

COMMITTEE REPORT SENATE

FURTHER:

Date 12/13/76

Mr. President

The Committee on FINANCE considered SB 76
driving while intoxicated.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 76 (2)
- new title
- same title and recommends " "
- and attached a "LETTER OF INTENT"
- reports it back without recommendation
- recommends referral to _____ Committee

NEW FISCAL NOTE
- SFC
< 68.8 > H&SS
68.8 Pub Safety

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS

Chairman _____

Chairman recommendation _____

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 4/4/85

REQUEST

Bill/Resolution No.: CSSB 74 (Jud)
 Title: An Act relating to driving while intoxicated
 Sponsor: Abood
 Requestor: Senate Finance Committee
 Date of Request: April 4, 1985

FISCAL DETAIL

Public Safety
 Agency Affected: Health and Social Services
 Program Category Affected: State Health Services and Administration of Justice
 BRU, Program or Subprogram(s) Affected: Alaska State Troopers/State Health Services, Laboratories

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

The legislation transfers responsibility for the blood/breath alcohol program from DHSS to Public Safety. DHSS currently has 1 full time position at a cost of 68.8 (47.2 personal services, 2.5 travel, 14.3 contractual, 4.8 commodities) which will be transferred to Public Safety. The net result is zero.

Prepared By: Jan Faiks, Co-Chairman
 Division: Senate Finance Committee

Phone: 465-4523
 Date: April 4, 1985

Approved by Commissioner: _____
 Agency: _____

Date: April 4, 1985

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CS SB 74
Title: Driving while Intoxicated

Sponsor: Judiciary
Requestor: _____
Date of Request: 3/21/85

FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Public Health

BRU, Program or Subprogram(s) Affected: _____
State Health Services, Laboratories

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		<47.2>				
200 TRAVEL		<2.5>				
300 CONTRACTUAL		<14.3>				
400 SUPPLIES		<4.8>				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		<68.8>				

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		<68.8>				
FEDERAL FUNDS						
OTHER						
TOTAL		<68.8>				

POSITIONS:

FULL-TIME		<1.0>				
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

In FY 77 and 78 attempts were made to fund a support position in the Section Chiefs office; however, the requests were never approved. The Section of Laboratories obtained some General Fund monies mid-year in FY 77 to fund an Administrative Assistant. However, only a small amount of the time was devoted to the blood/breath alcohol program, the major portion of time being spent on budgetary, fiscal (Cont.)

Prepared By: Robert I. Fraser, M.D. ^{RI/EDJ}
Division: Public Health

Phone: 465-3090
Date: March 28, 1985

Approved by Commissioner: J.R.G.
Agency: Dept. of Health & Social Services

Date: 4-1-85 JCC

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

FISCAL NOTE

CS SB 74 (Continued)

and purchasing of laboratory supplies. As this position was not funded for DWI activities, it is not appropriate to transfer any portion.

The Chemist III position located at the Southeast Regional Public Health laboratory has for the last year been used primarily for DWI related activities. Although the majority of the chemist's time has been devoted to supporting the DWI program, plans are well underway to expand the laboratory capability as the DWI activities taper down. Should the Public Health Laboratories lose the Chemist position, there will be no one on our staff to operate and maintain scientific equipment purchased for the purpose of assessing and monitoring compounds that may have significant impact on the public's health. We have been expanding our testing capabilities for analysis of pesticides in food and water. Chlorinated hydrocarbon analysis would monitor the impact upon individual health as well as community health during episodes of acute contamination resulting from accidental spills. Example: transformer contamination in the community of Kake that occurred several years back, samples could not be analyzed in state. The Section of Laboratories also uses Chemist positions in a consulting capacity to medical laboratories engaged in clinical chemistry. Chemists are also used to speciate anaerobic bacteria using fatty acid analysis techniques. Significant improvements in identification of other microorganisms are also in the initial planning stages. Public Health Laboratory operations could support the Department of Labor by developing testing activities related to contaminants in the work place. A recent example of the need for additional support activity in this area was in monitoring ethylene oxide levels in medical laboratories. Our Public Health Laboratory also has a need to monitor heavy metal contamination found in drinking water, as well as monitoring these contaminants in our food chain.

It should be noted, the removal of the Chemist III position eliminates any ability for our laboratory system to perform any Public Health Toxicology activities.

