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STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Transportation 3/14/85 7 AM

House Judiciary 4/2/85 1:30 pm

" " 4/19/85 1:15 pm

Alaska State Legislature



House of Representatives

DISTRICT 27:

AKHIOK
CHIGNIK
CHIGNIK LAGOON
CHIGNIK LAKE
CHINIAK
IVANOF BAY
KARLUK
KODIAK
LARSEN BAY
OLD HARBOR
OUZINKIE
PERRYVILLE
PORT LIONS
WOMENS BAY

REPRESENTATIVE
DAVE THOMPSON

POUCH V
JUNEAU, ALASKA 99811
(907) 465-2487
(907) 465-2498

P.O. BOX 75
KODIAK, ALASKA 99815
(H)(907) 486-4899
(L)(907) 486-8116

April 30, 1985

TO: Rep. Mike Miller, Chairman
Rep. John Sund, Vice Chairman
Rep. Max Gruenberg
Rep. Robin Taylor
Rep. Don Clocksin
Rep. Fritz Pettyjohn
Rep. Randy Phillips

FR: Rep. Dave Thompson *DT*

RE: HB 240

HB 240, passing stopped school busses, addresses a problem that has received unanimous agreement about the need for a solution. My attempts to word a statute providing a remedy for treating drivers causing the problem has met with mixed opinion from the legal community. This opinion seems to ebb and flow with the tide.

I understand the concern with original wording of this bill. I am now requesting suggestions for language to restore that original intent (sec. d.; attached).

Please consider the extent and severity of this problem and give me your best thinking for a solution.

att/HB 240, sec. d

COMMITTEE REPORT
HOUSE

4/22
Ruler

(7)

FURTHER:

3/15/85

Date: _____

The Committee on JUDICIARY has had HB 240
"An Act relating to motor vehicles."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 240 (JUD) same title
 new title
- and recommends it do pass
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

TO: CSHB 240

Page 1, line 29, through Page 2, line 4, delete all material

Page 2, line 5, delete "(e)" and insert "(d)"

Page 2, after line 9, insert:

"(e) The owner of a vehicle or lessee of a leased vehicle driven in violation of this section is subject to a civil ^{fine} ~~penalty~~ to be determined by a court in an amount not to exceed \$300."

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB-240
Title: ...motor vehicles

FISCAL DETAIL

Agency Affected: Education
Program Category Affected: _____

Sponsor: Thompson, et al.
Requestor: House Transportation
Date of Request: 3-11-85

BRU, Program or Subprogram(s) Affected: Rural Transportation

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONNEL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

This bill has no fiscal impact on this department.

Prepared By: Steve Hole Phone: 2800
Division: Commissioner's Office Date: 3-11-85
Approved by Commissioner: Harold Reynolds, Jr. Date: 3-11-85
Agency: Education

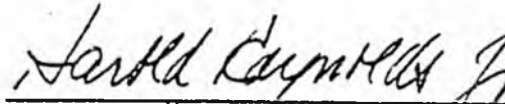
Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

POSITION PAPER OF THE DEPARTMENT OF EDUCATION

FOURTEENTH ALASKA LEGISLATURE
House Bill 240

The Department of Education supports this bill. Its provisions should result in safer conditions for passengers on and operators of school buses.



Harold Reynolds, Jr.
Commissioner

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 11, 1985

SUBJECT: Sectional Analysis of HB 240
TO: Representative David Thompson
FROM: George W. Edwards *GWE*
Legislative Counsel

This is in response to your request for a sectional analysis of HB 240 concerning overtaking and passing a school bus.

Section 1 AS 28.35 is amended by adding a new section. Section 28.35.145(a) requires that a driver of a vehicle that meets or overtakes a school bus stopped on a highway or vehicular way or area must stop at least 25 feet before reaching the school bus when the bus has red lights flashing. The driver must remain stopped until the bus proceeds, the red lights are extinguished, or the bus operator gives a signal to proceed.

Subsection (b) requires that the driver of a vehicle yield the right of way to a person crossing a highway or vehicular way or area to embark on or disembark from a school bus, regardless of whether the school bus has red lights flashing or whether the person crosses outside of a crosswalk.

Subsection (c) provides that the driver of a vehicle on a highway with separate roadways is not required to stop for a school bus on a different roadway or, when driving on a controlled access highway, for a school bus stopped in a loading zone if pedestrians are not permitted to cross the highway.

Subsection (d) provides that in a prosecution under (a) or (b) of this section the trier of fact may presume, subject to rebuttal by the accused, that the leasor of a leased vehicle or the owner of any other vehicle was the driver of the vehicle if other evidence identifies the vehicle as

Representative David Thompson
March 11, 1985
page 2

having been driven in violation of this section at the time
and place charged.

Subsection (e) provides that a person convicted under this
section is guilty of an infraction. An infraction carries a
maximum penalty of a \$300 fine.

