

HB

87

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 87 | _____

Revision Date: _____ Dept. Affected: DOT&PF
 Title: Traffic Offenses In Highway Workzones BRU: Commissioner's Office
 Component: Office of the Commissioner
 Sponsor: Representative Elton
 Requester: House Transportation COMPONENT SERIAL NO. 530

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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 EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	------------	------------	------------	------------	------------	------------

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 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)

The department anticipates no additional costs associated with this legislation. The result of passage of House Bill 87 will be increased safety within construction workzones.

Prepared by: Sam Kito III Phone: 465-3900
 Special Assistant
 Division: Office of the Commissioner Date: 4/24/97
 Approved by: *Joseph L. Richardson* Date: 4/27/97
 Commissioner
 Agency: Department of Transportation and Public Facilities

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office



REPRESENTATIVE KIM ELTON

HB 87 • Traffic Offenses in Construction Zones

Sponsor Statement

HB 87 doubles the fines for speeding, and for reckless or negligent driving in a highway construction zone. It is a measure designed to lessen the risk to highway work crews and to reduce the number of accidents in highway work zones.

The temporary work zone is an inherently dangerous place for highway work crews. A comprehensive review of highway accidents in construction zones revealed accidents in work zones tend to peak during the day. Sixty-five percent are caused by drivers' negligence or inattention; speeding accounts for about six percent. In addition, surveys indicate almost two-thirds of work zone fatalities occur in rural areas. These figures indicate a lack of driver attention to the special risks and hazards of construction zones.

Although highway work crews use a variety of methods to call drivers' attention to the hazards of a construction zone, none has proven as effective as law enforcement. An increase in the normal fines for traffic offenses occurring in highway work zones will provide an additional inducement to Alaska drivers to slow down and drive carefully in any temporary work zone. New York, Delaware, Iowa and Virginia have passed similar laws.

HB 87 • Traffic Offenses in Construction Zones

Sectional Analysis

Section 1. Amends current law relating to the supreme court's authority and the authority of a municipality to establish bail schedules for traffic offenses, to double the amount of bail for a speeding offense, reckless or negligent driving offense committed in a highway work zone.

Section 2. Adds a new provision to current law doubling the bail or fine for a speeding offense, reckless or negligent driving offense committed in a highway work zone.

Section 3. Defines "highway work zone" as an area where road construction, repair or maintenance work is being done on a highway.

provides that "Sections 1-13 and 17-21 of this Act apply only to acts committed on or after November 8, 1996 except that to the extent that the amendments

made by §§ 6, 7, 10, 11, and 18-21 of this Act involve prior convictions, those prior convictions may have occurred before, on, or after November 8, 1996."

Article 3. Reckless and Negligent Driving.

Section

40. Reckless driving
45. Negligent driving

Sec. 28.35.040. Reckless driving. (a) A person who drives a motor vehicle in the state in a manner that creates a substantial and unjustifiable risk of harm to a person or to property is guilty of reckless driving. A substantial and unjustifiable risk is a risk of such a nature and degree that the conscious disregard of it or a failure to perceive it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

(b) A person convicted of reckless driving is guilty of a misdemeanor and is punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year or by both.

(c) Lawfully conducted automobile, snowmobile, motorcycle, or other motor vehicle racing or exhibition events are not subject to the provisions of this section. (§ 50-5-4 ACLA 1949; am § 1 ch 182 SLA 1955; am § 1 ch 70 SLA 1961; am § 2 ch 121 SLA 1967; am § 1 ch 13 SLA 1971; am § 46 ch 32 SLA 1971; am § 6 ch 74 SLA 1974)

NOTES TO DECISIONS

Codification of common-law standard of care.

This section and AS 28.35.045, defining reckless and negligent driving, do not set forth precise standards of care, but merely codify the usual common-law standard of care. *Bailey v Leonard*, 625 P2d 849 (Alaska 1981).

Specific conduct not proscribed. This section and AS 28.35.045, defining reckless and negligent driving, do not proscribe specific conduct, but rather state that a person shall not drive a motor vehicle in a manner which creates an unjustifiable risk. *Bailey v Leonard*, 625 P2d 849 (Alaska 1981).

Risks to safety of general public. Reckless driving involves risks to the safety of the public at large. *Caldor v State*, 619 P2d 1026 (Alaska 1980).

A defendant was not placed in double jeopardy by his conviction of the lesser included offense of reckless driving on a felony charge of assault with a dangerous weapon even though a misdemeanor charge of reckless driving had already been adjudicated against him because, although the charges arose out of the same general incidents, they were based on different conduct during that incident. *Caldor v State*, 619 P2d 1026 (Alaska 1980).

Lesser included offense of driving while intoxicated. Trial court erred in refusing defendant's request, at his trial for driving while intoxicated, for an instruction on the lesser included offense of reckless driving and negligent driving when the issue of defendant's intoxication was in dispute and the state presented evidence from which the jury could have found him guilty of reckless driving or negligent driving even if it acquitted him of DWI. *Concannon v State*, 758 P2d 108 (Alaska Ct. App. 1988).

Defendant was "in actual physical control" of her vehicle, where she was seated in the driver's seat behind the steering wheel, had possession of the ignition key and was attempting to put the key in the ignition, given these factors of control, it is not neces-

sary that the engine be running. *State, Dept. of Pub. Safety v Conley*, 754 P2d 232 (Alaska 1988).

