

SB

1 2 3

<TARGET><BILL>SB 123</BILL><SUBJECT>SB
123</SUBJECT><COMM>HJUD28</COMM></TARGET>

Alaska State Legislature



Interim:


716 West 4th Avenue, Room 410
Anchorage, Alaska 99501
(907) 269-0199 Phone
(907) 269-0197 Fax

Session:

State Capitol Building, Room 518
Juneau, Alaska 99801-1182
(907) 465-4945 Phone
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Senator Kevin Meyer Senate District L

TO: Representative Keller, Chair
House Judiciary Committee

FROM: Senator Kevin Meyer, Co-Chair 
Senate Finance Committee

DATE: February 27, 2014

RE: Request to Schedule SB 123 <PENDING REFERRAL>

With this memorandum, I respectfully request the scheduling of SB 123 in the House Community and Regional Affairs committee. This bill is enabling legislation to allow a municipality to pass an ordinance prohibiting the use of cell phones in school zones or on school property. The bill was reported out of the House Community & Regional Affairs committee today, with a recommendation by the Co-Chairs that the bill include language to allow people in legally parked, standing or stopped vehicles not in a roadway, or in a vehicle stopped because it is inoperable, to use their cell phones. We have requested a blank Committee Substitute to be adopted as the working document during the House Judiciary committee hearing that includes this language.

Attached to this memorandum please find:

- Sponsor Statement
- SB 123, Version 28-LS0960\A
- Fiscal Note, SB123-DPS-DET-01-31-14
- Legal Memorandum – 9/3/2013
- Title 28 Chapter 01. Alaska Uniform Traffic Laws Act
- Letter of Support – Wight
- Letter of Support – Sullivan
- Letter of Support – Miller
- Bill History

If you have any questions, please contact my staff member assigned to this bill, Edra Morledge at 465-6874.

ALASKA STATE LEGISLATURE

Rep. Neal Foster
Rep. Bob Herron
Rep. Kurt Olson
Rep. Lora Reinbold
Rep. Sam Kito III



State Capitol, Barnes 124
Juneau, AK 99801-1182
Co-Chairs
Rep. Gabrielle LeDoux
(907) 465-4998 FAX 465-4419
Rep. Benjamin Nageak
(907) 465-3018 FAX 465-2827

COMMUNITY & REGIONAL AFFAIRS COMMITTEE

MEMORANDUM

Date: February 27, 2014

To: Representative Keller, House Judiciary Chair

From: Representative LeDoux, House C&RA Co-Chair
Representative Nageak, House C&RA Co-Chair

af
BN

RE: SB 123 "Prohibit Use of Cell Phone While Driving"

Tuesday February 27, 2014 the House Community & Regional Affairs Committee heard and moved SB 123. The committee discussed amending the bill to include language to "exempt parked cars" from being prohibited to use a cellular telephone in a school zone. Many parents need to use the device once they are parked to communicate with their children. Since the bill's next committee of referral is House Judiciary, we thought your committee would be the more appropriate committee to look into the legal aspects of the definition of "operating a motor vehicle" and if it would include parked running vehicles. If so, we suggest including language to make the intentions of the bill clear that it does not include parked or unmoving vehicles.

We thank the committee in advance for your consideration.

Cc via email: House Judiciary Committee Members
House Community & Regional Affairs Committee Members

Alaska State Legislature



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Senator Kevin Meyer Senate District L

SPONSOR STATEMENT **SENATE BILL 123**

Senate Bill 123 is enabling legislation that authorizes a municipality to adopt an ordinance prohibiting the use of cellular telephones while driving a vehicle within a school zone or on school property. Our current statutes require that traffic laws be uniform across the state unless a municipality demonstrates a special problem. SB 123 removes the burden of individual municipalities having to demonstrate or defend their position that using cell phones while driving in school zones or on school property is dangerous, and instead allows local control in making that determination.

I encourage your support on SB 123.