GWE:csh
c3/038

RELATIVE TO SCHOOL BUS STOP ARM VIOLATIONS

WHEREAS, the safety of all Alaska school children who are transported to and from school is jeopardized by motorists who pass school buses displaying the red flashing stop lights while loading and unloading school children, and

WHEREAS, these violations occur in rural areas as well as in urbanized areas each school day in Alaska where an estimated 2,000 violations occur each school year with a negligible citation and conviction rate estimated to be less than 1%, and

WHEREAS, in the absence of identification and conviction of these motorists there exists no effective deterrent to the continuing lack of sensitivity to the safety of Alaska school children and is a discouragement to pupil transportation professionals in Alaska, and

WHEREAS, current reporting requirements set out in Alaska state law for stop arm violations have proven to be usually impossible to satisfy in the everyday work situation, and

WHEREAS, conviction of motorists who commit these violations and endanger the lives of Alaska school children is effectively stifled because of these onerous requirements,

NOW THEREFORE BE IT RESOLVED, that the Alaska School Bus Safety Committee urges the Alaska State Legislature to strengthen the current law to allow for citation and vigorous prosecution of the registered owner of the vehicle responsible for violating the law.

Alexander J. Nutbrown
Chairperson
Alaska School Bus Safety Committee

February 27, 1985
Date

Rule 303. Presumptions in General in Criminal Cases.**(a) Effect.**

(1) *Presumptions Directed Against an Accused.* In all criminal cases when not otherwise provided for by statute, by these rules or by judicial decision, a presumption directed against the accused imposes no burden of going forward with evidence to rebut or meet the presumption and does not shift to the accused the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast. However, if the accused fails to offer evidence to rebut or meet the presumption, the court must instruct the jury that it may, but is not required to, infer the existence of the presumed fact from the proved fact, but no mention of the word "presumption" shall be made to the jury. If the accused offers evidence to rebut or meet the presumption, the court may instruct the jury that it may, but is not required to, infer the existence of the presumed fact from the proved fact, but no mention of the word "presumption" shall be made to the jury.

(2) *Presumptions Directed Against the Government.* In all criminal cases when not otherwise provided for by statute, by these rules, or by judicial decision, a presumption directed against the government shall be treated in the same manner as a presumption in a civil case under Rule 301.

(b) Prima Facie Evidence. A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a presumption within the meaning of this rule.

(c) *Inconsistent Presumptions.* If two presumptions arise which conflict with each other, the court shall apply the presumption which is founded on the weightier considerations of policy and logic. If there is no such preponderance, both presumptions shall be disregarded. (Added by Supreme Court Order 364 effective August 1, 1979)

§ 28.35.135

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State, Sup. Ct.
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. 528 P.2d 1179

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A 1980)

§ 28.35.140

MOTOR VEHICLES

§ 28.35.155

Cross references. — For crime of
unsworn fabrication, see AS 11.56.110;
for penalties, see AS 12.55.035(b)(3) and
12.55.135(a).

Effect of amendments. — The 1980

amendment substituted "unsworn falsi-
fication" for "perjury" following "is guilty
of" near the middle of the second sentence
in subsection (a).

Sec. 28.35.140. Unlawful obstruction or blocking of traffic. A
person may not purposely obstruct or block traffic on any roadway by
any means. However, a service vehicle such as a bus, garbage truck,
tow truck or ambulance may make brief stops on a roadway, which
stops on the roadway are necessary in the performance of its services.
(§ 50-5-7 ACLA 1949; am § 1 ch 174 SLA 1970)

NOTES TO DECISIONS

This law pertains to roads of suffi-
cient width and condition to permit
vehicles to pass, without injury to their
tires or other parts, and without danger of
collision. *Vogler v. Greimann*, 12 Alaska
19, 78 F. Supp. 575 (D. Alaska 1948).

On a two lane highway, even a one
foot obstruction could easily cause a
following car to swerve into the opposite
lane to clear a parked vehicle. This would
interfere with the normal flow of traffic
and amount to a violation under this sec-
tion. *Beaumaster v. Crandall*, Sup. Ct. Op.
No. 1589 (File No. 2845), 576 P.2d 988
(1978).

This section is not an exclusive list of
service vehicles. *Beaumaster v.*
Crandall, Sup. Ct. Op. No. 1589 (File No.
2845), 576 P.2d 988 (1978).

A driver, while not operating a pro-
fessional service vehicle, may be
engaged in the same activity as a ser-
vice vehicle would have been. *Beaumaster*
v. Crandall, Sup. Ct. Op. No. 1589 (File
No. 2845), 576 P.2d 988 (1978).

Such as pulling over to aid occu-
pants of overturned car. — This section
describes service vehicles as buses, gar-
bage trucks, tow trucks or ambulances,
but a reasonable construction of the stat-
ute would hold that one who pulled his car
over to the side of the road in an emer-
gency situation in order to aid the occu-
pants of an overturned car, was acting in a
service capacity. *Beaumaster v. Crandall*,
Sup. Ct. Op. No. 1589 (File No. 2845), 576
P.2d 988 (1978).

A person who pulled over to the side of
the road in an emergency situation in
order to aid the occupants of an overturned
car, apparently parking as far over on the
right as he could given the snow conditions
and the presence of a ditch on the side of
the road, and who also turned his emer-
gency flasher lights on, was entitled to
make a brief stop on the roadway as neces-
sary in the performance of samaritan
efforts. *Beaumaster v. Crandall*, Sup. Ct.
Op. No. 1589 (File No. 2845), 576 P.2d 988
(1978).

