

SB

261

Date of Committee Action: 3/20/92

The JUDICIARY Committee considered: CSSB 261(JUD)(title am)

CS FOR SEN. BILL NO. 261 (JUD)(title am) OPERATION OF VEHICLES, PLANES, & BOATS
 "An Act relating to the authority of the Department of Public Safety to adopt regulations concerning commercial motor vehicle safety and licensing, and regulations necessary to qualify for federal highway funds; to operating commercial motor vehicles; to the definitions of 'previously convicted' and 'controlled substance' as they relate to motor vehicle licenses and to offenses regarding the operation of motor vehicles, aircraft, and watercraft; and providing for an effective date."

- RECOMMENDATIONS:
 be replaced with HCSCSSB 261 (JUD) the same title
 a new title
 have attached amendments(s)
 do pass
 do not pass
 no recommendations
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

- ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)
 fiscal impact _____ fiscal note(s) _____
 zero fiscal note Dept. of Law, Prosecution 3/10/92 zero fiscal note(s) Alaska Court System 2-24-92 (Trial Courts)

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Mike Miller	✓				
Terry Martin	✓				
Mark Stanley	X				
Louis Rod Palmell	✓				
J. Ellis	✓				
W. Krenberg	✓				

W. Krenberg
 VICE CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSSB 261 (Jud)

Revision Date: _____
Title: "...relating...to regulations concerning commercial motor vehicle safety..."
Sponsor: Senate Rules/Request of the Governor
Requestor: House Judiciary Committee

Department Affected: Department of Law
BRU: Prosecution
Component: All

COMPONENT SERIAL

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Expenditures/Revenues: (Thousands of Dollars)

85 through 91

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

This bill amends the Alaska Uniform Traffic Laws Act (AS 28) to authorize the adoption of regulations necessary to implement a commercial motor vehicle safety inspection program, a commercial motor vehicle licensing program, and other requirements imposed by federal law or regulation. The changes made in the bill are needed to avoid loss or withholding of federal highway money. Although some additional offenses may occur involving commercial drivers, it is not anticipated that the bill will have a fiscal impact on the Department of Law.

Prepared by: Richard I. Pegues, Director
Division: Administrative Services
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law

Phone: 465-3672
Date: March 10, 1992
Date: March 10, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE: (907) 465-4322

March 3, 1992

The Honorable Dave Donley
Chair, House Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Representative Donley:

Re: SB 261, An Act Relating to
Commercial Motor Vehicles

SB 261, an Act relating to penalties for operation of a commercial motor vehicle, has passed the Senate and is now in the House Judiciary Committee. I am writing to ask you to schedule this bill for a hearing as soon as reasonably possible.

If SB 261 is not enacted into law, there will be two major consequences. The first will occur on the federal deadline of April 1, 1992, when Alaska's authority to issue commercial motor vehicle driver's licenses (CDLs) will be revoked. This means that Alaska residents operating commercial vehicles in Alaska will be in violation of federal law, since the licenses previously issued to them will no longer be valid. It also means that Alaska commercial vehicle drivers will no longer be allowed to operate in any other state. The only "legal" commercial vehicle operators in Alaska would be out-of-state drivers with a valid CDL from their home state. Alaskans could not go to another state to get a license, because a state may only issue CDLs to its own residents.

The second consequence of a failure to adopt this proposed legislation is the loss of a percentage of federal highway money, beginning on October 1, 1993. The first year's loss would be five percent of the total allotment, approximately \$12,000,000. The second and subsequent

The Honorable Dave Donley
March 3, 1992
Page 2

years' loss would be 10 percent. This penalty would continue until the state complies with the federal requirement.

In order to avoid making all present commercial vehicle operators in the state ineligible to continue their livelihood, this bill must be passed and effective by April 1, 1992. I am respectfully requesting that this bill be set for a hearing as soon as possible. I, or Ms. Juanita Hensley, Chief of Driver Services, would be glad to answer any questions you may have about this.

