

S B

261

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX 100
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

May 13, 1991

The Honorable Pat Rodey
Alaska State Senate
P.O. Box V
Juneau, AK, 99811

Re: SB 261, relating to commercial motor vehicle drivers

Dear Senator Rodey:

This is in response to your request for an explanation of the anticipated impact of changing the burden of proof from a "preponderance" to "clear and convincing" evidence in AS 28.15.166(j), which governs administrative proceedings to revoke driver's licenses. The perceived need for the change is apparently to assure that commercial motor vehicle drivers are not treated unfairly in license revocation proceedings provided in SB 261.

The standard of "preponderance of the evidence" is the standard ordinarily applied in civil courts to justify awarding millions of dollars in tort cases, to impose years of incarceration in probation revocation actions, to civilly commit persons who are mentally ill, and to take a variety of other actions that have serious legal consequences. We do not view this historical allocation of burden of proof as somehow "too low", nor has there been any dissatisfaction in the application of this standard to the hundreds of driver license revocation proceedings that occur every year.

The number of commercial motor vehicle drivers who will be subject to these revocation procedures is expected to be minimal: perhaps 10 per year. By contrast, there are 5000 administrative revocations currently imposed annually involving ordinary drivers of passenger motor vehicles. About 20% take steps to challenge the revocation.

The issues to be determined by the hearing officer in a driver license revocation relate to whether the arresting officer had "reasonable grounds to believe that the person" was under the influence, whether the person refused to take a breath test, or

The Honorable Pat Rodey

May 13, 1991

Page 2

whether the chemical test produced a certain result, AS 28.15.166(g). These are essentially the same issues that are litigated in any criminal trial involving DWI or refusal to take a breath test. In other words, an administrative hearing officer is required to hear all the evidence in the case.

If the burden of proof is increased, as has been suggested, and some part of the evidence is later found by a court not to have been "clear and convincing", the case is reversed and the person's license cannot be administratively revoked. The public thus has less protection from potentially dangerous drivers.

A higher burden of proof makes it more difficult to revoke licenses and certainly gives drivers a greater incentive to pursue litigation in license revocation cases. It is conceivable that the Department of Public Safety would require a fiscal note to handle the additional contested proceedings that can be expected. Similarly, the budget of the civil division of the Department of Law, which handles these proceedings for the state, might also be impacted.

To impose upon the state an additional burden in so many administrative proceedings is, in our opinion, not warranted under the circumstances presented by this bill. As indicated by the testimony from the Alaska Truckers Association, it is hard to overstate the danger presented by these big rigs (in excess of 26,000 pounds) and by vehicles carrying hazardous substances. It does not seem unreasonable to impose upon these commercial drivers the same standard of proof that has worked well for many years as applied to ordinary drivers.

If I can provide additional information, please contact me.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: *Dean J. Guaneli*
Dean J. Guaneli
Assistant Attorney General

DJG:ma

ALASKA TRUCKING ASSOCIATION, INC.

3443 Minnesota Drive • Anchorage, Alaska 99503 • Phone (907) 276-1149 • Fax (907) 274-1948

TESTIMONY OF FRANK J. DILLON, EXECUTIVE DIRECTOR
ALASKA TRUCKING ASSOCIATION, INC.,
BEFORE THE SENATE STATE AFFAIRS COMMITTEE
MAY 10, 1991

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE

MY NAME IS FRANK DILLON. I AM EXECUTIVE DIRECTOR OF ALASKA TRUCKING ASSOCIATION, INC. ATA IS A 31-YEAR OLD TRADE ASSOCIATION REPRESENTING ALASKA'S TRUCKING INDUSTRY. ATA'S 300 MEMBER COMPANIES OPERATE FROM KETCHIKAN TO BARROW AND INCLUDE BOTH LARGE AND SMALL FIRMS, UNION AND NON-UNION. I'M HERE TODAY ON BEHALF OF ATA'S MEMBERSHIP TO ASK YOUR SUPPORT OF S.B. 261,

