

**HB**

**333**

<TARGET><BILL>HB 333</BILL><SUBJECT>HB  
333</SUBJECT><COMM>HCRA30</COMM></TARGET>

# LEGAL SERVICES

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

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## MEMORANDUM

February 22, 2018

**SUBJECT:** Authorizing Municipalities to Prohibit Cell Phone Use While Driving (HB 333; Work Order No. 30-LS1297A)

**TO:** Representative Chris Birch  
Attn: Ashton Compton

**FROM:** Allison M. Laffen *AM*  
Legislative Counsel

You asked whether the abovementioned bill, which authorizes a municipality to prohibit cell phone use while operating a motor vehicle<sup>1</sup> in school zones or on school property, is necessary for a municipality to adopt such a prohibition. The answer is probably yes, as discussed below. You asked in a subsequent email if current law prohibits cell phone use while driving, or just texting and watching videos, and if "operating a motor vehicle" is limited to driving a vehicle or if the phrase also encompasses a driver texting in a parked or idling vehicle.

1. Municipal authorization. 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,

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<sup>1</sup> While the bill title uses the term "driving," proposed AS 28.01.017 uses the term "operating."

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 specific local requirements. The Alaska Court of Appeals has determined that a municipal ordinance regulating the operation of motor vehicles is inconsistent if any discrepancy in the ordinance impedes or frustrates policy expressed by state law<sup>2</sup> and that such an ordinance is invalid under AS 28.01.010 unless justified under the local requirement savings clause in AS 28.01.010(b). *Simpson v. Municipality of Anchorage*, 635 P.2d. 1197, 1204 - 08 (Alaska Ct. App. 1981).

AS 28.35.161, which prohibits the use of electronic devices while driving, makes an exception for some uses of 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

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<sup>2</sup> For examples of ordinances found to not be impermissibly inconsistent with state law, see *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 because the Department of Public Safety likely "simply decided to leave this conduct unregulated at a state level"), and *Lampley v. Municipality of Anchorage*, 159 P.3d 515, 524 - 25 (Alaska Ct. App. 2007) (city ordinance imposing a higher degree of culpability concerning driving with a suspended license did not frustrate state law where state had concurrent jurisdiction over offense and the ordinance "does not authorize conduct that the Alaska Legislature has forbidden, nor does it forbid conduct that the Alaska Legislature has authorized.").

*(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.<sup>[3]</sup>*

AS 28.35.161 also provides exceptions for certain other communication devices that might be deemed covered under a municipal ordinance regarding cell phone use in school zones. AS 28.35.161(d). Thus it might well be argued that under current law, an ordinance prohibiting cell phone use by persons operating motor vehicles in school zones would be inconsistent with the Alaska Motor Vehicle Code and would frustrate the legislature's purpose in adopting the exception for cell phones. A municipality could make an argument for a specific local exception prohibiting cell phone use in school zones. To succeed, a municipality would need to make a two-fold showing of 1) the existence of a specific local requirement, and 2) the necessity of the municipal ordinance -- "in other words, that the specific local problem could not be addressed in a manner consistent with the provisions of the Alaska Motor Vehicle Code."<sup>4</sup>

2. Current law. As discussed above, AS 28.35.161 prohibits certain uses of electronic devices while driving. AS 28.35.161(a) prohibits watching videos and reading or typing a text message while driving. AS 28.35.161(c) makes an exception for cell phones "being used for voice communication or displaying caller identification information." Therefore, under current law, cell phone use is not prohibited while driving if the cell phone use is limited to the permissible uses under AS 28.35.161(c).

3. "Operating a motor vehicle." The language of the Alaska Statutes and case law indicate that "operating" a motor vehicle is more expansive than "driving" a motor vehicle.

The term "operating a motor vehicle" is not defined generally for the Alaska Statutes; however, AS 28.33.190 defines "operating a commercial motor vehicle" for purposes of AS 28.33:

(14) "operating a commercial motor vehicle" means

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<sup>3</sup> Emphasis added.

<sup>4</sup> *Simpson*, 635 Pd.D. at 1208 (finding that a high incidence of alcohol-related traffic accidents in the Anchorage area does not, alone, support "specific local requirement" because, at the very least, the municipality would need to demonstrate that the problem of drunk driving in Anchorage was disproportionately higher than other jurisdictions in the state).