Sincerely,


Gayle A. Horetski
Deputy Commissioner

SB 261--Operating Commercial Motor Vehicles While Intoxicated

<u>Sec.</u>	<u>Purpose</u>	<u>Required by</u>
1	Gives department authority to adopt regs	
2-6	Applies current license revocation procedures to commercial drivers with 0.04% blood alcohol or refusal of breath test	49 CFR 383.51(d)
7	Requires notification to the state where an out-of-state commercial driver is licensed	49 USC App. 2708
8-10	Requires court to revoke commercial license for refusing to take a chemical test of breath	
11-12	Makes a person a second or subsequent offender whether convicted of DWI as a regular driver or as a commercial driver	
13	Defines "disqualify" to mean that the privilege to drive a commercial motor vehicle is withdrawn	
14	Same as secs. 11-12	
15	Creates the offense of operating a commercial motor vehicle while intoxicated, using the threshold level of 0.04% blood alcohol	
	Establishes "implied consent" to take a chemical test of breath	49 CFR 383.72
	Creates the necessary legal presumptions arising from having 0.04% blood alcohol	
16	Amends current law to require a commercial license when "driving" a commercial vehicle	
17	Requires disqualification for 60 days for submitting false information in application for a commercial license or employment	49 CFR 383.73(g)
18	Prohibits employers from hiring commercial drivers who do not have a commercial license	
19	Requires that commercial drivers be placed "out of service" for 24 hours if drinking or using drugs or in possession of alcohol or drugs within four hours of going on duty	49 CFR 392.5
	Requires court disqualification for serious traffic violations	49 CFR 383.51(b) and (c)
	Creates an offense for driving a commercial vehicle without a license or if the license is revoked or the person is "out of service"	49 CFR 383.51(d)(1)

<u>Sec.</u>	<u>Purpose</u>	<u>Required by</u>
20	Necessary definitions	
21	Conforming amendments to current "open container" law	
22-23	Conforming amendments to current DWI law	
24-27	Conforming amendments to current law relating to refusal to take a breath test	
28	Conforming amendments to current law relating to administering chemical tests without consent	
29	Conforming repealer of portion of current "open container" law	
30	Provides, consistent with case law, that convictions committed before the effective date of the Act can be considered prior convictions	
31	Effective date	Deadline for implementation: April 1, 1992 49 CFR 383.23

ALASKA TRUCKING ASSOCIATION, INC.

3443 Minnesota Drive • Anchorage, Alaska 99503 • PHONE (907) 276-1149 • FAX (907) 274-1946

TESTIMONY OF FRANK J. DILLON
BEFORE
HOUSE JUDICIARY COMMITTEE
MARCH 13, 1992

Mr. Chairman, members of the Committee, My name is Frank Dillon and I am Executive Director of Alaska Trucking Association, Inc. I'm submitting this testimony on behalf of the members of ATA who urge you to pass Committee Substitute for Senate Bill No. 261.

CSSB 261 is enabling legislation that will validate with the federal government the more than 8,500 already issued Commercial Driver Licenses in the State of Alaska.

By and large, Alaska's heavy truck drivers are professionals. The demands of the job require a great degree of skill and knowledge in order to operate safely and efficiently over Alaska's highways.

Companies that use trucks and the drivers of those trucks believe that qualified drivers are an essential ingredient in making Alaska's highways safe.

The Commercial Driver's License is designed to help ensure the drivers of heavy commercial trucks are qualified.

On behalf of Alaska's truck users, drivers, and the motoring public, please pass CSSB 261.



• P.O. Box 73398
• 600 Driveway St.
• Fairbanks,
• Alaska 99707

• Telephone
(907) 452-1181
• FAX #
(907) 451-6188

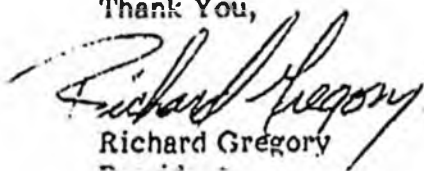
March 9, 1992

To Whom It May Concern:

This letter is in regards to C.S.S.B.261, the Commercial Drivers License bill which has been scheduled in the House Judiciary Committee.

All drivers and employees of Sourdough Express, Inc. support the C.S.S.B. 261 , the Commercial Drivers License bill.

Thank You,



Richard Gregory
President

cc: Rep. Dave Donley
Max Gruenberg
Pat Parnell
Mark Hanley
Terry Martin
Mike Miller
Johnny Ellis

To Members of Judiciary Com. March 10

As you well know safety is a high concern of responsible truck drivers on our highways. That is why I and owner/operators like myself greatly support C.S.S.B. 261, the Commercial Drivers License Bill. Any responsible professional trucker is glad to see restrictions that will get the outlaws out of the driver's seats. These are the same guys that will work for nothing that keeps the rates at a barely able to survive rate and they do it by hauling heavy, driving fast, and not keeping their rigs in safe mechanical shape.

You should look at re-regulating the trucking industry - especially in the construction hauling segment. It will make the highways safer!

Alvin B. Bogen
1407 W. 40th Anchorage

RULES OF APPELLATE PROCEDURE Rule 602

ground to relieve the attorney's client of the filing requirement. *Beavers v. Alaska Const., Inc.*, Op. No. 3560, 787 P2d 643 (Alaska 1990).

