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COMMITTEE REPORT

SENATE

1/16/73

FURTHER:

Date: 1/21/73

Mr. President:

The Committee on JUDICIARY has had SENATE BILL NO. 17  
An Act relating to: Act of arson in the first degree

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

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CHAIRMAN

SENATE JUDICIARY COMMITTEE LETTER OF INTENT

(SENATE BILL 13)

The Judiciary Committee has had under consideration SB 13, relating to the crime of arson. The Committee recommends that SB 13 be replaced with Committee Substitute for SB 13 (CSSB 13), and that CSSB 13 do pass.

Under Alaska Statute 11.46.400, a person, under certain circumstances set forth in the section, is guilty of the crime of arson in the first degree if by starting a fire or explosion, such person recklessly places another "person" in danger of physical injury.

However, in the Superior Court at Fairbanks, a trial judge instructed a jury, in an arson prosecution under AS 11.46.400, that "a fireman is not a 'person' within the crime of first degree arson", i.e., that one who starts a fire or explosion, thereby placing a fireman in danger of physical injury, has not thereby put a "person" in danger of physical injury within the meaning of the section cited. (State v. Markland, case no. 4FA S82-100 Criminal).

The Alaska State Firefighters Association has sought an amendment to prevent such an instruction from being given again. The Committee Substitute for SB 13 would make clear that for purposes of AS 11.46.400, public safety personnel and public employees responding to emergencies are "person[s]" whose reckless endangerment by another who intentionally causes a fire or explosion could be the basis of a prosecution under the statute.

During the Judiciary Committee's consideration of SB 13, a representative of the Alaska Department of Law expressed concern lest the Legislature, by changing AS 11.46.400 only, could be viewed by a Court as having intended to exclude public safety personnel and/or public employees responding to emergencies from the meaning of the word "person" or "persons" where those words appear elsewhere in Title 11.

There is no such intention. Rather, the Committee wishes to cure a specific problem which arose in a specific setting under one section of Title 11. It is the view of the Committee, respectfully, and as part of the traditional legislative oversight of judicial interpretations of statutory law, that the exclusion of fire fighters from the purview of the term "person", in AS 11.46.400, in the instruction of the trial judge, was a misapprehension of legislative intent and was unsupportable as public policy. The Committee wishes to avoid any similar misapprehensions of the meaning of AS 11.46.400 in future. The report of the Committee and the enactment of CSSB 13 should not be construed to reflect any legislative intent to exclude fire fighters, police officers, or other public safety personnel or public employees from the purview of the term "person" in other sections of Title 11. On the

contrary, it is rather the view of the Committee that no such exclusion can be reasonably found or implied, and thus, no other statutory changes are required.

Date: January 31, 1983

Senator Bill Ray, Chairman

*Letter of Intent*  
SENATE JUDICIARY COMMITTEE REPORT

Subject: SB 13, relating to the crime of arson.

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implied, and thus, no other statutory changes are required.

January 31, 1983.

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Senator Bill Ray, Chairman

FIRE AND POLICE SERVICE  
PERSONNEL OR OTHER PUBLIC  
EMPLOYEES WHO RESPOND TO  
EMERGENCIES, REGARDLESS OF  
RANK, FUNCTIONS OR DUTIES  
BEING PERFORMED.

A fireman is not "a person" within the crime of first degree arson; that is, the presence of a fireman will not establish the required element of placing another "person" in danger of serious physical injury as required for first degree arson.

Judges instructions to the Jury

STATE OF ALASKA V. MERLIN DEAN MARKLAND

CASE # 4FA.582-100 cr



Official Business

# Alaska State Legislature

## Senate

January 25, 1983

Pouch V  
State Capitol  
Juneau, Alaska 99811

The Honorable Bill Ray,  
Alaska State Senator  
Chairman - Senate Judiciary Committee  
and  
All Members of the Senate Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

Re: SB 13: An Act relating to the  
crime of arson in the first degree.

Dear Mr. Chairman and Members:

As the Chairman so correctly stated during the organizational meeting of the Senate Judiciary Committee on January 17, this bill, which has absolutely no fiscal impact, is essentially a housekeeping measure.

As far as I know, no one objects to it; it is endorsed by the Alaska State Firefighters Association, the Alaska Fire Chiefs Association and the Task Force on Fire Prevention and Control.