Collateral references. — 7A Ann. Jur.
2d, Automobiles and Highway Traffic,
§ 277.

61A C.J.S., Motor Vehicles, § 684.

Stopping vehicle on traveled portion of
highway as affecting responsibility for col-
lision between vehicles, 131 ALR 562.

**Sec. 28.35.150. Unlawful to interfere with or destroy official traffic
control device or highway construction: action by state for damages.**
[Repealed, § 25 ch 144 SLA 1977.]

**Sec. 28.35.155. Operation of vehicle with certain tires
prohibited.** (a) It is unlawful to operate a motor vehicle with studded

Sec. 28.01.020. Short title. This chapter may be cited as the Alaska Uniform Traffic Laws Act. (§ 3 ch 241 SLA 1976)

Chapter 05. Administration.

Article

1. Powers and Duties of Department of Public Safety (§§ 28.05.011 — 28.05.071)
2. Vehicle Equipment Standards (§§ 28.05.081 — 28.05.099)
3. Subpoenas, Notices and Hearings (§§ 28.05.111 — 28.05.141)
4. Disposition of Certain Vehicle and Traffic Offenses (§ 28.05.151)

Article 1. Powers and Duties of Department of Public Safety.

Section	Section
11. Duty of commissioner to adopt regulations	41. Commissioner to prescribe forms, examine applications, and administer oaths
21. Commissioner to enter compacts and reciprocal agreements	51. Suspended or revoked documents
31. Department to publish statutes and regulations relating to vehicles, vehicle use and pedestrians	61. Records of department and certified copies of records
	71. Change of name or address

Sec. 28.05.010. Powers and duties. [Repealed, § 6 ch 178 SLA 1978.]

Sec. 28.05.011. Duty of commissioner to adopt regulations. The commissioner shall, unless otherwise provided by statute, adopt regulations in compliance with the Administrative Procedure Act (AS 44.62) necessary to carry out the provisions of this title and other statutes the administration of which is vested in the department. The regulations shall include, but not be limited to:

(1) rules of the road relating to the driving, stopping, standing, parking and other conduct of vehicles, to pedestrians and to official traffic control devices;

(2) minimum equipment for vehicles, including, but not limited to, minimum standards of compliance to be met by manufacturers and vehicle sales and repairs businesses;

(3) inspection of vehicles, and the removal of vehicles from areas of public use when they are found to be in a defective or unsafe condition;

(4) registration, titling, transfer and abandonment of vehicles;

(5) licensing of drivers of vehicles;

(6) financial responsibility relating to vehicles;

(7) management of records of the department required for the administration of this title and regulations adopted under this title, including provisions for insuring the accuracy of information contained in automated and manual information retrieval systems;

(8) *[Repealed, § 3 ch 77 SLA 1982.]*

§ 28.05.011

§ 28.05.011

MOTOR VEHICLES

§ 28.05.011

- (9) definitions of words and phrases used in this title and in regulations adopted under this title unless otherwise provided by statute;
- (10) registration of motor vehicle, trailer, and semi-trailer dealers; and
- (11) certification and regulation of junk yards. (§ 6 ch 178 SLA 1978; am § 3 ch 77 SLA 1982)

Cross references. — For regulations adopted under this section, see generally 13 Alaska Admin. Code 02 — 40 and 70; for rules of road, see 13 AAC 02; for required equipment and inspection, see 13 AAC 04; for authority of Department of Transportation and Public Facilities to establish weight, size and load limitations, see AS 19.10.060; for present provisions of former paragraph (8) of this section, see AS 44.33.020(25).

Effect of amendments. — The 1982

amendment repealed paragraph (8), concerning operation of motor vehicle weighing stations.

Opinions of attorney general. — Statutes may be enforced on streets not within state highway system. The Department of Public Safety has the authority to enforce all traffic statutes and regulations upon dedicated or public subdivision streets, regardless of whether they are in the state highway system. 1965 Op. Att'y Gen., No. 10.

NOTES TO DECISIONS

Editor's notes. — Many of the cases cited below were decided under former AS 28.05.030.

Power of commissioner includes regulation of motorcycle construction and safety apparel. — The power of the commissioner of public safety to adopt regulations governing rules of the road has been interpreted as including the regulation of motorcycle construction and safety apparel insofar as such regulations are reasonable and do not violate constitutional rights of the individual. *Kingery v. Chapple*, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Wholesale frontal assault on traffic laws not intended. — Although the supreme court strongly presumes that most traffic regulations do in fact provide standards of reasonable behavior, it is conceivable that in highly unusual cases certain traffic laws may be so obscure, oblique or irrational that they could not be said as a matter of law to provide such a standard. In the event the courts of Alaska are faced with such arbitrary and unreasonable laws, they may provide that violations thereof merely indicate some evidence of negligence or no evidence at all. But it should be emphasized that the supreme court does not intend to signify a wholesale frontal assault on Alaska's wise and comprehensive traffic laws. *Ferrell v. Baxter*, Sup. Ct. Op. No. 688 (File No. 1041), 484 P.2d 250 (1971).

