

HOUSE OF REPRESENTATIVES 1965-1966 8672

1 HJ: MISCELLANEOUS INFORMATION ON BILLS

1965-1966

HOUSE JUDICIARY COMMITTEE

LIST OF FILES (PAGE. 1)

1 FOLDER WITH MISCELLANEOUS INFORMATION  
ON BILLS

HOUSE  
JUDICIARY  
1965/66  
MISC.

A M E N D M E N T

Offered in the HOUSE

BY J. J. [unclear]

To: \_\_\_\_\_ HOUSE Bill No. \_\_\_\_\_

\_\_\_\_\_ SENATE Bill No. \_\_\_\_\_

AMENDMENT: Page 1 Line 22

strike all matter after the word "passenger" and insert  
and the operator has effective  
liability coverage for the protection  
of the passenger against bodily  
injury in the sum of not less than  
\$10,000 when the operator is riding on a  
public highway.

A M E N D M E N T

Offered in the HOUSE

By Judiciary

To: CS HOUSE Bill No. 295

SENATE Bill No. \_\_\_\_\_

AMENDMENT: Page \_\_\_\_\_ Line 14

14. after "of" insert "or passenger on"  
15 after "operate" insert "or ride"

3 P.M. Friday April 8

Public Hearing on SB 151

<sup>Chairman</sup> <sup>Donna Borough</sup>  
Mr. Pomeroy - boundary com in 1964 said Igroek  
can't be excluded from borough.

David Mathis - Sitka Borough include Igroek

English Bay

Port Graham

Seldovia 50%

all natives of the Cook Inlet area - Ex Ord.

Interior says Igroeks only get reserve.

Taylor - Igroek is a federal incorporated municipality.

title & real property is in US. but can tax  
lease hold

cooperative store - sales tax doesn't apply.

Donna. In exclusion of borough - they are more related  
to Anchorage Borough. They cannot look after themselves  
& want to be separate governmental units.

Stevens

amendment so there will be hearing & inclusion  
in another borough by Local Boundary Com.

Don Barry - Mayor of Alaska City

If anyone desires not equitable to all tax payers,

financial advantage to few

- special legislation -

Duffy quoted constitution on disclaimer - Stubbins Act.

Mr. Sheppard from Fairbanks Borough  
Cedok Bow has Kalluk reservation.

Johns. Borough - Millsap

## JUDICIARY COMMITTEE REPORT

on

### HOUSE BILL NO. 353

#### 1. GENERAL.

HB 353 is concerned with what is commonly called wire-tapping or eavesdropping. Section 280 pertains to the misuse, interception, and divulgence of messages sent by wire or radio and Section 290 is concerned with the recording or listening to oral conversations without the consent of at least one of the parties to the conversation. A violation of any one of the sections of the bill is made a misdemeanor with a maximum penalty of \$1,000 fine or imprisonment for one year, or both.

Under the federal act, in order to obtain a conviction, both interception and divulgence must be proved. This facet of the federal act has been extensively criticized by the U. S. Attorney General's office. Also, it is not clear under the federal act whether an innocent interception is a crime and the federal courts have split on the question. Section 280 of HB 353 avoids those problems.

#### 2. SECTIONAL ANALYSIS.

Section 280(a) applies to the employees of a common carrier communications system. It prohibits the employee who takes the message for transmission, the employee receiving the message and any employees assisting in those operations, from divulging or releasing in any manner the meaning of the message, except to the persons listed in this section, through authorized channels. It should be noted that a court may order the divulgence of a message.

Section 280(b) deals with the initial acquisition of a message by persons through the interception of the message at any time. The section contemplates an intentional interception. It should be noted that under this section, the interception alone constitutes a prohibited activity. There is no need to prove interception and divulgence, although the latter activity is a violation.

Section 280(c) prohibits a person for whom the message is not intended, regardless of the means by which that person received the message, from using the information he has received for his own or another's benefit.

Section 280(d) prohibits a person from disclosing the meaning of the message when the person has actual knowledge or should reasonably be expected to know that the communication originally was obtained in violation of section 280. In this case, the person would, of course, also be violating section 280(c) if the person used the information obtained for his own or another's benefit.

Section 280(e) prohibits a person who is not entitled to information, but becomes aware of the contents of a message although not actually in physical receipt of a message, from in any way divulging the meaning of the contents of the message, or from using the information for his own or another's benefit.

ORIGIN OF SECTION 280. Sec. 280 is based primarily on section 605 of the Federal Communications Act. The bill does not make innocent interception a crime except in the case of a person using information obtained for his own or another's benefit or the person divulges any information he has obtained.

Section 290 makes it a criminal offense to listen to or record any oral conversation without the consent of one of the parties to the conversation. It covers not only a telephone conversation, but any oral conversation in an office, home, car, boat, or any other place a conversation might be held. It prohibits the illegal use of any type of eavesdropping device, electronic or otherwise.

Section 290(2) prohibits a person from using information obtained through illegal use of an eavesdropping device for his own or another's benefit.

Section 290(3) prohibits a person from revealing the meaning of any conversation heard by means of the illegal use of an eavesdropping device; and

Section 290(4) prohibits a person who becomes aware of the contents of a conversation from revealing the meaning of the conversation if he knows or reasonably should know that the information he has received was originally obtained by the illegal use of an eavesdropping device.

SUPPLEMENTARY COMMENT - EFFECT OF BILL ON POLICE AND ADMISSIBILITY OF EVIDENCE. Neither section 290 or section 300 (the exemption section) makes any exception for law enforcement officers. A law enforcement officer is subject to the same penalties as a private citizen who violates the provisions of

the bill. Law officers would be permitted under section 290(1) to record and listen to a conversation with the consent of one of the parties to the conversation. The most common examples of when this provision would be applicable would be in the case of a kidnapper who has told the victim's family he will call them or obscene phone calls.

Along this line, it is to be noted that only six states permit, by statute, law enforcement officers to obtain evidence by wiretap or other means. They are Maryland, Massachusetts, Louisiana, Nevada, New York and Oregon. Of these six states, only Louisiana does not specifically require a judicial order preceding the tap.

Six states prohibit, by statute, the admission of any evidence obtained in violation of a wiretap or eavesdropping statute. They are Maryland, Nevada, Illinois, Rhode Island, Oregon and Pennsylvania. Overall, 39 states, by statute, prohibit wiretapping or electronic eavesdropping, while 11 states prohibit only physical interference with wires. In regard to evidence obtained by wiretap or other eavesdropping devices being used in a court proceeding, the bill does not in any way change the existing law of Alaska. The admittance or rejection of such evidence is left to case law and the rules governing the admissibility of evidence as interpreted by the court.

Sec. 300 of the bill simply lists the activities which are not to be considered criminal under the provisions of the statute and is self-explanatory.

### 3. REPEALS.

Sec. 2 of the bill will repeal provisions in the present law that will duplicate provisions of the proposed bill if enacted. Sec. 2 amends AS 42.20.050 by deleting subsection 1 which makes it a crime for one to divulge the contents of a message to any person other than the party for which it was intended, his attorney, or agent. This is covered by section 280 of the proposed bill.

Sec. 3 repeals AS 42.20.100 which deals with persons taking messages from a telegraph wire or intercepting a message to which they are not entitled. This activity is covered in section 280 of the bill.

### 4. AMENDMENT.

The amendment offered by Mr. Josephson is almost identical to secs. 141.720 - 141.990 of the Oregon Revised Statutes. The amendment allows the presiding judge for the judicial district

in which the interception will take place to allow an interception of telecommunications, radio communications or conversations by peace officers if there are reasonable grounds to believe that a crime directly and immediately affecting the safety of human life or the national security has been committed or is about to be committed. Also, there must be reasonable grounds to believe that evidence will be obtained essential to the solution of the crime, or which may enable the prevention of the crime and there must be no other means readily available for obtaining the information.

The order must be applied for by the district attorney with the approval of the attorney general whether the interception is to be made by peace officers of the state or a political subdivision. The court may examine under oath the district attorney, a witness he produces, or anyone the court wishes to question. If the court issues the order for interception, it is effective for 10 days under this amendment. The Oregon law allows 60 days. The order may be renewed for 10 days at a time.

The amendment makes it a misdemeanor to use an expired order or to release any information about the application or any supporting documents or testimony. The presiding judge shall, however, report to the legislature the number of orders and renewals issued and also the nature of the reasons for issuance.

strued as modifying or limiting any other statute relating to the classification of information for reasons of national defense or security. (Sept. 9, 1950, ch. 936, § 5, 64 Stat. 824.)

§ 1156. Use of existing facilities.

(a) The Secretary may utilize any personnel, facilities, bureaus, agencies, boards, administrations, offices, or other instrumentalities of the Department of Commerce which he may require to carry out the purposes of this chapter.

(b) The Secretary is authorized to call upon other departments and independent establishments and agencies of the Government to provide, with their consent, such available services, facilities, or other cooperation as he shall deem necessary or helpful in carrying out the provisions of this chapter, and he is directed to utilize existing facilities to the full extent deemed feasible. (Sept. 9, 1950, ch. 936, § 6, 64 Stat. 824.)

§ 1157. Relation to other provisions.

Nothing in this chapter shall be construed to repeal or amend any other legislation pertaining to the Department of Commerce or its component offices or bureaus. (Sept. 9, 1950, ch. 936, § 7, 64 Stat. 824.)

Chapter 24.—TRANSPORTATION OF GAMBLING DEVICES

Sec.

1171. Definitions.

1172. Transportation of gambling devices as unlawful; exceptions; authority of Federal Trade Commission.

1173. Registration of manufactures and dealers.

- (a) Activities requiring registration; contents of registration statement.
- (b) Numbering of devices.
- (c) Records; required information.
- (d) Retention of records.
- (e) Dealing in, owning, possessing or having custody of devices not marked or numbered; false entries in records.
- (f) Authority of Federal Bureau of Investigation.

1174. Labeling and marking of shipping packages.

1175. Specific jurisdictions within which manufacturing, repairing, selling, possessing, etc., prohibited.

1176. Penalties.

1177. Confiscation of gambling devices and means of transportation; laws governing.

1178. Nonapplicability of chapter to certain machines and devices.

§ 1171. Definitions.

As used in this chapter—

(a) The term "gambling device" means—

(1) any so-called "slot machine" or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance,

any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(3) any subassembly or essential part intended to be used in connection with any such machine or mechanical device, but which is not attached to any such machine or mechanical device as a constituent part.

(b) The term "State" includes the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(c) The term "possession of the United States" means any possession of the United States which is not named in subsection (b) of this section.

(d) The term "interstate or foreign commerce" means commerce (1) between any State or possession of the United States and any place outside of such State or possession, or (2) between points in the same State or possession of the United States but through any place outside thereof.

(e) The term "intrastate commerce" means commerce wholly within one State or possession of the United States. (Jan. 2, 1951, ch. 1194, § 1, 64 Stat. 1134, Oct. 18, 1962, Pub. L. 87-840, §§ 2, 3, 76 Stat. 1075.)

AMENDMENTS

1962—Subsec. (a) (2), (3). Pub. L. 87-840, § 2 (a), (b), substituted provisions including machines and mechanical devices designed and manufactured primarily for gambling by the operation of which a person may become entitled to receive, as the result of chance, any money or property, for provisions which included machines or mechanical devices designed and manufactured to operate by inserting a coin, token, or similar object, in par. (2), and inserted ", but which is not attached to any such machine or mechanical device as a constituent part", in par. (3).

Subsec. (b). Pub. L. 87-840, § 8, substituted "the District of Columbia" for "Alaska, Hawaii."

Subsecs. (d) and (e). Pub. L. 87-840, § 3, added subsec. (d) and (e).

EFFECTIVE DATE OF 1962 AMENDMENT

Section 7 of Pub. L. 87-840 provided that: "The amendments made by this Act [enacting section 1173 of this title and amending this section and sections 1172 and 1173 of this title] shall take effect on the sixtieth day after the date of its enactment [Oct. 18, 1962]."

SHORT TITLE

Section 1 of Pub. L. 87-840 provided that Pub. L. 87-840, which enacted section 1173 of this title, and amended this section and sections 1172 and 1173 of this title, may be cited as the "Gambling Devices Act of 1962."

SEPARABILITY OF PROVISIONS

Section 8 of act Jan. 2, 1951, provided that: "If any provision of this Act [this chapter] or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act [this chapter] which can be given effect without the invalid provision or application, and to this end the provisions of this Act [this chapter] are declared to be severable."

CROSS REFERENCES

Numbering of gambling devices, see section 1173 of this title.

§ 1172. Transportation of gambling devices as unlawful; exceptions; authority of Federal Trade Commission.

It shall be unlawful knowingly to transport any gambling device to any place in a State, the District of Columbia, or a possession of the United States

from any place outside of such State, the District of Columbia, or possession: *Provided*, That this section shall not apply to transportation of any gambling device to a place in any State which has enacted a law providing for the exemption of such State from the provisions of this section, or to a place in any subdivision of a State if the State in which such subdivision is located has enacted a law providing for the exemption of such subdivision from the provisions of this section, nor shall this section apply to any gambling device used or designed for use at and transported to licensed gambling establishments where betting is legal under applicable State laws: *Provided, further*, That it shall not be unlawful to transport in interstate or foreign commerce any gambling device into any State in which the transported gambling device is specifically enumerated as lawful in a statute of that State.

Nothing in this chapter shall be construed to interfere with or reduce the authority, or the existing interpretation of the authority, of the Federal Trade Commission under the Federal Trade Commission Act. (Jan. 2, 1951, ch. 1194, § 2, 64 Stat. 1134; Oct. 18, 1962, Pub. L. 87-840, § 4, 76 Stat. 1075.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in the text, is classified to sections 41-46 and 47-58 of this title.

AMENDMENTS

1962—Pub. L. 87-840 excepted gambling devices used or designed for use at and transported to licensed gambling establishments where betting is legal under State laws, and provided that it shall not be unlawful to transport such devices into any State in which the device is specifically enumerated as lawful in a State statute.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section effective on the sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87-840, set out as note under section 1171 of this title.

CROSS REFERENCES

Penalty for violations, see section 1176 of this title.

§ 1173. Registration of manufacturers and dealers.

(a) Activities requiring registration; contents of registration statement.

(1) It shall be unlawful for any person engaged in the business of manufacturing gambling devices, if the activities of such business in any way affect interstate or foreign commerce, to manufacture any gambling device during any calendar year, unless, after November 30 of the preceding calendar year, and before the date on which such device is manufactured, such person has registered with the Attorney General under this subsection, regardless of whether such device ever enters interstate or foreign commerce.

(2) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others any gambling device, if in such business he sells, ships, or delivers any such device knowing that it will be introduced into interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30 of the preceding calendar year, and before the date such sale, shipment, or delivery occurs, such person has registered with the Attorney General under this subsection.

(3) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others any gambling device, if in such business he buys or receives any such device knowing that it has been transported in interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30 of the preceding calendar year and before the date on which he buys or receives such device, such person has registered with the Attorney General under this subsection.

(4) Each person who registers with the Attorney General pursuant to this subsection shall set forth in such registration (A) his name and each trade name under which he does business, (B) the address of each of his places of business in any State or possession of the United States, (C) the address of a place, in a State or possession of the United States in which such a place of business is located, where he will keep all records required to be kept by him by subsection (c) of this section, and (D) each activity described in paragraph (1), (2), or (3) of this subsection which he intends to engage in during the calendar year with respect to which such registration is made.

(b) Numbering of devices.

(1) Every manufacturer of a gambling device defined in paragraph (a) (1) or (a) (2) of section 1171 of this title shall number seriatim each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

(2) Every manufacturer of a gambling device defined in paragraph (a) (3) of section 1171 of this title shall, if the size of such device permits it, number seriatim each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

(c) Records; required information.

(1) Every person required to register under subsection (a) of this section for any calendar year shall, on and after the date of such registration or the first day of such year (whichever last occurs), maintain a record by calendar month for all periods thereafter in such year of—

(A) each gambling device manufactured, purchased, or otherwise acquired by him,

(B) each gambling device owned or possessed by him or in his custody, and

(C) each gambling device sold, delivered, or shipped by him in intrastate, interstate, or foreign commerce.

(2) Such record shall show—

(A) in the case of each such gambling device defined in paragraph (a) (1) or (a) (2) of section 1171 of this title, the information which is required to be affixed on such gambling device by subsection (b) (1) of this section; and

(B) in the case of each such gambling device defined in paragraph (a) (3) of section 1171 of

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this title, the information required to be affixed on such gambling device by subsection (b) (2) of this section, or, if such gambling device does not have affixed on it any such information, its catalog listing, description, and, in the case of each such device owned or possessed by him or in his custody, its location.

Such record shall also show (i) in the case of any such gambling device described in paragraph (1) (A) of this subsection, the name and address of the person from whom such device was purchased or acquired and the name and address of the carrier; and (ii) in the case of any such gambling device described in paragraph (1) (C) of this subsection, the name and address of the buyer and consignee thereof and the name and address of the carrier.

(d) Retention of records.

Each record required to be maintained under this section shall be kept by the person required to make it at the place designated by him pursuant to subsection (a) (4) (C) of this section for a period of at least five years from the last day of the calendar month of the year with respect to which such record is required to be maintained.

(e) Dealing in, owning, possessing or having custody of devices not marked or numbered; false entries in records.

(1) It shall be unlawful (A) for any person during any period in which he is required to be registered under subsection (a) of this section to sell, deliver, or ship in intrastate, interstate, or foreign commerce or own, possess, or have in his custody any gambling device which is not marked and numbered as required by subsection (b) of this section; or (B) for any person to remove, obliterate, or alter any mark or number on any gambling device required to be placed thereon by such subsection (b).

(2) It shall be unlawful for any person knowingly to make or cause to be made, any false entry in any record required to be kept under this section.

(f) Authority of Federal Bureau of Investigation.

Agents of the Federal Bureau of Investigation shall, at any place designated pursuant to subsection (a) (4) (C) of this section by any person required to register by subsection (a) of this section, at all reasonable times, have access to and the right to copy any of the records required to be kept by this section, and, in case of refusal by any person registered under such subsection (a) to allow inspection and copying of such records, the United States district court for the district in which such place is located shall have jurisdiction to issue an order compelling production of such records for inspection or copying. (Jan. 2, 1951, ch. 1194, § 3, 84 Stat. 1135; Oct. 18, 1962, Pub. L. 87-840, § 5, 76 Stat. 1075.)