It is before us as a result of a Superior Court decision out of Fairbanks (State vs. Markland, #4FA-S82-100); the court instructed the jury that for the purposes of an arson prosecution that "A fireman is not "a person" within the crime of first degree arson; that is, the presence of a fireman will not establish the required element of placing another "person" in danger of serious physical injury as required for first degree arson."

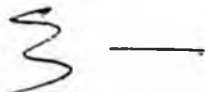
The new language in SB 13 would rectify what might very well be a serious defect in the law.

Also, on lines 14 and 15 it has been suggested that the words "fire protection officer" be deleted and that the words "fire service personnel, regardless of rank," be inserted in lieu thereof. By so doing, any ambiguities which might arise as the result of the usage of the word "officer" will be avoided.

Senator Bill Ray, Chairman  
and  
All Members of the Senate Judiciary Committee  
January 25, 1983  
Page Two

If the amendment is authorized by the Chairman, it can easily be submitted  
as a Judiciary Committee amendment along with the Committee report.

Respectfully submitted this 26<sup>th</sup> day of January, 1983.



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Robert H. Ziegler, Sr., Member  
Senate Judiciary Committee

TO MEMBERS OF THE SENATE JUDICIARY COMMITTEE

TESTIMONY OF THE ALASKA STATE FIREFIGHTERS ASSOCIATION AND THE  
ALASKA FIRE CHIEFS ASSN.

The Alaska State Firefighters Association, as well as the Alaska Fire Chiefs Association, during their respective annual meetings last October, 1982, passed resolutions recommending revision to AS11.46.400 (2)

The purpose of the resolutions were to define "another person".

The Associations appreciate Senator Ziegler introducing the bill.

They suggest the committee consider a slight change to the definition of "another person" in the bill.

Lines 14 and 15 contain words "fire protection officer". They suggest the words be changed to "fire service personnel, regardless of rank". No other changes to the existing bill are required.

The reason for the change is how a court, judge, jury or attorney might consider the words "fire protection officer". A "fire protection officer" could be construed as one involved only in fire protection. The word "officer" could be construed as only a command officer.

The Fire Fighter's Assn's and the Fire Chief's Assn's. resolutions used the words "fire service personnel" to cover all involved in the fire service, not just an Officer. The word "firefighter", which was considered, could be construed as only those fighting a fire and perhaps only a "fireman,

Please note that the resolutions (copy attached) were as a result of the case (State of Alaska v. Markland) in which Superior Court Judge Warren Taylor stated in the instructions to the jury that, "a fireman is not a person within the crime of first degree arson."

AS11.81.900 (39) states "Person means a natural person and, when appropriate, an organization, government, or governmental instrumentality".

The associations believe the words "fire service personnel, regardless of rank" would more appropriately cover all those who are involved in the Fire Service.

Example: Officers and paid personnel in organized Fire Depts;  
Volunteers in organized Fire Depts; Volunteers in other  
than organized municipality depts., who respond to a  
fire or explosion. Personnel of the State Fire Marshal's  
Office are normally covered under the "peace officer"  
catagory

The associations respectfully request the Committee to seriously  
consider this change of wordage during the early processing of  
this important legislation to those in the Fire service and to the  
peace officers.

The Associations also request the same word changes be made to SB 24  
relating to assaulting a peace officer.....

RESOLUTION No. 82-8

WHEREAS Alaska Statutes, Title 11, Section 11.46.400 states:  
A person commits the crime of arson in the first degree if, by starting a fire or causing an explosion, he intentionally damages protected property of another; or any property, whether his own or another's, and the act recklessly places another person in danger of physical injury or protected property of another in danger of damage, and

WHEREAS Alaska Statutes, Title 11, Section 11.81.900(39) states:  
"Person" means a natural person and, when appropriate, an organization, government, or governmental instrumentality, and

WHEREAS in the case of the State of Alaska v. Markland (4FA-82-100 Cr.), the defendant was charged with arson in the first degree, and

WHEREAS in the case of the State of Alaska v. Markland Superior Court Judge Warren Taylor stated in the instructions to the jury that, "a fireman is not a person within the crime of first degree arson",

NOW, THEREFORE, BE IT RESOLVED BY THE ALASKA STATE FIREFIGHTERS ASSOCIATION as follows:

Section 1: That the Alaska State Firefighters Association directs the Alaska State Firefighters Association President to have the Alaska Statutes, Title 11 (Alaska Criminal Code) amended to read in Section 11.46.400,

A person commits the crime of arson in the first degree if, by starting a fire or causing an explosion, he intentionally damages protected property of another; or any property, whether his own or another's, and the act recklessly places another person, including fire service personnel, police officers and public employees, in danger of physical injury or protected property of another in danger of damage.

