc.) and other traffic engineering measures to reduce traffic accidents.

I. The program shall provide, as a minimum, that:

A. There is a method:

1. To identify needs and deficiencies of traffic control devices.

2. To assist in developing current and projected programs for maintaining, upgrading, and installing traffic control devices.

B. Existing traffic control devices on all streets and highways are upgraded to conform with standards issued or endorsed by the Federal Highway Administrator.

C. New traffic control devices are installed on all streets and highways, based on engineering studies to determine where devices are needed for safety. Such devices conform with standards issued or endorsed by the Federal Highway Administrator.

D. There are programs for preventive maintenance, repair, and daytime and nighttime inspection of all traffic control devices.

E. Fixed or variable speed zones are established, at least on expressways, major streets and highways, and through streets and highways, based on engineering and traffic investigations.

II. This program shall be periodically evaluated by the State and the National Highway Safety Bureau shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD 14 PEDESTRIAN SAFETY

Every State in cooperation with its political subdivisions shall develop and implement a program to insure the safety of pedestrians of all ages. The program shall provide, as a minimum, that:

I. There is a continuing statewide inventory of pedestrian-motor vehicle accidents, identifying specifically:

A. The locations and times of all such accidents.

B. The age of all of the pedestrians injured or killed.

C. Where feasible, to determine whether the exterior features of the vehicle produced or aggravated an injury.

D. The color and shade of clothing worn by pedestrians when injured or killed, and the visibility conditions which prevailed at the time.

E. The extent to which alcohol is present in the blood of fatally injured pedestrians 16 years of age and older.

F. Where possible, to determine, the extent to which pedestrians involved in accidents have physical or mental disabilities.

II. There are established statewide operational procedures for improving the protection of pedestrians through reduction of potential conflicts with vehicles:

A. By application of traffic engineering practices including pedestrian signals, signs, markings, parking regulations and other pedestrian and vehicle traffic control devices.

B. By land-use planning in new and redevelopment areas for safe pedestrian movement.

C. By provision of pedestrian bridges, barriers, sidewalks and other means of physically separating pedestrian and vehicle pathways.

D. By provision of environmental illumination at high pedestrian volume and/or potentially hazardous pedestrian crossings.

III. There is established a statewide program for familiarizing drivers with the pedestrian problem and with ways to avoid pedestrian collisions.

A. The program content shall include emphasis on:

(1) Behavior characteristics of the three types of pedestrians most commonly involved in accidents with vehicles: (i) children; (ii) persons under the influence of alcohol; (iii) the elderly

(2) Accident avoidance techniques that take into account the hazardous conditions, and behavior characteristics displayed by each of the three high risk pedestrian groups listed in subparagraph (1).

B. Emphasis on this program content shall be included in:

(1) all driver education and training courses

(2) driver improvement courses

(3) driver license examinations

IV. There are statewide programs for training and educating all members of the public as to safe pedestrian behavior on or near streets and highways.

A. For children, youths and adults enrolled in schools, beginning at the earliest possible age.

B. For the general population via the public media.

V. There is a statewide program for the protection of children walking to and from school, entering and leaving school buses, and in neighborhood play.

VI. There is a statewide program for establishment and enforcement of traffic regulations designed to achieve orderly pedestrian and vehicle movement and to reduce vehicle-pedestrian conflicts.

VII. This program shall be periodically evaluated by the States, and the National Highway Safety Bureau shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD 15 POLICE TRAFFIC SERVICES

Every State in cooperation with its political subdivisions shall have a program to insure efficient and effective police services utilizing traffic patrols: to enforce traffic laws; to prevent accidents; to aid the injured; to document the particulars of individual accidents; to supervise accident cleanup and to restore safe and orderly traffic movement.

I. The program shall provide as a minimum that there are:

A. Uniform training procedures in all aspects for police supervision of vehicular and pedestrian traffic related to highway safety, including use of appropriate instructional materials and techniques for recruit, advanced, in-service and special course training.

B. Periodic in-service training courses for uniformed and other police department employees assigned to traffic duties dealing with:

(1) administration and management of police, vehicular and pedestrian traffic services.

(2) analysis, interpretation and use of traffic records data.

(3) insurance of prompt reliable post-accident response, including skilled aid to the injured.

(4) accomplishing post-accident responsibilities.

C. Procedures for the selective assignment of trained police personnel to supervise vehicular and pedestrian traffic duties including enforcement patrols in hazardous or congested areas based on time and location of:

(1) traffic volume.

(2) accident experience.

(3) traffic violation frequency.

(4) emergency and service needs.

D. Procedures for investigating, recording and reporting accidents pertaining to:

(1) the human, vehicular, and highway causative factors in individual accidents.

(2) the human, vehicular, and highway causative factors of injuries and deaths, including failure to use safety belts.

(3) the efficiency of the post-accident response.

E. Procedures for recognizing and reporting, to the appropriate agencies, hazardous highway defects and conditions, including:

(1) condition of drivers.

(2) operational condition of motor vehicles.

(3) defective signs, signals, controls, construction and maintenance deficiencies.

a. Data listed in (3) above shall be readily available to the public.

F. Appropriate agreements by the State and its political subdivisions regarding primary responsibility and authority for police traffic supervision, and cooperative responsibilities where concurrent jurisdictional boundaries and problems exist, and appropriate participation of each law enforcement agency in the comprehensive highway safety program of the State and its political subdivisions.

II. The programs shall be periodically evaluated by the State, and the National Highway Safety Bureau shall be provided with an evaluation summary.

III. Nothing in this standard shall preclude the use of personnel other than police officers in carrying out the minimum requirements in accordance with laws and policies established by State and/or local governments.

HIGHWAY SAFETY PROGRAM STANDARD 16 DEBRIS HAZARD CONTROL AND CLEANUP

Each State in cooperation with its political subdivisions shall have a program which provides for rapid, orderly, and safe removal from the roadway of wreckage, spillage, and debris resulting from motor vehicle accidents, and for otherwise reducing the likelihood of secondary and chain-reaction collisions, and conditions hazardous to the public health and safety.

I. The program shall provide as a minimum that:

A. Operational procedures are established and implemented for:

(1) enabling rescue and salvage equipment personnel to get to the scene of accidents rapidly and to operate effectively on arrival:

a. on heavily traveled freeways and other limited access roads;

b. in other types of locations where wreckage or spillage of hazardous materials on or adjacent to highways endangers the public health and safety;

(2) extricating trapped persons from wreckage with reasonable care—both to avoid injury or aggravating existing injuries;

(3) warning approaching drivers and detouring them with reasonable care past hazardous wreckage or spillage;

(4) safe handling of spillage or potential spillage of materials that are:

- a. radioactive
- b. flammable
- c. poisonous
- d. explosive
- e. otherwise hazardous.

(5) removing wreckage or spillage from roadways or otherwise causing the resumption of safe, orderly traffic flow.

B. Adequate numbers of rescue and salvage personnel are properly trained and retrained in the latest accident cleanup techniques.

C. A communications system is provided, adequately equipped and manned, to provide coordinated effort in incident detection, and the notification, dispatch, and response of appropriate services.

II. The program shall be periodically evaluated by the State, and the National Highway Safety Bureau shall be provided with an evaluation summary.

U. S. C. A.

HIGHWAYS

HIGHWAYS

23 § 401

"Sec. 2. Only at the request of a State, a political subdivision thereof, or a Federal department or agency, shall the Secretary furnish information contained in the register established under the first section of this Act, and such information shall be furnished only to the requesting party and only with respect to an individual applicant for a motor vehicle operator's license or permit.

"Sec. 3. As used in this Act, the term 'State' includes each of the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands, the Canal Zone, and American Samoa."

ORDER NO. 10838

1973, as amended by Ex.Ord.No.10908, Oct. 10, 1967, under this section, which established the Highway Safety, was revoked by section 10 of Ex.Ord. No. 10908, set out as a note under section 1032 of Title 23.

ORDER NO. 10898

by Ex.Ord.No.10880, Jan. 12, 1962, 27 F.R. 430; Oct. 28, 1967, 32 F.R. 16247

DEPARTMENTAL HIGHWAY SAFETY BOARD

- (1) The Postmaster General.
 - (2) The Secretary of Labor.
 - (3) The Secretary of Health, Education, and Welfare.
 - (4) The Chairman of the Interstate Commerce Commission.
 - (5) The Administrator of General Services.
- (d) Four members of the Board shall constitute a quorum thereof.

and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub.L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

Highway purposes of lands or interests in

Government patent by which United States withdrew from entry tract of land for use by State as highway right-of-way, which was valid on its face, could not be collaterally attacked by landowners claiming fee ownership of land in area of highway right-of-way. *Id.*

1. Approval of application
Application by State for right-of-way across unimproved and unreserved lands consisting of map of right-of-way area was in effect, upon approval of application, patent from United States government. *Allison v. State, 1966, 420 P.2d 239, 101 Ariz. 415.*

to airport

and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub.L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

enhancement

3 per centum of the funds apportioned 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, not to exceed \$120,000,000 for the fiscal year ending June 30, 1967, and not to exceed \$20,000,000 for the fiscal year ending June 30, 1970. The provisions of chapter 1 of this title relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this subsection after June 30, 1967.

As amended Pub.L. 89-574, § 8 (b), Sept. 13, 1966, 80 Stat. 768; Pub.L. 90-495, § 6 (f), Aug. 23, 1968, 82 Stat. 818.

1968 Amendment. Subsec. (b). Pub. L. 90-495 added provisions authorizing an appropriation of not to exceed \$20,000,000 for the fiscal year ending June 30, 1970.

1966 Amendment. Subsec. (b). Pub.L. 89-574 substituted provisions making applicable to the funds authorized to be appropriated to carry out this subsection after June 30, 1967, the provisions of chapter 1 of this title relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds for provisions prohibiting the use of any part of the Highway Trust Fund in carrying out this subsection.

Effective Date of 1968 Amendment. Amendment by Pub.L. 90-495 effective Aug. 23, 1968, see section 37 of Pub.L. 90-495, set out as a note under section 502 of this title.

Transfer of Functions. All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub.L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

Legislative History. For legislative history and purpose of Pub.L. 89-574, see 1966 U.S. Code Cong. and Adm. News, p. 2800. See, also, Pub.L. 90-495, 1968 U.S. Code Cong. and Adm. News, p. 3482.

§ 320. Bridges on Federal dams

Transfer of Functions. All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways

and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub.L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

CHAPTER 4.—HIGHWAY SAFETY

- Sec. 401. Authority of the Secretary.
- 402. Highway safety programs.

- Sec. 403. Highway safety research and development.
- 404. National Highway Safety Advisory Committee.

Library references: Automobiles § 5(1) et seq.; Highways § 105 et seq.; C.J.S. Highways § 14 et seq., 571; C.J.S. Motor Vehicles § 232.

§ 401. Authority of the Secretary

The Secretary is authorized and directed to assist and cooperate with other Federal departments and agencies, State and local governments, private industry, and other interested parties, to increase highway safety. Added Pub.L. 89-564, Title I, § 101, Sept. 9, 1966, 80 Stat. 731.

Transfer of Functions. All functions, powers, and duties of the Secretary of Commerce under this title and under specific related laws and parts of laws set out in the notes in

this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub.L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation, Sec. section 103(a) (1), (9) of Title 49, Transportation.

National Highway Safety Agency; Creation; Appointment of Director; Duties of Director. Section 201 of Pub.L. 89-564, as amended by Pub.L. 89-670, § 8 (9), Oct. 15, 1966, 80 Stat. 943; Pub.L. 90-53, § 10(b), Sept. 11, 1967, 81 Stat. 221, provided that: "The Secretary shall carry out the provisions of the Highway Safety Act of 1966 (including chapter 4 of title 23 of the United States Code) [enacting this chapter, amending sections 105 and 307 of this title, repealing sections 135 and 313 of this title and enacting material set out as notes under this section and sections 303, 307, 402 and 403 of this title] through a National Highway Safety Bureau (hereinafter referred to as the 'Bureau'), which he shall establish in the Department of Commerce [Transportation]. The Bureau shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be a citizen of the United States, and shall be appointed with due regard for his fitness to discharge efficiently the powers and the duties delegated to him. The Director shall have no pecuniary interest in or own any stock in or bonds of any enterprise involved in (1) manufacturing motor vehicles or motor vehicle equipment, or (2) constructing highways, nor shall he engage in any other business, vocation, or employment. The Director shall perform such duties as are delegated to him by the Secretary. On highway matters the Director shall consult with the Director of Public Roads. The President is authorized to carry out the provisions of the National Traffic and Motor Vehicle Safety Act of 1966 [section 1331 et seq. of Title 15, Commerce and Trade] through the Bureau and Director authorized by this section."

Annual Report to Congress on Administration of Highway Safety Act of 1966. Section 202 of Pub.L. 89-564 provided that:

"(a) The Secretary shall prepare and submit to the President for transmittal to the Congress on March 1 of each year a comprehensive report on the administration of the Highway Safety Act of 1966 (including chapter 4 of title 23 of the United States Code) [which enacted this chapter, amended sections 105 and 307 of this title, repealed sections 135 and 313 of this title, and enacted material set out as notes under this section and sections 303, 307, 402, and 403 of this title] for the preceding calendar year. Such report should include but not be restricted to (1) a thorough statistical compilation of the accidents and injuries occurring in such year; (2) a list of all safety standards issued or in effect in such year;

(3) the scope of observance of applicable Federal standards; (4) a statement of enforcement actions including judicial decisions, settlements, or pending litigation during the year; (5) a summary of all current research grants and contracts together with a description of the problems to be considered by such grants and contracts; (6) an analysis and evaluation of completed research activities and technological progress achieved during such year together with the relevant policy recommendations flowing therefrom; (7) the effectiveness of State highway safety programs (including local highway safety programs) and (8) the extent to which technical information was being disseminated to the scientific community and consumer-oriented material was made available to the motoring public.

"(b) The annual report shall also contain such recommendations for additional legislation as the Secretary deems necessary to promote cooperation among the several States in the improvement of highway safety and to strengthen the national highway safety program."

Submission to Congress by January 10, 1968, of Detailed Estimates of Cost of Carrying Out Highway Safety Act of 1966. Section 207 of Pub.L. 89-564 provided that: "In order to provide the basis for evaluating the continuing programs authorized by this Act [which enacted this chapter, amended sections 105 and 307 of this title, repealed sections 135 and 313 of this title, and enacted material set out as notes under this section and sections 303, 307, 402, and 403 of this title], and to furnish the Congress with the information necessary for authorization of appropriations for fiscal years beginning after June 30, 1969, the Secretary, in cooperation with the Governors or the appropriate State highway safety agencies, shall make a detailed estimate of the cost of carrying out the provisions of this Act. The Secretary shall submit such detailed estimate and recommendations for Federal, State, and local matching funds to the Congress not later than January 10, 1968."

Short Title. Section 208 of Pub.L. 89-564 provided that: "This Act [which enacted this chapter, amended sections 105 and 307 of this title, repealed sections 135 and 313 of this title, and enacted material set out as notes under this section and sections 303, 307, 402, and 403 of this title] may be cited as the 'Highway Safety Act of 1966.'"

National Highway Safety Bureau. Administration of National Traffic and Motor Vehicle Safety Act through the Bureau and its Director, see Ex.Ord. No.11357, June 6, 1947, 32 F.R. 8223, set out as a note under section 1302 of Title 15, Commerce and Trade.

Legislative History. For legislative history and purpose of Pub.L. 89-564, see 1966 U.S.Code Cong. and Adm.News, p. 2741.

§ 402. Highway safety programs

(a) Each State shall have a highway safety program approved by the Secretary, designed to reduce traffic accidents and deaths, injuries, and property damage resulting therefrom. Such programs shall be in accordance with uniform standards promulgated by the Secretary. Such uniform standards shall be expressed in terms of performance criteria. Such uniform standards shall be promulgated by the Secretary so as to improve driver performance (including, but not limited to, driver education, driver testing to determine proficiency to operate motor vehicles, driver examinations (both physical and mental) and driver licensing) and to improve

pedestrian performance. In addition such uniform standards shall include, but not be limited to, provisions for an effective record system of accidents (including injuries and deaths resulting therefrom), accident investigations to determine the probable causes of accidents, injuries, and deaths, vehicle registration, operation, and inspection, highway design and maintenance (including lighting, markings, and surface treatment), traffic control, vehicle codes and laws, surveillance of traffic for detection and correction of high or potentially high accident locations, and emergency services. Such standards as are applicable to State highway safety programs shall, to the extent determined appropriate by the Secretary, be applicable to federally administered areas where a Federal department or agency controls the highways or supervises traffic operations. The Secretary shall be authorized to amend or waive standards on a temporary basis for the purpose of evaluating new or different highway safety programs instituted on an experimental, pilot, or demonstration basis by one or more States, where the Secretary finds that the public interest would be served by such amendment or waiver.

(b) (1) The Secretary shall not approve any State highway safety program under this section which does not—

(A) provide that the Governor of the State shall be responsible for the administration of the program.

(B) authorize political subdivisions of such State to carry out local highway safety programs within their jurisdictions as a part of the State highway safety program if such local highway safety programs are approved by the Governor and are in accordance with the uniform standards of the Secretary promulgated under this section.

(C) provide that at least 40 per centum of all Federal funds apportioned under this section to such State for any fiscal year will be expended by the political subdivisions of such State in carrying out local highway safety programs authorized in accordance with subparagraph (B) of this paragraph.

(D) provide that the aggregate expenditure of funds of the State and political subdivisions thereof, exclusive of Federal funds, for highway safety programs will be maintained at a level which does not fall below the average level of such expenditures for its last two full fiscal years preceding the date of enactment of this section.

(E) provide for comprehensive driver training programs, including (1) the initiation of a State program for driver education in the school systems or for a significant expansion and improvement of such a program already in existence, to be administered by appropriate school officials under the supervision of the Governor as set forth in subparagraph (A) of this paragraph; (2) the training of qualified school instructors and their certification; (3) appropriate regulation of other driver training schools, including licensing of the schools and certification of their instructors; (4) adult driver training programs, and programs for the retraining of selected drivers; and (5) adequate research, development and procurement of practice driving facilities, simulators, and other similar teaching aids for both school and other driver training use.

(2) The Secretary is authorized to waive the requirement of subparagraph (C) of paragraph (1) of this subsection, in whole or in part, for a fiscal year for any State whenever he determines that there is an insufficient number of local highway safety programs to justify the expenditure in such State of such percentage of Federal funds during such fiscal year.

(c) Funds authorized to be appropriated to carry out this section shall be used to aid the States to conduct the highway safety programs approved in accordance with subsection (a), shall be subject to a deduction not to exceed 5 per centum for the necessary costs of administering the provisions of this section, and the remainder shall be apportioned among the several States. For the fiscal years ending June 30, 1967, June 30, 1968,

and June 30, 1969, such funds shall be apportioned 75 per centum on the basis of population and 25 per centum as the Secretary in his administrative discretion may deem appropriate and thereafter such funds shall be apportioned as Congress, by law enacted hereafter, shall provide. On or before January 1, 1969, the Secretary shall report to Congress his recommendations with respect to a nondiscretionary formula for apportionment of funds authorized to carry out this section for the fiscal year ending June 30, 1970, and fiscal years thereafter. After December 31, 1969, the Secretary shall not apportion any funds under this subsection to any State which is not implementing a highway safety program approved by the Secretary in accordance with this section. Federal aid highway funds apportioned on or after January 1, 1970, to any State which is not implementing a highway safety program approved by the Secretary in accordance with this section shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 101 of this title, until such time as such State is implementing an approved highway safety program. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of the preceding sentence to a State. Any amount which is withheld from apportionment to any State under this section shall be reapportioned to the other States in accordance with the applicable provisions of law.

all
appt.
funds

100%
of fed.
hwy. aid
funds

(d) All provisions of chapter 1 of this title that are applicable to Federal-aid primary highway funds other than provisions relating to the apportionment formula and provisions limiting the expenditure of such funds to the Federal-aid systems, shall apply to the highway safety funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section. In applying such provisions of chapter 1 in carrying out this section the term "State highway department" as used in such provisions shall mean the Governor of a State for the purposes of this section.

(e) Uniform standards promulgated by the Secretary to carry out this section shall be developed in cooperation with the States, their political subdivisions, appropriate Federal departments and agencies, and such other public and private organizations as the Secretary deems appropriate.

(f) The Secretary may make arrangements with other Federal departments and agencies for assistance in the preparation of uniform standards for the highway safety programs contemplated by subsection (a) and in the administration of such programs. Such departments and agencies are directed to cooperate in such preparation and administration, on a reimbursable basis.

(g) Nothing in this section authorizes the appropriation or expenditure of funds for (1) highway construction, maintenance, or design (other than design of safety features of highways to be incorporated into standards) or (2) any purpose for which funds are authorized by section 403 of this title. Added Pub.L. 89-564, Title I, § 101, Sept. 9, 1966, 80 Stat. 731, and amended Pub.L. 90-495, § 13, Aug. 23, 1968, 82 Stat. 822.

1968 Amendment. Subsec. (c). Pub.L. 90-495 substituted "December 31, 1969" for "December 31, 1968" as the last day on which the Secretary may apportion funds to States which are not implementing highway safety programs approved by the Secretary and substituted "January 1, 1970" for "January 1, 1969" as the date after which funds apportioned to States not having approved safety programs shall be reduced until a safety program is implemented.

Effective Date of 1968 Amendment. Amendment by Pub.L. 90-495 effective Aug. 23, 1968, see section 37 of Pub.L. 90-495, set out as a note under section 402 of this title.

Transfer of Functions. All functions, powers, and duties of the Secretary of Commerce and other officers and officers of the Department of Commerce under

this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub.L. 80-070, Oct. 15, 1960, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 40, Transportation.

Authorization of Appropriations. Section 101 of Pub.L. 89-564 provided that: "For the purpose of carrying out section 402 of title 23, United States Code [this section], there is hereby authorized to be appropriated the sum of \$07,000,000 for the fiscal year ending June 30, 1967; \$100,000,000 for the fiscal year ending June 30, 1968; and \$100,000,000 for the fiscal year ending June 30, 1969."

Report to Congress by July 1, 1967, on Initial Standards. Section 203 of Pub.L. 89-564 provided that: "The Secretary of Commerce shall report to Congress, not later than July 1, 1967, all standards to be initially applied in carrying out section 402 of title 23 of the United States Code [this section]."

Study of Relationship Between Consumption of Alcohol and Highway Safety. Report to Congress On or Before July 1, 1967. Section 201 of Pub.L. 89-564 provided that: "The Secretary of Commerce shall make a thorough and complete study of the relationship between the consumption of alcohol and its effect upon highway safety and drivers of motor vehicles, in consultation with such other government and private agencies as may be necessary. Such study shall cover review and evaluation of State and local laws and enforcement methods and

procedures relating to driving under the influence of alcohol, State and local programs for the treatment of alcoholism, and such other aspects of this overall problem as may be useful. The results of this study shall be reported to the Congress by the Secretary on or before July 1, 1967, and shall include recommendations for legislation if warranted."

National Highway Safety Bureau. Provisions of section to be carried out by National Highway Safety Bureau in the Department of Transportation headed by a Director, see section 201 of Pub.L. 89-564, set out as a note under section 401 of this title.

Legislative History. For legislative history and purpose of Pub.L. 89-564, see 1966 U.S. Code Cong. and Adm. News, p. 2741. See, also, Pub.L. 90-495, 1968 U.S. Code Cong. and Adm. News, p. 3182.

§ 403. Highway safety research and development

The Secretary is authorized to use funds appropriated to carry out this section to carry out safety research which he is authorized to conduct by subsection (a) of section 307 of this title. In addition, the Secretary may use the funds appropriated to carry out this section, either independently or in cooperation with other Federal departments or agencies, for (1) grants to State or local agencies, institutions, and individuals for training or education of highway safety personnel, (2) research fellowships in highway safety, (3) development of improved accident investigation procedures, (4) emergency service plans, (5) demonstration projects, and (6) related activities which are deemed by the Secretary to be necessary to carry out the purposes of this section. Added Pub.L. 89-564, Title I, § 101, Sept. 9, 1966, 80 Stat. 733.

Transfer of Functions. All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub.L. 80-070, Oct. 15, 1960, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 40, Transportation.

Authorization of Additional Appropriations. Authorization of appropriation of additional sum of \$10,000,000 for the fiscal year ending June 30, 1967, \$20,000,000 for the fiscal year ending June 30, 1968, and \$25,000,000 for the fiscal year ending June 30, 1969, for the purpose of carrying out this section and section 307(a) of this title, see section 105 of Pub.L. 89-564, set out as a note under section 307 of this title.

Form and Use of Reports of Highway Traffic Accidents or Research Projects in Court. Availability to Public. Section 106 of Pub.L. 89-564 provided that: "All facts contained in any report of any

Federal department or agency or any officer, employee, or agent thereof, relating to any highway traffic accident or the investigation thereof conducted pursuant to chapter 4 of title 23 of the United States Code [this chapter] shall be available for use in any civil, criminal, or other judicial proceeding arising out of such accident, and any such officer, employee, or agent may be required to testify in such proceedings as to the facts developed in such investigation. Any such report shall be made available to the public in a manner which does not identify individuals. All completed reports on research projects, demonstration projects, and other related activities conducted under sections 307 and 403 of title 23, United States Code [this section and section 307 of this title], shall be made available to the public in a manner which does not identify individuals."

National Highway Safety Bureau. Provisions of section to be carried out by National Highway Safety Bureau in the Department of Transportation headed by a Director, see section 201 of Pub.L. 89-564, set out as a note under section 401 of this title.

§ 401. National Highway Safety Advisory Committee

(a) (1) There is established in the Department of Transportation a National Highway Safety Advisory Committee, composed of the Secretary or an officer of the Department appointed by him, who shall be Chairman, the Federal Highway Administrator, and thirty-five members appointed by the President, no more than four of whom shall be Federal officers or employees. The appointed members, having due regard for the purposes of this chapter, shall be selected from among representatives of various State and local governments, including State legislatures, of public and private interests contributing to, affected by, or concerned with highway safety, including the national organizations of passenger car,

bus, and truck owners, and of other public and private agencies, organizations, or groups demonstrating an active interest in highway safety, as well as research scientists and other individuals who are expert in this field.