This reduction includes a Chemist III and supporting funding. The original amount was authorized in CH 139 SLA 82 p. 11, ln. 8, and has been adjusted to reflect the Legislature's annual appropriation. This includes personal services funding at 3.1% V&T, a travel reduction of 21.8%, contractual services increase of 2.1% and commodities reduction of 3.2%.

We expect equipment transfers to be minimal. Very little line 500 equipment was purchased specifically for the DWI program. For example, a gas chromatograph used from time to time in the DWI area is a device intended for use primarily in the general microbiology area and would not be transferred with other equipment obtained for DWI work.

POSITION PAPER

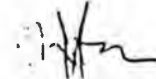
CS FOR SENATE BILL NO. 74 (Judiciary)

For "An act relating to driving while intoxicated; and providing for an effective date."

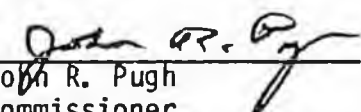
Under the existing statute, the Department of Health and Social Services is authorized to approve satisfactory techniques, methods, and standards of training necessary to ascertain the qualifications of individual's to conduct the analysis of the amount of alcohol in an individuals breath or blood.

This bill in part provides for the transfer of this overview function from the Department of Health and Social Services to the Department of Public Safety.

The Department of Health and Social Services supports the passage of this bill.

Recommended by: 
Robert I. Fraser, M.D.
Director
Division of Public Health

Date: 3/28/85

Approved by: 
John R. Pugh
Commissioner
Department of Health and
Social Services

Date: 4-1-85

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSSB 74 (Jud)
 Title: "An Act relating to driving while intoxicated....."
 Sponsor: Sen. Abood
 Requestor: Sen. Finance Committee
 Date of Request: 4-3-85

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		47.2	50.0	53.0	56.2	59.6
200 TRAVEL		2.5	2.7	2.9	3.1	3.3
300 CONTRACTUAL		14.3	15.2	16.1	17.1	18.1
400 SUPPLIES		4.8	5.1	5.4	5.7	6.0
500 EQUIPMENT						
500 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		68.8	73.0	77.4	82.1	87.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		68.8	73.0	77.4	82.1	87.0
FEDERAL FUNDS						
OTHER						
TOTAL		68.8	73.0	77.4	82.1	87.0

POSITIONS:

FULL-TIME		1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

This fiscal note reflects the transfer of the breath test program from the Department of Health & Social Services to the Department of Public Safety. 6% inflation factor included in fiscal note.

Prepared By: James D. Vaden Phone: 465-4322
 Division: Deputy Commissioner Date: 4-3-85

Approved by Commissioner: James D. Vaden Date: 4-3-85
 Agency: Public Safety

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

DEPARTMENT OF PUBLIC SAFETY
POSITION PAPER - CSSB 74 (JUD)

Support

CSSB74(JUD) - "An Act relating to driving while intoxicated; and providing for an effective date."

The Department of Public Safety supports passage of this bill. It is needed to provide and support a unified cohesive breath test program in Alaska.

Analysis

Several problems have plagued the breath test program since its inception in 1964.

The majority of the problems relate to the administration of the program and the priority level assigned to resolve the problem.

At present, The Department of Public Safety provides the instruments and training to both Troopers and local Police Departments. Health and Social Services provides program administration, instrument certification and officer certification.

However, as with the training, most instruments are certified by police officers trained as technicians.

When problems occur, the agencies charged with operation are not always advised. This is also true of the Department of Law. If everyone was current, possibly appeals and adverse decisions by the Court could be avoided through a change in procedures, training or expert forensic testimony.

The Attorney General and Commissioners of Health & Social Services and Public Safety met and agreed this program could best be administered by Public Safety.

Public Safety has moved the administration of the Alaska Crime Laboratory from the Division of State Troopers to the Commissioner's office.

A director of the Crime Laboratory, Mr. George Taft, has been appointed. Mr. Taft was in charge of the Texas Department of Public Safety Crime Laboratory for years and has the expertise and resources to administer this program.

The one Chemist III assigned to this program at H&SS has numerous other responsibilities. (See analysis H&SS CSSB 74).