REFERENCES IN TEXT

The effective date of the Gambling Devices Act of 1962, referred to in pars. (2) and (3) of subsec. (a), means the effective date of Pub. L. 87-840. See effective date note under this section.

AMENDMENTS

1962—Pub. L. 87-840 amended section generally. Prior to such amendment, section provided that: "Upon first engaging in business, and thereafter on or before the 1st day of July of each year, every manufacturer of and dealer in gambling devices shall register with the Attorney General his name or trade name, the address of his

principal place of business, and the addresses of his places of business in such district. On or before the last day of each month every manufacturer of and dealer in gambling devices shall file with the Attorney General an inventory and record of all sales and deliveries of gambling devices as of the close of the preceding calendar month for the place or places of business in the district. The monthly record of sales and deliveries of such gambling devices shall show the mark and number identifying each article together with the name and address of the buyer or consignee thereof and the name and address of the carrier. Duplicate bills or invoices, if complete in the foregoing respects, may be used in filing the record of sales and deliveries. For the purposes of this chapter, every manufacturer or dealer shall mark and number each gambling device, so that it is individually identifiable. In cases of sale, delivery, or shipment of gambling devices in unassembled form, the manufacturer or dealer shall separately mark and number the components of each gambling device with a common mark and number as if it were an assembled gambling device. It shall be unlawful for any manufacturer or dealer to sell, deliver, or ship any gambling device which is not marked and numbered for identification as herein provided; and it shall be unlawful for any manufacturer or dealer to manufacture, recondition, repair, sell, deliver, or ship any gambling device without having registered as required by this section, or without filing monthly the required inventories and records of sales and deliveries."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment of section effective on the sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87-840, set out as a note under section 1171 of this title.

CROSS REFERENCES

Penalty for violations, see section 1176 of this title.

§ 1174. Labeling and marking of shipping packages.

All gambling devices, and all packages containing any such, when shipped or transported shall be plainly and clearly labeled or marked so that the name and address of the shipper and of the consignee, and the nature (if the article) or the contents of the package may be readily ascertained on an inspection of the outside of the article or package. (Jan. 2, 1951, ch. 1194, § 4, 64 Stat. 1135.)

CROSS REFERENCES

Penalty for violations, see section 1176 of this title.

§ 1175. Specific jurisdictions within which manufacturing, repairing, selling, possessing, etc., prohibited.

It shall be unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device in the District of Columbia, in any possession of the United States, within Indian country as defined in section 1151 of Title 18 or within the special maritime and territorial jurisdiction of the United States as defined in section 7 of Title 18. (Jan. 2, 1951, ch. 1194, § 5, 64 Stat. 1135.)

CROSS REFERENCES

Penalty for violations, see section 1176 of this title.

§ 1176. Penalties.

Whoever violates any of the provisions of sections 1172—1174 or 1175 of this title shall be fined not more than \$5,000 or imprisoned not more than two years, or both. (Jan. 2, 1951, ch. 1194, § 6, 64 Stat. 1135.)

§ 1177. Confiscation of gambling devices and means of transportation; laws governing.

Any gambling device transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, or used in

violation of the provisions of this chapter shall be seized and forfeited to the United States. All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as applicable and not inconsistent with the provisions hereof: *Provided*, That such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of gambling devices under this chapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General. (Jan. 2, 1951, ch. 1194, § 7, 64 Stat. 1135.)

**§ 1178. Nonapplicability of chapter to certain machines and devices.**

None of the provisions of this chapter shall be construed to apply—

- (1) to any machine or mechanical device designed and manufactured primarily for use at a racetrack in connection with parimutuel betting,
- (2) to any machine or mechanical device, such as a coil-operated bowling alley, shuffleboard, marble machine (a so-called pinball machine), or mechanical gun, which is not designed and manufactured primarily for use in connection with gambling, and (A) which when operated does not deliver, as a result of the application of an element of chance, any money or property, or (B) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money or property, or
- (3) to any so-called claw, crane, or digger machine and similar devices which are not operated by coin, are actuated by a crank, and are designed and manufactured primarily for use at carnivals or county or State fairs.

(Jan. 2, 1951, ch. 1194, § 9, as added Oct. 18, 1962, Pub. L. 87-840, § 6, 76 Stat. 1077.)

**EFFECTIVE DATE**

Section effective on the sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87-840, set out as a note under section 1171 of this title.

**Chapter 25.—FLAMMABLE FABRICS**

**Sec.**

- 1191. Definitions.
- 1192. Prohibited transactions.
- 1193. Standards of flammability; proposals for new standards.
- 1194. Administration and enforcement; law governing; rules and regulations; inspections, tests, etc.
- 1195. Injunction and condemnation proceedings.
  - (a) Temporary injunction; venue.
  - (b) Process of libel for seizure and confiscation; manner of procedure; consolidation of trials.
  - (c) Application by defendant for representative samples of seized materials.
  - (d) Disposal of condemned materials.

**Sec.**

- 1196. Penalties.
- 1197. Guaranties.
- 1198. Shipments from foreign countries, posting of bond.
- 1199. Chapter as additional legislation.
- 1200. Persons excluded from operation of chapter.

**§ 1191. Definitions.**

As used in this chapter—

(a) The term "person" means an individual, partnership, corporation, association, or any other form of business enterprise.

(b) The term "commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

(c) The term "Territory" includes the insular possessions of the United States and also any Territory of the United States.

(d) The term "article of wearing apparel" means any costume or article of clothing worn or intended to be worn by individuals except hats, gloves, and footwear: *Provided, however*, That such hats do not constitute or form part of a covering for the neck, face, or shoulders when worn by individuals: *Provided further*, That such gloves are not more than fourteen inches in length and are not affixed to or do not form an integral part of another garment: *And provided further*, That such footwear does not consist of hosiery in whole or in part and is not affixed to or does not form an integral part of another garment.

(e) The term "fabric" means any material (other than fiber, filament, or yarn) woven, knitted, felted, or otherwise produced from or in combination with any natural or synthetic fiber, film, or substitute therefor which is intended or sold for use in wearing apparel except that interlining fabrics when intended or sold for use in wearing apparel shall not be subject to this chapter.

(f) The term "interlining" means any fabric which is intended for incorporation into an article of wearing apparel as a layer between an outer shell and an inner lining.

(g) The term "Commission" means the Federal Trade Commission.

(h) The term "Federal Trade Commission Act" means the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 28, 1914, as amended. (June 30, 1963, ch. 164, § 2, 67 Stat. 111.)

**REFERENCES IN TEXT**

The Federal Trade Commission Act, referred to in subsec. (h), is classified to sections 41-46 and 47-68 of this title.

**EFFECTIVE DATE**

Section 12 of act June 30, 1963, provided that this chapter shall take effect one year from June 30, 1963.

**SHORT TITLE**

Congress in enacting this chapter provided by section 1 of act June 30, 1963, that it should be popularly known as the "Flammable Fabrics Act."

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**§ 1192. Pro**

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Testimony of Ernest H. Jones, Chairman,  
for the Board of Christian Social Concerns  
of the ALASKA MISSION of The METHODIST CHURCH

Presented to the House Judiciary Committee  
March 16, 1966

Re: SB 282

We are opposed to this bill for all the reasons cited previously against the legalization of gambling activities. (See attached statements.) The obvious threats to the economic, political, and physical welfare of Alaska and its people make this particular bill especially undesirable. Whereas HB 419 was ostensibly designed to bring money into Alaska, SB 282 might tend to take money out of the state.

On August 19, 1965, the Supreme Court of Alaska ruled unanimously that the type of coin-operated machines referred to in SB 282 are gambling instruments, and therefore subject to seizure according to Alaska law. In spite of several attempts to have this decision set aside, it still stands today.

On February 24 SB 282 was introduced, apparently to nullify this decision of the Supreme Court. The bill was passed hurriedly through the Senate with no publicity, and without debate. It was noted that many telegrams had been received by various senators, expressing opposition to the bill, but they were not read to the Senate, and no heed was paid to them.

SB 282 seems to be aimed at the wording of the Supreme Court decision: "A pinball machine . . . cannot be operated without the three elements of price, chance and prize being present." This bill would make the law say there is no prize. By adding the clause, "but free plays shall not be construed as a thing of value," to the legal description of these machines, this bill seeks to make the law say that these machines are not gambling devices. As long as free plays are registered, however, they are gambling devices, since the operator can "pay off" and cancel the free games.

The machines are gambling devices. They are subject to outside control, or to unscrupulous control from within. They are designed for no other purpose than to take money from those who are weak enough to be tempted by this kind of "amusement."

We respectfully urge that this bill be defeated.

STATEMENTS ADOPTED BY THE ALASKA MISSION  
of the Methodist Church  
in its Annual Meetings and Printed in the Journals in the Years Indicated

1959

We recommend study, prayer and action . . . to be ever on the alert to head off schemes aimed at legalizing gambling. We must speak out against lotteries, raffles, and other gambling devices, often only thinly disguised, for this is the ever present threat that calls people to try to get something for nothing. (p. 60)

1960

We urge special caution to our people, that they may not aid and encourage gambling through their participation in, or approval of, any form of gambling and its associated events, and for these reasons: gambling becomes an addiction, it provides a productive climate for syndicate crime and common theft, it thrives on legislative corruption, and for us, personally, is contrary to any understanding of Christian Stewardship. A person who gambles does so in order to gain, at the expense and because of the weakness of others, wealth without labor exerted. (p. 63)

1961

Alaskans were warned nearly three years ago of efforts to whip up support for legalize gambling. This warning was sounded by the Alaska Council of Churches. The warning has not proved to be illusory. The "Alaska Citizens Economic Study Group" with information headquarters in Anchorage is issuing a publication urging that "Alaskans Need The Protection And Benefits of Regulated Legalized Gambling." . . .

The most authoritative studies made on the effects of gambling, legal and otherwise, have shown that gambling "neither hews wood nor draws water. It does not add to the total wealth of a state or nation. It simply drains the wallets of those addicted to gambling, whether they actually can afford such a drain or not." (the late Senator Richard Neuberger). To those who claim that gambling should be legalized because some will gamble anyway, we ask if legislation against homicide, crimes of violence, crimes against property, and other conduct viewed by our society as against the interest of our people should also be repealed. In the words of Congressman John D. Dingell, "Our laws create the social climate in which we live; they are both enunciate of our morals and beliefs, and creative of our mores and customs." (p. 52)

1962

Persistent and recurrent efforts have been made and probably will continue to be made, through innocent-seeming legislation, to further weaken Alaska's gambling laws. Such efforts, if successful, will invite the exploitation of Alaska by organized crime and gambling syndicates. (p. 57)

1963

Persistent efforts have been increased this year by powerful gambling interests to turn the new State of Alaska into another Nevada for their own sinister purposes. Alaskans were assured during the First State Legislature by those who were successful in legalizing the Nanana lottery and certain other types of gambling in the state that such a move would protect us from the syndicates. It was only intended, they said, to provide a measure of control for innocent "traditional games" in the state. Now it is becoming obvious to many Alaskans that what was thought to be control was actually incentive for expanded gambling activities of many kinds and a screen for large-scale illegal gambling activities. (pp. 52-3)

1964

Federal and State law enforcement officials have been successful in bringing indictments against a number of corporations and individuals in the state for illegal pin-ball gambling operations. Alaska Methodists should keep a watchful eye on all such activities and exert their influence on the side of persistent crackdowns whenever illegal gambling is detected. We commend Governor William A. Egan for his stand against increased gambling activities in the state. We urge the State Legislature to repeal the Alaska Statutes which legalize gambling. Legalized gambling encourages wage earners to gamble - businesses suffer and relief agencies require more funds to do their job. Legalized gambling increases police and government costs - losses drive bettors to embezzlement, burglary and other crimes. Legalized gambling spurs public interest in getting something for nothing and undercuts community responsibility - starts youth betting and breeds addicts or compulsive gamblers. Gambling taxes come high. Schemes of the gambling crowd to establish a state lottery or other "gimmick" in lieu of honest and equitable taxation must be vigorously resisted by all individuals who care about good government. (p. 65)

1965

Pressure continues in Alaska from those seeking to break down the laws controlling gambling. Advocates of all-out legalized gambling paint a rosy picture. They claim legalization will bring in tax revenues, but say nothing about the increased cost of crime control and social welfare. They claim that legalization is the answer to illegal gambling, but say nothing about the evidence that legal gambling brings about increased illegal gambling. They say nothing about the broken lives and distorted values gambling promotes. (p. 52)

- Compiled by Ernest H. Jones, Chairman,  
Board of Christian Social Concerns  
The Alaska Mission of The Methodist Church

Additional comments of Ernest H. Jones  
before the HOUSE JUDICIARY COMMITTEE  
March 27, 1966

Re: SB 282

1. Several of these are more pertinent to SB 282 than they were to HB 419. I call your attention especially to the statements of 1961, 1962, 1963, and 1964. I am prepared to elaborate on the 1963 quotation if you should desire it.
2. *on March 16*  
You were told ~~last evening~~ that SB 282 would merely restore the circumstances that prevailed a year ago, before the Supreme Court decision, as though it was that decision which made these machines illegal. If they were not illegal before August 19, 1965, why were seven corporations and eighteen individuals indicted by a federal grand jury on November 5, 1963, for bringing pinball gambling devices into the state? If these machines were not illegal until August 19, 1965, why did at least two of these individuals decline to contest the charges, and submit to conviction in September, 1964?
3. *on March 16*  
You were told ~~last evening~~ that there are only a few of these machines left in Alaska, and that they bring in very little money. If these allegations are true, why is there this constant plea for legalizing them; why the spending of considerable sums of money to keep applying pressure through such bills as SB 179 in the Third Legislature and SB 282 in the present Legislature?

Just a few days more than two years ago the House Finance Committee held a hearing on HB 296. This bill was defended by the operators as an attempt to be allowed to "phase out" their investments over a three-year period. Now you have been told that all these machines are two years older (for no new ones have been brought in since 1961 or 1962, they say), and they want to use them "until they wear out" - possibly five more years - so they can pay off their mortgages - from the proceeds of the "unprofitable" machines!

TESTIMONY GIVEN BEFORE THE HOUSE JUDICIARY COMMITTEE  
by Rev. Richard K. Heacock, Jr., Chairman, Committee  
on Christian Social Relations of the Alaska Council  
of Churches at Juneau, Alaska, March 16, 1966, re SB NO. 282

A statement of the nature and purpose of the Alaska Council of Churches was given to this committee on March 1, 1966, at the hearing on HB No. 419. Included in that statement were excerpts from statements adopted by the Council since its formation in 1959 opposing any weakening of Alaska's gambling laws.

A paper entitled "The Legal Aspects of the Fight Against Gambling" and prepared by James N. Wanamaker, Attorney at Law, was adopted by the Eighth Annual Assembly of the Alaska Council of Churches for distribution to the churches of the State. A copy of this paper is submitted with this testimony for the committee's file.

As Mr. Wanamaker points out, the State of Alaska now has the power to eliminate pinball machines which are classified as gambling devices under the existing laws. An essential feature of such machines which causes them to be classed as gambling devices is its ability to register "free plays". The Supreme Court of Alaska has now ruled that such machines are gambling machines in themselves, subject to seizure and destruction under the law.

We have been informed that Senate Bill No. 282, should it become law, would have the effect of removing pinball machines from the gambling device category by the simple insertion of the phrase, "but free plays shall not be construed as a thing of value", into the language of existing law. If this is so, it would, in effect, legalize all such gambling devices. It would also deprive Alaska of the protection of federal law enforcement of 15 U.S.C. 1171-1177 (as amended) which prohibits the use of interstate or foreign commerce for the shipment of gambling machines into states where they are outlawed.

It is well known that the churches oppose further weakening of Alaska's gambling laws on theological and moral grounds. It needs to be shown, however, that the position of the churches is reinforced by the findings of the most prominent authorities who are experienced in criminal law and enforcement.

For example, in The Annals of the American Academy of Political and Social Science of May, 1963, the following findings of experts were published:

"There exists in the United States at this time a powerful group of persons who are specializing in the pursuit of crime on an organized scale. They utilize the latest technologies and scientific know-how in the conduct of their operations, which span the continent from coast to coast. Until recently, the most important underworld tycoons came from an older generation which won fame during the era of Prohibition. At this time, a younger group of persons is striving to gain greater influence in criminal circles as some of the older criminals are dying out...The area of activity which made up for the income that was lost to organized crime as a result of the repeal of Prohibition was gambling...The turnover of business due to illegal gambling has been estimated at anywhere from twenty-two to fifty billion dollars a year...In 1960 the Senate Committee on Improper Activities in the Labor or Management Field under the chairmanship of Senator McClellan drew the following conclusions, among others: 'The coin-operated machine industry, particularly in the music, amusement, and cigarette vending segments, has been victimized by an astounding number of racketeers...The early experience with pinball and slot machine gambling...has enabled criminals to extend their operations into nongambling amusement games, automatic phonographs and, to a minor extent, in vending machines...' If these laws and standards are consistently violated by millions of Americans and if criminals are able to exploit the demand for immoral and illegal products and to rise to prominence and

"power in various areas of the country, then the very basis of the society is in danger, because the values people profess no longer command their respect or compliance." (Robert K. Woetzel, Ph.D., J.D., New York City, Associate Professor in the Department of Government of New York University and Adjunct Associate Professor of Political Science at Fordham.)

"The Capone syndicate has been particularly interested in almost all phases of the coin-machine business. Following the enactment of federal legislation prohibiting the interstate shipment of slot machines, the underworld began concentrating on the operation of the multiple-play pinball machines equipped with devices to record the number of free games won by the players. The location owner makes cash payments to the winners of free games, and the recording device enables the underworld operator to know exactly how much money has been paid in winnings when he makes regular settlements on a percentage basis with the location owner. These pinball machines are merely subterfuges for the old one-arm-bandit type of slot machines and are actually more lucrative." (Virgil W. Peterson, A.B., J.D., LL. D., Operating Director, Chicago Crime Commission since 1942; previously served with the FBI; author of Gambling: Should It Be Legalized?; contributor to popular, legal and professional journals and to Encyclopaedia Britannica.)