TO SAFELY DRIVE HEAVY TRUCKS IN ALASKA REQUIRES A HIGH DEGREE OF SKILL. CROWDED STREETS, POOR HIGHWAYS AND HARSH WEATHER COMBINE TO MAKE THE TASK OF OPERATING LARGE TRUCKS A FORMIDABLE ONE. COMPETENT, QUALIFIED PROFESSIONAL DRIVERS ARE NEEDED. ENACTMENT OF S.B. 261 WILL HELP ASSURE IMPROVED HIGHWAY SAFETY BY REQUIRING THAT TRUCK DRIVERS ARE SOBER AND DRUG-FREE. S.B. 261 MANDATES HARSH PENALTIES FOR THOSE COMMERCIAL VEHICLE DRIVERS WHO DO NOT CHOOSE TO OPERATE THEIR VEHICLES IN A REASONABLE, PRUDENT AND SAFETY-CONSCIOUS MANNER. FOR THE VAST MAJORITY OF ALASKA'S PROFESSIONAL DRIVERS AND TRUCKING COMPANIES S.B. 261 WILL HAVE NO IMPACT. MOST TRUCK DRIVERS DO NOT DRIVE IMPAIRED, NOR DO MANY COMPANIES TAKE THE RISK OF PERMITTING IMPAIRED DRIVERS TO DRIVE. HOWEVER, ATA FEELS THAT EVEN A VERY SMALL NUMBER OF IMPAIRED TRUCK DRIVERS IS TOO MANY AND STEPS SHOULD BE TAKEN TO KEEP THEM OFF THE ROAD. S.B. 261 WILL DO JUST THAT. ATA ASKS THAT YOU PASS S.B.261 FROM THIS COMMITTEE AND THAT YOU ACTIVELY HELP IT BECOME LAW.

THANK YOU FOR THIS OPPORTUNITY TO TESTIFY ON THIS IMPORTANT ISSUE.



Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

May 10, 1991

To: Senator Pat Rodey
Members, State Affairs Committee

From: Max Gifford
Committee staff

Subj: SB-261, operating commercial motor vehicles

At the last hearing members expressed concerns that changes proposed in SB-261 could impact both the Courts and Corrections system. At the time neither department had submitted either fiscal note or position papers.

THE COURT has submitted a **zero fiscal note** and notes any potential impact depends on the "level of enforcement" of the new law. The Court indicates it will monitor the effects of the legislation to ascertain if additional funding is needed in the future. (Fiscal note in bill file).

CORRECTIONS has submitted a **zero fiscal note** and concluded the effects of the new law *"will not have a significant impact upon the Department."* (See attached fiscal note and attachment in bill file.)

AMENDMENT REQUESTED: Page 4, lines 19 and 20, licensed commercial vehicle operators have expressed concern with *"a preponderance of the evidence"* which is the standard to be used in seeking a conviction under the proposed legislation. Using the new blood alcohol content level (0.04 percent, or 0.04 or more grams of alcohol per 210 liters of the person's breath; Sec. 15) a person convicted by *"a preponderance of the evidence"* may lose their license for lifetime. The request was to change "preponderance" to "clear and convincing" evidence.

I discussed the matter with Mr. Guanelli from the Department of Law and Juanita Hensley from Public Safety. Both concluded the proposed changes would more than likely result in non-compliance with federal law. As you know, failure to adopt the standards established by the federal government may well result in the loss of federal highway matching funds, estimated to be about \$12.2 million for FY93.

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____
 Title: An Act relating to Commercial
Driver's Licenses
 Sponsor: Rules Committee
 Requestor: Governor

Department Affected: _____
 BRU: Motor Vehicles
 Component: Drivers Services

COMPONENT SERIAL NO.

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

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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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

Estimate of current year impact None

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Juanita Hensley
 Division: Drivers Services

Phone: 465-4335
 Date: 4/10/91

Approved by Commissioner: Richard L. Burton
 Agency: Department of Public Safety

Richard L. Burton
 Date: 4/10/91

Distribution (by preparer):

Fiscal Note - DPS

OMB, & Impacted Agency(ies).

