ALASKA LEGISLATURE COMMITTEE FILES 1969-1970 8672
9 HJ: FILE NO. 3

| | |
|---|---|
| Personal Services | $174,816 |
| Equipment | 18,440 |
| Forms, Stationery, etc. | 15,420 |
| Rents and Utilities | 9,400 |
| | $218,076 |

This estimate does not include the cost to the Department of Public Safety for establishing files of Drivers License violations in promptly retrievable form.

It does not include the additional cost to the Motor Vehicle Department for additional cost of establishing files (or registering without fee) for the approximately 8,000 vehicles driven by military personnel and not required to be registered in Alaska.

Potential Revenue from Program:

150,000 ~~re-registration~~ X ~~$2.00~~ 1.00 ~~$300,000~~ $150,000

It does not include the cost of personal services to the State.

It does not include additional administrative costs incidental to the function: ie personnel matters, equipment, storage, the building and facilities etc.

Use the complete list and know who else would be placed on this list. Mark

COUNTRYWIDE

Exhibit 17 (a)

AUTOMOBILE LIABILITY INSURANCE - STATEWIDE AVERAGE RATES ϕ - PRIVATE PASSENGER CARS

Based on Automobile Casualty Manual Rates Effective As Of August 15, 1968

| State | Effective Date | $10,000/20,000 Limits Bodily Injury | $5,000 Limits Property Damage | Bodily Injury & Property Damage Combined |
|---|---|---|---|---|
| Dist. of Col. | 7-31-68 | $ 89.83 | $ 57.16 | $146.99 |
| Massachusetts | 1-1-67 | 90.56 | 42.03 | 132.59 |
| New York | 7-26-67 | 83.67 | 32.36 | 116.03 |
| Rhode Island | 2-23-66 | 66.37 | 31.00 | 97.37 |
| Illinois | 1-11-67 | 61.53 | 31.81 | 93.34 |
| Connecticut | 3-6-68 | 58.72 | 31.43 | 90.15 |
| Maryland | 3-27-68 | 56.88 | 28.07 | 84.95 |
| New Jersey | 4-13-66 | 54.97 | 27.46 | 82.43 |
| Louisiana | 2-28-68 | 53.87 | 27.65 | 81.52 |
| Michigan | 5-3-67 | 42.05 | 39.29 | 81.34 |
| Minnesota | 10-5-66 | 53.52 | 26.82 | 80.34 |
| Oregon | 5-24-67 | 49.99 | 28.46 | 78.45 |
| Ohio | 3-29-67 | 42.37 | 34.97 | 77.34 |
| Wisconsin | 8-2-67 | 51.61 | 25.57 | 77.18 |
| Nevada | 2-22-67 | [illegible].04 | 27.92 | 75.96 |
| Washington | 10-4-67 | [illegible].91 | 26.93 | 73.84 |
| Arizona | 11-1-67 | [illegible].14 | 23.57 | 73.81 |
| Indiana | 9-20-67 | 35.43 | 37.89 | 73.32 |
| Vermont | 5-10-67 | 48.78 | 24.08 | 72.86 |
| New Hampshire | 6-26-68 | 46.94 | 23.79 | 70.73 |
| West Virginia | 3-15-67 | 42.69 | 26.61 | 69.30 |
| Arkansas | 4-10-68 | 43.02 | 25.86 | 68.88 |
| Utah | 2-21-68 | 39.45 | 28.75 | 68.20 |
| Florida | 7-17-68 | 47.46 | 20.24 | 67.70 |
| Pennsylvania | 10-1-65 | 40.72 | 26.52 | 67.24 |
| Texas | 8-1-67 | 38.79 | 28.20 | 66.99 |
| Mississippi | 9-21-66 | 44.40 | 20.99 | 65.39 |
| Virginia | 8-2-67 | 40.05 | 24.57 | 64.62 |
| Kentucky | 8-2-67 | 40.36 | 23.18 | 63.54 |
| South Carolina | 2-17-66 | 41.37 | 21.85 | 63.22 |
| Maine | 1-10-68 | 37.30 | 25.62 | 62.92 |
| Alabama | 3-20-68 | 38.30 | 24.29 | 62.59 |
| Oklahoma | 3-6-68 | 38.81 | 21.79 | 60.78 |
| Tennessee | 4-6-66 | 43.42 | 21.79 | 60.60 |
| Iowa | 5-1-68 | 31.36 | 28.82 | 60.18 |
| Kansas | 5-22-68 | 37.72 | 22.38 | 60.10 |
| North Carolina | 4-24-68 | 35.20 | 19.96 | 55.16 |
| New Mexico | 10-11-67 | 29.58 | 24.07 | 53.65 |
| Georgia | 12-4-63 | 31.75 | 18.31 | 50.06 |
| Nebraska | 1-3-68 | 27.04 | 22.78 | 49.82 |
| Delaware | 10-18-67 | 26.40 | 22.98 | 49.38 |
| Colorado | 4-17-68 | 31.54 | 17.63 | 49.17 |
| North Dakota | 5-18-68 | 25.97 | 19.77 | 45.74 |
| Wyoming | 8-23-67 | 18.47 | 18.34 | 36.81 |
| South Dakota | 7-19-67 | 20.45 | 13.64 | 34.09 |
| Countrywide | -- | 51.99 | 27.91 | 79.90 |

ϕ Based on Voluntary Risk exposures.