"The end of the war saw Chicago companies manufacturing a new type of gambling machine--pinballs--which appeared in New England. It was a fast playing machine with high odds and special features too lucrative to be overlooked by the professional gambling operator...In 1949 the Massachusetts legislature passed a bill sponsored by Senator John E. Powers of South Boston whereby these pinball machines offering free play were permitted to be licensed, thereby negating a 1948 Supreme Judicial Court decision (Commonwealth v. Rivers, 323 Mass. 379) which held that the free-play feature was in violation of the gaming statutes. No other state had such a law. The Commonwealth soon became flooded with pinballs--some 4,000 of them in variety stores, barber shops, lunchrooms, taverns, and amusement centers. All the exciting features of other forms of gambling became easily available to the workingman, young people, and children as young as eight and nine years of age. Some of the pinball machines operating in Boston were taking in a total of \$800 a week. One machine in a twenty-four-hour diner was reported to take in \$1,200 a week. A sum of \$41,600 to \$62,400 a year is a very substantial take on a machine costing \$700...Soon after a machine was approved, it would be found on location with added equipment installed by the local operators. The knockoff switch and recording meters assisted the store owner and the operator to keep the count on the cash pay-offs for unused free plays. The added equipment made these gambling machines very attractive to players of all ages. Massachusetts soon became well organized with numerous vending-machine companies who found these machines a ready source of easy money, in coins, not always reported in full according to the gross business operation. Persons known as operators in organized crime became more than interested in 'locations' for this lucrative setup... But organized gambling is political poison, as ten years of intensive investigation undertaken by the New England Citizens Crime Commission has pointed out with a parallel intensive campaign to eliminate it. 'The National Association of Citizens' Crime Commissions called for remedial Federal legislation to eliminate loopholes in the Internal Revenue laws which exclude pinball machines designed or used as subterfuges for slot machines from the slot machine provisions of the Revenue Laws.' Although over forty Massachusetts cities and towns with pinballs banned them during the 1950's, the real blow came after the 1959 federal court decision which ruled the multiple-coin machine a gambling machine per se... Overnight, some 3,000 machines were shipped out of Massachusetts--many to Japan.

"...Legalized...gambling, since the early Thirties, has contributed greatly to the growth of illegal...gambling...Second, legalized organized gambling tends to educate people to gambling and to soften a community for many forms of illegal gambling, major and minor, whether operated by bookies in the form of organized crime or by religious, veterans', and other organizations, presumably for worthy causes but often for the benefit of members...Third, the huge sums of money gained from illegal, organized, criminal gambling puts into the hands of the underworld operators a power used to corrupt candidates for public office and to negate law-enforcement officials. These huge sums also make possible the racketeer's entrance into and investment in legitimate business, causing unfair competition to honest investors and businessmen... Fourth, there follows in the wake of organized gambling and general crime a more widespread attitude of indifference toward laws, the courts, and the police. Some public officials and business concerns devise unscrupulous ways to seek personal gain. There is a lack of public morality. Corruption grows. Although steps are taken by the federal government to control corruption and crime, these measures are often canceled by that same government in other areas of unexpected leniency. This pattern, imitated at the state level, which in turn is imitated at the local level, looks like the wave of corruption in the future. Throughout our entire democratic structure, local, state, and federal, there is hope that corrective measures can and will be taken when exposures are made by concerned citizens. This is the only hope of democracy." (Dwight S. Strong, Boston, Massachusetts, Executive Secretary of the New England Citizens Crime Commission; Secretary of the National Association of Citizens' Crime Commissions.)

"The findings of the Kefauver and the McClellan committees of the United States Senate offer ample evidence of the extent of criminal power in America--a power based largely on the revenues of national gambling networks. As the United States Attorney-General said, organized crime in America is financed to a great degree by the two dollar bet placed by the otherwise law-abiding citizen. The social policy which underlays the early attempts at the suppression of gambling in this country is set out explicitly in 'Marvin v. Trout' wherein the United States Supreme Court in 1905 stated: 'It is well settled that the police power of the state may be exerted to preserve and protect the public morals. It may regulate or prohibit any practice or business, the tendency of which as shown by experience, is to weaken or corrupt the habits of those who follow it, or to encourage idleness instead of habits of industry. Whether or not gambling is demoralizing in its tendencies is no longer an open question. Gambling is injurious to the morals and welfare of the people, and it is not only within the scope of the state's police power to suppress gambling in all its forms, but it is its duty to do so.'

"It is submitted that today, however, the greater harm is not the slight pecuniary loss to the average citizen or any subsidiary idleness but, rather, the criminal empires which the revenues of gambling support and the resultant corruption of many law-enforcement and elected officials across the nation by these criminal elements." (Alvin J. T. Zumbrun, M.A., Executive Director of the Maryland Crime Investigating Committee.)

Mr. Chairman, I believe the testimony of these experts supports our position of opposition to Senate Bill No. 282 and any similar legislation which give the sanction and protection of law to gambling activities which are now operating illegally under Alaska laws.

Nevada

**463.410 GAMBLING LICENSING AND CONTROL**

and collected in the same manner as other charges, licenses and penalties under this chapter.

[Part 10e:99:1931; added 1945, 492; A 1947, 734; 1949, 114; 1955, 760]

**TRANSPORTATION OF GAMBLING DEVICES  
IN INTERSTATE COMMERCE**

**463.410 Declaration of state's exemption from operation of provisions of 15 U.S.C. § 1172.** Pursuant to section 2 of that certain Act of the Congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951, being c. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. §§ 1171-1177, the State of Nevada, acting by and through its duly elected and qualified members of its legislature, does hereby in this section, and in accordance with and in compliance with the provisions of section 2 of such Act of Congress, declare and proclaim that it is exempt from the provisions of section 2 of that certain Act of the Congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951, being c. 1194, 64 Stat. 1134.

[1:97:1951]

**463.420 Legal shipments of gambling devices, slot machines into State of Nevada.** All shipments of gambling devices, including slot machines, into this state, the registering, recording and labeling of which has been duly had by the manufacturer or dealer thereof in accordance with sections 3 and 4 of that certain Act of the Congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951, being c. 1194, 64 Stat. 1134, and also designated as 15 U.S.C. §§ 1171-1177, shall be deemed legal shipments thereof into this state.

[2:97:1951]

**LICENSING AND REGULATION OF DISSEMINATION  
OF HORSE RACING INFORMATION**

**463.430 Unlawful to disseminate horse racing information without license; public utility exception.**

1. It shall be unlawful for any person, firm, corporation or association in this state to supply or disseminate in this state by any means information received from any source outside of this state concerning horse racing, when such information is to be used by the user for the purpose of maintaining and operating any gambling

only that upon the facts and circumstances of the instant case, the prosecutor's statement did not deprive defendant of a fundamentally fair trial.

The writ is denied.



UNITED STATES of America,  
 Libelant,  
 v.  
 TWO COIN-OPERATED PINBALL MACHINES, Nos. B-1107 and B-1878,  
 Respondents.

Civ. A. No. 4727.

United States District Court  
 W. D. Kentucky,  
 at Louisville.  
 March 26, 1965.

Libel against coin-operated pinball machines as gambling devices under federal statute. The District Court, Brooks, Chief Judge, held that the record established that the machines were gambling devices in that they were designed and manufactured primarily for use in connection with gambling and by operation of which a person could become entitled to receive as a result of application of element of chance money or property.

Decree of forfeiture accordingly.

1. Gaming § 61

Record, in libel action, established that coin-operated pinball machines were gambling devices as defined in federal statute, in that they were designed and manufactured primarily for use in connection with gambling and by operation of which person could become entitled to receive as result of application of element of chance money or property. Gambling Devices Act of 1962, § 1 et seq., 15 U.S.C.A. § 1171 et seq.; KRS 486-230(5).

2. Gaming § 2

Coin-operated pinball machines, involved in libel against them as gambling devices under federal statute, were not specifically enumerated as lawful devices in Kentucky statute. Gambling Devices Act of 1962, § 1 et seq., 15 U.S.C.A. § 1171 et seq.; KRS 486.230(5).

3. Gaming § 58

Coin-operated pinball machines, as involved in libel against them as gambling devices under federal statute, were not exempted from application of federal statute by virtue of any exception contained in that statute. Gambling Devices Act of 1962, §§ 1 et seq., 9, 15 U.S.C.A. §§ 1171 et seq., 1171, 1178.

4. Gaming § 52

Federal statute, under which coin-operated pinball machines may be condemned and forfeited if gambling devices within statute, as applied to devices involved in libel against them, was constitutional exercise of legislative power. Gambling Devices Act of 1962, § 1 et seq., 15 U.S.C.A. § 1171 et seq.

5. Gaming § 62

Transportation of coin-operated pinball machines in interstate commerce is prohibited, if gambling devices, under federal statute. Gambling Devices Act of 1962, § 2, 15 U.S.C.A. § 1172.

6. Gaming § 61

Coin-operated pinball machines would be condemned and forfeited to United States, as gambling devices, pursuant to statute, in libel brought for purpose. Gambling Devices Act of 1962, § 7, 15 U.S.C.A. § 1177.

Boyce F. Martin, Jr., U. S. Atty., for W. D. Ky., Wm. E. Scent, former U. S. Atty., Louisville, Ky., for W. D. Ky., for libelant, United States of America.

Ben T. Cooper, Louisville, Ky., and Paul R. Connolly, Washington, D. C., for respondents and claimants.

BROOKS, Chief Judge.

This matter having come on regularly for hearing before the Court and a Jury,

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 870 U.S. 448,  
 408 (1965).  
 Wright, 800 F.  
 1962), cert.  
 S.Ct. 878, 9 L.

upon the Amended Libel filed for and on behalf of the Libelant, United States of America, and upon the Answer to the Libel filed for and on behalf of the Claimants, H. M. Branson Distributing Company, a Kentucky corporation, with its principal place of business at 814 East Broadway, Louisville, Kentucky and Lion Manufacturing Corporation, an Illinois corporation, with its principal place of business at 2640 Belmont Avenue, Chicago, Illinois; and both the Libelant and the Claimants having presented their evidence and arguments at the conclusion of which the Court submitted to the Jury the following interrogatory:

"Were the Two Coin-Operated Pinball Machines, Nos. B-1197 and B-1378, Respondents, designed and manufactured primarily for use in connection with gambling and by the operation of which a person may become entitled to receive as the result of the application of an element of chance any money or property?" To which interrogatory the Jury responded in the affirmative and after hearing further argument by the parties hereto, the Court makes the following findings of fact and conclusions of law.

#### FINDINGS OF FACT

1. That subsequent to February 4, 1964, the respondents, Two Coin-Operated Pinball Machines, Nos. B-1197 and B-1378 were transported from Chicago, Illinois to Louisville, Kentucky.

2. That the respondents are coin activated electrically operated machines. The machines when assembled and ready for use consist of a vertical section attached to a base section to which are secured four legs. The base section contains a plunger device, a number of holes drilled into an inclined playboard and a quantity of posts with rubber bumpers placed at intervals thereon. The devices are each equipped with eight metal balls, five of which are released for play upon insertion of a coin. The vertical section has a glass front upon which the results of play are recorded by electrically operated equipment. The object of play of

the devices is to propel the balls by means of the plunger onto the inclined playboard so that the ball will fall into certain holes and thereby light corresponding light bulbs located on the vertical section of the machines. When three or more bulbs are lit in a row, or in some other predetermined order, the machine registers so-called "free plays." The machines are so constructed that any number of coins may be inserted therein before actual play of the game begins. The number of "free plays" to be awarded for successful operation of the device can be increased by insertion of additional coins prior to play of the machine, although the rate of increase of free play awards cannot be controlled by the player and may or may not increase upon the insertion of a particular coin. The machine also provides other "features", the most prominent of which is denominated "skill-shot" which will award a designated number of "free play" if the first ball played falls into any of several pre-designated holes. After striking the ball with the plunger, the ball is propelled onto the playboard and descends the inclined plane totally dependent upon the law of gravity and chance contacts with the posts affixed to the board. The player has no control over this descent and only negligible, if any, skill is involved in the operation or play of the device. Free plays won on the machine are recorded on a three-digit counting meter (Replay register). The register is numbered so that it will apparently record 999 free games but a stop is contained in these devices so that, in fact, the register will record only 899 free games. Free games so recorded may be used by depressing appropriate buttons to activate the machine; to activate the mechanism which controls the increase of the free game awards, or to activate other features of the machine. Each such use decreases the number shown on the replay register by one. The replay register can be immediately cleared by operation of an on-off switch located on the base section of the device or by disconnecting the device from its power source and then reconnecting it. Inside the base section are

located two additional meters which record as the total plays meter. The first meter records the number of plays in the play of the machine. The second meter records the number of free plays which have been awarded on the replay register. The number of free plays registered on the replay register result in the number of free plays awarded from the meter used in play. The machine is equipped that the meter can be readily rewired in order to increase the number of free plays which can be awarded on the replay register and to eliminate these devices from the market.

3. The great number of free plays which can be achieved on the machine and depends upon the application of an element of chance.

#### CONCLUSIONS

1. The respondents, H. M. Branson Distributing Company and Lion Manufacturing Corporation, manufactured and operated pinball machines with gambling features of which a person may become entitled to receive as the result of an element of chance any money or property.

2. The respondents, H. M. Branson Distributing Company and Lion Manufacturing Corporation, violated Section 1081 of the Revised Statutes.

located two additional meters referred to as the total plays meter and the replays meter. The total plays meter records the number of coins inserted in the device and the number of free plays used in the play of the machine. The replays meter records the total number of free plays which have been won on the play of the machine. Subtracting the total registered on the replays meter and the total of coins in the coin box from the total registered on the total plays meter will result in the number of free games eliminated from the machine without being used in play. The devices are so equipped that the replay meter may be readily rewired in order to record only the number of free games so eliminated.

3. The great number of free games which can be achieved by players, the provision for multiple coin insertion in order to increase the reward for successful play, the facility with which free plays can be eliminated from the free play register and the ease by which free plays so eliminated can be counted renders these devices peculiarly and uniquely suited for gambling purposes.

4. Successful play of these devices cannot be achieved by the application of skill and depends upon the result of the application of an element of chance.

5. The successful player of these devices will win not only a right to replay the devices but also the opportunity to have free games redeemed for cash or merchandise.

CONCLUSIONS OF LAW

[1] 1. The respondent machines are gambling devices as defined in 15 U.S.C. § 1171 in that they are designed and manufactured primarily for use in connection with gambling and by the operation of which a person may become entitled to receive as a result of an application of an element of chance money or property.

[2] 2. The respondent machines are not specifically enumerated as lawful devices in Section 436.230(5), Kentucky Revised Statutes.

[3] 3. The respondent devices are not exempted from the application of Chapter 24 of Title 15, U.S.C. by virtue of any exception contained in 15 U.S.C. § 1178 or any other section of Chapter 24.

[4] 4. Chapter 24 of Title 15, U.S.C. as applied to the respondent devices is a constitutional exercise of the legislative power.

[5] 5. Transportation of respondent devices in interstate commerce is prohibited by Section 1172 of Title 15 U.S.C.

[6] 6. The respondent devices are guilty and subject to be condemned and forfeited to the United States, pursuant to the provisions of Section 1177 of Title 15.

7. The libelant is entitled to a decree of forfeiture.



Carl MASSEY, Plaintiff,

v.

Anthony J. CELEBREZZE, Secretary of Health, Education and Welfare, Defendant.

No. 671.

United States District Court  
E. D. Kentucky,  
Pikeville Division.

Oct. 18, 1963.

Action for review of decision denying social security disability benefits. The District Court, Swinford, Chief Judge, held that denial of benefits was not supported by substantial evidence in absence of showing of employment opportunities available to person who could do only what claimant could do in the general area where claimant lived.

Motion of plaintiff for summary judgment sustained; motion of defendant therefor overruled.

Marshall McKEE, Respondent,  
v.

FOSTER, District Attorney of Polk  
County, and Robert Y. Thornton, Attorney  
General of the State of Oregon, Appel-  
lants.

Supreme Court of Oregon,  
En Banc.

Filed and Submitted Sept. 10, 1959.

Decided Dec. 9, 1959.

Appeal for decree declaring free play  
pinball machines not to be gambling devices.  
The Circuit Court, Polk County, Arlie  
Rossman, J., entered a decree permanently  
injunctioning defendants from curtailing,  
seizing, or confiscating plaintiff's ma-  
chines, and defendants appealed. The Su-  
preme Court, Rossman, J., held that ma-  
chines were not gambling devices, and were  
not outlawed by lottery statute or any other  
law.

Affirmed.

347 P.2d 585(3)  
347 P.2d 585(3)

Free play pinball machines were not  
gambling devices, and were not outlawed by  
lottery statute or any other state law. ORS  
167.310, 167.305, 167.505, 167.535  
and Const. art. 15, § 4.

John D. Sullivan, Asst. Atty. Gen., for  
appellant. On the brief were Robert Y.  
Thornton, Atty. Gen., and John D. Nichols,  
Asst. Atty. Gen., and Walter W. Foster,  
Attorney of Polk County, Dallas.

W. Williams, Salem, for respond-  
ent. On the brief were Otto R.  
Burris, and Paul Burris, Salem.

ROSSMAN, Justice.

Appeal by the state from a de-  
cree entered by the circuit court in a cause  
brought by the plaintiff, Marshall McKee, insti-  
tuted against the District Attorney of Polk

347 P.2d 585-587

County, Mr. Walter Foster, and the Attor-  
ney General of this state, Mr. Robert Y.  
Thornton, for the purpose of securing a de-  
claratory decree determining whether or not  
free play pinball machines are gambling de-  
vices. Attached to the complaint as an ex-  
hibit and forming a part of it is an opinion  
of the defendant Attorney General dated  
March 20, 1958, which declares "It is my  
opinion that these so-called 'free play' ma-  
chines violate both ORS 167.535 and 167.  
555." The complaint alleges that the plain-  
tiff owns and operates "certain free play  
pinball machines." Although it gives an ex-  
tensive description of the manner in which  
machines of that kind operate, we will, in  
lieu of quoting it, take the following from  
the answer of the two defendants which sets  
forth the process whereby the machines in-  
dicate the right of a winning player to a  
free play.

" \* \* \* Scores are credited to the  
player if he causes a ball to roll into the  
holes on the board. When a ball rolls  
into the hole it causes an electronic cir-  
cuit to be activated which lights one of  
the squares in the panel on the back-  
board corresponding to the number as-  
signed the hole. The object of the  
player is to light three, four or five  
lights in a row horizontally, vertically  
or diagonally on the backboard by caus-  
ing the ball to roll into the appropriate  
hole on the board. Free plays are scored  
upon principles similar to Bingo by the  
lighting of three, four or five lights in  
a row. \* \* \*"

The complaint avers that "it is just and  
equitable under the existing circumstances  
that the Court \* \* \* determine by de-  
claratory judgment that the machine herein  
is not a gambling device as defined by Ore-  
gon Revised Statutes 167.535 and 167.555  
and that the legal opinion of the defendant  
Thornton and its directive be held for  
naught \* \* \*." The prayer sought a de-  
cree holding that "free play pinball ma-  
chines of the type herein described and  
proof of operation offered are not gambling  
devices as defined by ORS 167.535 and 167.  
555."