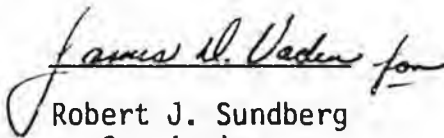
The State Crime Laboratory has other chemists that can assist and be consulted with to resolve problems. Other chemists in the State Crime Laboratory will be available to provide expert forensic testimony when the primary chemist is not available.

Most importantly, there will be a one window concept for maintenance, training, certification and procedures that comply with the court's requirements for introduction of intoximeter results into evidence.

The Department of Public Safety and the Department of Law have an excellent line of communications which will keep both agencies and users current in regard to operational changes or training needs.

The relationship between local police and Troopers will insure that instruments which are not currently certified will not be used and that training will be delivered as needed.

This program will be a priority of the Department of Public Safety.


Robert J. Sundberg
Commissioner

Offered: 3/20/85
Referred: Finance

Original sponsor: Abood

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 CS FOR SENATE BILL NO. 74 (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 driving while intoxicated; and
7 providing for an effective date."

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

9 * Section 1. AS 28.35.033(d) is amended to read:

10 (d) To be considered valid under the provisions of this section
11 the chemical analysis of the person's breath or blood shall have been
12 performed according to methods approved by the Department of Public
13 Safety [HEALTH AND SOCIAL SERVICES]. The Department of Public Safety
14 [HEALTH AND SOCIAL SERVICES] is authorized to approve satisfactory
15 techniques, methods, and standards of training necessary to ascertain
16 the qualifications of individuals to conduct the analysis. If it is
17 established at trial that a chemical analysis of breath or blood was
18 performed according to approved methods by a person trained according
19 to techniques, methods and standards of training approved by the
20 Department of Public Safety [HEALTH AND SOCIAL SERVICES], there is a
21 presumption that the test results are valid and further foundation for
22 introduction of the evidence is unnecessary.

23 * Sec. 2. AS 28.35.035(b) is amended to read:

24 (b) A person who is unconscious, injured, or otherwise in a
25 condition rendering that person incapable of providing a breath sample
26 [REFUSAL] is considered not to have withdrawn the consent provided
27 under AS 28.35.031(a) and a chemical test may be administered to
28 determine the amount of alcohol in that person's breath or blood. A
29 person who is unconscious, injured, or otherwise incapable of

1 providing a breath sample [REFUSAL] need not be placed under arrest
2 before a chemical test may be administered.

3 * Sec. 3. TRANSITION. Regulations adopted by the Department of Health
4 and Social Services under authority of AS 28.35.033(d) remain in effect
5 until revoked or ~~repealed~~ by the Department of Public Safety.

6 * Sec. 4. This Act takes effect July 1, 1985.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSSB 74(JUD)AM
 Title: "An Act relating to driving while intoxicated..."
 Sponsor: Sen. Abood
 Requestor: House State Affairs
 Date of Request: 4-16-85

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		47.2	50.0	53.0	56.2	59.6
200 TRAVEL		2.5	2.7	2.9	3.1	3.3
300 CONTRACTUAL		14.3	15.2	16.1	17.1	18.1
400 SUPPLIES		4.8	5.1	5.4	5.7	6.0
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		68.8	73.0	77.4	82.1	87.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		68.8	73.3	77.4	82.1	87.0
FEDERAL FUNDS						
OTHER						
TOTAL		68.8	73.3	77.4	82.1	87.0

POSITIONS:

FULL-TIME		1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

This fiscal note reflects the transfer of the breath test program from the Department of Health & Social Services to the Department of Public Safety. 6% inflation factor included in fiscal note.

Prepared By: James D. Vaden Phone: 465-4322
 Division: Deputy Commissioner Date: 4-16-85

Approved by Commissioner: *Robert J. Shery* Date: 4-17-85
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Rec'd 4/18/85
after SB 74
RO

7/1/84

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 74
 Title: An Act relating to driving while intoxicated...
 Sponsor: Sen. Abood
 Requestor: Sen. State Affairs
 Date of Request: 2-6-85

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Paul Conger
 Division: Administrative Services

Phone: 465-4338
 Date: 2-6-85

Approved by Commissioner: [Signature]
 Agency: Public Safety

Date: 2-6-85

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

SECTIONAL ANALYSIS FOR SENATE BILL 74 (Judiciary)

An Act relating to driving while intoxicated

Section 1

This section amends existing law and transfers the responsibility for breath or blood analysis tests in drunk driving arrests from the Department of Health and Social Services to the Department of Public Safety.

