

S B

368

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

2

SENATE BILL NO. 368

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to commercial motor vehicle in-
7 spections."

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

9 * Section 1. AS 28.32.010 is amended by adding a new subsection to
10 read:

11 (b) A peace officer, or an employee of the department who is
12 authorized by the commissioner to enforce hazardous materials and
13 commercial vehicle safety regulations, may issue a citation under
14 AS 12.25.180 - 12.25.230 to a person who violates a regulation adopted
15 under AS 28.05.011(2). An employee of the department who is aut-
16 horized by the commissioner to enforce hazardous materials and commer-
17 cial vehicle safety regulations may not take a person into custody
18 under AS 12.25.180(b).

19 * Sec. 2. AS 28.32.900 is repealed and reenacted to read:

20 Sec. 28.32.900. DEFINITIONS. In this chapter,

21 (1) "commercial motor vehicle" means a motor vehicle or a
22 combination of a motor vehicle and one or more other vehicles

23 (A) used to transport passengers or property;

24 (B) used upon a highway or vehicular way connected to

25 (i) the land-connected state highway system; or

26 (ii) a land highway or vehicular way with an
27 average daily traffic volume greater than 499; and

28 (C) which

29 (i) has a gross vehicle weight rating or gross

1 combination weight rating greater than 10,000 pounds;

2 (ii) is designed to transport more than 15 passen-
3 gers, including the driver; or

4 (iii) is used in the transportation of materials
5 found by the Secretary of Transportation to be hazardous for
6 purposes of 49 U.S.C. 1801 - 1813 (Hazardous Materials
7 Transportation Act);

8 (D) except that the following vehicles meeting the
9 criteria in (A) - (C) of this paragraph are not commercial
10 vehicles:

11 (i) emergency or fire equipment that is necessary
12 to the preservation of life or property;

13 (ii) farm vehicles that are controlled and
14 operated by a farmer; used to transport agricultural
15 products, farm machinery, or farm supplies to or from that
16 farmer's farm; not used in the operations of a common or
17 contract motor carrier; and used within 150 miles of the
18 farmer's farm;

19 (iii) school buses;

20 (iv) vehicles owned and operated by the federal
21 government unless the vehicle is used to transport property
22 of the general public for compensation in competition with
23 other persons who own or operate a commercial motor vehicle
24 subject to this chapter, and except to the extent that
25 regulation of vehicles operated by the federal government is
26 permitted by federal law; and

27 (v) vehicles used exclusively for purposes other
28 than commercial purposes;

29 (2) "commercial purposes" means activities for which a

1 person receives direct monetary compensation or activities for which a
2 person receives no direct monetary compensation but which are inci-
3 dental to and done in furtherance of the person's primary business;

4 (3) "division" means the division of ^{trucks} motor vehicles, De-
5 partment of Public Safety;

6 (4) "gross combination weight rating" means the value
7 specified by the manufacturer as the loaded weight of a combination
8 vehicle, except that if a value has not been specified by the manufac-
9 turer, the gross combination weight rating is determined by adding the
10 gross vehicle weight rating of the power unit and the total weight of
11 the towed unit and the load on the towed unit;

12 (5) "gross vehicle weight rating" means the value specified
13 by the manufacturer as the loaded weight of a single vehicle.

14 * Sec. 3. AS 28.32.020 is repealed.

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 8, 1990

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to commercial vehicle safety inspections.

This bill is intended to bring Alaska into compliance with the Federal Motor Carrier Safety Regulations (49 C.F.R. secs. 390 -- 399). Compliance with these federal regulations is a condition of receiving federal Motor Carrier Safety Assistance Program money.

The primary component of this bill is the definition of "commercial motor vehicle" in sec. 2 of the bill, which adopts federal standards while recognizing the uniqueness of Alaska roadways. The definition continues the tradition of less strict regulation of vehicles on roads not connected either to the main state highway system or to heavily travelled roads. See, e.g., AS 28.10.011 (registration) and AS 28.22.200 (insurance).