Certain class of individual to be protected from certain type of harm. — In promulgating traffic laws and regulations the legislature, sometimes expressly, but more often by implication, indicates a policy that a certain class of individual be protected from a certain type of harm. For example, in the case at bar the regulation requiring drivers to remain within their lanes was at least partly designed to protect oncoming motorists against head-on collisions. By enacting the regulation pursuant to statutory authority, the Department of Public Safety has implicitly indicated that no reasonable person would move from his lane before ascertaining it could be done safely. Therefore, before a plaintiff is entitled to an instruction defining the violation as negligence per se, he must first demonstrate that he is among the protected class and, second, that the injury was caused by a harm against which the law was designed to protect. *Ferrell v. Paxter*, Sup. Ct. Op. No. 688 (File No. 1041), 484 P.2d 250 (1971).

Restatement rules adopted. — The rules the supreme court adopts to be applied in this state in trials held after the date of this opinion are those set forth in the Restatement (Second) of Torts §§ 286, 288A, and 288B (1965). Trial courts should apply these rules whether the actor is alleged to have violated a traffic statute, regulation, or ordinance. Restatement (Second) of Torts § 286 (1965) provides: "The court may adopt as the standard of

conduct of a reasonable man the requirements of a legislative enactment or an administrative regulation whose purpose is found to be exclusively or in part (a) to protect a class of persons which includes the one whose interest is invaded, and (b) to protect the particular interest which is invaded, and (c) to protect that interest against the kind of harm which has resulted, and (d) to protect that interest against the particular hazard from which the harm results." Restatement (Second) of Torts § 288A (1965) provides: "(1) An excused violation of a legislative enactment or an administrative regulation is not negligence. (2) Unless the enactment or regulation is construed not to permit such excuse, its violation is excused when (a) the violation is reasonable because of the actor's incapacity; (b) he neither knows nor should know of the occasion for compliance; (c) he is unable after reasonable diligence or care to comply; (d) he is confronted by an emergency not due to his own misconduct; (e) compliance would involve a greater risk of harm to the actor or to others." Restatement (Second) of Torts § 288B (1965) provides: "(1) The unexcused violation of a legislative enactment or an administrative regulation which is adopted by the court as defining the standard of conduct of a reasonable man, is negligence in itself. (2) The unexcused violation of an enactment or regulation which is not so adopted may be relevant evidence bearing on the issue of negligent conduct." These rules are equitable. They are already widely followed. The previous Alaska cases, rightly construed, are all consistent with these rules. Wide changes in personal injury liability should not occur as a result of the adoption of these rules. These rules will greatly promote stability in the law, and will simplify and expedite the many personal injury cases in our trial courts. These rules provide that the law allegedly violated must be applicable to the situation. If the law is adopted by the court as providing a fair and just standard of reasonable behavior and the violation is not excused, the violation will be negligence per se. Ferrell v. Baxter, Sup. Ct. Op. No. 688 (File No. 1041), 484 P.2d 250 (1971). But see Clabaugh v. Botcher, Sup. Ct. Op. No. 1235 (File No. 2000), 545 P.2d 172 (1976).

By adopting these rules the supreme court provides a basic method of determining extenuating circumstances which will excuse the violation. The list is not rigid. Comment a to § 288A of the Restatement states: "The list of situations in which a violation may be excused is not

intended to be exclusive. There may be other excuses." The rule will cover most situations. Other extenuating circumstances will have to depend upon the facts of each case. Ferrell v. Baxter, Sup. Ct. Op. No. 688 (File No. 1041), 484 P.2d 250 (1971).

The fear that obscure or antiquated laws may be utilized to trap the unwary should prove groundless under the above rules. In the first place the court will be free under § 286 to refuse to adopt such a law as the standard of a reasonable man. However, the supreme court wishes to caution both bench and bar that it believes most traffic laws in this state do in fact represent reasonable behavioral standards. The supreme court does not intend that the inclusion of Section 288B(2) as part of the adopted rules signals a wholesale assault upon Alaska traffic laws. The purpose of adoption of that subsection is to provide an alternative in the rare instance in which, for one reason or another, the violated law cannot fairly be said to require reasonable behavior. Needless to say, in its review of such challenged laws the supreme court shall cast a strong presumption in favor of the legislative enactment or regulation. The supreme court expects the trial courts of this state to do the same. However, in the unlikely event the court does not adopt the statutory command as the standard of reasonable behavior, it may either permit the violation to be introduced as evidence relevant to the negligence issue — or it may exclude it altogether. Ferrell v. Baxter, Sup. Ct. Op. No. 688 (File No. 1041), 484 P.2d 250 (1971).

The general rule to be applied in the majority of cases remains that all drivers are presumed to know the law. And if a reasonably prudent man would take precautions in addition to those statutorily required, the court may, of course, find defendant negligent for failing to do so. Ferrell v. Baxter, Sup. Ct. Op. No. 688 (File No. 1041), 484 P.2d 250 (1971).

It is certainly fair to require all drivers, who must be tested on these traffic laws and regulations before they may obtain driver's licenses, to know and obey the rules of the road. In few areas is the ancient presumption of universal legal knowledge more fairly applied. It is both just and accurate to presume that all reasonable drivers know and obey the law, and to hold them civilly as well as criminally responsible for any unexcused violations thereof. Ferrell v. Baxter, Sup. Ct. Op. No. 688 (File No. 1041), 484 P.2d 250 (1971).

