

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

SB 91 thru SB 95 L.B. Finance 40

SB 911

*H. Judd 1/21/88  
No H. Judd. Return  
H. Judd contacted  
re report  
updated  
note the  
date.*

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Dept. of Military & Veterans Affairs  
Title: An act limiting liabilities for BRU: Alaska National Guard  
activities of the Alaska National Guard  
Sponsor: Rules Committee Components: \_\_\_\_\_  
Requestor: Governor Cowper

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
TOTAL	0	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)

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 fiscal benefit is difficult to project because the State insurance deductible has varied, also this bill will only affect future claims. There could, however, be substantial savings in claims defense costs.

Prepared By: Donald J. Hitchcock *[Signature]* Phone: 465-2180  
Division: Risk Management Date: January 18, 1988

Approved by Commissioner: John M. Andrews *[Signature]* Date: 1/20/88  
Agency: Department of Administration

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

**RECEIVED**  
JAN 20 1988

LEGISLATIVE FINANCE

FISCAL NOTE

REQUEST:

Revision Date: January 11, 1988  
Title: An Act limiting liability for activities of the Alaska National Guard  
Sponsor: Rules Committee  
Requestor: Governor

Agency Affected: Military & Veterans Affairs  
BRU: Alaska National Guard  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary) Passage of this bill will have no effect on the operating budget of the Alaska National Guard BRU. The fiscal benefit expected due to the passage of this bill will be the reduced exposure of the state to future liabilities, future claims, and future claims defense costs in the risk management program of the Department of Administration.

Prepared by: Jeff Morrison Phone: 465-4600  
Division: Administrative & Support Services, DMVA Date: 1/19/88

Approved by Commissioner: MG John Schaeffer Date: 1/19/88  
Agency: Department of Military & Veterans Affairs

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

JAN 20 1988  
LEGISLATIVE COUNCIL

SENATE COMMITTEE REPORT

FURTHER:

3/9/87

DATE TURNED INTO OFFICE 3/31/87

Mr. President:

FINANCE Committee considered SB 91

limiting liability for activities of the Alaska National Guard.

and recommended:

- replace with CS FOR \_\_\_\_\_ )  same title
- or adopt \_\_\_\_\_ CS FOR \_\_\_\_\_ )  new title
- attached amendment(s) and
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to \_\_\_\_\_
- letter of intent adopted \_\_\_\_\_

Committee  attached or  adopted fiscal note(s)  
 new  updated or  previous 2  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

*[Handwritten signatures]*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
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\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*[Handwritten signature]* DO PASS  
 Chairman signature and recommendation

Committee Backup Attached

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

**REQUEST** SB 91  
 Bill/Resolution No. : LL#773-87-0016  
 Title: Civil Liability for National Guard activities.  
 Sponsor: Rules Committee  
 Requestor: Governor  
 Date of Request: \_\_\_\_\_

**FISCAL DETAIL**  
 Agency Affected: Military & Veterans Affairs  
 BRU: Alaska National Guard  
 Components: \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

<b>CAPITAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
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<b>REVENUE</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
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**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

This bill would have no known fiscal impact.

Prepared by: Richard N. Rasmussen Phone: 465-4600  
 Division: Administrative & Support Services Division Date: 10/07/86  
 Approved by Commissioner for Richard G. Pagan Date: 10/07/86  
 Agency: Dept. of Military & Veterans Affairs

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

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STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: SB 91  
Publish Date: 1/29/87

REQUEST \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: An act limiting liabilities for activities of the Alaska National Guard  
Sponsor: Rules Committee  
Requestor: Governor Cowser

Agency Affected: Dept. of Military & Veterans Affairs  
BRU: Alaska National Guard  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

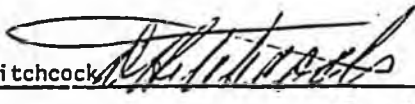
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
TOTAL	0	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)

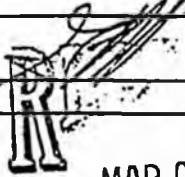
POSITIONS:

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 fiscal benefit is difficult to project because the State insurance deductible varies, also this bill will only affect future claims. There will, however, be savings in claims defense costs.

Prepared By: Donald J. Hitchcock  Phone: 465-2180  
Division: Risk Management Date: February 26, 1987

Approved by Commissioner: Garrey Peska  Date: 3/2/87  
Agency: Department of Administration

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)  
Senate Secretary

MAR 05 1987

LEGISLATIVE FINANCE

1 IN THE SENATE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2

SENATE BILL NO. 91

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act limiting liability for activities of the

7

Alaska National Guard."

8

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

9

\* Section 1. AS 26.05 is amended by adding a new section to read:

10

Sec. 26.05.145. IMMUNITY FROM TORT LIABILITY. The state, its

11

employees and representatives, and individual members of the Alaska

12

National Guard, acting in an official capacity, are not civilly liable

13

in tort actions for injuries to persons or property arising from

14

National Guard activities occurring during training or duty under 32

15

U.S.C. secs. 316, 502, 503, 504, or 505.

PUBLIC LAW 97-124 (H.R. 3799); December 29, 1981

FEDERAL TORT CLAIMS—  
NATIONAL GUARD

*For Legislative History of Act, see p. 2692*

An Act to extend the Federal tort claims provisions of title 28, United States Code, to acts or omissions of members of the National Guard, and to provide that the remedy under those provisions shall be exclusive in medical malpractice actions involving members of the National Guard.

Federal tort  
claim provisions  
for National  
Guard members.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2671 of title 28, United States Code, is amended—*

(1) in the second paragraph, by inserting "members of the National Guard while engaged in training or duty under section 816, 502, 503, 504, or 505 of title 32," after "naval forces of the United States,"; and

(2) in the third paragraph, by inserting "or a member of the National Guard as defined in section 101(3) of title 32" immediately after "United States".

Sec. 2. Section 1089(a) of title 10, United States Code, is amended by inserting "the National Guard while engaged in training or duty under section 816, 502, 503, 504, or 505 of title 32," after "armed forces,".

Repeal.

Sec. 3. Section 834 of title 32, United States Code, and the item relating to such section in the section analysis of chapter 8 of such title, are repealed.

10 USC 1089  
note.

Sec. 4. The amendments made by this Act and the repeal made by section 3 of this Act shall apply only with respect to claims arising on or after the date of the enactment of this Act.

Approved December 29, 1981.

LEGISLATIVE HISTORY—H.R. 3799 (S. 267):

HOUSE REPORT No. 97-384, Pt. 1 (Comm. on the Judiciary).  
SENATE REPORT No. 97-297 accompanying S. 267 (Comm. on the Judiciary).  
CONGRESSIONAL RECORD, Vol. 127 (1981):

Dec. 15, considered and passed House.

Dec. 15, considered and passed Senate, in lieu of S. 267.

**LEGISLATIVE HISTORY**

P.L. 97-124

**FEDERAL TORT CLAIMS—NATIONAL GUARD**

*P.L. 97-124, see page 95 Stat. 1668*

House Report (Judiciary Committee) No. 97-384,

Dec. 10, 1981 [To accompany H.R. 3799]

Cong. Record Vol. 127 (1981)

**DATES OF CONSIDERATION AND PASSAGE**

House December 15, 1981

Senate December 16, 1981

No Senate Report was submitted with this legislation.

**HOUSE REPORT NO. 97-384**

[page 1]

The Commission on the Judiciary, to whom was referred the bill (H.R. 3799) to amend title 28, United States Code, to provide that the Federal tort claims provisions of that title are the exclusive remedy in medical malpractice actions and proceedings resulting from federally authorized National Guard training activities, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

[page 2]

**STATEMENT**

The National Guard is a reserve component of the Armed Forces. As such it has been assigned important responsibilities as a reserve force in the event it is called upon in an emergency. To assure our national defense it must continuously engage in federally prescribed training and demonstrate a high degree of readiness. To assure this, the Federal Government provides the funds to pay for training of Guard personnel and the equipment necessary for Guard operation and training. Except when federalized, the Guard is under the direct order of State Governments. For this reason, its activities have not been covered by the Tort Claims Act even though the Army and Air National Guard have similar roles in Defense planning and training as do the Army Reserve and the Air Force Reserve. This bill amends the tort claims provisions of title 28 to provide the National Guard the same coverage under the Tort Claims Act as now exists for the Armed Forces and its other reserve components.

The bill, with the subcommittee amendments, provides for the necessary amendments to title 28 to accomplish this purpose and makes the necessary amendments to the provisions concerning medical personnel in title 10. This includes the repeal of section 334 of title 32 which presently indemnifies National Guard medical personnel for liability incident to federal training activity.

## FEDERAL TORT CLAIMS

P.L. 97-124

### HISTORY

In the 86th Congress, the committee considered the bill H.R. 5435 which would have similarly amended the Federal tort claims provisions of title 28 to include the acts or omissions of National Guard personnel. Ultimately however, the committee adopted an amendment suggested by the Department of the Army which established administrative authority in the Department of the Army and the Air Force for the payment of claims against the National Guard arising out of Federal training. That amendment became Public Law 86-740 and is popularly known as the National Guard Claims Act, 32 U.S.C. 715. The National Guard Claims Act satisfied the major concerns raised at the time. It authorized the Federal government to assume liability for damages caused by modern military weapons in use by National Guard during federal training, and avoided treating National Guard employees as Federal employees for purposes of Federal liability. As the Committee noted, "a member of the National Guard performing training or duty authorized by title 32, United States Code, who allegedly commits a tort, is not, as a matter of law, under the command of Federal military authorities". *see* H.R. Report No. 1928, 86th Congress 2d Session at 4 (National Guard Claims Act, H.R. 5435).

In the 96th Congress, the Senate held hearings on S. 1858, a bill to extend the Federal tort claims provisions to the acts or omissions of National Guard personnel. *see*, Senate Judiciary Committee Hearings No. 96-66, 96th Congress 2d Session. The Senate subsequently passed S. 1858 on May 30, 1980. Mr. Kastenmeier introduced a bill identical to S. 1858 in the 96th Congress. That bill, H.R. 7475, was not considered by the Committee.

In the 97th Congress, the Senate Armed Services Committee adopted an amendment to S. 815, the Department of Defense Authorization for

[page 3]

Fiscal 1982, which established Federal liability for damages arising out of the acts or omissions of National Guard personnel during Federal training in the same manner and to the same extent that the United States would be liable in any other action brought against the United States under the Federal tort claims provisions of title 28. The Senate passed S. 815 as amended on May 14, 1981. *see*, Senate Report 97-58, 97th Congress, 1st Session at 181 and 182 (Department of Defense Authorization for Fiscal Year 1982, S. 815). The House passed bill (H.R. 3519) did not include similar provisions, and the Senate receded to the House on the issue in conference. *see*, House Conference Report No. 97-311, 97th Congress, 1st Session at 132 (Department of Defense Authorization for Fiscal Year 1982, S. 815). On July 23, 1981 the Senate Judiciary Subcommittee on Agency Administration held hearings on the National Guard tort provisions of S. 815, and on S. 267, a bill identical to S. 1858.

On June 4, 1981, Mr. Kastenmeier introduced H.R. 3799 for himself and Mr. Montgomery. The bill was referred jointly to the Committees on the Judiciary and Armed Services. On October 13, 1981 and October 29, 1981 the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee held hearings on H.R. 3799. On October 29, the subcommittee considered and adopted an

## LEGISLATIVE HISTORY

P.L. 97-124

amendment in the nature of a substitute for H.R. 3799, and favorably recommended the bill, as amended to the Full Judiciary Committee. The Judiciary Committee reported H.R. 3799 as amended to the House by unanimous voice vote on December 8, 1981.

By letter dated November 3, 1981 to Honorable Peter W. Rodino, Jr., Chairman of the House Judiciary Committee, the Honorable Melvin Price, Chairman of the House Armed Services Committee indicated the support of the Armed Services Committee for the action of the subcommittee. The letter further expressed the intent of the Armed Services Committee not to hold hearings on the subject, and to support the bill as reported by the Judiciary Committee on the floor. The complete text of the letter is reprinted in the appendix.

### FINDINGS AND CONCLUSIONS

Testimony and materials supplied to the subcommittee in the course of the hearings indicate that there is substantial risk of personal liability by National Guard personnel engaged in Federal training activity. National Guard representatives from every state except Arkansas and West Virginia reported to the National Guard Association on litigation against National Guard personnel in their states since 1960. The information supplied to the subcommittee by the National Guard Association indicates that there are 956 known instances of claims against National Guard personnel since 1960. Of those, less than 10 percent or 94 claims were actionable against the Federal Government under the current Federal tort claims provisions of title 28. In only 339, or 35 percent of the cases, were claimants reported to have filed a claim under the National Guard Claims Act. A total of 959 or 89.85 percent of reported claims involved motor vehicles. While information is not complete for the entire reporting period, all 48 reporting states included data for 1975 to present. During that period, 360 claims were reported to have been settled for an aggregate sum of

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\$914,536.02. Available information from those states reporting indicates that since 1960, a total of 431 claims have been settled for an aggregated amount of \$1,165,961.25.

Information supplied by the Army Claims Service indicates that between 1977 and October 1981, approximately 1,689 claims involving Army National Guard personnel have been filed under the National Guard Claims Act, and have been settled for the approximate aggregate amount of \$2,807,239. Motor vehicle claims accounted for 89 percent of Army National Guard claims reported by the Army Claims Service from 1977 to October 1981. The Air Force Claims Service reports a total of 651 claims involving Air National Guard personnel from 1973 to October 1981. Of those 462 have been settled for an aggregated \$3,397,555. The Air Force does not have a category for motor vehicle claims.

Though incomplete, the statistical information before the committee indicates that a substantial number of claims arise every year as a result of Federally prescribed National Guard training and that the preponderance of these claims involve motor vehicles. Moreover, as the information from the National Guard Association indicates, the individual National Guard member is subject to personal liability for damages arising out of Federal training activity.

## FEDERAL TORT CLAIMS

P.L. 97-124

The subcommittee also received testimony on the organizational structure and the role of the National Guard. The Department of Justice pointed out in its testimony in opposition to H.R. 3799 that Article I, Section 8, Clause 16 of the Constitution reserves to states the power to appoint officers of the militia and the authority to train the militia according to the discipline prescribed by Congress. Because the Federal government does not command the National Guard during Federal training, the Department of Justice points out that there is no basis for the vicarious liability of the Federal Government for the acts or omissions of National Guard personnel during that training. However, as was pointed out in testimony before the Subcommittee, the primary role of the modern National Guard is to provide a well trained and integral reserve force for our nation's defense, and the Federal Government does exercise a great deal of control over the Federal training activities of the National Guard.

The same Department of Defense regulations that govern Army and Air Force Reserve training activities govern the Federal training activities of the National Guard. Army and Air Force officers are assigned to each state National Guard organization. They conduct inspections, monitor and assist in training activities and approve promotion of National Guard personnel. In addition, they coordinate National Guard training with the needs of the Army and Air Force. The Federal government not only prescribes the duration and type of National Guard training, it pays National Guard personnel for Federal training, it provides workman's compensation to National Guard personnel for injuries sustained during Federal training and it provides the equipment used by National Guard personnel during training. Thus, while actual command during Federal training activities is maintained by the states as a matter of law, as a matter of policy, it is appropriate that the Federal liability for damages arising out of the acts or omissions of National Guard personnel during Federal

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training be equivalent to Federal liability for the acts or omissions of Air Force and Army Reserve personnel which arise out of their identical training.

The bill, as amended by the subcommittee, merely amends the definition of the phrases "employee of the government" and "acting within the scope of his office or employment" as they are used in the tort claims provisions of title 28 to include National Guard personnel engaged in Federal training. It is the interest of the committee that coverage under these provisions be the same for National Guard personnel as it is for members of the Army and Air Force Reserves, *see*, 43 Comp. Gen. 412, B-148324 (1963) (inactive duty training extends from the time of first muster until the end of scheduled inactive duty training for the day and does not include travel to and from home and headquarters). This decision of the Comptroller General is reprinted in the appendix below. It is well settled that claims for injuries to servicemen that "arise out of or are in the course of activity incident to service" may not be brought under the Federal Tort Claims provision of title 28, *see*, *Feres v. United States*, 340 U.S. 135, 71 S.Ct. 153, 95 L.Ed. 152 (1950). It is the intent of the Committee that the rule of the *Feres* case apply to the acts or omissions of National Guard personnel.