HOUSE CS FOR SENATE BILL NO. 123()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS MEYER, Micciche, Egan, Gardner, Bishop

REPRESENTATIVE Holmes

A BILL

FOR AN ACT ENTITLED

1 **"An Act authorizing a municipality to adopt an ordinance prohibiting the use of cellular**
2 **telephones while driving in school zones or on school property."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1. AS 28.01 is amended by adding a new section to read:**

5 **Sec. 28.01.017. Municipal regulation of cellular telephone use. (a)**
6 **Notwithstanding other provisions of this title, a municipality may adopt an ordinance**
7 **prohibiting the use of a cellular telephone by a person operating a motor vehicle while**
8 **on school property or in a school zone designated under the current edition of the**
9 **Alaska Traffic Manual prepared by the Department of Transportation and Public**
10 **Facilities.**

11 **(b) An ordinance adopted under this section may not prohibit cellular**
12 **telephone use when the vehicle is**

- 13 **(1) lawfully parked, standing, or stopped and is not in a roadway; or**
- 14 **(2) stopped because it is inoperable.**

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: SB 123
Fiscal Note Number: _____
() Publish Date: _____

Identifier: SB123-DPS-DET-01-31-14
Title: PROHIBIT USE OF CELL PHONE WHILE
DRIVING
Sponsor: MEYER
Requester: Senate Community & Regional Affairs

Department: Department of Public Safety
Appropriation: Alaska State Troopers
Allocation: Alaska State Trooper Detachments
OMB Component Number: 2325

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

| | FY2015 | Included in | Out-Year Cost Estimates | | | | |
|-------------------------------|-------------------------|---------------------------|-------------------------|------------|------------|------------|------------|
| | Appropriation Requested | Governor's FY2015 Request | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| OPERATING EXPENDITURES | FY 2015 | FY 2015 | | | | | |
| Personal Services | | | | | | | |
| Travel | | | | | | | |
| Services | | | | | | | |
| Commodities | | | | | | | |
| Capital Outlay | | | | | | | |
| Grants & Benefits | | | | | | | |
| Miscellaneous | | | | | | | |
| Total Operating | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Fund Source (Operating Only)

| | | | | | | | |
|--------------|------------|------------|------------|------------|------------|------------|------------|
| None | | | | | | | |
| Total | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Positions

| | | | | | | | |
|-----------|--|--|--|--|--|--|--|
| Full-time | | | | | | | |
| Part-time | | | | | | | |
| Temporary | | | | | | | |

| | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|
| Change in Revenues | | | | | | | |
|---------------------------|--|--|--|--|--|--|--|

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

| | | | |
|--------------|---|--------|---------------------|
| Prepared By: | Kelly Howell, Special Assistant to the Commissioner | Phone: | (907)465-4336 |
| Division: | Office of the Commissioner | Date: | 01/31/2014 03:45 PM |
| Approved By: | Gary Folger, Commissioner | Date: | 01/31/14 |
| Agency: | Office of the Commissioner | | |

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. SB 123

Analysis

This bill would authorize a municipality to adopt an ordinance prohibiting the use of cellular telephones while in a school zone or on school property.

Passage of this bill would have no fiscal impact to the Alaska State Troopers.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

September 3, 2013

SUBJECT: Bill Authorizing Municipalities to Prohibit Cell Phone Use While Driving (Work Order No. 28-LS0960\A)

TO: Senator Kevin Meyer
Attn: Edra Morledge

FROM: Kathleen Strasbaugh
Legislative Counsel

Please find enclosed the draft bill you requested authorizing a municipality to adopt an ordinance prohibiting cell phone use while driving in school zones or on school grounds. There is some question about whether authorizing legislation is necessary. The answer is probably yes, as discussed below.