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Statutes, regulations, and ordi-
nances comprising the rules of the
road represent the fundamental guide-
lines by which society transports people
and things in an orderly manner from
place to place. To abrogate these rules
would not only lead to legal chaos, it would
drastically impair the functioning of our
necessarily mobile society and economy.
Ferrell v. Baxter, Sup. Ct. Op. No. 688
(File No. 1041), 484 P.2d 250 (1971).

Traffic laws serve two purposes. —
Traffic laws, including statutes, regu-
lations, and local ordinances, serve two
purposes in this state. First, they provide
criminal penalties, often minor, for their
violation. Second, they set the standard of
a reasonable man and thereby require a
finding of negligence in a tort action if the
plaintiff can prove that the defendant
committed an unexcused violation. Ferrell
v. Baxter, Sup. Ct. Op. No. 688 (File No.
1041), 484 P.2d 250 (1971).

Traffic laws prescribe the legal duty
or standard of care owed by the driver
to the general public who may be injured
if such standard is not met. Ferrell v.
Baxter, Sup. Ct. Op. No. 688 (File No.
1041), 484 P.2d 250 (1971).

And a violation of a statute, regu-
lation, or ordinance is a breach of that
duty and, unless excused, results in a
prima facie showing that the defendant did
not act towards the plaintiff as would a
reasonably prudent driver. Ferrell v.
Baxter, Sup. Ct. Op. No. 688 (File No.
1041), 484 P.2d 250 (1971).

Tort consequences for a traffic viola-
tion. — See Ferrell v. Baxter, Sup. Ct. Op.
No. 688 (File No. 1041), 484 P.2d 250
(1971).

Civil consequences of violation of
traffic statute, regulation, or
ordinance. — See Ferrell v. Baxter, Sup.
Ct. Op. No. 688 (File No. 1041), 484 P.2d
250 (1971).

The violation-of-statute doctrine
assists plaintiff to establish a firm duty to
impose upon the defendant. Ferrell v.
Baxter, Sup. Ct. Op. No. 688 (File No.
1041), 484 P.2d 250 (1971).

For an examination of the theoretical
underpinnings of the doctrine of statu-
te-based negligence and comparison of
the differing views of the various jurisdic-
tions, see Ferrell v. Baxter, Sup. Ct. Op.
No. 688 (File No. 1041), 484 P.2d 250
(1971).

Doctrine of *res ipsa loquitur*. — See
Ferrell v. Baxter, Sup. Ct. Op. No. 688
(File No. 1041), 484 P.2d 250 (1971).

Res ipsa loquitur procedurally assists
the plaintiff in his proof in certain incom-
plete factual settings. Ferrell v. Baxter,
Sup. Ct. Op. No. 688 (File No. 1041), 484
P.2d 250 (1971).

A violation of a traffic law is negli-
gence per se. Ferrell v. Baxter, Sup. Ct.
Op. No. 688 (File No. 1041), 484 P.2d 250
(1971). But see Claubaugh v. Bottcher,
Sup. Ct. Op. No. 1235 (File No. 2481), 545
P.2d 172 (1976).

The violation of either an applicable
traffic statute or regulation which has
been adopted by the court as a standard of
reasonable behavior is negligence per se.
Ferrell v. Baxter, Sup. Ct. Op. No. 688
(File No. 1041), 484 P.2d 250 (1971). But
see Claubaugh v. Bottcher, Sup. Ct. Op.
No. 1235 (File No. 2481), 545 P.2d 172
(1976).

A violation of a statewide admin-
istrative traffic regulation adopted
pursuant to statutory authority must be
equated with a violation of a traffic statute
itself. Ferrell v. Baxter, Sup. Ct. Op. No.
688 (File No. 1041), 484 P.2d 250 (1971).
But see Claubaugh v. Bottcher, Sup. Ct.
Op. No. 1235 (File No. 2481), 545 P.2d 172
(1976).

Difference between negligence per
se and mere evidence of negligence. —
Assuming causation is shown, if a plaintiff
proves that a defendant violated a traffic
law prescribing a standard of reasonable
behavior, and the defendant produces
nothing to the contrary, plaintiff's case is
then sufficiently strong to warrant a judg-
ment in his favor. However, if the law is
not held to establish a standard of reason-
able behavior and its violation is further
held merely to constitute evidence of negli-
gence which may, but need not, be con-
sidered determinative by the trier of fact,
the judge need not render a verdict for the
plaintiff. Ferrell v. Baxter, Sup. Ct. Op.
No. 688 (File No. 1041), 484 P.2d 250
(1971).

Judgment for plaintiff in absence of
defense. — Unless the defendant offers
evidence of some defense, judgment for the
plaintiff will be required in those jurisdic-
tions in which a traffic violation is negli-
gence in itself. Ferrell v. Baxter, Sup. Ct.
Op. No. 688 (File No. 1041), 484 P.2d 250
(1971).

Prima facie case satisfies burden of
proof. — When the plaintiff establishes a
prima facie case, that is enough to satisfy
the burden of proof when the evidence is
not in conflict. Ferrell v. Baxter, Sup. Ct.
Op. No. 688 (File No. 1041), 484 P.2d 250
(1971).

