

**HB**

**43**



# ALASKA STATE LEGISLATURE

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## REPRESENTATIVE GARY DAVIS

March 5, 1999

### MEMORANDUM

TO: Representative Pete Kott, Chair  
House Judiciary Committee

FROM: Representative Gary Davis 

RE: Request for Hearing on House Bill 43 *"An act relating to police training surcharges imposed for violations of municipal ordinances"*

Please schedule a committee hearing on the House Bill 43 at your earliest convenience. Attached are the following materials for inclusion in the committee packet:

- Sponsor Statement;
- Sectional Analysis;
- Zero fiscal notes from the Departments of Community and Regional Affairs and Public Safety; and
- Affected Statutes.

I would also like to request that this hearing be teleconferenced to Kenai and Anchorage to enable municipal attorneys with whom I've been working to testify.

Thank you for your consideration of this request. If you have any questions or would like additional information, please contact Deb Davidson of my staff.

Attachments



# ALASKA STATE LEGISLATURE

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## REPRESENTATIVE GARY DAVIS

### HOUSE BILL 43

#### SPONSOR STATEMENT

*An act relating to police training surcharges imposed for violations of municipal ordinances*

The Police Training Fund was established to provide training for the law enforcement and corrections community of the state. Appropriations to this fund may be made from income derived from the imposition of surcharges on criminal convictions.

Last year, legislation was passed expanding the types of crimes for which a surcharge is imposed and increasing the amount of the surcharge applied. This surcharge is imposed on both state and municipal law violations.

Recently, concern was raised that the phrasing used in the legislation could be interpreted as requiring surcharges to be imposed on civil as well as criminal violations of the law. Additionally, it was argued that if a local government did not authorize the imposition of a surcharge, an entire ordinance could be found invalid rather than just the section imposing the fine.

House Bill 43 is a housecleaning measure to address these two concerns. First, the legislation clarifies that the surcharge will be imposed on a violation of a municipal ordinance that imposes a criminal penalty for its violation. Second, this legislation specifies that the municipality can not enforce (or collect) a penalty for a violation unless the municipality also authorizes the imposition of a surcharge on the violation.

HB43/ss/020199

Session: State Capitol, Juneau, AK 99801 • Phone 907/465-2693 or 800/463-2693 • Fax 907/465-3835  
Interim: 145 Main St. Lp., Ste. 223, Kenai, AK 99611 • Phone 907/283-7095 or 907/224-2051 • Fax 907/283-3075  
Email: Representative\_Gary\_Davis@legis.state.ak.us



# ALASKA STATE LEGISLATURE

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## REPRESENTATIVE GARY DAVIS

### HOUSE BILL 43

#### SECTIONAL ANALYSIS

*An act relating to police training surcharges imposed for violations of municipal ordinances*

- Section 1: Amends AS 12.55.039, Surcharges, subsection (a)(4) to clarify that surcharges are imposed on violations of a municipal ordinance if that ordinance imposes a criminal penalty for its violation.
- Section 2: Amends AS 29.25.074, Surcharges, subsection (a) to specify that a municipality cannot enforce a penalty for the violation of an ordinance unless it has authorized the imposition of the surcharge set out in AS 12.55.039.

HB43/sa/020199

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Email: Representative\_Gary\_Davis@legis.state.ak.us

# FISCAL NOTE

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

**BILL NO: HB 43**

Revision Date: 2-23-99

Dept. Affected: Department of Public Safety

Title: An Act... relating to police training surcharges

BRU:

Component: Alaska Police Standards Council

Sponsor: Rep. Davis

Requestor: (H) C&RA

COMPONENT SERIAL NO. 0519

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-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 EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
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CHANGE IN REVENUES ( ) Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-
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**FUNDING: (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-

Estimate of current year (FY 00) impact: \$ -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 purpose of HB 43 is to amend (section 1) AS 12.55.039 for clarification of surcharges that are imposed on violations of a municipal ordinance if that ordinance imposes a criminal penalty for its violation; (section 2) AS 29.25.074, to specify that a municipality cannot enforce a penalty for the violation of an ordinance unless it has authorized the imposition of the surcharge set out in AS 12.55.039.