As you may know, AS 28.01.010 requires that traffic laws must be uniform across the state:

Sec. 28.01.010. Provisions uniform throughout state. (a) The provisions of this title and the regulations adopted under this title are applicable within all municipalities of the state. A municipality may not enact an ordinance that is inconsistent with the provisions of this title or the regulations adopted under this title. A municipality may not incorporate into a publication of traffic ordinances a provision of this title or the regulations adopted under this title without specifically identifying the provision or regulation as a state statute or regulation.

(b) A municipality may adopt by reference all or a part of this title and regulations adopted under this title, and may request and shall receive from the Department of Commerce, Community, and Economic Development and, as appropriate, either the Department of Administration or the Department of Public Safety, assistance in the drafting of model ordinances for adoption by reference. Notwithstanding (a) of this section, a municipality may enact necessary ordinances to meet specific local requirements. . . .

As AS 28.01.010(b) provides, a municipality may adopt an ordinance to meet local requirements. The Alaska Court of Appeals has determined that to invoke the local requirement exception, a municipality must demonstrate that any discrepancy in the ordinance does not impede or frustrate policy expressed by state law. *Simpson v. Municipality of Anchorage*, 635 Pd.D. 1197, 1204 (Alaska Ct. App. 1981).

A municipality may well be able to make this argument for a local exception requirement prohibiting cell phone use in school zones if it demonstrates a special problem compared to other jurisdictions within the state. However, a statute prohibiting the use of electronic devices while driving makes a specific exception for cell phones:

Sec. 28.35.161. Use of electronic devices while driving; unlawful installation of television, monitor, or similar device. (a) A person commits the crime of driving while texting, while communicating on a computer, or while a screen device is operating if the person is driving a motor vehicle, and

(1) the vehicle has a television, video monitor, portable computer, or any other similar means capable of providing a visual display that is in full view of a driver in a normal driving position while the vehicle is in motion, and the monitor or visual display is operating while the person is driving; or

(2) the person is reading or typing a text message or other nonvoice message or communication on a cellular telephone, personal data assistant, computer, or any other similar means capable of providing a visual display that is in the view of the driver in a normal driving position while the vehicle is in motion and while the person is driving.

(b) A person may not install or alter equipment described in (a) of this section that allows the images to be viewed by the driver in a normal driving position while the vehicle is in motion.

(c) *Subsections (a) and (b) of this section do not apply to*

(1) portable cellular telephones or personal data assistants being used for voice communication or displaying caller identification information;

....

(e) It is an affirmative defense to a prosecution under (b) of this section that the equipment installed or altered includes a device that, when the motor vehicle is being driven, disables the equipment for all uses except those described in (c) of this section.

AS 28.35.161 (*emphasis supplied*). AS 28.35.161 also provides exceptions for certain other communications devices that might be deemed covered under a cell phone ordinance. AS 28.35.161(d). Thus it might well be argued that an ordinance prohibiting cell phone use by persons operating motor vehicles in school zones would frustrate the legislature's purpose in adopting the exception for cell phones. *Compare and contrast State v. Hamilton*, 216 P.3d 547, 549 (Alaska Ct. App. 2009) (Juneau ordinance prohibiting squealing tires does not frustrate purpose of any state statute); *Lamplery v. Municipality of Anchorage*, 159 P.3d 515, 524 - 25 (Alaska Ct. App. 2007) (city

Senator Kevin Meyer
September 3, 2013
Page 3

ordinance imposing a higher degree of culpability concerning driving while license is suspended did not frustrate state law where state had concurrent jurisdiction over offense).

If I may be of further assistance, please advise.

KJS:Ind
13-329.Ind

Enclosure

Title 28. Motor Vehicles.