Section 2

This section corrects a defect in current law relating to the administering of a chemical test without consent. Currently, an unwilling DWI defendant can avoid conviction for either a DWI or refusal because he or she is injured. This section corrects that problem.

Section 3

During the transfer of responsibility from the Department of Health and Social Services to the Department of Public Safety, regulations of DHSS remain in effect until revoked by DPS.

Section 4

Effective date of July 1, 1985.

FISCAL NOTE

CS SB 74 (Continued)

and purchasing of laboratory supplies. As this position was not funded for DWI activities, it is not appropriate to transfer any portion.

The Chemist III position located at the Southeast Regional Public Health laboratory has for the last year been used primarily for DWI related activities. Although the majority of the chemist's time has been devoted to supporting the DWI program, plans are well underway to expand the laboratory capability as the DWI activities taper down. Should the Public Health Laboratories lose the Chemist position, there will be no one on our staff to operate and maintain scientific equipment purchased for the purpose of assessing and monitoring compounds that may have significant impact on the public's health. We have been expanding our testing capabilities for analysis of pesticides in food and water. Chlorinated hydrocarbon analysis would monitor the impact upon individual health as well as community health during episodes of acute contamination resulting from accidental spills. Example: transformer contamination in the community of Kake that occurred several years back, samples could not be analyzed in state. The Section of Laboratories also uses Chemist positions in a consulting capacity to medical laboratories engaged in clinical chemistry. Chemists are also used to speciate anaerobic bacteria using fatty acid analysis techniques. Significant improvements in identification of other microorganisms are also in the initial planning stages. Public Health Laboratory operations could support the Department of Labor by developing testing activities related to contaminants in the work place. A recent example of the need for additional support activity in this area was in monitoring ethylene oxide levels in medical laboratories. Our Public Health Laboratory also has a need to monitor heavy metal contamination found in drinking water, as well as monitoring these contaminants in our food chain.

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POSITION PAPER

CS FOR SENATE BILL NO. 74 (Judiciary)

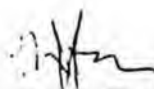
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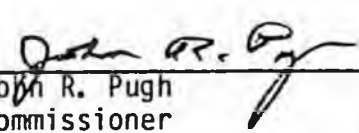
Recommended by:


Robert I. Fraser, M.D.
Director
Division of Public Health

Date:

3/28/85

Approved by:


John R. Pugh
Commissioner
Department of Health and
Social Services

Date:

4-1-85

DEPARTMENT OF PUBLIC SAFETY
POSITION PAPER - CSSB 74 (JUD)

Support

CSSB74(JUD) - "An Act relating to driving while intoxicated; and providing for an effective date."

The Department of Public Safety supports passage of this bill. It is needed to provide and support a unified cohesive breath test program in Alaska.

Analysis

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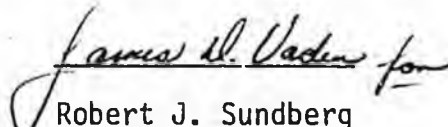
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This program will be a priority of the Department of Public Safety.


Robert J. Sundberg
Commissioner

Alaska Association Chiefs of Police



APR 02 1985

DEPT. OF LAW
CRIMINAL DIVISION

March 29, 1985

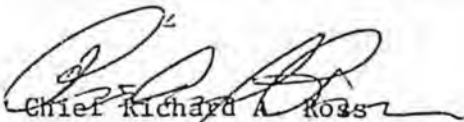
Commissioner Robert Sundberg
Department of Public Safety
Pouch N
Juneau, Alaska 99811

Dear Commissioner Sundberg,

The Alaska Association of Chiefs of Police supports the adoption of the Judiciary Committee substitute for Senate Bill 74. The association strongly supports the placing of the breath testing program under the Department of Public Safety.

It is our understanding that with the adoption of the bill that the program will be operated as part of the State Crime Lab. This will consolidate both the authority and responsibility for the programs operation. This will make enforcement, prosecution, and program administration much more efficient than in the past.

Please keep us advised as to the status of the bill and if further input from the Association would be helpful in obtaining its passage.