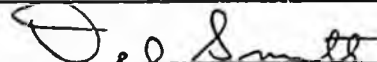
Prepared By: Laddie Shaw

Phone: 465-4378

Division: Alaska Police Standards Council

Date: 2-23-99

Approved by Commissioner:



Date: 2-25-99

Agency:

Ronald L. Otte, Dept. of Public Safety

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# FISCAL NOTE

Revision Date: \_\_\_\_\_ Dept. Affected: Community & Regional Affairs  
 Title: An Act relating to police training surcharges BRU: \_\_\_\_\_  
imposed for violations of municipal ... Component: \_\_\_\_\_  
 Sponsor: REPRESENTATIVE DAVIS  
 Requestor: House CRA Committee COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 00	FY 01	FY 02	FY 03	FY04	FY 05
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>REVENUE FUND SOURCE:</b>						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current (FY99) impact \$ none

**ANALYSIS:** (Attach a separate page if necessary)

Enactment of this legislation would not have significant fiscal impact on the department.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4709  
 Division: Division of Administrative Services Date: 2/22/99  
 Approved by Commissioner: *Mike Dorn* Date: 2/22/99  
 Agency: Community & Regional Affairs

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(2) make written findings of the facts considered in

(A) finding the existence of aggravating or mitigating factors and in assigning a value to those factors; and

(B) determining the defendant's gross and daily net incomes.

(d) When imposing a sentence of a day fine, the court may permit the payment of the day fine in specified installments or within a certain period of time, provided the entire day fine is paid within 180 days of imposition.

(e) A sentence imposing a day fine shall be considered a civil judgment for the day fine. The Department of Law shall enforce the judgment and may utilize any procedure available for the enforcement of civil judgments. If the Department of Law uses the civil process of the court to enforce or collect a day fine, the department shall be awarded costs and attorney fees.

(f) The Alaska Court System shall evaluate and prepare a report every two years not later than February 1 on the use of day fines and their effectiveness. The court system shall notify the legislature that the report is available. The report must include

(1) a comparison of the number of defendants receiving a day fine as a sentence with the number of other defendants, eligible to receive a day fine, who receive another sentence;

(2) a comparison of the recidivism rates between defendants receiving a day fine with other defendants,

(A) eligible for a day fine, who receive another sentence; and

(B) not eligible for a day fine, who receive another sentence;

(3) the potential savings to the state from the number of defendants who are eligible to receive a sentence of imprisonment, and who receive a day fine, assuming those defendants would have been sentenced to a term of imprisonment;

(4) the amount of day fines collected, the success rate of collections, and the number of cases requiring civil process to collect the day fine; and

(5) recommendations concerning expansion or restriction of the use of day fines, including proposals for legislation.

(g) Money collected under this section shall be deposited into the general fund and separately accounted for under AS 37.05.142. The annual estimated balance in the account maintained under AS 37.05.142 for day fines collected under this section may be appropriated by the legislature as follows: (1) 25 percent of the annual estimated balance for grants and claims paid by the Council on Domestic Violence and Sexual Assault; (2) 25 percent of the annual estimated balance for grants and claims paid by the Violent Crimes Compensation Board; and (3) the balance for any lawful purpose. Nothing in this subsection creates a dedicated fund. (§ 5 ch 79 SLA 1994; am § 6 ch 21 SLA 1995)

**Postponed repeal of subsection (f).** — Section 7, ch. 79, SLA 1994 repeals (f) of this section, effective February 2, 2004.

**Cross references.** — For effect of enactment of this section on Alaska Rule of Criminal Procedure 32, see § 6, ch. 79, SLA 1994 in the Temporary and Special Acts.