Chapter

01. Alaska Uniform Traffic Laws Act (§§ 28.01.010 — 28.01.020)
05. Administration (§§ 28.05.011 — 28.05.155)
10. Vehicle Registration, Liens, and Title (§§ 28.10.011 — 28.10.661)
11. Abandoned Vehicles (§§ 28.11.010 — 28.11.110)
15. Drivers' Licenses (§§ 28.15.011 — 28.15.291)
17. Commercial Driver Training Schools (§§ 28.17.011 — 28.17.071)
20. Motor Vehicle Safety Responsibility Act (§§ 28.20.010 — 28.20.640)
22. Mandatory Motor Vehicle Insurance (§§ 28.22.011 — 28.22.321)
32. Commercial Motor Vehicle Safety Citations (§ 28.32.010)
33. Commercial Motor Vehicles (§§ 28.33.030 — 28.33.190)
35. Offenses and Accidents (§§ 28.35.028 — 28.35.410)
37. Driver License Compact (§§ 28.37.010 — 28.37.199)
39. Snowmobiles (§§ 28.39.010 — 28.39.250)
90. General and Miscellaneous Provisions (§§ 28.90.010 — 28.90.995)

Revisor's notes. — The provisions of this title were redrafted in 1984 to remove personal pronouns pursuant to § 4, ch. 58, SLA 1982, and in 1984, 1989, 1994, and 2006 to make other minor word changes under AS 01.05.031.

Administrative Code. — For motor vehicle and driving offenses: rules of the road, see 13 AAC 02.

For motor vehicle and driving offenses: vehicle equipment and inspection, see 13 AAC 04.

For operations, wheeled vehicles, see 17 AAC 25.

For buses, see 17 AAC 28.

NOTES TO DECISIONS

Stated in *Buckalew v. Holloway*, 604 P.2d 240 (Alaska 1979).

Chapter 01. Alaska Uniform Traffic Laws Act.

Section

10. Provisions uniform throughout state
15. Municipal impoundment and forfeiture
20. Short title

Sec. 28.01.010. Provisions uniform throughout state. (a) The provisions of this title and the regulations adopted under this title are applicable within all municipalities of the state. A municipality may not enact an ordinance that is inconsistent with the provisions of this title or the regulations adopted under this title. A municipality may not incorporate into a publication of traffic ordinances a provision of this title or the regulations adopted under this title without specifically identifying the provision or regulation as a state statute or regulation.

(b) A municipality may adopt by reference all or a part of this title and regulations adopted under this title, and may request and shall receive from the Department of Commerce, Community, and Economic Development and, as appropriate, either the Department of Administration or the Department of Public Safety, assistance in the drafting of model ordinances for adoption by reference. Notwithstanding (a) of this section, a municipality may enact necessary ordinances to meet specific local requirements.

(c) A copy of all traffic ordinances enacted by a municipality shall be forwarded to the commissioner of public safety and specific notice of any inconsistent ordinances shall be given by the municipality when the copy of the ordinances is forwarded. So far as practicable, the section number identifying a particular municipal traffic ordinance must be the same as the section number identifying a corresponding provision of this title or regulations adopted under this title.

(d) A municipality shall erect necessary official traffic control devices on streets and highways within its jurisdiction that as far as practicable conform to the current edition of the Alaska Traffic Manual prepared by the Department of Transportation and Public Facilities. The municipality

(1) shall post a sign indicating that the school is a "drug-free school zone" at each location in which it has installed a sign identifying the location of a school;

(2) may post a sign at each recreation and youth center indicating that the center is a "drug-free recreation and youth center zone"; in this paragraph, "recreation or youth center" has the meaning given in AS 11.71.900.

(e) Copies of all traffic ordinances enacted by a municipality shall be incorporated in a manual and made available to the general public.

(f) Regulations adopted pertaining to a matter partially or wholly governed by this title must be mutually consistent and compatible, and must complement each other, as far as practicable. For the purpose of uniformity, the Department of Administration or the Department of Public Safety, whichever is appropriate, shall offer and receive reasonable assistance in the coordination and adoption of these regulations.

(g) Regulations adopted under this title must, as far as practicable, conform to the recommendations of the current edition of the Uniform Vehicle Code adopted by the National Committee on Uniform Traffic Laws and Ordinances.