The secondary component of this bill is the authorization in sec. 1 of the bill, for employees of the Department of Public Safety, who are not peace officers, to issue citations for violations of commercial vehicle safety regulations. Granting authorized employees the authority to conduct inspections and to issue citations is a cost-effective method of enforcing the commercial vehicle safety standards.

I urge your favorable action on this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper".

Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
Title: An Act relating to commercial BRU: Highway Safety Planning Agency
vehicle inspections
Sponsor: Rules Committee Component: Commercial Vehicle Safety
Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 28.32 to bring Alaska law into conformity with federal motor carrier safety regulations. These changes are needed to allow Alaska to participate in the federal commercial vehicle safety inspection program. Alaska's participation in the federal program is not mandated by the federal government, at least at this time. A State program is being developed; funding for implementation will be sought through the normal departmental budgetary process. There will be no direct fiscal impact as a result of the passage of this bill.

Prepared by: Earl D. Clark
Division: Highway Safety Planning Agency

Phone: 465-2446
Date: 12/15/89

Approved by Commissioner: D.A. H. English
Agency: Department of Public Safety

Date: 12/15/89
Page: 1 of 1

12/15/89

Chapter 25. Protection of Blind Persons.

[Repealed, § 1 ch 19 SLA 1972.]

Chapter 30. Abandoned Vehicles.

[Repealed, § 36 ch 127 SLA 1974.]

Chapter 31. Abandoned Motor Vehicles.

[Repealed, § 3 ch 61 SLA 1976. For current law, see AS 28.11.]

Chapter 32. Commercial Motor Vehicle Safety Inspections.

Section	Section
10. Commercial motor vehicle safety inspections	50. Issuance of certificate of inspection
20. Exemptions	60. Falsely representing to be an official station
30. Official commercial motor vehicle inspection stations	70. Counterfeit certificates of inspection
40. Certification of commercial motor vehicle inspectors	80. Duties of commissioner
	90. Violation a misdemeanor
	900. Definitions

Sec. 28.32.010. Commercial motor vehicle safety inspections. A commercial motor vehicle may not be operated after January 1, 1986 without a certificate of inspection. An owner of a commercial motor vehicle shall renew a certificate of inspection at least semi-annually at an official inspection station under AS 28.32.030. The owner may renew a certificate of inspection at any time during the office hours of the inspection station. An owner of a commercial motor vehicle shall display a current sticker of inspection visible from outside the vehicle in a location determined by the division. (§ 3 ch 104 SLA 1985)

Sec. 28.32.020. Exemptions. A commercial motor vehicle is exempt from the requirements of AS 28.32.010 if it is

(1) owned and operated by the federal government unless the vehicle is used to transport property of the general public for compensation in competition with other persons who own or operate a commercial motor vehicle subject to this chapter, and except to the extent regulation of vehicles operated by the federal government is permitted by federal law;

(2) used exclusively to transport ranch and farm products other than bulk milk; or

(3) customarily and historically used for commercial purposes for less than 20 hours per month. (§ 3 ch 104 SLA 1985)

Sec. 28.32.900. Definitions. In this chapter,

(1) "commercial motor vehicle" means a vehicle used by the owner or another person for commercial purposes upon a highway or vehicular way with a daily traffic volume greater than 499 that is a part of the state highway system or is connected by another highway or vehicular way to the state highway system, if the vehicle is

(A) a school bus;

(B) a state or local government vehicle of more than 10,000 pounds unladen gross weight;

(C) a truck or bus of more than 10,000 pounds unladen gross weight; or

(D) a trailer of 5,000 pounds or more unladen gross weight attached to a vehicle described in (C) of this paragraph;

(2) "commercial purposes" means activities for which a person receives direct monetary compensation or activities for which a person receives no direct monetary compensation but are incidental to and done in furtherance of the person's primary business;

(3) "division" means the division of motor vehicles, Department of Public Safety. (§ 3 ch 104 SLA 1985)

Chapter 33. Commercial Motor Vehicle Financial Responsibility.