Rev 10/90

Page 1 of 2

This bill is the second phase of a two-phase process to revise state law to meet the requirements of the federal Commercial Motor Vehicles Safety Act. Phase one dealt with the licensing of commercial drivers, and passed the Legislature last year (Ch 53, SLA 1990). A fiscal note accompanied that legislation, and was approved. That fiscal note funded a position to handle the workload expected from the commercial driver's license program. At the present time, the position is assigned the duties of determining the eligibility of applicants for a commercial driver's license.

This bill requires the Division of Motor Vehicles to remove an operator's commercial motor vehicle license upon conviction for certain traffic violations. The additional workload resulting from this bill will be absorbed by present staff, hired as a result of Ch 53, SLA 1990.

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BI No. 1
Bill Version: SA 261
(S) Publish Date: 4/22/91

FISCAL NOTE

Revision Date: Draft 4/9/91 Department Affected: DOT&PF
Title: An Act relating to operating commercial motor vehicles, BRU:
motor vehicles, aircraft, and watercraft; and providing for an
effective date
Sponsor: Rules Committee Component:
Requestor: Governor Component Serial Number:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY92	FY93	FY94	FY95	FY96	FY97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0
CAPITAL	0	-12197.1*	-24394.3*	-27361.6*	-34323.9*	Unk*
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0	0	0	0	0	0
FEDERAL FUNDS	0	-12197.1*	-24394.3*	-27361.6*	-34323.9*	Unk*
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	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

Estimate of current year impact: None

* Estimates of future year impacts are based on the Federal Highway Administrations proposed highway program submitted to Congress as H.R. 1351. The proposed highway program is a 5 year program and, therefore, funding impact in FY 96 is unknown.

ANALYSIS: (Attach a separate page if necessary)

Failure to enact legislation to bring Alaska into compliance with the Commercial Motor Vehicle Act of 1986 (CMVSA 86) will put our highway dollars in jeopardy. CMVSA provides for 5% highway funding for states that do not comply in FY 93 and 10% for each fiscal year thereafter. Without draft legislation will bring Alaska into compliance with CMVSA 86. We recommend approval of the legislation.

Prepared by: M. Clyde Stoltzfus

Phone: 465-3900

Division: Commissioners Office

Date: April 10, 1991

Approved by Commissioner: Frank G. Tompkins

Phone: 465-3900

Agency: Department of Transportation and Public Facilities

Date: April 10, 1991

Distribution By Preparer: Leg

REV 2/7/91

Fiscal Note - DOT

Agency(ies).

Page 1 of 1

COURTS ^{SB-261}
Fiscal impact?

CORRECTIONS ^{FISCAL}
NOTES →

Graveli - Enforcement
policies re: pot, etc.

MAX.

re: SB-261 ✓

WALTER J. HICKEL
GOVERNOR



261

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 22, 1991

The Honorable Richard I. Eliason
President of the Senate
P.O. Box V
Juneau, AK 99811

Dear President Eliason:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to operating commercial motor vehicles, motor vehicles, and aircraft.

The main thrust of the bill relates to the operation of a commercial motor vehicle while intoxicated. The primary provisions of the bill are (1) the statutory blood alcohol level for an operator of a commercial motor vehicle is lowered from 0.10 percent to 0.04 percent for purposes of a new offense of operating a commercial motor vehicle while intoxicated; (2) persons are prohibited from consuming alcohol or controlled substances, or having any such substance in their blood, for four hours before operating or being on-duty to operate such a vehicle; and (3) violators are subject to appropriate action against their commercial driver's licenses. Most of these provisions are required by federal statutes and regulations relating to the operation of commercial motor vehicles.

If this bill 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 Honorable Richard Eliason - 2 -

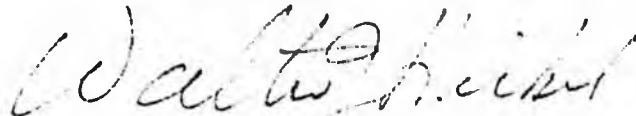
The second consequence of a failure to adopt this proposed legislation is the loss of a percentage of federal highway money, beginning on October 1, 1993. The first year's loss would be five percent of the total allotment, approximately \$12,000,000. The second and subsequent years' losses would be 10 percent. This penalty would continue until the state complies with the federal requirement.