A challenge to an administrative decision, even if based on constitutional grounds, is subject to the 30-day limitation of this rule. *Diedrich v. City of Ketchikan*, Op. No. 3661, 805 P2d 362 (Alaska 1991).

Any claim which is functionally an administrative appeal must be brought within the 30-day limit of this rule; however denominated, a claim is functionally an administrative appeal if it requires the court to consider the propriety of agency determination. *Diedrich v. City of Ketchikan*, Op. No. 3661, 805 P2d 362 (Alaska 1991).

City employee's complaint in superior court that the city breached the covenant of good faith and fair dealing implied in his employment contract when it discharged him, allegedly in retaliation for appealing his termination to the city personnel board, was the functional equivalent of an administrative appeal, and therefore had to be brought within the 30-day appeal period of this rule. *Diedrich v. City of Ketchikan*, Op. No. 3661, 805 P2d 362 (Alaska 1991).

Rule 603. Stays.

(a) Civil Appeals.

(1) *Automatic Stay.* An automatic two day stay of execution or enforcement of district court judgments is provided for in District Court Civil Rule 24(a). A motion for stay and bond are not required for this stay.

(2) *Stay Upon Appeal—Supersedeas Bond.*

[a] *Stay.* When an appeal is taken, the appellant may obtain a stay of proceedings to enforce the judgment by filing a supersedeas bond. The stay is effective when the supersedeas bond is approved. The filing of a supersedeas bond does not prohibit the court from considering the public interest in deciding whether to impose or continue a stay on that portion of an administrative or district court judgment which is not limited to monetary relief.

[b] *Request for Approval.* A supersedeas bond, with a Request for Approval of Supersedeas Bond, must be served and filed with the district court, or with the superior court in administrative appeals. The bond may be filed at or after the time for filing the notice of appeal.

[c] *Amount and Form.* The amount of the supersedeas bond is 125% of the district court or administrative agency judgment (including any prejudgment interest, costs and attorney's fees), except that the court may specify a different amount based on the standard provided by Rule 204(d) upon motion by any party to the appeal. The form and conditions of the bond are governed by Civil Rule 80 and Appellate Rule 204(d).

[d] *Objections — Reconsideration.* An appellee may by motion raise objections to the form or amount of the bond or to the sufficiency of the surety. However, approval of the bond will not be delayed to allow objections to be filed. Objections filed after the supersedeas bond has been approved will be treated as a motion to rescind or modify the approval to be decided by the judge.

[e] *Approval.* The clerk may approve a supersedeas bond upon filing if: (i) the bond is in the form prescribed above; (ii) the amount of the bond is 125% of the judgment or, if the judge has ordered a different amount, in the amount ordered by the judge; and (iii) the bond is in cash pursuant to Rule 602(f) or is executed by approved surety companies. Otherwise, the judge must decide whether to approve the bond.

[f] *Exemption.* The state or an officer or agency thereof or a municipality or an officer or agency thereof desiring a stay on appeal is exempt from the requirement of filing a supersedeas bond.

(3) *Stay in Workers' Compensation Appeals.* An employer appealing to the superior court from a judgment of the Alaska Workers' Compensation Board may obtain a stay of the judgment pending the appeal by complying with subparagraph (a)(2) and by establishing that irreparable damage will result if the stay is not granted.

(4) *Proceedings on Stay.* When an appeal is taken, the district court judge or magistrate shall enter a written order indicating whether or not the proceedings to enforce a judgment have been stayed. If the proceedings are stayed, and process has been issued to enforce the judgment, the judge or magistrate must recall the process by written notice to the officer holding the process. Thereupon the process must be returned to the court, and all property seized or levied upon by virtue of such process must be released if it has not been sold, and in cases of civil arrest, the person arrested must be released from custody. This subdivision of this rule will not be construed as making any stay retroactive or as invalidating any proceedings or levies prior to the time the stay becomes effective.

(b) *Criminal Appeals.* If a sentence of imprisonment is imposed, admission to bail will be allowed and the sentence stayed, pending appeal. A sentence to pay a fine or a fine and costs may be stayed, if an appeal is taken, by the district judge or magistrate or by the superior court upon such terms as the court deems proper. During appeal the court may require the defendant to deposit the whole or any part of the fine and costs in the registry of the superior court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make an appropriate order to restrain the defendant from dissipating his or her assets. An order placing the defendant on probation will be stayed if an appeal is taken.

(SCO 439 effective November 15, 1980; amended by SCO 554 effective April 4, 1983; by SCO 957 effective March 30, 1989; and by SCO 1015 effective January 15, 1990)

Annotations

Cases

An employer must make a showing of irreparable damage as well as filing a supersedeas bond in order to obtain a stay of a disability

award in worker's compensation cases. *Wise Mechanical Contractors v. Bignell*, Op. No. 2329, 626 P2d 1085 (Alaska 1981).