Representative Chris Birch  
February 22, 2018  
Page 4

- (A) to drive a commercial motor vehicle; or
- (B) whether or not the vehicle is in motion, or is capable of being moved, to be in actual physical control, or to attempt to affect the movement, of a commercial motor vehicle;

AS 28.35.030, regarding the crime of driving under the influence, makes it a crime if a person "*operates or drives* a motor vehicle or operates an aircraft or a watercraft" while under the influence of certain substances. (Emphasis added). In an appeal of a drunk driving conviction where the defendant was found asleep in the passenger side of a vehicle that was parked with the motor running, the Alaska Supreme Court noted: "[a]s a general proposition, it appears that 'to operate' includes a larger class of activities than 'to drive.' While one who drives a vehicle must necessarily in that process operate it, the reverse is not necessarily so."<sup>5</sup>

Proposed AS 28.01.017 in HB 333 authorizes a municipality to adopt an ordinance that prohibits the use of a cellular phone by a person operating a motor vehicle while on school property or in a school zone. This would allow a municipality to adopt an ordinance prohibiting such cell phone use while *operating* a motor vehicle or a subset of operating a motor vehicle, for example, *driving*. In this regard, HB 333 allows a municipality to tailor an ordinance to their own special circumstances or needs in relation to operating a vehicle. If you would like to further restrict the authority of a municipality to adopt an ordinance in this regard the grant of authority to a municipality could be amended.

If I may be of further assistance, please advise.

AML:boo  
18-090.boo

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<sup>5</sup> *Jacobson v. State*, 551 P.2d 935, 937 (Alaska 1976).

# ALASKA STATE LEGISLATURE

## Representative Chris Birch

### Session Contact

State Capitol, Rm 112  
Juneau, AK 99801  
(907) 465-4931  
[rep.chris.birch@akleg.gov](mailto:rep.chris.birch@akleg.gov)



### Interim Contact

1500 W. Benson Blvd.  
Anchorage AK, 99503  
(907) 269-0205  
[alaskahouserepublicans.org](http://alaskahouserepublicans.org)

## Sponsor Statement

### House Bill 333

House Bill 333 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. HB 333 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 HB 333.

# Fiscal Note

State of Alaska  
2018 Legislative Session

Bill Version: HB 333  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB333-DPS-AST-04-06-18  
Title: MUNI: BAN DRIVER PHONE USE IN SCHOOL  
ZONE  
Sponsor: BIRCH  
Requester: (H) CRA

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)

	FY2019	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2019 Request	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
<b>OPERATING EXPENDITURES</b>	<b>FY 2019</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
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>0.0</b>

**Fund Source (Operating Only)**

None							
<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>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

**Change in Revenues**

None							
<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>	<b>0.0</b>

**Estimated SUPPLEMENTAL (FY2018) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2019) 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/comments:**

Not applicable, initial version.

Prepared By: Kelly Howell, Administrative Services Director  
Division: Administrative Services  
Approved By: Walt Monegan, Commissioner  
Agency: Public Safety

Phone: (907)465-4336  
Date: 04/06/2018  
Date: 04/06/18

**FISCAL NOTE ANALYSIS**

**STATE OF ALASKA  
2018 LEGISLATIVE SESSION**

**BILL NO. HB 333**

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**Analysis**

This bill amends AS 28.01 Alaska Uniform Traffic Laws Act by adding a new section to allow a municipality to adopt an ordinance prohibiting the use of a cell phone by a person operating a motor vehicle while on school property or in a designated school zone.

The Alaska State Troopers generally do not enforce municipal ordinances. Should this bill pass, there would be no fiscal impact to the Alaska State Troopers. Therefore, a zero fiscal note is being submitted.

ANCHORAGE SCHOOL DISTRICT  
ASDR 2017-2018-20

**RESOLUTION IN SUPPORT OF HB333 – CELL PHONE LEGISLATION**

**WHEREAS**, House Bill 333 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; and

**WHEREAS**, The State of Alaska's current statutes require that traffic laws be uniform across the state (AS 28.01.010) unless a municipality demonstrates a special problem; and

**WHEREAS**, HB 333 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.

**NOW, THEREFORE**, be it resolved, that the Anchorage School Board supports HB333, helping municipalities keep students, staff, and families safe in school zones and on school property.