Certain traffic violations may be excused. *Ferrell v. Baxter*, Sup. Ct. Op. No. 688 (File No. 1041), 484 P.2d 250 (1971).

One such excuse can be that the violation was caused by outside forces, either man-made or natural, over which the actor had no control. *Ferrell v. Baxter*, Sup. Ct. Op. No. 688 (File No. 1041), 484 P.2d 250 (1971).

Contributory negligence. — Once a traffic violation has been proved, the defendant can offer any one of several defenses. For example, the contributory negligence of the plaintiff will be such a defense. *Ferrell v. Baxter*, Sup. Ct. Op. No. 688 (File No. 1041), 484 P.2d 250 (1971).

Violation excused under § 288A(2)(c) of Restatement. — If a trial court holds that a statute sets forth the standard of reasonable behavior and admits evidence of its violation, the court still may, in appropriate cases, permit the defendant to introduce evidence that although he did in fact violate the law, its meaning was so obscure or unreasonable that he acted

with all due care in attempting to obey it. In this case his violation could be excused under § 288A(2)(c) of the Restatement. *Ferrell v. Baxter*, Sup. Ct. Op. No. 688 (File No. 1041), 484 P.2d 250 (1971).

Construction of 13 AAC 02.485(a). — Study of 13 AAC 02.485(a), which provides that "a driver of a vehicle may not back the vehicle unless the movement can be made with safety and without interfering with the traffic," and this section, under which this regulation was promulgated, reveals no reason why the regulation should be construed to prohibit an emergency excuse. *Wilson v. Sibert*, Sup. Ct. Op. No. 1151 (File No. 2165), 535 P.2d 1034 (1975).

For application of rules and regulations governing roads and highways to military base in absence of federal statute, see *Hundley v. United States*, 15 Alaska 551, 131 F. Supp. 655 (D. Alaska 1955).

Cited in *Anderson v. Municipality of Anchorage*, Ct. App. Op. No. 89 (File No. 5318), 645 P.2d 205 (1982).

Collateral references. — Constitutionality of legislative delegation of powers to prescribe or vary regulations concerning motor vehicles used on highways, 87 ALR 546.

Power to limit weight of vehicle or load thereon with respect to use of highways, 26 ALR 747, 75 ALR2d 376.

Sec. 28.05.020. Authority of highway commissioner. [Repealed, § 6 ch 178 SLA 1978.]

Sec. 28.05.021. Commissioner to enter compacts and reciprocal agreements. The commissioner may, under terms and conditions best calculated to promote the interests of the state, enter into a compact or agreement with an authorized representative of another jurisdiction in a matter relating to driver licensing, vehicle registration, or other activity authorized under this title. A compact or agreement affecting state finances or driving privileges must be approved by adoption of a concurrent resolution approved by a majority vote of each house of the legislature before it becomes effective. (§ 6 ch 178 SLA 1978)

Secs. 28.05.025, 28.05.030. Authority of Department of Commerce and public safety commissioner [Repealed, § 6 ch 178 SLA 1978.]

Sec. 28.05.031. Department to publish statutes and regulations relating to vehicles, vehicle use and pedestrians. (a) The department shall publish current state statutes and regulations

13 AAC 02.260. OVERTAKING AND PASSING SCHOOL BUS. (a) The driver of a vehicle meeting or overtaking a school bus stopped on a highway must stop before reaching the school bus when there is in operation on the school bus flashing red lights as provided in 13 AAC 04.097. The driver may not proceed until the school bus resumes motion, he is signaled by the school bus driver to proceed, or the flashing red lights are no longer illuminated.

(b) Repealed 6/28/79.

(c) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway, or when upon a controlled-access highway and the school bus is stopped off the roadway in a loading zone which is part of, or adjacent to, the controlled-access highway and where pedestrians are not permitted to cross the roadway.

(d) When a school bus is stopped on a roadway, whether or not there are in operation flashing red lights as required in 13 AAC 04.097, the driver of a vehicle shall yield the right-of-way to children crossing a roadway to embark on or disembark from the school bus, whether or not the children are crossing within a marked crosswalk, or crossing the roadway upon which the bus is located. (In effect before 7/28/59; am 12/15/61, Reg. 3; am 8/10/66, Reg. 22; am 12/31/69, Reg. 31; am 6/28/79, Reg. 70)

Authority: AS 28.05.011

13 AAC 02.265. STOP WHEN TRAFFIC MAY BE OBSTRUCTED. No driver may enter an intersection or crosswalk, or drive onto a railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk, or railroad grade crossing to accommodate the vehicle he is driving without obstructing the passage of other vehicles, pedestrians, or railroad trains, notwithstanding a traffic-control signal indication to proceed. (Eff. 6/28/79, Reg. 70)

Authority: AS 28.05.011

**ARTICLE 7.
SPEED RESTRICTIONS**

Section

- 275. Basic rule and maximum limits
- 280. Alteration of limits by state and municipalities
- 285. (Repealed)
- 290. (Repealed)
- 295. Minimum speed regulation
- 300. (Repealed)
- 305. (Repealed)
- 310. (Repealed)
- 315. (Repealed)
- 320. (Repealed)
- 325. Special speed limitations
- 330. Racing on highways

13 AAC 02.275. BASIC RULE AND MAXIMUM LIMITS. (a) No person may drive a vehicle at a speed greater than is reasonable and prudent considering the traffic, roadway, and weather conditions.