(2) (A) Each member appointed by the President shall hold office for a term of three years, except that (i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (ii) the terms of office of members first taking office after the date of enactment of this section shall expire as follows: Twelve at the end of one year after the date such committee members are appointed by the President, twelve at the end of two years after the date such committee members are appointed by the President, and eleven at the end of three years after the date such committee members are appointed, as designated by the President at the time of appointment, and (iii) the term of any member shall be extended until the date on which the successor's appointment is effective. None of the members appointed by the President who has served a three-year term, other than Federal officers or employees, shall be eligible for reappointment within one year following the end of his preceding term.

(B) Members of the Committee who are not officers or employees of the United States shall, while attending meetings or conferences of such Committee or otherwise engaged in the business of such Committee, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding \$100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized in section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 73b-2) for persons in the Government service employed intermittently. Payments under this section shall not render members of the Committee employees or officials of the United States for any purpose.

(b) The National Highway Safety Advisory Committee shall advise, consult with, and make recommendations to, the Secretary on matters relating to the activities and functions of the Department in the field of highway safety. The Committee is authorized (1) to review research projects or programs submitted to or recommended by it in the field of highway safety and recommend to the Secretary, for prosecution under this title, any such projects which it believes show promise of making valuable contributions to human knowledge with respect to the cause and prevention of highway accidents; and (2) to review, prior to issuance, standards proposed to be issued by order of the Secretary under the provisions of section 402(a) of this title and to make recommendations thereon. Such recommendations shall be published in connection with the Secretary's determination or order.

(c) The National Highway Safety Advisory Committee shall meet from time to time as the Secretary shall direct, but at least once each year.

(d) The Secretary shall provide to the National Highway Safety Committee from among the personnel and facilities of the Department of Commerce such staff and facilities as are necessary to carry out the functions of such Committee.

Added Pub.L. 89-564, Title I, § 101, Sept. 9, 1966, 80 Stat. 733, amended Pub.L. 90-150, Nov. 24, 1967, 81 Stat. 507.

References in Text. The date of enactment of this section, referred to in subtitle (a) (2) (A), is September 9, 1966.

Section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 73b-2), referred to in subtitle (a) (2) (ii), was classified to section 73b-2 of Title 5, and is now classified to sections 503 and 507 of Title 5, Government Organization and Employees.

1967 Amendment. Subsec. (a) (1). Pub.L. 90-150, § 1(1), substituted "De-

partment of Transportation" for "Department of Commerce", increased number of Committee appointees from twenty-nine to thirty-five, and provided for selection of members from representatives of national organizations of passenger car, bus, and truck owners.

Subsec. (a) (2) (A). Pub.L. 90-150, § 1(2), substituted provisions for expiration of term of office of initial appointees one, two, and three years after date of appointment for twelve, twelve, and eleven

en members, respectively, for former provisions for such expiration one, two, and three years following enactment date of Sept. 9, 1966, for ten, ten, and nine members, respectively, and prohibited reappointment within one year after end of preceding term of member serving a three-year term of office.

Transfer of Functions. All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws

and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub.L. 89-470, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1653(a) (1), (6) of Title 49, Transportation.

Legislative History: For legislative history and purpose of Pub.L. 90-150, see 1967 U.S. Code Cong. and Adm. News, p. 541.

CHAPTER 5.—HIGHWAY RELOCATION ASSISTANCE

Sec. 501. Declaration of policy.
502. Assurance of adequate relocation assistance program.
503. Administration of relocation assistance program.
504. Federal reimbursement.
505. Relocation payments.
506. Replacement housing.

Sec. 507. Expenses incidental to transfer of property.
508. Relocation services.
509. Relocation assistance programs on Federal highway projects.
510. Authority of Secretary.
511. Definitions.

§ 501. Declaration of policy

Congress hereby declares that the prompt and equitable relocation and reestablishment of persons, businesses, farmers, and nonprofit organizations displaced as a result of the Federal highway programs and the construction of Federal-aid highways is necessary to insure that a few individuals do not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole. Therefore, Congress determines that relocation payments and advisory assistance should be provided to all persons so displaced in accordance with the provisions of this title.

Added Pub.L. 90-495, § 30, Aug. 23, 1968, 82 Stat. 830.

Effective Date. Section effective Aug. 23, 1968, see section 37 of Pub.L. 90-495, set out as a note under section 502 of this title.

Short Title. Section 1 of Pub.L. 90-495 provided that: "This Act (enacting this chapter and sections 135, 139, 140, and 141 of this title, amending sections 101, 101 note, 103, 104, 108, 112, 113, 115, 116, 120, 125, 128, 129, 131, 133, 136, 138, 205, 310, and 402 of this title, section 630 of Title 15, Commerce and Trade, and section 1653 of Title 49, Transportation, repealing section 133 of this title, and enacting provision set out as notes under this section and sections 101, 104, 108, 125,

131, 502, and 510 of this title) may be cited as the 'Federal-Aid Highway Act of 1968'."

Enactment Domain. Section 32 of Pub.L. 90-495 provided that: "Nothing contained in chapter 5 of title 23, United States Code [this chapter], shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of damages not in existence on the date of enactment of such chapter 5 [Aug. 23, 1968]."

Legislative History. For legislative history and purpose of Pub.L. 90-495, see 1968 U.S. Code Cong. and Adm. News, p. 3182.

§ 502. Assurance of adequate relocation assistance program

The Secretary shall not approve any project under section 106 or section 117 of this title which will cause the displacement of any person, business, or farm operation unless he receives satisfactory assurances from the State highway department that—

(1) fair and reasonable relocation and other payments shall be afforded to displaced persons in accordance with sections 505, 506, and 507 of this title;

(2) relocation assistance programs offering the services described in section 508 of this title shall be afforded to displaced persons; and

(3) within a reasonable period of time prior to displacement there will be available, to the extent that can reasonably be accomplished, in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by the Secretary, equal in number to the number of and available to such displaced families

QUESTION PRESENTED

Whether a State requirement that any person riding upon or operating a motorcycle on the streets or highways of the State shall wear upon his head a protective head device of a type approved by the State is unconstitutional under the Fourteenth Amendment.

BACKGROUND

Twenty-three U.S.C. § 402(a) (P. L. 89-564, the Highway Safety Act of 1966) requires each State to have a highway safety program approved by the Secretary of Transportation and in accordance with uniform standards promulgated by him.

Highway Safety Program Standard 4.4.3 released by the Secretary on June 26, 1967, and entitled Motorcycle Safety, (23 C.F.R. Part 204) requires each State to have a motorcycle safety program providing as a minimum, inter alia, that when a motorcycle is being operated on streets and highways, each motorcycle operator and passenger shall wear an approved safety helmet. Latest available information ^{1/} indicates that as of September 1, 1969, 41 states had enacted motorcycle protective headgear statutes ("headgear legislation" hereafter) of this type providing criminal penalties upon violation. Additionally an unknown number of cities may have enacted similar municipal ordinances.

As of January 1, 1970, there have been decisions in response to 43 known separate court challenges of State and municipal headgear legislation. In 31 instances legislation has been upheld, and in 12 it has been declared unconstitutional. ^{2/} Headgear legislation has been upheld by 11 State Supreme Courts (Vermont, Missouri, Florida, Washington, Oregon, North Carolina, Rhode Island, Massachusetts, Louisiana, North Dakota, and Wisconsin), 12 appellate courts (three in New York, two in New Jersey, and one each in Hawaii, Pennsylvania, Texas, Maryland, Ohio, Washington, and Connecticut), and 8 trial courts (two each in Pennsylvania, Kansas and New York, one each in South Dakota and Minnesota). Headgear legislation has been declared unconstitutional by 1 State Supreme Court (Illinois), 3 appellate courts (one each in Idaho, Arizona and Michigan), and 8 trial courts (two in New York, and one each in Ohio, Florida, Missouri, Kentucky, Colorado, and Michigan).

^{1/} Insurance Institute of Highway Safety, Legislative Review 1970, p. 20.

^{2/} This figure is computed on the basis of the last known decision in each case. Such decision, of course, may represent an appellate reversal, or be subject to reversal on appeal.

Additionally, it is the opinion of the Attorney General of Oklahoma that the State's headgear legislation is unconstitutional and the opinion of the Attorney General of New Mexico that a proposed city ordinance would be invalid if applied to citizens over 18 years of age.

The Supreme Court has never agreed to review one of these cases on the merits. However, in June 1969 the Court in Bisenius v. Karns dismissed an appeal (89 S. Ct. 2033 (1969)) attacking the constitutionality of the Wisconsin statute "for want of a substantial federal question". Such a disposition means that the Court viewed the decision below, upholding constitutionality, to be correct.

THE UNITED STATES SUPREME COURT VIEWS A STATE SUPREME
COURT DECISION UPHOLDING CONSTITUTIONALITY OF HEAD-
GEAR LEGISLATION TO BE CORRECT

During its 1968-69 term, the United States Supreme Court denied two petitions for certiorari in cases upholding headgear legislation 1/ and dismissed an appeal in a third case "for want of a substantial federal question", Bisenius v. Karns, 165 N.W. 2d 377 (S. Ct. Wisc. 1969), appeal dismissed, 89 S. Ct. 2033 (1969). The appellant had attacked Wisconsin's headgear legislation (§ 347.485(1)(a) Stats.) as a restriction upon individual liberty and as exceeding the police power of the state, alleging that both violated the due process clause of the Fourteenth Amendment.

The Supreme Court's dismissal of appeal "for want of substantial federal question" means that the Court views the decision below to be correct, and that no substantial question on the merits was raised. 2/

The issues raised in Bisenius are essentially the same as those raised in other suits challenging the constitutionality of headgear legislation.

1/ Everhardt v. City of New Orleans, 217 So. 2d 400 (S. Ct. La. 1968) reversing 208 So. 2d 423 (La. App. 1968), cert. denied 89 S. Ct. 1775 (1969); Mass. v. Howie, 238 N.E. 2d 373 (S. Jud. Ct. Mass. 1968), cert. denied 89 S. Ct. 485 (1968).

2/ Stern and Gressman, Supreme Court Practice 195 (3rd ed. 1962)

II

THE PRESUMPTION IN FAVOR OF THE CONSTITUTIONALITY OF A STATUTE IS ESPECIALLY APPOSITE WHEN A STATE STATUTE IMPLEMENTS THE EXPRESS COMMAND OF THE CONGRESS OF THE UNITED STATES.

There is a "long established presumption in favor of the constitutionality of a statute", Brandeis J., Ashwander v. Tennessee Valley Authority, 297 U.S. 288 at 354, (1936). This presumption has been recognized by the Supreme Court since the earliest days of the United States. Calder v. Bull, 3 Dall. 386, 399, (1798). In the words of Mr. Chief Justice Waite: "Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt." Sinking-Fund Cases, 99 U.S. 700, 718, (1879). Accord: Marshall C.J., Dartmouth College v. Woodward, 4 Wheat. 518, 625 (1818); Washington, J., Ogden v. Saunders, 12 Wheat. 213, 270 (1827).

This presumption applies to an Act of a State legislature as well as an Act of Congress, and "all reasonable doubts will be resolved in favor of the lawful exercise of their powers by the representatives of the people." State of North Carolina v. Anderson, 164 S.E. 2d 48 (1968) upholding that State's helmet legislation. The presumption extends to a city ordinance as well. Everhardt v. City of New Orleans 217 So. 2d 400 (S. Ct. La. 1968), reversing 203 2d 423 (La. App. 1968) cert. denied 89 S. Ct. 1775 (1969).

The presumption of constitutionality seems especially apposite when a State enacts legislation as a complement to an Act of Congress. The Highway Safety Act of 1966 (P. L. 89-564) was enacted "To provide for a coordinated national highway safety program through financial assistance to the States to accelerate highway traffic safety programs" It requires that "Each State shall have a highway safety program . . . designed to reduce traffic accidents and deaths" These programs "shall be in accordance with uniform standards promulgated by the Secretary." 23 U.S.C. § 402 a)

Pursuant to the authority granted him by the Act the Secretary released Highway Safety Program Standard 4.4.3 (23 C.F.R. Part 204, Highway Safety Program Standard No. 3) title "Motorcycle Safety." The purpose of the Standard was

"To assure that motorcycles, motorcycle operators, and their passengers meet standards which contribute to safe operation and protection against injuries."

The background of the Standard shows the imperative need for such a Standard:

"Deaths and injuries from motorcycle accidents doubled between 1963 and 1965. This fact is particularly alarming when it is understood that most of those killed and injured were young people under the age of 25. Motorcycle registrations have jumped from 574,080 in 1960 to 1,914,700 in 1966. By 1970 the annual increase is expected to reach 1 million per year. Motorcycle safety takes on grave dimensions in view of the fact that since 1960 the rate of motorcycle fatalities has increased at about the same rate as the number of motorcycles."

The Standard requires that "Each State shall have a motorcycle safety program to insure . . . that protective safety equipment for driver and passengers will be worn," specifically, "as a minimum," that

"B. Each motorcycle operator wears an approved safety helmet and eye protection when he is operating his vehicle on streets and highways.

"C. Each motorcycle passenger wears an approved safety helmet"

This, then, is the Federal Standard that the State legislation was enacted to implement at the express command of the Congress.

III

THE POLICE POWER OF A STATE INCLUDES THE POWER TO REQUIRE A MOTORCYCLIST TO WEAR PROTECTIVE HEADGEAR.

Headgear legislation stems from the police power of a State. The police power includes the power to enact laws within constitutional limits to promote the public safety and health, but from its nature it is incapable of exact definition. See e.g. Berman v. Parker 348 U.S. 26 (1954). It is one of the least limitable of governmental powers, and a proper exercise thereof may involve limitation of the use and enjoyment of private property without violation of the due process clause of the Constitution. See e.g. Queenside Hills Realty Co. v. Saxl, 328 U.S. 80 (1945).

The public streets, roads, and highways of a State are the property of all the people of a State, and a State has plenary power over the regulation of the use of such for the safety and best interests of the public. The Supreme Court has recognized and given sanction to the State exercise of its police power over use of the public way for more than 40 years:

"Motor vehicles are dangerous machines, and, even when skillfully and carefully operated, their use is attended by serious dangers to persons and property. In the public interest the state may make and enforce regulations reasonably calculated to promote care on the part of all . . . who use its highways."

Hess v. Pawloski, 274 U.S. 352, at 356 (1927).

Protection of a motorcyclist and his passenger while on the public roads then is within the legitimate concern of the State and not an area reserved to the individual. Legislation requiring the use of protective headgear by both cyclist and passenger is reasonably related to the end envisioned of reducing deaths and injuries to cyclists and passengers upon the public roads. Therefore State headgear legislation is a valid exercise of the police power by a State. See Massachusetts v. Howie, 238 N.E. 2d 373 (S. Jud. Ct. Mass., 1968); 89 S. Ct. 485 cert. denied 1968); State v. Edwards, Case No. 582370, Mun. Ct. Hennepin Cty. Minn. (1968).

IV

A STATE STATUTE REQUIRING A MOTORCYCLIST AND PASSENGER TO WEAR PROTECTIVE HEADGEAR DOES NOT VIOLATE THE FOURTEENTH AMENDMENT.

A. EVEN IF THE PRIMARY OBJECT OF HEADGEAR LEGISLATION IS TO PROTECT AN INDIVIDUAL FROM HIMSELF, SUFFICIENT PUBLIC INTEREST EXISTS TO JUSTIFY THIS STATUTE AND THERE IS NO VIOLATION OF THE DUE PROCESS CLAUSE.

If headgear legislation bears no relationship to the general welfare but has the sole effect of requiring an individual to protect himself from himself, it will establish a restriction upon personal liberty such as to constitute a denial of due process.

But such legislation is based upon sufficient public interest to constitute a valid exercise of the State police power.

The unprotected motorist presents a potential traffic hazard to the public at large. Unlike the operator of an enclosed motor vehicle a cyclist without a helmet is unprotected against falling objects such as tree branches. He is also unprotected against flying stones or gravel from the wheels of other moving vehicles. If struck in the head an unprotected cyclist could be so affected as to lose control of the vehicle and be the cause of death or injury to himself and other users of the highway. Everhardt v. City of New Orleans, supra; State ex rel. Colvin v. Lombardi, 241 A. 2d 625 (S. Ct. R. I. 1968).

Further, once a cyclist, passenger, or other person is injured because of the action of an unprotected cyclist, there is a tangible effect upon the public. There is an effect upon insurance rates, public hospital services, income tax revenues because of lost manhours of employment, public services to the disabled, and national defense since many motorcyclists are young men.

Severe injuries may result in an individual becoming a public charge; his death may call into force the State's welfare responsibility for his widow and children. State v. Lombardi, supra; People v. Newhouse, 287 N.Y.S. 2d 713 (1968).

The interdependence of the acts of an individual and the interest of the State has long been recognized. "The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected, the State must suffer." New York Central R. Co. v. White, 243 U.S. 188 at 206-07 (1916).

Accordingly States have legislated in many situations where there is a demonstrable risk to an individual which can be substantially reduced by requiring him to take certain protective measures. State laws prohibiting self-maiming and attempted self-destruction are well known. Additionally many States require safety devices to be worn by window cleaners, eye protection for welders, hard hats for those involved in demolition work, life preservers to be worn while water skiing, and nets protecting aerial performers from the effects of accidental falls. Headgear legislation belongs to this class of legislation.

B. HEADGEAR LEGISLATION DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE SINCE THE DISTINCTION BETWEEN MOTORCYCLES AND OTHER VEHICLES IS BASED UPON SUBSTANTIAL DIFFERENCES AND THEREFORE REASONABLE IN LIGHT OF ITS PURPOSE.

Headgear legislation restricts the liberty of only one class of users of the public highway: motorcyclists and their passengers. There is no similar restriction upon the liberty of operators and passengers of other motor vehicles.

But headgear legislation does not violate the equal protection clause because the distinction between motorcycles and other vehicles such as bicycles and automobiles is based upon substantial differences and is reasonable in light of its purpose:

"The power-driver cycle is a unique machine. It is capable of moderate to high speeds by motor vehicle standards, with the hazards inherent in speeds at which the vehicle is driven. A bicycle is limited in its speed by the nature of the power which propels it. An automobile differs from a motorcycle in

providing a shell surrounding the motorists. Both bicycles and automobiles can be dangerous to the riders, but the hazards of speed on the one hand and lack of an enclosure on the other hand do distinguish the motorcycle from both the bicycle and the automobile and make the hazard of operation distinguishable from both the bicycle and the automobile. Just because both the bicyclist and the motorist are subjected to hazards of head and face injuries does not mean that in order to make Sec. 347.485 valid it must apply to bicyclists and motorists. The degrees of hazards differ and therein lies the distinction. A classification is not unreasonable because it does not affect everyone who has any exposure to an evil." Bisenius v. Karns, Case No. 124423 (Cty. Ct. Wisc. 1968).

C. HEADGEAR LEGISLATION DOES NOT VIOLATE THE DUE PROCESS CLAUSE SINCE IT IS CLEAR AND DEFINITE ENOUGH TO GIVE UNEQUIVOCAL WARNING OF THE RULE TO BE OBEYED.

Even though headgear legislation may require the wearing of a helmet of a type approved by a designated State official, such a statute is sufficiently definite, clear, and positive to give unequivocal warning to citizens of the rule which is to be obeyed.

A statute does not have to specify precise helmet performance requirements in order to be clear and definite, since the use and nature of protective helmets in industry, athletics, and the military service is known generally to the public. People v. Schmidt, 54 Misc. 2d 702, 283 NYS 2d 290 (1967). It is sufficient that the regulations, or proposed regulations of the designated State official "indicates that the requirements will be definite and certain with standards based upon tests to be made of the various headgear." Bisenius v. Karns, Case No. 124423 (Cty. Ct. Wisc. 1968).

D. HEADGEAR LEGISLATION DOES NOT VIOLATE THE DUE PROCESS CLAUSE SINCE IT LAWFULLY DELEGATES POLICE POWER TO AN ADMINISTRATIVE OFFICIAL.

The established rule is that the legislature may delegate to a subordinate body the discretionary power to execute and administer a law, provided a reasonably clear standard is formulated to govern the exercise of discretion by the subordinate body. The test is the completeness of the statute so that no part of the legislative function is left to the judgment of a delegate. People v. Carmichael, 288 NYS 2d 931 (1968) rev. 279 NYS 2d 272 (1967). Even though a standard by its nature is a general one it is valid if it is capable of reasonable application under the circumstances. Headgear legislation constitutes a lawful delegation of the police power since it describes the job to be done, who must do it, and the scope of his authority. Bowles v. Willingham, 321 U.S. 502, 575 (1944).

Numerous examples of legislative delegation of powers pertaining to vehicle and traffic standards can be found in State laws. In New York, for example, the Commissioner of Motor Vehicles may make rules and regulations prescribing standards of brake efficiency, brake linings, hydraulic brake fluid, commercial vehicle lighting, emergency equipment, school bus equipment, splash guards, safety belts and shoulder harnesses, and traffic hazard warning devices. ^{3/}

^{3/} Subject to sec. 103(d) of P.L. 89-563 (The National Traffic and Motor Vehicle Safety Act of 1966).

APPENDIX

I

MOTORCYCLE PROTECTIVE HEADGEAR STATUTES

A typical statute requiring use of protective headgear by motorcycle operators and/or passengers might read:

No person shall ride upon or operate a motorcycle on the streets or highways of this State (city) without wearing upon his head a protective head device (crash helmet, safety headgear, protective helmet) of a type approved by the Director of Public Safety (Commissioner, City Council Department of Health).¹

The following 40 States have enacted statutes of this type:

Alabama	Kentucky	North Dakota
Arizona	Louisiana	Ohio
Arkansas	Maine	Oklahoma
Colorado	Maryland	Oregon
Connecticut	Massachusetts	Pennsylvania
Delaware	Minnesota	Rhode Island
Florida	Missouri	South Carolina
Georgia	Nebraska	South Dakota

¹ The legislature of Michigan, in response to a decision of the Court of Appeals on April 30, 1968, holding its protective headgear statute unconstitutional, enacted a new statute on June 12, 1968, which reads:

A motorcycle and a motor driven cycle shall be equipped with, and carry when it is being operated, a number of crash helmets equal to the number of drivers and passengers carried during operation. Helmets shall be approved by the department of State police. The department shall promulgate rules for the implementation of this section in accordance with the provisions of [here follows a lengthy citation]

Hawaii	New Hampshire	Tennessee
Idaho	New Jersey	Texas Utah
Illinois	New Mexico (under 18)	Vermont
Indiana	New York	Washington
Kansas	North Carolina	Wisconsin

The factual situations in the cases are virtually identical: the operator of a motorcycle was apprehended while operating a motorcycle upon the public streets without wearing on his head a protective head device as required by law.

APPENDIX

II

Courts and Cases

The following is a listing and citation of motorcycle protective headgear legislation opinions known as of January 1, 1970

I. United States Supreme Court

1. Krafft v. New York, 90 S. Ct. 198 (1969), certiorari denied.
2. Bisenius v. Karns, 89 S. Ct. 2033 (1969), appeal dismissed "for want of a substantial federal question."
3. Everhardt v. City of New Orleans, 89 S. Ct. 1775 (1969), certiorari denied.
4. Massachusetts v. Howie, 89 S. Ct. 485 (1968), certiorari denied.

II. State

A. Supreme or Highest Courts

1. State v. Solomon, _____ A. 2d _____ (S. Ct. Vt. 1969) upholding 23 V.S.A. § 1256.
2. State v. Darrah, _____ S.W. 2d _____ (S. Ct. Mo. 1969) upholding § 301.010 R.S. Mo. and reversing 1968 decision of Sedalia Mun. Ct.
3. State v. Eitel, 227 So. 2d 489 (S. Ct. Fla. 1969), reversing Small Claims - Magistrate Cts., Palm Beach Cases Nos. 68M-7013/14, 68M-7234 (1968) and upholding F. S. 317.981.
4. State v. Laitinen, 459 P. 2d 789 (S. Ct. Wash. 1969) holding constitutional RCW 46.37.530(3).
5. State v. Fetterly 456 P. 2d 996 (S. Ct. Oreg. 1969), holding constitutional ORS 483.443(1).
6. People v. Fries, 250 NE. 2d 149 (S. Ct. Ill., 1969) Docket No. 41624, holding unconstitutional Ill. Rev. Stat. 1967, ch. 971/2 Par. 189c(a).
7. State v. Anderson, 166 S.E. 2d 49 (S. Ct. N.C. 1969), affirming 164 S.E. 2d 48 (1968) reversing decision of Superior Ct., Guilford Cty., and upholding G.S. 20-140.2(b).
8. Bisenius v. Karns 165 N.W. 2d 377 (S. Ct. Wisc., 1969) upholding § 347.485 (1) and (2), Stats., 1967. Appeal dismissed, 89 S. Ct. 2033 (1969).

9. State v. Odegaard 165 N.W. 2d 677 (S. Ct., N.D., 1969), upholding N.D.C.C. § 39-21-43.
10. Everhardt v. City of New Orleans 217 So. 2d 400 (S. Ct. La. 1968), reversing 203 So. 2d 423 (La. App. 1968), upholds city ordinance which is similar to state statute, R.S. 32:190. Cert. denied 89 S. Ct. 1775 (1969).
11. Massachusetts v. Howie, 238 N.E. 2d 373 (S. Jud. Ct. Mass., 1968), Memorandum decision upholding Massachusetts statute. Cert. denied 89 S. Ct. 485 (1968).
12. State ex rel Colvin v. Lombardi 241 A. 2d 625 (S. Ct. R. I., 1968), upholding G. L. 1956, § 31-10.