## LEGISLATIVE HISTORY

P.L. 97-124

The amendments made by this bill to the Tort claims provisions of title 28, and specifically to the definitions contained in section 2671 of that title, only concern the application of the Federal tort claims provisions of that title. They do not change or modify the application of any other laws governing federal employees such as the Ethics in Government Act of 1978, as amended.<sup>1</sup>

### SECTION-BY-SECTION ANALYSIS

Section 1 amends the definition of "Employees of the Government" and the definition of "Acting within the scope of his office or employment" in section 2671 of title 28, United States Code, to extend the scope of the Federal tort claims provisions of that title to members of the National Guard while engaged in Federal training or duty.

Section 2 amends section 1089 of title 10, United States Code, which creates an exclusive remedy against the United States in civil actions arising out of medical malpractice by certain federal employees to include actions arising out of medical malpractice by National Guard medical personnel while engaged in Federal training.

Section 3 repeals section 334 of title 32, United States Code, relating to payment of malpractice liability of National Guard medical personnel.

Section 4 provides that the amendments and the repeal made by the bill shall apply prospectively.

### CONCLUSION

In light of the consideration and circumstances discussed in this report, it is recommended that the bill, as amended, be considered favorably.

<sup>1</sup> Public Law 95-521, 92 Stat. 1824, as amended by Public Law 96-19, 93 Stat. 37-44 and Public Law 96-28, 93 Stat. 76.

\* \* \* \* \*

[page 9]

STATEMENTS UNDER CLAUSE 2(1)(3)(A), CLAUSE 2(1)(3)(B), CLAUSE 2(1)(2)(B), CLAUSE 2(1)(3)(D), CLAUSE 2(1)(4), AND CLAUSE 2(1)(3)(C) OF RULE XI AND CLAUSE 7(a)(1) OF RULE XIII OF THE HOUSE OF REPRESENTATIVES

### COST (RULE XIII (7)(a)(1))

The Congressional Budget Office in its letter of December 10, 1981 advised the Committee that it is expected that passage of this legislation will result in additional outlays of \$661,000 in Fiscal Year 82, \$721,000 in Fiscal Year 83, \$757,000 in Fiscal Year 84, \$792,000 in Fiscal Year 85, and \$823,000 in Fiscal Year 86. This estimate is based on figures provided by the United States Army and Air Force claims service as well as information from the states of New York and California.

## FEDERAL TORT CLAIMS

P.L. 97-124

### OVERSIGHT STATEMENT (RULE XI 2(1)(3)(A))

The Subcommittee on Administrative Law and Governmental Relations of this committee exercises the committee's oversight responsibility in accordance with rule VI(b) of the Rules of the Committee on the Judiciary with reference to the subject of tort claims. That subcommittee has recommended the amendments provided in this bill, and the Committee joins in recommending the changes made.

### (RULE XI 2(1)(3)(B))

Enactment of the bill would not create any additional cost for the Government pursuant to rule XIII(7)(a)(1). The bill does not involve new budget authority nor does it require new or increased tax expenditures as contemplated by clause 2(1)(3)(B) of rule XI.

### COMMITTEE VOTE (RULE XI 2(1)(2)(B))

On December 8, 1981, the full Committee on the Judiciary approved the bill, H.R. 3799, by voice vote.

### OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS (RULE XI 2(1)(3)(D))

No findings or recommendations of the Committee on Government Operations were received as referred to in subdivision (D) of clause 2(1)(3) of House Rule XI.

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### INFLATIONARY IMPACT (RULE XI 2(1)(4))

In compliance with clause 2(1)(4) of House rule XI, it is stated that this legislation will have no inflationary impact on prices and costs on the operation of the national economy.

### ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, D.C., December 10, 1981.

HON. PETER W. RODINO, JR.,  
Chairman, Committee on the Judiciary, U.S. House of Representatives,  
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 3799, a bill to amend title 28, United States Code, to provide that the Federal tort claims provisions of that title are the exclusive remedy in medical malpractice actions and proceedings resulting from federally authorized National Guard training activities, and for other purposes, as ordered reported on December 8, 1981.

Should the Committee so desire, we would be pleased to provide further detail on the attached cost estimate.

Sincerely,

RAYMOND C. SCHEPPACH,  
(For Alice M. Rivlin, Director).

2697

**LEGISLATIVE HISTORY**  
P.L. 97-124

**CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE**

DECEMBER 10, 1981.

1. Bill number: H.R. 3799.
2. Bill title: A bill to amend title 28, United States Code, to provide that the Federal tort claims provisions of that title are the exclusive remedy in medical malpractice actions and proceedings resulting from federally authorized National Guard training activities, and for other purposes.
3. Bill status: As ordered reported by the Senate Committee on the Judiciary on December 8, 1981.
4. Bill purpose: The bill establishes that the United States shall have exclusive jurisdiction on claims resulting from National Guard training activities including injury or loss of property, or personal injury or death.  
The United States shall also be exclusive in providing remedy to claims for damages for personal injury and death caused by any medical personnel of the armed forces and the National Guard while acting within the scope of his duties or employment.
5. Cost estimate:

[page 11]

Estimated authorization levels:		Amount
Fiscal year:		
1982	-----	\$681,000
1983	-----	721,000
1984	-----	757,000
1985	-----	792,000
1986	-----	823,000
Estimated outlays:		
Fiscal year:		
1982	-----	681,000
1983	-----	721,000
1984	-----	757,000
1985	-----	792,000
1986	-----	823,000

The costs of this bill fall within function 050.

6. Basis of estimate: Neither the Department of Defense, the National Guard Bureau, nor the states themselves have extensive data on National Guard related claims which would be affected by this bill. The major contributing factors to this problem are the various state remedies and procedures available to investigate and process National Guard claims. Because of these limitations, CBO is basing this estimate on the weighted average of total claims paid for three years to National Guard personnel in data provided by California and New York, two states with large National Guard forces.

Four states currently have an arrangement with the United States Army to share the amounts of claims paid equally. Approximately 11.7 percent of all National Guardsmen live in states with such an arrangement. For these states it is assumed that one half of the claims to be paid would be an additional cost to the U.S. government.

The remaining 88.3 percent of National Guardsmen live in states where the federal government has no liability for National Guard claims. For these states the adoption of this bill would shift the costs of all awarded claims applicable under the Federal tort claims provision from the states to the federal government.

FEDERAL TORT CLAIMS

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7. Estimate comparison: None.
8. Previous CBO estimate: CBO provided an estimate on S. 267, ordered reported on December 8, 1981. H.R. 3799 is similar to S. 267, and the cost estimates are identical.
9. Estimate prepared by: Thomas D. Phillips.
10. Estimate approved by:

JAMES L. BLUM,  
*Assistant Director for Budget Analysis.*

[page 13]

APPENDIX I

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ARMED SERVICES,  
*Washington, D.C., November 3, 1981.*

Hon. PETER W. RODINO, JR.,  
*Chairman, Committee on the Judiciary,  
U.S. House of Representatives,  
Washington, D.C.*

DEAR MR. CHAIRMAN: Reference is made to H.R. 3799, a bill to amend title 28, United States Code, to provide that the Federal tort claims provisions of that title are the exclusive remedy in medical malpractice actions and proceedings resulting from federally authorized National Guard training activities. I understand that the Subcommittee on Administrative Law and Governmental Relations, chaired by Mr. Danielson, has favorably reported that bill to the full committee, and I wish to offer my support and that of the committee for its enactment.

As you will recall, the provisions of H.R. 3799 were included in S. 815, the Senate version of the fiscal year 1982 Defense authorization legislation, but not in the House amendment. We recognized immediately the jurisdictional problem involved and were successful in having the Senate recede to the House during the conference on S. 815. In that conference we noted that your committee would take early action on H.R. 3799 as indicated by Chairman Danielson, and we sincerely appreciate your leadership and that of Mr. Danielson in bringing the bill before the Judiciary Committee.

Because of the obviously thorough manner in which the Subcommittee on Administrative Law and Governmental Relations has acted on H.R. 3799, we do not plan to hold hearings on the subject although the bill was referred to this committee as well. Accordingly, I would appreciate it if you would include this letter in your record as an endorsement of the legislation and an indication of our support when the bill reaches the floor.

Mr. Chairman, may we again express our appreciation to you and Chairman Danielson for the expeditious handling of H.R. 3799 and for your cooperation with us in our successful efforts concerning the tort claims provisions in the conference on S. 815.

With best regards,  
Sincerely,

MELVIN PRICE, *Chairman.*

LEGISLATIVE HISTORY

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APPENDIX II

43 Comp. Gen. 412 (1963)

[B-148324]

*Military Personnel—Reservists—Death or Injury—Inactive Duty Training—Injury Within Scope of Duties*

In view of the fact that the court refrained from formulating a rule for general application in *Meister v. United States*, Ct. Cl. No. 54-82, decided July 12, 1963, in which it held that a reservist ordered to perform inactive duty at a training center who while proceeding to the drill hall to report for inspection and duty slipped and fractured his ankle was "within the scope of his assigned duties when he slipped" and, therefore, within the purview of 10 U.S.C. 6148(a), and entitled to the disability benefits prescribed by that section, the *Meister* case should not be used as a precedent for favorable administrative action in similar cases, and any claim involving facts which might be viewed as coming within the purview of the *Meister* case should be forwarded to the United States General Accounting Office for direct settlement.

*Military Personnel—Reservists—Death or Injury—Inactive Duty Training—Injury Within Scope of Duties*

When a reservist ordered to inactive duty training suffers a physical injury during a scheduled lunch break, or while during a lull in his duties he engages in some independent activity, he is deemed to have received the injury while engaged in the inactive duty training drill within the purview of 10 U.S.C. 6148(a), and therefore, is entitled to the disability benefits prescribed by that section, the reservist having been ordered to perform inactive duty training is employed from the time he first musters in for that duty until the end of the ordered period of such duty for that day.

*Military Personnel—Reservists—Death or Injury—Inactive Duty Training—Injured While Traveling*

Where for the mutual convenience of a naval reservist and the Government, he is permitted to utilize Government transportation as a permissive traveler to and from a training center before or after a period of inactive duty training, the reservist while so traveling is not "employed" in inactive duty training within the meaning of 10 U.S.C. 6148(a), prescribing disability and death benefits, the travel pursuant to paragraph 6002(2) of the Joint Travel Regulations, whether accomplished by private or Government conveyance, not being part of the inactive duty training is outside the contempla-

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tion of 10 U.S.C. 6148, and the reservist, therefore, is not entitled to the disability benefits provided by section 6148(a), and permission to travel by Government transportation to the drill station during a part of the period assigned for the

## FEDERAL TORT CLAIMS

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performance of the drill would not increase the rights of the reservist.

*To the Secretary of the Navy, October 25, 1963:*

By letter dated September 4, 1963, the Under Secretary of the Navy requested decision on various questions concerning the effect of the decision of the Court of Claims in the case of *Meister v. United States*, Ct. Cl. No. 54-62, decided July 12, 1963, on the application of 10 U.S.C. 6148(a) to certain cases involving injuries suffered by members of the United States Naval Reserve who have been ordered to perform inactive duty training. The request for decision was assigned No. SS-N-720 by the Military Pay and Allowance Committee, Department of Defense.

Meister had been ordered by his executive officer to be at the training center no later than 7:20 p.m., on March 8, 1961. After he had parked his car at the curb, entered the training center compound and while proceeding toward the drill hall to report for inspection and duty, he slipped and fractured his ankle. The court held that the plaintiff was "within the scope of his assigned duties when he slipped" and therefore he was held to be within the purview of 10 U.S.C. 6148(a). Doubt is expressed as to the scope of the rule announced in the *Meister* case and it is stated that guidelines as to the authorized application of the *Meister* rule would be extremely helpful. The following facts of two cases are recited as illustrative of the types of cases in which question has arisen as to the applicability of 10 U.S.C. 6148(a).

In the first case, Joseph Patrick Volpe, SA, USNR-R, was ordered to perform inactive duty training at the United States Naval Reserve Training Center, McKeesport, Pennsylvania, during the week end of April 20-21, 1963. On April 21, 1963, he participated in the scheduled morning drill which was from 8 a.m. to 12 noon. A lunch break was scheduled from 12 to 1:15 p.m., and the afternoon drill session was scheduled to extend from 1:15 p.m., until 4:30 p.m. At approximately 12:50 p.m., during the scheduled lunch break, he fell while playing basketball on the grounds of the training center and sprained his hand.

In the second case, Charles A. Scott, AME3, USNR-R, was ordered to perform 2 days of inactive duty training on February 16 and 17, 1963, at the United States Naval Air Station, Alameda, California. On February 16, 1963, he reported for training at 8 a.m. From approximately 1:30 p.m., until 2 p.m., he participated with his squadron in launching a scheduled anti-submarine warfare helicopter flight. Upon completion of the launching, Scott and three other men from his squadron proceeded to the station's gymnasium to play handball while awaiting the return of the flight squadron. At approximately 2:30 p.m., while playing handball, Scott sustained a fracture of his right thumb.

The submission poses for decision the following questions:

(a) May a reservist who has been ordered to perform inactive duty training and who sustains an injury after he has reached his training center but before he has actually

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mustered for duty, as illustrated by the *Meister* case, be deemed to have received his injury while engaged in an in-

## LEGISLATIVE HISTORY

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active duty training drill within the purview of 10 USC 6148(a) ?

(b) May a reservist who has reported to his training center for inactive duty (and has actually mustered) and incurs an injury during a scheduled break in training drills, as illustrated by the Volpe case, be deemed to have received his injury while engaged in an inactive duty training drill within the purview of 10 USC 6148(a) ?

(c) May a reservist who has reported to his training center for inactive duty and sustains an injury during the period of a scheduled training drill but as the direct result of some independent activity that is not part of his training duties, as illustrated by the Scott case, be deemed to have received his injury while engaged in an inactive duty training drill within purview of 10 USC 6148(a) ?

(d) If the answer to question (a), above, is in the affirmative, would the answer be the same in a case containing factual elements such as those in the case of the U.S. Marine Corps Sergeant discussed in 38 Comp. Gen. 841 ?

(e) May a reservist who suffers a disabling injury while being transported (no reimbursement involved) by Government air, land or water transportation incident to the performance of ordered or authorized inactive duty training, to or from such duty, prior to muster or following the termination of such period of duty, be deemed to have received his injury while engaged in an inactive duty training drill within the purview of 10 USC 6148(a) ?

(f) If the answer to question (e), above, is in the negative, would the answer be the same if the travel was authorized to be performed and was performed during the period of time assigned for the performance of the drill ?

(g) If the answer to question (e), above, is in the affirmative, would the answer be the same if the reservist were to incur a disabling injury while performing travel to or from the place of performance of inactive duty training by a means other than Government air, land or water transportation, with the express authorization of his commanding officer ?

Before answering the specific questions, we consider it necessary to say that we do not agree with the court's conclusion in the *Meister* case. The decision in that case is inconsistent with our view of section 1 of the act of June 20, 1949, Ch. 225, 63 Stat. 201 (now 10 U.S.C. 6148(a)) as expressed in 38 Comp. Gen. 841, that Congress intended to provide coverage for injuries suffered by inactive duty trainees only while actually performing inactive duty training. The court stated that it would not attempt to "lay down a rule of general application" and it is clear that the court limited its decision to the particular facts involved in that case. The court did not indicate the degree of physical proximity "between the employee and employer" required in such cases and it is not clear from the court's opinion what action it might take in a similar case in which some of the facts present in the *Meister*

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case are missing. While we did not recommend further action in the *Meister* case to the Department of Justice since, as a practical matter,

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we doubted that any useful purpose would be served by further proceedings, it is our view that a similar case based on facts a little more favorable to the Government should be vigorously defended.