(b) Except when a special hazard exists that requires a lower speed for compliance with (a) of this section, the limits specified in this subsection are the maximum lawful speeds throughout the state, and no person may drive a vehicle at a speed in excess of these maximum limits, unless otherwise posted:

- (1) 15 miles per hour in an alley;
 - (2) 20 miles per hour in a business district;
 - (3) 25 miles per hour in a residential district;
- or
- (4) 55 miles per hour on any other roadway.

(c) Repealed 6/28/79.

(d) Repealed 6/28/79.

(e) The maximum speed limits set forth in (b) of this section may be altered as authorized in sec. 280 of this chapter. (In effect before 7/28/59; am 12/15/61, Reg. 3; am 8/10/66, Reg. 22; am 12/31/69, Reg. 31; am 6/28/79, Reg. 70)

Authority: AS 28.05.011

yellow. The lights authorized by this section must be visible from a distance of not less than 500 feet in normal sunlight.

(g) A tow car must be equipped with a flashing yellow warning light visible at 500 feet in normal sunlight to the front, rear and both sides. The tow car must illuminate the yellow warning light during preparation at the location from which a disabled vehicle is to be towed, and the yellow warning light must be illuminated when the tow car is towing a vehicle at a speed slower than the normal flow of traffic, during the hours of darkness when the towed vehicle does not have taillights illuminated to the rear, or when the taillights, stop lights or turn signals on the tow car are obscured by the towed vehicle. The flashing warning light may not be illuminated except as provided in this section.

(h) A vehicle used for the purpose of mail or other delivery along a highway must illuminate the lights required by this section at least 100 feet, but not more than 500 feet, before making a stop as required in the official performance of the duties of the driver of the vehicle. Display of the lights must continue for as long as the conditions specified in (d) of this section exist. The lights must be visible to the front and rear of the vehicle at a distance of 500 feet in normal sunlight. Further, a mail delivery vehicle must clearly display to the front and to the rear of the vehicle, the words "U.S. MAIL" in letters at least eight inches high on a distinctively contrasting background; other vehicles used in making deliveries along a highway must display the words "DELIVERY VEHICLE" in a like manner.

(i) The lights specified in this section may not be turned on when a vehicle is

(1) parked lawfully in an urban district;

(2) stopped lawfully to avoid conflict with other traffic or to comply with the directions of a police officer, a fireman or an authorized flagman or an official traffic-control device; or

(3) otherwise stopped or driven when there do not exist the conditions specified in (c) of this section. (Eff. 12/31/69, Reg. 31; am 6/28/79, Reg. 70)

Authority: AS 28.05.011

13 AAC 04.097. SPECIAL SCHOOL BUS LIGHTING EQUIPMENT. (a) A school bus must, in addition to other equipment and distinctive markings required by this chapter, be equipped with signal lights mounted as high and as widely spaced laterally as practicable, which must display to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level. The lights must be visible at 500 feet in normal sunlight. The alternately flashing red lights must be illuminated by the driver of the school bus when, but only when, the bus is stopped for the purpose of receiving or discharging school children, except that the lights may not be illuminated in

(1) a designated school bus loading or unloading area where the bus is entirely off the roadway and a child being received into or discharged from the bus is not required to cross the roadway; or

(2) an intersection or other place where traffic is controlled by a traffic-control signal or by a police officer.

(b) A school bus must be equipped with yellow signal lights mounted near each of the four red lights required in (a) of this section and at the same level but closer to the vertical centerline of the bus. These lights must display two alternately flashing yellow lights visible to the front and rear of the bus for a distance of at least 500 feet in normal sunlight. The yellow flashing lights must be illuminated by the school bus driver at least 100 feet, but not more than 500 feet, before every stop at which the alternately flashing red lights are illuminated, at which time the alternately flashing yellow lights authorized by this section must be turned off.

(c) Every school bus must have indicator lights readily visible to the driver of the bus, which automatically indicate to the driver of the bus when any of the alternately flashing lights authorized by this section are illuminated. (Eff. 6/28/79, Reg. 70)

Authority: AS 28.05.011

Editor's Note: This section is based partially on the former 13 AAC 04.090(b) and 150(c)-(e).



LICENSEE

March 18, 1985

Representative M. Mike Miller
Alaska State Legislature
Pouch V (MS3100)
Juneau, Alaska 99811

Dear Mr. Miller:

I have just reviewed a copy of House Bill No. 240 relating to motor vehicles. We at Avis strongly support the intent of the bill, but equally strongly object to subparagraph (d), lines 29, 1-4: "it is prima facie evidence that the leasor of a leased vehicle or the owner of another vehicle was the driver of the vehicle if other competent evidence identified the vehicle as having been driven in violation of this section at the time and place charged."

To assign responsibility to a lessor for the actions of the driver of a leased or rented vehicle is entirely inappropriate and unreasonable. The negligence of the driver of a leased or rental vehicle can under no circumstances I can envisage be imputed to the lessor. Indeed, if there is negligence or responsibility other than the driver's, it appears to me it is the state agency that issued the driver's license in the first place.