(h) A municipality may issue a citation for a traffic offense only if the citation complies with the provisions of AS 12.25.175 and 12.25.200.

(i) A municipal parking citation trial or appeal process and fees charged for it must be substantially similar to the applicable trial or appeal process adopted by the Alaska Supreme Court or imposed by law.

(j) A court may not enforce a municipal ordinance prescribing a penalty for driving while under the influence of an alcoholic beverage, inhalant, or controlled substance or refusal to submit to a chemical test unless that ordinance imposes ignition interlock device requirements under this title. (§ 1 ch 91 SLA 1974; am §§ 1, 2 ch 241 SLA 1976; am §§ 1 — 5 ch 178 SLA 1978; am § 7 ch 63 SLA 1991; am § 6 ch 70 SLA 1994; am § 3 ch 47 SLA 1996; am E.O. No. 99 §§ 21 — 23 (1997); am § 2 ch 97 SLA 2008; am § 38 ch 29 SLA 2010)

Revisor's notes. — Under E.O. No. 39, § 11, a reference to Department of Transportation and Public Facilities was substituted for Department of Highways in (d) of this section in 1977. In 1999, in this section, "Department of Community and Economic Development" was substituted for "Department of Community and Regional Affairs" in accordance with § 91(a)(7), ch. 58, SLA 1999. In 2004, in (b) of this section, "Department of Community and Economic Development" was changed to "Department of Commerce, Community, and Economic Development", in

accordance with § 3, ch. 47, SLA 2004.

Effect of amendments. — The 2008 amendment, effective January 1, 2009, added subsection (j).

The 2010 amendment, effective July 1, 2010, in (h), substituted "AS 12.25.175 and 12.25.200" for "AS 12.25.200".

Editor's notes. — Under § 61, ch. 29, SLA 2010, the 2010 amendment of (h) of this section applies "to all citations issued . . . for violations occurring on or after July 1, 2010."

NOTES TO DECISIONS

A city ordinance, to the extent it is in conflict with the state traffic regulations, constitutes an exercise of home-rule power expressly prohibited by the legislature. *Adkins v. Lester*, 530 P.2d 11 (Alaska 1974).

The word "inconsistent" describes that which

reveals lack of uniformity in over-all purpose or design. *Cremer v. Anchorage*, 575 P.2d 306 (Alaska 1978).

Similarity to Uniform Vehicle Code. — Subsection (a) is similar in substance and purpose to the provisions of § 15-101 of the Uniform Vehicle Code

Annotated adopted by the National Committee on Uniform Traffic Laws and Ordinances in 1962. *Simpson v. Municipality of Anchorage*, 635 P.2d 1197 (Alaska Ct. App. 1981).

Standard governing ordinance validity. — Under the express terms of subsection (a) it is clear that inconsistency is the standard that governs the validity of a local ordinance regulating the operation of a motor vehicle. *Simpson v. Municipality of Anchorage*, 635 P.2d 1197 (Alaska Ct. App. 1981).

Nature of inconsistency. — When the question of inconsistency between a local ordinance and state law under subsection (a) is raised, the issue is not whether there is a mere discrepancy between the state law and local ordinance; rather, the inquiry must focus on whether any discrepancy in the ordinance impedes or frustrates policy expressed by state law. *Simpson v. Municipality of Anchorage*, 635 P.2d 1197 (Alaska Ct. App. 1981).

Municipal penalties greater than state penalties are permitted. — Because the legislature has explicitly granted municipalities the power to enact forfeiture ordinances that are inconsistent with the corresponding provisions of state law, municipalities do not violate state law when they exercise this power. *McCormick v. Municipality of Anchorage*, 999 P.2d 155 (Alaska Ct. App. 2000).

The saving provisions of subsection (b) by their express terms, require a twofold showing to be made before an ordinance inconsistent under subsection (a) can be upheld. First, it is incumbent upon the municipality to demonstrate the existence of a "specific local requirement." Second, the municipality must show that its ordinance was "necessary," in other words, that the specific local problem could not be addressed in a manner consistent with the provisions of this title. *Simpson v. Municipality of Anchorage*, 635 P.2d 1197 (Alaska Ct. App. 1981).