B. Appellate Courts

1. Commonwealth v. Arnold, (Pa. Super. Ct. 1969) upholding P. I. 58, section 625.1 as amended, and reversing Clearfield Cty. Ct. (1969) decision.
2. State v. Betts (Warren Cty. Ct., Ohio, 1969) holding unconstitutional § 4511.53 Revised Code.
3. People v. Krafft (Onondaga Cty. Ct. 1969) upholding subdivision 6, section 331 of Vehicle and Traffic Law; cert. denied, 90 S. Ct. 198 (1969).
4. People v. Thoreson, (Maricopa Cty. Ct. 1969), holding Arizona law unconstitutional.
5. State v. _____ (Seneca Cty. Ct., Ohio, 1969) upholding § 4511.53 Revised Code (See Cycle News East, Nov. 4, 1967, p. 30).
6. People v. Albertson, Dist. Ct. (1969) holding Idaho statute unconstitutional, reversing Cty. Ct.
7. State v. Krammes, 252 A.2d 223 (1969) upholding N.J. S.A. 39:3-7b.7.
8. Ex Parte Smith, 441 S.W. 2d 544 (1969) upholding Art. 6701c-3 V.A.C.S., Texas.
9. State v. Myers, (Balto. Cty. Ct. 1969), affirming 1968 decision of Magistrate Ct. upholding Md. headgear and goggle legislation.
10. State v. Burzycki, 37 Law Week 2448, Conn. Cir. Ct. App. Div. (1969) File No. MV 10-63528 AP upholding Conn. Gen Stat. § 14-289(e), petition for appeal to S. Ct. Conn. denied, 252 A2d 812 (1969).

11. State v. Mele, 247 A. 2d 176 (1968) upholding N.J.S.A. 39: 3-76.7.
12. American Motorcycle Association and Farnum v. Davids and State Police, 153 N.W. 2d 72 (Mich. Ct. of Appeals, 1968), reversing 1967 decision of Circuit Ct., Ingham Cty., and holding unconstitutional PA 1949, No. 300, § 6581(d) as added by PA 1966, No. 207 (CL 1948 § 257, 658[d]).
13. People v. Carmichael, 288 N.Y.S. 2d 931 (1968) reversing 279 N.Y.S. 2d 272 (1967) and upholding subdivision 6, section 381, of Vehicle and Traffic Law.
14. State v. Zektzer, Sup. Ct. King Cty. No. 47101 (Wash. 1967) upholding Ch. 232, Sec. 4 Subd. 3, Laws of 1967, and reversing City of Seattle v. Zektzer, Seattle Mun. Ct. (1967).
15. People v. Schmidt, 283 N.Y.S. 2d 290 (Cty. Ct., Erie Cty. 1967) upholding subdivision 6, section 381 of Vehicle and Traffic Law. Appeal dismissed 295 N.Y.S. 2d 936 (1968).

C. Trial Courts

1. Sheneman v. Commonwealth (Dauphin Cty. Ct. Pa. 1969) upholding P. L. 50, section 625.1 as amended.
2. Commonwealth v. Molter, (Delaware Cty. Ct. Pa. 1969) No. S.A. #7, upholding P. L. 58, Section 625.1 as amended.
3. Colo. Motorcycle Ass'n v. Love, Hogan, (Denver Cty. Ct. 1969) holding Colo. law unconstitutional.
4. Commonwealth v. Coffman (Jefferson Cty. Ct., Ky. 1969) holding unconstitutional KRS 189.285.
5. City of Wichita v. White, Cases Nos. MC 150-151, (D. Ct. Sedgwick Cty. 1969) upholding city ordinance; on appeal Kansas Supreme Ct. (Case No. 45676).
6. S.D. Motorcycle Dealers Ass'n and Haight v. Parker, (S. D. Cir. Ct. 1968) upholding Section 4 of Chapter 215 of the 1967 Session Laws.
7. State v. Babbs, (Martin Cty. Ct., Fla. 1968) holding unconstitutional F.S. 317.981.
8. State v. Edwards, Case No. 582370 (Mun. Ct. Hennepin Cty., 1963) upholding Minn. Stat. 169.974, subd. (4)a.
9. People v. Newhouse, 287 N.Y.S. 2d 713 (City Ct. of Ithaca, N.Y. 1968) upholding subdivision 6, section 381 of Vehicle and Traffic Law.

10. People v. Daugherty, (West Plains Mun. Ct. 1968) holding Missouri Law unconstitutional.
11. People v. Wattle, (Buffalo City Ct. 1967) holding unconstitutional subdivision 6, section 381 of Vehicle and Traffic Law.
12. City of Hutchinson v. Silvey, Case No. CR 8081 (D. Ct. Reno City., Kansas 1967) upholding city ordinance.
13. People v. Bielmeyer 282 N.Y.S. 2d 797 (Buffalo City Ct. 1967) upholding subdivision 6, section 381 of Vehicle and Traffic Law.
14. State v. Duncan, No. 44835 (Wayne Cty. 1967) holding Michigan statute unconstitutional.
15. People v. Smallwood, 277 NYS. 2d 429 (Ct. Spec. Sess., Irondequoit, Monroe Cty. 1967), holding unconstitutional subdivision 6, section 381 of Vehicle and Traffic Law.

III. Opinions of States Attorneys - General

1. Opinion of Attorney - General of New Mexico, No. 69-14 Feb. 25, 1969. In response to an Attorney for the New Mexico legislative Counsel, the opinion notes cases contra position taken in No. 66-15 but states "we are unwilling to completely abandon our past position."
2. Opinion of Attorney - General of Oklahoma No. 68-267, December 31, 1968, that 470. S. Supp. 1967, § 40-105(b), is unconstitutional.
3. Opinion of Attorney - General of New Mexico, No. 66-15, Feb. 1, 1966. Proposed city ordinance unconstitutional as to citizens over 18.

IV. Law Review Notes and Articles

1. Constitutional Law - Validity of Safety Helmet Requirements, 71 W.Va. L. Rev. 191 (1969).
2. Constitutional Law - Police Power - Motorcycle Crash Helmet Laws' Relation to Public Welfare, 1969 Wis. L. Rev. 320 (1969).
3. Constitutionality of Mandatory Motorcycle Helmet Legislation, 73 Dick. L. Rev. 100 (1968).

4. Constitutional Law - Due Process - Statute Requiring Motorcyclist to Wear Crash Helmet is Unconstitutional, (American Motorcycle Ass'n. v. Davids), 82 Harv. L. Rev. 469 (1968).

Virginia
~~Commonwealth~~ Hwy
Safety

ery is \$200. At least 20 percent of all stolen vehicle crashes result in injury to one or more persons.

TESTING

Two identical cars were in an experimental run from Germany into Italy, a distance of 1,000 miles. One driver was to make the best time he possibly could within reasonable bounds of safety. The other was told to take it safe and easy. The first finished only 21 minutes ahead of the other with a driving time of 20 hours and 12 minutes. The experiment was repeated over an 800 mile course and this time the difference was again 21 minutes. The fast driver used 10 more gallons of gas.

level by the unsteadiness of his eyes as he attempts to fix his gaze on a target. It can spot a level as low as .02 percent. The device makes a pictorial record of what happens to each of the testee's eyes when he attempts to look in a shadowbox at a target light. Not a difficult operation for a sober person, it requires control of the eye muscles through the brain and a drinking person loses this control.

A recent Wisconsin survey revealed that among 16 pedestrians 16 years of age and over killed in traffic, 73 percent had been drinking and 40 percent had levels of .15 or higher. Of 422 drivers tested, 65 percent had been drinking and 37 had alcohol levels of .15 or above.

ALCOHOL

In Wisconsin, a person who refuses a test under the State's implied consent law and is convicted gets an extra two days in jail and six more months of license suspension.

In New York State, a drinking driver left the road on a curve. His car did not overturn but plowed a 200-foot path through weeds and bushes. Moments later, a second and following drinking driver, seeing the first driver's taillights ahead, thought the newly plowed path was the highway and followed it until he crashed into the rear of the first car.

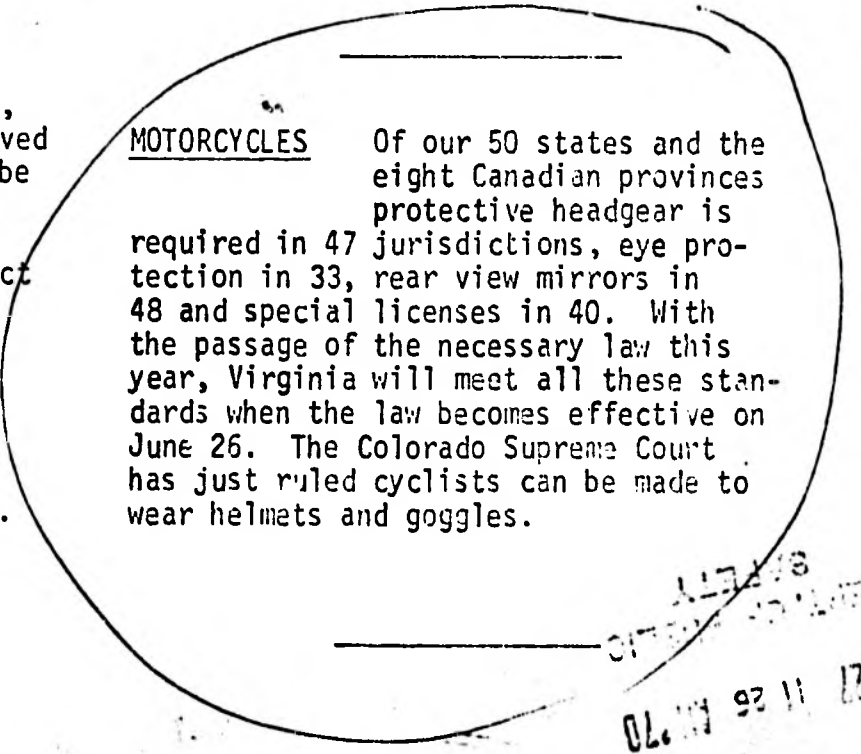
In Leeds, England, it was found that motorists were heating the second blood sample, which goes to the accused, and then claiming they were being deprived of evidence, since the blood could not be tested, through no fault of theirs.

MOTORCYCLES

Of our 50 states and the eight Canadian provinces protective headgear is required in 47 jurisdictions, eye protection in 33, rear view mirrors in 48 and special licenses in 40. With the passage of the necessary law this year, Virginia will meet all these standards when the law becomes effective on June 26. The Colorado Supreme Court has just ruled cyclists can be made to wear helmets and goggles.

In October, 1967, Britain's strict drunk driving laws, which included a roadside preliminary breath test, went into effect. The Ministry of Transport reports 22,000 less deaths and serious injuries than in a similar period. In both years, about 70 percent of the reductions were achieved between 10 p.m. and 4 a.m. when drinking and driving are most likely to be at their worst.

Cornell Aeronautical Laboratory has been experimenting with a device which measures an individual's alcohol



with a lamp on the front which shall emit a white light visible from a distance of at least 500 feet to the front and with a red reflector on the rear of a type approved by the department which shall be visible from all distances from 100 feet to 600 feet to the rear when directly in front of lawful lower beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of 500 feet to the rear may be used in addition to the red reflector. (REVISED, 1968.)

(b) No person shall operate a bicycle unless it is equipped with a bell or other device capable of giving a signal audible for a distance of at least 100 feet, except that a bicycle shall not be equipped with nor shall any person use upon a bicycle any siren or whistle.

(c) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

ARTICLE XIII—SPECIAL RULES FOR MOTORCYCLES (NEW, 1968.)

§ 11-1301—Traffic laws apply to persons operating motorcycles

Every person operating a motorcycle shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under this act, except as to special regulations in this article and except as to those provisions of this act which by their nature can have no application.

§ 11-1302—Riding on motorcycles

(a) A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the motorcycle at the rear or side of the operator. (FORMERLY § 11-1103; REVISED, 1968.)

(b) A person shall ride upon a motorcycle only while sitting astride the seat, facing forward, with one leg on each side of the motorcycle.

(c) No person shall operate a motorcycle while carrying any package, bundle, or other article which prevents him from keeping both hands on the handlebars.

(d) No operator shall carry any person, nor shall any person ride, in a position that will interfere with the operation or control of the motorcycle or the view of the operator.

§ 11-1303—Operating motorcycles on roadways laned for traffic

(a) All motorcycles are entitled to full use of a lane and a motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. This subsection shall not apply to motorcycles operated two abreast in a single lane.

(b) The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

(c) No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.

(d) Motorcycles shall not be operated more than two abreast in a single lane.

(e) Subsections (b) and (c) shall not apply to police officers the performance of their official duties.

§ 11-1304—Clinging to other vehicles

No person riding upon a motorcycle shall attach himself or the motorcycle to any other vehicle (or streetcar) on a roadway.

§ 11-1305—Footrests and handlebars

(a) Any motorcycle carrying a passenger, other than in sidecar or enclosed cab, shall be equipped with footrests for such passenger.

(b) No person shall operate any motorcycle with handlebars more than 15 inches in height above that portion of the seat occupied by the operator.

§ 11-1306—Equipment for motorcycle riders

(a) No person shall operate or ride upon a motorcycle unless he is wearing protective headgear which complies with standards established by the commission.

(b) No person shall operate a motorcycle unless he is wearing

an eye-protective device of a type approved by the commissioner, except when the motorcycle is equipped with a windscreen.

(c) This section shall not apply to persons riding within an enclosed cab.

(d) The commissioner is hereby authorized to approve or disapprove protective headgear and eye-protective devices required herein, and to issue and enforce regulations establishing standards and specifications for the approval thereof. The commissioner shall publish lists of all protective headgear and eye-protective devices by name and type which have been approved by him.

ARTICLE XIV—STREETCARS¹

(REPOSITIONED, 1968; FORMERLY ARTICLE XIII.)

§ 11-1401—Traffic laws apply to operators of streetcars

Every operator of a streetcar upon any roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter and chapter 10, except regulations and provisions which by their nature can have no application. (NEW, 1968.)

§ 11-1402—Passing streetcar on left

(a) The driver of a vehicle shall not overtake and pass upon the left nor drive upon the left side of any streetcar proceeding in the same direction, whether such streetcar is actually in motion or temporarily at rest, except:

1. When so directed by a police officer;
2. When upon a one-way street; or
3. When upon a street where the tracks are so located as to prevent compliance with this section.

(b) The driver of any vehicle when permitted to overtake and pass upon the left of a streetcar which has stopped for the purpose of receiving or discharging any passenger shall reduce speed and may proceed only upon exercising due caution for pedestrians and shall accord pedestrians the right of way when required by other sections of this chapter.

¹This article should be omitted in states where no streetcars are in operation.

§ 11-1403—Passing streetcar on right

The driver of a vehicle overtaking upon the right any streetcar stopped or about to stop for the purpose of receiving or discharging any passenger shall stop such vehicle at least five feet to the rear of the nearest running board or door of such streetcar and thereupon remain standing until all passengers have boarded such car or upon alighting have reached a place of safety, except that where a safety zone has been established, a vehicle need not be brought to a stop before passing any such streetcar but may proceed past such car at a speed not greater than is reasonable and proper and with due caution for the safety of pedestrians.

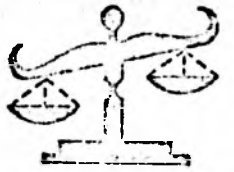
§ 11-1404—Driving on streetcar tracks

(a) The driver of any vehicle proceeding upon any streetcar track in front of a streetcar upon a street shall remove such vehicle from the track as soon as practical after signal from the operator of said streetcar.

(b) When a streetcar has lawfully entered and is crossing an intersection, no driver of a vehicle shall drive upon or across the car tracks within the intersection in front of the streetcar when there is hazard of a collision.

(c) The driver of a vehicle upon overtaking and passing a streetcar shall not turn in front of such streetcar so as to interfere with or impede its movement.

MOTOR VEHICLE LAW REVIEW



In this issue of the Bulletin, Joseph P. Hennessee, Director of AAMVA's Division of Legal Services, reports on a Colorado helmet law decision and gives a summary of a memorandum from the National Highway Safety Bureau which reviews existing helmet law decisions in the various jurisdictions.

Colorado Helmet Law Upheld

The latest in a series of motorcycle helmet cases is *The People of the State of Colorado v. Joseph Ball, et al*, not yet reported, which was handed down by the Colorado Supreme Court on January 26, 1970.

The facts show that defendants in error (who were plaintiffs in the trial court and are hereafter referred to as such) began a class action seeking a declaratory judgment concerning the constitutionality of the Colorado Motorcycle Helmet Law (CRS 1963, 13-S-159) enacted by the 1968 General Assembly, and seeking relief against its enforcement.

The pertinent part of the Colorado statute provides "No person shall operate any motorcycle or motor-driven cycle on a public highway in this state unless such person and any passenger therein is wearing securely fastened on his head a protective helmet designed to deflect blows, resist penetration, and spread the force of the impact, . . ."

At trial the plaintiffs presented no evidence whatsoever. The State offered in evidence documents containing statistics dealing with results of operation of motorcycles by drivers wearing helmets as compared to those with drivers not wearing helmets. No other evidence appears in the record.

At the conclusion of the trial the Court ruled that the legislative interest was to prevent motorcyclists from sustaining serious head injuries, and that the legislation was designed to protect only that certain class of persons who ride motorcycles. For this reason the trial judge ruled that the helmet statute did not relate to the health and welfare of the citizens of Colorado in general, and was, therefore, an unconstitutional exercise of the police power of the state, and enjoined the State from enforcing the "helmet" requirement. The court upheld as constitutional that portion of the

statute requiring operators and passengers of motorcycles to wear a face shield, goggles, or safety glasses.

Upon appeal the Supreme Court reversed the trial court and held that the helmet requirement was constitutional.

In reaching this conclusion the Supreme Court pointed out there is a presumption that every statute is valid and constitutional, and that the burden of clearly demonstrating the unconstitutionality of a statute is upon the party asserting its invalidity. Second, in order for a statute to be within the police power of the state, the provisions of the statute must be reasonably related to the public health, safety and welfare. Whether or not the relationship is reasonable is a judicial question.

Plaintiffs argued that where a statute deprives a certain class of persons of their individual constitutional freedoms, there must be a more substantial relationship between the restrictive provisions and the public health, safety, and welfare than that provided by the test of reasonableness.

The Supreme Court did not agree. While it noted that it had characterized an individual's right to use of the public highways as an adjunct of the constitutional right to acquire, possess and protect property, it has clearly held that such a right may be limited by the proper exercise of the police power based on a reasonable relationship to the public health, safety and welfare.

In deciding that the helmet law bore no reasonable relationship to the public health, safety and welfare, the trial judge, in the opinion of the Supreme Court, failed to apply the above principles of constitutional law correctly to the facts of the case.

The trial judge concluded that the purpose of the helmet law was to prevent motorcyclists from sustaining head injuries, and that such purpose was not within the state's police power.

"To say that statutes which protect the individual from serious bodily harm or death are per se unconstitutional as not bearing a reasonable relationship to the public health, safety and welfare is to apply a most shallow doctrine of the police

power of the state. Such a concept would require us to hold unconstitutional hunter laws, laws requiring life jackets on certain occupations to wear protective devices, a result which we are not pre-

pared to adopt in the name of the 'right to be left alone'."

The Court stated that the safety of other highway users might be affected by failure of motorcyclists to protect themselves against, for example, stones picked up and thrown by tires, and noted that the hypothesis that an accident might occur because of failure to wear protective helmets had been upheld as reasonable by the ruling courts in Louisiana, Massachusetts, North Carolina, North Dakota, Oregon, Rhode Island, Texas, Washington, and Wisconsin. While only the Supreme Court of Illinois has held to the contrary.

Everhardt v. New Orleans, 253 La. 285, 217 So.2d 400; *Commonwealth v. Howie*, 354 Mass. 769, 238 N.E. 2d 373, *Cert. denied* 393 U.S. 999, 895 Ct. 485, 21 L.Ed. 2d 464; *State v. Anderson*, 275 N.C. 168, 166 S.E. 2d 49; *State v. Odegaard*, 165 N.W. 2d 677 (N.D.); *State v. Fetterly*, —Ore.—, 456 P. 2d 966; *State v. Lombardi*, —R.I.—, 241 A. 2d 625; *Ex parte Smith*, —Tex.— 441 S.W. 2d 544; *State v. Leitenen*, —Wash.—, 459 P. 2d 789; *Bisentin v. Karns*, 42 Wis. 2d 42, 165 N.W. 2d 377 (dismissed on appeal by U.S. Supreme Court "for want of a substantial federal question in 89 S.Ct. 2033 (1969)"); *Contra, People v. Fries*, 42 Ill. 2d 446, 250 N.E. 2d 149.

In an assignment of cross error, plaintiffs alleged that the helmet requirement constituted an unconstitutional burden on interstate commerce.

In demolishing this argument the Court noted that 41 states now have helmet laws. In addition, it noted, the Federal Traffic and Motor Vehicle Safety Statute, 15 U.S.C.A. Sec. 1381 *et seq.*, which was passed under the commerce power for the purpose of reducing traffic accidents, deaths and injuries, is an indication that state statutes designed to reduce the death toll on the public highways are not contrary to any federal policy or interstate commerce.

Headgear Legislation Memorandum

The National Highway Safety Bureau has circulated a memorandum to the Governors of the various states in regard to whether a State requirement that any person riding upon or operating a motorcycle on the streets or highways

of the State shall wear upon his head a protective device of a type approved by the State is unconstitutional under the Fourteenth Amendment.

This memorandum is available from the National Highway Safety Bureau.

It relates that as of January 1, 1970, there have been at least 43 separate decisions in regard to headgear requirements. In 31 instances, legislation has been upheld. In 12 instances it has been held unconstitutional.

Headgear legislation has been upheld by 11 State Supreme Courts (Vermont, Missouri, Florida, Washington, Oregon, North Carolina, Rhode Island, Massachusetts, Louisiana, North Dakota and Wisconsin); 12 Appellate Courts (three in New York, two in New Jersey, and one each in Hawaii, Pennsylvania, Texas, Maryland, Ohio, Washington and Connecticut); and of Trial Courts (two each in Pennsylvania, Kansas and New York, and one each in South Dakota and Minnesota).

Headgear legislation has been declared to be unconstitutional by one State Supreme Court (Illinois), three Appellate Courts (one each in Idaho, Arizona and Michigan), and 8 trial courts (two in New York and one each in Ohio, Florida, Missouri, Kentucky, Colorado and Michigan).

Additionally, as this memorandum reports, the Attorney General of Oklahoma has issued an opinion that the Oklahoma law is unconstitutional. The Attorney General of New Mexico has ruled that a proposed city ordinance would be invalid if applied to citizens over 18 years of age.

The United States has never agreed to review one of these cases on the merits. In June, 1969, the Court in *Bisensius v. Karns* dismissed an appeal (89 S.Ct. 2033 (1969)) attacking the constitutionality of the Wisconsin statute "for want of a substantial federal question." During the 1968-69 term the Court denied certiorari in *Everhardt v. City of New Orleans*, 217 So. 2d 400 (S. Ct. La. 1968), *Cert. denied* 89 S. Ct. 1775 (1969); and *Massachusetts v. Howle*, 283 N.E. 2d 373 (S. Jud. Ct. Mass. 1968) *Cert. denied* 89 S. Ct. 485 (1968).

In an Appendix to the memorandum there is a listing and citation of motorcycle protective headgear legislation opinions known as of January 1, 1970. This Appendix also lists the known opinions of the States Attorneys General.

For further information it cites the following four Law Review Notes and Articles: (1) *Constitutional Law—Validity of Safety Helmet Requirements*, 71 W. Va. L. Rev. 191 (1969); (2) *Constitutional Law—Police Power—*

Arthur P. Flynn Elected First Chairman Of AAMVA Industry Advisory Committee

Arthur P. Flynn was elected the first permanent Chairman of the AAMVA Industry Advisory Committee at a meeting held in Washington, D. C. March 4th.

Flynn, National Sales Manager for State Government Markets for 3-M Company, succeeds J. Olan Cooper. Cooper, Manager of the State Relations Department of the Automobile Manufacturers Association, had served as temporary Chairman of the group since it was formed in late 1969.

The Industry Advisory Committee was created by former AAMVA President Douglas W. Toms shortly before he resigned from the Association's chief executive post to become Director of the National Highway Safety Bureau. It was formed to facilitate relationships between the member jurisdictions of AAMVA and those businesses and commercial enterprises with which they engage in regular business activity.

Cooper, who had been serving as an alternate for Russell MacCleery, Administrative Vice President of AMA, has been designated as a regular member by AAMVA President Will Buchofner. Also, President Buchofner recently announced the appointment of Leonard Schuttig, Eastern Sales Manager for the Stardust Hotel in Las Vegas, as an Advisory Committee member.

Others attending the March meeting were: John O'Hara, Vice President and Associate General Counsel, R. L. Polk & Company; Fred Jackson, Remington Rand, Office Systems Division; Rex Williams, Manager, Governmental Relations, Ryder Truck Rental; and Pat

Motorcycle Crash Helmet Laws' Relation to Public Welfare, 1969 Wis. L. Rev. 320 (1969); (3) *Constitutionality of Mandatory Motorcycle Helmet Legislation*, 73 Dick. L. Rev. 100 (1968); and (4) *Constitutional Law—Due Process—State Requiring Motorcyclist to Wear Crash Helmet Is Unconstitutional*, (*American Motorcycle Ass'n. v. Davids*), 82 Harv. L. Rev. 649.

This memorandum is a "must" for each motor vehicle department attorney. While we cannot furnish each of you with a copy of this memorandum, it is available as previously mentioned, from the National Highway Safety Bureau. Copies are already in the hands of each State Safety Coordinator, each State Attorney General, and each Regional Highway Representative. The complete listing of cases with citations is available from this office.

Lynch, representing Christ Rousseff, President, Dek Processes Division, Scott and Fetzer Company.

Toms Lists Priorities

(Continued from Page 1)

of a program to cope with the alcohol/driving problem; and, (3) development of a proto-type safety car.

Toms said that as the result of a recent visit to the Detroit factories of the auto manufacturers he was truly impressed by the sophistication in "air bags" research to date. He predicted that "air bags" probably will become fully operational between 1973 and 1975. Also, he said he felt that "air bags" can be easily and economically "retrofit" to used vehicles.

The "alcoholic" not the social drinker poses the major problem in the area of drinking and driving. The NHSB Director conceded that the approach cannot be puritanical—such as prohibition—because the motoring public will not buy it. Toms said he and Secretary Volpe have appealed to the Governors to help. At the winter meeting of the National Governor's Conference, held in Washington in early March, Secretary told the state's chief executives that to support a hard-nosed and effective alcohol program would not be politically adverse.

Bids are now out to build two proto-type safety cars. Toms said NHSB is hoping for vigorous competition in bidding to build the car. One bid probably will be awarded to a major auto manufacturer and one will be let outside the industry—possibly in the aero-space industry.