In view of the fact that the court refrained from formulating a rule for general application in the *Meister* case, it should not be used as a precedent for favorable administrative action in any similar case. Any claim involving facts which might be viewed as coming within the purview of that case should be forwarded to this Office for direct settlement. Question (a) is answered accordingly and question (d) requires no answer.

When a reservist is ordered to inactive duty training in situations similar to the *Volpe* and *Scott* cases, the period of training extends from the time the man is first mustered in until the end of his scheduled inactive duty training on that day. It cannot be said that during a scheduled lunch break (*Volpe* case) or a time when no actual duty is being performed during a drill (*Scott* case) the man reverts to his normal civilian status so as to be outside the protection of 10 U.S.C. 6148(a) during those times. In neither of the cases described had the men been released from military control at the time the injuries were sustained. While it may not be concluded that a reservist is employed on inactive duty for the entire day on which a drill or drills are performed, it is our view that, when a reservist is ordered to perform inactive training, he is so employed from the time he first musters in for that duty until the end of the ordered period of such duty for that day. Questions (b) and (c) are answered in the affirmative.

It is assumed that questions (e) through (g) are limited to situations which may raise in connection with drills or other scheduled inactive duty training at the member's Reserve component unit headquarters. Paragraph 6002(2) of the Joint Travel Regulations provides that a member is not entitled to travel or transportation allowances for any inactive duty training at the city or town in which the headquarters of his Reserve component unit is located, including travel between his home and the headquarters of his Reserve unit. Tours of inactive duty training are for scheduled periods of time and, where such duty is to be performed at the headquarters of the member's Reserve unit, do not include travel to and from his home and headquarters. Such travel, no matter whether it is accomplished by private or Government conveyance, is not a part of the inactive duty training and is outside the contemplation of 10 U.S.C. 6148. See in this connection 38 U.S.C. 106(d). It is our view that if Congress had intended to extend the benefits of 10 U.S.C. 6148 to cover a reservist while traveling in connection with inactive duty training at the location of his Reserve component unit headquarters, it doubtless would have used appropriate language to make that intention clear. Thus, where a reservist was injured while proceeding to his home 65 miles away as the driver of a Government truck after completion of a period of inactive duty training, we concluded that in the absence of a showing that such truck driving activity was a prescribed part of his inactive duty training as a reservist, he was not entitled to the benefits

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of 10 U.S.C. 3687 and 3721 which contain language similar to that found in 10 U.S.C. 6148. Accordingly, where for the mutual con-

## LEGISLATIVE HISTORY

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venience of the member and the Government, a member is permitted to utilize Government transportation as a permissive passenger in traveling to or from his training center before or after a period of inactive duty training, he is not "employed" in inactive duty training within the meaning of 10 U.S.C. 6148(a) while so traveling. Question (e) is answered in the negative and question (g) requires no answer.

It is our view that the granting of permission to travel by Government transportation to the drill station during a part of the period assigned for the performance of such drill would not increase the rights of the reservist in question (e) in any way. See 32 Comp. Gen. 554, answer to question 1. Accordingly, question (f) is answered in the affirmative.

STEVE COWPER  
GOVERNOR



SB91

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

The Honorable Jan Faiks  
President of the Senate  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Senator Faiks:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to liability immunity of the state, its employees and agents, and members of the Alaska National Guard.

While training or on duty under federal mandate, the state national guards are performing a United States Government activity. Nevertheless, there have been occasions in which states, rather than the United States, have been exposed to tort liability for injuries or damage resulting from federally mandated guard activities.

In 1981, Congress amended 28 U.S.C. sec. 2671 by adding to the definition of "employees of the government" members of the National Guard training or on duty pursuant to federal order under 32 U.S.C. The effect of this amendment was to clarify that the United States considers the Guard as a federal function during 32 U.S.C. activities and that claims for injuries resulting from such activities could be pursued under the Federal Tort Claims Act, 28 U.S.C. sec. 2671 et seq. In spite of this change in the law, there are rare occasions when the state remedy is preferred by an injured third party who consequently will file a claim for damages in state court on the basis of state law. This bill will prevent suits of this nature, and assure that persons injured or property damaged as a result of federally mandated and controlled Guard activities will be required to seek damages from the United States Government. Existing worker's compensation coverage of guardsmen will not be affected by this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper".

Steve Cowper  
Governor

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 2/19/87 5-DAY NOTICE  
IN ACCORDANCE WITH UNIFORM RULE 23

*Rule*

FURTHER:

\*\*FISCAL NOTE(S) ATTACHED  \*\*  
IN ACCORDANCE WITH AS 24.08.035  
(see below)

1/29/87 DATE TURNED INTO OFFICE \_\_\_\_\_  
Mr. President:

JUDICIARY \_\_\_\_\_ Committee considered \_\_\_\_\_ SB 91

limiting liability for activities of the Alaska National Guard.

and recommended:

- replace with CS \_\_\_\_\_  same title
- attached amendment(s) and  new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to \_\_\_\_\_
- letter of intent adopted and attached

\*\* Committee  attached or  adopted fiscal note(s)  
*Gwen's*  zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

*Rick Halgedad*  
\_\_\_\_\_  
*Joe Josephson*  
\_\_\_\_\_  
*Julius Stung, Lewski*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*White Foley no rec.*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Walt* *Do pass*  
Chairman signature and recommendation

Committee Backup Attached

SB 93

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: CSSB 93  
PUBLISH DATE: \_\_\_\_\_

H. Rules 1/21/88

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Investments by Financial Institutions  
Sponsor: Duncan  
Requestor: Duncan  
Agency Affected: Comm. & Econ. Dev.  
BRU: Banking, Securities & Corp.  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Willis F. Kirkpatrick Phone: 465-2521  
Division: Banking, Securities & Corporations Date: January 15, 1988

Approved by Commissioner: J. Anthony Smith, Commissioner Date: January 15, 1988  
Agency: Department of Commerce & Economic Development

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

SENATE COMMITTEE REPORT

FURTHER:

3/11/87

DATE TURNED INTO OFFICE 3/19/87

Mr. President:

FINANCE

Committee considered SB 93

investments by financial institutions.

and recommended:

replace with CS FOR \_\_\_\_\_ )  same title  
 or adopt \_\_\_\_\_ CS FOR SB 93 (Jud) )  new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

letter of intent adopted \_\_\_\_\_

Committee  attached or  adopted fiscal note(s)

new  updated or  previous  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Handwritten signatures]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Handwritten signature] DO PASS  
Chairman signature and recommendation

Committee Backup Attached

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

**REQUEST:** \_\_\_\_\_

Bill Version: SR 93

Publish Date: \_\_\_\_\_

Revision Date: \_\_\_\_\_

Title: Investments by Financial  
Institutions

Agency Affected: Comm. & Econ. Dev.

BRU: Banking, Securities & Corp.

Sponsor: \_\_\_\_\_

Requestor: \_\_\_\_\_

Components: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

**ANALYSIS :**

\_\_\_\_\_

Prepared by: Willis F. Kirkpatrick, Director Phone: 465-2521  
 Division: Banking, Securities & Corporations Date: \_\_\_\_\_

Approved by Commissioner: *J. Anthony Smith* Date: \_\_\_\_\_  
 Agency: Department of Commerce and Economic Development

**Distribution (by preparer):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

Original sponsor: Duncan

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 93 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to investments by financial insti-  
7 tutions."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 06.05.180 is amended to read:

10 Sec. 06.05.180. POWERS AS TRUSTEE AUTHORIZED. Every bank organ-  
11 ized under this chapter, subject to the restrictions and limitations  
12 of laws and the regulations of the department, may

13 (1) act as trustee under any mortgage or bond issued by the  
14 state, or any municipality, body politic, or corporation, foreign or  
15 domestic, and accept and execute any municipal or corporate trust not  
16 prohibited by the laws of this state;

17 (2) accept a trust from, and execute a trust for a married  
18 woman in respect to the married woman's [HER] separate property, and  
19 act as agent in the management of the property or transact any busi-  
20 ness in relation to the property;

21 (3) act under the order or appointment of a court of compe-  
22 tent jurisdiction including any probate court as guardian, receiver,  
23 or trustee of the estate of a minor, and as depository of money paid  
24 into court for the benefit of any person, corporation, or party, and  
25 in any other fiduciary capacity;

26 (4) act under the order or appointment of a court of compe-  
27 tent jurisdiction including any probate court as trustee, guardian,  
28 receiver or committee of the estate of a lunatic, idiot, spendthrift,  
29 person of unsound mind or habitual drunkard, or as receiver or

1 committee of the property or estate of any person in insolvency or  
2 bankruptcy proceedings;

3 (5) act as executor or administrator with or without the  
4 will annexed of the estate of a deceased person;

5 (6) accept and execute any legal trust, duty and power in  
6 regard to the holding, management and disposition of any estate, real  
7 or personal, wherever located, and the rents and profits from it, or  
8 the sale of it, as may be granted or confided to it by a court of  
9 competent jurisdiction including any probate court or by any person,  
10 corporation, municipality or other authority, and is accountable to  
11 all parties in interest for the faithful discharge of every trust,  
12 duty, or power which it may accept;

13 (7) accept and execute any trust or power conferred upon it  
14 by any person or any body politic or domestic or foreign corporation,  
15 or any other authority, grant, assignment, transfer, devise, bequest  
16 or otherwise, or which may be entrusted or committed or transferred to  
17 it by order of a court of competent jurisdiction including any probate  
18 court;

19 (8) receive, manage, hold and dispose of according to the  
20 terms of any trust or power any property or estate, real or personal,  
21 which may be the subject of any such trust or power;

22 (9) act as the fiscal or transfer agent of the United  
23 States or of any state, territory, municipality, or other body poli-  
24 tic, and in this capacity may receive and disburse moneys, transfer,  
25 register and countersign certificates of stocks, bonds, or other  
26 evidences of indebtedness;

27 (10) whenever the instrument or power governing the fidu-  
28 ciary relationship directs, requires, authorizes, or permits invest-  
29 ment in obligations of the United States government, with the approval

1 of the investor invest in the obligations either directly or in the  
2 form of securities of, or other interests in, an open-end management  
3 type investment company or investment trust registered under 15 U.S.C.  
4 80a-1 - 80a-64 (Investment Company Act of 1940), if

5 (A) the portfolio of the investment company or invest-  
6 ment trust is limited to obligations of the United States govern-  
7 ment and repurchase agreements fully collateralized by the  
8 obligations; and

9 (B) the investment company or investment trust takes  
10 delivery of the collateral directly or through an authorized  
11 custodian.

12 \* Sec. 2. AS 06.05.270(a) is amended to read:

13 (a) In addition to loans and acquisitions expressly authorized  
14 by this chapter, a state bank may deal in, underwrite, and invest in  
15 for its own account

16 (1) direct or guaranteed obligations of the United States,  
17 either directly or in the form of securities of, or other interests  
18 in, an open-end management type investment company or investment trust  
19 registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of  
20 1940), if

21 (A) the portfolio of the investment company or invest-  
22 ment trust is limited to obligations of the United States govern-  
23 ment and repurchase agreements fully collateralized by the  
24 obligations; and

25 (B) the investment company or investment trust takes  
26 delivery of the collateral directly or through an authorized  
27 custodian;

28 (2) general obligations of the State of Alaska and its  
29 political subdivisions;

1           (3) general obligations of a state of the United States or  
2 its political subdivisions;

3           (4) revenue obligations of the State of Alaska or its  
4 political subdivisions subject to the limitation of (b) of this sec-  
5 tion;

6           (5) revenue obligations of a state of the United States or  
7 its political subdivisions subject to the limitation of (b) of this  
8 section;

9           (6) obligations of instrumentalities of the United States  
10 government including, but not limited to Federal Intermediate Credit  
11 Banks, Federal Land Banks, the Federal National Mortgage Association,  
12 and Banks for Cooperatives;

13           (7) commercial paper of prime or equivalent quality as  
14 rated by a recognized national rating service subject to the limita-  
15 tion of (b) of this section;

16           (8) secured corporate obligations rated within the three  
17 highest grades of a national rating service subject to the limitation  
18 of (b) of this section;

19           (9) obligations of the International Bank for Reconstruc-  
20 tion and Development or the Inter-American Development Bank subject to  
21 the limitation of (b) of this section;

22           (10) stock in the Federal National Mortgage Association or a  
23 Federal Reserve Bank.

SENATE AMENDMENT #1

BY: Labor & Commerce Committee

TO: \_\_\_\_\_ SENATE BILL NO. 93

TO: \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

On page 2, line 29, following "government,"

Insert: "with the approval of the trustor,".

(TURN IN ORIGINAL AMENDMENT TO SENATE SECRETARY'S OFFICE.  
THE AMENDMENT WILL BE NUMBERED, COPIED AND DISTRIBUTED.)

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 2-19-87 5-DAY NOTICE  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: JUDICIARY  
FINANCE

\*\*FISCAL NOTE(S) ATTACHED X \*\*  
IN ACCORDANCE WITH AS 24.08.035  
(see below)

1/30/87  
Mr. President:

DATE TURNED INTO OFFICE 2/26/87

LABOR & COMMERCE Committee considered SB 93

relating to investments by financial institutions."

and recommended:

[ ] replace with CS \_\_\_\_\_ [ ] same title  
[ ] attached amendment(s) and [ ] new title

[ ] do pass

[ ] do not pass

[ ] no recommendation

~~[ ]~~ individual recommendations

[ ] further referral to \_\_\_\_\_

[ ] letter of intent adopted and attached

\*\* Committee ~~[ ]~~ [ ] attached or [ ] adopted fiscal note(s)  
[ ] zero [ ] fiscal impact

MEMBERS SIGNING DO PASS

[Signature]  
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OTHER RECOMMENDATIONS

Mike Spinali - No Rec.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tim Kelly - Do Pass  
Chairman signature and recommendation

~~[ ]~~ Committee Backup Attached

1 IN THE SENATE

BY DUNCAN

2

SENATE BILL NO. 93

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to investments by financial insti-  
7 tutions."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 06.05.180 is amended to read:

10 Sec. 06.05.180. POWERS AS TRUSTEE AUTHORIZED. Every bank organ-  
11 ized under this chapter, subject to the restrictions and limitations  
12 of laws and the regulations of the department, may

13 (1) act as trustee under any mortgage or bond issued by the  
14 state, or any municipality, body politic, or corporation, foreign or  
15 domestic, and accept and execute any municipal or corporate trust not  
16 prohibited by the laws of this state;

17 (2) accept a trust from, and execute a trust for a married  
18 woman in respect to the married woman's [HER] separate property, and  
19 act as agent in the management of the property or transact any busi-  
20 ness in relation to the property;

21 (3) act under the order or appointment of a court of compe-  
22 tent jurisdiction including any probate court as guardian, receiver,  
23 or trustee of the estate of a minor, and as depository of money paid  
24 into court for the benefit of any person, corporation, or party, and  
25 in any other fiduciary capacity;

26 (4) act under the order or appointment of a court of compe-  
27 tent jurisdiction including any probate court as trustee, guardian,  
28 receiver or committee of the estate of a lunatic, idiot, spendthrift,  
29 person of unsound mind or habitual drunkard, or as receiver or

1 committee of the property or estate of any person in insolvency or  
2 bankruptcy proceedings;

3 (5) act as executor or administrator with or without the  
4 will annexed of the estate of a deceased person;

5 (6) accept and execute any legal trust, duty and power in  
6 regard to the holding, management and disposition of any estate, real  
7 or personal, wherever located, and the rents and profits from it, or  
8 the sale of it, as may be granted or confided to it by a court of  
9 competent jurisdiction including any probate court or by any person,  
10 corporation, municipality or other authority, and is accountable to  
11 all parties in interest for the faithful discharge of every trust,  
12 duty, or power which it may accept;

13 (7) accept and execute any trust or power conferred upon it  
14 by any person or any body politic or domestic or foreign corporation,  
15 or any other authority, grant, assignment, transfer, devise, bequest  
16 or otherwise, or which may be entrusted or committed or transferred to  
17 it by order of a court of competent jurisdiction including any probate  
18 court;

19 (8) receive, manage, hold and dispose of according to the  
20 terms of any trust or power any property or estate, real or personal,  
21 which may be the subject of any such trust or power;

22 (9) act as the fiscal or transfer agent of the United  
23 States or of any state, territory, municipality, or other body poli-  
24 tic, and in this capacity may receive and disburse moneys, transfer,  
25 register and countersign certificates of stocks, bonds, or other  
26 evidences of indebtedness;

27 (10) whenever the instrument or power governing the fidu-  
28 ciary relationship directs, requires, authorizes, or permits invest-  
29 ment in obligations of the United States government, invest in the

1 obligations either directly or in the form of securities of, or other  
2 interests in, an open-end management type investment company or in-  
3 vestment trust registered under 15 U.S.C. 80a-1 - 80a-64 (Investment  
4 Company Act of 1940), if

5 (A) the portfolio of the investment company or invest-  
6 ment trust is limited to obligations of the United States govern-  
7 ment and repurchase agreements fully collateralized by the  
8 obligations; and

9 (B) the investment company or investment trust takes  
10 delivery of the collateral directly or through an authorized  
11 custodian.