A monetary enforcement judgment on an administrative order may be stayed as a matter of right upon the posting of an appropriate supersedeas bond under this rule. *Pipeliners Union v. Alaska State Commission*, Op. No. 2820, 681 P2d 330 (Alaska 1984).

In a consolidated review and enforcement proceeding pertaining to an order of the Alaska State Commission for Human Rights, the court could enter an enforcement judgment before entering a judgment on the appeal. *Pipeliners Union v. Alaska State Commission*, Op. No. 2820, 661 P2d 330 (Alaska 1984).

Superior court improperly stayed the payment of taxes during its review of administrative agency's order where the supersedeas bond filed with the court for the principal amount of taxes due did not include costs and interest. *City of Nome v. Catholic Bishop of Northern Alaska*, Op. No. 2986, 707 P2d 870 (Alaska 1985).

Even if AS 29.53.390(a), which authorizes judicial review of a disputed tax assessment, were interpreted to require payment of taxes before appeal, this rule supersedes it. *City of Nome v. Catholic Bishop of Northern Alaska*, Op. No. 2986, 707 P2d 870 (Alaska 1985).

Rule 604. Record.

(a) Appeals from District Court.

(1) Preparation of Record.

[a] The record on appeal consists of the entire district court file, including the original papers and exhibits filed in the district court, and the record of proceedings before the district court, unless otherwise ordered by the court or unless the parties designate an abbreviated record. A party is not required to submit a designation of the record unless the court so requires.

[b] The record of proceedings before the district court will include cassette tapes rather than transcripts unless the superior court orders the submission of transcripts. Otherwise, the record on appeal must be prepared and certified in conformity with Rule 210. The papers in the record need not be numbered, and the superior court clerk's certificate attached to the record need not include a table of contents.

[c] The clerk of the superior court shall prepare the record on appeal. In the absence of an agreement between the parties or an order of the court to the contrary, all reasonable costs incurred in connection with preparing the record on appeal or a cross-appeal will be borne by the appellant.

(2) *Time*. The record must be prepared and certified within 40 days from the date of filing of the notice of appeal.

(3) *Power of Court to Correct or Modify Record of District Court*. If any differences arise as to whether the record on appeal truly discloses what occurred in the district court, the difference must be submitted to and settled by the superior court and the record made to conform to it. If anything material to either party is omitted from the record on appeal by error or accident or is misstated therein, the parties by stipulation, or the superior court on motion or of its own initiative, may direct that the omission or misstatement be corrected,

and if necessary that a supplemental record be prepared and certified in accordance with this rule.

(4) *Return of Record and Appellate File after Final Disposition*. Unless the court otherwise orders, the clerk shall return the record and appellate file after final disposition to the district court as provided by Rule 512(a)(2).

(b) Appeals from Administrative Agencies.

(1) Preparation of Record.

[a] The original papers and exhibits filed with the administrative agency, and a typed transcript of the record of proceedings before the agency, constitute the record on appeal unless otherwise ordered by the court or unless the parties designate an abbreviated record. In an appeal from the revocation of a driver's license by the Division of Motor Vehicles, the record of proceedings will include cassettes rather than transcripts unless otherwise ordered by the court. A party is not required to submit a designation of the record unless the court so requires.

[b] The record on appeal must be prepared and certified in conformity with Appellate Rule 210, except as otherwise provided in this rule.

[c] The administrative agency shall prepare the record on appeal. In the absence of an agreement between the parties or an order of the court to the contrary, all reasonable costs incurred in connection with preparing the record on appeal shall be borne by the appellant. The preparing agency may require advance payment of the costs as reasonably estimated by the agency.

(2) *Time*. The record must be prepared and certified by the agency within 40 days from service of notice by the court that the agency is to prepare the record.

(3) *Notice of Certification of the Record*. Immediately upon completion, the agency shall forward the record to the superior court. The court shall notify the parties that the record has been prepared and certified by the agency and is available at the court.

(4) *Return of Record and Appellate File after Final Disposition*. If a timely appeal from the superior court decision is filed and unless the court otherwise orders, the clerk shall return the record after final disposition to the administrative agency as provided by Rule 512(a)(3). If a timely appeal is not filed, the clerk shall return the record to the agency on the day after the time for filing an appeal expires. The appellate file will be retained by, or returned to, the superior court.

(SCO 439 effective November 15, 1980 as amended by SCO 767 effective March 15, 1987; by SCO 826 effective August 1, 1987; by SCO 873 effective July 15, 1988; by SCO 928 effective January 15, 1989; and by SCO 1015 effective January 15, 1990)