The bill also contains procedural provisions as well as housekeeping and technical amendments. These provisions, in addition to the ones mentioned above, are described in more detail in the attached section-by-section description of the bill.

Drivers of commercial motor vehicles have a tremendous responsibility for ensuring the safety of their passengers and the driving public, and must be held to a high standard of conduct. I believe that this bill takes an important and necessary step toward better ensuring the safety of the people of Alaska.

I urge your favorable action on this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Walter J. Hickel".

Walter J. Hickel
Governor

SECTION-BY-SECTION DESCRIPTION OF LEGISLATION
RELATING TO COMMERCIAL MOTOR VEHICLES

Section 1 of the bill gives regulation adoption authority to the commissioner of public safety to implement a commercial motor vehicle safety inspection program (AS 28.32) and a commercial motor vehicle driver license program (AS 28.33). These laws are required by federal regulations as a condition to the state receiving additional federal highway money. This section of the bill gives the commissioner the authority to adopt appropriate regulations to avoid the loss or withholding of federal money.

Federal regulations in 49 C.F.R. 383.51(d) require states to apply their licensing sanctions to commercial motor vehicle drivers with blood alcohol at or above the 0.04 percent level. Thus, sections 2 - 6 of the bill amend portions of AS 28.15.165 and 28.15.166, which govern department revocations of driver licenses. The amendments would require the department to disqualify a person (as defined in sec. 13 of the bill) from driving a commercial motor vehicle if a chemical test of the breath indicates a blood alcohol reading at or above the federally-mandated level of 0.04 percent. The amendments in these sections also give commercial drivers the right to have that disqualification administratively and judicially reviewed under the same procedure as is now applied to ordinary drivers. Federal regulations do not mandate a review process, but considerations of due process make such a procedure advisable.

Section 7 of the bill amends AS 28.15.171 to be in compliance with federal law (sec. 12009(a)(8) of the Commercial Motor Vehicle Safety Act of 1986, Public Law 99-570, 49 U.S.C. app 2708), which requires notification to another state when a commercial driver licensed in that other state violates a traffic law in Alaska, and notification to the U.S. Department of Transportation when an out-of-state commercial driver is disqualified for a period of 60 days or more.

Sections 8 - 10 amend AS 28.15.181 to require, in addition to the current reasons for a court revoking a driver license, that a license be revoked if a commercial driver refuses to submit to a chemical test. A housekeeping amendment is also made to AS 28.15.181(a)(9) in sec. 8 of the bill.

Sections 11, 12, and 14 amend the definitions of the term "previously convicted" in AS 28.15.181, 28.15.201, and 28.15.291 to make clear that a person is considered a second, third, or subsequent offender whether the person is convicted of offenses set out in current law or the new commercial driver offenses created by this bill. Section 23 makes a similar change with respect to AS 28.35.030. Section 30 makes it clear that a person is considered a second, third, or subsequent offender even if prior convictions occur before the effective date of the legislation.

Section 15 creates a new offense of operating a commercial motor vehicle while intoxicated, adopting the federally-mandated blood alcohol level of 0.04 percent, with punishment precisely the same as for ordinary drivers who operate motor vehicles while intoxicated. As mandated by federal regulations (49 C.F.R. 383.5), the federal definition of "controlled substance" is used (sec. 20 of the bill). Although the federal regulations do not specifically require that states enact a criminal offense of driving a commercial vehicle while intoxicated, fairness dictates that commercial operators, moving large and potentially dangerous conveyances on our highways, should face at least the same criminal penalties as ordinary drivers. Proposed AS 28.33.030. Under the definition of "operating a commercial motor vehicle" in sec. 20 of the bill, a mechanic or other person responsible for servicing or inspecting a commercial motor vehicle could be subject to this new provision.

In compliance with 49 C.F.R. 383.72, sec. 15 also provides "implied consent" so that commercial drivers, just like ordinary drivers under current AS 28.35.032, are deemed to have consented to a chemical test of breath or blood when they are under arrest for operating while intoxicated. As with ordinary drivers under AS 28.35.032, this section also gives law enforcement officers the right under certain circumstances to request the operator to submit to a "preliminary test" without the necessity of placing the person under arrest, which permits officers to administer breath tests in the field with the type of hand-held instruments used by many police departments. Proposed AS 28.33.031.