**PASSED AND APPROVED** this 5<sup>th</sup> day of March 2018.

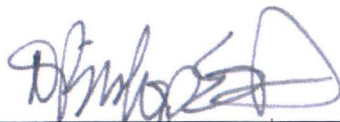
**ANCHORAGE SCHOOL BOARD**



Tam Agosti-Gisler, President

Bettye Davis  
Dave Donley  
Andy Holleman

Starr Marsett  
Kathleen Plunkett  
Elisa Snelling



Dr. Deena Bishop, Superintendent



### **Agenda Item Details**

**Meeting** Mar 05, 2018 - School Board Meeting

**Category** E. Action Items

**Subject** 3. ASD Memorandum #138 - Resolution in Support of HB333 - Cell Phone Legislation

**Type** Action

**Recommended Action** To approve and adopt the attached resolution in support of HB333, an act authorizing a municipality to adopt an ordinance prohibiting the use of cellular telephones while driving in school zones or on school property.

**ANCHORAGE SCHOOL DISTRICT  
ANCHORAGE, ALASKA**

**ASD MEMORANDUM #138 (2017-2018)**

**March 5, 2018**

**TO:** SCHOOL BOARD

**FROM:** DR. DEENA BISHOP, SUPERINTENDENT

**SUBJECT:** RESOLUTION IN SUPPORT OF HB333 – CELL PHONE LEGISLATION

**ASD Core Value:** All schools and departments will be safe and supportive.

**RECOMMENDATION:**

The Administration recommends the Anchorage School Board approve and adopt the attached resolution in support of HB333, an act authorizing a municipality to adopt an ordinance prohibiting the use of cellular telephones while driving in school zones or on school property.

**PERTINENT FACTS:**

House Bill 333 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.

The State of Alaska's current statutes require that traffic laws be uniform across the state (AS 28.01.010) unless a municipality demonstrates a special problem. HB 333 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.

**DB/CE/KG**

**Prepared by:** Katy Grant, Executive Assistant, School Board

**Approved by:** Catherine Esary, Director, Communications

**RESOLUTION IN SUPPORT OF HB333 – CELL PHONE LEGISLATION**

**WHEREAS**, House Bill 333 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; and

**WHEREAS**, The State of Alaska’s current statutes require that traffic laws be uniform across the state (AS 28.01.010) unless a municipality demonstrates a special problem; and

**WHEREAS**, HB 333 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.

**NOW, THEREFORE**, be it resolved, that the Anchorage School Board supports HB333, helping municipalities keep students, staff, and families safe in school zones and on school property.

**PASSED AND APPROVED** this 5<sup>th</sup> day of March 2018.

**ANCHORAGE SCHOOL BOARD**

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Tam Agosti-Gisler, President

Davis	Starr Marsett	Bettye
Donley	Kathleen Plunkett	Dave
Holleman	Elisa Snelling	Andy

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Dr. Deena Bishop, Superintendent

**Motion & Voting**

To approve and adopt the attached resolution in support of HB333, an act authorizing a municipality to adopt an ordinance prohibiting the use of cellular telephones while driving in school zones or on school property.

Motion by Starr Marsett, second by Bettye Davis.

Final Resolution: Motion Passes

Yea: Tam Agosti-Gisler, Bettye Davis, Andy Holleman, Starr Marsett, Kathleen Plunkett, Elisa Snelling, Dave Donley

# 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 § 36 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 Com-

merce, Community, and Economic Development" in accordance with § 3, ch. 47, SLA 2004.

**Effect of amendments.** — 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 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 de-

sign. *Cremer v. Anchorage*, 575 P.2d 306 (Alaska 1978).

**Similarity to Uniform Vehicle Code.** — Substantive provision (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 1992.

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municipality shall be forwarded to the...  
 inconsistent ordinances shall...  
 ordinances is forwarded. So far as...  
 municipal traffic ordinance...  
 responding provision of this title or...

traffic control devices on streets and...  
 conform to the current edition...  
 ment of Transportation and Public...

a "drug-free school zone" at each...  
 the location of a school;  
 center indicating that the center is...  
 is paragraph, "recreation or youth...

municipality shall be incorporated in a...

tially or wholly governed by this...  
 must complement each other, as...  
 department of Administration or the...  
 shall offer and receive reasonable...  
 regulations.

far as practicable, conform to the...  
 Uniform Vehicle Code adopted by the...  
 finances.

expense only if the citation complies...

ness and fees charged for it must be...  
 the process adopted by the Alaska...

prescribing a penalty for driving...  
 delinquent, or controlled substance or...  
 ordinance imposes ignition interlock...  
 1974; am §§ 1, 2 ch 241 SLA 1976;  
 ; am § 6 ch 70 SLA 1994; am § 3  
 a § 2 ch 97 SLA 2008; am § 38 ch...

community, and Economic Development<sup>2</sup>, in...  
 with § 3, ch. 47, SLA 2004.