Chief Richard A. Ross
Kenai Police Department
President AACOP

RAR/lo

SECTIONAL ANALYSIS FOR SENATE BILL 74 (Judiciary)

An Act relating to driving while intoxicated

Section 1

This section amends existing law and transfers the responsibility for breath or blood analysis tests in drunk driving arrests from the Department of Health and Social Services to the Department of Public Safety.

Section 2

This section corrects a defect in current law relating to the administering of a chemical test without consent. Currently, an unwilling DWI defendant can avoid conviction for either a DWI or refusal because he or she is injured. This section corrects that problem.

Section 3

During the transfer of responsibility from the Department of Health and Social Services to the Department of Public Safety, regulations of DHSS remain in effect until revoked by DPS.

Section 4

Effective date of July 1, 1985.

SCOTT & WESLEY GERRISH
MEMORIAL

M A D D

RECEIVED MAR 25 1985

ANCHORAGE, ALASKA
CHAPTER

MAILING ADDRESS:
711 H Street, Box 108
Anchorage, Alaska 99501

(907) 279-MADD

BUSINESS ADDRESS
733 West 4th Avenue
Anchorage, Alaska 99501

March 21, 1985

Senator Jan Faiks
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

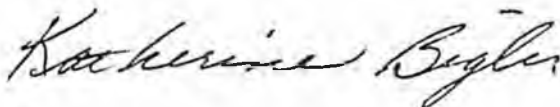
Dear Senator Faiks,

MADD supports the enclosed bills that have been introduced in the legislature this year.

Singly and collectively, these bills will contribute to reducing the incidence of drunken driving. While there has been a reduction in the number of drunk driving fatalities, we have a long way to go.

You may recall that in the decision in the case of State of Alaska vs Erickson, the state Supreme Court commented that alcohol is more dangerous than cocaine. Because of several laws passed by the legislature in recent years, Alaska is establishing itself as a progressive state in matters relating to reducing alcohol abuse. We urge you to continue this fine record by passing these bills.

Sincerely,



Katherine Bigler, President
Anchorage Chapter MADD

MOTHERS
AGAINST
DRUNK
DRIVERS

1985 Legislative Bills
Supported by MADD

House Bill No.3 - Open alcoholic containers in motor vehicles.

House Bill No.55 - Licensed premises.

Senate Bill No.69 - Licensing and regulation of the sale and distribution of alcoholic beverages; and providing for an effective date.

Senate Bill No.73 - Identification of persons arrested for D.W.I.

Senate Bill No.74 - Driving while intoxicated.

Senate Bill No.75 - Suspension of the privilege to obtain a driver's license.

Senate Bill No.76 - Rights of prisoners and amending Rule 5 (b).

Senate Bill No.136 - Increasing the membership of the A.B.C. Board.

Senate Bill No.138 - Pricing and promotion of alcoholic beverages.

MEMORANDUM

State of Alaska

TO: Senator Mitch Abood
Alaska State Senate

DATE: March 23, 1985

See me please
ny

FILE NO:

TELEPHONE NO:

FROM: Gayle Horetski *Gayle*
Assistant Attorney General

SUBJECT: CSSB 74 (Jud)

I am attaching a revised "Commentary" to CSSB 74 (Jud), which you may wish to pass along to the Senate Finance Committee and other committees which will consider the bill. I will be out of town this next week, but can be reached through the Office of Special Prosecutions and Appeals in Anchorage, 279-7424.

You may be interested to know that the Alaska Association of Chiefs of Police considered this bill at its meeting in Anchorage yesterday, and voted overwhelmingly to support the bill. The association secretary will be sending a letter to the legislature expressing that support.

Thanks so much for your interest and support on this important issue. Please call me or DPS Deputy Comm. James Vaden if we can be of any further assistance to you.

RECEIVED
MAR 26 1985

Commentary: CSSB 74 (Jud)

Section 1 of CSSB 74 (Jud) transfers administrative and regulatory authority for the state's alcohol breath testing program from the Department of Health and Social Services (DHSS) to the Department of Public Safety (DPS). This transfer would improve the administration of Alaska's breath testing program by eliminating unnecessary confusion, expense, and duplication of effort, and would help to ensure that the state's breath test program is conducted in the most efficient and legally defensible manner.