Section 15 also creates the necessary legal presumptions to effectuate the new offense of operating a commercial motor vehicle while intoxicated. Proposed AS 28.33.033. The provisions in this section presume that a person operating a commercial motor vehicle is under the influence of an intoxicating substance (that is, the person's physical or mental abilities are impaired so that the person cannot operate the vehicle with the degree of caution characteristic of a person who is not under the influence) when the person's blood alcohol level is 0.04 percent or higher. No presumption is created for levels below 0.04 percent. The procedures set out in this section are almost identical to those in current AS 28.35.033, governing presumptions when persons operate non-commercial motor vehicles, and apply in civil cases as well as criminal.

Section 16 amends AS 28.33.100 to make clear that a commercial motor vehicle license is required when a person "drives" a commercial motor vehicle. The current language requiring a license to "operate" a commercial motor vehicle is inappropriate in light of the definition of "operate" adopted in sec. 20 of the bill, which could include mechanics or other persons who are responsible for inspecting or servicing the vehicle.

Section 17 amends AS 28.33.100 to provide, as required by federal regulations (49 C.F.R. 383.73(g)), that a person is disqualified for 60 days from driving a commercial motor vehicle if the Department of Public Safety determines that the person falsified any information required to be submitted in an application for a commercial driver's license or in an application for employment as a commercial motor vehicle driver.

Section 18 amends AS 28.33.120 to prohibit an employer from permitting a person to drive a commercial motor vehicle unless the person is licensed to do so.

Section 19 creates proposed AS 28.33.130, which prohibits operators of commercial motor vehicles from consuming or being under the influence of alcohol or a controlled substance within four hours of operating or going on-duty, and, with limited exceptions, from possessing any alcohol or controlled substance while operating or being on-duty. An employer or peace officer who has reasonable grounds to believe that such a situation exists must place a violator "out-of-service" for 24 hours. Federal regulations require such a statute as to the use of alcohol (49 C.F.R. 392.5; 53 F.R. 39048), but this proposal extends the prohibitions to use of controlled substances.

Section 19 also creates proposed AS 28.33.140, which requires a court to disqualify a person from operating a commercial motor vehicle for any one of several violations of laws relating to operation of commercial motor vehicles. The federal regulations require such disqualifications to occur if a person is convicted of driving a commercial motor vehicle while intoxicated, refusing to submit to a chemical test, leaving the scene of an accident, committing a felony using the vehicle, or committing a serious traffic violation. 49 C.F.R. 383.51. This proposal also adds serious license violations as a grounds for disqualification. The periods of disqualification set out in the bill are the minimum periods specified under the federal regulations. In addition, the federal regulations permit, and this bill would enact, a means for most drivers who have been disqualified for life to obtain reinstatement after 10 years.

Section 19 also adds proposed AS 28.33.150, which is the offense of driving a commercial motor vehicle in violation of a license restriction. Although such a provision is not expressly required by federal law, the only way to make court or department disqualifications and out-of-service orders truly effective is to create criminal penalties. This provision is thus similar to the offense applied to ordinary drivers in current AS 28.15.291, though the penalties applied to commercial drivers are more severe.

Section 20 amends AS 28.33.190 by adding several necessary definitions. The most important definitions are described below.

The definition of "employer" comes into play in proposed AS 28.33.130 (sec. 19 of the bill), requiring employers to place operators "out-of-service" if they have been consuming alcohol or controlled substances within the four hours before operating a commercial motor vehicle or being on-duty. The definition includes those who provide compensation to the operator, as well as supervisors, dispatchers, and any other agents who have authority to allow, require, permit, assign, or authorize the operation of a commercial motor vehicle.

The definitions of "drive" and "operate" distinguish between "driving" a commercial motor vehicle, which requires a commercial driver's license, and the broader concept of "operating" a commercial motor vehicle, which comes into play when alcohol or controlled substances are involved. The definitions of these terms are intended to be in keeping with decisions of the Alaska courts in Jacobson v. State, 551 P.2d 935 (Alaska 1976); Dept. of Public Safety v. Conley, 754 P.2d 232 (Alaska 1988); and Lathan v. State, 707 P.2d 941 (Alaska App. 1985).