Trooper arriving at accident scene cannot arrest for reckless driving without warrant. The Alaska legislature has classified both reckless driving and operating or driving an automobile under the influence of intoxicating liquor as misdemeanors. Thus, a state trooper who arrived at an accident scene could not arrest a driver without a warrant for either reckless driving or drunk driving since neither of these offenses was committed or attempted in his presence. *Layland v State*, 535 P2d 1013 (Alaska 1975), *aff'd*, 549 P2d 1182 (Alaska 1976), overruled on other grounds, *City of Anchorage v Gebert*, 92 P2d 1192 (Alaska 1979).

Sentencing considerations. Where it was undisputed at trial that there were three people in the rear of defendant's pickup who were extremely vulnerable in case of any accident, the judge could properly consider this fact at sentencing in evaluating the extent of defendant's recklessness, even though he could not properly consider the fact that they had fled from defendant's recklessness. *Huckaby v State*, 632 P2d 975 (Alaska Ct. App. 1981).

Considering unconsented moving violations in sentencing held harmless error. Any error which might have occurred by reason of the trial court's consideration of two unconsented moving violations in determining the sentence for negligent driving was harmless where the court also considered three consented moving violations and where it did not restrict or suspend defendant's license but imposed a fine of \$100, which was only \$25 above that suggested by defendant's counsel. *McKenzie v State*, 520 P2d 791 (Alaska 1974).

Sentence upheld. Severity of defendant's offense within the crime of reckless driving and the need to deter him, to deter others, and to reaffirm societal norms justified a one-year sentence. *Huckaby*

v. State, 632 P2d 975 (Alaska Ct. App. 1981).

Cited in *Hood v Smedley*, 408 P2d 120 (Alaska 1972), *Williford v State*, 674 P2d 1329 (Alaska 1983).

Wilson v. State, 680 P2d 1173 (Alaska Ct. App. 1984); *Smith v. State*, 787 P2d 1038 (Alaska Ct. App. 1990).

Collateral references. — 7A Am. Jur. 2d, Automobile and Highway Traffic, §§ 312 to 320; 61A C.J.S., Motor Vehicles, §§ 609 to 624.

What amounts to reckless driving within statute making reckless driving of automobile a criminal offense, 52 ALR2d 1337.

Reckless driving as lesser included offense of driving while intoxicated or similar charge, 10 ALR4th 1252.

Definiteness and certainty of statute prohibiting reckless driving, 52 ALR4th 1161.

Sec. 28.35.045. Negligent driving. (a) A person who drives a motor vehicle in the state in a manner that creates an unjustifiable risk of harm to a person or to property and who, as a result of the creation of the risk, actually endangers a person or property is guilty of negligent driving. An unjustifiable risk is a risk of such a nature and degree that a failure to avoid it constitutes a deviation from the standard of care that a reasonable person would observe in the situation. Proof that a defendant actually endangered a person or property is established by showing that, as a result of the defendant's driving:

- (1) an accident occurred;
- (2) a person, including the defendant, took evasive action to avoid an accident;
- (3) a person, including the defendant, stopped or slowed down suddenly to avoid an accident; or
- (4) a person or property, including the defendant or the defendant's property, was otherwise endangered.

(b) The offense of negligent driving is a lesser offense than, and included in, the offense of reckless driving, and a person charged with reckless driving may be convicted of the lesser offense of negligent driving.

(c) A person convicted of negligent driving is guilty of an infraction as provided under AS 28.40.050.

(d) Lawfully conducted automobile, snowmobile, motorcycle or other motor vehicle racing or exhibition events are not subject to the provisions of this section. (§ 7 ch 74 SLA 1974, am § 6 ch 241 SLA 1976; am § 19 ch 144 SLA 1977; am § 43 ch 21 SLA 1985)

NOTES TO DECISIONS

Codification of common-law standard of care.

This section and AS 28.35.040, defining reckless and negligent driving, do not set forth precise standards of care, but merely codify the usual common-law standard of care. *Bailey v Leonard*, 625 P2d 849 (Alaska 1981).

Specific conduct not proscribed. This section and AS 28.35.040, defining reckless and negligent driving, do not proscribe specific conduct, but rather state that a person shall not drive a motor vehicle in a manner which creates an unjustifiable risk. *Bailey v Leonard*, 625 P2d 849 (Alaska 1981).

Negligent driving is an infraction, not an offense for double jeopardy purposes, and pleading in contest to negligent driving does not preclude a subsequent prosecution for the offense of second

degree assault. *Carlson v State*, 676 P2d 603 (Alaska Ct. App. 1984).

Lesser included offense of driving while intoxicated. — Trial court erred in refusing defendant request, at his trial for driving while intoxicated, for an instruction on the lesser included offense of reckless driving and negligent driving, where the issue of defendant's intoxication was in dispute and the state presented evidence from which the jury could have found him guilty of reckless driving or negligent driving even if it acquitted him of DWI. *Concannon v State*, 758 P2d 108 (Alaska Ct. App. 1988).

Cited in *Williford v State*, 674 P2d 1329 (Alaska 1983), *McCallum v State*, 808 P2d 268 (Alaska Ct. App. 1991).

Collateral references. — 7A Am. Jur. 2d, Automobile and Highway Traffic, §§ 321, 322; 61A C.J.S., Motor Vehicles, § 632.