We have quoted parts of the answer which the two defendants filed jointly. Other parts admitted that the defendant Attorney General issued in his "official capacity" the opinion dated March 20, 1958, in which he expressed the belief that "these so-called 'free play' machines violated both ORS 167.535 and 167.555." The answer further alleged that on October 4, 1947, Mr. Thornton's predecessor issued an opinion which declared that "free-play pinball machines were gambling devices as defined by §§ 23-935 and 23-939 O.C.L.A., now compiled in Oregon Revised Statutes as ORS 167.535 and 167.555 respectively." Going on, it alleged that "on or about March 20, 1958, defendant Thornton caused to be issued an Opinion No. 3976, affirming the aforesaid opinion and conclusion reached by Attorney General Neuner." The answer further set forth:

"Plaintiff contends that the free-play pinball machines owned and operated by him in the manner above described are not prohibited nor subject to seizure and destruction under the provisions of ORS 167.405, 167.535 to 167.540 or 167.555."

It continues:

"\* \* \* a real and substantial dispute exists between plaintiff and defendants herein over the lawfulness of free-play pinball machines as herein described under the provisions of ORS 167.405, 167.535 and 167.555."

The cause was submitted to the court upon stipulated facts. The part of the findings of fact which recites the manner in which the machine indicates the player's right to a free play is couched in the same language as the above quoted excerpt of the answer. The findings contain no assertion that the machine issued to the player anything except a free play. Nor do they contain any recital that there comes to the player something of a tangible or physical nature such as a token, slug or card. The conclusions of law state:

"The machine as described in the Findings of Fact does not dispense

money, checks, slugs, tokens, credit or other representative of value or evidence of winning capable of being exchanged or redeemed for anything of value, when it returns to the player free plays upon securing a designated score."

There is no claim that the statement just quoted is at variance with the record. The illumination of a part of the machine in the manner indicated by the excerpt which we took from the answer signifies to the player that he has won the right to a free play. In order to avail himself of the right he pushes a button but does not deposit in the machine a coin, slug or anything else. The brief filed by the defendants-appellants (Attorney General and District Attorney) says:

"It is this distinctive 'free game' feature which is involved in this case and which incidentally gives this and other similar machines the generic term 'free-play pinball machines.' Such machines thus stand apart from machines dispensing coins, tokens, mints or similar items. Cf., State v. Coats, 138 Or. 122, 124-127, 74 P.2d 1102."

In other words, the machine with which this case is concerned issues to the player a slug, coin or other item. Likewise, it awards to the player nothing whatever except occasionally a free play.

The findings of fact, after mentioning ORS 167.405, 167.535 and 167.555 which are cited in the answer, state:

"\* \* \* Provided, however, that the parties through their attorneys have agreed that the applicable statute to be interpreted is 167.535."

No one claims that the finding just quoted misstates the agreement of the parties. ORS 167.535 reads as follows:

"Any person, firm or corporation who possesses, sets up, conducts, maintains, operates, or is in control of the operation, either as owner, proprietor, lessee, employe or agent, or plays or uses any nickel-in-the-slot machine or other device of like character, which operates as described in this section and

which may or may not indicate before the deposit of a coin what it will vend or dispense, shall be punished upon conviction by a fine of not less than \$10 nor more than \$100, and in default of payment of the fine shall be imprisoned in the county jail one day for each \$2 thereof:

"(1) Upon deposit therein of a coin, slug, token or other thing representative of value, the machine may vend or dispense any merchandise, money, check, token, slug, credit or other representative of value or evidence of winning in varying quantities or values, depending upon chance.

"(2) In exchange for a deposit therein, there may be received at occasional or uncertain intervals or in varying quantities or value, from time to time, depending upon chance, any money, check, slug, token, credit or other representative of value or evidence of winning which:

"(a) May be exchanged or redeemed for anything of value.

"(b) May be deposited in such machine or device for further operation or play with the chance of winning or receiving additional merchandise, money, check, token, slug, credit or other representative of value or evidence of winning."

The appellants (defendants) present only one assignment of error. It follows:

"The court erred in entering its decree permanently enjoining the defendants from curtailing, molesting or confounding the plaintiff's free-play pinball machines inasmuch as such decree was based upon an incorrect Conclusion of Law that the operation of such machines was not prohibited by ORS 167.535, which was not supported by the undisputed facts."

Terry v. City of Portland, 204 Or. 478, P.2d 514, held that since free play pinball machines lend themselves to gambling purposes the police power of the state may suppress them. The question

remains, however, as to whether or not the plaintiff's machines come within the terms of the statute just quoted.

It will be noticed that ORS 167.535 provides that any person who possesses "any nickel-in-the-slot machine \* \* \* which operates as described in this section" is guilty of the crime proscribed by that section of our laws. That provision is followed by two subsections which contain many similar words but which are concerned with machines of three different kinds. Subsection (1) begins this way, "Upon deposit therein of a coin, slug, \* \* \*" and subsection (2) begins, "In exchange for a deposit therein \* \* \*." Although the latter omits the words "coin, slug \* \* \*" the two provisions mean the same. The deposit activates the machine and thereupon the play begins. From that point on subsection (1) describes a machine which is different from that described in subsection (2). Subsection (1) in specifying the machine with which it is concerned uses these words, "may vend or dispense any merchandise, money, check, token \* \* \*." Thus, the machine to which it is applicable vends or dispenses merchandise, money, checks, etc. Subsection (2) omits the words "vend or dispense" and, accordingly, the device to which it is applicable is not a vending machine. Subsection (1) renders a machine which vends or dispenses merchandise, etc. "in varying quantities or values, depending upon chance" unlawful. Although one who patronizes a machine of that kind is certain to receive something, however small or great in value it may be, yet because of the fact that the "quantities or values" which come to him are "depending upon chance" the machine is rendered by subsection (1) a gambling device.

We now turn to the machine which subsection (2) outlaws. The first part of that subsection does not employ the term "merchandise." Likewise, subsection (2), as we have already noted, does not use the words "vend or dispense." The player who resorts to the machine described in subsection (2) activates it by depositing in it a

normal, but it is possible that at the end of the play the machine may issue to him absolutely nothing. Or, it is possible that at "occasional or uncertain intervals or in varying quantities or values, from time to time, depending upon chance," there may come to him "money, check, slug, token, credit or other representative of value or evidence of winning." Subsection (2), however, does not stop there. If it did, its language in that phase of the matter would be somewhat similar to that of subsection (1). Subsection (2) goes on to say that the thing received must be of a kind which "may be exchanged or redeemed for anything of value," or if it is not of that kind, it must be something which "may be deposited in such machine or device" for replay bringing to the player upon replay "the chance of winning or receiving additional merchandise, money, check, token \* \* \*."

The defendants-appellants argue that the plaintiff's machines fall within subsection (1). They point out that when a player deposits his nickel in a machine the latter may dispense for him only a single play or, if he is lucky, it may give him a sequence of two or more plays. He may thus keep the machine operating upon the deposit of a single nickel as long as his luck continues, or, stated differently, as long as he continues to obtain high scores and win free replays. The defendants-appellants argue that the plaintiff's machines therefore come within this language: "may vend or dispense any \* \* \* other representative of value or evidence of winning in varying quantities or values, depending upon chance." The length of play and hence the "quantities or values" of the play vary in plaintiff's machines, so the defendants argue, according to chance. We may safely assume, since other courts have so held, that a free play is a "representative of value or evidence of winning."

The contention that a free play machine violates subsection (1) is fundamentally unsound in our belief. The words "vend or dispense" found in that subsection, if we employ their nonplace meanings (ORS 161.050), describe an ordinary vending machine

into which the player inserts a coin and then stands by while the machine goes through the operation of issuing to him an item of merchandise. The subsection, however, appears to be aimed at machines which, in dispensing mints, gum balls or other items, do so "in varying quantities or values, depending upon chance." Thus, upon one play the patron of the machine may receive a piece of chewing gum and on the next not only gum but also some trinket. The patron of a vending machine stands by idle while the machine goes through the operation incidental to the delivery to him of the desired item. The ordinary "one-arm bandit" slot machine clearly comes under the terms of this subsection. On the other hand, in a pinball game the player actively participates after he has inserted his nickel. And in order to obtain his free play, if one is awarded to him, he must depress a button on the machine so that the play will continue.

Although the observations just made indicate that the plaintiff's machines are not embraced in subsection (1) another distinction of a more persuasive nature will now receive mention. It consists of the fact that replay machines are the specific subject matter of subsection (2) (b) of ORS 167.535. It seems unreasonable to believe that the legislature, after making specific provision for them in subsection (2) intended that they should also be deemed within subsection (1) which, as we have seen, appears to take as its province vending machines.

Subsection (2) describes machines from which "there may be received at occasional or uncertain intervals, \* \* \* depending upon chance, any money, check \* \* \* which \* \* \* May be deposited in such machine or device for further operation or play with the chance of winning or receiving additional merchandise, money, check, token, slug, credit or other representative of value or evidence of winning." Since replay machines are clearly singled out by this subsection as the latter's province, and since subsection (1) is applicable to vending and dispensing machines, we

are satisfied that subsection (1) does not embrace replay machines.

The same difficulty is encountered if one attempts to apply subsection (2) (a) of ORS 167.535 to the plaintiff's machines. This section is applicable to coin-operated machines from which "there may be received at occasional or uncertain intervals or in varying quantities or value \* \* \* depending upon chance, any money, check, slug, token \* \* \* which \* \* \* May be exchanged or redeemed for anything of value \* \* \*." It may seem that this provision contemplates a situation where the machine issues to the player something which he may hand to the machine's owner and surrender for a prize. But when one takes into view the broad language of the statute he will conclude that the "something" received need not be a tangible item. Very likely, a mere light flashing in the machine or other mechanical indication of a high score would be enough to qualify as a "credit or other representative of value or evidence of winning" capable of redemption or exchange. See *People v. Gravenhorst*, Sp.Sess., Bronx County, 1912, 32 N.Y.S.2d 760; *Prickett v. State*, 1918, 88 Okl.Cr. 213, 200 P.2d 457, 201 P.2d 798. But here again it does violence to the scheme of the statute to apply subsection (2) (a) to a replay machine. ORS 167.535(2) (b) occupies the field. Since subsection (2) (b) describes with particularity the kind of replay machine prohibited by the state, it is reasonable to conclude that subsection (2) (a) does not apply to replay machines.

ORS 167.535(2) (b) apparently does not prohibit pinball machines which give free plays if no coin or token is dispensed by the machine. The subsection outlaws only coin-operated machines from which "there may be received" some tangible object which "May be deposited in such machine" for a replay. Although "credit or other representative of value or evidence of winning" are among the prohibited class of objects which "May be deposited" in the machine for a replay, we must conclude, if we construe words in their normal sense, that

for the purposes of this subsection these things must be of a tactile, tangible character; that is, they must be of a sufficiently corporal nature so that they may be physically "deposited" in the machine. The defendants argue that it would be an absurdity to say that the statute prohibits a machine which dispenses checks or tokens for replay but does not prohibit a machine which permits replays without the use of checks or tokens. If we assume that the argument is unanswerable, the absurdity lies in the statute and not in our interpretation of it. A replay machine which does not issue checks, slugs or tokens is simply *casus omisus*.

The rule that penal statutes are to be strictly construed has been abrogated by ORS 161.050. In lieu of that rule ORS 161.050 provides:

"\* \* \* Their provisions shall be construed according to the fair import of their terms with a view to effect their objects and to promote justice."

We cannot give to ORS 167.535(2) (b) the meaning sought by defendants without wrenching from the legislative language its "fair import."

It is our belief that since the plaintiff's machine issues nothing to the player which he may deposit in it, ORS 167.535 is not applicable to it. This disposes of the appellants' (defendants') assignment of error.

Notwithstanding the fact that the single assignment of error (previously quoted) is based exclusively upon ORS 167.535, the appellants make the following request in their brief:

"If the court should determine that ORS 167.535 does not prohibit free-play pinball machines, then it should enter judgment that such machines are prohibited by ORS 167.405 or 167.505."

Even though the parties "agreed that the applicable statute to be interpreted is 167.535," as the findings of fact state, we will go on and determine whether or not any of the other sections of our laws which the defendant seeks, apart from ORS 167.535, outlaw the plaintiff's machines. The sec-

tions which the defendants cite are Article XV, section 4, Constitution of Oregon; ORS 161.310, 167.405 and 167.505.

Article XV, section 4 of the state's constitution, follows:

"Lotteries, and the sale of Lottery tickets, for any purpose whatever, are prohibited, and the Legislative Assembly shall prevent the same by penal laws."

The defendants render it clear that in their belief ORS 167.535 and none of the other enactments is applicable to pinball games. Their brief, referring to the specially concurring opinion which Mr. Justice Bailey filed in *State v. Coats*, 158 Or. 122, 74 P.2d 1102, 1119, says:

"\* \* \* Justice Bailey's reasoning, we believe, is clear. Because it represents the view we urge here, we will have occasion to comment more fully on Justice Bailey's view later."

In his specially concurring opinion Justice Bailey stated:

"If we are to pursue the intention of the Legislature in the instant case, we must conclude that it was intended that any one guilty of the crime with which the defendant is charged must be prosecuted under the provisions of section 14-746, supra. It surely was not the intention of the Legislature that the defendant could be prosecuted under both the lottery act and the nickel-in-the-slot machine statute, or that of numerous offenders guilty of similar acts: some might be prosecuted under a statute making the violation thereof a felony, while others could be charged with the violation of some other statute making the crime charged a misdemeanor. \* \* \*"

Section 14-746, Oregon Code 1930, cited in the language just quoted, as subsequently amended, is now ORS 167.535. There are two cases which are entitled *State v. Coats*, 158 Or. 102, 74 P.2d 1120, and *State v. Coats*, 158 Or. 122, 74 P.2d 1102. According to 158 Or. 102 at page 103, 74 P.2d 1120,

the facts in that case "are identical with those in the pinball machine case (*State v. Coats*) this day held to constitute a lottery." Those words and a re-examination of the record in our clerk's office seem to indicate that both charges were based upon a single machine possessed by Coats, but it may be that he had more than one machine and we will so assume. The patron of Coats' machine or machines, upon inserting a nickel in the device and pulling a lever, set the machine in operation. If chance favored him he could win as much as ten nickels which the machine paid out to him automatically. We see from those facts that the device which was the subject matter of the Coats decision was a pay-off machine. It granted no replays. In the first of the two cases (158 Or. 102, 74 P.2d 1120) the information filed against the accused mentioned no section of our laws, but the opinion stated:

"\* \* \* we assume from the briefs that the charge was brought under section 14-746, Oregon Code 1930, prohibiting the operation of nickel in-the-slot machines. \* \* \*"

In the other Coats case (158 Or. 122, 74 P.2d 1102, 1103) the information, referring to the defendant, stated that he "wrongfully, unlawfully and feloniously promote[d] and set up a certain lottery for money" by operating the machine. Each information was challenged by demurrer which the circuit court sustained. In each of the two decisions the majority opinion of this court, written by Mr. Justice Belt, held that the circuit court erred when it sustained the demurrer. The majority opinion ruled that each information charged the defendant with the operation of a lottery.

The decisions in the two cases of *State v. Coats* recognized that the term "lottery" has no technical or established legal meaning. They held that the essential elements of a lottery are prize, chance and consideration. Neither of the prevailing opinions undertook to define the word "prize." As we have said, Coats' machine issued to the winner as a prize as much

ten nickels. Section 14-801, Oregon Code, which was in effect when the Coats decisions were written, stated:

"If any person shall promote or set up any lottery for money or other valuable thing, or shall dispose of any property of value, real or personal, by way or means of lottery \* \* \* or suffer the setting up, management, or drawing of any such lottery, or the sale of any lottery tickets, share of a ticket, or any writing, token, or other device purporting or intended to entitle the holder or bearer thereof \* \* \* to any prize \* \* \* such person, upon conviction thereof shall be punished \* \* \*"

Section 14-802, Oregon Code, stated:

"If any person shall sell \* \* \* a ticket or share of a ticket in any such lottery, or any writing, token, or other device as is mentioned in section 14-801, such person, upon conviction thereof, shall be punished \* \* \*"

Section 14-803, Oregon Code, repeated much of the phraseology of which we have just taken note. Those sections, apart from minor alterations in language, are now ORS 167.405, 167.410 and 167.415.

Although the opinions written by Mr. Justice Belt in the Coats cases did not define the word "prize" Mr. Justice Bailey, in his specially concurring opinion of which we have already taken note, set forth a number of definitions of lottery which indicated that the prize must be greater in value than the amount hazarded. The majority opinion expressed no disagreement with that view. It remained silent upon the subject. The machine in the Coats cases paid to the winner, as we have said, ten times the sum which he deposited in it when he placed it in operation. In view of that fact the majority may have felt that since the winner received something of a tangible nature and of measured worth the situation did not call for a definition of the word "prize." A free play, on the other hand, is intangible and, in a sense, of immeasurable

value. The manufacturer of the plaintiff's machine assigned the arbitrary value of a nickel to the replay, but in the market place the replay has no such value. The replay cannot be sold. It cannot be carried away. It is intangible in nature and after the mechanics of the replay have been undergone the replay has disappeared for all time. It may appeal to the gambling instincts of some and perhaps is the kind of prize which is a "representative of value or evidence of winning" within the prohibition of ORS 167.535(2) (b). But there is no reason to believe that *State v. Coats* contemplates "prize" as including a free game within its interpretation of the lottery statute.

The lottery statute appears to exclude free games from its coverage. We have in mind the language of the lottery statute which prohibits promoting or setting up lotteries for "money or other valuable thing" and then reiterates that same idea by prohibiting the disposal by lottery of any property of value, real or personal. It seems clear that it is tangible property which is contemplated by those provisions. They cannot be construed reasonably in any other way. The words of the lottery statute of which we have just taken notice are very different from those which we find in ORS 167.535(2), that is "credit or other representative of value or evidence of winning." Since "lottery" has no fixed legal definition it was within the province of the legislature, acting under the constitutional mandate, to provide a reasonable definition of the "prize" element of a lottery. We believe that the prize must be tangible in nature and have a value in the market place.