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

notes. — Under § 61, ch. 29, SLA 2010,  
 amendment of (h) of this section applies "to  
 issued . . . for violations occurring prior  
 , 2010."

er v. Anchorage, 575 P.2d 306 (Alaska)

y to Uniform Vehicle Code. — Subsec-  
 similar in substance and purpose to the  
 f § 15-101 of the Uniform Vehicle Code  
 adopted by the National Committee on  
 Traffic Laws and Ordinances in 1962. Simp-

son v. Municipality of Anchorage, 635 P.2d 1197  
 (Alaska Ct. App. 1981).

**Standard governing ordinance validity.** — Un-  
 der the express terms of subsection (a) it is clear that  
 inconsistency is the standard that governs the valid-  
 ity 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 pen-  
 alties 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 sub-  
 section (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 re-  
 quired.** — Although subsection (d) of this section  
 states that a municipality shall erect signs, the effec-  
 tiveness 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.** — Municipal ordi-  
 nance that prohibited driving with a blood alcohol  
 level of .10 percent or more was inconsistent with AS  
 28.35.033; defendant's convictions under the ordi-  
 nance were reversed. Simpson v. Municipality of An-  
 chorage, 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 prose-  
 cute someone for the same conduct. Lampley v. Mu-  
 nicipality of Anchorage, 159 P.3d 515 (Alaska Ct. App.  
 2007).

**City code for Juneau, § 72.02.210(b), does not vio-  
 late subsection (a) because it regulates or prohibits  
 conduct, unnecessary tire-spinning, that is not incon-  
 sistent 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 muni-**

pal 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 opin-  
 ion).

**Home rule ordinance held not inconsistent  
 with former AS 28.15.300(a).** — Home rule ordi-  
 nance 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 overall or basic purpose or design of former AS  
 28.15.300(a) and a home rule ordinance which prohib-  
 ited 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 com-  
 petent 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 instruct-  
 ing 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 mu-  
 nicipal law.** — Municipal sentencing provision that  
 allowed concurrent sentences for convictions of driv-  
 ing 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. Mu-  
 nicipality 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. Mu-  
 nicipality of Anchorage, 649 P.2d 251 (Alaska Ct. App.  
 1982); Mangiapane 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)

**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 regulations of the Department of Administration, see 2 AAC 02 — 2 AAC

05. For regulations of the Department of Public Safety, see 13 AAC 02 — 13 AAC 04.

**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 and regulations relating to vehicles, vehicle use, and pedestrians
35. Approval of accident prevention courses

**Section**

41. Forms, applications, and oaths
45. Voter registration
48. Sex offender registration
51. Suspended or revoked documents
61. Records of departments and certified copies of records
65. Access to criminal justice information
71. Change of name or address



AAA Alaska  
1277 Treat Blvd., Suite 1000  
Walnut Creek, CA 94597

March 30, 2018

The Honorable Chris Birch  
State Capitol Room 112  
Juneau AK, 99801

**Position: HB 333 - Support**

Dear Representative Birch:

On behalf of AAA Alaska, I write to express our support for House Bill 333, related to the use of wireless devices while operating a vehicle in a school zone. As a non-governmental organization focused on improving traffic safety, we believe this bill is a step toward reducing the dangers associated with distracted driving.

This bill would authorize a municipality to adopt an ordinance that prohibits the use of a mobile phone while driving in a school zone and on school property. According to the National Highway Traffic Safety Administration, 3,477 people were killed in 2015 because of distracted driving. Another 391,000 were injured. Research has shown that text messaging while driving involves a combination of visual, cognitive, and physical distractions making it an inherently dangerous activity.

Anything that takes your attention away from driving can be a distraction and any of these distractions can endanger the driver and others. In a recent survey, the AAA Foundation for Traffic Safety found that 88 percent of drivers believe distracted driving is on the rise. AAA supports educational efforts to inform drivers of the safest use of wireless devices while driving, including urging drivers to refrain from use while operating a vehicle.

AAA has been a leader and trusted advocate for the safety and security of people for over 100 years. One of our core missions is promoting safer roads and advocating for traffic safety policies. Therefore, we respectfully request your support on House Bill 333, a measure that will reduce the risks associated with mobile phones and distracted driving.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Moreno".

John Moreno  
Manager, Public Affairs  
AAA Northern California, Nevada & Utah

cc: House Community & Regional Affairs Committee, Chair Justin Parish  
House Community & Regional Affairs Committee, Chair Tiffany Zulkosky