**Effect of amendments.** — The 1995 amendment, effective August 8, 1995, in the first sentence of the

introductory language of subsection (f), substituted "prepare a report every two years" for "report every two years to the legislature" and added the second sentence.

**Legislative history reports.** — For House letter of intent relating to CSHB 119(JUD) am. from which ch. 79, SLA 1994, which enacted this section derived, see 1993 House Journal 1413.

**Sec. 12.55.039. Surcharge.** (a) In addition to any fine or other penalty prescribed by law, a defendant who pleads guilty or nolo contendere to, forfeits bail for, or is convicted of a

(1) felony shall be assessed a surcharge of \$100;

(2) violation of a misdemeanor offense under AS 28.33.030, 28.33.031, AS 28.35.030, or 28.35.032, or a violation of a municipal ordinance comparable to a misdemeanor offense under AS 28.33.030, 28.33.031, AS 28.35.030, or 28.35.032 and adopted under AS 28.01.010, shall be assessed a surcharge of \$75;

(3) misdemeanor or a violation of a municipal ordinance if a sentence of incarceration may be imposed for the misdemeanor or ordinance violation, other than a provision identified in (2) of this subsection, shall be assessed a surcharge of \$50;

(4) violation or an infraction under state law or a misdemeanor or a violation of a municipal ordinance if a sentence of incarceration may not be imposed for the misdemeanor or ordinance violation shall be assessed a surcharge of \$10 if the fine or bail forfeiture amount for the offense is \$30 or more.

(b) A court may not fail to impose the surcharge required under this section. The surcharge may not be waived, deferred, or suspended. A court may allow a defendant who is unable to pay the surcharge required to be imposed under this section to perform community work under AS 12.55.055(c) in lieu of the surcharge.

(c) The surcharge shall be paid within 10 days of imposition or such shorter period of time as ordered by the court. Failure to pay the surcharge is punishable as contempt of court. Proceedings to collect the surcharge may be instituted by the state, the municipality, or by the court on its own motion.

(d) Money collected under this section shall be deposited into the general fund and accounted for under AS 37.05.142. (§ 2 ch 119 SLA 1994; am § 4 ch 56 SLA 1998)

**Cross references.** — For legislative findings and purpose in connection with the enactment of this section, see § 1, ch. 119, SLA 1994 in the Temporary and Special Acts.

**Effect of amendments.** — The 1998 amendment, effective August 27, 1998, rewrote subsection (a).

**Effective dates.** — Section 7, ch. 119, SLA 1994 makes this section effective January 1, 1996.

**Editor's notes.** — With respect to subsection (d), § 10, ch. 56, SLA 1998 provides the following: "Notwithstanding the requirements of AS 12.55.039(d) and AS 37.05.142 that surcharges collected under AS 12.55.039 be accounted for separately, the Alaska Court System shall deposit money collected under AS 12.55.039 in the general fund and shall, by February

1 of each year, provide to the Department of Administration, to the Legislative Budget and Audit Committee, and to each house of the legislature an estimate of the money collected under AS 12.55.039 for that fiscal year."

Section 11, ch. 56, SLA 1998 provides a repeal date for § 10, ch. 56, SLA 1998 as follows: "Section 10 of this Act is repealed on the earlier of (1) the date that the Alaska Court System has the capability to separately track and account electronically for money collected under AS 12.55.039, or (2) June 30, 2002. The executive director of the Alaska Court System shall notify the lieutenant governor and the revisor of statutes when the electronic capability described in this section has been obtained."

*Sec. 12.55.040. Increased punishment for habitual criminal after conviction of petty larceny or misdemeanor involving fraud. [Repealed. § 21 ch 166 SLA 1978.]*

**Sec. 12.55.045. Restitution.** (a) The court may order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim or other person injured by the offense, to a public, private, or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim or other person injured by the offense, or as otherwise authorized by law. In determining the amount and method of payment of restitution, the court shall take into account the

(1) public policy that favors requiring criminals to compensate for damages and injury to their victims; and

(2) financial burden placed on the victim and those who provide services to the victim and other persons injured by the offense as a result of the criminal conduct of the defendant.