The defendants' (appellants') brief says:

"No Oregon case has construed and applied ORS 167.535, which we believe to be applicable, in its present form. *State v. Coats*, (1938) 158 Or. 102, 74 P.2d 1120, and *State v. Coats*, (1938) 158 Or. 122, 74 P.2d 1102, construed this section as it read prior to its amendment chapter 210, Oregon

Laws 1937, and chapter 185, Oregon Laws 1943. Parenthetically, it should be noted that although chapter 210, Oregon Laws 1937, was enacted by the Legislature prior to the time the Coats cases arose, the statute was referred to the people upon petition and therefore did not apply. \* \* \*

We believe that the amendments which gave ORS 167.535 its present form render it clear that that section of our laws is the enactment which determines the validity of plaintiff's machines. In our opinion the machines are not outlawed by that provision of our laws. No other enactment has any application to them.

The challenged decree is affirmed.



STATE of Oregon, Appellant,

v.

Charles George JOY, Respondent.

STATE of Oregon, Appellant,

v.

Sam GILGUS, Respondent.

Supreme Court of Oregon,  
En Banc.

Argued and Submitted Sept. 10, 1950.

Decided Dec. 9, 1950.

Prosecutions for illegal possession and operation of nickel-in-the-slot machines. The Circuit Court, Multnomah County, Alfred T. Sulmonetti, J., sustained demurrers to the indictment, and appeals were taken. The Supreme Court, Rossman, J., held that pinball game machine which does not issue any tangible objects and requires deposit of none upon replay is not a gambling device and is not rendered unlawful by

statute pertaining to setting up of lotteries or any other law of state.

Affirmed.

Gaming  $\Rightarrow$  68(3)

Lotteries  $\Rightarrow$  3

Pinball game machine which does not issue any tangible objects and requires deposit of none upon replay is not a gambling device and is not rendered unlawful by statutes pertaining to setting up of lotteries or any other law of state; and indictment charging possession and operation of replay pinball machines were demurred ORS 167.535.

Robert M. Christ, Deputy Dist. Atty. Multnomah County, Portland, for appellant. With him on the briefs were Leo S. Sullivan, Dist. Atty. of Multnomah County, and Donald D. Sullivan, Deputy Dist. Atty. Multnomah County, and Charles E. Hammond, Dist. Atty. of Multnomah County, Portland.

Francis E. Harrington, Portland, for respondents.

ROSSMAN, Justice.

These are two appeals which have been consolidated by order of this court.

One of the two defendants-appellants, Charles George Joy, was indicted by grand jury of Multnomah County for the crime of possessing and operating a nickel-in-the-slot machine in violation of ORS 167.535. To the indictment he filed a demurrer which, referring to the statute recited: "The facts stated do not constitute a crime." The demurrer was sustained.

The challenged indictment alleged that the defendant possessed and operated

"\* \* \* a nickel-in-the-slot machine, to-wit, one 'Bally Variety' pinball game, which said machine operated in a manner so that in exchange for deposit therein of a coin there was

received at once upon pressing upon another representative of winning which free play of the said machine part of an amusement by the Statutes provided, and the duty of the State. The defendant-appellant by the grand jury and was charged with possession of the machine. To the indictment which, referring to the facts stated do not constitute a crime." The demurrer was sustained. The challenged indictment was sustained. \* \* \* a nickel-in-the-slot machine, to-wit, one 'Bally Variety' pinball game, which said machine operated in a manner so that in exchange for deposit therein of a coin there was received at once upon pressing upon another representative of winning which may be described for further amusement with the chance of winning additional money or other representative of winning. \* \* \* ORS 167.535 reads: "Any person, who possesses, sets up, operates, or maintains, either as an amusement or for profit, any nickel-in-the-slot machine or other device of like kind which may be described as follows: \* \* \*

*Taylor Amendments*

Introduced: 2/24/66  
Referred: Judiciary

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IN THE SENATE

BY MONEALY

SENATE BILL NO. 282

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to coin-operated devices."

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

\* Section 1. AS 43.35.090(2) is amended to read:

(2) "coin-operated device class 2" means a pinball machine, including a bingo type coin-operated device, horse race machine or other apparatus or device which operates by means of insertion of a coin, token, or similar object and which, by embodying the elements of chance or skill, awards free plays and which contains a device for releasing free plays and a meter for registering or recording the plays so released, but free plays shall not be construed as a thing of value, or with a provision for multiple coin insertion for increasing the odds; class 2 does not include bona fide vending machines in which gaming or amusement features are not incorporated;

\* Sec 2

It is the intention of the Legislature that this bill shall in no way be deemed an attempt or intent to liberalize or to exempt the State of Alaska from the limitations imposed in 15 U. S. Code ~~1171, et. seq.~~ <sup>1178</sup>.

\* Sec 3

shall not remain in force beyond June 30, 1971.

McKee

15 USC Sec 1171 - 1172 347 P 2d 5-85  
(1959) 219 or 322

Marshall McKee v Foster, Hot Rock County  
1965 - Oregon Supreme Ct.

thing of value - same statute  
free play same as Oregon statute  
~~same as Oregon statute~~  
gambling <sup>title</sup> same as Oregon

Oregon case says free play  
167.535

410, 415  
167.405 "Lottery" contemplates a prize,  
tangible in nature and having a value in  
the market place, but does not include the  
"free-play" feature of a replay pinball machine.

4505  
167.535 - This section does not prohibit  
the operation of "free play" pinball  
machines. McKee v Foster

If its a gambling device under fed statute,  
it can't be transported in interstate commerce.

Conclusions of law

(2) The machines are not specifically enumerated  
as lawful devices in sec 436.230(5) Kentucky  
Revised Statutes. US v Two Coin-operated  
Pinball Machines, 241 F. Supp 57 (1965)

(1) The machines are gambling devices as  
defined in 15 USC 1171...

(5) Transp. of devices in interstate commerce is  
prohibited by sec 1172, 15 USC

✓  
11/19/52

11.60.110  
167.505

Chaff  
11/19/52

Wed March 16 7:30pm.

S.B. 282

Meeting absent

Supporting

Proponents

Kalamazoo:

1933 - first slot machines.

1941 - ch 76 sec 3138 amended by adding (20)

1946 - ch 40 Repealed ch 76/41 legalize

1947 ch 92 This Act does not ~~legalize~~ gambling.

This was year of first Johnson Act, ch 24 title 15  
Sec 9 Organic Act no gambling act allowed.

49-3-8 ACLA 1949 - does not legalize gambling

1960 ch 142 Sec 8 " "

nor the possession of a gambling device.

1940 - army asked for arcades. Arcades opened  
with first coin devices which came here on military transports.  
Then operators brought in their own machines. Machines  
sold for \$500 for 10 or 20 machines. Machines  
legal when brought in + taxed

Kenfauer said (52) no gambling syndicate  
in Alaska. Too small population. Alaska can't  
get 25,000, <sup>more</sup> ~~and~~ that Nevada has.

S.B. 282 does not open Alaska to Nevada gambling.  
15 USC 1171 et seq also have anti-~~recruitment~~ act  
can't bring in ~~machines~~ <sup>gambling equipment</sup> illegally.

1962 - 15 USC as amended - 1965 Sup Ct decides  
case. Between 62+65 no machines were allowed  
to be transported in interstate commerce.

Reads Nevada law.

cites Oregon law case.

Says McKee case is 1965 case. WRONG !!

Removed element of free play from  
Spit as prizes.

Machines don't last longer than 5 years.

Were 1200 machines new less than 270

5 yrs maximum life of them.

comes phase out program

class 1 & 2 brought in 32,000

year before 38,000

1955 over to high 4 year.

If 3 elements appear on a class II device  
it is gambling implement per se. Remove  
one element & it is not - per se.

Joe

Did not talk of "money or property" so free  
play is not either.

Machines continue without free games. They  
wear out & they don't pay them off.

Opponents

Mr David Free, Citizens opposed to further  
legalization of gambling laws.

don't oppose amusement type pinball machine  
quoted from last pg of Sup Ct opinion

also from op. pinball machines gambling device per se.  
free games is the prize.

" free play is a prize

US v Kemp 4335.090(2) says op<sup>pg 7</sup> impliedly approved  
gambling implements. Op says this isn't so  
US v O, The burden of the tax can be imposed on  
an illegal implement.

pg 11 - 43.35.070 says doesn't legalize gambling.

11.45.040 says can't have gambling devices.

~~MMMM~~

Congressional Record re pinball machines

999 games can be won.

1962 Congress Record pg 11,447

Eastland broadens definition of gambling device

~~MMMM~~

US v Korwin, US Sup Ct

pinball machine is a slot machine under  
internal revenue code. Successor to slot machine.

MMMM

Journal of <sup>criminal law etc.</sup> Vol 55 June 1964 pg 206

MMMM

White v Oxlace, 2d Pt Dist

pg 1. coin machine gambling

PM  
2

2pm

say probably more than 270.

Get Dept of Revenue to get no from  
Treasury Dept,

March 14, 1966 Internal Revenue Service

each location must have fuel stamps,

154 locations 300 machines at \$100 a week.

crime in Nevada 1st in nation.

Greenfelt jungle pg 178<sup>↑</sup> 179

crime begets crime.

The fact that the law says it is not a thing of value  
may be sufficient.

Steering Committee - 10 members

February 19, 1966

M E M O R A N D U M

TO: William A. Egan  
Governor

FROM: Warren C. Colver  
Attorney General

RE: Nonprofit Corporation Law

Alaska's present nonprofit corporation law has remained basically unchanged since its enactment in 1913. At the urging of a number of Alaska attorneys the Department of Law made a study of the law. The Department concluded that our present law is inadequate and the State should adopt the Model Nonprofit Corporation Act drafted by the American Bar Association. The attached bill is an Alaska Nonprofit Corporation Act based on the Model Nonprofit Corporation Act, 1964 Edition.

In 1957 Alaska adopted the Model Business Corporation Act, which covers stock corporations. In that year the American Bar Association issued a revised version of its Model Nonprofit Corporation Act which had first been drafted in 1952. This model act had been revised primarily to bring it into accord with the Model Business Corporation Act. Again in 1964 the American Bar Association published a new edition of the nonprofit act. This latest edition follows as closely as possible the corresponding provisions of the business corporation act.

Adoption of the Model Nonprofit Corporation Act would result in these significant changes in Alaska law:

(1) The new law will enlarge the purposes for which nonprofit corporations may be formed. (10.20.005)

(2) It provides that a nonprofit corporation may make incidental income or profit in carrying on its primary nonprofit functions; for example, a nonprofit

William A. Egan  
Governor

February 10, 1966  
- 2 -

hospital may run a small gift shop. This incidental profit may not be distributed to members but must be devoted to the primary purposes of the corporation. (10.20.135)

(3) The law allows a nonprofit corporation to pay reasonable compensation to its members and directors for services rendered. This is not considered a prohibited distribution of income. (10.20.135)

(4) A nonprofit corporation which holds assets subject to limitations permitting their use only for charitable or similar purposes must, upon its dissolution, transfer these assets to an organization engaged in similar activities. (10.20.295)

The Model Nonprofit Corporation Act is designed to give an organization its basic authority and corporate status and to provide a method of administering the organization. It is not a regulatory statute which imposes controls. The major purpose of the law is to provide nonprofit organizations with a clear, orderly method of conducting its internal affairs and its relations with the State.

The American Bar Association has designed a set of official forms to accompany the act. If the act is adopted, these forms will be useful both to lawyers who must draft documents in compliance with the act and to the Department of Commerce which would administer the act.

As of 1964 the Model Nonprofit Corporation Act had been adopted, either as a whole or in large part, by the following jurisdictions:

Wisconsin - 1953	North Dakota - 1959
Alabama - 1955	Oregon - 1959
North Carolina - 1956	Texas - 1959
Virginia - 1956	District of Columbia - 1962
Nebraska - 1959	

In addition, Illinois, Missouri and Ohio have nonprofit laws substantially similar to the Model Act.

Attached to the bill is a chart which gives parallel sections. This may be of use to legislative committees which study the law.

WCC:jt  
tef

THE FOLLOWING DOCUMENT(S) MAY NOT FILM  
LEGIBLY BECAUSE OF POOR QUALITY OF THE  
ORIGINAL.

February 10, 1966

**MEMORANDUM**

**TO:** William A. Fran  
Governor

**FROM:** Warren Selver  
Attorney General

**RE:** Nonprofit Corporation Law

Alaska's present nonprofit corporation law has remained basically unchanged since its enactment in 1913. The drafting of a new law for Alaska by the Department of Law made a study of the law. The Department concluded that our present law is inadequate and the State should adopt the Model Nonprofit Corporation Act drafted by the American Bar Association. The attached bill is an Alaska Nonprofit Corporation Act based on the Model Nonprofit Corporation Act, 1954 Edition.

In 1957 Alaska adopted the Model Business Corporation Act, which was revised in 1963. In that year the American Bar Association revised a portion of its Model Nonprofit Corporation Act which had first been drafted in 1951. This model act had been revised primarily to bring it into accord with the Model Business Corporation Act. In 1964 the American Bar Association published a new edition of the nonprofit act. This latest edition contained as nearly as possible the corresponding provisions of the business corporation act.

Adoption of the Model Nonprofit Corporation Act would result in these significant changes in Alaska law:

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William A. Egan  
Governor

February 10, 1966  
- 2 -

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The Model Nonprofit Corporation Act is designed to give an organization a legal identity and corporate status and to provide a framework for governing the organization. It is not a rigid law which imposes controls. The major purpose of the law is to provide nonprofit organizations with a clear, orderly method of conducting its internal affairs and its relations with the State.

The American Bar Association has designed a set of optional provisions which may be added to the act. It also provides for the possibility of a special high level board to be appointed by the State in connection with the act and to the Board of Directors which would administer the law.

As of 1965, the Model Nonprofit Corporation Act has been adopted, in whole or in large part, by the following jurisdictions:

- |                         |                               |
|-------------------------|-------------------------------|
| ✓ Wisconsin - 1953      | ✓ North Dakota - 1959         |
| ✓ Alabama - 1955        | ✓ Oregon - 1959               |
| ✓ North Carolina - 1956 | ✓ Texas - 1959                |
| ✓ Virginia - 1955       | — District of Columbia - 1962 |
| ✓ Nebraska - 1959       |                               |

In addition, Illinois, Missouri and Ohio have nonprofit laws substantially similar to the Model Act.

Attached to the bill is a chart which gives parallel sections. This may be of use to legislative committees which study the law.

WAC:jc  
tc

THE PRECEDING DOCUMENT(S) MAY NOT FILM  
LEGIBLY BECAUSE OF POOR QUALITY OF THE  
ORIGINAL.

ALASKA NONPROFIT CORPORATIONS ACT

<u>AS Section</u>	<u>Model Nonprofit Act</u>	<u>Alaska Business Corporation Law</u>
Article 1. Substantive Provisions.		
10.20.005	<u>Sec. 4</u>	<u>10.05.008</u>
10.20.010	<u>Sec. 5</u>	<u>10.05.009</u>
10.20.015	<u>Sec. 6</u>	<u>10.05.018</u>
10.20.020	<u>Sec. 7</u>	<u>10.05.021</u>
10.20.025	<u>Sec. 8</u>	<u>10.05.045</u>
10.20.030	none	<u>10.05.048</u>
10.20.035	<u>Sec. 9</u>	<u>10.05.051</u>
10.20.040	<u>Sec. 9</u>	<u>10.05.054</u>
10.20.045	<u>Sec. 10</u>	<u>10.05.057</u>
10.20.050	<u>Sec. 11</u>	none
10.20.055	<u>Sec. 12</u>	<u>10.05.135</u>
10.20.060	<u>Sec. 13</u>	<u>10.05.138</u>
10.20.065	<u>Sec. 14</u>	<u>10.05.141</u>
10.20.070	<u>Sec. 15</u>	none
10.20.075	<u>Sec. 16</u>	<u>10.05.153</u>
10.20.080	<u>Sec. 17</u>	<u>10.05.174</u>
10.20.085	<u>Sec. 18</u>	<u>10.05.177</u>
10.20.090	<u>Sec. 18</u>	<u>10.05.180</u>
10.20.095	<u>Sec. 18</u>	<u>10.05.183</u>
10.20.100	<u>Sec. 19</u>	<u>10.05.189</u>
10.20.105	<u>Sec. 20</u>	<u>10.05.192</u>
10.20.110	<u>Sec. 21</u>	<u>10.05.195</u>
10.20.115	<u>Sec. 22</u>	<u>10.05.198</u>
10.20.120	<u>Sec. 23</u>	<u>10.05.228</u>
10.20.125	<u>Sec. 24</u>	<u>10.05.234</u>
10.20.130	<u>Sec. 25</u>	<u>10.05.237 - 240</u>
10.20.135	<u>Sec. 26</u>	none
10.20.140	<u>Sec. 27</u>	none

AS SectionModel Nonprofit ActAlaska Business  
Corporation Law

## Article 2. Formation of Corporations.

10.20.145	Sec. 28	<u>10.05.252</u>
10.20.150	Sec. 29	<u>10.05.253</u>
10.20.155	Sec. 30	<u>10.05.254</u>
10.20.160	Sec. 31	<u>10.05.261</u>
10.20.165	Sec. 32	<u>10.05.267</u>

## Article 3. Amendment.

10.20.170	Sec. 33	<u>10.05.270</u>
10.20.175	Sec. 34	<u>10.05.276</u>
10.20.180	Sec. 35	<u>10.05.285</u>
10.20.185	Sec. 36	<u>10.05.288</u>
10.20.190	Sec. 36	<u>10.05.291</u>
10.20.195	Sec. 37	<u>10.05.294</u>
10.20.200	Sec. 37	<u>10.05.297</u>
10.20.205	Sec. 37	<u>10.05.300</u>
10.20.210	Sec. 37	<u>10.05.303</u>

## Article 4. Merger, Consolidation, and Sale of Assets.

10.20.215	Sec. 38	<u>10.05.375</u>
10.20.220	Sec. 38	<u>10.05.378</u>
10.20.225	Sec. 39	<u>10.05.381</u>
10.20.230	Sec. 39	<u>10.05.384</u>
10.20.235	Sec. 40	<u>10.05.387 - 390</u>
10.20.240	Sec. 40	<u>10.05.393</u>
10.20.245	Sec. 41	<u>10.05.396</u>
10.20.250	Sec. 41	<u>10.05.399</u>
10.20.255	Sec. 41	<u>10.05.402</u>
10.20.260	Sec. 42	<u>10.05.405</u>
10.20.265	Sec. 43	<u>10.05.408</u>
10.20.270	Sec. 43	<u>10.05.411</u>
10.20.275	Sec. 43	<u>10.05.414</u>
10.20.280	Sec. 43	<u>10.05.393</u>
10.20.285	Sec. 44	<u>10.05.438 - 444</u>