Posting of state-wide speed limits not required. — Although subsection (d) of this section states that a municipality shall erect signs, the effectiveness of the 30 mile per hour limit set by the state in the Alaska Administrative Code is not conditioned upon the posting of signs. *Bailey v. Lenord*, 625 P.2d 849 (Alaska 1981).

Ordinance held inconsistent. — See *Simpson v. Municipality of Anchorage*, 635 P.2d 1197 (Alaska Ct. App. 1981).

Ordinance held not inconsistent. — There was no unlawful inconsistency between Anchorage, Alaska, Mun. Code 9.28.019.B (ordinance) and AS 28.15.291 under subsection (a) of this section, where the ordinance did not impede or frustrate state policy or the enforcement of state law due to the fact that its culpable mental state for driving under the influence was recklessness rather than negligence, as provided in AS 28.15.291; the ordinance did not authorize conduct that the Alaska legislature had forbidden or forbid conduct that the legislature had authorized, it simply made it harder for the municipality to prosecute someone for the same conduct. *Lampley v. Municipality of Anchorage*, 159 P.3d 515 (Alaska Ct. App. 2007).

City code for Juneau, § 72.02.210(b), does not violate AS 28.01.010(a) because it regulates or prohibits conduct, unnecessary tire-spinning, that is not inconsistent with state traffic law. *State v. Hamilton*, 216 P.3d 547 (Alaska Ct. App. 2009).

District court did not err when it found that there was no significant inconsistency between the municipal and state laws, and defendant was lawfully

stopped for driving while his license was suspended. *Jenkins v. Municipality of Anchorage*, — P.3d — (Alaska Ct. App. Aug. 11, 2010), (memorandum opinion).

Home rule ordinance held not inconsistent with former AS 28.15.300(a). — Home rule ordinance which prohibited driving a motor vehicle while one's license is suspended or revoked as did former AS 28.15.300(a) but which was not limited to public highways as was former AS 28.15.300(a) was not in conflict with former AS 28.15.300(a) and, therefore, was not invalid. *Cremer v. Anchorage*, 575 P.2d 306 (Alaska 1978).

A slight discrepancy between former AS 28.15.300(a) and an ordinance which prohibited the same acts but was not limited to public highways, i.e., the driving of motor vehicles on private property, was not of such a nature that the exercise of municipal power has been directly or indirectly prohibited by legislative action. *Cremer v. Anchorage*, 575 P.2d 306 (Alaska 1978).

The over-all or basic purpose or design of former AS 28.15.300(a) and a home rule ordinance which prohibited the same acts but was not limited to public highways is the same: to prohibit the driving of a motor vehicle while one's license is suspended or revoked. *Cremer v. Anchorage*, 575 P.2d 306 (Alaska 1978).

The fact that former AS 28.15.300(a) referred to the license suspension being effected by a "court of competent jurisdiction" did not mean that the ordinance was inconsistent with the statute because it might have encompassed a valid license suspension effected by a state agency rather than by a court. *Cremer v. Anchorage*, 575 P.2d 306 (Alaska 1978).

Noncompliance with subsection (c) did not illustrate any inconsistency between an ordinance prohibiting the driving of a motor vehicle while one's license is suspended or revoked and former AS 28.15.300(a). *Cremer v. Anchorage*, 575 P.2d 306 (Alaska 1978).

Jury instructions. — Although a city ordinance set the speed limit on the streets in question at 20 miles per hour, the trial court did not err in instructing the jury that the applicable speed limit was the state-wide limit of 30 miles per hour since the city did not post speed limit signs as required by the Alaska Administrative Code. *Bailey v. Lenord*, 625 P.2d 849 (Alaska 1981).