Eventually 16 proto-types will be built. These, according to Toms, are a necessity to prove research theories. I want to make certain that something has been proved before I put my name on it, he stated.

Toms said that because of current research by the auto manufacturers that air pollution by the internal combustion engine will be no problem by 1980.

The 16 Highway Safety Program Standards are carefully being examined and suggestions have been made for updating. In addition to the re-vamping, the ones concerned with highway building: Identification and Surveillance of Accident Locations; Highway Design, Construction and Maintenance; Traffic Control Devices; and Debris Hazard Control and Clean-up likely will be placed under the Bureau of Public Roads, if the recommendations are approved by Secretary Volpe.

1969
Hwy Safety
Legislation

MONTANA reduced to 48 hours the time when a vehicle may be left parked or standing upon the right-of-way of a public highway before it may be taken into custody as an abandoned vehicle. (H 370, Ch 169)

A NEW YORK law provides new provisions governing the removal and disposal of abandoned vehicles. (S 5636, Ch 829)

An enactment in TENNESSEE requires the owner of a vehicle who disposes of it as wreckage or salvage, to deliver the certificate of title to the commissioner of revenue within 72 hours, along with the manufacturer's serial plate if the vehicle was manufactured less than five years prior to the current model year. (S 827, Ch 267)

VERMONT requires the removal of junkyards by July 1, 1970, if they are visible from the main traveled way along Interstate and primary highways and cannot be effectively screened. The same law provides procedures for the disposition of junk motor vehicles. (H 69, Ch 24) Another VERMONT enactment established comprehensive provisions for the governing of junkyards and the disposal of junk motor vehicles. The State Highway Board was empowered to carry out the new law and was authorized to enter into agreements with the U. S. Secretary of Transportation to arrange for Federal cost participation. (S 81, Act 98)

A WASHINGTON law established procedures for the disposition of stolen and abandoned vehicles. A provision of the new enactment gives the director of the Motor Vehicle Department the responsibility for the ultimate disposition of abandoned vehicles and automobile hulks. (H 769, Ch 42)

Scenic Highways and Service Facilities

An enactment in FLORIDA designated the everglades parkway as an official scenic highway of the State. The new law prohibits certain advertising signs within 500 feet of either side of the right-of-way and provides procedures for removal of nonconforming signs. (H 68, Ch 371)

HAWAII requested the Department of Transportation, the Department of Planning and Economic Development and the Department of Land and Natural Resources to take whatever steps may be necessary and feasible to establish a State system of scenic drives and trails. (SCR 7) Another request to the Department of Transportation requires the holding of public hearings before granting permission to public utilities to construct utility facilities along State or Federal-aid highways. (HR 219)

MAINE created a Scenic Highway Board empowered to develop and adopt procedures, rules and regulations for the designation and development of a system of scenic highways and the preservation of scenic value in the highway corridor. (H 837, Ch 453)

The MICHIGAN Legislature memorialized Congress to pass necessary legislation to provide funds for a national system of scenic highways. (SCR 22)

The commissioner of highways in MINNESOTA was authorized to negotiate contracts to provide maintenance services for interstate and trunk highway rest stops and tourist information centers. (S 691, Ch 157)

NEW YORK authorized the commissioner of transportation to construct and maintain or permit the construction and/or maintenance of information centers at safety rest areas. (S 3405, Ch 503)

A House Joint Memorial in WASHINGTON requested Congress to appropriate special financing for fiscal year 1970 for the development of needed recreation facilities, visitor service facilities and scenic highways for North Cascades National Forests. (HJM 17)

UNIFORM LAWS AND MOTOR VEHICLE REGULATION

HIGHWAY SAFETY AND UNIFORM LAWS PROGRESS

Again this year substantial progress was made by the States toward compliance with the Federal Highway Safety Act of 1966 and the standards for State programs promulgated by the Department of Transportation.

Periodic Vehicle Inspection

No State enacted new laws requiring periodic inspection of motor vehicles this year. For other laws relating to periodic inspection, please see page 27 under Equipment Requirements.

Motorcycle Helmets

Legislation to require motorcycle operators and passengers to wear safety helmets has been enacted in five States this year: GEORGIA (H 409, Ch 541), MICHIGAN (H 3114), NEW MEXICO (H 249), OKLAHOMA (H 1258) and RHODE ISLAND (H 2017). The OKLAHOMA law modified previous requirements to provide that persons under age 21 must wear safety helmets and eliminates the requirement that a safety helmet be worn by all persons operating or riding on a motorcycle. A law requiring that motorcyclists wear helmets has been repealed in ILLINOIS. (S 311) Such laws have been ruled unconstitutional in lower courts in IDAHO and KENTUCKY and by the Supreme Court in ILLINOIS.

Motorcycle Driver Licenses

MINNESOTA law now provides that no two-wheeled (motorcycle) endorsement shall be issued unless the person applying has been in possession of a valid

two-wheeled vehicle instruction permit for at least 30 days; and after September 1, 1970, applicants under 18 years of age must present evidence of having successfully completed a two-wheeled vehicle driver's safety course. (H 485, Ch 1123)

Special licensing for motorcycle drivers was made mandatory this year in MONTANA. (S 135, Ch 28)

Eye Protection—Motorcycles

Protection for the eyes, either by use of a windshield or some type of glasses or goggles, is required by legislation passed in four States: GEORGIA (H 409, Ch 541), MINNESOTA (H 485, Ch 1123), RHODE ISLAND (H 2017) and UTAH (S 76, Ch 69).

Passenger Footrests—Motorcycles

Foot supports for passengers are required by legislation approved in GEORGIA (H 409, Ch 541), NEW HAMPSHIRE (H 34), NEW MEXICO (H 253, H 295, H 296 and H 349, Ch 266), SOUTH CAROLINA (S 182) and UTAH (S 76, Ch 69).

Rear View Mirrors—Motorcycles

Six States passed legislation this year to require motorcycles to be equipped with at least one rear view mirror: MAINE (H 155, Ch 58), MINNESOTA (H 485, Ch 1123), NEW HAMPSHIRE (H 34), RHODE ISLAND (H 2017), SOUTH CAROLINA (S 182) and WASHINGTON (S 305, Ch 42). WASHINGTON previously required two mirrors, but now requires only that one must be mounted on the left side of the handlebar.

Implied Consent Laws

Implied consent legislation enacted in 13 States this year brings the total number of States which have enacted such legislation to 45. The only jurisdictions which do not have such legislation are ILLINOIS, MISSISSIPPI, MONTANA, WISCONSIN, WYOMING and the DISTRICT OF COLUMBIA. The States which enacted such legislation this year are: ALABAMA (S 70), ALASKA (S 23, Ch 83), ARIZONA (S 28, Ch 41), ARKANSAS (H 131, Act 106), DELAWARE (H 86), INDIANA (H 1165, Ch 64), MAINE (H 1030, Ch 439), MARYLAND (H 852, Ch 153), NEVADA (H 268, Ch 341), NEW MEXICO (S 63, Ch 30), SOUTH CAROLINA (S 24, Ch 471), TENNESSEE (S 159, Ch 292) and TEXAS (S 74). The MARYLAND law requires that an applicant for a driver license express his consent to a chemical test to determine blood alcohol concentration or he is not to be issued a license.

The presumed level of intoxication has been set at 0.10 per cent by weight of alcohol in the blood by ALABAMA (S 70), ALASKA (S 23, Ch 83), ARKANSAS (H 89, Act 17), CALIFORNIA (H 105), COLORADO (S 89), DELAWARE (H 92), IDAHO (S 1042), IOWA (H 207), NEBRASKA (LB 1997) and

SOUTH CAROLINA (S 24, Ch 471). COLORADO enacted legislation which presumes impairment of driving ability at blood-alcohol concentrations by weight of alcohol from 0.08 per cent to 0.10 per cent. (S 89) MARYLAND (H 851, Ch 157) has provided presumed levels of impairment at blood-alcohol concentrations of 0.10 per cent to 0.15 per cent.

A police officer is required to advise a person suspected of driving while intoxicated that he has a choice of tests which he may take under CALIFORNIA law. (S 1065)

A CONNECTICUT enactment provides for the inclusion of private roads in the enforcement provisions relating to drunk driving. (S 374)

IDAHO permits a blood sample to be drawn from all pedestrians and motor vehicle operators who have died as a result of a vehicle accident. (S 1303, Ch 253)

MINNESOTA corrected certain language in its implied consent law pertaining to the revocation of a person's driver license upon refusal to submit to a test to determine blood alcohol concentration. (H 96)

A law requiring a coroner's report on the alcoholic content of the blood of a person who died as a result of a motor vehicle accident on public highways has been enacted by NEW MEXICO. (S 74, Ch 36)

A NEW YORK enactment provides that a police officer may require a person who has been involved in a motor vehicle accident to take a breathalyzer test and then a chemical test, if the breathalyzer test shows that the individual has consumed alcohol. (S 747, Ch 1027)

NORTH CAROLINA reworded its implied consent law and has included a penalty provision. (H 5)

NORTH DAKOTA permits the taking of blood from an unconscious person to determine blood alcohol content. (H 225)

The Dean of the University of Oklahoma Medical School or his designate shall be the chairman of the board of chemical tests for alcohol according to a law passed this year in OKLAHOMA. (S 307)

OREGON enacted legislation which authorizes the application of the implied consent law to arrests made pursuant to municipal ordinances. (S 341, Ch 579)

Driver Education

An ALABAMA enactment provides that high school students shall receive credit for driver education courses beginning in the school year 1969-70. The law also makes driver education compulsory for students who enter the tenth grade in the school year 1972-73. (S 79)

ARKANSAS transferred responsibility for certain equipment used in driver education programs from the State Police Department to the State Department of Education. (S 186, Act 184)

tests is to be revoked according to an act passed in CALIFORNIA this year. (S 1135)

GEORGIA amended the schedule of points assessed for certain traffic violations. (H 603, Ch 615)

IDAHO defined an habitual violator of traffic laws as an individual who accumulates a total of 18 points in 24 months or 24 points in 36 months. The license of such an individual is to be suspended. (S 1263)

ILLINOIS provided certain exceptions to its law requiring the suspension of a driver license after conviction for three traffic violations within a 12-month period. (S 334)

The Drinking Driver

Legislation extending laws which prohibit driving while under the influence of alcohol or while under the influence of narcotic drugs has been enacted in CALIFORNIA (H 200), INDIANA (S 215), MONTANA (H 58), NEVADA (H 233), NEW HAMPSHIRE (H 163), NEW JERSEY (H 358) and OREGON (S 464).

Other legislation enacted in CALIFORNIA authorizes a peace officer to arrest, without a warrant, anyone involved in a traffic accident whom the officer suspects was driving while intoxicated or while under the influence of any drug. (S 176, Ch 956)

The courts of MINNESOTA are permitted to stay the sentence of individuals convicted of drunken driving upon medical recommendation and on the condition that the convicted person submit to medical treatment. (H 162, Ch 741)

Motorcycle Operators

ILLINOIS enacted legislation which requires a motorcycle operator to use his headlight at all times of operation. (S 10)

MAINE provides that if a motorcycle headlamp does not provide an adequate beam such motorcycle shall be restricted to daylight operation. (H 155, Ch 58)

Legislation dealing with handlebar height was approved in five states: IOWA (H 319), MICHIGAN (H 2513), NEW MEXICO (H 253, H 295, H 296 and H 349, Ch 266), SOUTH CAROLINA (S 182) and UTAH (S 76, Ch 69). The UTAH law provides that handlebars shall be no higher than shoulder height while the other States stipulate a maximum height of 15 inches above the seat.

Laws governing the operation of motorcycles have been enacted in IOWA (H 319), NEBRASKA (LB 895), SOUTH CAROLINA (S 182), and UTAH (S 76, Ch 69). Generally these laws prohibit driving more than two abreast and require motorcyclists to drive within a lane and not abreast of another motor

vehicle. The NEBRASKA law prohibits having more than two persons on a motorcycle.

Legislation providing operating restrictions for holders of learner permits has been enacted by MICHIGAN (H 2513), MINNESOTA (H 485, Ch 1123) and NEW MEXICO (H 253, H 295, H 296 and H 349 (Ch 266)). The MICHIGAN law provides that as of January 1, 1970, motorcyclists must be 18 to obtain a motorcycle endorsement unless they have completed a driver training course. The MINNESOTA law provides for instruction permits for operators of two-wheel vehicles and requires that those under 18 complete a course in two-wheel vehicle driver training. NEW MEXICO law prescribes restricted licenses for those 13 years old for the operation of motor driven cycles of less than five horsepower and prohibits holders of motorcycle instruction permits from carrying passengers.

NEVADA enacted regulations governing the sale of motor driven cycles to 14 and 15 years old. (H 264, Ch 399)

Other Driver Licensing Legislation

ALABAMA has enacted legislation which permits the deposit of a driver license as security for certain traffic violations. (H 57)

A CALIFORNIA resolution provides for a Department of Motor Vehicles study on the feasibility of limiting examinations for the renewal of a driver license to a vision test only. (HCR 67)

In CONNECTICUT Spanish speaking applicants for a driver license may now take the written examination in Spanish but they must have sufficient command of English to interpret traffic control signals. (H 5519)

A person whose license has been revoked in DELAWARE because of an unpaid judgment against him may, after ten years and under certain circumstances, be issued another license. (H 53)

Nonresident migrant farm workers need not have a State driver license according to an amendment to FLORIDA's licensing requirements. (S 652)

IDAHO amended its regulations governing the revocation and suspension of driver licenses and provides that a person must have at least 20/40 vision in one eye with or without glasses according to the Snellen system, in order to be licensed to drive. (S 1263)

KANSAS enacted legislation which amends its driver license requirements and provides for a four-year driver license. (H 1143)

MAINE law requires that driver licenses be issued for a duration of two years and that first licenses shall be provisional licenses. (H 617) Another law requires eye examinations for individuals over age 65 upon renewal of their driver licenses. (S 282)

WE CAN OWN THE WORLD!

What's a government but silly putty? It can be pushed any direction and spreads out where there's no resistance. Bike power advocates in Illinois proved that it can be done: here's their 3-step formula for helmet law repeal.

BY FRANK CONNER

• Government is like Silly Putty: push against it hard enough at one point, and it will recede from that point, flabbing out someplace else where there is less resistance. A blueprint for the successful, lawful combat of motorcyclists against government can be drawn from the activities of Illinois riders to repeal the Mandatory Helmet law.

Illinois riders were less than enchanted with the helmet ruling. Several groups had been formed to work against restrictive legislation, and had done much valuable spadework to stir up the riders, so the climate was right for revolution, but nobody had been successful at focusing rider-discontent against the forces of government in Illinois. Then eight riders casually decided to get together to see what they could do to get the helmet law overturned. They called themselves the "Committee on Legislation," and they decided that if they wanted to succeed, they should run their campaign like a business. First they needed a product: organized enraged motorcyclists. Then they needed to get their product to the market, which was the Illinois Legislature. Finally, they needed a good sales-feature for their product. Since legislators need to get reelected periodically, the votes of the riders made the best-possible selling-feature.

How good was their product? Well, there were 110,000 registered motorcycles in Illinois, which meant that about 250,000 people (including friends, wives, or parents) were predisposed to like motorcycles and could possibly be enlisted into the fight. Potentially, the committee had a very strong product; even a tiny fraction of 250,000 votes is something that most state politicians regard with great care. How to get the product to the market? The committee didn't have enough money to contact all 110,000 riders in the state, so they decided to work through groups.

The eight members of the committee listed the various groups whose names and addresses were readily available. The committee then wrote to those groups and asked for the names of any groups or dealers who weren't as yet on the list. In such manner, the committee collected the names of about 600 dealers, AMA-affiliated clubs, outlaw clubs,



dealer-associations, etc. Now the committee had enough contacts to reach a large percentage of the riders in Illinois.

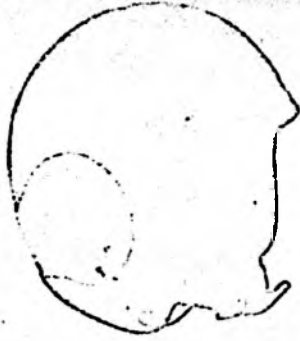
As a next step, the committee put together a map of the state, showing each of the political districts, and listing the names and addresses of the three state representatives and the one state senator from each district. Thus, any rider receiving a copy of the map would know whom to write.

The committee sent quantities of these maps to each of the 600 groups, along with a request to distribute the maps to the riders in

that area. Along with the map went a letter asking the rider to write to each of the three representatives and the senator from his district, requesting repeal of the helmet law. The letter to the riders suggested some reasons why the law was unsatisfactory, but the committee felt that the campaign would be successful only if the riders wrote their own letters, stating their own beliefs. In addition, the committee got as many of the 600 groups as possible to send two members each to visit all of the legislators from their respective districts. This would give the legislators an unmistakable indication as to the amount of voting power that Illinois riders could swing.

Having gotten this far, the Committee on Legislation found that they had all sorts of access to news media. At first, they began to make use of the media, but then they decided that they should leave it strictly alone, because they would be hurting—not helping—their enterprise by attracting the attention of the public to their cause. The general public either doesn't care about motorcycling, or is opposed to it; the committee decided to let sleeping dogs lie.

As the next step, the committee needed to get somebody in the legislature to introduce a bill to repeal the helmet law. Who better than the man who had originated the helmet law? That particular legislator happened to live in the same town as one of the eight committee members, so the committee went to work there right away, getting the local motorcycling groups to begin visiting and writing to that legislator to inform him of their displeasure. (Continued on page 62)



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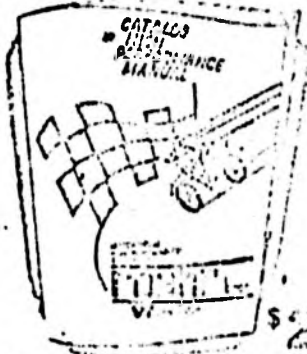


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WORLD Continued from page 43

with his law. He saw the light of day and introduced a new bill to repeal his helmet law.

The committee then sent to each state legislator a rational list of reasons why the helmet law was unsatisfactory. The committee said, in effect: "We don't have our hands out for anything; all we want is not to be discriminated against. Repeal of the helmet law will have no adverse effect upon the state. We feel so strongly about this issue that if you disregard us, you will not like what happens at the next election."

Then the letters from riders began to pour in. Some of the riders who wrote to their legislators made no attempt to mince words in expressing their dissatisfaction with the helmet law. The committee was not at all unhappy with that state of affairs; it gave the legislators a much better understanding of the riders' and voters' unhappiness. Then began the personal confrontations between riders and legislators. The committee felt that the outlaw groups were particularly effective in getting their message across. The legislators were amazed and appalled; they hadn't even been aware of the existence of motorcyclists before, except as scapegoats who could be put down with impunity. Now the scapegoats were threatening to bite them. Taking a leaf from the SDS handbook, various motorcycle groups were murmuring about putting 50,000 motorcyclists into Springfield during the summer if the helmet law were not repealed. It was not—apparently—an empty threat.

The repeal bill went first to the Illinois Senate. Forty-three voted "aye;" 11 voted "nay." In the House of Representatives, only eight of approximately 160 legislators voted against the bill.

The repeal bill was ready to be signed into law. Then, the state judiciary found in favor of Donald Freeze, who had brought suit previously to test the constitutionality of the helmet law, and the offending law was declared unconstitutional in Illinois.

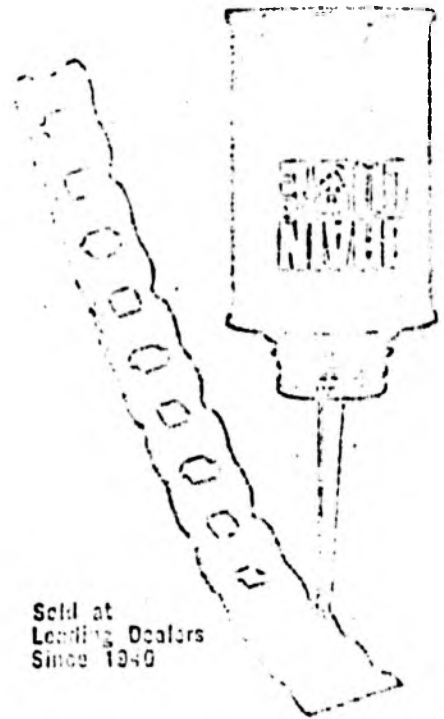
However, courts in other states have upheld the helmet law, and some valuable lessons can be learned from the activities of the Committee on Legislation. Politicians respect organized voting-power (lots of loud votes). Reed Ehrlich, one of the eight members of the committee, has this to say about getting the repeal bill into and through the legislature: "It was so easy to do. It can be done anywhere else just as easily. All you have to do is organize carefully at the beginning. If we—the riders—are ever threatened seriously with restrictive national legislation, all we have to do is organize nationally the way the Illinois riders did regionally. We can own the United States."

That would be a change. ©



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NOTES

CONSTITUTIONAL LAW—POLICE POWER—Michigan Statute Requiring Motorcyclists To Wear Protective Helmets Held Unconstitutional

"They that can give up essential liberty to obtain a little safety deserve neither liberty nor safety."

—Benjamin Franklin

"When asked what he would take to himself receive a blow on the head, he said, 'A helmet.'"

—Diogenes Laertius

The burgeoning use of motorcycles in the United States¹ has given rise to a great problem of safety. The fatality rate among motorcyclists is substantially higher than the rate for the drivers of all other motor vehicles, with head injuries the most frequent cause of death.² In response to this situation, the legislatures of at least thirty-four states have passed special laws regarding motorcycle safety; of these states, thirty have regulations that require the wearing of helmets.³ These helmet regulations have given rise to a great deal of controversy, and the constitutionality of such statutes has been challenged on the ground that they unduly restrict the individual cyclist's freedom without benefiting the community.

A recent Michigan case, *American Motorcycle Association v. Davids*,⁴ confronted the issue directly. In a proceeding instituted by the Association, the Michigan court of appeals held unconstitutional a statute which required a person operating or riding on a motorcycle to wear a crash helmet of a type approved by the department of state police.⁵ The decision was based primarily on a finding that the statute was intended only for the protection of the individual motorcyclist—not for the safety and well-being of the general public

1. CYCLE WORLD, July 1968, at 50, says increased 43,800 from the previous year.

2. See *American Motorcycle Assn. v. Davids*, 158 N.W.2d 72, 75 n.9 (1968), where the court quotes a Michigan state police report showing a mortality rate of 10.6 for 10,000 registrations per 10,000 for all vehicles in the same period.

3. CYCLE WORLD, July 1968, at 50. All states which have laws requiring helmets are: Arkansas, Connecticut, Florida, Maine, Massachusetts, Minnesota, Missouri, New York, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee. These laws appear to have been effective, for despite an increase in motorcycle registrations in the thirty states that had such requirements (in New York), while California, which leads the nation in motorcycle registrations but has no protective helmet law, saw a 9% increase in motorcycle fatalities.

4. 158 N.W.2d 72 (1968).

5. MICH. STAT. ANN. § 9.2358(d) (Cum. Supp. 1968), amending MICH. COMP. LAWS § 257.658(d) (1948).

motorcycle registrations in 1967 increased 43,800 from the previous year.

158 N.W.2d 72, 75 n.9 (1968), where the court quotes a Michigan state police report showing a mortality rate of 10.6 for 10,000 registrations per 10,000 for all vehicles in the same period.

states which have laws requiring helmets are: Arkansas, Connecticut, Florida, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin, Wyoming. These laws appear to have been effective, for despite an increase in motorcycle registrations in the thirty states that had such requirements (in New York), while California, which leads the nation in motorcycle registrations but has no protective helmet law, saw a 9% increase in motorcycle fatalities.

158 N.W.2d 72, 75 n.9 (1968), amending MICH. COMP. LAWS § 257.658(d) (1948).

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—and that it thus went beyond the permissible scope of the state's police power.

The Michigan decision is representative of the initial reaction by various courts to such statutes. In early 1967, two New York cases held that the New York law requiring the wearing of helmets⁶ was unconstitutional. In *People v. Smallwood*,⁷ a local level trial court held that such a statute takes from the individual his right to exercise his judgment in the use of personal adornment, a right which, according to the court, cannot be waived. In *People v. Carmichael*,⁸ another local court defined the police power of the state as the power to regulate the conduct of one person so that his actions do not unreasonably restrict the rights of or endanger others. Concluding that a helmetless driver or rider would not endanger the safety of others, the court found in the New York statute an attempt to enlarge the state's police power beyond federal constitutional bounds. In *Everhardt v. City of New Orleans*⁹ the Louisiana court of appeals held unconstitutional a city ordinance requiring helmets to be worn by all motorcyclists; this court found that the requirement was a denial of due process and equal protection.

The majority trend, however, has been to hold helmet statutes constitutional. The New York courts appear to have changed their view, and three recent local court cases—*People v. Bielmeyer*,¹⁰ *People v. Schmidt*,¹¹ and *People v. Newhouse*¹²—have held that the state has the right to regulate how riders and passengers of vehicles susceptible to special dangers should protect themselves on public property. In February of 1968, an intermediate appellate court in New York reversed the *Carmichael* decision, holding that the helmet requirement is valid because it furthers the state's interest in maintaining a strong and viable citizenry by keeping the cyclists safe.¹³ In *State ex rel. Colvin v. Lombardi*,¹⁴ the Supreme Court of Rhode Island denied defendant cyclist's motion to dismiss on the grounds of unconstitutionality of the helmet statute and found that the law bears a reasonable relationship to highway safety and thus does not constitute an improper exercise of police power. In the most recent reported decision, *Commonwealth v. Howie*,¹⁵ the Supreme Judicial Court of Massachusetts followed *Lombardi* and upheld the validity of a helmet statute.

6. N.Y. VEH. & TRAF. LAW § 381(6) (McKinney Supp. 1966).

7. 52 Misc. 2d 1027, 277 N.Y.S.2d 429 (Town Ct. of Irandequoit 1967).

8. 53 Misc. 2d 584, 279 N.Y.S.2d 272 (Town Ct. of Oakfield 1967).

9. 208 S.2d 423 (1968).

10. 54 Misc. 2d 466, 282 N.Y.S.2d 797 (City Ct. of Buffalo 1967).