AS SectionModel Nonprofit ActAlaska Business  
Corporation Law

## Article 5. Dissolution.

10.20.290	<u>Sec. 44</u>	10.05.465
10.20.295	<u>Sec. 46</u>	10.05.561
10.20.300	<u>Sec. 47</u>	none
10.20.305	<u>Sec. 48</u>	10.05.498 - 501
10.20.310	<u>Sec. 49</u>	10.05.468
10.20.315	<u>Sec. 50</u>	10.05.468
10.20.320	Sec. 50	<u>10.05.516</u>
10.20.325	Sec. 51	<u>10.05.519</u>
10.20.330	Sec. 52	<u>10.05.522</u>
10.20.335	Sec. 52	<u>10.05.525</u>
10.20.340	Sec. 52	<u>10.05.528</u>
10.20.345	Sec. 52	<u>10.05.531</u>
10.20.350	Sec. 53	<u>10.05.534</u>
10.20.355	Sec. 54	<u>10.05.537</u>
10.20.360	Sec. 54	<u>10.05.540</u>
10.20.365	Sec. 54	<u>10.05.543</u>
10.20.370	Sec. 54	<u>10.05.546</u>
10.20.375	Sec. 54	<u>10.05.549</u>
10.20.380	Sec. 54	<u>10.05.552</u>
10.20.385	Sec. 55	<u>10.05.555</u>
10.20.390		<u>10.05.558</u>
10.20.395	<u>Sec. 55</u>	10.05.561
10.20.400	Sec. 55	<u>10.05.564</u>
10.20.405	Sec. 55	<u>10.05.567</u>
10.20.410	Sec. 55	<u>10.05.570</u>
10.20.415	Sec. 55	<u>10.05.573</u>
10.20.420	Sec. 56	<u>10.05.576</u>
10.20.425	Sec. 57	<u>10.05.579</u>
10.20.430	Sec. 58	<u>10.05.582</u>
10.20.435	Sec. 59	<u>10.05.585</u>

AS SectionModel Nonprofit ActAlaska Business  
Corporation Law

10.20.440	Sec. 60	<u>10.05.588</u>
10.20.445	Sec. 61	<u>10.05.591</u>
10.20.450	Sec. 62	<u>10.05.594</u>
Articles 6.	Foreign Corporations.	
10.20.455	Sec. 63	<u>10.05.597</u>
10.20.460	Sec. 63	<u>10.05.600</u>
10.20.465	Sec. 64	<u>10.05.603</u>
10.20.470	<u>Sec. 65</u>	10.05.600
10.20.475	Sec. 66	<u>10.05.609</u>
10.20.480	Sec. 67	<u>10.05.612</u>
10.20.485	<u>Sec. 67</u>	10.05.615
10.20.490	Sec. 67	<u>10.05.618</u>
10.20.495	Sec. 68	<u>10.05.621</u>
10.20.500	Sec. 69	<u>10.05.624</u>
10.20.505	Sec. 70	<u>10.05.627</u>
10.20.510	none	<u>10.05.630</u>
10.20.515	Sec. 71	<u>10.05.633</u>
10.20.520	Sec. 71	<u>10.05.636</u>
10.20.525	Sec. 72	<u>10.05.639</u>
10.20.530	Sec. 72	<u>10.05.642</u>
10.20.535	Sec. 72	<u>10.05.645</u>
10.20.540	Sec. 72	<u>10.05.648</u>
10.20.545	Sec. 73	<u>10.05.651</u>
10.20.550	Sec. 74	<u>10.05.654</u>
10.20.555	Sec. 75	<u>10.05.657</u>
10.20.560	Sec. 76	<u>10.05.660</u>
10.20.565	Sec. 76	<u>10.05.663</u>
10.20.570	Sec. 76	<u>10.05.666</u>
10.20.575	Sec. 77	<u>10.05.669</u>
10.20.580	Sec. 77	<u>10.05.672</u>

<u>AS Section</u>	<u>Model Nonprofit Act</u>	<u>Alaska Business Corporation Law</u>
10.20.585	Sec. 78	<u>10.05.675</u>
10.20.590	Sec. 78	<u>10.05.678</u>
10.20.595	Sec. 79	<u>10.05.681</u>
10.20.600	Sec. 79	<u>10.05.684</u>
10.20.605	Sec. 80	<u>10.05.690</u>
10.20.610	Sec. 80	<u>10.05.693</u>
10.20.615	Sec. 80	<u>10.05.696</u>
Article 7. Annual Reports.		
10.20.620	Sec. 81	<u>10.05.699</u>
10.20.625	Sec. 81	<u>10.05.702</u>
10.20.630	Sec. 82	<u>10.05.705</u>
Article 8. Fees and Charges.		
10.20.635	<u>Sec. 83</u>	10.05.708
10.20.640	<u>Sec. 84</u>	10.05.762
Article 9. Penalties.		
10.20.645	<u>Sec. 85</u>	10.05.771, 783
10.20.650	Sec. 85	<u>10.05.786</u>
Article 10. Miscellaneous Provisions.		
10.20.655	Sec. 87	<u>10.05.777</u>
10.20.660	Sec. 88	<u>10.05.780</u>
10.20.665	Sec. 90	<u>10.05.789</u>
10.20.670	Sec. 90	<u>10.05.792</u>
10.20.675	Sec. 91	<u>10.05.795</u>
10.20.680	Sec. 92	<u>10.05.798</u>
10.20.685	<u>Sec. 93</u>	10.05.801
10.20.690	Sec. 94	<u>10.05.804</u>
10.20.695	<u>Sec. 95</u>	10.05.807
10.20.700	Sec. 96	<u>10.05.810</u>
Article 11. General Provisions.		
10.20.705	Sec. 89	<u>10.05.813</u>
10.20.710	<u>Sec. 3</u>	10.05.816

<u>AS Section</u>	<u>Model Nonprofit Act</u>	<u>Alaska Business Corporation Law</u>
10.20.715	none	<u>10.05.819</u>
10.20.720	Sec. 2	<u>10.05.825</u>
10.20.725	Sec. 1	10.05.828

LAW OFFICES OF  
GUESS, RUDD & HAVELOCK  
202 CRAWFORD BUILDING  
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MICHAEL G. BRIGGS

TELEPHONE  
272-4577

March 22, 1966

*Ted  
please give me your  
address on this -  
D.H.L.*

Representative W. Eugene Guess,  
Alaska State Legislature  
P.O. Box 2199  
Juneau, Alaska

Dear Gene:

The OEO sponsored a meeting here on March 9th and 10th to determine the possibilities of the development of a statewide legal aid program. An OEO lawyer flew up from San Francisco and participants were brought from Bethel, Ketchikan, Fairbanks and Juneau. Stan Howitt was the Juneau representative, but weather prevented him from flying here. Tom ~~Stewart~~ was able to fill us in on the needs of the Juneau area during the portion of the hearing set aside for testimony of local residents.

The plans for the legal services were well formulated, but much remains to be done before the official application can be submitted. The entire proposal is at least as complicated as a large SBA loan application. It was finally decided that we should have eight attorneys. The administrative chief and most experienced attorney would be stationed in Anchorage. In addition there would be three staff attorneys here. Fairbanks would have two attorneys responsible for most of the Fourth Judicial District and all of the Second. Juneau and Ketchikan offices would divide the Southeast responsibility.

The financial arrangements allow for a 90% federal contribution. The 10% to be provided by the state can come from a number of sources. It can be in a cash appropriation by the government, or it can be in contributions of facilities and services. Some of the ideas that were developed at the meeting were as follows:

Annual time commitments by private attorneys.

Office space donations by municipalities,  
state government, churches, or private parties.

Representative W. Eugene Guess  
March 22, 1966  
Page 2

Secretarial assistance from women's organizations.

Bush transportation furnished by State Police and Fish & Game.

The most expensive part of the transportation would no doubt be in the numerous charters needed to cover the many bush villages where legal assistance would be the only form of representation available to the subsistence dwellers. I could envision thousands of dollars spent each year in flying charters out of Bethel. If the State Police were permitted to transport the attorney when they are on their regular charter trips, we could use that as a credit toward our 10% contribution. In addition, the Fish & Game Department has flights to many of the villages and a sizable contribution could be made there without inconveniencing the schedule of the Department. I have not bothered to write to the commissioners of these Departments because of the sensitive situation existing since the investigations conducted by the legislature. I believe that we could get some valuable credits toward our 10% contribution if a legislative resolution were passed to encourage the cooperation of state agencies with the new legal services program. This would take the pressure off of the department heads.

The legal services program would not be a federal or state agency. We would be required to establish a nonprofit corporation and the agency would be a federally funded, independent institution. It would be governed by a board of directors to be composed of members of the Bar Associations, the court system and representatives of those persons poor enough to receive benefits under the program. Part of the problem is to be found in the nongovernmental nature of the employees of this program. Without authorization from the legislature it is very doubtful if these private individuals would be flown on state charters or state aircraft.

We should submit our application on April 1st. If it is at all possible, we would appreciate your getting together with the other lawyer members from Anchorage and pushing something through. The Anchorage Bar has heard a full proposal at the last weekly meeting. They voted almost unanimously to endorse the program and Russ Arnett, our new president, was instructed to write a letter expressing our endorsement. This letter has already been submitted.

Representative W. Eugene Guess

March 22, 1966

Page 3

If any of the other lawyer members should worry about this program spreading socialized law practice, they need not worry. We have taken steps in our proposal to ensure the constant control of the program by lawyers and to do without staff attorneys unless Alaska lawyers with experience can be found. A system has been partially developed to provide for the constant referral of fee generating cases back to the private bar. If anything, the program will stimulate the private practice of law.

I should mention the express idea of having a part time office in Nome to be used by the Fairbanks attorney designated to cover that area. It has been proposed that the space now rented from the federal government in the court house could be partially allocated to this attorney. Without some action by the legislature I don't think that we will be successful.

Very truly yours,

*Herb*

*by Alaska*

REPORT ON CSHB NO. 296

Sec. 1 of CSHB 296 increases the amounts to be paid into the second injury fund by the employer or his insurance carrier.

Sec. 2 of the bill leaves in the law that the Workmen's Compensation Board may approve lump-sum settlements when it appears to be in the best interest of the beneficiaries. It deletes the limitation that in death cases the lump-sum settlement shall be approved only in cases where the deceased leaves a spouse and more than five years have elapsed since the death of the employee.

Sec. 3 substantially rewrites AS 23.30.215 to improve the benefits of the spouse and children of a deceased employee. Paragraph (a)(1) is the same as present law. Paragraph (a)(2) - (4) should be compared to present law to determine the changes. Generally, (a)(2) raises the lump-sum settlement upon the widow's remarriage from two years' compensation (which amounted to a maximum of \$2,948.40) to \$10,000 and at the same time limits the amount of the total compensation to \$20,000 in the aggregate. In the past the total compensation has usually averaged around \$8,000 or \$9,000 but the insurance companies have kept \$37,000 in reserve. The \$20,000 limit closes the open end that has existed under this section except as to the situation covered by (e) of this section.

(a)(3) is reworded but there seems to be no substantive change, except for the age change which will be discussed later.

In (a)(4), on line 20, page 3, after "children", the words "or if the amount payable to a surviving wife or dependent husband and to children is less in the aggregate than 65 per cent of the average wages of the deceased" have been dropped. A \$20,000 limitation is also added in this paragraph in place of the dropped language.

(b) Fixes the method of computing death benefits and a new method is created by this bill based on the determination of the average weekly wage of the employee as set out in AS 23.30.220 and subject to the same weekly maximum limitation in the aggregate as temporary total disability compensation under AS 23.30.175(a). Subsection (b) changes the maximum and minimum average weekly wage from the present \$27 and \$81 to a minimum of \$45 for a widow or widower, \$15 for a child or \$30 for children.

(c) is the same except the words "or death" are added at the end of the sentence.

(d) is the same except that on page 4, line 14, the word "may" that is after "board" in the present law has been deleted and inserted on line 15 after "carrier" and the word "shall" has been deleted after "carrier". On lines 16 and 17, the words "who is not a resident of the United States or Canada" have been added.

(e) is a new sub-section. It provides that regardless of anything else in this section, that the surviving widow or widower who was dependent upon the deceased employee at the time of death and incapable of self-support by reason of mental or physical disability or otherwise not employable and who has not remarried shall continue to receive death benefits until conditions change. Whether a person is unemployable is left to the determination of the board.

Sec. 4 of the bill amends AS 23.30.265 (7) to raise the age from 18 to 19 years for those minors who may receive support as dependents of the deceased.

Saturday

March 26 10am

all present

Andrew Stancoff

SB 262

Hux, Stevens, Lellon, Metcalf, Taylor, Hellstrom, Johnson.

Mr. Stancoff

Ocean Mining a subsidiary of Ocean Sciences Engineering Inc.

have options on permits held by individuals, 5,120 acres

1. several ~~the~~ permits he locked in for 6 or 8 years.

2. for many years, couldn't get permits under for submerged lands.

submerged lands - mean low tide pulling in tide lands makes it easier to put in land.

Sec 2 of bill - discretion of com to keep the permit for an addition of 6 or 8 years.

See Hearst. letter to resource committee in Journal.

possible overlapping permits prospecting must be done -

aylor Motion for sub-committee

~~pg 23-25~~

The Dir would have right to issue a new permit <sup>of the existing permittee.</sup> at the end of four years for good cause - extending it 4 years.

or requirement that so much work has to be done,

suffi showing that he has done enough work,

if president man would continue the exploration.

Mon March 28 10am

2 PM  
3 PM  
3 PM 386

Stevens, Miteroff & Taylor, Josephson  
(Telling about) Kellstrand

Mike Holmes speaks on 368-370

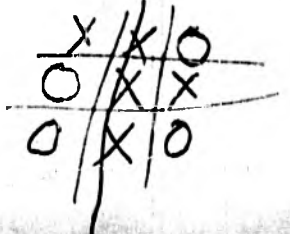
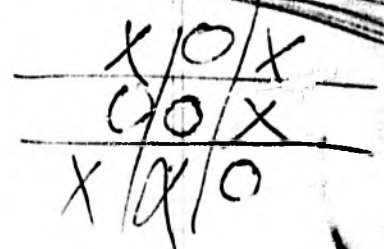
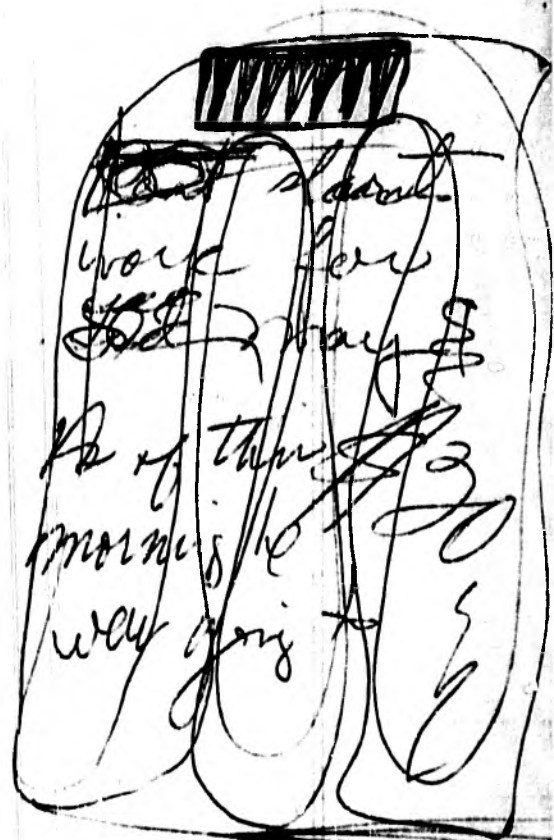
~~\* Ask Bruce Campbell about primary & secondary highways in Alaska.~~

384 & 386 - Holdsworth & Edwards,

~~386~~

Stevens moved adaption<sup>CS</sup>, Kellstrand seconded,  
Josephson objected.

Stevens "may" for "shall" at end of line. 23 pg 2.



**STATEMENT ON COMMITTEE SUBSTITUTE  
FOR HOUSE BILL 138  
SENATE STATE AFFAIRS & COMMERCE COMMITTEES**

**March 8, 1966**

**SUBMITTED BY DON M. BERRY, EXECUTIVE DIRECTOR, ALASKA MUNICIPAL LEAGUE**

**Chairman Harrison; Chairman Nolan;**

Pursuant to the request of members of your respective committees, I am submitting written testimony on C S HB 138 which will include the remarks I made when appearing before your committees, Tuesday, February 8, 1966. I will also expand those remarks in this written brief.

The Alaska Municipal League has been consistent during a long line of legislative sessions opposing regulation and control of municipally-owned utilities by the state Public Service Commission. Our objection has always been based on the sound principle that the municipality-on the local level - can best regulate its own utility. Certainly, nothing has been proved over the years which would cause us, in all good conscience, to alter our opinion. State legislatures in all but 15 states have evidently shared in the belief that municipally-owned utilities are best regulated on the local level since only 15 states have enacted laws regulating such utilities at the state level. CSHB 138 proposes that municipally-owned water and sewer systems should be regulated by the P. S. C. We would like to call your attention to the fact that only 3 states have seen fit to regulate water systems and none has tried to include sewer systems. In Alaska there is no municipality which operates sewers as a utility. No sewer rates are charged and costs are funded from general revenues of the municipality. Therefore, any reference to sewers should be completely deleted from the bill.

There are several general areas of CSHB 138 which we do not feel are in the best interests of the state nor do they tend toward improving utility regulation. Basically, we can see no advantage to increasing the membership of the commission from 3 to 5 members. We feel that no quorum problem is presented by a 3 man commission. Eighty per cent of the states operate with 3, and we feel the smaller body will be able to operate more quickly and effectively.

We strongly oppose the provision that the commission serve at the pleasure of the governor. Since the commission is a quasi-judicial body the members should be as free as possible to exercise their judgement as they think best and this is not statutorily possible if they are subject to being removed whenever the governor fancies to do so. We also oppose the deletion of any qualifications for the members of the commission. They should, at least, have adequate backgrounds in regulatory matters by reason of education or experience.