Differences in sentencing under state or municipal law. — Municipal sentencing provision that allowed concurrent sentences for convictions of driving under the influence and refusing to submit to a chemical test under Anchorage, Alaska, Mun. Code 9.28.020A, 9.28.022.C was not fatally inconsistent with AS 28.35.032(a) for purposes of subsection (a) of this section because the fact that the district court might have different sentencing authority, depending on whether a motorist is charged under state or municipal law, did not affect the statutory goal of statewide uniformity of traffic laws. *Lampley v. Municipality of Anchorage*, 159 P.3d 515 (Alaska Ct. App. 2007).

Stated in *City of Anchorage v. Richards*, 654 P.2d 797 (Alaska Ct. App. 1982).

Cited in *Anderson v. Municipality of Anchorage*, 645 P.2d 205 (Alaska Ct. App. 1982); *Cooley v. Municipality of Anchorage*, 649 P.2d 251 (Alaska Ct. App. 1982); *Mangiapano v. Municipality of Anchorage*, 974 P.2d 427 (Alaska Ct. App. 1999); *Dunn v. Municipality of Anchorage*, 100 P.3d 905 (Alaska Ct. App. 2004).

Sec. 28.01.015. Municipal impoundment and forfeiture. (a) Notwithstanding other provisions in this title, a municipality may adopt an ordinance providing for the impoundment or forfeiture of a

(1) motor vehicle, watercraft, or aircraft involved in the commission of an offense under AS 28.35.030, 28.35.032, or an ordinance with elements substantially similar to AS 28.35.030 or 28.35.032;

(2) motor vehicle involved in the commission of an offense under AS 28.15.291 or an ordinance with elements similar to AS 28.15.291;

(3) motor vehicle used by a person whose license is suspended under AS 28.22.041;

(4) motor vehicle used by a person who fails to carry proof of insurance as required under AS 28.22.019; or

(5) motor vehicle used by a person who has \$1,000 or more in delinquent traffic fines for moving violations committed within the municipality.

(b) An ordinance adopted under (a) of this section may

(1) include a fee for the administrative costs incurred by the municipality; and

(2) be more stringent than or the same as but may not be less stringent than applicable provisions under this title or regulations adopted under this title. (§ 6 ch 60 SLA 2002; am § 1 ch 64 SLA 2007)

Effect of amendments. — The 2007 amendment, effective October 29, 2007, added paragraph (a)(5) and made related changes.

NOTES TO DECISIONS

Construction. — The legislature's failure to specifically mention AS 12.55.080 — 12.55.085 in the wording of this section does not manifest a legislative intent to bar municipalities from enacting mandatory forfeitures. *McCormick v. Municipality of Anchorage*, 999 P.2d 155 (Alaska Ct. App. 2000).

Municipal penalties greater than state penal-

ties are permitted. — Because the legislature has explicitly granted municipalities the power to enact forfeiture ordinances that are inconsistent with the corresponding provisions of state law, municipalities do not violate state law when they exercise this power. *McCormick v. Municipality of Anchorage*, 999 P.2d 155 (Alaska Ct. App. 2000).

Sec. 28.01.020. Short title. This chapter may be cited as the Alaska Uniform Traffic Laws Act. (§ 3 ch 241 SLA 1976)

Chapter 05. Administration.

Article

1. Powers and Duties of Departments of Public Safety and Administration (§§ 28.05.011 — 28.05.071)
2. Vehicle Equipment Standards and Seat Belts (§§ 28.05.081 — 28.05.106)
3. Subpoenas, Notices, and Hearings (§§ 28.05.111 — 28.05.141)
4. Disposition of Certain Vehicle and Traffic Offenses (§§ 28.05.151, 28.05.155)

Administrative Code. — For division of motor vehicles, see 13 AAC, part 4.

Article 1. Powers and Duties of Departments of Public Safety and Administration.