(b) An order of restitution under this section does not limit any civil liability of the defendant arising from the defendant's conduct.

(c) If a defendant is sentenced to pay restitution, the court may grant permission for the payment to be made within a specified period of time or in specified installments.

(d) In any case, including a case in which the defendant is convicted of a violation of AS 11.46.120 — 11.46.150 and the property is commercial fishing gear as defined in AS 16.43.990, the court shall consider the victim's loss and may order restitution that may include compensation for loss of income.

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- enactments regulating lobbying. 42 ALR3d 1046.
- Validity of statute or ordinance forbidding pharmacists to advertise prices of drugs or medicines. 44 ALR3d 1301.
- Validity and construction of statute or ordinance respecting employment of women in places where intoxicating liquors are sold. 46 ALR3d 369.
- Validity and construction of statute or ordinance regulating or prohibiting self-service gasoline filling stations. 46 ALR3d 1393.
- Operation of nude-model photographic studio as offense. 46 ALR3d 1313.
- Validity and construction of statute or ordinance forbidding treatment in health clubs or massage parlors by persons of the opposite sex. 51 ALR3d 936.
- Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor. 51 ALR3d 1061.
- Validity and construction of regulations dealing with misrepresentation in the sale of Kosher food. 52 ALR3d 359.
- Validity of municipal ordinances regulating time during which restaurant business may be conducted. 53 ALR3d 942.
- Modern status of the law as to validity of statutes or ordinances requiring notice of tort claim against local governmental entity. 59 ALR3d 93.
- Validity and construction of curfew statute, ordinance, or proclamation. 59 ALR3d 321; 53 ALR4th 1056.
- Validity and construction of statute or ordinance prohibiting commercial exhibition of malformed or disfigured persons. 62 ALR3d 1237.
- Application of city ordinance requiring license for laundry to supplier of coin-operated laundry machines intended for use in apartment building. 65 ALR3d 1296.
- Application of statute or regulation dealing with registration or carrying of weapons to transient non-residents. 66 ALR3d 1253.
- Larceny as within disorderly conduct statute or ordinance. 71 ALR3d 1156.
- Validity and construction of ordinance prohibiting roof signs. 76 ALR3d 1162.
- Validity and construction of statute or ordinance proscribing solicitation for purposes of prostitution, lewdness, or assignation — modern cases. 77 ALR3d 519.
- Validity of statutes, ordinances, and regulation requiring the installation or maintenance of various bathroom facilities in dwelling units. 79 ALR3d 716.
- Validity and construction of statute or ordinance restricting outdoor rate advertising by motels, motor courts, and the like. 80 ALR3d 740.
- Validity of state or local regulation dealing with resale of tickets to theatrical or sporting events. 81 ALR3d 655.
- What constitutes "sale" of liquor in violation of statute or ordinance. 89 ALR3d 551.
- Validity and construction of statute or ordinance prohibiting desecration of church. 90 ALR3d 1128.
- Validity and construction of statute or ordinance specifically criminalizing passenger misconduct on public transportation. 78 ALR4th 1127.
- Validity and construction of statute, ordinance, or regulation applying to specific dog breeds, such as "pit bulls" or "bull terriers." 80 ALR4th 70.
- Validity, construction, and effect of juvenile curfew regulations. 83 ALR4th 1056.
- Laws regulating begging, panhandling, or similar activity by poor or homeless persons. 7 ALR5th 455.
- Validity and construction of statutes or ordinances imposing civil or criminal penalties on alarm system users, installers, or servicers for false alarms. 17 ALR5th 825.
- Governmental regulation of place of amusement, entertainment, or recreation as violating rights of owner or operator under equal protection clause of Federal Constitution's Fourteenth Amendment — Supreme Court cases. 104 L Ed 2d 1078.