Section

10. Financial responsibility

Sec. 28.33.010. Financial responsibility. (a) A person who carries passengers or freight for hire intrastate in a commercial motor vehicle or a person who carries freight in a motor vehicle for commercial purposes, or a person who rents or leases a motor vehicle for the use of another to carry freight shall procure and maintain security in the following minimum amounts:

(1) \$200,000 for property damage in a single occurrence;

(2) \$500,000 for bodily injury or death in a single occurrence.

(b) Evidence of security required under (a) of this section shall be filed with the department and must be

(1) a policy or certificate of insurance issued by an insurer acceptable to the department;

(2) a bond of a surety company licensed to write surety bonds in the state;

(3) evidence accepted by the department, showing ability to self-insure; or

(4) other security approved by the department.

(c) The department may authorize department personnel to enforce this section and may adopt procedural regulations necessary to implement this section.

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

- 11. Duty of commissioner to adopt regulations
- 21. Commissioner to enter compacts and reciprocal agreements
- 31. Department to publish statutes and regulations relating to vehicles, vehicle use and pedestrians
- 35. Approval of accident prevention courses

Section

- 41. Commissioner to prescribe forms, examine applications, and administer oaths
- 45. Voter registration
- 51. Suspended or revoked documents
- 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 must include, but are not 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 ensuring the accuracy of information contained in automated and manual information retrieval systems;

(8) *(Repealed, § 3 ch 77 SLA 1982.)*

(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).

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*, 504 P.2d 831 (Alaska 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*, 484 P.2d 250 (Alaska 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. Baxter*, 484 P.2d 250 (Alaska 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

Sec. 12.25.160. Arrest defined. Arrest is the taking of a person into custody in order that the person may be held to answer for the commission of a crime. (§ 2.01 ch 34 SLA 1962)

NOTES TO DECISIONS

Arrest for speedy trial purposes. — "Arrest," as used in Crim. R. 45(c)(1), which provides for a 120-day speedy trial period, must be defined in conformity with the statutory definition of an arrest. *G.D. v. State, Ct. App. Op. No. 374* (File No. 7724), P.2d (1984).

Defendant was not arrested on the date of the child-in-need-of-aid hearing, and the 120-day speedy trial period did not begin to run until he was served with a copy of the information charging him with sexual assault in the first degree and contributing to the delinquency of a minor. *G.D. v. State, Ct. App. Op. No. 374* (File No. 7724), P.2d (1984).

Drawn guns and handcuffing do not necessarily turn stop into arrest. *Howard v. State, Ct. App. Op. No. 260* (File Nos. 6027, 6123), 664 P.2d 603 (1983).

Lawful stops and custodial arrest distinguished. — See *Howard v. State, Ct. App. Op. No. 260* (File Nos. 6027, 6123), 664 P.2d 603 (1983).

Applied in *Goss v. State, Sup. Ct. Op. No. 193* (File No. 235), 390 P.2d 220, cert. denied, 379 U.S. 859, 85 S. Ct. 118, 13 L.Ed.2d 62 (1964); *Aldridge v. State, Sup. Ct. Op. No. 1971* (File No. 3413), 602 P.2d 798 (1979); *Maynard v. State, Ct. App. Op. No. 136* (File No. 5501), 652 P.2d 489 (1982).

Sec. 12.25.180. When peace officer may issue citation or take person before the court. (a) When a person is stopped or contacted by a peace officer for the commission of a misdemeanor or the violation of a municipal ordinance, the person may, in the discretion of the contacting peace officer, be issued a citation instead of being taken before a judge or magistrate under AS 12.25.150, unless

- (1) the person does not furnish satisfactory evidence of identity;
- (2) the contacting officer has reasonable and probable cause to believe the person is a danger to self or others;
- (3) the crime for which the person is contacted is one involving violence or harm to another person or to property; or
- (4) the person asks to be taken before a judge or magistrate under AS 12.25.150.