Section

11. Duty of commissioners to adopt regulations
15. Wheeled adjuncts
21. Commissioners to enter compacts and reciprocal agreements
31. Department of Public Safety to publish statutes

Section

- and regulations relating to vehicles, vehicle use, and pedestrians
35. Approval of accident prevention courses
41. Forms, applications, and oaths
45. Voter registration

Lynne Smith

From: Edra Morledge
Sent: Monday, February 03, 2014 10:08 AM
To: Lynne Smith
Subject: FW: SB 123

Letter in support of SB 123

-----Original Message-----

From: David Wight [<mailto:davidgwight@me.com>]
Sent: Saturday, February 01, 2014 6:18 AM
To: Edra Morledge
Subject: SB 123

Senator Kevin Meyer

I strongly support your SB 123 and have worked with the Anchorage Assembly and Anchorage School District for more than three years to eliminate this high risk use of cell phones in our school zones.

I have volunteered as a crossing guard at the corner of Gregory and Chinook, the intersection in front of Bowman Elementary for the last three years. ASD does not have funding for this intersection. After three years of effort to get users to cease use of cell phones it is apparent that some users have refused to change their behavior. I see no alternative to change their practice except to make it illegal in school zones.

What have I experienced in this time. The worst case was being rear ended right after school was out as I stopped quickly to avoid a child running across the street. The driver behind me did not see my car much less the child in front of me. A cell phone was in use and the driver considered the call important even when told about the child.

I have had people on cell phones run the stop signs, not stop when I direct them to stop, make incorrect turns and go in the exit only lane. They have also turned too sharply, ending up on the curb where children are waiting to cross the street. I have had to tap on car windows as cars approach the stop sign and all I can see is the top of their head while they use their phone. Many times they are driving too fast for safety while using their phones.

I believe cell phone use in school zone is the single most legal risky activity allowed in school zones and will result in a significant tragedy. It should be illegal. It is a very small sacrifice for us to give up cell phone use in school zones for the safety of our children. Maybe 10 minutes twice a day.

David Wight
Volunteer Crossing Guard
Retired CEO of Alyeska Pipeline Service Company

Sent from my iPad

MUNICIPALITY OF ANCHORAGE



Office of the Mayor

Phone: 907-343-7100

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Mayor Dan Sullivan

February 5, 2014

The Honorable Peter Micciche
Capitol Building, Room 125
Juneau, Alaska 99801-1182

Dear Senator Micciche,

I am contacting you today regarding SB 123, *Prohibit Use of Cell Phone While Driving*. This bill is currently in the possession of your committee, Senate Community and Regional Affairs and I understand the bill will be considered in a second hearing this week.

I would like to express my support for this legislation. The Municipality Of Anchorage submitted a request to the Legislature in 2013 to have this bill introduced. This problem is not unique to Municipality Of Anchorage. However, my office has received many calls, emails and letters from residents of Anchorage who have found themselves in the frightening situation where a driver is not paying attention to the road, vehicles or pedestrians around them and have had several close calls. We would like to try to address this safety issue before a true tragedy takes place. This bill would provide local Assemblies the authority to adopt ordinances prohibiting the use of cell phones while driving in school zones within their municipalities. HB 123 does not require municipalities to make such changes to their local codes, but gives them the option to do so if the problem exists in their community.

I urge you and your fellow committee members to support this legislation. I appreciate your time and consideration.

Sincerely,

A handwritten signature in cursive script that reads "Dan Sullivan".

Dan Sullivan
Mayor

Edra Morledge

From: Gary Miller <gmiller_juneauak@hotmail.com>
Sent: Monday, February 10, 2014 9:36 AM
To: Sen. Kevin Meyer
Cc: Rep. Cathy Munoz; Sen. Dennis Egan
Subject: SB 123

I support SB 123, restricting the use of cell phones in school zones. What about sporting events (these are mostly events with kids) and around churches (which also have lots of kids). How about store parking lots when they are very busy? I would prefer a total ban on drivers using cell phones while driving.

Thank you.

Gary Miller
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