ACTION

PassedDATE: October 23, 1982

Leigh Gallagher  
LEIGH GALLAGHER, President, ASFA

ALASKA STATE FIREFIGHTERS ASSOCIATION

SENATE JUDICIARY COMMITTEE

Hearing on Senate Bill No. 13 Relating to Crime of Arson

January 28, 1983

Mr. Chairman:

My name is E. Robert Haag and today I am representing the 15 Chapters of the Alaska State Firefighters Association.

We wish to speak in favor of Senate Bill No. 13 now before your Committee.

The Alaska State Firefighters Association, as well as the Alaska Fire Chiefs Association, during their respective annual meetings last October, 1982, passed resolutions recommending revision to AS 11.46.400 (a). The purpose of the resolutions were to define the words "another person" in the existing Statute.

We suggest that your Committee consider a slight change to the definition of "another person" in SB-13. Lines 14 and 15 contains the words "fire protection officer". We would suggest the words be changed to "fire service personnel, regardless of rank". No other changes are suggested in the existing Bill.

The reason for the change is how a court, judge, jury, or attorney might consider the words "fire protection officer". The words "fire protection officer" could be construed as one involved only in fire protection. The word "officer" could be considered as only a command officer.

Our resolution (copy attached), as well as the Alaska Fire Chiefs Association, used the words "fire service personnel". The reason, at the time of the meetings, was to cover all personnel involved in the Fire Service not just an officer. The words "fire fighter", which was originally considered, could perhaps be construed as only those fighting a fire and perhaps only a "fireman".

Please note, in our resolution, we were concerned about the Court case of the State of Alaska v. Hark and in which Superior Court Judge Warren Taylor stated in his instructions to the Jury that a, "fireman is not a person within the crime of first degree arson".

AS 11.81.900 (39) states "Person means a natural person and, when appropriate, an organization, government, or governmental instrumentality".

We believe that the words "fire service personnel, regardless of rank" would more appropriately cover all those involved in the Fire Service".

Example: Officers and paid personnel in organized Fire Departments; Volunteers in organized Fire Departments; and, Volunteers in other than organized municipality departments, who respond to a fire or explosion. Personnel of the State Fire Marshal's Office are normally covered under the "peace officer" category.

We respectfully request your Committee seriously consider this change of wordage, during the early processing of this important legislation to those of us in the Fire Service including our fellow friends in the "peace officer" category.

RESOLUTION No. 82-8

WHEREAS Alaska Statutes, Title 11, Section 11.46.400 states:  
A person commits the crime of arson in the first degree if, by starting a fire or causing an explosion, he intentionally damages protected property of another; or any property, whether his own or another's, and the act recklessly places another person in danger of physical injury or protected property of another in danger of damage, and

WHEREAS Alaska Statutes, Title 11, Section 11.81.900(39) states:  
"Person" means a natural person and, when appropriate, an organization, government, or governmental instrumentality, and

WHEREAS in the case of the State of Alaska v. Markland (4FA-S82-100 Cr.), the defendant was charged with arson in the first degree, and

WHEREAS in the case of the State of Alaska v. Markland Superior Court Judge Warren Taylor stated in the instructions to the jury that, "a fireman is not a person within the crime of first degree arson",

NOW, THEREFORE, BE IT RESOLVED BY THE ALASKA STATE FIREFIGHTERS ASSOCIATION as follows:

Section 1: That the Alaska State Firefighters Association directs the Alaska State Firefighters Association President to have the Alaska Statutes, Title 11 (Alaska Criminal Code) amended to read in Section 11.46.400,

A person commits the crime of arson in the first degree if, by starting a fire or causing an explosion, he intentionally damages protected property of another; or any property, whether his own or another's, and the act recklessly places another person, including fire service personnel, police officers and public employees, in danger of physical injury or protected property of another in danger of damage.