Transfer of the breath test program to the DPS was one of the secondary recommendations made by the Governor's Task Force on Drunk Driving in January of this year. In the interests of consolidation of resources and administrative efficiency, both DPS Commissioner Robert Sundberg and DHSS Commissioner John Pugh have recommended that the transfer be made. This change is also supported by the Department of Law.

Under existing law, DHSS possesses regulatory authority for the state's breath test program. Much of the responsibility for the actual administration and day-to-day functioning of the program rests with DPS, however. Historically, DPS has purchased and distributed the breath test instruments, repaired the instruments, purchased and distributed necessary supplies, and conducted the training of breath test operators and supervisor-instructors. This defacto division of functions between the two departments has led to some unfortunate difficulties in the administration of the present program. Since there is no one office or agency with clear administrative oversight authority over the breath test program, some uncertainty about areas of responsibility and lines of authority has developed. Occasionally some necessary duties have "fallen between the cracks." As a direct result of this lack of a centralized oversight authority prosecutors have had to dismiss numerous DWI prosecutions and have had to defend scores of DWI cases on appeal.

Alaska's first "implied consent" statute (requiring all persons suspected of drunken driving to consent to a chemical test to determine blood alcohol content) was adopted in 1969. AS 28.35.033(d) made the Department of Health and Social Services (at that time called the Department of Health and Welfare) responsible for approving "satisfactory techniques, methods, and standards of training" for analysis of the alcohol content of a DWI arrestee's breath sample. This responsibility was given to DHSS at that time because there was no other state agency which had

either the facilities or the technical expertise to perform this function.

In 1978 a state forensic crime laboratory was established in the Department of Public Safety to provide essential scientific support services to local law enforcement officers and state troopers throughout the state. Since that time the state crime laboratory has performed a steadily increasing array of scientific functions and analyses. The laboratory now employs four full time chemists who routinely analyze suspected controlled substances and have testified in numerous criminal trials. In recent years laboratory personnel have begun conducting analyses of diverse crime scene evidence, including physical evidence in arson cases, urine and blood testing, foot print comparisons, and some limited fiber, trace, and serological analyses.

In 1983 and 1984 the legislature appropriated 5½ million dollars to DPS to build and equip a sophisticated new crime laboratory facility in Anchorage. Construction of that facility is underway, and is expected to be complete by September of this year. The new laboratory will provide expanded testing capabilities in the areas of forensic chemistry, serology, toxicology, firearms identification, and trace evidence identification.

In light of this expansion of the public safety laboratory, it makes administrative and public policy sense to transfer the responsibility for administration of Alaska's alcohol breath testing program to the DPS laboratory. Transfer of this function to the DPS laboratory would be consistent with the national trend in DWI law enforcement and breath testing. Currently, over half of the states in the country have placed full administrative responsibility for their alcohol breath test programs with their departments of public safety. Several of these states, such as Texas, Minnesota, New York, New Jersey, and Michigan, have sophisticated programs which serve as models for other states. In only about ¼ of the states does administrative oversight authority for the state breath test program remain in the department of public health.

Section 3 of CSSB 74 (Jud) provides that existing breath test regulations will remain in effect until new regulations are adopted by the Department of Public Safety, and section 4 establishes a special effective date of July 1, 1985. This special effective date has been included because it will be necessary to transfer some resources from DHSS to DPS when the bill takes effect. July 1st is the beginning of the new fiscal year, and a convenient point at which to transfer positions.

Section 2 of the bill addresses a problem which has surfaced as a result of the Court of Appeals decision in Bass v. Municipality of Anchorage, Op. No. 429 (Alaska Ct. App., December 14, 1984). Bass overturned his car in a one-car accident in September of 1983. When the police arrived at the scene of the accident Bass appeared to be extremely intoxicated. Bass had been injured in the accident, and so was immediately taken to a hospital. Because Bass was required to remain at the hospital for several hours, he could not be taken to the police station for a breath test.

After consulting with the municipal prosecutor, the investigating officer asked Bass to provide a sample of his blood for analysis to determine alcohol content. Bass refused, but a blood sample was taken over his objections. The sample was taken under the authority of AS 28.35.-035(b), which allows a blood alcohol test to be administered to a DWI suspect who is "unconscious or otherwise in a condition rendering that person incapable" of refusing a breath test.