I urge that this be corrected before this bill is acted upon. Thank you for your help.

Sincerely,

A handwritten signature in cursive script that reads "Jack B. Hayes".

J. B. Hayes, Vice President
and General Manager

:cm

Original sponsors: Thompson, Cato
and Sund

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 240 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to overtaking and passing school
7 buses."

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

9 * Section 1. AS 28.35 is amended by adding a new section to read:

10 Sec. 28.35.145. OVERTAKING AND PASSING SCHOOL BUS. (a) The
11 driver of a vehicle that meets or overtakes a school bus stopped on a
12 highway or vehicular way or area shall stop not less than 25 feet from
13 the school bus before reaching it when there are in operation on the
14 school bus flashing red lights as required by regulation. The driver
15 may not proceed until the school bus proceeds and the flashing lights
16 are no longer illuminated.

17 (b) When a school bus is stopped on a highway or vehicular way
18 or area, whether or not there are in operation on the school bus
19 flashing red lights as required by regulation, the driver of a vehicle
20 shall yield the right-of-way to a person crossing a highway, vehicular
21 way, or area to embark on or disembark from the school bus, whether or
22 not the person is crossing within a marked crosswalk.

23 (c) The driver of a vehicle on a highway with separate roadways
24 is not required to stop when meeting or passing a school bus that is
25 on a different roadway or, if upon a controlled access highway, when a
26 school bus is stopped off the highway in a loading zone that is at
27 of, or adjacent to, the controlled access highway, and pedestrians are
28 not permitted to cross the highway.

29 (d) A person charged under this section is required to enter a

1 court appearance. A person convicted under this section is guilty of
2 an infraction and, in addition to other penalties as provided by law,
3 is subject to a mandatory assessment of six demerit points under
4 AS 28.15.22, - 28.15.261.
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Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
General Counsel

303 K Street
Anchorage, AK 99501

April 2, 1985

Representative Mike Miller
Chair, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Miller:

I am writing to express a minor technical concern with CSHB 240, an act relating to motor vehicles, which is presently before the House Judiciary Committee.

This act would create a new vehicle and traffic offense for overtaking and passing a school bus. Section (e) of the proposed bill provides that a person charged under this section is required to enter a court appearance.

Under AS 28.05.151 (copy attached), the legislature has authorized the state supreme court to determine by rule or order those vehicle and traffic offenses that are amenable to disposition without court appearance, and to establish a schedule of bail forfeiture amounts which permit a person to avoid a court appearance by pleading guilty and mailing in the amount. The proposed language of this bill limits the otherwise broad discretion delegated to the supreme court.

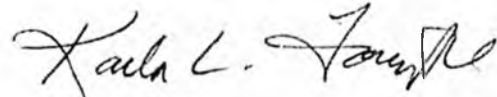
My concern with this language is that it may be difficult for the persons responsible for compiling the bail forfeiture schedule to keep track of each exception the legislature creates. One alternative might be to delete this sentence from the bill, and to provide a letter of legislative intent that this offense not be listed on the bail forfeiture schedule. This approach was followed by the legislature in authorizing adoption of a fish and game bail forfeiture schedule.

Another option would be to amend AS 28.05.151 as follows: "Except as otherwise provided by law, the state supreme court shall determine by rule or order those vehicle and traffic

offenses that are amenable to disposition without court appearance...".

Thank you for the opportunity to comment on this legislation. If I can provide further information about this concern, please let me know.

Sincerely,



Karla L. Forsythe
General Counsel

KLF:smh

cc: Arthur H. Snowden, II
Representative Thompson
Representative Taylor
Representative Cato
Representative Sund

KODIAK ISLAND BOROUGH
RESOLUTION NO. 85-38-R

A RESOLUTION OF THE KODIAK ISLAND BOROUGH ASSEMBLY SUPPORTING COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 240 CONCERNING OVERTAKING AND PASSING SCHOOL BUSES.

WHEREAS, Committee Substitute for House Bill No. 240 has been introduced which increases the regulations on passing school buses and stiffens the penalties for violations of this law, and

WHEREAS, school bus passing has been a serious problem in the Kodiak Island Borough during the current school year, and

WHEREAS, the State Troopers and City Police cannot be everywhere at once which means a greater deterrence must be placed in this law to encourage citizens to abide within the law, and

WHEREAS, the school children must be protected while loading and unloading on school buses.

NOW, THEREFORE, BE IT RESOLVED that the Kodiak Island Borough Assembly strongly supports Committee Substitute for House Bill No. 240 and urges that it be passed and signed into law, and

BE IT FURTHER RESOLVED that copies of this resolution be sent to the following individuals:

The Honorable Bill Sheffield, Governor of Alaska
The Honorable M. Mike Miller, Chairman House Judiciary Committee
The Honorable Fred F. Zharoff, Senator District N
The Honorable David W. Thompson, Representative District 27

PASSED AND APPROVED this 4th day of April, 1985.

KODIAK ISLAND BOROUGH

By Thomas H. Peterson
Borough Mayor

ATTEST:

By Shirley Miller, CMC
Borough Clerk