The definition of "serious traffic violation" is derived from that required by federal regulations (49 C.F.R. 383.5), and covers those traffic violations that, if committed using a commercial motor vehicle, subject the driver to disqualification for up to 120 days upon a second or subsequent offense.

Section 21, and the repealer in sec. 29 of the bill, make necessary amendments in AS 28.35.029 (open containers) to be consistent with other provisions in this bill.

Section 22 makes necessary amendments in AS 28.35.030(a) (DWI) to be consistent with other provisions in this bill and to correct a vagueness problem noted by the Alaska courts in the phrase "or other substance," which appears in current AS 28.35.030(a)(3). In addition, because federal regulations (49 C.F.R. 383.5) require that the federal definition of controlled substances be used in provisions for operating commercial motor vehicles while intoxicated, sec. 23 of the bill amends AS 28.35.030(k) to adopt proposed AS 28.33.190's definition of "controlled substance" (sec. 20 of the bill). That term is used in proposed AS 28.33.030 (sec. 15 of the bill). This change provides consistency between AS 28.33 and AS 28.35.

Sections 24 - 27 make necessary amendments to AS 28.35.032 (refusal to submit to chemical test) to be consistent with other provisions in this bill. Section 28 makes necessary amendments to AS 28.35.035 (chemical tests without consent) to be consistent with other provisions in this bill.

Section 30 provides, consistently with settled case law, that convictions for offenses committed before the effective date of the Act are considered previous convictions for purposes of this Act.

Section 31 provides an effective date of January 1, 1992, to give carriers sufficient time to put procedures in place to comply with the new law, while at the same time giving the Department of Public Safety sufficient time to implement a commercial motor vehicle licensing and revocation system before the federal deadline of April 1, 1992. 49 C.F.R. 383.23.

SB261

An act relating to operating commercial motor vehicles, motor vehicles, aircraft, and watercraft; and providing for an effective date.

In an effort to reduce the amount of deaths, injuries and property damage caused by certain motor vehicles, the United States Congress passed the Commercial Motor Vehicle Safety Act of 1986.

That Act set some specific requirements that driver's and employer's must meet, plus set requirements that each state must meet. If the State does not meet these standards, the federal government will withhold Federal Highway funds.

This bill is the second phase of a two phase process caused by the delay in federal rule making. Phase one dealt with the issuance of a commercial driver's license and passed the Legislature last year (Ch.53 SIA 1990).

This phase deals with the disqualification and penalties that will occur if a commercial driver is in violation of certain laws pertaining to alcohol, drugs, traffic accidents and violations.

If this bill is not passed there will be two major consequences.

1. April 1, 1992 is the deadline set by federal regulations. Alaska's authority to issue a commercial license will be revoked. This means that Alaska CDL holders will not be allowed to operate commercial vehicles in any other state and will be in violation of the federal law. Alaska CMV operators will not be allowed to go to any other state to be licensed because states can only license their own residents.
2. Loss of Federal Highway funds begins October 1, 1993. The first years loss is 5% of the total allotment, which is approximately 12 million dollars. The second and subsequent years losses' until compliance will be 10%, approximately 24 million dollars.

Last years legislation passed with a fiscal note which adequately funded the commercial driver license program, therefore, this phase does not require additional funding.

We feel that it is extremely important for this legislation to pass as it will allow the state to be in full compliance with the federal regulations and will not put any undue hardships on Alaska's commercial motor vehicle operators.

A brief section by section analysis. A more detailed analysis was prepared and is in the packet.

Section 1

Allows the Commissioner of Department of Public Safety, to adopt regulations which will conform to the federal regulations.

Section 2 through 6

Amends current law allowing the Department of Public Safety to revoke or disqualify a commercial driver's license at .04 percent blood alcohol concentration. It also allows for due process rights to the commercial operator.

Section 7

Amends current law and requires the state to notify another state if a driver from the other state is disqualified for a violation of a traffic law in Alaska.