12 \* Sec. 2. AS 06.05.270(a) is amended to read:

13 (a) In addition to loans and acquisitions expressly authorized  
14 by this chapter, a state bank may deal in, underwrite, and invest in  
15 for its own account

16 (1) direct or guaranteed obligations of the United States,  
17 either directly or in the form of securities of, or other interests  
18 in, an open-end management type investment company or investment trust  
19 registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of  
20 1940), if

21 (A) the portfolio of the investment company or invest-  
22 ment trust is limited to obligations of the United States govern-  
23 ment and repurchase agreements fully collateralized by the  
24 obligations; and

25 (B) the investment company or investment trust takes  
26 delivery of the collateral directly or through an authorized  
27 custodian;

28 (2) general obligations of the State of Alaska and its  
29 political subdivisions;

1           (3) general obligations of a state of the United States or  
2 its political subdivisions;

3           (4) revenue obligations of the State of Alaska or its  
4 political subdivisions subject to the limitation of (b) of this sec-  
5 tion;

6           (5) revenue obligations of a state of the United States or  
7 its political subdivisions subject to the limitation of (b) of this  
8 section;

9           (6) obligations of instrumentalities of the United States  
10 government including, but not limited to Federal Intermediate Credit  
11 Banks, Federal Land Banks, the Federal National Mortgage Association,  
12 and Banks for Cooperatives;

13           (7) commercial paper of prime or equivalent quality as  
14 rated by a recognized national rating service subject to the limita-  
15 tion of (b) of this section;

16           (8) secured corporate obligations rated within the three  
17 highest grades of a national rating service subject to the limitation  
18 of (b) of this section;

19           (9) obligations of the International Bank for Reconstruc-  
20 tion and Development or the Inter-American Development Bank subject to  
21 the limitation of (b) of this section;

22           (10) stock in the Federal National Mortgage Association or a  
23 Federal Reserve Bank.

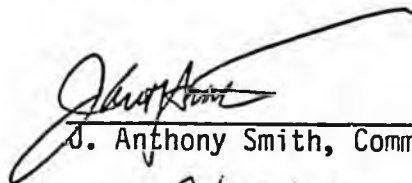
SB 93: "An Act relating to investments by financial institutions."

The Department of Commerce and Economic Development supports this bill if amended in the following manner. Page 2 line 29 after government insert "with approval of the trustor(s), . . . ."

Section 1 of the bill allows a trustee of a bank to invest in a mutual fund made up of government securities when the trust customer of the bank grants authority for the trustee to invest in government securities. This provision expands the trust power beyond that of the trustee agreement without allowing the trustor to make the determination as to whether this investment accords with the trustors' wishes. If the bank's trust customer gives the bank fiduciary freedom to invest in government securities the trustee of the trust should do just that. As SB 93 is now written, if the bank customer did not want government securities in the form of shares in a mutual fund the trust agreement would have to so state. There are a number of reasons why a trustor might choose not to have the trustee invest in mutual funds, one of which is that the trustor ends up paying double fees for the investment, one for the trustee administration cost and another for mutual fund management fees.

The department favors Section 2 of the bill as written. This section allows bank management to invest, as part of the bank's investment portfolio, mutual funds as long as the mutual fund limits its portfolio to legal investments. This allows a small financial institution the ability to have greater use of expertise of the mutual fund's managers, thus, diversifying some market risk.

This bill will have no affect on the program of regulating financial institutions nor will it have a fiscal impact.



J. Anthony Smith, Commissioner

DATE: 2/25/87

SENATE COMMITTEE REPORT

FURTHER:

FINANCE

2/26/87

DATE TURNED INTO OFFICE \_\_\_\_\_

Mr. President:

JUDICIARY

Committee considered SB 93

~~relating to~~ investments by financial institutions.

and recommended:

replace with CS FOR SB 93 (Jud)  same title  
 or adopt \_\_\_\_\_ CS FOR \_\_\_\_\_  new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

letter of intent adopted \_\_\_\_\_

Committee  attached or  adopted fiscal note(s)

new  updated or  previous  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Mike Roden  
Joe Josephson  
Rick Halford  
Arnis Stangulinski  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

J. K. [Signature] do pass  
Chairman signature and recommendation

Committee Backup Attached

SB 95

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: CS SB 95 (SA)  
PUBLISH DATE: \_\_\_\_\_

*Rec'd 1/20/88  
Forwarded (Rules)  
R/O*

FISCAL NOTE

REQUEST:

Revision Date: 1-14-88  
Title: An Act relating to renewal of a driver's license.  
Sponsor: Kerrtula  
Requestor: Rules

Agency Affected: Public Safety  
BRU: Motor Vehicles  
Components: Field Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		20.8	10.3	10.6	10.9	11.2
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	20.8	10.3	10.6	10.9	11.2
CAPITAL						
REVENUE	-0-	6.3	12.6	12.6	12.6	12.6

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	20.8	10.3	10.6	10.9	11.2
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	20.8	10.3	10.6	10.9	11.2

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See Page 2.

Prepared by: Charles R. Hosack *CRH/HBB* Phone: 269-5551  
Division: Motor Vehicles Date: 1-14-88

Approved by Commissioner: [Signature] Date: 1/14/88  
Agency: Public Safety

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 95 (SA)

## ASSUMPTIONS:

1. Each year 80,000 licenses are due for renewal. (400,000 active licenses divided by 5 year license term)
2. Of these, 70%, or 56,000, will be eligible for mail renewal, and will be sent notices. The other 30% will not be eligible due to a license action, conviction, or age.
3. Of the eligible drivers, 25% have left the State during the 5 year period, leaving 42,000 drivers who could take advantage of the program. (Percentage is based on renewal statistics for 1986).
4. Of these drivers, only 30%, or 12,600, will take advantage of the mail renewal program. The 30% estimate is based on the actual figures from the mail-in vehicle registration program. Other factors affecting this figure will be drivers who have changed addresses, and have not notified DMV, and drivers who wish to have a new photo, personal information, or new address recorded on the actual license.

## EXPENDITURES:

### Contractual

#### Postage

28,000 notices @ \$.18	5.1
6,300 renewals @ \$.22	1.4

#### Forms

Renewal notices and stickers	1.5
Savings on photo licenses (6,300 @ \$.75)	(4.7)

#### Data Processing Costs

Initial programming (One time cost)	15.0
Monthly runs of renewal notices	2.5

TOTAL 20.8\*

\*Based on effective date of 1-1-89 A 3% inflation factor was used for FY90 and subsequent years.

## ANALYSIS:

Personnel costs were not included because there will be no change in this area. Due to this program it is estimated there will be 12,600 less customers annually statewide in the field offices, which will result in some savings. At the same time, there will be extra work to do the monthly mailing, update the records, and process the returns for mailing. The savings and the extra work are roughly equal, resulting in no change in personnel costs.

## REVENUE:

Section 3 increases renewal fee by \$1.00 if the driver's license is renewed by mail. Since bill is only effective for half of FY89, the amount generated is estimated to be \$6,300 page 2 of 2

SENATE COMMITTEE REPORT

FURTHER:

4/1/87

DATE TURNED INTO OFFICE 5/17/87

Mr. President:

FINANCE

Committee considered SB 95

renewal of a driver's license.

and recommended:

replace with ~~Senate~~ CS FOR \_\_\_\_\_ )  same title  
 or adopt Senate CS FOR SB 95(SA) )  new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

letter of intent adopted \_\_\_\_\_

Committee  attached or  adopted fiscal note(s)

new  updated or  previous  
 zero  fiscal impact

25.0

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]  
[Signature]  
[Signature]  
W. Newberry  
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_

[Signature] (No Rec)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature] DO PASS  
Chairman signature and recommendation

Committee Backup Attached

B

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

**REQUEST:** \_\_\_\_\_

Bill Version: SB 95  
Publish Date: \_\_\_\_\_

Revision Date: \_\_\_\_\_

Agency Affected: Public Safety

Title: An Act relating to renewal of  
a driver's license.

BRU: Motor Vehicles

Sponsor: Kerrtula

Components: Field Services

Requestor: Senate State Affairs

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		25.0	10.3	10.6	10.9	11.2
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		25.0	10.3	10.6	10.9	11.2

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

GENERAL FUND		25.0	10.3	10.6	10.9	11.2
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

See page 2.

A 3% inflation factor was used for FY89 and subsequent years.

Prepared by: Charles R. Hosack *CRH* Phone: 269-5551  
Division: Motor Vehicles Date: 2-6-87

Approved by Commissioner: [Signature] Date: 2/6/87  
Agency: Public Safety

**Distribution (by preparer):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

JNR  
2/6/87

SB 95

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 95

## ASSUMPTIONS:

1. Each year 80,000 licenses are due for renewal. (400,000 active licenses divided by 5 year license term)
2. Of these, 70%, or 56,000, will be eligible for mail renewal, and will be sent notices. The other 30% will have a license action or conviction making them ineligible for this program.
3. Of the eligible drivers, 25% have left the State during the 5 year period leaving 42,000 drivers who could take advantage of the program. (Percentage is based on renewal statistics for 1986.)
4. Of these drivers, only 30%, or 12,600, will take advantage of the mail renewal program. The 30% estimate is based on the actual figures from the mail-in vehicle registration program. Other factors affecting this figure will be drivers who have changed addresses and have not notified DMV, and drivers who wish to have a new photo, personal information, or new address recorded on the actual license.

## EXPENDITURES:

### Contractual

#### Postage

56,000 notices @ \$.18	10.1
12,600 renewals @ \$.22	2.8

#### Forms

Renewal notices and stickers	1.5
Savings on photo licenses (12,600 @ \$.75)	(9.4)

#### Data Processing Costs

Initial programming (one time cost)	15.0
Monthly runs of renewal notices	<u>5.0</u>
	25.0

## ANALYSIS:

Personnel costs were not included because there will be no change in this area. Due to this program it is estimated there will be 12,600 less customers annually statewide in the field offices, which will result in some savings. At the same time, there will be extra work to do the monthly mailing, update the records, and process the returns for mailing. The savings and the extra work are roughly equal, resulting in no change in personnel costs.

Original sponsor: Kerttula

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE  
2 CS FOR SENATE BILL NO. 95 (State Affairs)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - FIRST SESSION  
5 A BILL  
6 For an Act entitled: "An Act relating to renewal of a driver's license;  
7 and providing for an effective date."  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
9 \* Section 1. AS 28.15.101(a) is repealed and reenacted to read:  
10 (a) Except as otherwise provided in this chapter, a driver's  
11 license expires on the licensee's birthday in the fifth year following  
12 issuance of the license. A license may be renewed within one year of  
13 its expiration upon proper application, payment of the required fee,  
14 and except when a license is renewed under (c) of this section, suc-  
15 cessful completion of a test of the licensee's eyesight.  
16 \* Sec. 2. AS 28.15.101 is amended by adding a new subsection to read:  
17 (c) A driver's license may be renewed by mail if the licensee  
18 complies with (a) of this section, except that a license may not be  
19 renewed by mail if  
20 (1) the applicant's license, within the previous five  
21 years, has been revoked by a court after conviction for an offense  
22 under AS 28.15.181(a) or another law or ordinance with substantially  
23 similar elements;  
24 (2) the applicant's license, within the previous five  
25 years, has been suspended, revoked, or denied by the department under  
26 AS 28.15.165 or 28.15.251;  
27 (3) the applicant, within the previous five years, has been  
28 convicted of a moving traffic violation;  
29 (4) the most recent renewal of the applicant's license was

1 by mail; or

2 (5) the applicant is 69 years of age or older on the ex-  
3 piration date of the driver's license being renewed.

4 \* Sec. 3. AS 28.15.271 is amended by adding a new subsection to read:

5 (b) In addition to the fees under (a) of this section, a person  
6 who renews a driver's license by mail shall be charged a fee of \$1.

7 \* Sec. 4. This Act takes effect January 1, 1988.

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

5/17/87 Revised  
note provided  
in Rankley's  
Office per  
fiscal note  
roundup

REQUEST: \_\_\_\_\_

Bill Version: CSSB 95 (SA)  
Publish Date: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: An Act relating to renewal of a  
driver's license

Agency Affected: Public Safety  
BRU: Motor Vehicles

Sponsor: Kerttula  
Requestor: Senate Judiciary

Components: Field Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		20.8	10.3	10.6	10.9	11.2
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	20.8	10.3	10.6	10.9	11.2

CAPITAL						
---------	--	--	--	--	--	--

REVENUE		6.3	12.6	12.6	12.6	12.6
---------	--	-----	------	------	------	------

FUNDING: (Thousands of Dollars)

GENERAL FUND		20.8	10.3	10.6	10.9	11.2
FEDERAL FUNDS						
OTHER						
TOTAL		20.8	10.3	10.6	10.9	11.2

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See Page 2.

Prepared by: Charles R. Hosack *CRH/BBB* Phone: 269-5551  
Division: Motor Vehicles Date: 3-27-87

Approved by Commissioner: [Signature] Date: 3/27/87  
Agency: Public Safety

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)  
Senate Secretary

RECEIVED  
MAR 31 1987

page 1 of 2

LEGISLATIVE FINANCE

5895

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 95 (SA)

## ASSUMPTIONS:

1. Each year 80,000 licenses are due for renewal. (400,000 active licenses divided by 5 year license term)
2. Of these, 70%, or 56,000, will be eligible for mail renewal, and will be sent notices. The other 30% will not be eligible due to a license action, conviction, or age.
3. Of the eligible drivers, 25% have left the State during the 5 year period, leaving 42,000 drivers who could take advantage of the program. (Percentage is based on renewal statistics for 1986).
4. Of these drivers, only 30%, or 12,600, will take advantage of the mail renewal program. The 30% estimate is based on the actual figures from the mail-in vehicle registration program. Other factors affecting this figure will be drivers who have changed addresses, and have not notified DMV, and drivers who wish to have a new photo, personal information, or new address recorded on the actual license.

## EXPENDITURES:

### Contractual

#### Postage

28,000 notices @ \$.18	5.1
6,300 renewals @ \$.22	1.4

#### Forms

Renewal notices and stickers	1.5
Savings on photo licenses (6,300 @ \$.75)	(4.7)

#### Data Processing Costs

Initial programming (One time cost)	15.0
Monthly runs of renewal notices	2.5

TOTAL 20.8\*

\*Based on effective date of 1-1-88. A 3% inflation factor was used for FY89 and subsequent years.