The League desires a full-time commission, technically competent, and we feel that the commissioners should be paid at least as much as the highest paid commissioner of a department of the state. We also feel that if the commission is to be an independent, quasi-judicial organ it must be able to hire its own personnel. We feel that this is particularly true in the case of the executive Director. Neither the governor nor the commissioner of Commerce should have anything at all to do with this appointment.

It is our opinion that any reference to the Administrative Procedure Act should be deleted from CSHB 138. The APA was not drawn with the P. S. C. in mind and the structure of the P. S. C. will suffer if it must conform to APA criteria which are ill-suited to rate-making purposes.

Since the administration has proposed and strongly urged enactment of this bill as being in the best interests of all the people of Alaska, we feel

it is unfair to levy the type tax as proposed in CSHB 138. It is, actually, a state sales tax levied discriminatorily against only the users of a utility. With certain basic and important changes in the legislation the P. S. C. should become a body of experts who will be able to offer advice and help; who will promote the industries and areas it regulates; who will point the way to more efficient methods of operation. This type of activity, if achieved, promotes the general welfare and should be funded from general revenues.

One other reference to the tax as proposed in CSHB 138 should be made. If municipally-owned utilities are regulated by the P. S. C. as is mandatory in the bill and would be possible under the proposed amendments which the League will subsequently submit, the suggested tax is the first instance of the state's taxing an agency of a municipality. The very constitutionality of such a tax is highly questionable. The inequality of the tax is even now apparent when you consider the number of utilities which are exempted under provisions of this bill.

We strongly appose that portion of CSHB 138 which bases short-term financing on 10% of the total debt of the utility. We feel that borrowing should be based on the total net worth of the utility. Otherwise, relatively debt free utilities could borrow little while those with a huge indebtedness would have a much greater borrowing ability.

Under this bill the P. S. C. would be given the power to dictate how a utility should distribute its profit. Although a commission may regulate the amount of profit to be received, we feel it is invading a province which is not contemplated in the regulatory scheme when it also attempts to distribute the profit.

While the League has not deviated one iota from its position that municipally-owned utilities are best regulated by locally-elected officials, we do recognize the problems created by those utilities which extend beyond the municipal boundaries. With this in mind, the League has suggested a new Article 8 in CSHB 138 entitled Original Local Jurisdiction. The rest of this testimony will deal specifically with this proposal.

Briefly, the League advocates the establishment of a municipal utility agency of not less than 5 members. The utility agency would be appointed by the assembly and the council and be apportioned by borough population thus assuring representation to those people residing outside the city. The municipal utility agency would retain original and exclusive jurisdiction over municipally owned water and sewer systems. The agency shall also have original and exclusive jurisdiction over other municipally-owned utilities except that the P. S. C. would have the power to resolve conflicts by delineating service areas between utilities. A great deal of testimony has been given to the effect that the public service commission is needed primarily to solve service area problems. Under the League's proposal, this would be a definite responsibility of the commission since our proposed utility agency would have to have this delineation before it could assume jurisdiction. We have also provided that the P. S. C. would retain the authority to order the joint use and interconnection of facilities.

We propose that if the municipally-owned utility lies wholly within the city, the city has original and exclusive jurisdiction and the council acts as the municipal utility agency.

In those instances where the municipally-owned utility extends outside the boundaries of the borough or outside the boundaries of a city where there is no organized borough, the municipal utility agency must include at least one consumer member residing outside the borough or city. This member would be elected by the consumers residing in the area outside the city or borough. When more than 25% of the consumers reside in the area outside the borough or city, the membership shall include at least two outside consumer members. If a majority of the utilities consumers live outside a borough or in an area outside a city not within an organized borough, the P. S. C. would have jurisdiction over the entire utility.

Appeals from decisions of the municipal utility agency can be made by any interested party to the borough assembly. Further appeal from the decision of the assembly would then be taken to the superior court. In the case of a party residing outside a borough or city not within an organized borough, the appeal from the decision would be made to the commission.

The League proposal also provides that jurisdictional disputes between a public utility or any city or borough shall be decided by the commission. A municipal utility agency may also get permission from the municipality to relinquish all or any part of its jurisdiction to the commission.

Basic to this concept of a municipal agent is the League's proposed section that the borough and the city must provide an agreement, by borough ordinance, for the operation, powers, and duties of the agency. If no agreement is reached by April 1, 1967, the public service commission shall assume all jurisdiction vested by this chapter in the agency.

Gentlemen, this has been a comparatively brief and non-technical explanation of the Municipal League's proposal for municipally-owned utilities.

These recommendations were submitted to you on Feb. 8 and I have additional copies available if any committee member desires one. In view of the Committee's apparent tendency to try to treat separately the regulation of the various parties subject to jurisdiction under CSHB 138, we respectfully request that you seriously consider our proposal as the basis for legislation to regulate municipally-owned utilities. We feel it leaves responsibility where it can be handled best - on the local level, by locally-elected officials who are responsive to local problems. But if this response is not forthcoming the jurisdiction will be vested in a state public service commission.

Thank you very much.

Respectfully Submitted,

*Don M. Berry*  
Don M. Berry  
Executive Director  
Alaska Municipal League

Sec 705. Venue, gone

810(4) slightly changed,  
new (b) & (c).

815 Prerequisite designation  
of parties & notice.

Sec. 825 - some at first gone &

(7) eliminated

Sec 830 - gone, summons.

835 = "

840 " = some in 820.

845 "

895 - Procedure applicable

(17)  
(18)  
(19)  
(20)  
(21)  
(22)  
(23)  
(24)  
(25)  
(26)  
(27)  
(28)  
(29)

under this section shall forfeit any license to hunt obtained under the laws of this state and shall be ineligible to obtain a license to hunt for a period of ~~10~~ years following the date of his conviction.

\*Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

This bill is Sec. 163.310 of the Oregon Revised Statutes. Sec. 163.520 is like AS 11.15.200 in that it relates to pointing a firearm at a person without intent to harm them. For other statutes relating to use of firearms, see AS 11.55.



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February 16, 1966

Mr. Gene Guess, Chairman  
House Judiciary Committee  
State of Alaska  
Juneau, Alaska

Committee

Re: House Bill 306 - Comparative  
Negligence

Dear Mr. Guess:

1. In accordance with the suggestion contained in your letter of February 6, 1966, I am furnishing you with sufficient copies of information on the above subject to distribute them to all members of the Judiciary Committee.

2. As an introduction to the subject I am enclosing a copy of BUT IS IT JUSTICE, which should be especially valuable to your non-attorney members. This article covers the following points:

- a. It explains the present rule which bars recovery by anyone who is contributorily negligent and how the comparative negligence rule would replace it under certain circumstances.
- b. How the rule would work in negligence actions, and since H.B. 306 is taken from the Wisconsin statute, how it works in that state.
- c. It explains the most common arguments for and against the rule of comparative negligence.
- d. It shows by a map, the six states which each have the rule in one of various forms at the present time, three states which adopted and then abandoned it, the twelve states which considered the adoption of it in either 1963 or 1964 and rejected it, and the 44 states which have the comparative negligence rule.

3. The few surveys which have been made as to the effect of adopting the comparative negligence rule are quite

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Mr. Gene Guess, Chairman  
House Judiciary Committee  
Juneau, Alaska

February 16, 1966  
Page Two

inadequate and inconclusive. No exhaustive survey has ever been made. Many of the statements made for and against the doctrine are simply wild statements made with the author's special interest as the sole motivating factor. The only thing of which we are certain is that the comparative negligence doctrine allows recovery by plaintiffs who are obviously partly to blame for an accident whereas under the contributory negligence doctrine they could not recover. In other words more lawsuits could be started and recoveries made than under the present system. This means more cases for the insurance companies and uninsured motorists to defend. It also follows that since recoveries can be made in more instances, the amount of money paid in damages will increase. The more the insurance companies are required to pay defense costs and damages, the higher the rates. This is admitted by proponents of the bill as will be shown hereinafter. It is also borne out by a comparison of the rates in Wisconsin and in Alaska. In 1961 the Alaska Legislative Council tried to get some factual comparisons on the two systems. The National Bureau of Casualty Underwriters quoted to Mr. Howitt, then with the Legislative Council, on October 16, 1961, rates for a liability policy in Wisconsin which varied for \$10,000/20,000 bodily injury from \$49.20 to a low of \$30.00 depending on the Wisconsin city in which the insured resided. It quoted Alaska rates from \$22.00 in Anchorage down to \$17.00 for the balance of the State. If this is indicative of what our rates will be after adopting the comparative negligence doctrine, then it should be opposed.

4. The American Trial Lawyers Association is actively trying to have comparative negligence adopted. Its members are engaged in promoting several bills which would have the tendency to raise the number of lawsuits and the amounts of the recoveries because they are claimant's attorneys and generally take such suits on a contingent fee basis. The more business they generate and the bigger the verdicts, the more they make. The members recently changed the association's name which was formerly: National Association of Claimants Compensation Attorneys. While under that name they had a president named James A. Dooley who is very prominent in several associations to promote the interests of "plaintiff's attorneys". Later he was so well thought of that the association had him address its Miami convention in 1958. He started out by telling them his remarks would not be popular with those present but he proceeded to detail the reasons why comparative negligence should not be adopted. A copy of his speech is attached. I have underlined the more important remarks on this subject and summarize them as follows:

Mr. Gene Guess, Chairman  
House Judiciary Committee  
Juneau, Alaska

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Page Three

- a. The public is becoming alarmed at "the large verdict".
- b. The cost of automobile liability insurance is being priced out of the market by such verdicts.
- c. "With comparative negligence statutes there will be more lawsuits, and more meritless lawsuits, since comparative negligence gives a higher nuisance value. The courts will be even more crowded . . ."
- d. Such legislation in other countries such as England has led to abolition of the jury system in civil cases. "But try to get a jury trial in any one of them".
- e. In Wisconsin where comparative negligence is in force, the legislature failed by a single vote in 1953 to put in a plan to compensate all persons for automobile injuries, without regard to fault, as under Workmen's Compensation plans, but there is no employer to pay the cost and it would have to be a state run system, financed by taxation or automobile license fees.
- f. Any weakening of our present system will lead to a "liability without fault doctrine".

If you will read only the highlights of that speech you will see that there are valid social reasons for retaining the present system, and the plaintiff's attorneys who are after bigger verdicts may force us to abandon the whole system of damages from the persons at fault and put it on another basis where an injured person gets paid regardless of fault by the State.

5. Although the Wisconsin form of the statute is preferable to the others, H.B. 306 leaves out an important part of the Wisconsin statute. That statute protects the defendant who may be negligent, if the driver of the other vehicle is negligent but is not the owner or the person suing for loss of property. The Wisconsin statute provides that if a member of the owner's family is negligent while driving the owner's car, the negligence of the driver is imputed to the owner so his recovery is limited by a comparison of the driver's negligence to that of the defendant.

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House Judiciary Committee  
Juneau, Alaska

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6. The main argument of the proponents for this type of legislation is that a person who is only slightly at fault is barred from recovery because of contributory negligence. Actually as every lawyers knows, the jury disregards slight negligence and ordinary negligence is no defense to gross negligence. Nevertheless, if the committee decides to report favorably a comparative negligence bill, it should not allow a person who is only 45% to blame to recover 55% of the damages. It is more reasonable and equitable to deduct the 45% from the 55% negligence of the other party and limit the recovery to 10% of the damages.

7. I am pleased to know that I will be afforded an opportunity to present a more complete review of this subject when the Bill is being considered by your committee. I will appreciate having you distribute copies of this material to your committee members.

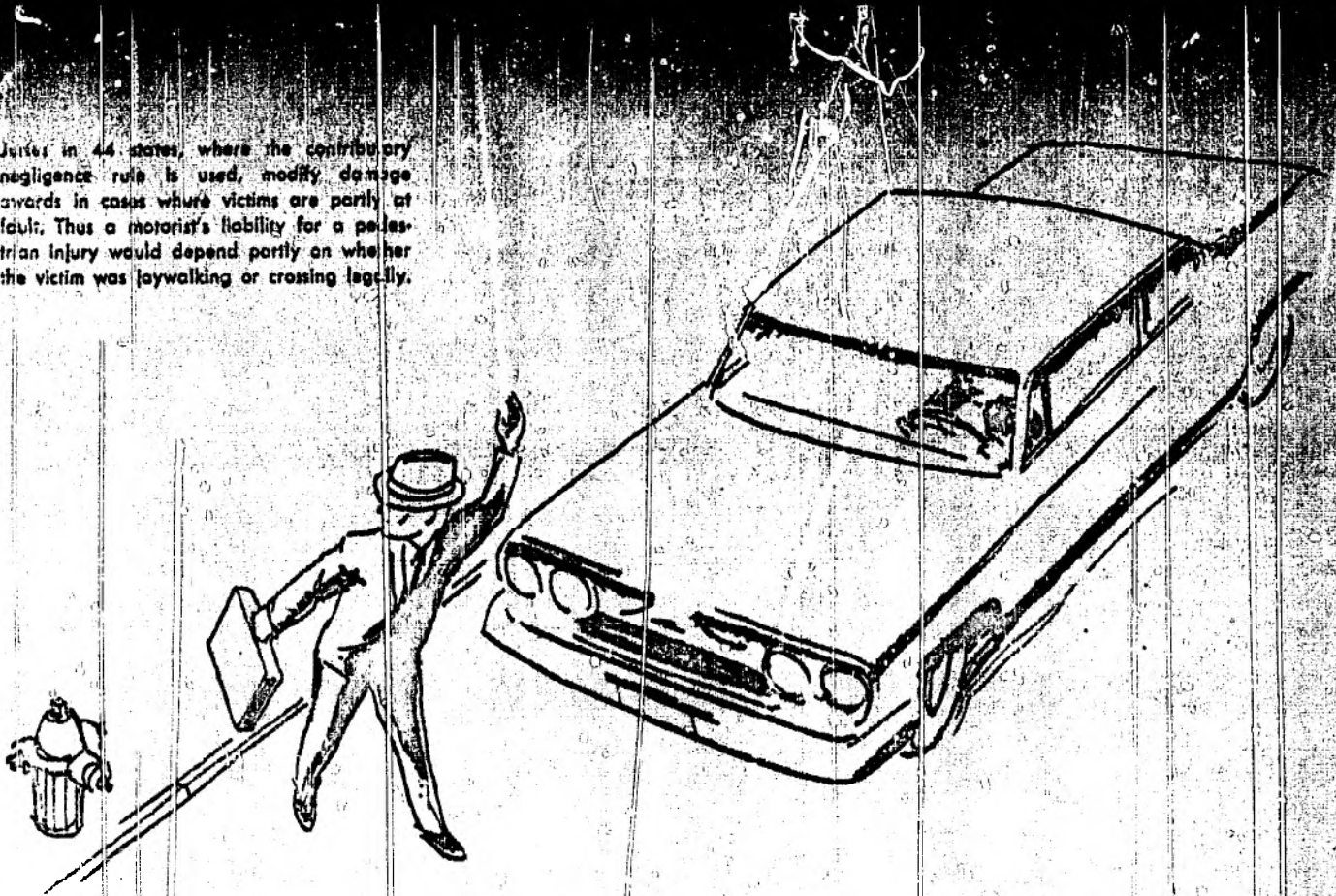
8. In the 1962 legislature, S.B. 192 on comparative negligence failed to pass the House.

Yours very truly,

  
\_\_\_\_\_  
Attorney for  
American Mutual Insurance Alliance

NCB:db

Juries in 44 states, where the contributory negligence rule is used, modify damage awards in cases where victims are partly at fault. Thus a motorist's liability for a pedestrian injury would depend partly on whether the victim was jaywalking or crossing legally.



## But Is It Justice?

'Comparative negligence' concept allows wrongdoers to collect, and adds to congested court calendars.

A PROLONGED AND SOMETIMES strident argument is raging among lawyers over relative merits of "contributory" and "comparative" negligence rules in lawsuits involving accidents. The public, though keenly affected by the outcome, knows little of the issues involved. Nor is the public participating in the struggle. It is a controversy generated and kept boiling before bar associations and state legislatures by plaintiffs' attorneys interested in more and bigger fees in personal injury suits.

Factors in the dispute might be pointed up by this hypothetical accident, one that could happen anywhere: Two drivers collide at an intersection, causing injuries to both and damage to their vehicles. Investigation shows that one was drunk and ran a stop sign; the other was a hot rodder who could not avoid the crash because he was speeding.

In 44 states that apply the contributory negli-

gence rule, the probability is that neither could successfully sue the other because he contributed substantially to making his own misfortune. However, both could collect insurance benefits under their own accident and health, auto collision and medical payments policies.

In six other states that apply the comparative negligence rule to auto liability cases, the results would not be so clear-cut. For these states allow many more plaintiffs to collect if there has been negligence on the part of the defendant. Damages may be allocated between parties, with the plaintiff's recovery reduced according to the degree of his own negligence. And at least one comparative negligence state (Mississippi) would permit each driver to sue the other, bringing about the possibility that both would get substantial settlements from each other's auto liability insurers.

*Excerpted from Journal of American Insurance*

AMERICAN MUTUAL INSURANCE ALLIANCE  
20 North Wacker Drive  
Chicago, Illinois 60606

## But Is It Justice?

In Wisconsin, which applies a "modified" comparative negligence rule, the plaintiff could recover only if his degree of negligence was less than that of the defendant. But even there the comparative negligence doctrine would impose complications by requiring "interrogatories" or questionnaires to be answered by jurymen. Wisconsin juries are thereby required to weigh the negligence of the drivers, but final appraisal of the effect of degrees of negligence on the amount of the award is reserved to the judge.

In all comparative negligence states, moreover, the certainty of some recovery increases the tendency to file insurance claims, thereby increasing insurance premiums and potentially adding to court congestion.

These are some of the myriad pitfalls and complications inherent in the comparative negligence rule, a doctrine that has been tried off and on for 140 years to erase supposed inequities in the contributory negligence rule. Proponents of comparative negligence argue that the contributory negligence rule is harsh because it prevents recovery by those who have been negligent in the slightest degree. This, the argument goes, imposes a standard of 100 per cent perfect conduct upon the plaintiff while defendants must exercise only the degree of care expected of a prudent man. In practice, minor negligence by the plaintiff seldom results in loss of recovery.

A law professor answers plaintiffs' lawyers who advocate comparative negligence rules by pointing out that, "Comparative negligence is a drastic proposal, disproportionate to the evils it seeks to remedy. In short, it violates the maxim in equity that one should never, never shoot down a mouse with an elephant gun." Lawyers admit they seldom, if ever, lose cases in which the plaintiff's negligence was slight and that of the defendant great.