11. 54 Misc. 2d 702, 283 N.Y.S.2d 290 (County Ct. of Erie County 1967).

12. 55 Misc. 2d 1064, 287 N.Y.S.2d 713 (City Ct. of Ithaca 1968).

13. 56 Misc. 2d 888, 288 N.Y.S.2d 931 (Genesee County Ct. 1968).

14. 241 A.2d 625 (1968).

15. 288 N.E.2d 878 (1968).

It is settled constitutional doctrine that a state's police power can be properly exercised only when there is a reasonable relationship to the public health, safety, morals, or welfare.¹⁶ Accordingly, in 1905 the United States Supreme Court upheld a law requiring all people to be vaccinated because the law was related not only to the health of the individual, but also to the protection of the public against the spread of disease.¹⁷ Conversely, if the courts can find no relationship between the statute in question and the public health, safety, morals, or welfare, the statute is unconstitutional.¹⁸ Thus, the Supreme Court has held invalid a statute requiring every parent or guardian of a child between the ages of eight and sixteen to send that child to a public school in the district where he resided since it did not promote the health, safety, peace, morals, education, or general welfare of the people and therefore was an unreasonable interference with the liberty of parents and guardians in raising their children.¹⁹ The basis for this and similar decisions is the due process clause of the fourteenth amendment: if there is no benefit flowing to the public from the enforcement of a statute which restricts individual freedom, there is a denial of liberty without due process of law.²⁰

16. E.g., *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937); *Van Oster v. Kansas*, 272 U.S. 465 (1926); *Pacific Gas Co. v. Police Ct.*, 251 U.S. 22 (1919).

It can be argued that the statute prohibiting a cyclist from riding helmetless is similar to statutes in many states which make it a crime to attempt suicide. These suicide statutes protect an individual from himself, generally without affecting the public welfare in any way except by maintaining a viable citizenry. The suicide situation, however, can be distinguished, for the shocking nature of the act and the long tradition of its criminality make it different from the new and indirect helmet regulations. To prohibit people from killing themselves directly is one thing, but to prohibit them from *risking* their lives indirectly is quite another.

17. *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). Similarly, before the passage of the eighteenth amendment, the Court found that a state prohibition on the manufacture and sale of intoxicating liquors did not deprive the citizen of his constitutional freedom because the law protected the public against the harmful conduct of one whose behavior toward others is affected by the use of alcohol. *Mugler v. Kansas*, 123 U.S. 623 (1887).

18. See *Griswold v. Connecticut*, 381 U.S. 479 (1965), in which a divided Court invalidated a Connecticut law prohibiting the use of contraceptives, even by married couples.

19. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). See also *Meyer v. Nebraska*, 262 U.S. 390 (1923).

20. See *Fairmont Creamery Co. v. Minnesota*, 274 U.S. 1 (1927); *Atkin v. Kansas*, 191 U.S. 207 (1903); *Minnesota v. Barber*, 136 U.S. 313 (1890); *Mugler v. Kansas*, 123 U.S. 623 (1887).

The Michigan court of appeals offered another basis, purportedly independent of the due process argument, for holding the helmet statute unconstitutional: the maxim of John Stuart Mill that "the individual is not accountable to society for his actions, insofar as these concern the interests of no person but himself." J. MILL, *UTILITARIANISM, LIBERTY AND REPRESENTATIVE GOVERNMENT* 201 (A. Lindsay ed. 1950). The Michigan court cited four decisions which it claimed were based upon this philosophy. These citations include *Smallwood* and the first *Carmichael* decision, neither of which mentioned the maxim and both of which suggested its content as only one of a number of arguments on which the respective courts based their decisions. See text accompanying notes 7 & 8

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Such a conclusion rests on a subjective interpretation of the fourteenth amendment's due process clause: that the rights protected by that clause from interference by the states include rights not specifically enumerated in the first eight amendments. It is uncertain, however, due to the many conflicting opinions in *Griswold v. Connecticut*,²¹ whether the Supreme Court still follows such an interpretation so far as the fourteenth amendment is concerned.²² Nevertheless, according to one scholar, *Griswold* is

supra. The Michigan court also cited an opinion by the attorney general of New Mexico which did not mention the maxim, though it employed Mill's philosophy. See N. MEX. OP. ATTY. GEN. No. 66-15, at 19 (1966). The question immediately arises whether Mill's maxim is, in fact, incorporated in the Federal Constitution. The Supreme Court has considered the due process clause to permit the state to restrain an individual's actions only to further the common welfare and, conversely, to guarantee a citizen the right to act as he pleases so long as his actions do not adversely affect others. E.g., *Grosjean v. American Press Co.*, 297 U.S. 233 (1936); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923). Cf. *Ex parte Drexel*, 147 Cal. 763, 82 P. 429 (1905). But see *Lochner v. New York*, 198 U.S. 45, 74 (1905) (dissent of Justice Holmes). In this view, the due process limitation on police power is simply an embodiment of Mill's premise. To state this maxim is only to state the reasonable-relationship test in the converse; thus Mill's maxim was not really an independent ground for the court's decision.

21. 381 U.S. 479 (1965). See note 18 *supra*. Another basis for holding the helmet laws unconstitutional, unrelated to the due process clause, was advanced by the Louisiana court in *Everhardt* when it concluded that the ordinance in question denied equal protection of the laws to motorcyclists by imposing undue and unnecessary restrictions upon one limited class of the motoring public. 255 So.2d at 426. The Constitution, however, requires only that the classification be reasonable and be based upon substantial differences having a reasonable relationship both to the objects or persons dealt with and to the public purpose sought to be achieved by the legislation involved. E.g., *Walters v. City of St. Louis*, 347 U.S. 231 (1954); *Old Dearborn Distrib. Co. v. Seagram Distillers Corp.*, 299 U.S. 183 (1936); *International Harvester Co. v. Missouri*, 234 U.S. 199 (1914). Even assuming that the ordinance was no relation to the safety of others, the classification itself would nonetheless be reasonable because the distinctions between cyclists and other motorists are clearly substantial, and because it is those very differences that suggest the need for special legislation to protect the former which would be unreasonable if imposed on others. Whether the purpose of the helmet restriction relates to the public or the individual and is valid or invalid, that purpose relates directly to the unique situation of a motorcyclist, and thus the regulation is not an unreasonable classification violative of the equal protection clause.

22. It is interesting to note that the Michigan court of appeals relied in part on Justice Goldberg's concurring opinion in *Griswold*—an opinion which invoked the ninth amendment in support of the fundamental rights theory. The ninth amendment, said Justice Goldberg, is an acknowledgement that liberty is not restricted to the freedoms enumerated in the Bill of Rights, but that there are inherent rights which exist independently of the explicit wording of the first eight amendments. As applied to the states through the fourteenth amendment, the ninth amendment shows that it was the intent of the original authors of the Bill of Rights that fundamental personal rights cannot be violated by the state merely because they were not enumerated in the first eight amendments. 381 U.S. at 480-82. Since the effect of Justice Goldberg's ninth-amendment argument is additional support for the fundamental-rights theory rather than a substitute for it, the Michigan court's reliance upon it adds nothing new to the basic analysis of the problem. See R. Kauper, *Penumbrae, Peripheries, Emanations, Things Fundamental, and Things Forgotten: The Griswold Case*, 64 MICH. L. REV. 235, 254 (1965).

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a reaffirmation by a majority of the Court of the fundamental [or substantive] rights theory—both in the sense that only fundamental rights derived from the Bill of Rights are incorporated into the fourteenth amendment and in the sense that the due process clause is a source of rights apart from the specifics of the Bill of Rights.²³

Thus, assuming that this interpretation is correct, the fundamental question is whether the helmet statutes bear a reasonable relationship to the public welfare.

The courts which have declared helmet statutes invalid have been unable to find a sufficient relationship between the helmet requirement and the welfare of the community at large. As indicated earlier, the Michigan court saw the statute in question only as a protection of the cyclist from severe head injuries; the court felt that any other interpretation was "a strained effort to justify what is admittedly wholesome legislation."²⁴ The Louisiana court declared that "[t]he only function of the helmet requirement we are able to discern is to minimize the extent of injury to the individual cyclist involved in an accident, and not to contribute to the safety of the motoring public at large."²⁵ On the other hand, those courts which have upheld the helmet laws advance various arguments to support the necessary relationship to the public welfare. The justification recently offered by the New York courts was the state's interest in a viable citizenry. According to this argument, the state can prevent its citizens from pursuing a course of conduct that could cause their dependents or themselves to become public charges.²⁶ Moreover, it is argued that "[i]t is to the interest of the state to have

23. *Id.* at 210-11. Professor Kauper adds that the *Griswold* case is not inconsistent with cases that have reduced economic liberty to a minimum of judicial protection. Freedom of the legislature to determine economic policy in the public interest is much greater than its freedom to determine social policy by means that intrude on personal liberty and essentially private conduct. In the case of restrictions on economic liberty, a simple rationality test applies, but when the legislature impinges upon fundamental non-economic liberties of an essentially personal character, as in *Griswold*, a more exacting judicial test is applied.

The Court apparently sees a hierarchy of values protected by the Constitution and recognizes that the degree of judicial scrutiny and protection varies in direct proportion to the importance of the right. Thus, assuming that the majority does follow the substantive interpretation of the due process clause of the fourteenth amendment, the right infringed in any given case would have to be important enough to be ranked as "fundamental" in order to be protected by that clause against state regulation. The right abridged by the helmet laws is the freedom to wear whatever one chooses so long as that action affects no one but the individual himself; whether that right is fundamental enough to be a substantive due process right has of course never been discussed by the Supreme Court. See note 40 *infra*.

24. 158 N.W.2d at 75. The court adds: "This statute has a relationship to the protection of the individual motorcyclist from himself, but not to the public health, safety and welfare." 158 N.W.2d at 76.

25. 208 S.2d 425, 426 (1968).

26. See *People v. Carmichael*, 288 N.Y.S.2d 931, 935 (1968). See also *State ex rel. Colvin v. Lombardi*, 241 A.2d 625, 627 (Sup. Ct. R.I. 1968).

strong, robust, healthy citizens capable of bearing arms, of self-support, and of adding to the resources of the country,"²⁷ and that, as long as the means are reasonable, the legislature can protect individuals from themselves to further that interest. Thus, the helmet regulations promote the public welfare not only by tending to prevent cyclists from becoming wards of the state because of disabling head injuries, but also by tending to keep members of the community healthy and productive.²⁸

The Michigan court specifically rejected the "public charges" argument, stating that it could lead to unlimited paternalism.²⁹ Once it can be said that protecting an individual from himself bears a reasonable relationship to public welfare, the argument runs, there is nothing to prevent the state from requiring all motorists to wear crash helmets, from forbidding smoking, or from requiring everyone to go to bed at 10:00 p.m. Such laws would be conducive to healthier citizens and thus to a "viable citizenry."³⁰ It is significant that the courts which upheld the helmet statutes on the basis of the public interest in a viable citizenry cited no authority to support their argument. Surely the Michigan court was correct in stating that the "public charges" argument proves too much, since such reasoning would give the legislature the power to regulate almost every aspect of individual conduct in a society "so complex that there are very few things that cannot be said to affect some other person or the public treasury."³¹ The limitations on the police power would disappear if the states were permitted to regulate individual conduct on the basis of the attenuated "public charge" rationale.

27. 288 N.Y.S.2d at 935.

28. It was argued by the state in the Michigan case that the helmet statute could also be justified under the doctrine of *parens patriae*, the specific relationship of the state to youth. This is the power of the state that justifies laws such as those making it illegal for minors to smoke. The Michigan court correctly rejected this contention because the application of the helmet statute was not limited to youth. 158 N.W.2d at 75.

29. 158 N.W.2d at 75. It is consistent with Michigan's view of the general welfare that suicide is not a statutory crime in Michigan.

30. 158 N.W.2d at 76. *People v. Carmichael*, 53 Misc. 2d 584, 588-89, 279 N.Y.S.2d 272, 277 (1967). A possible answer to this objection is that even if the courts would otherwise uphold such regulation of individual conduct in the interest of viable citizenry, they would not do so because of a reasonableness test which applies in cases of this sort. This test balances the state's interest against the individual's. A helmet requirement would be reasonable because it is only a slight infringement on the individual's freedom as he travels on a public highway, but an extreme law—for example, a requirement that a cyclist wear a suit of armor, a prohibition of smoking, or a requirement that people go to bed at 10:00 p.m.—would be unreasonable, and therefore unconstitutional, because it would infringe too greatly on personal liberty.

The reasonableness test, however, is unsatisfactory because the fact that a court can use it to limit grossly infringing regulations does not make up for the inability of that test to deal with infringements which are "reasonable" because relatively moderate, but nonetheless repugnant to ordinary concepts of personal liberty.

31. *People v. Carmichael*, 53 Misc. 2d 584, 589, 279 N.Y.S.2d 272, 277.

A second justification offered to demonstrate a reasonable relationship between helmet laws and the public welfare is that the crash helmet may prevent certain types of accidents—specifically situations in which the cyclist could be propelled off the road or into the opposing lane, causing damage to other vehicles or property, or injuries to other motorists or pedestrians. For example, loose stones kicked up by passing vehicles, or other flying objects—against which the driver of an automobile has some protection—could strike the helmetless motorcyclist in the head, causing him to lose control of his vehicle.³² One answer to this argument was given by the Michigan court:

If the purpose [of the helmet regulations] truly were to deflect flying objects, rather than to reduce cranial injuries, a windshield requirement imposed on the manufacturer would bear a [more] reasonable relationship to the objective and not vary from the norm of safety legislation customarily imposed on the manufacturer for the protection of the public rather than upon the individual.³³

But the court's answer is specious because it is not the function of the judiciary to decide whether the means adopted by the legislature are the best means possible to attain the end sought.³⁴ Except when the regulations chosen are in themselves unconstitutional, courts should defer to the legislative selection of methods. Thus, even if a windshield regulation would provide more effective protection for public safety, the helmet requirement is still constitutional as long as it tends in some degree to protect public safety. But while the legislature need not choose the best means to an end, it is clear that it cannot choose a method that violates the fundamental liberties of an individual if the end can be achieved without infringement of those liberties.³⁵ The Supreme Court stated this directly in

32. *People v. Bichmeyer*, 54 Misc. 2d 466, 469, 282 N.Y.S.2d 797, 800 (1967):

Cyclists generally keep to the right of the road where stones and gravel are found which could be propelled by the delicately balanced wheels into the head of the cyclist or passenger, causing distraction and loss of control.

Far more than with an automobile or a truck the very nature of a motorcycle requires that a rider be able to control his vehicle at every second . . . [This] means that the rider must always wear the recommended clothing and equipment for his protection as well as the protection of others.

33. 158 N.W.2d at 75.

34. *McLean v. Arkansas*, 211 U.S. 539, 547 (1909):

The legislature being familiar with local conditions is primarily the judge of the necessity of such enactments. The mere fact that the court may differ with the legislature in its views of public policy or that judges may hold views inconsistent with the propriety of legislation in question affords no ground for judicial interference . . .

See also *Old Dearborn Distrib. Co. v. Seagram Distillers Corp.*, 209 U.S. 185 (1936); *Standard Oil Co. v. City of Marysville*, 279 U.S. 582 (1929); *St. Louis Southwestern Ry. v. Board of Directors of Miller Levee Dist. No. 2*, 207 F. 338 (8th Cir. 1913).

35. This principle is supported by the general rule, stated in *People v. Armstrong*, 73 Mich. 288, 41 N.W. 275 (1889), that the state can impose restraints on the individual only to that extent which is required or necessary for the protection of public health, safety, or welfare. This seems to imply that if a statutory restriction is not

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Schneider v. State,³⁶ in which it invalidated an ordinance which banned all distribution of handbills on public streets. Although the ordinance's purpose—to keep the streets clean and neat—was legitimate, it was insufficient to justify an abridgement of the individual's right of free speech. There were other reasonable methods available to prevent littering which did not interfere with personal freedom—for example, punishment of those who actually throw papers on the streets. Similarly, in both *Shelton v. Tucker*³⁷ and *Dean Milk Co. v. City of Madison*,³⁸ the Supreme Court held laws which limited personal freedom unconstitutional because there were adequate non-infringing means to achieve the same end.³⁹ Thus, it might be argued that if the end which justifies the helmet requirement is the protection of the public from cyclists careening out of control because of a blow on the head by a flying object, that requirement should be invalid because a regulation on the manufacturer to install a windshield would accomplish the same goal without any infringement of personal liberty.

This argument, however, raises several problems. Unlike the rights that were restricted in *Schneider* and similar cases, the right to wear what one wishes on a public street, allegedly infringed by the helmet laws, is not a strong or well-established one.⁴⁰ Furthermore, the effectiveness of the noninfringing alternative here is uncertain—it is not clear that a windshield will do the same job as

necessary or essential—that is, if there is another method to the same end that does not infringe on individual liberty—the restriction is invalid.

36. 308 U.S. 147 (1939).

37. 364 U.S. 479 (1960).

38. 340 U.S. 349 (1950).

39. The Court in *Shelton* held unconstitutional an Arkansas statute requiring every teacher, as a condition of employment, to file an annual affidavit listing every organization to which he had belonged or regularly contributed within the preceding five years.

There can be no doubt of the right of a state to investigate the competency of those whom it hires to teach in its schools . . . [but] even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.

364 U.S. at 485, 488. In *Dean Milk Company*, an ordinance forbidding the sale of milk in a city under a "pasteurized" label unless the milk had been pasteurized and bottled at an approved plant within five miles of the city was declared unconstitutional. The Court made it clear that "even in the exercise of its unquestioned power to protect the health and safety of its people, [a municipality may not erect an economic barrier against competition] if reasonable nondiscriminatory alternatives, adequate to conserve legitimate local interest, are available." 390 U.S. at 354.

40. The rights abridged in *Schneider*, *Shelton*, and *Dean Milk Co.* were the right of free speech, the right of free association, and the guarantee of equal protection of the laws, respectively. All of these are liberties deeply rooted in the traditions of the United States, guaranteed from the beginnings of its history, and upheld time and time again by its courts. Although there are isolated cases in which courts have held that an individual has the right to choose his own attire [*People v. O'Gorman*, 274 N.Y. 284, 8 N.E.2d 862 (1937)], that right has certainly been recognized much less frequently.

a helmet in protecting the cyclist's head. Thus, it is difficult to see how the existence of an alternative and less restrictive method would by itself in these circumstances render the helmet requirement unconstitutional. The ultimate question then is not whether there is an alternative noninfringing method to the end. Rather, since the opposing courts agree that some form of reasonable-relationship test is proper,⁴³ the determinative question should be simply whether flying objects do, in fact, constitute such a danger to helmetless motorcyclists that those cyclists could adversely affect the safety of the general public.

The evidence which has arisen in response to this question is Delphic. The New York, Rhode Island, and Massachusetts courts, asserting that the danger is real, support their conclusion with such general statements as "one hears or reads about instances where cyclists have been hit with hard-shelled beetles or bees and have lost control of their bikes, causing damage and injuries to others."⁴² Accepting these statements, it might seem that the helmet regulations can be justified by the protection they afford to the general public even though their original purpose was the protection of individual cyclists.⁴³ But the courts which have claimed that the danger of flying objects is genuine cite no cases or studies and offer no *specific* evidence to support their conclusion.⁴⁴ Moreover, the legislatures which have enacted helmet statutes make no mention of any studies or reports which show that flying objects present such a danger to cyclists as to cause accidents. A New York legislative memorandum did cite an extensive study showing that most motorcycle fatalities could have been avoided by wearing the proper helmet,⁴⁵ but neither the memorandum nor the study said anything

41. The courts do not differ in their determination of the proper test to apply here, but differ rather in their view of the intent and effect of the helmet statute. Whereas the Michigan and Louisiana courts saw the law as affecting only individual safety, the New York, Rhode Island, and Massachusetts courts saw a reasonable relationship between it and the safety of others. Thus, all the courts agree that an individual is master of his fate so long as his actions concern only himself, but disagree as to whether the action of a cyclist in not wearing a helmet could directly affect the welfare of others.

42. *People v. Bielmeyer*, 54 Misc. 2d 466, 469, 282 N.Y.S.2d 797, 800 (1967). See also note 32 *supra*; *State ex rel. Colvin v. Lombardi*, 241 A.2d, 625, 627 (R.I. 1968).

It is also interesting that in a telephone interview, the Ann Arbor, Michigan, police stated that it is very likely that flying objects could cause a motorcyclist to lose control of his machine. However, they were unable to cite specific statistics or to recall any concrete instances in which a flying object had actually been the cause of a motorcycle accident.

43. See note 45 *infra*.

44. This is, of course, not conclusive proof that such dangers do not exist. It may indicate only that there have been no studies or reports on this subject; and, indeed, exhaustive research has revealed no such studies.

45. See N.Y. Session Laws 2961 (McKinney 1966) (citing the results of that study): The number of accidents involving motorcycles is increasing rapidly. In fact, motorcycle accidents increased by 105% in 1965 as compared to 1964. . . . Fatalities

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about protecting people other than the cyclist himself. Indeed, although there is substantial evidence that helmets have prevented individual cyclists from being injured in accidents,⁴⁶ none could be found to show that the use of helmets had ever prevented the occurrence of an accident, or even to show that accidents had been caused by flying objects hitting a helmetless rider in the head. It is an unsatisfactory resolution of the fundamental issue merely to take judicial notice of what "one hears or reads about"⁴⁷ when there is as yet no evidence in support of that contention and when several courts have disputed existence of the "fact" which is being judicially noticed.

It is unclear whether the state must come forward with any evidence of a reasonable relationship between a police power regulation and the public welfare in order to resist a challenge to the law's constitutionality. It may be that the challenger is required to prove that there is in fact no reasonable relationship to public welfare. Support for this approach to the burden-of-proof problem raised in these cases might be found in the presumption of constitutionality that attaches to all legislative enactments.⁴⁸ In *O'Gorman & Young, Inc. v. Hartford Fire Insurance Co.*, the Supreme Court stated:

As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute The action of the legislature . . . indicates that such evils did exist [for which this statutory provision was an appropriate remedy].⁴⁹

increased by 63.6% and personal injury accidents by 100%. A summary of the Department statistics indicates that 89.2% of the motorcycle accidents result in injury or death and that almost all fatalities occurring as a result of such accidents involved head injuries. Most of these fatalities could have been avoided, or the severity lessened, by the use of a proper helmet.

The helmet requirement, continues the memorandum, "should go far in protecting the drivers and passengers on motorcycles." *Id.* (emphasis added).

46. See notes 3 and 45 *supra*.

47. See, e.g., text accompanying note 42 *supra*.

48. *Davies Warehouse Co. v. Bowles*, 321 U.S. 144 (1944); *Toombs v. Citizens Bank*, 281 U.S. 649 (1930); *Home Tel. & Tel. Co. v. City of Los Angeles*, 211 U.S. 265 (1908).

49. 282 U.S. 291, 257-58 (1931). In *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964) and *Katzenbach v. McClung*, 379 U.S. 294 (1964), the Court held that Title II of the Civil Rights Act of 1964 preventing racial discrimination in public accommodations was a valid exercise of congressional power under the commerce clause as long as Congress had a rational basis for finding that racial discrimination by those establishments affected interstate commerce. By analogy, it can be argued in the helmet cases that, since the legislature has passed the law, it has determined that there is a reasonable relationship between it and the public welfare and that that determination cannot be overturned in the absence of a showing by complainant that no such reasonable relationship exists.

However, the *Heart of Atlanta* and *McClung* cases are inapposite here because they dealt with the congressional power over commerce—a broad, enumerated power of Congress—rather than with the police power. Moreover, in those cases there were congressional hearings about the effect of the prohibited activity upon interstate commerce: "[T]he record of [the Act's] passage through each house," says the Court in

If the law is that the state has no burden to offer any evidence to support its contentions, the Michigan court's decision in *Dauids* would appear to be correct since the defendant did not disprove that a reasonable relationship existed between the regulation and the public welfare.⁵⁰ However, such an interpretation of the law relating to the burden of proof requires the challenger, in effect, to offer evidence that there is no evidence of a reasonable relationship.⁵¹ How is one to prove lack of evidence other than by merely stating that fact and challenging the opposition to offer some evidence to controvert it? To require the challenger to prove a negative fact seems unreasonable. It appears more sensible—at least in cases where the challenger asserts in his pleadings that there is no evidence to demonstrate a reasonable relationship between the statute and the public welfare—to place the initial burden of going forward with the evidence upon the state. Once the state has offered any substantial evidence to support the statute,⁵² the burden would immediately shift to the challenger and it would be up to him to disprove that evidence. The meaning here of "substantial evidence" is the one advanced by the Supreme Court as the standard for judicial review of administrative action:

Evidence which is substantial, that is, affording a substantial basis of fact from which the fact in issue can be reasonably inferred . . . It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.⁵³

Heart of Atlanta, "is replete with evidence of the burdens that discrimination by race or color places upon interstate commerce." 379 U.S. at 252. See also *Katzenbach v. McClung*, *supra*, at 308. "The evidence presented at the hearings fully indicated the nature and effect of the burden on commerce which Congress meant to alleviate." But in the helmet statute there is no evidence that the legislatures ever gave any thought to the effect of the statutes on the safety of others. Indeed, there is evidence to the contrary; see note 48 *supra*.

50. The Michigan court's opinion is devoid of any reference to evidence which tended to demonstrate conclusively that helmets did not prevent accidents or that flying objects did not cause them.

51. Statistics are seldom compiled on events that do not happen or accidents that do not occur. It would be far easier for the state to offer evidence that such accidents caused by flying objects do, in fact, occur.

52. To allow the state to meet its burden of going forward with the evidence by offering merely a "scintilla" of evidence to support a reasonable relationship does not solve the problem. For example, the state could present one isolated incident in which a flying object striking a helmetless cyclist had caused an accident, and the challenger would still have the burden of proving that that incident was the only one of its kind. Thus, requiring the state to offer some substantial evidence would appear to be a better proposal.

53. *NLRB v. Columbian Enameling and Stamping Co.*, 306 U.S. 122, 300 (1939). According to the Court in *Universal Camera Corp. v. NLRB*, 340 U.S. 174 (1951), this definition continues as the authoritative guide to the meaning of "substantial evidence."