The appellate court held that Bass, who was injured and hospitalized but not unconscious, did not fall under the "narrow language" of AS 28.35.035 and therefore suppressed the result of the defendant's blood alcohol test (0.243). The amendment to AS 28.35.035(b) contained in section 2 of this bill would plug this "loophole" and allow collection of essential evidence of the blood alcohol level of a DWI suspect who cannot be transported to the police station for a breath test.

COMMITTEE REPORT
SENATE

FURTHER:

JUDICIARY
FINANCE

1/22/85

Date 2/8/84

Mr. President

The Committee on STATE AFFAIRS considered SB 74
driving while intoxicated.

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

do pass

do pass with attached amendment(s)

replace with/or adopt CS for SB 74 (SA)
new title
 same title and recommends

and attached a "LETTER OF INTENT"

NEW FISCAL NOTE

reports it back without recommendation

recommends referral to _____ Committee

MEMBERS SIGNING
DC PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Edm De Vries
Geo Ray

[Signature]
Chairman
[Signature]
Chairman recommendation

COMMITTEE REPORT
SENATE

FURTHER: FINANCE

2/8/85

Date 3-19-85

Mr. President

The Committee on JUDICIARY considered SB 74
driving while intoxicated.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB74 (Jud)
 new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

Tom Fark
Tom Kelly

MEMBERS HAVING
OTHER RECOMMENDATIONS

3 in, No/Res

Bill Jay
 Chairman
DO PASS
 Chairman recommendation

Introduced: 1/22/85
Referred: State Affairs, Judiciary
and Finance

1 IN THE SENATE

BY ABOOD

2

SENATE BILL NO. 74

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 driving while intoxicated."

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

8 * Section 1. AS 28.35.030(a) is amended to read:

9 (a) A person commits the crime of driving while intoxicated if
10 the person operates or drives a motor vehicle or operates an aircraft
11 or a watercraft

12 (1) while under the influence of intoxicating liquor, or
13 any controlled substance listed in AS 11.71.140 - 11.71.190, or a
14 combination of intoxicating liquor and a controlled substance;

15 (2) when, as determined by a chemical test taken within
16 four hours after the alleged offense was committed, there is 0.10
17 percent or more by weight of alcohol in the person's blood or 100
18 milligrams or more of alcohol per 100 milliliters of blood, or when
19 there is 0.10 grams or more of alcohol per 210 liters of the person's
20 breath; [OR]

21 (3) while the person is under the combined influence of
22 intoxicating liquor and a drug or another substance that acts as a
23 central nervous system depressant, hallucinogen or stimulant; or

24 (4) while the person is under the influence of a drug or
25 another substance that acts as a central nervous system depressant,
26 hallucinogen or stimulant.

27 * Sec. 2. AS 28.35.030(g) is amended by adding a new paragraph to read:

28 (3) "drug" has the meaning given in AS 11.71.900.

29 * Sec. 3. AS 28.35.030 is amended by adding a new subsection to read:

1 (h) A person convicted under this section may not receive credit
2 toward all or part of a mandatory sentence for time spent in a
3 residential alcohol treatment or rehabilitation program.

4 * Sec. 4. AS 28.35.032 is amended by adding a new subsection to read:

5 (k) A person convicted under this section may not receive credit
6 toward all or part of a mandatory sentence for time spent in a
7 residential alcohol treatment or rehabilitation program.

8 * Sec. 5. AS 28.35.035(b) is amended to read:

9 (b) A person who is unconscious or otherwise in a condition or
10 at a location rendering that person incapable of providing a breath
11 sample [REFUSAL] is considered not to have withdrawn the consent
12 provided under AS 28.35.031(a) and a chemical test may be administered
13 to determine the amount of alcohol in that person's breath or blood.
14 A person who is unconscious or otherwise incapable of providing a
15 breath sample [REFUSAL] need not be placed under arrest before a
16 chemical test may be administered.

Offered: 2/8/85
Referred: Judiciary and Finance

Original sponsor: Abood

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR SENATE BILL NO. 74 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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17 percent or more by weight of alcohol in the person's blood or 100
18 milligrams or more of alcohol per 100 milliliters of blood, or when
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