## ANALYSIS:

Personnel costs were not included because there will be no change in this area. Due to this program it is estimated there will be 12,600 less customers annually statewide in the field offices, which will result in some savings. At the same time, there will be extra work to do the monthly mailing, update the records, and process the returns for mailing. The savings and the extra work are roughly equal, resulting in no change in personnel costs.

## REVENUE:

Section 3 increases renewal fee by \$1.00 if the driver's license is renewed by mail. Since bill is only effective for half of FY88, the amount generated is estimated to be \$6,300 page 2 of 2

1 IN THE SENATE

BY KERTTULA

2 SENATE BILL NO. 95

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to renewal of a driver's license."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. AS 28.15.101(a) is repealed and reenacted to read:

9 (a) Except as otherwise provided in this chapter, a driver's  
10 license expires on the licensee's birthday in the fifth year following  
11 issuance of the license. A license may be renewed within one year of  
12 its expiration upon proper application, payment of the required fee,  
13 and except when a license is renewed under (c) of this section, suc-  
14 cessful completion of a test of the licensee's eyesight.

15 \* Sec. 2. AS 28.15.101 is amended by adding a new subsection to read:

16 (c) A driver's license may be renewed by mail if the licensee  
17 complies with (a) of this section, except that a license may not be  
18 renewed by mail if

19 (1) the applicant's license, within the previous five  
20 years, has been revoked by a court after conviction for an offense  
21 under AS 28.15.181(a) or another law or ordinance with substantially  
22 similar elements;

23 (2) the applicant's license, within the previous five  
24 years, has been suspended, revoked, or denied by the department under  
25 AS 28.15.165 or 28.15.251;

26 (3) the applicant, within the previous five years, has been  
27 convicted of a moving traffic violation; or

28 (4) the applicant's license has previously been renewed by  
29 mail two consecutive times for five-year periods.  
S

SENATE COMMITTEE REPORT

FURTHER:

FINANCE

3/26/87

DATE TURNED INTO OFFICE 3/31/87

Mr. President:

JUDICIARY

Committee considered

SB 95

renewal of a driver's license.

and recommended:

~~adopt~~ with

*adopt St. aff CS*

CS FOR

SB 95 (St. aff)

same title

or adopt

CS FOR

new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

letter of intent adopted \_\_\_\_\_

Committee  attached or  adopted fiscal note(s)

new

updated or

previous

zero

fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

*Carl's St. aff*  
*Mike Kadey*  
*Rick Halford*

*See Graham - no Rec*

*J. Keith Kuttala Do Pass*

Chairman signature and recommendation

Committee Backup Attached

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 2.4.87 5-DAY NOTICE  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: JUDICIARY  
*Finner*

\*\*FISCAL NOTE(S) ATTACHED 1 \*\*  
IN ACCORDANCE WITH AS 24.08.035  
(see below)

DATE TURNED INTO OFFICE 3.26.87

Mr. President:

STATE AFFAIRS Committee considered SB 95

renewal of a driver's license.

and recommended:

replace with CS SB 95 (STATE AFFAIRS)  same title  
 attached amendment(s) and  new title

do pass

do not pass

<sup>no</sup> recommendation

individual recommendations

further referral to \_\_\_\_\_

letter of intent adopted and attached

\*\* Committee  attached or  adopted fiscal note(s)  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

Willie Kerdig  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OTHER RECOMMENDATIONS

Jack Uehly (No Rec.)  
Don Jaffe (No Rec.)  
Joe P. Gresham (No Rec.)  
\_\_\_\_\_  
\_\_\_\_\_

*[Signature]*

Chairman signature and recommendation

Committee Backup Attached

BILL NO: SB 95

DATE: February 6, 1987

TITLE: An Act relating to  
renewal of a driver's  
license

CONTACT: Charles R. Hosack  
269-5551

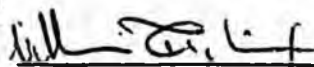
This bill would allow drivers to renew their driver's license by mail if they meet certain criteria. To be eligible for the program a driver must not have had a suspension, revocation, or denial of license because of a DWI conviction, accumulation of points, or resulting from a chemical sobriety test, or refusal to submit to the breath test following an arrest for DWI within the past five years. The driver also must not have had a conviction for a moving violation within the past five years. A driver may renew by mail for two consecutive five year periods provided the criteria is met.

The advantage of the bill is that it will make it easier for a person to renew a driver's license without the need to go to a DMV office. This serves as a reward for those with clean driving records. Another advantage is that it will reduce congestion somewhat in the motor vehicle offices throughout the state.

The disadvantage of the program is that a person may be allowed to drive for up to 15 years without vision screening at license renewal. This vision screening is often the first real indication that their vision has deteriorated to the point of becoming a hazard. The other disadvantage is that a driver may go for 15 years without a current photo on the license which could be detrimental to financial institutions and law enforcement.

This bill will reduce workload somewhat at the field offices, but it will also generate work to prepare and process the mailings. The savings and the new work will offset each other so there will be no change in personnel. Of the 42,000 drivers eligible for the program annually, the division estimates that 12,600 will take advantage of it. This estimate is based on the percentage of drivers that use the mail-in vehicle registration program annually.

The department is neutral on this bill.



WILLIAM R. NIX  
Acting Commissioner

DEPARTMENT OF  
PUBLIC SAFETY  
REGISTRATION DIVISION



Official Business

# Alaska State Legislature

SENATE

*Committee on Finance*

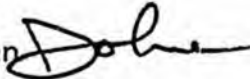
*Kathy  
Vicki*

P.O. Box V  
State Capitol  
Juneau, Alaska 99811

MEMORANDUM

April 8, 1987

TO: Senator Don Bennett

FROM: Senator John Binkley, Co-Chairman   
Senate Finance Committee

RE: Subcommittee Assignment - Senate Bill 95

As we discussed, Senate Bill 95, "An Act relating to renewal of a driver's license," will be assigned to you for subcommittee work. This bill was received in Finance on April 1.

I am attaching the backup information Senator Kerttula provided me, along with his request for a hearing before the Finance Committee. Please let me know when the bill is ready to be heard.

cc: Senator Jay Kerttula

**Sec. 28.15.091. Department may require re-examination.** If the department has good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed, it may upon written notice of at least 10 days to the licensee require the licensee to submit to an examination. Upon conclusion of the examination, the department shall take action as may be appropriate and may cancel the license of the person, or may issue a restricted license under AS 28.15.121, or restrict the type or class of vehicles that the person may drive. If the licensee refuses or neglects to submit to examination, the department may suspend the driver's license until the licensee complies with the requirements of re-examination. (§ 19 ch 178 SLA 1978.)

Collateral references. — 7A Am. Jur.  
2d, Automobiles and Highway Traffic,  
§ 111.

*Sec. 28.15.100. Duplicates. [Repealed, § 19 ch 178 SLA 1978.]*

**Sec. 28.15.101. Expiration and renewal of driver's license; re-examination.** (a) Unless otherwise provided in this chapter, a driver's license expires on the licensee's date of birth in the fifth year following issuance of the license. A license is renewable within one year of its expiration upon proper application, successful completion of a test of the licensee's eyesight, and payment of the required fee.

(b) The department may defer the expiration of the driver's license of a person who is outside the state under terms and conditions which the department shall prescribe by regulation. (§ 19 ch 178 SLA 1978)

Collateral references. — 7A Am. Jur.  
2d, Automobiles and Highway Traffic,  
§§ 102, 103.  
60 C.J.S., Motor Vehicles, § 156.

*Sec. 28.15.110. Restrictions. [Repealed, § 19 ch 178 SLA 1978.]*

**Sec. 28.15.111. Licenses issued to drivers; anatomical gift document.** (a) Upon successful completion of the application and all required examinations, and upon payment of the required fee, the department shall issue to every qualified applicant a driver's license indicating the type or general class of vehicles which the licensee may drive. The license shall display

- (1) a distinguishing number assigned to the license;
- (2) the licensee's full name, address, date of birth, brief physical description, and color photograph; and
- (3) either a facsimile of the signature of the licensee or a space upon which the licensee must write the licensee's usual signature with pen and ink. A license is not valid until signed by the licensee. If facilities

**Sec. 28.15.181. Court suspensions, revocations, and limitations.** (a) Conviction of any of the following offenses is grounds for the immediate revocation of a driver's license:

- (1) manslaughter or negligent homicide resulting from driving a motor vehicle;
- (2) a felony in the commission of which a motor vehicle is used;
- (3) failure to stop and give aid as required by law when a motor vehicle accident results in the death or personal injury of another;
- (4) perjury or making a false affidavit or statement under oath to the department under a law relating to motor vehicles;
- (5) driving a motor vehicle while intoxicated;
- (6) reckless driving;
- (7) using a motor vehicle in unlawful flight to avoid arrest by a peace officer;
- (8) refusal to submit to a chemical test under AS 28.35.032;
- (9) driving while license canceled, suspended, revoked or in violation of a limitation.

(b) A court convicting a person of an offense described in (a)(1) — (4), (6), or (7) of this section shall revoke that person's driver's license for not less than 30 days for the first conviction, unless the court determines that the person's ability to earn a livelihood would be severely impaired and a limitation under AS 28.15.201 can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public. If a court limits a person's license under this subsection, it shall do so for not less than 60 days. Upon a subsequent conviction of a person for any offense described in (a)(1) — (4), (6), (7) of this section occurring within 10 years after a prior conviction, the court shall revoke the person's license and may not grant the person limited license privileges for the following periods:

- (1) not less than one year for the second conviction; and
- (2) not less than three years for a third or subsequent conviction.

(c) A court convicting a person of an offense described in (a)(5) or (8) of this section arising out of the operation of a motor vehicle for which a driver's license is required shall revoke that person's driver's license. The revocation may be concurrent with or consecutive to an administrative revocation under AS 28.15.165. The court may not, except as provided in (e) of this section, grant limited license privileges for the following periods:

(1) not less than 90 days if, within the preceding 10 years, the person has not previously been convicted of an offense

(A) described in (a)(5) or (8) of this section; or  
(B) under a law or ordinance in another jurisdiction with elements substantially similar to an offense described in (a)(5) or (8) of this section;

(2) not less than one year if, within the preceding 10 years, the person has been previously convicted of one offense

(A) described in (a)(5) or (8) of this section; or

(B) under a law or ordinance in another jurisdiction with elements substantially similar to an offense described in (a)(5) or (8) of this section;

(3) not less than 10 years if, within the preceding 10 years, the person has been previously convicted of more than one of the following offenses or has more than once been previously convicted of one of the following offenses:

(A) an offense described in (a)(5) or (8) of this section; or

(B) an offense under another law or ordinance in another jurisdiction with elements substantially similar to an offense described in (a)(5) or (8) of this section.

(d) A court convicting a person of an offense described in (a)(9) of this section shall revoke that person's driver's license for not less than the minimum period under AS 28.15.291(c).

(e) A court revoking a driver's license under (c) of this section, or sustaining the action of the department under AS 28.15.165(c), may grant limited license privileges for the final 60 days during which the license is revoked if the

(1) revocation was for driving while intoxicated but not if the revocation was for refusal to submit to a chemical test of breath under AS 28.35.032;

(2) person has not been previously convicted within the preceding 10 years of an offense

(A) described in (a)(5) or (8) of this section; or

(B) under a law or ordinance in another jurisdiction with elements substantially similar to an offense described in (a)(5) or (8) of this section;

(3) court determines that the person's ability to earn a livelihood would be severely impaired; and

(4) court determines that a limitation under AS 28.15.201 can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public.

(f) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction. (S 19) ch 178 SLA 1978; am §§ 7 — 9 ch 117 SLA 1982; am §§ 4 — 7 ch 77 SLA 1983

**Effect of amendments.** — The 1982 amendment substituted the present provisions of paragraph (a)(5) for the former provisions, which read "driving or operating a motor vehicle while under the influence of alcohol or another drug." substituted "under (a)(1) — (4), (6), or (7) of this section" for "under (a)(1) — (7) of this section" in the first sentence of subsection (b) and for "under (a) of this section" in the

third sentence of subsection (b), and added subsection (e).

The 1983 amendment in subsection (a) rewrote the introductory language and added paragraphs (8) and (9); in subsection (b), in the second sentence substituted "60" for "30" and in the last sentence inserted "occurring within 10 years after a prior conviction"; rewrote subsection (c), and added subsections (d), (e), and (f). The

Collateral references. -- 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 112 et seq.

60 C.J.S., Motor Vehicles, § 164.1 et seq.

Civil rights and liabilities as affected by failure to comply with regulations as to licensing of automobile operator, 16 ALR 1108, 35 ALR 62, 38 ALR 1038, 43 ALR 1153, 54 ALR 374, 58 ALR 532, 61 ALR 1190, 78 ALR 1028, 87 ALR 1469, 111 ALR 1258, 163 ALR 1375.

Validity of statute relating to granting or revocation of license or permit to operate automobile, 71 ALR 616, 108 ALR 1162, 125 ALR 1459.

Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 ALR3d 452.

Necessity of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 ALR3d 361.

Sufficiency of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 ALR3d 427.

Validity of statute or regulation authorizing revocation or suspension of driver's license for reason unrelated to use of or ability to operate motor vehicle, 86 ALR3d 1251.

**Sec. 28.15.165. Administrative revocations resulting from chemical sobriety tests and refusals to submit to tests.** (a) If a chemical test administered under AS 28.35.031(a) to a person driving a motor vehicle for which a driver's license is required produces a result described in AS 28.35.030(a)(2) or if a person under arrest for driving a motor vehicle for which a driver's license is required refuses to submit to a chemical test under AS 28.35.031(a), a law enforcement officer shall read a notice and deliver a copy to the person. The notice shall advise that

(1) the department intends to revoke the person's driver's license or nonresident privilege to drive, or refuse to issue an original license to the person;

(2) the person has the right to administrative review of the revocation or determination not to issue an original license;

(3) the notice itself is a temporary driver's license that expires seven days after it is delivered to the person;

(4) revocation of the person's driver's license or nonresident privilege to drive, or a determination not to issue an original license shall take effect upon expiration of the temporary driver's license unless the person within seven days requests an administrative review.

(b) After reading the notice under (a) of this section, the law enforcement officer shall seize the person's driver's license if it is in the person's possession and shall deliver it to the department with a sworn report describing the circumstances under which it was seized.

(c) Upon receipt of a sworn report of a law enforcement officer that a chemical test under AS 28.35.031(a) produced a result described in AS 28.35.030(a)(2) or that a person refused to submit to a chemical test under AS 28.35.031(a), that notice under (a) of this section was provided to the person, and that contains a statement of the circumstances surrounding the arrest and the grounds upon which the officer's belief that the person was driving while intoxicated a motor vehicle for which

a driver's license is required was based, the department shall revoke the person's license or nonresident privilege to drive a motor vehicle in the state, or refuse to issue an original license effective upon expiration of the temporary driver's license issued under (a) of this section.

(d) The period of revocation of a driver's license by the department under this section shall be for the appropriate minimum period for court revocations under AS 28.15.181(c). (§ 3 ch 77 SLA 1983)

**Sec. 28.15.166. Administrative review of revocation.** (a) A person who has received a notice under AS 28.15.165(a) may make a written request for administrative review of the department's action under AS 28.15.165(c). If the person's driver's license has not been previously surrendered to the department, it shall be surrendered to the department at the time the request for review is made.

(b) A request for review shall be made within seven days after receipt of the notice under AS 28.15.165 or the right to review is waived and the action of the department under AS 28.15.165(c) is final. If a written request for a review is made after expiration of the seven-day period, and if it is accompanied by the applicant's verified statement explaining the failure to make a timely request for a review, the department shall receive and consider the request. If the department finds that the person was unable to make a timely request because of lack of actual notice of the revocation or because of factors of physical incapacity such as hospitalization or incarceration, the department shall waive the period of limitation, reopen the matter, and grant the review request.