(b) When a person is stopped or contacted by a peace officer for the commission of an infraction or a violation, the person shall be issued a citation instead of being taken before a judge or magistrate under AS 12.25.150, unless

- (1) the person does not furnish satisfactory evidence of identity; or
- (2) the person refuses to accept the citation or to give a written promise to appear as provided for under AS 12.25.190(c). (§ 1 ch 31 SLA 1973; am § 19 ch 127 SLA 1974; am § 3 ch 144 SLA 1977; am § 34 ch 102 SLA 1980)

Effect of amendments. — The 1980 amendment designated the provisions of this section as subsection (a), deleted "or an infraction" following "of a misdemeanor" near the beginning of subsection (a), and added subsection (b).

Legislative history reports. — For report on ch. 31, SLA 1973 (SB 25), see 1973 Senate Journal Supplement No. 7, p. 2.

NOTES TO DECISIONS

Applied in Ahmaogak v. State, Sup. Ct.
Op. No. 1857 (File No. 4171), 595 P.2d 985
(1979).

~~Sec. 12.25.190. When person to be given five-day notice to appear in court. (a) When a person is contacted by a peace officer and the peace officer exercises the option provided for in AS 12.25.180, the officer shall prepare a written citation and issue it to the person.~~

~~(b) The time specified in the notice to appear shall be at least five days after the alleged violation or the issuance of the citation, whichever is later, unless the person cited requests an earlier hearing.~~

~~(c) The person cited for the crime shall give a written promise to appear in court by signing at least one copy of the written citation prepared by the peace officer and the officer shall deliver a copy of the citation to the person. The written promise requirement of this subsection does not apply to motor vehicle and traffic citations under AS 28.05.151, fish and game citations for which a bail schedule has been established under AS 16.05.165, citations issued under AS 18.35.341, and citations issued in state park and recreational facilities under AS 41.21.960. (§ 1 ch 31 SLA 1973; am § 20 ch 127 SLA 1974; am § 4 ch 144 SLA 1977; am § 20 ch 78 SLA 1978; am § 12 ch 34 SLA 1984; am § 1 ch 102 SLA 1984; am § 1 ch 132 SLA 1984)~~

Effect of amendments. — The first 1984 amendment, in subsection (c), substituted "a" for "his" in the first sentence and added "or a citation issued under AS 18.35.341" in the second sentence.

The second 1984 amendment added "and citations issued in state park and recreational facilities under AS 41.21.960" at

the end of the last sentence in subsection (c).

The third 1984 amendment, in subsection (c), added the language beginning "and fish and game citations" and ending "under AS 16.05.165" in the second sentence.

NOTES TO DECISIONS

Applied in Ahmaogak v. State, Sup. Ct.
Op. No. 1857 (File No. 4171), 595 P.2d 985
(1979).

~~Sec. 12.25.200. Form for citations. The chief administrative officer of each law enforcement agency in the state is responsible for the issuance of books containing appropriate citations, and shall maintain a record of each book and each citation contained in it and shall require and retain a receipt for every book issued to a peace officer. (§ 1 ch 31 SLA 1973)~~

~~Sec. 12.25.210. Disposition and records of citations. (a) A peace officer, upon issuing a citation to an alleged violator under AS 12.25.180, shall deposit the original or a copy of the citation with a court having jurisdiction over the alleged offense.~~

(b) Upon the deposit of the original or a copy of the citation with a court having jurisdiction over the alleged offense, the original or copy of the citation may be disposed of only by trial in the court or other official action by a magistrate or judge of the court.

(c) It is unlawful and official misconduct for a peace officer or other officer or public employee to dispose of a citation or copies of it or of the record of the issuance of the citation in a manner other than as required in this section.

(d) The chief administrative officer of each law enforcement agency shall require each officer in the agency to return a copy of every citation issued by the officer to an alleged violator of a law or ordinance and all copies of every citation that has been spoiled or upon which any entry has been made and not issued to an alleged violator.