Under the substantial evidence test, a statute cannot be struck down unless the

This proposal is generally consistent with the presumption of constitutionality since the ultimate burden of proof will usually remain upon the challenger. Under the proposal suggested in this Note, which would put the initial burden of going forward with the evidence upon the state, the Michigan court would appear to have decided correctly since the state failed to offer any evidence to support a reasonable relationship between the helmet statute and the public welfare.⁵⁴

court has a firm conviction that it is unreasonable. Thus, such a test would result in upholding more state regulations than if the state judged the statutes on a "clearly erroneous" basis. The Supreme Court has stated that "a finding [or a statute] is 'clearly erroneous' when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948) (emphasis added). A firm-conviction-of-mistake test is closer to a substitution of judicial for legislative judgment than is a firm-conviction-of-unreasonableness test, which is necessary to upset a finding or a statute under the substantial-evidence test; consequently it is more difficult to invalidate a statute under the substantial-evidence test than under the clearly-erroneous test. When applied to helmet laws which are challenged as unreasonable, the proposal suggested in the text would require the state to come forward with enough evidence to meet the substantial-evidence test and thus to overcome the contention of unreasonableness. But as long as the statute is not unreasonable, that is, as long as there is enough evidence in its favor to justify a refusal to "direct a verdict" against it, then the challenger still has the burden of going forward even if the claim of a reasonable relationship is seen by the court as "clearly erroneous."

54. None of the courts which have dealt with the issue has gone to the basic factual and evidentiary question regarding the actual existence of a reasonable relationship or to the even more fundamental question concerning who has the initial burden of offering evidence. Instead, the courts have become involved in a balancing process between the interests of the individual and those of the state. To the courts striking down the helmet laws, the state's interest is too remote to be given weight. To the courts upholding the laws, however, the individual cyclist's interest is small, for wearing a helmet would hardly seem to be an oppressive burden, while the interest of the state in public highways and highway safety is great enough to justify regulation of even the most attenuated threat. *People v. Bielmeyer*, 54 Misc. 2d 466, 468-69, 282 N.Y.S.2d 797, 800 (1967) ("It has long been recognized that the power to regulate and control the use of public roads and highways is primarily the exclusive prerogative of the states."). Furthermore the right to wear what one wishes on a public street may not be considered fundamental enough to be protected by the fourteenth amendment even under the substantive-rights interpretation of the due process clause. See notes 23 and 40 *supra*. Thus, because helmet laws are merely a minor abridgement of individual liberty and because the right on which they impinge has not been definitely recognized as a fundamental one, these courts have been willing to grope to find a relationship between the regulations in question and the public welfare. Despite Benjamin Franklin's admonitions against those who would put safety over freedom, these courts seem willing to resolve all doubts in favor of the state without demanding any concrete evidence that unhelmeted cyclists are likely to harm others or even considering the burden of proof question at the crux of this entire controversy.

Yet the argument for constitutionality, if convincing at all, would appear to be persuasive only in regard to the operator of the cycle. The relationship between the requirement that a passenger on a cycle wear a helmet and the safety of others appears to be more attenuated. That requirement is supported in the case authority only by a statement in *Bielmeyer* that "passengers are just as susceptible to injuries as operators and a head injury to a passenger could sufficiently distract a driver to create a danger to other users of the highway." 54 Misc. 2d at 469-70, 282 N.Y.S.2d at 801. While such an event is conceivable, to view it as likely requires great imagination,

The ramifications of the *Dauids* cases are for the most part yet unknown. In Michigan, one immediate effect of the *Dauids* decision was the passage of a new statute by the Michigan legislature.⁵⁵ This statute requires that all motorcycles carry, when in operation, a number of crash helmets equal to the number of persons riding on the bike. Such a regulation is even more unlikely to promote public safety than the previous requirement since merely having a helmet on the motorcycle in no way protects the cyclist from being distracted or hurt. It is difficult to see what purpose this requirement serves other than encouraging the cyclist to wear a helmet; it is very awkward for him to carry it.⁵⁶ The new law appears to be merely an attempt to circumvent the court's ruling. Since the Supreme Court has indicated that indirect means to achieve unconstitutional ends are just as objectionable as the most direct form of regulation,⁵⁷ the new Michigan statute should also be declared unconstitutional.

The Michigan decision in the instant case may have an effect on the somewhat analogous problem connected with seat belt regulations. The Michigan courts, if they follow *Dauids*, could not uphold a legislative requirement that motorists wear safety belts.⁵⁸ Such a regulation would bear even less relation to the safety and welfare of others than the helmet laws,⁵⁹ for it is inconceivable that the failure to wear a seat belt could cause an accident,⁶⁰ or even pose the threat of one.

since the passenger is shielded by the operator from most flying objects and since he is not in control of the cycle. If there is any evidence to show that flying objects striking the operator actually cause accidents, it is unlikely that there is any to support an even more remote possibility for a court searching for reasons to justify the law, such a highly unlikely possibility as that used in *Bielmeyer* should probably be outweighed by the passenger's right to individual freedom.

55. MICH. STAT. ANN. § 9.2558(d) (1966).

56. The statute was evidently passed with the feeling that the new regulation was similar to the ones requiring seat belts to be installed in cars and, as such, should be allowed. However, the seat belt requirements are imposed upon the manufacturer and do not regulate individual conduct; in this case, the individual cyclist must buy and carry a helmet.

57. See *Louisiana v. United States*, 380 U.S. 90 (1965).

58. It is significant that at the present time no state has such a law on the books.

59. Even the New York courts, which have allowed a reasonable regulation of individual safety in the interest of a protected community, would probably find such a law unreasonable on the grounds that it is too great an infringement upon personal freedom. See note 30 *supra*. According to the court in *Miller v. Miller*, 100 S.E.2d 65, 69 (N.C. 1968), the scant use which the most reasonably prudent motorist makes of seat belts indicates that such a regulation would be too great an infringement. On the other hand, even where there is no infringement, most motorcyclists wear helmets in the interests of personal safety. Thus, helmet laws might be reasonable where seat belt laws would not.

60. Yet some states require seat belts on the operation of a car manufactured after a certain year. See CAL. VEHICLE CODE § 27300 (Supp. 1967); GA. CODE ANN. § 68-1801 (Supp. 1966); MASS. ANN. LAWS ch. 90, § 7 (1966); MICH. REV. STAT. § 9.2410(2) (Supp. 1965); NEB. REV. STAT. §§ 39-7, 125.05 (Supp. 1967); N.J. REV. STAT. § 39.3-76.2 (Supp. 1967); N.Y. VEH. & TRAF. LAW § 389(a) (McKinney Supp. 1966); N.C. GEN. STAT. § 20-135.2 (1965); ORLA. STAT. ANN. tit. 97, § 2-413 (Supp. 1967); ORE. REV. STAT.

The effect of the helmet decisions on the law in general may be substantial. On the one hand, if a helmet statute is held constitutional, inroads could be made upon personal liberty; the legislature might rely on similar strained and unproved relationships to the general welfare in order to justify regulations impinging upon other areas of individual conduct.⁶¹ On the other hand, to hold such a statute unconstitutional may require the judiciary to interfere unreasonably with the legislature's conception of public welfare. In light of these considerations, courts dealing with challenges to such regulations in the future should pay closer attention to the difficult factual questions underlying the reasonable relationship test; they must also attempt to answer the basic questions surrounding the burden of proof and the burden of going forward with the evidence in these cases.

§ 483.482 (1966); R.I. GEN. LAWS ANN. § 31-23-39 (Supp. 1966). In the case of such a regulation, but as in the helmet situation, the burden of installation is on the individual owner and he himself is regulated for his own protection. Thus, Michigan courts would probably not uphold such a law, for the requirement that the individual have belts in his car bears less relation to public welfare than a requirement of wearing them, and much less relation than a helmet requirement. This is analogous to the present Michigan law that helmets be carried on cycles—a law which cannot be reconciled with the *Dauids* decision, unless by the argument that the owner is thereby making seat belts available to anyone who should drive or ride in his car and is thus protecting people other than himself.

The federal standards issued by the Secretary of Commerce are different, for under them the burden is on the manufacturer, not the owner, to install safety belts. National Traffic and Motor Vehicle Act of 1966, 15 U.S.C. §§ 1391-425 (Supp. II, 1967), and Initial Fed. Motor Vehicle Safety Standards, 23 Fed. Reg. 2108, tit. 23, ch. II, part 255 (1967).

Congress has declared the scope of the federal standards. See National Traffic and Motor Vehicle Act of 1966, 15 U.S.C. § 1391(1) (Supp. II 1967):

Motor vehicle safety means the performance of motor vehicles or motor vehicle equipment in such a manner that the public is protected against unreasonable risk of accidents or injuries occurring as a result of the design, construction or performance of motor vehicles.

The standards, therefore, regulate the manufacturer in order to protect the public from unnecessary risks, and they do not directly restrict the individual owner's freedom. Thus, the federal seat belt standard would seem to meet no constitutional difficulties.

Some argue that a duty of due care to wear the belts can be derived from the federal seat belt regulations. The argument runs that statutes requiring mere installation of seat belts impliedly require their use, and that any ruling to the contrary undermines any possible value inhering in legislation. There is a notable absence of legislative history supporting this contention. See Note, *Seat Belt Legislation and Judicial Reaction*, 42 ST. JOHN'S L. REV. 371 (1968). As to the argument that the regulations are meaningless unless construed to require use, an equally likely construction is that they are designed to encourage use. In this connection, see Note, *Seat Belt Negligence in Automobile Accidents*, 1967 WIS. L. REV. 288 (1967).

61. See text accompanying note 81 *supra*.

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Supreme Court

State of Alaska

POUCH U. CAPITOL BUILDING

JUNEAU, ALASKA

99801

HUELL A. NESBETT, CHIEF JUSTICE
JOHN H. DIMOND, ASSOCIATE JUSTICE
JAY A. RABINOWITZ, ASSOCIATE JUSTICE
GEORGE F. BONEY, ASSOCIATE JUSTICE
ROGER G. CONNOR, ASSOCIATE JUSTICE

April 25, 1969

Hon. Barry W. Jackson, Chairman
House Judiciary Committee
Capitol Building
Juneau, Alaska

Dear Chairman Jackson:

Senate Bill No. 3 providing for the peremptory disqualification of district judges probably needs to be amended in at least two respects.

District judges also conduct sessions of municipal court in the main cities of Alaska. AS 22.20.022 should be amended to make it plain that there could be no challenge of a district judge while conducting a session of municipal court. Otherwise the procedure would be entirely unworkable.

(c) of the statute should be amended to require that the challenge of a district judge be made almost immediately after the matter has become a case. The five day period would completely stall the machinery in the district courts with respect to the minor criminal actions where a complaint is filed one day and often times tried the next day. All such cases, of course, should not be automatically stalled for five days in order to allow for a challenge. In that type case the challenge should be filed immediately after the defendant has notice that an action is pending in areas such as Ketchikan, Sitka and Nome where

Hon. Barry W. Jackson, Chairman
April 25, 1969
Page 2

there is only one judge to try the case and it would have to be known which judge the case would come before. In other areas such as Juneau, Fairbanks and Anchorage the challenge would have to be filed immediately after the case had been assigned to a judge without the five day provision.

Sincerely yours,

Buell A. Nesbett
Buell A. Nesbett
Chief Justice



Supreme Court

State of Alaska

POUCH U. CAPITOL BUILDING

JUNEAU, ALASKA

99801

- BUELL A. NESBETT, CHIEF JUSTICE
- JOHN H. DIMOND, ASSOCIATE JUSTICE
- JAY A. RABINOWITZ, ASSOCIATE JUSTICE
- GEORGE F. BONEY, ASSOCIATE JUSTICE
- ROGER G. CONNOR, ASSOCIATE JUSTICE

April 25, 1969

Hon. Barry W. Jackson, Chairman
 House Judiciary Committee
 Capitol Building
 Juneau, Alaska

Dear Chairman Jackson:

Senate Bill No. 3 providing for the peremptory disqualification of district judges is now in your committee.

Pursuant to our discussion of this morning, please be advised that it is my opinion that if this bill is enacted into law any additional expense to the Alaska Court System can be absorbed within the framework of the court system's budget as approved by the House Finance Committee. This is based on the assumption that there will not be a wholesale abuse of the peremptory challenge provision, and the occasional challenge in areas such as Nome and Ketchikan can be taken care of by the resident superior court judge.

Sincerely yours,

Buell A. Nesbett
 Buell A. Nesbett
 Chief Justice

STANLEY H. REITMAN
ATTORNEY AT LAW
708 FOURTH AVENUE
ANCHORAGE, ALASKA 99501
PHONE 272-2409

SB-45
File #
SB45-

February 3, 1969

The Honorable Barry Jackson
Chairman, House Judiciary Committee
House Chambers
Juneau, Alaska

Dear Barry:

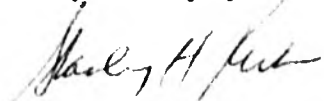
Re: Alaska Professional Corporation Act
A.S. 10.45

On January 6, 1969 I drafted a letter to the Legislative Council with copies to various interested persons. From the newspapers I see that one or more bills pertinent to the Alaska Professional Corporation Act have been introduced in this session. However, none of such bills have reached my desk as yet.

The enclosed xerox copy outlines some of the problems practitioners are having or will have regarding this Act, and I respectfully request you review the suggested statutory changes attached to my letter. I hope the Legislative Council has seen fit to incorporate some or all of my suggestions in the bill or bills sponsored by the Council.

Thank you for any courtesy extended to me and to all of those Alaskan professionals who are vitally interested in the effectiveness of the Alaskan Professional Corporation Act.

Very truly yours,


Stanley H. Reitman

SHR/mm

Enclosure

COMMENTARY AND SUGGESTED STATUTORY CHANGES

(1) Centralization of Management

Statute might emphasize the centralization of management concept by adding this language to AS 10.45.070:

"Management of a professional corporation shall be vested in the Board of Directors which shall have the continuing exclusive authority to make the management decisions necessary to the conduct of the profession for which the professional corporation is formed. The officers of the corporation, who shall be elected by the Board of Directors, shall have such power and authority to represent the Board as the Board may from time to time expressly or impliedly grant to such officers. A shareholder shall not have any power to bind the corporation within the scope of the corporation's activities merely by virtue of his being a shareholder.

(2) Transferability of Shares

Existing AS 10.45.080 requires the prospective sale or transfer of shares be approved by a majority of the other shareholders. Why make the rule mandatory - let the shareholders concensually impose such restrictions if they desire. By doing so we eliminate an unnecessary statutory impediment to "free transferability". In all cases the professional shareholders should prudently provide for this possibility in their buy-sell agreement. I therefore would amend this section to read:

"Transfer of Shares.

"A shareholder of a professional corporation may sell or transfer his shares in such professional corporation only to another individual duly licensed to render the same professional service as that for which the professional corporation was formed. The articles of incorporation may provide specifically for restraints on the alienation of shares and may require the purchase, redemption or retirement of shares by the professional corporation at a price and in a manner set out in the articles. The articles may, alternatively or in addition, authorize the corporation's Board of Directors or its shareholders to adopt by-laws restraining the alienation of shares and providing for their purchase, redemption or retirement by the corporation."

(3) Corporate Name

Almost all professional corporation or association statutes enacted by other jurisdictions require the professional organization to employ an identifying word or words in its name to indicate it is operating under a corporate or association format. Moreover, it is my personal belief, unsupported by anything other than instinct, that it will be far easier to confront the IRS if the corporate name indicates business is being conducted in the corporate name. Accordingly, it is vital to strike the last sentence of AS 10.45.120:

"It is permissible for the corporation to render professional services and to exercise its authorized powers under

the corporate name without the word 'Corporation' or 'Incorporated' or their abbreviations, or the words, 'a professional corporation' included in the name."

(4) Liability.

The existing liability sections 140, 150, 160 and 170 evidence an undue sensitivity to any suggestion or attempt to evade personal liability to clients and other third parties. Particularly bad, and not found in any other state statute, is section 170, which makes shareholders responsible for all corporate debts (including non-professional). This must be eliminated. The specific provision imposing joint and several liability for professional services I presume is intended to build in the partnership concept that a partner is jointly and severally liable for the torts of his partner. At the minimum, AS 10.45.170 must be eliminated. Suggested substitutional language for sections 140, 150, 160 and 170, adapted from the Georgia Professional Association Act, might prudently read:

"This Act does not modify any law applicable to the relationship between a person furnishing professional service and a person receiving such service, including liability arising out of such professional service, and including the confidential relationship between the person rendering the professional service and the person receiving such professional service, if any, and all confidential relationships previously enjoyed under the laws of this State or hereinafter enacted shall remain inviolate. Subject to the foregoing provisions of this Section, the shareholders of any professional corporation organized pursuant to the provisions of this Act shall not be individually liable for the debts of, or claims against, the professional corporation unless such shareholder has personally participated in the transaction for which the debt or claim is made or out of which it arises."

(5) Continuity of Life.

Akin to my comments on centralization of management under (1) above, a positive legislative expression regarding continuity of life will be useful. Accordingly, this new added language is suggested:

"Unless the Articles of Incorporation expressly provide otherwise, a professional corporation shall continue as a separate entity independent of its shareholders, for all purposes for such period of time as provided in the Articles, or until dissolved by a vote of two-thirds of the members, and shall continue notwithstanding the death, insanity, incompetency, conviction for felony, resignation, withdrawal, transfer of ownership of shares, retirement, or expulsion of any one or more of the shareholders, the transfer of shares to any new shareholder or shareholders, or the happening of any other event, which under the law of this State and under like circumstances, would work a dissolution of a partnership, it being the aim and intention of this Section that such professional corporation shall have continuity of life independent of the life or status of its shareholders. No shareholder of a professional corporation shall have the power to dissolve the corporation by his independent act of any kind."

(6) Disposal of Shares of Deceased Shareholder.

A problem may arise upon the death of sole owner of a professional corporation. The legatees or distributees more than likely will not be licensed to engage in the profession for which the corporation was formed. Additionally, disposition or transfer to a licensed person or persons may neither be feasible nor attainable. To prevent any undue loss because of a forced liquidation (keep in mind, the corporation may have significant holdings of real estate, equipment and other passive investments), an alternative should be given the family to switch over to a business corporation and in the process keep the corporate entity going. Accordingly, the following language might be added at the end of AS 10.45.220:

"If there is only one shareholder and the shares held by such deceased shareholder are not disposed of within six months after death, the legal representative, legatees or distributees of such deceased shareholder shall either (a) liquidate the professional corporation, or (b) amend its articles of incorporation so that the professional corporation may continue in existence as a business corporation under the Alaska Business Corporation Act."

Memorandum

5376
Alaska Court System

TO: Chief Justice Buell A. Nesbett

SB 76 am
FROM: Harold J. Butcher, Judge

DATE : May 28, 1968

SUBJECT: Proposed Rule Changes

Dr. Rehbock and I discussed rule changes affecting children's cases in the Superior Court yesterday afternoon and I think considerable progress was made in the several rules we discussed in detail with the hope that other rule changes may also be made after I furnish him with a memorandum on other rules which I feel should be changed for more orderly procedure and easier handling of children's matters. Nevertheless, I would like to propose a fundamental change in Rule 12 and the change contemplated will require major consideration on your part as to whether the change contemplated can, in fact, be accomplished by rule. This memorandum is intended to open the door to the subject and I will hope for a conference with you at an early date to discuss the matter further.

Section 47.10.080 reads as follows:

(a) The court, at the conclusion of the hearing, shall find and enter a judgment that the minor is or is not a delinquent or dependent minor.

(b) If the Court finds the child a delinquent he must (1) order the child committed to the Department of Health and Welfare for an indeterminate period of time * * * or (2) order the child placed on probation * * *.

(c) If the court finds that the minor is dependent, it shall (1) order the minor committed to the department for an indeterminate period of time not to exceed the date the minor becomes 21 years of age; (2) order the minor released to his parents, guardian, or some other suitable person; if the court releases the minor, it shall direct the department to supervise the care and treatment given to the minor; the department's supervision may not extend past the date the minor becomes 21 years of age; or * * *". (Emphasis added)

I call your attention to the 1967 report of the President's Commission on Law Enforcement and the Administration of Justice as quoted in an article entitled "Children's Court-Gateway or Last Resort", published in Case and Comment for November-December, 1967, Vol. 72, Issue No. 6.

Memorandum - Page 2
May 28, 1968

"The formal Juvenile Court system and its pronouncement of delinquency should be used only as a last resort."

The article from which the above quotation was made goes on to say:

✓ 11 "Delinquency invented as a soft substitute for the word 'crime' is now a cruel term itself."

✓ 11 As I read Section 47.10.080 the court must, at the conclusion of the adjudicative hearing declare the child either a delinquent or a dependent and has no other choice unless the decision itself is postponed. In many other states, among which is Colorado, the Legislature has provided an additional category covering children in trouble representing a status in which custody can be taken of a child and treatment administered and I quote from the Colorado Children's Code as follows:

"(17) (a) (i) 'Delinquent child' means any child ten years of age or older who, regardless of where the violation occurred, has violated:

(ii) Any federal or state law, * * *

(iii) Any municipal ordinance, * * *

(18) (a) "'Child in need of supervision' means any child:

(b) Who is an habitual truant from school;

(c) Who has run away from home or is otherwise beyond the control of his parent, guardian, or other legal custodian; or

(d) Whose behavior or condition is such as to endanger his own or others' welfare." (Emphasis added)

The Colorado Code goes on to define dependent children but we are not concerned with that definition at this time.

11 Thus, it will be seen that Colorado, by statute, has devised a means of avoiding the application of the harsher term of "delinquency" in all those cases except where there has been a specific violation of law. In the category of a "child in need of supervision" the custody of the child is procured without declaring him a delinquent. The common identification of this second category in Colorado and other places where the same category is in use is CHINS (Children in need of supervision). In Hawaii, Illinois and other states where a similar category exists persons (persons in need of supervision) are referred to as PINS.

Memorandum - Page 3
May 28, 1968

In the most recent issue of the Family Law Quarterly in an article on the Gault decision by Norman Doresen and Daniel A. Reznick, the attorneys for Gault before the Supreme Court, the following comment appears.

"This aspect of juvenile court law (avoidance of the declaration of delinquent) is in flux, however. There is discernible a legislative trend to treat 'truants' and 'incorrigibles' differently from those juveniles who commit law violations: to adjudicate the former as 'persons in need of supervision' (known as 'PINS') and to reserve the label 'delinquency' for the latter. An effort is made thereby to eliminate the stigma of a delinquency adjudication from these juveniles.

Removal of both the stigma of delinquency and the threat of commitment might well justify a difference in procedural treatment between 'PINS' and juveniles accused of law violations. It cannot be assumed that the application of particular procedural rights in juvenile courts by the Supreme Court in cases involving alleged law violations which are adult crimes will necessarily carry over in all respects to all categories of juveniles over whom the juvenile court exercises jurisdiction. As we shall discuss below, Gault need not be interpreted as imposing procedural inflexibility on differing categories of juvenile court adjudication, any more than it does on the pre-judicial and dispositional phases of the process."

It should be remembered at this stage the Gault decision is applicable according to its sweep in cases where a child has committed an act which, if committed by an adult, would be a crime and Gault may not necessarily be applicable in delinquency cases where the act of the child would not be a crime if committed by an adult.

It is my opinion that regardless of the strictness of the Alaska Statute in its requirements for an adjudication of either delinquency or dependency and particularly in view of the fact that the Supreme Court has the power to make rules which have the force and effect of law, that we could, by rule, establish the separate category of "Children in Need of Supervision" (CHINS) or Persons in Need of Supervision (PINS) and it is my further opinion that in this category about 75% of the misconduct of children in this area, at least, would probably fall. Subse-

*about 75%
of children*

Memorandum - Page 4
May 28, 1968

quently, and at the next session of the Legislature, we can urge the Legislature to adopt this middle ground in declarations involving children. Meanwhile, with a tool such as a change in Rule 12 might provide, much good could be accomplished in the handling of children before the court.

My object, therefore, is to induce the Supreme Court to make the rule change at once anticipating that the Legislature could be induced to change the statute at the next session providing, of course, you agree with me on this subject.

I should very much like to discuss the matter with you personally at your first opportunity and to further urge upon you then that we incorporate in Rule 12 which at the present time requires either a declaration of delinquency or dependency in the event the allegations of the petition are proved, the additional provisions referred to above.


HJB

MEMORANDUM

State of Alaska

TO: Honorable Irwin L. Metcalf
House of Representatives
Alaska State Legislature

DATE : April 13, 1970

FROM: Thomas J. Moore 
Commissioner
Department of Labor

SUBJECT: CS for SB 79

With respect to Committee Substitute for Senate Bill No. 79, relating to oil and gas lease provisions requiring reports of labor conditions, the Department regards this as a desirable piece of legislation.

Part of the regulations which the Department contemplates issuing under this bill is residency of an employee, based on one year's residence in the State. It would give us the opportunity to review the hiring practices of individual companies and, where they were not responsive to resident hiring, call the matter to their attention.

MEMORANDUM**State of Alaska**

TO: The Honorable Barry W. Jackson
Chairman, House Judiciary Committee
Alaska State Legislature
Juneau, Alaska

DATE : April 14, 1969

FROM: *R. D. Stevenson*
R. D. Stevenson
Chief, Excise Tax Section
Department of Revenue
Alaska Office Building
Juneau, Alaska

SUBJECT: CS for Senate Bill No. 85,
amended, An Act relating to
the compilation of jury lists.

Attached is a copy of a memorandum addressed to Mr. George A. Morrison, Commissioner of Revenue from Charles Pyles, Supervisor of Audit of the Department of Revenue concerning Administrative problems encountered by the Department of Revenue in complying with the provisions of CS for Senate Bill No. 85, amended, concerning certain lists to be prepared by the "Department of Revenue".

If you have any questions on the material contained in the attached memorandum, please feel free to call Mr. Charles Pyles, Department of Revenue at 6-5354.