(c) Upon receipt of a request for review, if it appears that the person holds a valid driver's license and that the driver's license has been surrendered, the department shall issue a temporary driver's permit that is valid until the scheduled date for the review. A person who has requested a review under this section may request, and the department may grant for good cause, a delay in the date of the hearing. If necessary, the department may issue additional temporary permits to stay the effective date of its action under AS 28.15.165(c) until the final order after the review is issued.

(d) A person who has requested a hearing under this section and who fails to appear at the hearing, for reasons other than lack of actual notice of the hearing or physical incapacity such as hospitalization or incarceration, waives the right to a hearing. The determination of the department that is based upon the enforcement officer's report becomes final.

(e) Notwithstanding AS 28.05.141(c), the hearing under this section shall be held at the office of the department nearest to the residence of the person requesting the hearing unless

(1) a district court judge or a magistrate has been designated as a hearing officer in the matter by the commissioner; or

*Effect of amendments.* — The 1981 amendment deleted "from January 1, 1975" preceding "one point," substituted "twelve consecutive months" for "year" preceding "of licensed" and added "within the five-year period preceding the point calculation" in subsection tet.

*Sec. 28.15.250. Reexamination. [Repealed, § 19 ch 178 SLA 1978.]*

**Sec. 28.15.251. Suspension, revocation, limitation, denial.** (a) The department shall suspend, revoke, limit, deny, or initiate other remedial action against the driver's license of a person, upon the person's failure to

(1) appear for a driver improvement interview under AS 28.15.231(a); or

(2) comply with reasonable recommendations designed to improve the person's driving abilities which are made to the person during the driver improvement interview.

(b) The department shall suspend, revoke, or deny a driver's license of a person who has been identified through the person's point accumulation as an habitual or frequent violator under AS 28.15.221.

(c) A suspension, revocation, limitation, or denial of, or other action against, a driver's license under AS 28.15.221 — 28.15.261 may not be for more than one year.

(d) If a driver's license is suspended or revoked upon the accumulation of the number of points which require that action under AS 28.15.221 — 28.15.261 and regulations adopted under those sections, a limited license may not be issued to that person during the period of suspension or revocation.

(e) Except for immediate action under AS 28.15.181, when the department proposes to take action against a driver's license under (b) of this section, it shall notify the licensee that the proposed action shall become effective 30 days from the date of the notice, except that the licensee shall have the right, within the 30-day period, to make an oral or written answer or statement in which the licensee may controvert any point or issue and the licensee may present evidence and arguments for the consideration of the department pertinent to the action to be taken or the grounds for the action.

(f) Upon receipt of an oral or written answer or statement from the licensee, the department shall make findings on the matter under consideration and shall notify the person involved of its decision in writing by registered mail. If the department's decision is to sustain an action against the licensee's driver's license, the department shall notify the licensee of the opportunity for a hearing under AS 28.05.121 — 28.05.141. (§ 19 ch 178 SLA 1978)

4. For such other and further relief as to this court seems proper.

Dated:   12  , 19  84  .

  15  

[Sign]

[Verification]

**§ 12812. Restricted driver's license as to person presumed to be negligent operator**

(a) Except as provided in subdivision (b), if a driver is presumed to be a negligent operator pursuant to Section 12810.5, the department may, as a condition of probation, issue a restricted driver's license to permit driving a vehicle for which the person is licensed and also certificated, where required, while in the course of the driver's employment during specified hours of employment or any other restrictions as determined by the department. The restrictions shall be noted on the driver's license.

(b) If a driver who holds a certificate issued pursuant to Section 12804.3, or both, is presumed to be a negligent operator as defined in subdivision (a) of Section 12810.5, the department may suspend or revoke the certificate or continue the certificate under terms of probation.

Amended Stats 1984 ch 667 § 12, operative July 1, 1985.

Amendments:

1984 Amendment: Substituted the section for the former section.

**§ 12814.5. Extension of licenses**

(a) At the discretion of the director, drivers' licenses expiring on or after January 1, 1983, may, subject to subdivision (b), be renewed by mail for a four-year period for licensees, not holding a probationary license, whose records, for the four years immediately preceding the determination of eligibility for the renewal, show no convictions of violating traffic laws, no involvement in a traffic accident, and no notification of a violation of subdivision (a) of Section 40509.

A driver's record that shows involvement in not more than one traffic accident within any two-year period preceding driver's license renewal shall not be considered to be involvement in a traffic accident for purposes of subdivision (a) if (1) the driver met the requirements of Chapter 1 (commencing with Section 16000) of Division 7 with respect to the accident and (2) the driver was not cited for any violation of this code in connection with the accident.

No renewal by mail shall be granted to any person who is 70 years of age or older.

(b) The director may establish a demonstration program to evaluate the traffic safety and other effects of renewing driver's licenses by mail. If such a demonstration program is established, the director may, under that program, renew by mail driver's licenses expiring on or after January 1, 1983, for licensees whose records, for the two years immediately preceding the determination of the eligibility for the renewal, show no convictions of violating traffic laws, no involvement in a traffic accident, and no notification of a violation of subdivision (a) of Section 40509, and whose records, for the four years immediately preceding that determination, do not show a violation which has a violation point count of two or more as determined in accordance with Section 12810 or a fatal accident notation. The department shall terminate the demonstration program when its evaluation is completed.

*California Vehicle Code Supplement*

is completed or may terminate the program at any time the department determines that the program has an adverse impact on traffic safety.

(c) The department shall charge a fee of ten dollars (\$10) for each license renewal granted pursuant to subdivision (a) or (b).

(d) The department shall monitor and conduct a continuing study of the effects of the license renewal by mail under subdivisions (a) and (b) and submit an interim report to the Legislature not later than January 1, 1986, and a final report to the Legislature not later than March 1, 1989, on its findings. The study shall include, but not be limited to, safety issues. The final report shall specifically include information regarding the impact on traffic safety of persons who receive a second extension under subdivision (b), which information shall cover a period not less than 24 months of experience following the second consecutive extension.

(e) The department shall notify each licensee granted a renewal by mail pursuant to this section of major changes to the Vehicle Code affecting traffic laws occurring during the prior four-year period.

(f) The department shall not renew a driver's license by mail if the license has been previously renewed by mail two consecutive times for four-year periods.

Amended Stats 1984 ch 985 § 1.

**Amendments:**

1984 Amendment: Added the second paragraph of subd (a).

**§ 12816. Term of licenses; Period for renewal**

(a) Every original driver's license expires on the fourth birthday of the applicant following the date of the application for the license.

(b) Renewal of a driver's license shall be made for a term which expires on the fourth birthday of the applicant following the expiration of the license renewed, if application for renewal is made within six months prior to the expiration of the license to be renewed, or within 90 days after expiration of the license. If renewal is not applied for within 90 days after expiration of the license, the application and fee is considered the same as an application for an original license.

(c) The department may accept application for a renewal of a driver's license made more than six months prior to the date of expiration. The renewal shall be made for a term which expires on the fourth birthday of the applicant following the date of the application for the renewal license.

(d) The department may accept an application for a license of a different class made more than six months before the expiration of the license previously issued, if the previously issued license is surrendered for cancellation in accordance with Section 13100. The driver's license issued from that application expires on the fourth birthday of the applicant following the date of the application.

Amended Stats 1984 ch 34 § 1, operative July 1, 1985.

**Amendments:**

1984 Amendment: In addition to making technical changes, substituted (1) "expires" for "issued after January 1, 1975, shall expire" in subd (a); and (2) "different" for "higher" after "license of a" in subd (d).

**§ 12950 and following sections—general references:**

Within Evidence 2d § 318A.

1963 Amendment: Added (1) "at any office of the Department of Motor Vehicles" in the first sentence; and (2) the last sentence.

1968 Amendment: Added (1)"; except that the department shall not require an examination of the driving ability of any applicant for the renewal of a four-year license who is otherwise eligible for the renewal of such license unless the department finds evidence of a condition which may affect the ability of the applicant to safely operate a motor vehicle" at the end of the second sentence; and (2) the third and fourth sentences.

1973 Amendment: (1) Designated the former section to be subd (a); (2) amended subd (a) by (a) adding "(a)"; (b) substituting ", or an examination deemed by the department to be appropriate considering the licensee's record of convictions and accidents, or an examination deemed by the department to be appropriate in relation to" for "; except that the department shall not require an examination of the driving ability of any applicant for the renewal of a four-year license who is otherwise eligible for the renewal of such license unless the department finds"; (c) substituting "a license" for "an applicant"; (d) deleting "such" after "evidence of"; (e) adding "requiring an examination of the driving ability"; (f) adding "or licensee" in the fourth sentence; and (3) added subds (b) and (c).

1974 Amendment: Added subd (d).

1979 Amendment: Deleted (1) "and, at the discretion of the director, licenses may be extended for not to exceed one year when the number of renewal applications to be processed in a year will exceed the number of applications in the previous year or the next subsequent year by more than 10 percent" after "by the department" in subd (b); and (2) former subd (d) which read: "(d) The department shall report to the Legislature on or before August 1st, annually, describing the number of licenses extended during the preceding fiscal year pursuant to subdivision (b) and the reason for such action. Such report shall also include the regulations adopted pursuant to subdivision (c), the categories of test waivers granted, the purposes for which waivers were granted, and the result of the evaluation made during the preceding fiscal year of the selective testing program."

Note —"the the" so appears in the second sentence of subd (a) of Veh C § 12814 in the enrolled bill.

**Cross References:**

Application for original license: § 12800.

Fee on application for renewal of license: § 14900.

**Collateral References:**

8 Cal Jur 3d Automobiles § 122.

**Attorney General's Opinions:**

33 Ops Atty Gen 161 (examination of applicant for renewal of driver's license as though he were applying for original license where application not timely made).

**§ 12814.5. Extension of licenses**

(a) At the discretion of the director, drivers' licenses expiring on or after January 1, 1983, may, subject to subdivision (b), be renewed by mail for a four-year period for licensees, not holding a probationary license, whose records, for the four years immediately preceding the determination of the eligibility for the renewal, show no convictions of violating traffic laws, no involvement in a traffic accident, and no notification of a violation of subdivision (a) of Section 40509.

No renewal by mail shall be granted to any person who is 70 years of age or older.

(b) The director may establish a demonstration program to evaluate

the traffic safety and other effects of renewing driver's licenses by mail. If a demonstration program is established, the director may, under that program, renew by mail driver's licenses expiring on or after January 1, 1983, for licensees whose records, for the two years immediately preceding the determination of the eligibility for the renewal, show no convictions of violating traffic laws, no involvement in a traffic accident, and no notification of a violation of subdivision (a) of Section 40509, and additionally whose records, for the four years immediately preceding that determination, do not show a violation which has a violation point count of two determined in accordance with Section 12810 or a fatal accident notation. The department shall terminate the demonstration program when its evaluation is completed or may terminate the program at any time the department determines that the program has an adverse impact on traffic safety.

(c) The department shall charge a fee of ten dollars (\$10) for each license renewal granted pursuant to subdivision (a) or (b).

(d) The department shall monitor and conduct a continuing study of the effects of the license renewal by mail under subdivisions (a) and (b) and submit an interim report to the Legislature not later than January 1, 1986, and a final report to the Legislature not later than March 1, 1989, on its findings. The study shall include, but not be limited to, safety issues. The final report shall specifically include information regarding the impact on traffic safety of persons who receive a second extension under subdivision (b), which information shall cover a period not less than 24 months of experience following the second consecutive extension.

(e) The department shall notify each licensee granted a renewal by mail pursuant to this section of major changes to the Vehicle Code affecting traffic laws occurring during the prior four-year period.

(f) The department shall not renew a driver's license by mail if the license has been previously renewed by mail two consecutive times for four-year periods.

Added Stats 1978 ch 658 § 1; Amended Stats 1979 ch 625 § 2; Stats 1981 ch 541 § 34, effective September 17, 1981, operative January 1, 1982; Stats 1982 ch 776 § 1.

**Amendments:**

1979 Amendment: Prior to 1979 the section read: "(a) The department may establish a demonstration program to evaluate the effect of extending drivers' licenses. At the discretion of the director, during the demonstration program, licenses expiring on or after July 1, 1979, may be extended for licensees whose records, for the four years immediately preceding the expiration date of their licenses, or expiration date of their extended licenses, show no convictions of violating traffic laws, no involvement in a traffic accident, and no notification of a violation of subdivision (a) of Section 40509. The periods of the extension shall be for one or two years and in no event shall there be more than two consecutive extensions nor shall two consecutive extensions exceed two years.

- "(b) During the demonstration program, the number of licenses extended shall not exceed 10 percent of the total number of licensees eligible for an extension.
- "(c) The department may charge a fee for each license extension issued pursuant to subdivision (a).
- "(d) The department may continue the demonstration period of extending licenses through December 31, 1981. However, if, at any time, the department determines that such program has a negative effect on traffic safety, the process of extending licenses may be terminated by the department.
- "(e) The department shall prepare and submit to the Legislature an interim report on the effects of the demonstration program by July 1, 1981, and shall submit a final report by December 31, 1983.
- "(f) The authority granted the department by this section is in addition to the authority granted the director under subdivision (b) of Section 12814.
- "(g) This section shall remain in effect until January 1, 1982, and as of such date is repealed."

1979 Amendment amended the section to read as at present, except for the 1981 and 1982 Amendments.

1981 Amendment: Substituted "ten dollars (\$10)" for "three dollars and twenty-five cents (\$3.25)" in subd (b).

1982 Amendment: (1) Amended subd (a) by substituting (a) "January 1, 1983, may, subject to subdivision (c), be renewed by mail for a four-year period for licensees not holding a probationary license," for "January 1, 1980, may be extended for a single four-year period for licensees"; (b) "renewal" for "extension" after "eligibility for the"; and (c) substituting "renewal by mail" for "extension" in the second paragraph; (2) added subd (b); (3) redesignated former subds (b)-(d) to be subds (c)-(e); (4) amended subd (c) by (a) substituting "renewal" for "extension"; and (b) adding "or (b)"; (5) amended the first sentence of subd (d) by substituting (a) "monitor and conduct a continuing" for "conduct a"; (b) "renewal by mail under subdivisions (a) and (b) and submit an interim " for "extension and submit a"; and (c) "January 1, 1986, and a final report to the Legislature not later than March 1, 1989, on its findings" for "January 1, 1982"; (6) deleted "including an assessment of age criteria" at the end of the second sentence in subd (d); (7) added the third sentence in subd (d); (8) substituted "a renewal by mail pursuant to this section" for "extension" in subd (e); and (9) added subd (f).

*Note* —Stats 1981 ch 541 also provides:

SEC. 42. The Supreme Court may, upon the request of any party, transfer to itself, before a decision in the court of appeal, any appeal or petition for extraordinary relief from an action or proceeding to attack, review, set aside, void, or annul any provision of this act. The request for transfer should receive preference over all civil actions and proceedings on the Supreme Court's calendar. If the action or proceeding is transferred to the Supreme Court, the Supreme Court should commence to hear the matter within six months of the transfer, unless the parties by joint stipulation request additional time and the request is granted or the court, for good cause shown, grants additional time.

### § 12814.6. Provisional licenses; Demonstration program; Components; Report

(a) Notwithstanding any other provision of this code, the director may establish a demonstration program to evaluate the traffic safety effects of issuing a provisional driver's license to persons under 18 years of age. The demonstration program may include any or all, but shall not be limited to, the following components:

(1) The issuance of a distinctive driver's license to persons under 18 years of age on which appear the words "Provisional until age 18."

(2) Notwithstanding subdivision (c) of Section 12509, a general

requirement that any person who has in his or her immediate possession a valid permit issued after June 30, 1983, pursuant to subdivision (a) of Section 12509 and who is under 18 years of age may operate a motor vehicle, other than a motorcycle or a motorized cycle, only if that person is accompanied by, and under the immediate supervision of, a driver who is 25 years of age or older, who then holds a driver's license issued under this code, and whose driving privilege is not on probation. This paragraph does not apply if that licensed driver is the parent, spouse, or guardian of the permit holder or is a licensed or certified driving instructor.