**Sec. 29.25.010. Acts required to be by ordinance.** (a) In addition to other actions that this title requires to be by ordinance, the governing body of a municipality shall use ordinances to

- (1) establish, alter, or abolish municipal departments;
- (2) provide for a fine or other penalty, or establish rules or regulations for violation of which a fine or other penalty is imposed;
- (3) provide for the levying of taxes;
- (4) make appropriations, including supplemental appropriations or transfer of appropriations.
- (5) grant, renew, or extend a franchise;
- (6) adopt, modify, or repeal the comprehensive plan, land use and subdivision regulations, building and housing codes, and the official map;
- (7) approve the transfer of a power to a first or second class borough from a city;
- (8) designate the borough seat;
- (9) provide for the retention or sale of tax-foreclosed property;
- (10) exempt contractors from compliance with general requirements relating to payment and performance bonds in the construction or repair of municipal public works projects within the limitations set out in AS 36.25.025; this paragraph applies to home rule and general law municipalities.

(b) This section does not grant authority, but requires the governing body to use ordinances in exercising certain of its powers. (§ 8 ch 74 SLA 1985)

**Sec. 29.25.060. Resolutions.** (a) The governing body shall provide for the maintenance of a permanent file of resolutions that have been adopted.

(b) This section applies to home rule and general law municipalities. (§ 8 ch 74 SLA 1985)

#### NOTES TO DECISIONS

Cited in *Lazy Mt. Land Club v. Matanuska-Susitna Borough Bd. of Adjustment & Appeals*, 904 P.2d 373 (Alaska 1995).

**Sec. 29.25.070. Penalties.** (a) For the violation of an ordinance, a municipality may by ordinance prescribe a penalty not to exceed a fine of \$1,000 and imprisonment for 90 days. For a violation that cannot result in incarceration or the loss of a valuable license, a municipality may allow disposition of the violation without court appearance and establish a schedule of fine amounts for each offense.

(b) The municipality or an aggrieved person may institute a civil action against a person, including a minor as provided in AS 29.25.072, who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed \$1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. On application for injunctive relief and a finding of a violation or a threatened violation, the superior court shall grant the injunction. Each day that a violation of an ordinance continues constitutes a separate violation.

(c) The penalties authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at no more than cost.

(d) This section does not apply to an ordinance adopted under AS 04.11.501(c).

(e) The municipality shall provide written notice to the commissioner of health and social services or to the commissioner's designee of the commencement of a civil enforcement action for the violation of an ordinance under (b) of this section against a minor. Unless the commissioner and the municipality have negotiated an agreement making other arrangements for the municipality to provide the notice required by this subsection, the municipality shall provide the notice by mailing a copy of the citation or other document setting out the notice of the commencement of the civil enforcement action. This subsection applies to home rule and general law municipalities.

(f) In this section, "minor" means a person under 18 years of age. (§ 8 ch 74 SLA 1985; am § 16 ch 80 SLA 1986; am § 11 ch 76 SLA 1987; am § 65 ch 101 SLA 1995; am §§ 2, 3 ch 107 SLA 1998)

**Effect of amendments.** — The 1995 amendment, effective July 1, 1995, made a section reference substitution in subsection c.

The 1998 amendment, effective July 1, 1998, in-

serted "including a minor as provided in AS 29.25.072," in the first sentence in subsection (b) and added subsections (e) and (f).

#### NOTES TO DECISIONS

**Punishment for failure to list taxable property authorized.** — A city had the power to enact an ordinance requiring a taxpayer to file a statement under oath listing all personal property at its just and fair value, and a former similar provision provided the authority to prescribe its punishment, including fine and imprisonment. *City of Anchorage v. Campbell*, 105 F Supp 57, 7 D. Alaska 19521.