RDS/se

Attachment 1

cc: Charles Pyles
Supervisor of Audit
Department of Revenue
Alaska Office Building

MEMORANDUM

State of Alaska

TO: G. A. Morrison
Commissioner of Revenue

DATE : April 11, 1969

FROM: Charles Pyles
Supervisor of Audit

SUBJECT: CS for SB #85
"An Act relating to the compilation of Jury Lists"

Administrative Problems:

The list of persons, to be prepared by the Department of Revenue, who either purchased a resident hunting or fishing license should be corrected to read "prepared by the Department of Fish and Game". The Department of Revenue is responsible solely for the accounting for monies received from the sale of licenses; the copies of licenses are processed and filed by the Department of Fish and Game. Mr. Fred Walstad of the Fish and Game Protection Division advises that his department hopefully has 98% of the previous year's hunting and fishing license copies filed and available for this use by February 15 of the current year.

The list of individuals who have filed income tax returns for the previous year which result in a refund can be provided by the Department of Revenue, from information compiled by Data Processing division. We must point out, however, that the income tax returns for the previous year are not due until April 15 of the current year. The incomplete list, consisting of 80% of the individuals who have previous year income tax returns could be provided by the Department of Revenue on approximately August 15 of the current year.

The remaining 20% of the prior year income tax filings would not be available for a listing until near December 31. This is due to fiscal year filings, extensions of time in which to file, etc.

We wish also to point out that there is a group of Alaska residents who may legally qualify for jury duty but whose income is insufficient to require an income tax filing.

Charles L. Pyles

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

April 30, 1970

M E M O R A N D U M

TO : Representative Barry W. Jackson
FROM : Arthur H. Peterson, Revisor of Statutes
SUBJECT: HCS CSSB 93

Your HCS for CSSB 93 (ombudsman) is attached. The main changes are on pages 1 and 2. The way the last part of the "Term of Office" section now reads, a subsequent appointee will serve a minimum of two years and a maximum of five years before he will be up for approval or rejection. (If his minimum were set at three years his maximum would be six years before being up for his first approval or rejection.) That five years may seem a bit long, but the provision incorporates the two elements the committee wanted -- a two-year minimum and a non-gubernatorial election. In addition, on page 6, line 24 of CSSB 93 I changed "shall not" to read "may not", and on page 7, line 14 I deleted "of 1970".

AHP:HG
Enclosure

Jackson

SB98

MEMORANDUM

State of Alaska

TO: Representative Earl D. Hillstrand
Chairman, House State Affairs
Alaska State Legislature

DATE: March 24, 1970

FILE NO: 00-3077

SUBJECT: S. B. 98 am

FROM: Robert L. Beardsley
Commissioner
Department of Highways
Juneau

Jackson

for

Pursuant to your request we suggest the following amendments to the referenced bill.

Page 2, Line 21

Add or activities conducted thereon;

OK

Page 2, Line 22 and Line 23

Strike out completely and substitute the following:

(3) Signs, displays, and devices in all zoned and unzoned, commercial and industrial areas. The Department will regulate the size, spacing, and lighting of signs within these areas that are not covered by (1) and (2) of this Section. ^

No billboards allowed!
OK

Add

*Sec. 6. A.S. 19.25.100 is repealed.

The above amendments and additions will define the limitations on advertising signs and bring us into conformity with Public Law 89-285, the Highway Beautification Act of 1965. Section 19.25.100 should be repealed because the Federal Highway Administration will not allow this type of sign along the Federal-aid Highway system. We have installed signs along the system indicating the availability of services of the various roadhouses, lodges, etc. These signs were approved by the Federal Highway Administration.

Department control and regulations within the zoned and unzoned commercial and industrial areas only applies to those signs, displays or devices that do not advertise the sale or lease of the property on which they are located or activities conducted thereon. The regulations are aimed at the large commercial billboard type structures which fortunately have not been introduced into Alaska for the most part.

Junkyard Control

Page 3, Line 1

Change "shall" to "may".

Our reason for requesting this change is two-fold. Number one, the Federal government has not appropriated a significant amount of funds for either control of outdoor advertising or junkyards. As an example the existing appropriation is \$1000 for advertising control and \$831 for junkyard control. If the removal is mandatory, we would be forced into spending unauthorized State funds.

March 24, 1970

OK
Second, we are of the opinion that it would be in the best interest of the State to expand the junkyard control legislation to also include the secondary highway system and suggest that Chapter 27, Title 19, be amended to accomplish this. Sections requiring amendment would be as follows: Section 19.27.020, Section 19.27.030 and Section 19.27.110.

The addition of the secondary highway system in the legislation would require an inventory of existing signs and junkyards along the secondary system and the future expenditures of State funds for their control. However, we believe the program would be well worthwhile.

MEMORANDUM

State of Alaska

TO: Earl Hillstrand, Chairman
House State Affairs Committee
Capitol Building, Juneau

DATE: March 25, 1970

FILE NO: 00-3077 & 00-1041

SUBJECT: Highway Beautification
Act of 1965

FROM: Robert L. Beardsley
Commissioner
Department of Highways

J. Hillstrand

STB 98

As further backup to Senate Bill #98 the State of Alaska has requested, in the Engineering and Construction Budget, State funds to match the Highway Beautification Program Act of 1965 as follows:

Year	Program	Total	Funds	
			Federal	State
1967	Apportionment-Control Outdoor Advertising (Est.)	\$ 102,480	\$ 72,360	\$ 30,120
1967	" Control Junkyards (Est.)	42,000	30,000	12,000
1967	" Landscape & Scenic Design (Est.)	1,299,743	1,207,743	92,000
1968	" Beautification Prog.(Est.)	1,487,500	1,350,000	137,500
1969	" " " "	1,487,500	1,350,000	137,500
1970	" " " "	1,983,252	1,800,000	183,252
1971	" " " "	1,983,252	1,800,000	183,252
Total Funds Appropriated by State of Alaska for Beautification		<u>\$8,385,727</u>	<u>\$7,610,103</u>	<u>\$ 775,624</u>

Federal funds apportioned to the State of Alaska are as follows:

	Total	Federal	Expended
1966 Apportionment			
Outdoor Advertising	\$ 36,180	\$ 56,180	\$ 7,500
Junkyard	15,000	15,000	--
1967 Apportionment			
Outdoor Advertising	\$180,899	\$180,899	\$ --
Junkyard	75,000	75,000	--
1970 Apportionment			
Outdoor Advertising	\$ 1,000	\$ 1,000	\$ --
Junkyard	1,662	1,662	Reduced 50%

The 1966 and 1967 apportionments were not expended because State enabling legislation was not passed until 1968 (Chapter 233 SLA 1968). For all practical purposes the Beautification Program is non-existent at the present time. State matching funds are available. The writer will approach the administration requesting approval to spend 100% State funds to institute the outdoor advertising and junkyard program until Federal funds are available.



Public Law 89-285
89th Congress, S. 2084.
October 22, 1965

SB-98

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, such 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, size, 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

79 STAT. 1029

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.

"(c) 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 such agreement, but no such State highway department shall be eligible to such payments unless the State maintains the control required by 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 system than those established under this section.

Information centers.

Bonus payments.

from inventory.

appropriate?

"(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. 929.

"(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

"181. Areas adjacent to the Interstate System."

and inserting in lieu thereof

"181. 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
at 899.

"§ 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. 1031

Reapportionment of withheld funds.

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.

Definitions.

"(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.

"(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-

To owner? what if we remove junk?

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.

"130. Control of junkyards."

TITLE III

Sec. 301. (n) Section 310 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."

(b) The table of sections of chapter 3 of title 23 of the United States Code is amended by striking out

"310. Landscaping."

and inserting in lieu thereof

"310. 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

Appropriation.

Estimate and study.

3-5 acres
Mex.

3-20-67
- facilities controlled w/ other work
- other state agencies for
P.E. work

79 STAT. 1033

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 regulations. 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 19, 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

Appropriation.

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.

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.

12

JUDICIARY COMMITTEE REPORT

ON

SENATE BILL NO. 131

The purpose of Senate Bill No. 131 is adequately explained by the Governor's letter of transmittal.

All states can now appear in the courts of Alaska to enforce judgements and liabilities for unemployment insurance contributions.

This bill will allow the Attorney General to appear for the other state if the other state similarly provides assistance to Alaska in its courts.

Barry Jackson, Chairman



ALASKA COMMISSION ON THE STATUS OF WOMEN

8 Craig Avenue West
Fairbanks, Alaska
April 8, 1969

Dear Barry,

The February workshop in Juneau of the Alaska Commission on the Status of Women was most informative. Ours is a research and recommendation commission. Independently, we research policies and practices in our own areas that fall within the responsibilities provided by Senate Bill 249, which established our Commission.

For your interest, enclosed are the Agenda and the Minutes for the Juneau workshop. Unfortunately, the minutes do not include our Friday afternoon and evening business sessions or the Sunday morning concluding business session.

During these sessions, the Commission unanimously voted support for Senate Bill 133, to add "Sex" to the "Unlawful Employment Practices", a part of the Civil Rights Bill. We request your support for Senate Bill 133. There is a similar bill, House Bill No. 33, introduced by Rep. Chance since our meeting.

Also, the Commission is in full support of the bill presented by the Department of Labor dealing with discrimination against women under the Employment Security Act. We respectfully request your support for this bill presented by Commissioner Moore who failed to provide us the number.

Enclosed also, is our long awaited report to the Governor and the Legislature for 1968. Recommendations were forwarded to the governor in February and an interim report will be presented in May.

Any suggestions you might have to make the work of our commission more effective would be welcome.

Sincerely,

A handwritten signature in cursive script, appearing to read "A.H. Fleetwood".

Mrs. A. H. Fleetwood

ALASKA COMMISSION ON THE STATUS OF WOMEN

The Alaska Commission on the Status of Women met in the Conference Room of the Governor's Office on Saturday, February 8, 1969, at 9:30 a.m. The following members were present:

Mrs. Gertrude Reeser, Chairman
Mrs. John Cushing, Vice-Chairman
Mrs. Marjorie Fitzpatrick
Mrs. A. H. Fleetwood
Mrs. Isabel McLean
Mrs. LaDemma Zuback

Mrs. Reeser, President, opened the meeting, stating that similar meetings were being held in 53 other communities, including the other 49 states, Washington, D.C., the Virgin Islands, and Puerto Rico. The purpose of the program is to bring women into full partnership with men, put women in policy-making positions, and bring about full utilization of women in family, home, community, state and nation in order to extend opportunities to all people to develop to their full potential. These opportunities can help to make our State a better place.

Mrs. Reeser introduced Representative Mildred Banfield, who complimented the Commission on their previous report which had been well received in the Legislature. She offered any help that the Legislature might be able to give the Commission in their efforts. It was her feeling that the Commission could help in placing women in a position where they could best render service to the community, the family, and to themselves.

Mrs. Wanda Cooksey, Consultant, Guidance and Counseling, Alaska Department of Education, was then introduced. She reviewed what was presently being done in the State in public schools in guidance services. About 10-12 districts this year have approved guidance programs. The State Department of Education files with the federal government a state plan for receiving NBEA money which helps to support these guidance and counseling programs. Among the responsibilities of these programs is educational opportunities--helping students to decide for themselves what they want, what their programs should be, and what opportunities are suitable for them. Usually this counseling is on a one-to-one relationship; however, in recent years there has been more work done in the area of group counseling. Trained personnel are essential, and some training is being undertaken now. Counseling takes a great deal of time, but other demands on counselors for other guidance services limits the amount of time available for individual counseling. Mrs. Cooksey also works in the area of adult education. This field has grown rapidly in the past few years. It provides that persons who have not graduated from high school may take tests which will allow them to obtain a high school diploma. These tests are usually handled through community colleges or through the Department of Education. Communities are establishing their own testing offices. The program also offers brush-up courses. She stated that this material would soon be available in a brochure for the purpose of public information.

Another area is adult basic education, offered in ten communities now. This is a federally financed group of programs offering educational programs for adults who have not achieved the 8th grade level. The demand is considerable and both of these programs are helping people to obtain employment. No minimum amount of formal education is required for these programs, and after completing these satisfactorily, persons are eligible for college entrance. Wrangell is the only community which has a program directed at the lower grades, and they are in the second year of a pilot project. Fairbanks has a person working with the parents of disadvantaged children. In the villages, the teacher is the only person who can help in this area, and her time is very limited.

Mrs. Reeser introduced Dr. Donald Freedman, Alaska Division of Health. Mr. Freedman was concerned about expanded services for women as wives, mothers, and young women, particularly in the areas of population and of providing services where they are needed. The greatest problem has been with staffing and budget to provide services.

The population growth, in which the population of the world now doubles in 37 years, causes higher death rates, disease, and other related problems. Contrary to past years, the present birth rate exceeds the death rate and more people are living to the reproductive age, bringing a variety of problems. In the State of Alaska people who should be getting health and other services are not receiving them. Mothers in remote areas spend a great deal of time caring for these health problems, and education would be a great assistance to them.

The State has recorded a figure of 586 known abortions during the past year. Pregnant individuals handle this problem in many ways--by leaving the country, illegal abortions, suicide--and many result in permanent damage, both physical and psychological, to the mother. These girls often feel they have to have an abortion because they can't get the help they need in this country.

In Alaska the birth rates in some sections are higher than in other sections of the population. Also, the death rate among infants is higher in these areas. In a family of from 6 to 12 children a very real problem exists in bringing these children up in a healthy manner, and often leads to other problems such as alcohol, sex, drugs, etc. Often the cause goes back 20-30 years in the family attitudes. In families of over 3 children, there are increases in complications of many problems for both the mother and the child--mental retardation, premature births, infant deaths, etc. We know the groups that have the greatest needs, but we are unable to do much about it because it takes personnel, budget, and program. Studies have been carried on in some low income areas to see if these people would accept family planning advice. Almost 100% continued to come back for this assistance; and in one year there was a drop of 32% in the births and a drop of 40% in illegitimate births. Presently there is only one family planning clinic in Alaska. There are also programs now to see what can be done to help support the doctor with other paramedical personnel and other aids in pediatrics and other areas.

Dr. Freedman stated three warnings: 1) Women carrying unwanted children to term have a high incidence of disabling psychiatric problems than those having abortions, regardless of the circumstances of conception. The created

psychiatric problems are passed on to the children; 2) The unwanted children have a greater number of emotional and social handicaps which affect their attitudes, behavior, and learning as they grow up; 3) Almost all women having abortions under decent conditions have very few emotional sequelae after their abortions. Many have no problems whatsoever.

Dr. Freedman then stated points on services which would be particularly helpful in thinking of expanded needs: 1) Expanded assistance in fertility control, family planning clinics and services of all kinds wherever needed; 2) Development of family planning specialists; 3) Better prenatal care for all mothers; 4) Better mental and health care for children and their whole families; 5) Abortion legislation.

Mrs. Reeser then introduced Mr. Richard Folta, Juneau attorney, who spoke on Alaska's laws relating to the family situation. He stated that generally Alaska was above other states in providing justice to women through its laws. Property rights are provided women whereby they may own property, sue, be sued, and made liable for their own torts and crimes. One area where fair treatment is not afforded women is in the area of domicile, or intent to reside. The domicile of the wife is that of the husband. Alaska has modified this so that a woman may set up a domicile for voting purposes, divorce purposes, and other purposes, if she lives here a year. In Alaska a wife may sue her husband for negligence in case of injury. A child may also sue its parents for a negligent injury. Alaska law does not recognize common law marriages.

Alaska does not legally recognize maternity leave, which concerns Mr. Folta as it discriminates against the working wife. He felt the Commission might look into this. A high percentage of women work in Alaska, very often from necessity.

Alaska is very liberal in its divorce laws, and provides nine grounds for divorce. Most divorces are granted on the grounds of incompatibility. However, it is the children who are injured the most often, and no one represents their interests. The applied theory of "fault" in divorce is wrong, and perhaps the Commission could look into this and eventually advocate some change.

In the area of adoption the Alaska statutes are very fair. The consent of the father is not required, making adoption somewhat easier than in other states which do require this consent.

There is some bias against high school girls who are pregnant. Often they are not allowed to continue in school, and this could be another area the Commission could consider. The abortion laws in Alaska need to be reviewed and a more realistic law adopted. During questioning it was felt that a change in the abortion laws will be a difficult thing to bring about. Several states do have fairly ideal abortion laws, and some exploration would be advisable. It was also mentioned that Alaska is a common law property state, which gives no consideration to the housewife who stays at home and works in the home.

Dr. Freedman indicated that studies show the best way to handle abortion is as a medical problem, the decision resting with the physician and patient, and not regulated by a set of laws. He felt that very few additional persons would be needed to staff an adequate family planning program. Needed most were

funds and someone to administer them. These funds would go to the local communities which would set up their own clinics using their own practicing nurses and physicians during regular hours with the aid of adult educational material sent out through the schools. Some thought has been given to providing materials, supplies, and drugs in the rural villages through some lay resident.

Mrs. Cooksey stated that in the case of pregnant girls attending school, some have kept on, though some have not been able to do so for physical reasons. There is really no out-of-school programs for these girls except in several larger cities in the State.

The next speaker introduced by Mrs. Reeser was Charlotte Thompkins, past extension service agent of the University of Alaska Home Extension Service. She stated that the Extension Service was well equipped to help in the villages, but so short-handed because of a lack of funds for extension agents that help was not being provided to its fullest potential. It was felt that at least six agents should be provided for just Southeastern Alaska. At present there are only five for the entire State of Alaska. Anchorage is engaged in a project with approximately 20 aids--lay people--being trained to go out and work with people considered to be poverty stricken. They are using some federal and some state funding, emphasizing nutrition as their main objective. In most cases these agents have been able to make only one visit a year to outlying areas, but at least two visits are recommended. It often takes time to become accepted in these villages, and in order to be of real help one must be able to go back. Some of the specific areas of need and interest are: homemaking, cleaning, repairing, reupholstering, knitting instructions. It was felt that if more of these people were aware of what was available, there would be more requests for them and more effort to fill the requests. The possibility of cooperation with VISTA was discussed.

The meeting was adjourned at 12:00 for lunch to be held in the Iris Room of the Baranof Hotel. Guest speaker for the luncheon was Shari Gross, President of the State League of Women Voters of Alaska. Mrs. Gross spoke on the history of the League in the United States and the process by which the League accomplishes its aim of a more informed voting public.

The meeting was reconvened in the Conference Room of the Capitol Building at 2:15 p.m.

First speaker of the afternoon session was Mr. Thomas Moore, Commissioner of Labor, State Department of Labor. Mr. Moore quoted some Alaska employment figures, including the total work force of 94,000, up 35,000 from 1960. Female employment is presently 35,250. One of the major problems in Alaska, which has the highest unemployment rate in the United States, is the training of people to meaningfully participate in the development industries. The first such training program, financed by the federal government, was the Manpower Training Program started in 1962, financed under the Area Redevelopment Act. This program is directed toward heads of households, unemployed, or underemployed, and low educational levels. Since 1962 approximately 2,500 trainees have completed or are completing scheduled training under 226 courses in 50 different occupations. These courses include basic education courses as well as a great variety of skills training. Among trainees, 51% are educationally deficient, 9% are physically, emotionally or mentally handicapped, 38% were women, and 42% were members of minority groups.

The Department of Education, Vocational Division, is responsible for curriculum through the training. The Department of Labor is responsible for the selection of training occupations, based on cooperation with industry and business, so that the trainees will have jobs available. The Department pays an allowance, transportation, and often room and board for the training period.

He also discussed the Work Incentive Program for persons receiving aid to dependent children. This provides referrals and day care centers for these persons. At present there are 232 people enrolled in these programs, and 14 have been placed in jobs. About 97% of the enrollees in the program are women. With the discovery of oil in Alaska, an attempt is being made to train persons to hold jobs in this industry wherever possible.

Under the Employment Security Act there are certain types of disqualifications which apply only to women. Such provisions provide that if a woman leaves her job to be with her husband, to be married, or because of pregnancy, her disqualification is permanent until she earns \$120.00. Under the general provisions of the Act, anyone seeking work and available for work is qualified for benefits. This discriminates against working women.

Mr. Moore was questioned concerning efforts of the Department to actively recruit female trainees for various positions, such as electricians. He indicated no intentional direction of recruitment was made, but that they had to be practical. Women were being recruited mainly for the clerical jobs. In training for advancement, there is a program called New Careers for persons who do not have specific educational or training requirements for a job. He stated that generally women's pay scales were slightly below men's, probably on the theory that the man is the basic family wage earner.

Other requirements relating to women such as the 25-pound maximum lifting requirement are primarily safety regulations. Mr. Moore felt that the disqualifications concerning moving, marriage, and pregnancy should be the same for all employees, and that they were presently discriminatory. An amendment has recently been offered to delete these so that women would be eligible for benefits as soon as they were available for employment.

Mrs. Reeser introduced Mr. Khris Lethin, Director of Planning and Research, Office of the Governor. Mr. Lethin discussed the operations of the Planning and Research program and the various titles under the Act. The first was planning, then the Vista program, and the State Technical Assistance Office funded by OEO programs. He then described the OEO Act. Title I provides for the Job Corps operation, of which Alaska has none. Title II - Work and Training for Youth and Adults - covers a number of programs such as Neighborhood Youth Corps, in-school and out-of-school programs, New Careers, and Operation Mainstream. Federal funds for these come from OEO to the Department of Labor. Community Action may be operated by the State, locally, or through non-profit corporations (Green Amendment). These programs are provided by OEO under Community Action Programs on these different levels.

The Work Incentive Program is under the Department of Labor. Under Title VIII, VISTA is operated by the State Division of Planning and Research. Many of these programs are directed toward the rural areas, and ground work is done in the villages prior to placing the program. Due to a problem in hiring

by the National Office of OEO, they have had to ask that recruits are more adult and have some specialty so that they can do some specific projects in the villages.

One Commission member discussed briefly the Hope Center, a vocational rehabilitation center which has been trying to operate but needs more referrals from the State in order to keep going. There is indication that many people need this help, but are not being referred.

Mention was made of the Foster Grandparents Program, and a possible application of it in Alaska.

Mrs. Marie Darlin spoke briefly, stating that the Governor's Committee on Helping Services will be preparing a list of all community service agencies which should be available sometime during the summer. She also spoke of a commission on children and youth for the State of Alaska. The main concern, as felt by the State PTA, is that of establishing such a commission. Most states already have such commissions, and the Division of Welfare has been attempting to establish one which would be concerned with the education and welfare of children. Such a commission would provide a wider area from which to gather all the needs of the children and provide for these needs. Support was asked if legislation is introduced to set up such a commission. She also repeated the need for libraries in the outlying areas of the northern areas of the State.

Representative Ernie Haugen was introduced. He discussed the Governor's State of the State and Budget Messages, which indicated two main objectives of the administration--economic development, and human resource requirements of the State. Items in the budget and in department budgets total about \$110 million out of \$144 million for the human resource requirements of the State. Some legislators are spending a considerable amount of time working on legislation for the low income groups--aid to dependent children, etc. On many federally aided programs the federal participation is gradually diminished until the State is required to take over, thereby causing budget problems within the State. Many of these are in areas of real human need and are difficult to cut back.

Several bills have been introduced on consumer protection. He suggested that persons interested be sure to study the bills carefully for their end results. Several other bills raise the welfare benefits in several categories--aid to dependent mothers, etc. Some of these are covered in the Governor's budget. Another bill raises employment benefits to \$5.00 on each end of the benefit schedule. The real need for unemployment insurance is at the low income levels--seasonal workers and others--whose earnings are low in the seafood processing industry many women are the head of the family, and their earnings are seasonal; and although they qualify, they don't come within the scope of the program at the present time.

A bill to introduce the word "sex" in the Human Rights Bill has been introduced.

Mrs. Elladean Bittner discussed the need for day care centers and whether federal funds were being used to their fullest extent.

The meeting was adjourned at 4:50 p.m.

*from 1968 report of
Alaska Commission on the Status of Women*

The Alaska Commission members in Washington, D. C. have been invited to attend the Annual Meeting of the National Consumers League on June 19, 1968. The theme of this meeting is "Urban and Rural Poverty--Unfinished Business". Due to mutual concern of this problem the members are planning to attend.

The next Alaska Commission meeting is scheduled for August 9, and 10th, 1968 in Anchorage.

RECOMMENDATIONS

The Alaska Commission on the Status of Women Commission recommends:

1. Formation of sub-committees in cities, towns and villages to co-ordinate with the Commission.
 - a. Volunteer workers program
 - b. Library or mobile book units for rural areas
 - c. Leadership training
 - d. Adoption program for native students
 - e. Catalog of service organizations
 - f. Catalog of qualified women for policy making positions
2. Day Care Program
 - a. Grandmother program
 - b. Neighborhood sitter's cooperative
3. Counseling and Guidance
 - a. Work experience training
 - b. Awareness of Existing programs
4. Discrimination on basis of sex
 - (1) Formation of sub-committee to assist the Commission on the Status of Women.

Because the commission consists of only eleven members and the area to be covered and the charges of duties is large it was believed that various service organizations could help materially with much of the necessary research and contacts. Each commission member in the larger cities has been asked to make up a sub-committee which could

reach out for information in the nearby rural areas and determine the best way to assist them in their local problems.

As of May 31, 1968, Anchorage has had the best response to this plan and has had several meetings of a remarkably well represented group of service organizations with much volunteer assistance. Sitka has the nucleus of such a group and shortly should have their first meeting, stressing not only what can be done or needs doing in the city itself, but in the outlying villages.

Nome had had for many years a coordinating committee and it is hoped that they will work with the commission.

(a) Volunteer workers are needed in every segment of the State to act as sitters, medical aids, kitchen aides, to organize various youth and adult programs and work collecting books and needed teaching supplies. A roster of available volunteer workers would be a help.

(b) From a survey made of a number of villages and especially replies from a questionnaire sent to Vista workers, there is a crying need for books. Libraries and schools with surplus or duplicate books should be contacted and alerted to this need. In some areas mobile libraries should be considered. Book drives in the larger communities could be conducted and the books sent to those villages expressing such a need.

(c) Leadership training is woefully lacking in the smaller communities and the sub-committees will be charged with finding potential leaders and obtain help from them to establish worthwhile education, health and organization activities in the villages. This can be done by cooperating with existing agencies.

(d) A suggestion was made that an "adoption" program be implemented for native students. It was found especially true in the Fairbanks and Anchorage areas that often native students try to attend college but become discouraged due to a feeling of segregation. It is believed that if these native students could have sponsors who would make them feel welcome and wanted in a community they would have a better attitude. There is a need for them to have someone they can go to for advice on dress, manners, etc. as well as for emotional outlet.