(e) The chief administrative officer of each law enforcement agency shall also maintain in connection with every citation issued by an officer in the agency a record of the disposition of the charge by the court in which the original or copy of the citation was deposited. (§ 1 ch 31 SLA 1973)

Sec. 12.25.220. When copy of citation considered a lawful complaint. If the form of citation provided under AS 12.25.200 includes information and is sworn to as required under the laws of this state in respect to a complaint charging commission of the offense alleged in the citation, then the citation when filed with a court having jurisdiction is considered to be a lawful complaint for the purpose of prosecution. (§ 1 ch 31 SLA 1973)

NOTES TO DECISIONS

When citation is a charge within meaning of Cr. R. 45(c)(1). — When a citation is served which gives a person official notice that he or she is accused of a crime and is summoned to appear in court to answer for such crime upon penalty of fine and/or imprisonment, the citation is a charge within the meaning of Cr. R. 45(c)(1) which triggers the 120-day period.

Ahmaogak v. State, Sup. Ct. Op. No. 1857 (File No. 4171), 595 P.2d 985 (1979).

Service of a Uniform Summons and Complaint triggers the 120-day period in which trial must be commenced under Cr. R. 45(b). Ahmaogak v. State, Sup. Ct. Op. No. 1857 (File No. 4171), 595 P.2d 985 (1979).

~~**Sec. 12.25.230.** Failure to obey citation. A person who fails to appear in court to answer the citation, regardless of the disposition of the charge for which the citation was issued, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both. (§ 1 ch 31 SLA 1973; am § 5 ch 144 SLA 1977)~~

submit to a blood test at the hospital or be arrested and transported to the state police where he would be required by law to submit to a breath test to determine his blood-alcohol level, was released after the blood sample was taken, and was never handcuffed or moved from the hospital, the trial court could find that although

the defendant was in police custody, the custody never amounted to an arrest as defined in this section. *Greenawalt v. Municipality of Anchorage*, 692 P.2d 983 (Alaska Ct. App. 1985).

Cited in *Cannizzaro v. State*, 765 P.2d 110 (Alaska Ct. App. 1988).

Sec. 12.25.190. When person to be given five-day notice to appear in court. (a) When a person is contacted by a peace officer and the peace officer exercises the option provided for in AS 12.25.180, the officer shall prepare a written citation and issue it to the person.

(b) The time specified in the notice to appear shall be at least five days after the alleged violation or the issuance of the citation, whichever is later, unless the person cited requests an earlier hearing.

(c) The person cited for the crime shall give a written promise to appear in court by signing at least one copy of the written citation prepared by the peace officer and the officer shall deliver a copy of the citation to the person. The written promise requirement of this subsection does not apply to motor vehicle and traffic citations for which a bail or fine schedule has been established under AS 28.05.151, fish and game citations for which a bail schedule has been established under AS 16.05.165, citations issued under AS 04.21.065, citations issued under AS 18.35.341, citations issued in state park and recreational facilities under AS 41.21.960, or littering citations issued under AS 46.06.080. (§ 1 ch 31 SLA 1973; am § 20 ch 127 SLA 1974; am § 4 ch 144 SLA 1977; am § 20 ch 178 SLA 1978; am § 12 ch 34 SLA 1984; am § 1 ch 102 SLA 1984; am § 1 ch 132 SLA 1984; am § 1 ch 37 SLA 1987; am § 1 ch 16 SLA 1987; am § 3 ch 81 SLA 1989)

Effect of amendments. — The first 1987 amendment, effective June 6, 1987, in the last sentence of subsection (c) deleted "and" following "AS 18.35.341" and added "and littering citations issued under AS 46.06.080" at the end of the subsection.

The second 1987 amendment, effective

January 1, 1988, inserted "for which a bail or fine schedule has been established" in the second sentence of subsection (c).

The 1989 amendment, effective August 30, 1989, inserted "citations issued under AS 04.21.065" in the second sentence of subsection (c).