(3) A requirement for supervised driving practice, which is prior to the issuance of a provisional driver's license and is in addition to any other driving training instruction required by law, and certification by a parent, spouse, guardian, or licensed or certified driving instructor that the person under 18 years of age has completed that driving practice. A minor without a parent, spouse, or guardian, or emancipated minors, may have a licensed driver 25 years of age or older or a licensed or certified driving instructor complete the certification. This requirement does not apply to motorcycle practice.

(4) A suspension of the driving privilege of any driver under 18 years of age when the record shows notification of one or more violations of subdivision (a) of Section 40509. The suspension shall continue until the suspended person's driver record does not show any notification of a violation of subdivision (a) of Section 40509.

(5) A 30-day restriction imposed on a driver under 18 years of age when that driver's record shows a violation point count of two or more points in 12 months determined in accordance with Section 12810. The restriction shall require the licensee to be accompanied by a licensed parent, spouse, guardian, or other licensed driver 25 years of age or older, except when operating a class 4 vehicle with no passengers aboard.

(6) A six-month suspension of the driving privilege and one-year term of probation to be imposed whenever the record of a driver under 18 years of age shows a violation point count of three or more points in 12 months determined in accordance with Section 12810.

(7) A requirement that any term of restriction or suspension imposed on a person under 18 years of age remain in effect until the end of the term even though the person becomes 18 years of age before the term ends.

(b) If the provisional driver's license demonstration program is established pursuant to subdivision (a), the department shall conduct a study on the traffic safety effects of the program, and, unless the department sooner determines that the program has no substantial beneficial impact on traffic safety, in which case the department may, upon that determination, recommend termination of the program and

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

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(3) A requirement for supervised driving practice, which is prior to the issuance of a provisional driver's license and is in addition to any other driving training instruction required by law, and certification by a parent, spouse, guardian, or licensed or certified driving instructor that the person under 18 years of age has completed that driving practice. A minor without a parent, spouse, or guardian, or emancipated minors, may have a licensed driver 25 years of age or older or a licensed or certified driving instructor complete the certification. This requirement does not apply to motorcycle practice.

(4) A suspension of the driving privilege of any driver under 18 years of age when the record shows notification of one or more violations of subdivision (a) of Section 40509. The suspension shall continue until the suspended person's driver record does not show any notification of a violation of subdivision (a) of Section 40509.

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(b) If the provisional driver's license demonstration program is established pursuant to subdivision (a), the department shall conduct a study on the traffic safety effects of the program, and, unless the department sooner determines that the program has no substantial beneficial impact on traffic safety, in which case the department may, upon that determination, recommend termination of the program and

The department in its discretion, if a person has successfully passed a motorcycle examination not involving operation of a motorcycle, issue an instruction permit entitling the applicant to operate a motorcycle during daylight hours on heavily traveled streets, roads, and highways for a period of two months; provided, the permit is in the immediate possession of the applicant and that the applicant does not operate the motorcycle at any time. Upon expiration of the motorcycle operation permit, the applicant shall indicate on the operator license whether the licensee is qualified to operate a motorcycle.

The department shall issue to an applicant who is the holder of an operator license and who is otherwise qualified in accordance with the provisions of this act such applicant's driving privilege and if such license is suspended or revoked for cause, a license to operate a motorcycle on a motorcycle.

On application for either a motorcycle license or a driver's license, the applicant shall be accompanied by a fee of \$8. Application for renewal of such licenses shall be accompanied by a fee of \$5 except that renewal application for a license for persons 65 years of age and over shall be accompanied by a fee of \$3.

Provisions of Chapter 2, Title 41, pertaining to the issuance of an operator license shall apply to the issuance of a motorcycle license under this act, but not limited to fees, requirements, training and the renewal of licenses. A class C misdemeanor for a person operating a motorcycle in this state without being licensed.

Records to be filed - Suitable indices kept - The department shall file every application received by it in alphabetical order and suitable indices containing: applications denied and on each thereof the reasons for such denial; applications granted; and name of every licensee whose license is suspended or revoked by the department and such name note the reasons for such suspension or revocation.

The department shall also file all accident reports and abstracts of court records of convictions under the laws of this state and shall maintain convenient records of such convictions in order that an individual licensee showing the convictions and the traffic accidents in which he was involved where a conviction has resulted in a suspension or revocation of license shall be readily ascertainable and available for review by the department upon any application for renewal of license and at other suitable times.

A peace officer shall have the authority to stop a motor vehicle for traffic violations of which he has observed and shall forward a record of all such violations to the department to be copied on the operator license of the licensee.

Fee for making report. The department shall collect a fee determined by the department pursuant to Subsection 63-39-2 for the drivers' license files and making copies of such files as requested by any person or company.

for a report on the driving record of any person licensed as an operator in the state. 1964  
Effective July 1, 1965.

41-2-12.2. Fees deposited in transportation fund - Expenses of tax commission - Budget.

All fees collected under this act shall be transmitted monthly to the state treasurer for deposit in the transportation fund. The expenses of the state tax commission in carrying out the provisions of this act shall be provided for by legislative appropriation from this fund. The commission shall prepare and submit to the governor, to be included in his budget to the legislature, a budget of the requirements for carrying out the provisions of this act for the fiscal year next following the convening of the legislature. 1977

41-2-12.3. No fee for reports made to governmental agencies.

Provided further, that no charge shall be made for reports furnished to municipal, county, state or federal agencies. 1977

41-2-13. Licenses issued to operators - Contents - Anatomical gifts indication - Temporary licenses - Minor's licenses and permits.

(1) The department shall issue to every person privileged to drive as an operator, a license certificate indicating the type or general class of vehicle the licensee may drive. No person shall drive any class of motor vehicle unless licensed in that class.

(2) Every such license certificate shall bear thereon (a) the social security number and/or the distinguishing number assigned to the licensee, (b) the name, age and residence address of the licensee, a brief description of the licensee for the purpose of identification, and (c) a photograph of the licensee and a photograph or other facsimile of the licensee's signature. The license shall be of an impervious material, resistant to wear, damage and alteration. The size, form and color of said license shall be as prescribed by the commissioner of public safety and the commissioner may prescribe the issuance of a special type limited license as authorized in subsection 41-2-18(d). In addition, the commissioner may in his discretion authorize the issuance of renewed or duplicate driver licenses without pictures in instances where the applicants are not then living within the boundaries of the State of Utah.

(3)(a) With every operator's license issued or renewed on and after July 1, 1981, the division shall, upon the request of the licensee, provide a sticker which can be affixed to the back of the license and which will indicate the licensee's intent to make an anatomical gift pursuant to the requirements of the anatomical gift act in Chapter 26 of Title 26. The statement must be signed in the presence of at least one witness who shall sign the statement in the presence of the licensee.

(b) The division or any of its employees shall not be liable for any loss, detriment, or injury, directly or indirectly, which results from false or inaccurate information contained in the sticker issued to and signed by the licensee.

(4) The department, upon determining after an examination that an applicant is mentally and physically qualified to be granted a license, may issue to such a person a receipt for the fee which shall serve as a temporary license certificate allowing him to operate a motor vehicle while the department is completing its investigation and determining all of the facts bearing upon whether he is entitled to be licensed. Such receipt must be in his immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license certificate has been issued or for good cause the privilege has been refused. The department shall indicate on such receipts a date after which it ceases to be valid as a license certificate.

(5) The department will, when issuing to any person under 21 years of age, issue to all such persons who have qualified, an instruction permit or a temporary permit which is plainly printed with the word "minor," or an operator's license of a special color not used for issue to persons 21 years of age and over.

(6) The department shall issue such temporary licenses, of the same nature except as to duration as the licenses which they temporarily replace, as are necessary to implement applicable provisions of section 41-2-19.6. 1983

41-2-13.1. Change of address - Duty of licensee to notify department.

Whenever any person after applying for or receiving an operator's license shall move from the address named in such application or in the license issued to him such person shall within 10 days thereafter notify the department in writing of his new address and of the number of any license then held by him. 1983

41-2-14. Duplicate license certificate - Fee.

In the event that an operator's license certificate issued under the provisions of this act shall be lost, stolen, or destroyed, the person to whom the same was issued may obtain a duplicate thereof upon furnishing proof satisfactory to the department that such license certificate has been lost, stolen or destroyed and upon payment of a fee of \$5. In the event that the department is advised that an operator's license certificate has been lost, stolen or destroyed, the same shall forthwith be void. 1983

41-2-15. License to be carried when driving - Production in court.

The licensee shall have his license in his immediate possession at all times when driving a motor vehicle and shall display the same upon demand of a justice of peace, a peace officer or a field deputy or inspector of the department. It shall be a defense to any charge under this subsection that the person so charged produce in court an operator's license theretofore issued to such person and valid at the time of his arrest. 1983

41-2-16. Expiration dates of licenses - Renewal - Fees for renewal - Extension without examination - FDes, forms and clerical help - Licensees in armed forces.

(1) Every operator's license renewed after June 30, 1967 shall expire on the licensee's birth date in the fourth year following the year of issuance of such license, and no new license shall be issued to any person after the expiration of his license until he has again passed the examinations specified in subsection 41-2-11(1) and has paid the required fee. Any operator's license granted without specific expiration date, heretofore designated as good-until-revoked license, shall expire on the date last stamped by the department upon such license and may be renewed as any other operator's license referred to in this chapter for the applicable period of time set forth above.

(2) The holder of a valid license may secure a renewal thereof by making application at any time within six months before such license expires, by

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passing the examination specified in subsection 41-2-11(2) and by paying a fee of \$10, except for those 65 years of age and over who shall pay a fee of \$3.00. Upon the payment of such fee and the passing of such examinations, the department shall issue a new license to such holder.

The commissioner may allow the holder of a valid operator's license to renew said license more than six months prior to its expiration date; provided, the applicant furnishes proof that such applicant will be absent from the state during the six-month period prior to the expiration of the license.

(3) At the discretion of the commissioner and under standards established by the department, operators' licenses expiring after July 1, 1980, may be extended for four years without examination for licensees whose driving records for the four years immediately preceding the determination of eligibility for extension show driving violation penalty points not exceeding 50, no suspensions or revocations, and no outstanding warrants for traffic violations, except that a person 65 years of age or older must take and pass the eye examination specified in subsection 41-2-11(1). No extension shall be granted to any person who is identified by the department as having a medical impairment which may represent a hazard to public safety. The department shall charge \$10 per extension for each person under 65 years of age and \$3.00 per extension for each person 65 or over. During the period of the extension, or prior thereto, the department shall notify each licensee granted an extension under this subsection of changes to the traffic code.

(4) The department shall establish the necessary files, application blanks, license certificate blanks, and clerical help to put into effect the provisions of this act.

(5) Utah operators' licenses held by persons ordered to active duty in any of the armed forces of the United States shall be honored as valid until 90 days after the person has been discharged or has left the service, unless such license is suspended or revoked for cause by the department.

(6) All operators' licenses in effect as of the effective date of this act unless expressly otherwise provided herein, shall continue in force and effect for the period for which such license was issued.

#### 41-2-17. Court to report convictions and may recommend suspension of license.

(a) Whenever any person is convicted of any offense for which this act makes mandatory the revocation of the operator's license of such person by the department, the court in which such conviction is had shall require the surrender to it of all operator's license certificates then held by the person so convicted and the court shall thereupon forward the same together with the record of such conviction to the department.

(b) Every court having jurisdiction over offenses committed under this act or any other act of this state or under any city ordinance regulating the operation of motor vehicles on highways, shall within 10 days forward to the department an abstract of the court record of the conviction of any person in said court for a moving traffic violation of any said laws or ordinances, and may recommend the suspension of the operator's license of the person so convicted.

Said abstract shall be made upon a form approved and furnished by the department and shall

include the name and address of the party charged, the number of his operator's license, the registration number of the vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment or whether bail was forfeited, and the severity of the violation, which shall be graded by the court as "minimum," "intermediate," or "maximum" with respect to a conviction or bond forfeiture for speeding, the severity of violation shall be graded as "minimum" for exceeding the posted speed limit by up to 9 miles per hour; as "intermediate" for exceeding the posted speed limit by from 10 to 19 miles per hour; and as "maximum" for exceeding the posted speed limit by 20 or more miles per hour.

(c) For the purposes of this act the term "conviction" shall mean conviction by the court of first impression. Also, for the purposes of this act a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

(d) Where a convicted person secures a judgment of acquittal or reversal in any appellate court after conviction in the court of first impression, the department shall reinstate his operator's license and return his license certificate immediately upon receipt of a certified copy of said judgment of acquittal or reversal.

#### 41-2-18. Mandatory revocation or suspension of license - Extension of period - Hearing - Limited driving privileges - Instructional programs.

(a) Except as hereinafter provided, the department shall forthwith revoke or, in those cases in which suspension is in this code specifically provided for, suspend the license of any person upon receiving a record of the conviction of such person of any of the following crimes:

(1) Manslaughter resulting from the operation of a motor vehicle or automobile homicide provided for in section 76-5-207.

(2) Driving or being in actual physical control of a vehicle while under the influence of alcohol or any drug or combination thereof to a degree which renders the person incapable of safely driving a vehicle as prohibited in section 41-6-44 or as prohibited in an ordinance that complies with the requirements of subsection 41-6-43(1).

(3) Driving or being in actual physical control of a vehicle with a blood alcohol content of .08% or higher as prohibited in section 41-6-44 or as prohibited in an ordinance that complies with the requirements of subsection 41-6-43(1).

(4) Perjury or the making of a false affidavit to the department under this act or any other law of this state requiring the registration of motor vehicles or regulating their operation on highways.

(5) Any crime punishable as a felony under the motor vehicle laws of this state or any other felony in the commission of which a motor vehicle is used.

(6) Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death of person or injury of another.

(7) Two charges of reckless driving committed within a period of twelve months; provided, however, that if, upon a first conviction of reckless driving, the judge or justice shall recommend suspension of the convicted person's license, the department may, after a hearing suspend the said license.

sued to him.

History.—s. 28, ch. 19551, 1936, CGL 1940 Supp. 4151(642), 8135(58); s. 28, ch. 20451, 1941; s. 1, ch. 29683, 1955; s. 1, ch. 57-757, s. 1, ch. 59-432, s. 2, ch. 67-174; s. 1, ch. 67-265; s. 1, ch. 69-81; s. 209, ch. 71-138, s. 1, ch. 71-144; s. 5, ch. 77-120; s. 14, ch. 77-121; s. 15, ch. 78-394; s. 10, ch. 79-3; s. 1, ch. 82-132, s. 1, ch. 85-121; s. 12, ch. 85-309.

### 322.17 Duplicate and replacement certificates.—

(1) In the event that an instruction permit or driver's license issued under the provisions of this chapter is lost or destroyed, the person to whom the same was issued may, upon payment of \$5, obtain a duplicate, or substitute thereof, upon furnishing proof satisfactory to the department that such permit or license has been lost or destroyed, and further furnishing the full name, date of birth, sex, residence address, proof of birth as provided in s. 232.03, and proof of identity satisfactory to the department.

(2) Upon the surrender of the original license and the payment of a \$1 replacement fee, the department shall issue a replacement license to make a change in name, address, or restrictions.

History.—s. 29, ch. 19551, 1939, CGL 1940 Supp. 4151(643), s. 29, ch. 20451, 1941; s. 1, ch. 71-73; s. 2, ch. 75-228; s. 1, ch. 77-174; s. 5, ch. 85-98.

### 322.18 Original applications, licenses, and renewals; expiration of licenses; delinquent licenses.—

(1) An original operator's, restricted operator's, or chauffeur's license may be issued only after the applicant successfully passes the required driver's license examination and presents the application to the department.

(2) Each applicant who is entitled to the issuance of a driver's license, as provided in this section, shall be issued a driver's license, as follows:

(a) An applicant applying for an original issuance shall be issued a driver's license which expires at midnight on the licensee's birthday which next occurs on or after the sixth anniversary of the date of issue.