(e) An attempt is being made to compile a working catalog of all the service organizations in the State to use as a working basis and contact for the sub-committees of the Commission. Several quite complete lists have been made and help has been received from several organizations.

(f) A catalog of policy making positions in the State which women should be able to fill is being considered. Required is a list of Alaskan women capable of filling such posts. Service organizations have been contacted about this project but as yet no concrete results have been forthcoming.

2. Day Care Programs are evidently of major concern in all areas. From questionnaires sent out to outlying areas, practically everyone expressed a need for some sort of child day care program.

(a) One suggestion was implementing the old time concept of the "Grandmother" program. This would organize the older women in a community on an availability basis and free the younger women to work in canneries or other jobs.

(b) The Neighborhood Sitter's Cooperative has worked well in a number of areas and could be organized in many cities.

Counseling and Guidance are needed greatly in all areas, not only for youths but adults. Here again we feel the sub-committees could act competently in creating awareness of these community programs.

(a) Work experience training has had success in some localities and it is recommended that this program be enlarged and made available to many more.

(b) There needs to be more awareness of existing training programs. Especially from the Alaska Department of Labor we learned of a number of existing programs. It is suggested that comprehensive lists of the programs be compiled and more widely brought to the attention of the populous.

(c) Home extension courses and community colleges are offering a variety of subjects which are not being actively sought by the public. These should be more widely publicized and the public encouraged to take advantage of them through such mediums as "Campus Days" where the facilities are opened to the public and adequate explanations given of the subjects offered.

Discrimination on Basis of Sex:

The Civil Rights Bill passed by the Alaska Legislature reads; "Section 16.80.220 - Unlawful Employment Practices, It is unlawful for

(1) an employer to refuse employment to a person, or to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of race, religion, color or national origin, or because of his age when the reasonable demands of the position do not require age distinction;"

This Commission strongly recommends the word "sex" be added following the words "race, religion, color" and preceding "or national origin"

in (1), (2), and (3) of Section 18.80.220.

We have been advised that the Equal Employment Opportunity Commission in a staff opinion, that Alaska's law limits its ban on sex discrimination to the requirement of equal pay for equal work for male and female employees. Because this law limits itself to discrimination, the E.E.O.C. will not defer complaints of discrimination because of sex, received by it, to the Alaska State Commission for Human Rights. Such an amendment would give the State Commission the legislative ability to handle its own complaints, as it does in the other areas under its jurisdiction.

JUDICIARY COMMITTEE REPORT

ON

CS FOR SENATE BILL NO. 145

The original SB 145 mainly provided for the biennial (rather than annual) renewal of the license of an electrical contractor firm, consistent with the provisions for other occupations and professions covered by the centralized licensing chapter, AS 08.01. It also provided for reinstatement of a lapsed license and made clear that the grounds for suspending and revoking a license would also serve for refusing to grant a license.

The committee substitute adds a requirement that all electrical contractor licenses, not just those issued to firms, be renewed, and applies the same biennial and reinstatement language to them.

Barry Jackson, Chairman

SB-160

STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S—JUNEAU 99801

March 27, 1970

The Honorable Barry Jackson
Chairman, House Judiciary Committee
Alaska State Legislature
Juneau, Alaska 99801

Re: Senate Bill 160 - Multistate Tax Compact Act

Dear Mr. Jackson:

On March 26, 1970 Senate Bill 160, which has passed the Senate, was referred to the House Judiciary Committee. I am writing to you to urge its immediate consideration and passage. Following is a general description of the Multistate Tax Compact, its purpose, what it hopes to do and reasons why it is to the definite advantage of Alaska to adopt the Compact.

1. The Multistate Tax Compact was first contemplated at a National Association of Tax Administrators (N.A.T.A.) meeting in Chicago in January, 1966 where the idea was unanimously approved.

The purpose of the Compact was to provide an alternative to Federal regulation of taxation of businesses conducting business in two or more states. Big multistate business firms (principally those affiliated with the National Association of Manufacturers and the National Association of Wholesalers) have and currently are bringing much pressure on the United States Congress to regulate the entire multistate tax field.

Congress has had and currently has before it several bills which would regulate the entire multistate tax area. Most notable of these are the Willis Bill (90th Congress) and the Rodino Bill (H.R. 7906 - 91st Congress) which is identical to the Willis Bill. These bills strongly favor the large multistate companies at the expense of the states.

The Rodino Bill has passed the U. S. House of Representatives in Congress and is pending before the U. S. Senate Finance Committee. The U. S. Senate Finance Committee also has before it Senate Bill 2804 which has the backing of many Senators and would provide the Multistate Tax Compact approach to work out taxation problems in lieu of the Federal government doing this.

2. The Multistate Tax Compact is made up of 19 full member states and 12 states who are associate members. The full member states are:

Kansas
Washington
Texas
New Mexico
Illinois
Florida

Nevada
Oregon
Missouri
Nebraska
Arkansas
Idaho

Hawaii
Colorado
Wyoming
Utah
Montana
North Dakota
Michigan

Associate members, including Alaska do not vote but are allowed to participate to a limited degree. It is expected that the associate members who do not adopt the Multistate Tax Compact within a reasonable time will be dropped.

3. The Multistate Tax Commission's headquarters was in Kansas City, Missouri but is now in Denver, Colorado. It operates with an Executive Director and a small staff. The Commission is composed of one representative member from each full member state and meets three times a year. Subcommittees may meet oftener.

4. The Multistate Tax Compact was set up to deal with all types of multi-state taxation. At this time it is most active in the fields of income tax, sales and use tax, and property taxes. Regulations standardizing procedures are being drafted and some have already been distributed to member states. In particular I refer to such items as consolidated income tax returns, standard accounting procedures in the construction industry, and sales and use taxes.

5. The Multistate Tax Commission is the only organization which has testified in Congress against passage of S. 2044 which would greatly restrict the withholding of income taxes from the wages of transportation workers. This is an area which vitally concerns Alaska since we have been accused of causing problems to transportation workers by our action in bringing the case of Alaska v. Petronia, 418 P 2d 755 (Wash. 1966), cert. den. 389 U.S. 7 (1967) in which the state's position was upheld.

6. The Multistate Tax Commission has also arranged with several member states to conduct joint audits of multistate firms to avoid duplication of audits by those states. The Commission has also met with railroad companies to work out standard rules for the assessment of real estate.

7. If the states do not act and Congress passes the Rodino Bill, Alaska will suffer in the following ways:

a) Using the two factor apportionment formula (payroll and property) of the Rodino bill rather than the three factor formula (sales, payroll and property) followed by Alaska and the Multistate Compact, the State of Alaska would have received \$6,200 less in corporation taxes than it did in 1968, the latest year for which figures are available. If the Rodino bill were changed to cover all businesses rather than only those businesses having a net income of less than \$1,000,000 as that bill presently reads, Alaska would have lost \$167,056 in corporation income taxes in 1968.

March 27, 1970

b) The Rodino bill would exclude from Alaska state income tax the income of multistate businesses which do not have an office in Alaska but who have salesmen which come into the state or otherwise conduct businesses in Alaska. In 1968 Alaska would have lost \$18,581 in corporation income tax because of such a restriction.

c) The Rodino bill would prohibit Alaska from imposing its gross receipts tax (AS 43.70) on multistate businesses which do not have a business location in Alaska. This would reduce Alaska's business license tax collections. The Multistate Compact contains no such restrictions.

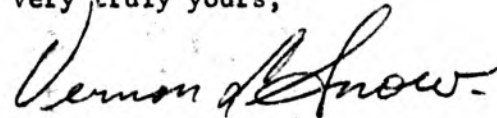
d) The Rodino bill would limit the jurisdictional standards on our state and local governments and jeopardize collection of any Alaska or local government sales and use tax. We could not require an out-of-state retailer to collect the use tax if it has a representative, agent, salesman, canvasser or solicitor in this state. This would give the nonresident business an advantage over local business and make more difficult the collection of a use tax by local governments.

I suppose that what everything boils down to, really, is simply this: there is clearly so much pressure on the United States Congress from big multistate business firms that Federal legislation giving them some relief from state taxation will be passed unless the states offer a proper alternative. In other words the "Federal solution" to the alleged version of complying with the tax laws of many states is to exempt multistate operators from state taxing jurisdiction. Because of the revenue losses which must inevitably follow from this sort of "solution" the states committed to the Compact idea believe that the problems of non-uniformity and multiple returns should be worked on (i.e., simplified or made more uniform) through their voluntary, collective efforts. Only in this way will the legitimate complaints be solved while at the same time preserving the fiscal integrity and political independence of the states in our Federal system.

The Multistate Tax Commission budget is apportioned to members on a basis of 10% in equal shares and 90% on the basis of tax revenue. It was originally estimated that Alaska's share would be about \$1,900 for the current year. However, subsequent information received indicates that it would be approximately \$1,650. Compared to the tax loss that the state can incur, this cost is very low.

It is recommended that Senate Bill 160 be passed. Permission is requested to appear before your committee to answer any questions that it may have.

Very truly yours,



Vernon L. Snow
Deputy Commissioner

VLS/ge

Enclosures: Memorandum ^{from} to Eugene F. Corrigan, Executive Director,
Multistate Tax Commission, dated February 27, 1970
First Annual Report - Multistate Tax Commission

cc: Members of the House Judiciary Committee w/enclosures
Representative Bill Ray w/enclosures
John Beard
R. D. Stevenson

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 Department of Revenue
 State of Illinois
 JAMES SCHAFFNER, Director
 Department of Revenue
 State of Missouri



EUGENE F. CORRIGAN, Executive Director

RECEIVED

MAR 2 1970

DEPARTMENT OF REVENUE
 STATE OF ALASKA
 JUNEAU

February 27, 1970

WHY
 ALASKA
 SHOULD BE A MEMBER
 OF THE
 MULTISTATE TAX COMMISSION

One of the major reasons why each state should join the Multistate Tax Commission is that the Multistate Tax Commission provides the only viable alternative to federal invasion of the field of state and local taxation of multistate business. The thrust of such a federal invasion of the field is now a very real one in the form of H.R. 7906, which has passed the House and is soon to be considered in the Senate Finance Committee. Our hope lies in convincing the Senate that the business complaints which gave rise to the Bills in question are no longer justified, that some of the problems have been solved, and that solutions are being developed for the others through cooperative efforts among the states.

The Multistate Tax Commission stands as the only vehicle available for such efforts. We have already received many compliments for having codified a sales and use tax jurisdiction standard...the first time that it has been done.

The Multistate Tax Commission has been pursuing experiments in joint auditing for income tax purposes. Joint audits should eventually prove to be of immense value not only to the states but to business as well. To the states they will offer the benefits of periodic audits of all businesses. To business they will offer the assurance of decreasing interference with business operations by state auditors since one audit will suffice for many, and eventually all, states.

The Multistate Tax Commission is also seeking to foster increasing uniformity in the manner in which all states approach taxation of multistate business. This does not mean uniformity in tax rates. It means optional uniformity in the means by which is determined the tax base to which each state applies its tax rate. We use the word "optional" because the Multistate Tax

Compact provides only that the three-factor formula is available for use with respect to a taxpayer if the taxpayer chooses to use it. This does not preclude the state from using a formula more favorable to taxpayers if the state so chooses.

A major complaint of the business world to Congress has been that the same income of a multistate business is often taxed in two or more states. The Multistate Tax Commission approach offers a guarantee against such results; and it does so without restricting the states' option to choose alternatives so long as those alternatives do not produce such double taxation.

By comparison, H.R. 7906 (to which we have referred in the first paragraph of this memorandum) would answer business' complaints about non-uniformity in a way which would provide no uniformity whatsoever. Rather, it would simply exempt from taxation a large share of the income of certain preferred multistate businesses. It is apparent that this exemption approach is unfair to the states whose markets are being exploited by these multistate businesses free of tax consequences; and that it is equally unfair to in-state businesses with which said multistate businesses compete.

On the other hand, many multistate business complaints have been valid. The Multistate Tax Commission seeks solutions to problems in this field for the benefit of both business and the states. We know that we can be successful if states such as yours will support us.

How much would it cost Alaska to support the Multistate Tax Commission as a regular member? Your state's share of our budget would decrease as membership increased. The following example illustrates how the computation of your state's share would be made under the provisions of Paragraph 4(b) of Article VI of the Multistate Tax Compact:

The Commission's approximate budget for 1970-71 is \$160,000.00. One tenth of the budget is divided equally among all member states. We currently have 19 members. The next member will be the twentieth. One-twentieth of \$16,000.00 (one-tenth of \$160,000.00) would be \$800 for 1970-71. The balance of each state's share is determined by the ratio of that state's revenues from certain types of taxes compared to the revenues of all members of those types of taxes. The taxes in question are the sales, use, income, capital stock and gross receipts taxes. The total of such taxes collected by our current members for the period July 1, 1967 through June 30, 1968, was approximately \$5,567,324,150. According to your Revenue Department's figures Alaska collected \$33,688,684 from the above mentioned taxes for that period, which amount is approximately .6% of \$5,601,012,834 (\$5,567,324,150 plus \$33,688,684). Accordingly, your state's share of the remaining nine-tenths of the budget would be approximately \$864 for 1970-71. .6% of \$144,000 (\$160,000 less 10%) would be \$864.

To summarize:

1970-71

\$	800.00
	864.00
\$	<u>1,664.00</u>

The above figures are based upon the assumption that Alaska would be the twentieth state. We emphasize that increased membership decreases the per-state percentage share of expenses. Also, appropriate adjustments will be made with respect to time lapsed in the current budget period for those states becoming members between payment due dates.

The increased budget for 1970-71 (\$144,000 in 1969-70) reflects our expectation of rendering substantially increasing services to the member states. There is no desire on our part to spend money unnecessarily. We are well within our budget for the current year.

Ultimately, of course, the viability of the Multistate Tax Commission will depend upon the willingness of all states to become Regular Members. This will determine the long-range value of the Multistate Tax Commission as an instrument of state government in the field of state and local taxation of multistate businesses.

We are occasionally asked whether the Multistate Tax Commission will not be just another supergovernmental agency with all of the objectionable features which a federal agency would have in this field. The answer is negative. The various tax administrators of the member states operate the Multistate Tax Commission through the Executive Committee elected from among themselves. The Executive Director, who has many years of experience in state revenue administration, is responsible to these state tax administrators. A federal agency would not be responsible to any state tax administrator or group thereof.

The following may help to emphasize the advantages which the Multistate Tax Commission offers to all states as an alternative to the type of federal legislation with which H.R. 7906 threatens them:

- 1) The Multistate Tax Commission cannot and never will tell a state what tax or what rate of tax it may apply to a business. A federal agency ultimately would do so.
- 2) The Multistate Tax Commission is a means of protecting each state's current tax base. The threatened federal legislation would immediately diminish that tax base.
- 3) The Multistate Tax Commission will make it possible for each state to benefit from a larger number of audits at decreased cost. The threatened federal legislation offers no help whatsoever in this field. A federal agency would eliminate the need for any

state tax collection activities at all, which would ultimately result in the elimination of the states as sovereign entities.

- 4) The Multistate Tax Commission will ultimately ensure that each business carries its fair share of the governmental burdens of the states in which it does business. The threatened federal legislation would ensure that many businesses would in fact be exempt from any obligation whatsoever to many states whose markets they exploit.
- 5) The Multistate Tax Commission will protect each multistate business against the multitude of audits to which it is subjected today. This will be true because many states (ultimately, we hope, all states) will participate in one complete audit performed under the auspices of the Multistate Tax Commission.
- 6) The Multistate Tax Commission has available to it the expertise of the tax experts who participate in its activities, including several prominent consultants and the Revenue Administrators of all member states. The threatened federal legislation is the product of mainly non-state-oriented people who have been overly impressed by certain non-state-oriented aspects of multistate tax problems but have paid far too little attention to the state-oriented aspects of those problems and who have ignored the great strides which the states have been making in curing the causes of the original 1961-62 complaints to Congress.
- 7) The Multistate Tax Commission offers business a vehicle by which to communicate its problems to tax administrators as a group and also a vehicle via which those problems can in many cases be solved.
- 8) The Multistate Tax Commission is run by the state tax administrators of its member states operating co-operatively. The threatened federal legislation would jeopardize each state tax administrator's operation of his own revenue department.
- 9) A. The Multistate Tax Commission offers:
 - a) unity of purpose for both the states and business;
 - b) uniformity of approach;
 - c) the distribution of its benefits to its members and to the business world.

B. The threatened federal legislation offers:

a) unity of purpose on behalf of certain favored businesses only, thereby affording those businesses a discriminatory approach which limits the benefits to those particular businesses. This defeats the interests of all other businesses as well as the interests of the states.

b) no uniformity whatsoever; it really offers less uniformity than exists now.

c) virtually no benefits to either the states or the business world as a whole, the exception being the benefits which it confers on the certain favored multistate businesses.

The Multistate Tax Commission needs the support of Alaska as a member. We hope that this memorandum has served to convince you of the importance of your state becoming a regular member.

EUGENE F. CORRIGAN
EXECUTIVE DIRECTOR

JUDICIARY COMMITTEE REPORT

ON

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 191

The proposed amendments to A. S. 9.35.080 would repeal sub-paragraph (1) of that section and replace it with a new sub-paragraph. The changes proposed would not make major substantive changes but would clarify ambiguities in the present section.

Section 9.35.080(1) is intended to provide an exemption from execution upon a man's income of \$350.00 per month if he is the head of a family and \$200.00 per month if he is a single man.

A number of problems arise under the section. First, all of the earnings of a married woman are exempt. To change this, the judiciary committee amendment would change the exemption to \$350.00 per month for the head of a family and \$200.00 otherwise. Second, the present language specifies that the total amount of the exemption shall apply to income "which is due him or received by him from any source at any time within thirty

days immediately preceding the levy." While it is clear that the statute is intended to insure receipt by the judgment debtor of the appropriate exemption amount each month, this language does not specify whether the excess over the exemption which may be attached is to be computed with respect to amounts actually paid during the past thirty days, and appears to authorize both accrued income and paid income to be added together to determine the excess liable to attachment. The proposed amendment would gear the thirty day period contained in the exemption statute to an accrual basis, and would subject only those funds actually earned or otherwise accrued during the previous thirty day period to execution, regardless of when those funds are payable.

The third change would specify that the \$350.00 and \$200.00 monthly exemption amounts relate to net rather than gross income and direct that the amount be computed after deductions and payments required by law or court order, such as social security and child support payments. Frequent problems arise because the present section fails to specify net or gross income, but the practice of many courts has been to treat the exemption as relating to net income.

The fourth change exempts the judgment debtor from the requirement of filing a formal affidavit to avail himself of the exemption. The formal affidavit requirement which requires notarization frequently constitutes an unnecessary burden.

Barry Jackson
Chairman
House Judiciary Committee

JUDICIARY COMMITTEE REPORT

ON

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 191

The proposed amendments to A. S. 9.35.080 would repeal sub-paragraph (1) of that section and replace it with a new sub-paragraph 1. The changes proposed would not make major substantive changes but would clarify ambiguities in the present section.

Section 9.35.080(1) is intended to provide an exemption from execution upon a man's income of \$350.00 per month if he is the head of a family and \$200.00 per month if he is a single man. The judiciary committee amendment would change this to \$350.00 per month if he is the head of a family and \$200.00 per month if he is not the head of a family. A number of problems arise under the section. First, the present language specifies that the total amount of the exemption shall apply to income "which is due him or received by him from any source at

any time within thirty days immediately preceding the levy." While it is clear that the statute is intended to insure receipt by the judgment debtor of the appropriate exemption amount each month, this language does not specify whether the excess over the exemption which may be attached is to be computed with respect to amounts actually paid during the past thirty days, and appears to authorize both accrued income and paid income to be added together to determine the excess liable to attachment. The proposed amendment would gear the thirty days period contained in the exemption statute to an accrual basis, and would subject only those funds actually earned or otherwise accrued during the previous thirty day period to execution, regardless of when those funds are payable.

The second change would specify that the \$350.00 and \$200.00 monthly exemption amounts relate to net rather than gross income and direct that the amount be computed after deductions for federal and state tax withholding, social security, school tax, disaster tax, and unemployment insurance. Frequent problems arise because the present section fails to specify net or gross income, but the practice of many courts has been to treat the exemption as relating to net income.

The third change exempts the judgment debtor from the requirement of filing a formal affidavit to avail himself of the exemption. Amendments to other statutes proposed specify procedures to be followed in claiming exemptions. The formal affidavit requirement which requires notarization frequently constitutes an unnecessary burden, particularly in rural areas where notaries are not readily available.

Barry Jackson
Chairman
House Judiciary Committee



SB 218

District Court
State of Alaska

604 BARNETTE STREET
FAIRBANKS, ALASKA 99701
March 13, 1969

*Assigned to
Fink*

The Honorable Barry Jackson
The House of Representatives
Juneau, Alaska

Re: **Senate Bill No. 218**

Dear Barry:

Apparently sooner or later this bill will pass through your committee. It is the one which sets forth the language for re-election of a judge, as for example, "shall Charlie Brown be retained as judge of the Superior Court for six years?" Now that I am somehow intimately involved in this sort of election the humor with which I viewed this approach has diminished. I would like to suggest that we eliminate the confusion which occurred with respect to Justice Rabinowitz and Judge Taylor last time around in the same manner as other states have solved this. Namely, the wording should be "shall Charlie Brown be retained as judge of the Superior Court for the term prescribed by law?" This eliminates the public thinking that they are voting on the length of term.

I hope this suggestion is not misguided, but it does seem somewhat essential to avoid the confusion. Thanks for all you are doing for me, Fairbanks, and Alaska.

Sincerely,

Arthur Lyle Robson
District Judge

ALR/mjf

JUDICIARY COMMITTEE REPORT

ON

SENATE BILL NO. 218

By providing for a single judicial ballot in each judicial district, this bill changes the present requirement that the name of each judge and supreme court justice seeking to succeed himself be placed on a separate ballot. The committee substitute clarifies the question which is to appear on the ballot by referring to the fact that the vote is required by law.

Barry Jackson, Chairman

ROBERTSON, MONAGLE, EASTAUGH, ANNIS & BRADLEY

R. E. ROBERTSON (1885-1961)
M. E. MONAGLE
F. O. EASTAUGH
R. J. ANNIS
J. B. BRADLEY
W. G. RUDDY
T. P. BLANTON

ATTORNEYS AT LAW
P. O. BOX 1211
JUNEAU, ALASKA 99801

200 NATIONAL BANK OF ALASKA BLDG.
PHONE 586-3340
CABLE ADDRESS: ROMEA

February 12, 1970

Representative Stanley P. Cornelius,
Sixth Alaska Legislature,
Juneau, Alaska.

Re: SSSB 245

Dear Representative Cornelius:

AS 09.35.200 provides for contribution among judgment debtors.

S 245 by a one line amendment proposed that the above section be extended to cover joint tortfeasors, probably because of the Spaeth case, 16 Alaska 199, which held that this section did not apply to joint tortfeasors where no apportionment is made or may be made. This case also restated the common law rule that contribution may not be enforced by the tortfeasor who pays the judgment against one or more joint tortfeasors.

I felt that S 245 was an imperfect solution and would leave many important questions unsettled.

As a result the uniform act was introduced as the present sponsor's substitute. It was revised by the National Conference in 1955 and has been enacted in four states, Massachusetts, North Carolina, North Dakota and Tennessee.

I see nothing in the act as proposed that would adversely affect plaintiffs, who indeed would be aided through the use of the contribution doctrine through the settlement process as well as after judgment.

Under our present law it is my opinion that the settlement by one tortfeasor with the claimant would not result in the release from liability of other joint tortfeasors, and it is my further opinion that subsection (d) would not change our present law in that respect.

In short I believe that the bill before the House Judiciary Committee comprehensively treats the subject of contribution amount joint tortfeasors on an equitable basis and I urge its enactment.

Very truly yours,



JUDICIARY COMMITTEE REPORT

ON

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 245

This bill proposes the adoption of the Uniform Contribution Among Tortfeasors Act, prepared by the National Conference of Commissioners on Uniform State Laws in 1955. The national conference's prefatory note to this Act states in part:

"This uniform act establishes the right of a person liable for damages for an unintentional wrong to compel others, who are liable with him for the same damages, to share in discharging the common liability.

"Under the existing law an injured person may select whom he wishes to sue from among those jointly liable to him for an injury. He need not sue all. He may settle out of court or he may sue all and collect the full amount of the judgment from one. Under the prevailing law rule there is no recourse by one who voluntarily pays or who is forced to pay the common liability, against the others who are equally liable to the injured party but who have escaped payment.

"This act would distribute the burden of responsibility equitably among those who are jointly liable and thus avoid the injustice often resulting under the common law."

The judiciary committee amendment would require each tortfeasor's share of the liability to be based on his relative degree of fault. After a review of the official comments accompanying the uniform Act and of the relevant pages of the transcript of the meeting of the national conference's committee which wrote this Act, the Judiciary Committee is unconvinced of the need to prohibit the degrees of fault from being considered (as is done in the original version).

Barry W. Jackson, Chairman

A M E N D M E N T

IN THE HOUSE

BY THE JUDICIARY COMMITTEE

TO: Sponsor Substitute for Senate Bill No. 245

Page 2, Line 16: Delete "not".

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March 6, 1969

*File -
Misc. Judiciary
correspondence*

The Honorable Barry Jackson
House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Barry:

Sometime back I wrote you regarding the possibility of introducing a Bill permitting contribution among joint tortfeasors. It is my understanding that Senator Hagglund is considering introducing the Uniform Contribution Among Tortfeasors Act. I hope you will support the Bill when it is introduced. The basic idea of the legislation is that if two persons are found to be liable for injuries or damage to a third person, and one of the two has to pay more than his share of damages, he has a right to recover proportionately from his joint tortfeasor.

It also tends to prevent collusion between one Defendant and the Plaintiff in a tort action in return for a promise by the Plaintiff to only collect from the uncooperative Defendant. This can be very deceptive to a jury which does not realize that the Plaintiff and one of the Defendants are working together.

The Uniform Bill also contains many provisions which insure that the rights of the Plaintiff, the injured person, are not prejudiced in any way by the Bill.

Yours, very truly,

Howard Staley
Howard Staley

HS/be