Sec. 12.25.195. Disposition of scheduled offenses. (a) A person cited for an offense for which a scheduled amount of bail or a fine has been established may mail or personally deliver to the clerk of the court with appropriate jurisdiction if a bailable offense, or to the clerk of the municipality that issued the citation if a scheduled municipal fine, the amount of the bail or fine indicated on the citation for the offense together with a copy of the citation signed by the person indi-

cating the person's waiver of court appearance, entry of plea of no contest, and forfeiture of bail or fine. A motor vehicle or traffic citation may be mailed or personally delivered within five days of the date of the citation. A citation for a scheduled offense other than a motor vehicle or traffic citation may be mailed or personally delivered within 15 days of the date of the citation.

(b) When bail or a fine is forfeited under this section, a judgment of conviction shall be entered. The bail or fine paid is complete satisfaction for the offense. (§ 2 ch 76 SLA 1987)

Sec. 12.25.200. Form for citations. (a) The chief administrative officer of each law enforcement agency in the state is responsible for the issuance of books containing appropriate citations, and shall maintain a record of each book and each citation contained in it and shall require and retain a receipt for every book issued to a peace officer.

(b) A citation issued under AS 12.25.180 must indicate the amount of bail or fine applicable to the offense, the procedure a person must follow in responding to the citation, and that if the person fails to pay the bail or fine the person must appear in court. In addition, a citation must indicate that the person has a right to

- (1) a trial;
- (2) engage counsel;
- (3) confront and question witnesses;
- (4) testify; and

(5) subpoena witnesses on the person's behalf. (§ 1 ch 31 SLA 1973; am § 3 ch 76 SLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, added subsection (b).

Sec. 12.25.210. Disposition and records of citations. (a) A peace officer, upon issuing a citation to an alleged violator under AS 12.25.180, shall deposit the original or a copy of the citation with a court having jurisdiction over the alleged offense. If the citation charges an offense under a municipal ordinance for which a scheduled fine has been established, the peace officer shall deposit the original or a copy of the citation with the clerk of the municipality that issued the citation, unless otherwise provided under rule adopted by the supreme court.

(b) Upon the deposit of the original or a copy of the citation with a court having jurisdiction over the alleged offense, the original or copy of the citation may be disposed of only by trial in the court or other official action by a magistrate or judge of the court.

(c) It is unlawful and official misconduct for a peace officer or other officer or public employee to dispose of a citation or copies of it or of

the record of the issuance of the citation in a manner other than as required in this section.

(d) The chief administrative officer of each law enforcement agency shall require each officer in the agency to return a copy of every citation issued by the officer to an alleged violator of a law or ordinance and all copies of every citation that has been spoiled or upon which any entry has been made and not issued to an alleged violator.

(e) The chief administrative officer of each law enforcement agency shall also maintain in connection with every citation issued by an officer in the agency a record of the disposition of the charge by the court in which the original or copy of the citation was deposited. (§ 1 ch 31 SLA 1973; am § 4 ch 76 SLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, added the last sentence of subsection (a).

Sec. 12.25.230. Failure to obey citation. (a) Except as provided in (b) of this section, a person who fails to appear in court to answer the citation, regardless of the disposition of the charge for which the citation was issued, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than one year, or by both.

(b) If a person is cited for an offense for which an amount of scheduled bail or fine is established and fails to pay the bail or fine, or appear in court, the citation shall be considered a summons for a misdemeanor.

(c) If a person cited for an offense for which an amount of scheduled bail or fine has been established appears in court and is found guilty, the penalty imposed for the offense may not exceed the bail or fine established for the offense. (§ 1 ch 31 SLA 1973; am § 5 ch 144 SLA 1977; am §§ 5, 6 ch 76 SLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, substituted "Except as provided in (b) of this section, a" for "A" at the beginning of the section and added subsections (b) and (c).

Chapter 30. Bail.

Sec. 12.30.060. Violation of conditions.

NOTES TO DECISIONS

Superior court has discretion to order remission of a forfeited bond. In exercising its discretion, the court should consider all relevant factors, including: (1)

Cost, inconvenience, or prejudice to the government in regaining custody, (2) delay resulting from the nonappearance, (3) willfulness of the failure to appear, and