Section 8 through 10

Amends current law by adding additional reasons for the Court to revoke or disqualify CDL holders upon convictions of certain traffic law violations.

Section 11, 12, and 14

Redefines previously convicted.

Section 13

Adds definitions for disqualification, or to disqualify.

Section 15

Creates new offense for operating a commercial motor vehicle while intoxicated, implied consent and presumption of intoxication.

Section 16

Clears up the definition of "to drive a commercial motor vehicle."

Section 17

Amends current law by substituting "drive" instead of "operate" and allows the department to disqualify a commercial operator for falsification of documents for a commercial license or other documentation required of CFR49.

Section 18

Amends current law by prohibiting an employer from permitting an unlicensed driver to operate a CMV or operating when prohibited.

Section 19

Creates a new section by allowing a peace officer or employer to place an operator "out of service" for 24 hours for any detectable level of alcohol or controlled substance.

It also requires the Court to disqualify a CMV operator for several traffic law violations. The period of disqualifications are minimum and according to CFR49.

It also creates penalties for operating a CMV after withdrawal.

Section 20
Adds definitions

Section 21
Amends current law pertaining to open containers.

Section 22 and 23
Amends current law to be consistent to the DWI provisions and controlled substances.

Section 24 through 27
Amends current law to be consistent to refusal to submit to a breath test and defines previously convicted.

Section 28
Amends current law to be consistent to chemical test without consent.

Section 29
Repeals a current section of the law.

Section 30
Provides consistently with current case law regarding convictions.

Section 31
Allows for an effective date which will allow Public Safety time to implement prior to the April 1, 1992 deadline.

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STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. S.B. 261

Revision Date: April 29, 1991 Department Affected: Corrections
 Title: "An Act relating to operating commercial motor vehicles..." BRU: Statewide Operations
 Component: Various
 Sponsor: _____
 Requestor: Governor COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
 See Attached.

Prepared By: Tom Sutton, Director Phone: 465-3376
 Division: Administrative Services Date: 04-29-91

Approved by Commissioner: _____ Date: 04-29-91
 Agency: Department of Corrections

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Department of Corrections
Division of Administrative Services

One of the features of Senate Bill No. 261, lowers the blood alcohol level for drunk driving from .10 percent to .04 percent for the operators of commercial motor vehicles.

The Department contacted three police departments, Anchorage, Fairbanks and Juneau. We asked each Department if data was available for us to determine the blood alcohol level of those who have been charged for drunk driving. Fairbanks and Anchorage police departments did not have that information readily available. However, for both cities, the staff stated it would be their best estimate that there would be few instances where the blood level would fall within the .04 to .10 percentage rate.

Fortunately, the Juneau Police department was able to provide us with records for testing on the intoximeter for the entire year of 1990. Our review of 148 charged with a DWI provided us with the following information:

Average Blood Alcohol Level	=	.1998
Blood Alcohol Level below .100	=	2
Blood Alcohol Level above .100	=	146
Blood Alcohol Level between .080 - .100%	=	0
Blood Alcohol Level between .050 - .080	=	2

The Department of Corrections reviewed its own records relative to DWI offenders and found the following admission rates and sentenced offenders in our institutions:

Calendar Year	1986	1987	1988	1989	1990
Admissions for DWI (A)	3536	3686	3603	3539	4033
Sentenced for DWI	3560	3081	2603	2584	2544

(A) Admission into facilities relates to those who are in an unsentenced status.

Considering the zero frequency rate of the number of offenders whose test results fall into .04 and .10; and the declining impact of sentenced DWI offenders on our system, it is my opinion that SB 261 will not have a significant fiscal impact upon the Department.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill No. SB 261

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to operating BRU: Trial Courts
commercial motor vehicles Components: _____
 Sponsor: Rules Committee by request
 Requestor: Office of the Governor COMPONENT SERIAL NO. 000 | 000 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact. The impact of this legislation on the Alaska Court System will depend on the level of enforcement, and thus cannot be determined at this time. We will monitor the effects of the legislation to ascertain if additional funding is needed in the future.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228
 Division: Alaska Court System Date: 05/09/91

Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System Date: 05/09/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).