Contributory negligence as a defense first appeared in England in 1809 in a case involving a claimant who was barred from recovering damages after he struck a pole that lay over a highway. In subsequent years, England, Canada and most countries on the Continent adopted the comparative negligence doctrine. But in England, for example, application of the comparative negligence rule became so complicated that in 1945 it ended the use of juries in tort cases. This placed the determination of damages in the hands of judges.

As early as 1825 Louisiana experimented with this country's first comparative negligence rule but later dropped it, as did Illinois and Kansas. Georgia in 1861 permitted use of the comparative negligence

rule, followed in 1910 by Mississippi and in 1913 by Nebraska. These states have been joined by South Dakota, Arkansas and Wisconsin. Florida permits application of the rule in cases involving railroads and hazardous occupations.

Wisconsin merits special attention because its modified comparative negligence rule calls for the use of "special verdicts" from juries. Jurymen simply answer questions prepared by the court. Such special verdicts enable courts to apply jurors' appraisals of degrees of negligence chargeable in fixing awards. But Wisconsin lawyers are among the first to question the feasibility of comparative negligence and jury interrogatories in states with large metropolitan areas, high numbers of auto accidents and severely crowded court calendars. Defenders of the Wisconsin system claim that the comparative negligence rule has served in that state to reduce the volume of litigation, particularly trials of tort actions. Yet one authority on court congestion points out that Wisconsin has a relatively high ratio of auto damage claims to registered vehicles, commenting, "One is tempted to speculate whether that state's comparative negligence rule has anything to do with this."

It is no mere speculation, however, that the comparative negligence principle enhances opportunities for recovery in every suit involving accidents. By giving certain cases higher nuisance value, comparative negligence may provide a bonanza for plaintiffs' counsel, thereby increasing the tendency to file insurance claims. It presents also the possibility of collusion between uninjured and slightly injured persons if both are insured.

Resultant increases in claims consciousness, litigation and collusion would inevitably increase insurance rates. Some who oppose comparative negligence point out that insurance rates for some liability policies in Wisconsin are as much as 40 per cent higher than those in some neighboring states. Increased litigation and trial complexities under comparative negligence may boost the tax burden to pay for more extensive court operations. Trial intricacies, moreover, augment chances of error and misjudgment.

Another key pitfall of comparative negligence is the compensation of persons for their own wrongdoing, overturning the entire concept of tort recovery. "To inform a person that he may recover damages in spite of his own negligence seems to be a decided step in the wrong direction," says one veteran lawyer. "It's a step toward a compensation-without-fault system where the reckless and careful



## COMPARATIVE NEGLIGENCE -- WHETHER WILL IT LEAD?

Address by James A. Dooley\*  
at NACCA Convention  
Miami Beach, 1958

### SECTION

- 7.1 Introduction
- 7.2 Apportionment of damages
- 7.3 Objectives of NACCA, making clear to public
- 7.4 Will comparative negligence statutes weaken judicial structure?
- 7.5 Public sentiment against large verdicts and delays
- 7.6 Personal injury -- plaintiff does not always collect
- 7.7 Broadening horizon of tort litigation
- 7.8 Danger seen in comparative negligence statutes
- 7.9 United States last stronghold of contributory negligence
- 7.10 Comparative negligence in United States
- 7.11 Comparative negligence is socialistic
- 7.12 Liability without fault doctrine or compensation system
- 7.13 Alternative compensation coverage endorsement
- 7.14 Insurance policy offered in settlement of court case
- 7.15 Casualty compensation system -- only state could operate
- 7.16 Casualty compensation system compared to workmen's compensation
- 7.17 Serve public by protecting present system

### §7.1 INTRODUCTION

Our thoughts concerning comparative negligence may be unorthodox to a plaintiff's lawyer. We know they will not be popular here. But we wish to examine that oft-debated doctrine in the climate of today's realities.

### §7.2 APPORTIONMENT OF DAMAGES

NACCA has been referred to "as the highly articulate minority who are pressing for this reform,"<sup>1</sup> referring, of course, to a doctrine whereby damages are apportioned. Then, too, there have been multiple expressions of thought that the proponents of the doctrine are actually lawyers who are interested in both opening new vistas in tort litigation, and in guaranteeing their contingent fees.

### §7.3 OBJECTIVES OF NACCA, MAKING CLEAR TO PUBLIC

But with us, as members of the legal profession, it is basic that our

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\* Of the Illinois Bar; A.B. Loyola Univ., J.D. Loyola Univ. Law School, LL.D. Clarke College; member Chicago Law Institute, American Judicature Society, Scribes, International Academy of Trial Lawyers, past-President NACCA, Founder and past-President Association of Plaintiffs' Lawyers of Illinois.

- 2 -

concern be not with our own interests, but with the good of the law, and what is good for the law is good for the people. Lawyers, as a whole, must bring home to the public that our profession is not a profession of interests, with the plaintiff's lawyer, but insurance company's lawyer, the labor relations' lawyer, all seeking what is good for their particular phase of the practice. Indeed, NACCA has a peculiar duty in this respect. Why? Because it has been marked as a group with selfish interests, so frequently and in so many quarters that the public is beginning to regard it as such. Witness, if you will, the recent article in a nationwide publication recognized for its objectivity in reporting.<sup>2</sup>

Believe us, there never was a time when we were more pressed to demonstrate that our objectives are for the common good, which means everyone's good.

#### §7.4 WILL COMPARATIVE NEGLIGENCE STATUTES WEAKEN JUDICIAL STRUCTURE?

Should we, as lawyers, press for adoption of comparative negligence statutes? As a preface to any answer to that query, let us say every lawyer with any experience in lawyering recognizes that today the prime problem in our legal world is the preservation of the jury system. This, we admit, is a condition which has been chronic for many years. Today its acuteness is such that it is a matter of its life and death. The system can be extirpated just as easily as it can be fortified.

And this acuteness is accentuated no end by the apathy of many members of the profession towards it. Whether it is because they believe the abolition of trial by jury will not affect their practice or because they do not recognize the full meaning of this important right, we cannot say. And, worse yet, there are amongst the profession those who find it fashionable to criticize the jury system.

We might more correctly state the issue thus: Will comparative negligence statutes weaken our judicial structure? It is from this aspect only do we wish to examine this doctrine. We are not undertaking to consider its desirability in the abstract.

#### §7.5 PUBLIC SENTIMENT AGAINST LARGE VERDICTS AND DELAYS

Today's society is ready to accept some substitute for the courts. It has awakened to the wrongs wrought by delay, and particularly to the hardships and injustices resulting from the protracted lapse between filing and trial time in metropolitan areas. It wants to know why it must tolerate these conditions. It is aroused. It is casting about for a substitute.

Again, whether you wish to face it or not, the public has become sensitive to what is termed "the large verdict." And why not? Multiple articles have appeared in all vehicles of print during the last decade. They have made their impression. They are being made to fear such verdicts.

And the man on the street who did not read any such propaganda has

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<sup>2</sup> Wall Street Journal, July 7, 1958

brought home to him a fear of verdicts in personal injury cases in a way that pinches, namely, the rising price of insurance on his automobile. Rates have risen so high that automobile insurance in some communities comes close to pricing itself outside of the market, even for persons of moderate income. These fears have already been reflected in an epidemic of grossly inadequate verdicts in many sections of the country.

#### §7.6 PERSONAL INJURY -- PLAINTIFF DOES NOT ALWAYS COLLECT

Again, many say we now have in effect a system where almost everyone recovers in a common law personal injury action. With this contention, we cannot agree. As a matter of fact, in Cook County, Illinois, each year there are more not guilty verdicts than findings for the plaintiff in personal injury actions.

#### §7.7 BROADENING HORIZON OF TORT LITIGATION

But we recognize that today actions can be brought which were impossible yesterday. Thus, eleemosynary institutions, governmental agencies, such as schools, are subject to suit so long as there are policies of insurance providing against the contingency out of which the particular tort arises. Even actions can be brought between husband and wife for personal injury. Then, too, the wife in many jurisdictions can maintain a suit for loss of consortium of her husband.

There is likewise the Federal Tort Claims Act, the classical illustration of the broadening horizon of tort litigation.

Thus the crowded court calendars and increasing costs of protection against claims and suits give real impetus to the movement against our courts. But many of you will say we do not have these conditions where we live and practice. True, but they exist in metropolitan areas. And reforms undertaken to cope with problems peculiar to large areas are soon adopted throughout the country.

#### §7.8 DANGER SEEN IN COMPARATIVE NEGLIGENCE STATUTES

With comparative negligence statutes there will be more lawsuits and more meretricious lawsuits. Since comparative negligence gives a higher nuisance value, the courts will be even more crowded. The delay between filing and trial time will be increased as well by the antipathy toward the existing system. Indeed, it would not be improbable that there might be a public indifference, or even antipathy, to injury cases.

Thus we say any attempt at this time to increase the periphery of tort litigation will be a Paul Bunyan step toward a casualty compensation system.

#### §7.9 UNITED STATES LAST STRONGHOLD OF CONTRIBUTORY NEGLIGENCE

Look at the world about you. Dean Prosser says the United States is virtually the last stronghold of contributory negligence.<sup>3</sup> That is no doubt

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<sup>3</sup> Vol. 51 Mich. Law Review, 465.

true. Research indicates that we have had apportionment of damage statutes in Australia, France, Germany, Italy, Japan, Norway, Persia, Portugal, Sweden and Russia for many years. For over the last quarter century, it has been present in all the Canadian provinces.

Yes, these countries do have laws whereby the damages are apportioned. But try and get a jury trial in any one of them.

England, the mother country of the common law, passed the Reform Act of 1945 providing, in substance, in case of mutual fault, a claim for damages shall not be defeated by the presence of negligence on the part of the injured, but the damage shall be apportioned as the Court thinks just and equitable.

But shortly after the comparative negligence statute had been passed in 1949, England abolished jury trials in practically all civil cases. When it is considered that our common law has been adopted from the English, and that in many phases of the law we have followed the English, are not these events and their weaknesses a warning to us?

#### §7.10 COMPARATIVE NEGLIGENCE IN THE UNITED STATES

It is true that in six states<sup>4</sup> in this country where there are comparative negligence statutes, there are still jury trials. These, however, are not large communities with a great volume of litigation. They retain the jury system, despite their comparative negligence statutes. The jury system is still a part of the American scene. However, in Wisconsin, a state which has had a comparative negligence statute since 1953, failed by a single vote in its legislature to adopt an automobile compensation plan in 1953.

#### §7.11 COMPARATIVE NEGLIGENCE IS SOCIALISTIC

The thought underlying the doctrine of comparative negligence is, if we may use an unpopular term, socialistic. That law is to make certain that every injured person should get something -- not too much -- but something -- for his injury. And if you make some recovery for an injured person, the amount recovered in any single case is certain to be diminished. Usually this means the verdict does not represent a true reflection of the elements for which recovery may be had. Whether this is due to the fact that jurors partake of the socialistic concept of the doctrine, or because even the most innocent can be rationalized to be guilty, or because they realize there is a limitation of funds available for payment of claims, we do not know.

The hard cold fact of the matter is that verdicts in these six jurisdictions are very low, with the exception of Georgia and Mississippi. On the other hand, South Carolina, in which the standard of living is probably as low as any state in the country, has verdicts returned and affirmed far in excess of those in any of the comparative negligence areas.

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<sup>4</sup> Arkansas, Georgia, Mississippi, Nebraska, South Dakota and Wisconsin.

#### §7.12 LIABILITY WITHOUT FAULT DOCTRINE OR COMPENSATION SYSTEM

That comparative negligence is a move towards liability without fault is not difficult to understand. Both doctrines have similar foundations, namely, the social need for adjusting "conflicting rights" as they are called. Under comparative negligence, there is economic protection against one's own negligence and even against defects of character. Under liability without fault, rights are distributed and thinned out so that one questions whether they have in fact been extirpated. Duties, on the other hand, are proportionately distributed. All pay for the wrongs of each individual. It is a rather communal life. Why? Because the concern is not with this given case, or whether the particular litigants have an opportunity for a result reached after a system of due process as we know it. The issue is one of social policy such like crime. In fact, one advocate of the liability without fault doctrine says the distinction between tort and crime is only one of scope.<sup>5</sup> Moreover, it is interesting to note some of the most vociferous advocates of the comparative negligence doctrines openly admit that they favor it as a palliative for their panacea, namely, the liability without fault doctrine or compensation system.

We stated that any weakening of our present system would, in our opinion, eventually lead to the adoption of the liability without fault doctrine. Actually, it seems that at least one insurance company has already undertaken such a program.

#### §7.13 ALTERNATIVE COMPENSATION COVERAGE ENDORSEMENT

The Nationwide Insurance Company has developed an endorsement to their insurance policy. It is termed "alternative compensation coverage." It gives the injured person fifteen months in which to elect to take the compensation available of payments, regardless of fault, or to sue. If he elects to take compensation, he must, within fifteen months, release the insured and the company. There is a provision for medical expenses incurred within a year after the accident up to \$2,000. He can likewise obtain \$5 per day indemnity within eighteen days after injury while confined and under the care of a doctor. If he is killed, the compensation awarded is \$5,000, providing he is over 18; if under 18, \$2,000. (These figures themselves demonstrate the injustice of this program.) This endorsement has been approved in such states as Connecticut, Delaware, Indiana, Maryland, Michigan, New York, Ohio, Pennsylvania, North Carolina and Vermont. In New York it was filed, not as alternative compensation coverage, but as a variation in medical payments.

Roger Kenney, the lay writer most universally read and quoted by insurance company executives, in an article entitled: "Why this sudden consternation about automobile compensation insurance?"<sup>6</sup> predicts that "payment certain" will cause a drastic revision in the entire concept of rate making. He further comments that the real stake in the preservation of the present system is that of the lawyers.

His comments are so succinct, with your permission we shall read them:

<sup>5</sup> I.L.S. Ann. 1954, 527

<sup>6</sup> United States Investor, May 17, 1956

"If you were to ask the average insurance lawyer a few years ago what he thought of the chances of automobile liability compensation insurance ever becoming a far-flung reality in this country, like as not, you'd get a knowing wink and be asked whether you ever stopped to think that the state legislatures are made up in part, of lawyers. And lawyers, as a group, or individually for that matter, have never shown any great disposition to liquidate themselves professionally:

"Of course, the implication in such a remark is that so long as the legal profession is in the driver's seat, it is just plain foolhardy to believe that a law would pass any state legislature which would set up a definite schedule of benefits to be paid to those injured in automobile accidents and thus reduce, or eliminate, the fertile field now open to lawyers under what the latter like to call the 'adversary system.' But what the lawyers haven't been counting upon is the fact that there is more than one way to bring about a compensation scheme in the automobile liability field -- and the simplest of all is through an insurance policy, akin to the old-fashioned and time-honored accident contract."

He continues:

"What our friends, the lawyers, seem to have forgotten is that the driving of automobiles upon the public highways has become such a social and economic problem as to place quite a strain upon many of our long-established customs and procedures -- including our revered system of justice about which they had so much to say at their gathering in New York."

This makes good reading, does it not? How many lay persons would be able to detect that this new policy is merely an effort to obviate our system of law whereby only the legally liable are made to respond in damages?

Worse yet, this policy will sell. It will be copied by other companies. It is not a matter of superior logic, but of economics, marketing skill, salesability and ultimately the thought processes of the insurance buying public.

#### §7.14 INSURANCE POLICY OFFERED IN SETTLEMENT OF COURT CASE

There is another wrinkle. The Continental Casualty Company has offered an insurance policy to be used in the settlement of court cases involving future illness or disability. The main customers for the policy will be other insurance companies attempting to settle claims. Under this system, the claimant will get reimbursement for past expenditures and obtain a policy under which he will be indemnified for future costs, whether for medical care or disability. It was first employed in the settlement of a child's case. A small amount of cash was paid, and the child was given a \$25,000 policy providing for future medical or surgical care until the child was 21 years of age.

Through the scheme of giving policies of insurance in settlement of claims an insurance company may pyramid its profits through saving a loss on the initial policy by settling the claim with a second policy. This system, however,

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will not be acceptable to most of the public. The fact, however, remains that this is another case in which the insurance industry, which virtually depends for existence upon our present system, states that the system is inadequate.

#### 87.15 CASUALTY COMPENSATION SYSTEM -- ONLY STATE COULD OPERATE

The insurance industry has thus demonstrated its own shortsightedness. In the preservation of the present system lies the life of the industry. It is a business operating under the free enterprise system which makes possible a collection of capital to pay claims and judgments. Making it a welfare agency to dispense social benefits is incompatible with its foundation. The insurance industry has assigned regimentation and politics as its big reasons against compulsory insurance. But better yet the insurance companies realize they could not operate under a casualty compensation system. Why? Simply because the cost would be beyond them. Only the State could afford such an operation. Here would be some of the problems. Would each death be worth the same price? Would there be certain schedules of benefits similar to the Workmen's Compensation Acts? What provision would there be for complete payment for medical and hospital expenses? What about the problem of lost earnings?

#### 87.16 CASUALTY COMPENSATION SYSTEM COMPARED TO WORKMEN'S COMPENSATION

And remember, a casualty compensation system is not similar to Workmen's Compensation, with a business paying the premiums and the periphery injured's receiving benefits to occurrences associated with his working life.

If a sufficient number of American people decide to safeguard themselves to liability without fault policies, there will be multiple suits on a contractual basis concerning whether the claimant has the injury complained of, whether the decedent died as the result of the occurrence, and as many questions as the inclusions and exclusions of a policy give rise to.

Consider our experience under Workmen's Compensation laws where payment instead of being automatic, was met with such defenses as acts of God, street risk cases, scope of employment, assaults and others.

#### 87.17 BEARS PUBLIC BY PROTECTING PRESENT SYSTEM

Such policies must perforce lead to a compensation system of casualty insurance. Indeed, by writing such policies, the Nationwide Insurance Company is telling the public that it does not believe in the present system. Its profits, however, from this alternative compensation venture will be short lived.

Our existing system is now hanging in the balance. Any movement might swing the balance against the judicial system. Our interest must be that of the public. We can only serve the public by protecting our present system. Remember, a bird flying through the air may be tempted to think that since he must labor to do so, the air is holding him back and that he would be better off without it -- and, of course, without flying.

We consider it a great privilege to address so many outstanding practitioners in the most challenging area of the law. We do not expect your agreement with our thoughts, but we know in some idle moment you will consider this problem in this limited light.

You have been a delightful audience.

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