ACTION

Passed

DATE:

October 23, 1982

Leigh Gallagher  
LEIGH GALLAGHER, President, ASFA

Alaska Fire Chiefs' Association



RESOLUTION No. 82-1 amended

WHEREAS Alaska Statutes, Title 11, Section 11.46.400 states:  
A person commits the crime of arson in the first degree if, by starting a fire or causing an explosion, he intentionally damages protected property of another; or any property, whether his own or another's, and the act recklessly places another person in danger or physical injury or protected property of another in danger of damage, and

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WHEREAS in the case of the State of Alaska v. Markland (4FA-S82-100 Cr.), the defendant was charged with arson, in the first degree, and

WHEREAS in the case of the State of Alaska v. Markland Superior Court Judge Warren Taylor stated in the instructions to the jury that, "a fireman is not a person within the crime of first degree arson",

NOW, THEREFORE, BE IT RESOLVED BY THE ALASKA FIRE CHIEFS' ASSOCIATION as follows:

Section 1: That the Alaska Fire Chiefs' Association directs the Alaska Fire Chiefs' Association President to have the Alaska Statutes, Title 11 (Alaska Criminal Code) amended to read in Section 11.46.400,

A person commits the crime of arson in the first degree if, by starting a fire or causing an explosion, he intentionally damages protected property of another; or any property, whether his own or another's, and the act recklessly places another person, including fire service personnel, police officers, and public employees, in danger of physical injury or protected property of another in danger of damage.

APPROVED in conference October 20, 1982 in Ketchikan, Alaska.

\_\_\_\_\_  
BASIL J. SANDS, Jr., President

Buel 452-1527

ALASKA STATUTES

§ 11.46 ARSON IN THE FIRST DEGREE

(Effective January 1, 1980)

(2) as soon as reasonably practical after the entry, use, or occupancy, the person contacts the owner of the premises, the owner's agent or, if the owner is unknown, the nearest state or local police agency, and makes a report of the time of the entry, use, or occupancy and any damage to the premises or personal property, unless notice waiving necessity of the report is posted on the premises by the owner or the owner's agent. (§ 4 ch 166 SLA 1978)

**Sec. 11.46.350. Definition.** (a) As used in §§ 300 — 350 of this chapter, unless the context requires otherwise, "enter or remain unlawfully" means t

(1) enter or remain in or upon premises or in a propelled vehicle when the premises or propelled vehicle, at the time of the entry or remaining, is not open to the public and when the defendant is not otherwise privileged to do so; or

(2) fail to leave premises or a propelled vehicle that is open to the public after being lawfully directed to do so personally by the person in charge.

(b) For purposes of this section, a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, is privileged to do so unless

(1) notice against trespass is personally communicated to him by the owner of the land or some other authorized person; or

(2) notice against trespass is given by posting in a reasonably conspicuous manner under the circumstances. (§ 4 ch 166 SLA 1978)

**Article 3. Arson, Criminal Mischief, and Related Offenses.**

Section	Section
400. Arson in the first degree	482. Criminal mischief in the second degree
410. Arson in the second degree	484. Criminal mischief in the third degree
430. Criminally negligent burning	486. Criminal mischief in the fourth degree
450. Failure to control or report a dangerous fire	488. Littering
480. Criminal mischief in the first degree	490. Definitions

**Sec. 11.46.400. Arson in the first degree.** (a) A person commits the crime of arson in the first degree if he intentionally damages any property by starting a fire or causing an explosion and by that act recklessly places another person in danger of serious physical injury.

(b) Arson in the first degree is a class A felony. (§ 4 ch 166 SLA 1978)

For cases construing former first degree arson statute, see *Salinas v. United States*, 277 F.2d 914 (9th Cir. 1960); *Rank v. State*, Sup. Ct. Op. No. 92 (File No. 167), 373 P.2d 734 (1962), overruled on another point in *Shafer v. State*, Sup. Ct. Op. No. 563 (File No. 1034), 456 P.2d 466 (1969).

For cases construing former second degree arson statute, see *Tarnoff v. State*, Sup. Ct. Op. No. 911 (File No. 1486), 512 P.2d 923 (1973).

Am. Jur., ALR and C.J.S. references. — 4 Am. Jur., Arson, § 1 et seq.