(b) An applicant applying for a renewal issuance shall be issued a driver's license which expires at midnight on the licensee's birthday which next occurs 4 years after the month of expiration of the license being renewed, except that a driver whose driving record reflects no convictions for the preceding 3 years shall be issued a driver's license which expires at midnight on the licensee's birthday which next occurs 6 years after the month of expiration of the license being renewed.

(3) If a license expires on a Saturday, Sunday, or legal holiday, it shall be valid until midnight of the next regular working day and may be renewed on that day without payment of a delinquent fee.

(4) Except as otherwise provided in this chapter, all licenses shall be renewable every 4 years or 6 years, depending upon the terms of issuance and shall be issued upon application, payment of the fees required by s. 322.21, and successful passage of any required examination, unless the department has reason to believe that the licensee is no longer qualified to receive a license.

(5) All renewal operator's licenses or chauffeur's licenses may be issued after the applicant licensee has been issued a certificate of eligibility by the department.

(6) If the licensee does not receive a certificate of eligibility, the licensee or applicant may apply to the department, under oath, at the nearest driver's license ex-

amining office. Such application shall be on a form prepared and furnished by the department. The department shall make such forms available to the various examining offices throughout the state. Upon receipt of such application, the department shall issue a license or temporary permit to the applicant or shall advise the applicant that no license or temporary permit will be issued and advise the applicant of the reason for his ineligibility.

(7) An expired Florida driver's license may be renewed any time within 12 months after the expiration date, with reexamination, if required, upon presenting to the department a valid certificate of eligibility and upon payment of the required delinquent fee or taking and passing the written examination. If the final date upon which a license may be renewed under this section falls upon a Saturday, Sunday, or legal holiday, the renewal period shall be extended to midnight of the next regular working day. The department may refuse to issue any license if:

(a) It has reason to believe the licensee is no longer qualified to receive a license.

(b) Its records reflect that the applicant's driving privilege is under suspension or revocation.

(8) To implement a 6-year license term for licensees whose driving record reflects no convictions for the preceding 3 years, the department may issue a one-time 4-year license extension by mail, without reexamination, for licenses which expire between November 1, 1985, and October 31, 1989.

(a) If the department determines from its records that the holder of a license about to expire has no convictions for the preceding 3 years, the department shall mail a certificate of eligibility to the licensee at his last known address, not less than 30 days prior to the licensee's birthday. The licensee shall have the option of obtaining a 4-year license extension by mail or a 6-year license renewal at a driver license examining station.

(b) Upon receipt of a properly completed certificate of eligibility form and payment of a service fee of \$15, the department shall mail a license extension sticker to the licensee to affix to the expiring license as evidence that the license term has been extended for 4 years.

(c) The department shall not issue more than one license extension to a licensee. Upon expiration of the license extension period, renewal with reexamination as provided in s. 322.121 shall be required.

(d) A renewal applicant whose driving record reflects no convictions for the preceding 3 years shall be issued a 6-year renewal license upon payment of the fees required by s. 322.21 and passing the required examinations if application is made at a driver license examining station.

(e) Any person who knowingly possesses any forged, stolen, fictitious, counterfeit, or unlawfully issued license extension sticker, unless possession by such person has been duly authorized by the department, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(f) The provisions of paragraphs (a), (b), (c), and (d) shall expire on October 31, 1989, and paragraph (e) shall expire on October 31, 1993.

(9)(a) A restricted operator's license shall not be issued to any person who has previously held a restricted operator's license issued by this state.

(b) An original restricted operator's license is not renewable.

History.—s. 30, ch. 19551, 1939; CGL 1940 Supp. 4151(644); s. 30, 20451, 1941; s. 1, ch. 24346, 1947; s. 1, ch. 26911, 1951; s. 1, ch. 61-13, s. 2, ch. 67-242; ss. 24, 35, ch. 69-106; s. 1, ch. 72-211; ss. 3, 5, ch. 75-228; s. 17, ch. 78-394, s. 2, ch. 82-132; s. 22, ch. 84-359; s. 6, ch. 85-98.

Note.—As amended, effective November 1, 1985.

322.19 Notice of change of address or name.—

Whenever any person, after applying for or receiving an operator's or chauffeur's license, moves from the address named in such application or in the license issued to him, or when the name of a licensee is changed by marriage or otherwise, such person shall within 10 days thereafter notify the department in writing of his old and new addresses, or of such former and new names, and of the number of his license. A violation of this section is a nonmoving violation with a penalty as provided in s. 318.18(2).

History.—s. 31, ch. 19551, 1939; CGL 1940 Supp. 4151(645); s. 31, ch. 20451, 1941; s. 18, ch. 84-359.

322.20 Records of the department; fees; destruction of records.—

(1) The department shall maintain a record of every application for license received by it. The possession of such an application form, whether filled out or in blank, or of a counterfeit thereof, not authorized by the department or its personnel constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) The department shall also maintain a record of all accident reports, abstracts of court records of convictions, and notices of revocation or suspension of a person's driver's license or driving privilege.

(3) The department shall maintain convenient records or make suitable notations, in order that the individual driver history record of each licensee is readily available for the consideration of the department upon application for renewal of a license and at other suitable times. The release by the department of the driver history record, with respect to accidents involving a licensee, shall not include any notation or record of the occurrence of a motor vehicle accident unless the licensee received a traffic citation as a direct result of the accident.

(4) It is unlawful for any person to falsify, alter, erase, remove, or destroy, or cause to be altered, erased, removed, or destroyed, any record maintained by the department unless the alteration, erasure, removal, or destruction has been duly authorized.

(5) The department shall promulgate rules and procedures to ensure adequate safeguards and auditing capabilities to enable records of uniform traffic dispositions to be reported to the department in an automated fashion, through cooperative arrangements which may be entered into between court clerks and the department, in order to enhance the effectiveness and efficiency of dispositions reported on the uniform traffic citation. Automated procedures must be subjected to tests to ensure that the integrity of the driver file is enhanced or maintained and that the intent of this chapter, as stated in s. 322.263, is given priority consideration with respect

to either on-line data entry activities between the court and the department or the forwarding of electronically recorded data. Departmental rules shall require that data verification be accompanied by comparison with data from uniform traffic disposition reports.

(6) The department shall tabulate and publish statistics of traffic citation dispositions and provide records to court clerks for the purpose of verifying that the data was properly received and recorded.

(7) The requirement for the department to keep records shall terminate upon the death of an individual licensed by the department upon notification by the Department of Health and Rehabilitative Services of such death. The department shall make such notification as is proper of the deletions from their records to the court clerks of the state.

(8) The department may, upon application, furnish to any person, from the records of the Division of Driver Licenses, a list of the names, addresses, and birth dates of the licensed drivers of the entire state or any portion thereof by age group. Each person who requests such information shall pay a fee, set by the department, of 2 cent per name listed, except that the department shall furnish such information without charge to any state agency or to any state attorney, sheriff, or chief of police. Such state agency, state attorney, or law enforcement agency may not sell, give away, or allow the copying of such information. Noncompliance with this prohibition shall authorize the department to charge the noncomplying state agency, state attorney, or law enforcement agency the appropriate fee for any subsequent lists requested. The department may adopt rules necessary to implement this subsection.

(9) The Division of Driver Licenses is authorized, upon application of any person and payment of the proper fees, to search and to assist such person in the search of the records of the department and make reports thereof and to make photographic copies of the departmental records and attestations thereof.

(10)(a) The department is authorized to charge the following fees for the following services and documents:

- 1. For providing a transcript of any one individual's driver history record for the past 3 years or for searching for such record when no record is found to be on file .....\$2.00
- 2. For providing a transcript of any one individual's driver history record for the past 7 years or for searching for such record when no record is found to be on file .....\$3.00
- 3. For providing a certified copy of a transcript of the driver history record for any one individual .....\$3.00
- 4. For providing a certified photographic copy of a document, per page .....\$1.00
- 5. For providing an exemplified record .....\$15.00
- 6. For providing photocopies of documents, papers, letters, clearances, or license or insurance status reports, per page .....\$0.50
- 7. For assisting persons in searching any one individual's driver record at a terminal located at the department's general headquarters in Tallahassee .....\$2.00

Senate State Affairs  
Standing Committee  
February 9, 1987

Members Present:

Senator Mitch Abood, Chairman  
Senator Rick Uehling, Vice-Chairman  
Senator Willie Hensley  
Senator Jan Faiks  
Senator Joe Josephson

COMMITTEE CALENDAR

SB 4  
An Act relating to outdoor advertising

SB 90  
An Act relating to the eligible age for service in the  
militia of the state

SB 95  
An Act relating to renewal of a driver's license P.4-7

WITNESS REGISTER

Bill Brown  
Division of Motor Vehicles  
Department of Public Safety  
P.O. Box N  
Juneau, AK 99811  
465-4335  
Position Statement: Neutral on SB 95

Dick Rountree  
Administrative and Support Services  
Department of Military & Veterans Affairs  
Juneau, AK 99811  
465-4600  
Position Statement: Supports SB 90

PREVIOUS ACTION

TAPE ONE SIDE ONE  
Number 008

Senator Abood called the meeting to order noting the  
members in attendance were Senators Josephson, Faiks and  
Abood.

Senator Abood brought before the committee SB 4 An Act  
relating to outdoor advertising by Senator Fahrenkamp and

*Back-up CSSB 95SA*

pointed out that there is a committee substitute and asked for a brief description of the changes to the CS.

Number 020

Senator Fahrenkamp said that on the committee substitute she added only the underlined words on lines 27 through 29 which addresses the bus benches and bus shelters and left the rest of the bill the same as present law.

Number 028

Senator Faiks apologized to the prime sponsor for not being in attendance for the initial testimony on this bill and told Senator Fahrenkamp that she had been thinking about doing research to eliminate all political signs during the campaign season, and asked if Senator Fahrenkamp had done any research on that idea.

Senator Fahrenkamp said she had not.

Number 039

Senator Faiks said that in Anchorage all the political signs are illegal. During the campaign season, the signs that are put up are as a general rule, ~~are~~ all illegal. She said she felt that we can't expect the state employees of the Department of Transportation, to police the signs; there is no fine involved; yet people blatantly violate the law on these things and she doesn't know of anyway to keep people straight other than to just say there will be no more political signs. She then asked Senator Fahrenkamp if she had any thoughts along those lines.

Number 058

Senator Fahrenkamp said she just happens to be one who likes political signs, as she likes to know who is running, but the difficulty in her area is different in that they have trouble keeping any signs up.

Number 065

Brief discussion on the abuse of signs during political campaigns and the legalities of a blanket prohibition on portable signs.

Number 132

Senator Josephson said that he felt the committee substitute addresses the concerns expressed during the hearing last week and eliminated the concerns he had had and perhaps would prefer the committee develop another

vehicle to address the concerns for the abuse of portable signs during a campaign.

Number 153

Senator Fahrenkamp said that since the issue of the signs seems to be a bit controversial, she would ask that her bill be kept clean and she would help research and work on another bill to address the concerns of illegal political signs.

Number 159

Senator Josephson also said he would be willing to research the legalities of signs.

Number 164

Senator Josephson moved the bill with individual recommendations.

Number 166

Senator Abood asked for any objections. Hearing no objections, so ordered.

Number 183

Senator Abood brought before the committee SB 90 An Act relating to the eligible age for service in the militia of the state and asked for any witnesses.

Number 185

Dick Rountree with the Department of Military and Veterans Affairs said that what this bill actually does is take the age limit off the members who belong to the Alaska State militia. The department finds that they have many interested citizens, some ex-national guardsmen, who still want to be active in the militia. Therefore, he felt that some of them still have a lot to offer after the age of 60.

Number 200

Senator Faiks moved the bill with individual recommendations.

Number 202

Senator Abood asked for any objections. Hearing none, so ordered.

Number 221

Senator Abood brought before the committee SB 95 An Act relating to renewal of a driver's license and asked for any witnesses.

Ted Beilman of Senator Kerttula's office said that the purpose of SB 95 is two-fold. One is to provide a convenient method for driver's license renewal and the second is to reward those individuals who have a clean driving record for 5 years. Currently the motor vehicle offices are open Monday through Friday during regular business hours which requires a person to take off work to get their driver's license renewed. For example, people in the Mat-Su Borough could drive as many as 200 miles round trip to get their license renewed. In addition, they have received complaints from Alaska students going to school out-of-state, who have to get their license renewed, get an out-of-state driver's license and they fear that by doing that, they are going to jeopardize their Alaska residency. They are concerned that when they get another student loan application, they may be denied because they're compromising themselves.

Mr. Beilman said that basically the renewal by mail method will provide a greater convenience to the public. The fiscal note shows the cost is minimal based upon participation of 35% of those who are qualified to renew their license. As the renewal rate increases, higher than 30%, basically the fiscal note would decrease; up to 50% participation.

Some of the arguments against it is that there is no vision screening taken. At this point and time no research has been conducted that there is an increase in accidents when vision test are not given.

Number 254

Senator Abood said he is concerned about a 62 year old who doesn't have to take an eye examination until 5 years later when he's 67. He questioned if it was 10 or 15 years before a person had to come in for a test for a renewal.

Number 273

Mr. Beilman said that according to DMV for a period of 15 years you wouldn't have to take a test. Initially you get the driver's license, 5 years later get it renewed by mail, 5 years after that get a renewal by mail and 5 years after that, the 15th year, it would have to be renewed in person.

Number 279

Senator Faiks asked how you renew it by mail.

Number 283

Mr. Beilman explained that currently a number of other states are already conducting renewal by mail. The Department notifies the individual that they need to renew their license, fill out the appropriate papers which are sent back to DMV; then DMV would put any new information on the driver's license such as change of address, etc. that then goes back to the individual. Other states have a peel off sticker that they put on the back of the current driver's license which provides up-dated information.

Number 297

Senator Faiks said that people change a lot in 15 years and Alaska uses the driver's license for identification almost totally. How do you get around the people who would use this as a disguise. Would it be perpetuating a crime and are there any statistics that this is happening in other places?

Number 304

Mr. Beilman said that at this time there is no research that he knows of, along those lines. He said that a passport is good for 10 years and that's on an international basis, and the photograph is accepted. He imagined anybody who really wants to change their looks could do so quite easily if they were going to be a crook or a bad guy.

The main purpose of this legislation is to provide an easy way for an individual to get their license renewed who has shown to have a good driving record. That way there is no need to take off work to get the license renewed, it can all be done through the mail the same way an automobile registration is handled.

The cost would be minimal, there wouldn't be the time constraints, they wouldn't have to drive long distances, etc.

Number 323

Senator Faiks asked if he would be willing to put a feature in the bill that the cost of renewal would be covered by a fee.

Number 326

Mr. Beilman said that at this point there would be a 75 cent savings per license by doing it through the mail rather than doing it in person

Number 328

Mr. Beilman gave a brief summary of information on the department's fiscal note.

Number 344

Senator Faiks asked if Mr. Beilman would object to an amendment put on the bill which would require the cost of the program to be included in the cost of the license renewal fee since it is cheaper.

Number 350

Senator Josephson said that at the present time in Anchorage there is not a problem because you can go down to the post office and get a photo and without a long line you can renew your license.

He also saw the potential for mischief for driver identification for people who aren't allowed them because of prior actions or age who use a mail system to get themselves a license. The obligation to go down and report to an office and show up is a deterrent to people trying to figure out ways to get phoney identification.

Number 368

Mr. Beilman only commented that those individuals who get renewal notices would be only those individuals with clean driving records. No past violations. Also he thought these individuals would be less likely to take advantage of that.

He also commented on the fact that Alaska is spread apart and an individual from Palmer or Talkeetna has a long drive to renew his license and may have to take a day off work to renew his license.

Number 394

Senator Abood questioned whether those people would come down at some time in a 5 year period anyway.

Number 406

Senator Faiks said that the bill has merit if some of the holes could be plugged and one of the biggest problems she sees is that she would want to see a zero net effect cost factor on the department. She would like to see it financially neutral and if possible make money for the department.