An act may be made a penal offense under both state statute and municipal ordinance. *Guidoni v. Wheeler*, 230 F. 93 (9th Cir. 1916), decided under former, similar law.

**Ordinance may impose penalties on class of persons.** — While an ordinance which made an act done by one penal and imposed upon another no penalty for a like act done under like circumstances could not receive judicial sanction for the reason that it was unjust and unreasonable, the same could not be said of discrimination by municipal authority against a whole class of persons who were lawfully regarded as proper subjects for police regulation, such as persons without occupation or visible means of support. *Guidoni v. Wheeler*, 230 F. 93 (9th Cir. 1916), decided under former, similar law.

**Sec. 29.25.072. Civil penalties for violation of municipal ordinances by minors.** (a) Except as otherwise provided in this section, the enforcement under AS 29.25.070(b) of a civil penalty against a minor for violation of a municipal ordinance shall be heard in the district court in the same manner as for similar allegations brought against an adult, except that the minor's parent, guardian, or legal custodian shall be present at all proceedings unless the court excuses the parent, guardian, or legal custodian from attendance for good cause.

(b) If provision is made by ordinance for use of a hearing officer to decide enforcement of a civil penalty under AS 29.25.070(b), allegations against a minor for a civil penalty under a municipal ordinance may be assigned to a hearing officer for the municipality for decision.

(c) An action for a civil penalty filed against a minor under this section does not give rise to the right to a trial by jury or to counsel appointed at public expense. (§ 4 ch 107 SLA 1998)

**Effective dates.** — Section 59, ch. 107, SLA 1998 provides that this section applies "to all offenses committed on or after July 1, 1998."

**Editor's notes.** — Section 57, ch. 107, SLA 1998

**Sec. 29.25.074. Surcharge.** (a) A municipality may not enforce an ordinance for which a fine of \$30 or more or imprisonment is prescribed as a penalty unless the municipality authorizes the imposition of and provides for the collection of the surcharge required to be imposed under AS 12.55.039. The surcharge shall be deposited into the general fund of the state and accounted for under AS 37.05.142. Subject to appropriation, the legislature may reimburse a municipality that collects a surcharge required to be imposed under AS 12.55.039 for the cost to the municipality in collecting the surcharge and transmitting the surcharge to the state. The reimbursement may not exceed 10 percent of the surcharge collected and transmitted to the state.

(b) This section applies to home rule and general law municipalities. (§ 8 ch 56 SLA 1998)

**Revisor's notes.** — This section was enacted as AS 29.25.072. Renumbered in 1998. which enacted this section, took effect on August 27, 1998.

**Effective dates.** — Section 8, ch. 56, SLA 1998.

**Sec. 29.25.075. Collection of penalties.** The court may collect for a municipality any monetary penalty or surcharge or item to be forfeited as a result of the violation of an ordinance. The supreme court may prescribe by rule the fees to be charged by all courts to municipalities for providing collection services under this section. (§ 47 ch 36 SLA 1990; am § 9 ch 56 SLA 1998)

**Effect of amendments.** — The 1998 amendment, effective August 27, 1998, inserted "surcharge or" in the first sentence.

**Sec. 29.25.080. Breast-feeding.** A municipality may not enact an ordinance that prohibits or restricts a woman breast-feeding a child in a public or private location where the woman and child are otherwise authorized to be. In a municipal ordinance, "lewd conduct," "lewd touching," "immoral conduct," "indecent conduct," and similar terms do not include the act of a woman breast-feeding a child in a public or private location where the woman and child are otherwise authorized to be. Nothing in this section may be construed to authorize an act that is an offense under a municipal ordinance that establishes an offense with elements substantially equivalent to the elements of an offense under AS 11.61.123. This section is applicable to home rule and general law municipalities. (§ 4 ch 78 SLA 1998)