Mutual Insurance
Rating Bureau

Bob Hunter

# AUTOMOBILE LIABILITY INSURANCE

## PRIVATE PASSENGER CARS

Average Rates for $10,000/20,000 Bodily Injury and $5,000 Property Damages Coverages Combined

| State | Present Average | January 1, 1957 Average | January 1, 1947 Average |
|---|---|---|---|
| Alabama | $ 59.22 | $ 38.91 | $ 37.98 |
| Arizona | 74.37 | 47.78 | 29.26 |
| Arkansas | 65.13 | 35.86 | 32.08 |
| Colorado | 54.88 | 29.96 | 25.60 |
| Connecticut | 90.66 | 73.54 | 43.59 |
| Delaware | 52.13 | 33.81 | 24.39 |
| Dist. of Col. | 108.43 | 54.21 | 33.52 |
| Florida | 59.12 | 39.93 | 24.95 |
| Georgia | 55.34 | 43.81 | 31.83 |
| Illinois | 107.39 | 55.48 | 38.98 |
| Indiana | 71.97 | 36.72 | 24.84 |
| Iowa | 59.97 | 30.20 | 19.45 |
| Kansas | 54.80 | 32.69 | 20.48 |
| Kentucky | 72.26 | 45.46 | 32.30 |
| Louisiana | 80.65 | 43.54 | 27.98 |
| Maine | 58.03 | 45.01 | 28.98 |
| Maryland | 86.59 | 56.49 | 32.76 |
| Michigan | 80.29 | 37.09 | 20.56 |
| Minnesota | 94.28 | 53.27 | 37.42 |
| Mississippi | 73.29 | 43.67 | 31.02 |
| Nebraska | 58.31 | 28.95 | 25.67 |
| Nevada | 85.06 | 44.64 | 28.37 |
| New Hampshire | 83.66 | 54.23 | 43.31 |
| New Jersey | 95.71 | 58.93 | 44.12 |
| New Mexico | 56.14 | 27.74 | 21.80 |
| New York | 123.59 | 96.53 | 57.55 |
| North Carolina | 62.84 | 34.63 | 33.41 |
| North Dakota | 43.60 | 22.74 | 25.57 |
| Ohio | 87.88 | 48.98 | 79.08 |
| Oklahoma | 67.24 | 41.23 | 34.22 |
| Oregon | 84.25 | 43.55 | 26.93 |
| Pennsylvania | 75.03 | 50.18 | 32.24 |
| Rhode Island | 97.07 | 46.03 | 28.17 |
| South Carolina | 72.34 | 38.67 | 33.00 |
| South Dakota | 37.88 | 21.60 | 17.83 |
| Tennessee | 76.01 | 53.36 | 32.41 |
| Texas | 65.87 | 28.95 | 25.76 |
| Utah | 69.44 | 39.20 | 25.08 |
| Vermont | 83.07 | 48.00 | 29.63 |
| Virginia | 64.62 | 36.26 | 29.40 |
| Washington | 78.28 | 40.73 | 27.23 |
| West Virginia | 78.07 | 49.91 | 34.90 |
| Wisconsin | 85.34 | 52.32 | 34.38 |
| Wyoming | 40.57 | 27.24 | 25.33 |
| Countrywide | 84.03 | 53.54 | 38.03 |

84.03
53.54
30.49

53.54 | 3014900 | .58
26770
32208
32147

# A Realistic Look at Auto Insurance Costs

Today's policyholder spends less of his income for basic coverages than he did 20 years ago.

AS EVERY CAR OWNER KNOWS, it takes more dollars to pay for auto insurance today than it did, say, 20 years ago. The same is true of most other products and services.

But in terms of consumer purchasing power, basic auto liability insurance is a better value than it was in 1947. The typical policyholder is able to pay for his coverages with fewer hours of work, and with a smaller percentage of his family income, than were required to pay for the same coverages 20 years ago.

For example, the typical U.S. factory production worker had to put in 30.9 hours of work to earn the annual premium for $10,000/$20,000/$5,000 auto liability coverages in 1947, when wages averaged $1.23 an hour and the average cost of insurance was $38.03 a year.

In 1967, the typical production worker put in only 29.7 hours of work to pay for the same coverage. The average insurance premium for these basic coverages had risen to $84.03, up 121 per cent in the 20-year period. But average hourly wages had risen to $2.83, up 130.1 per cent, in the same period.

The improvement is even greater when the comparison is based on median family income, perhaps the best single yardstick of consumer affluence. In 1947, when median family income was $2,854, the typical American family spent 1.33 per cent of its annual income to buy basic auto liability coverages with limits of $10,000 per person, and $20,000 per accident, for bodily injuries, plus $5,000 for property damage.

By 1967, when median family income was $7,400, the portion of annual income spent for basic auto insurance coverages had dropped to 1.14 per cent.

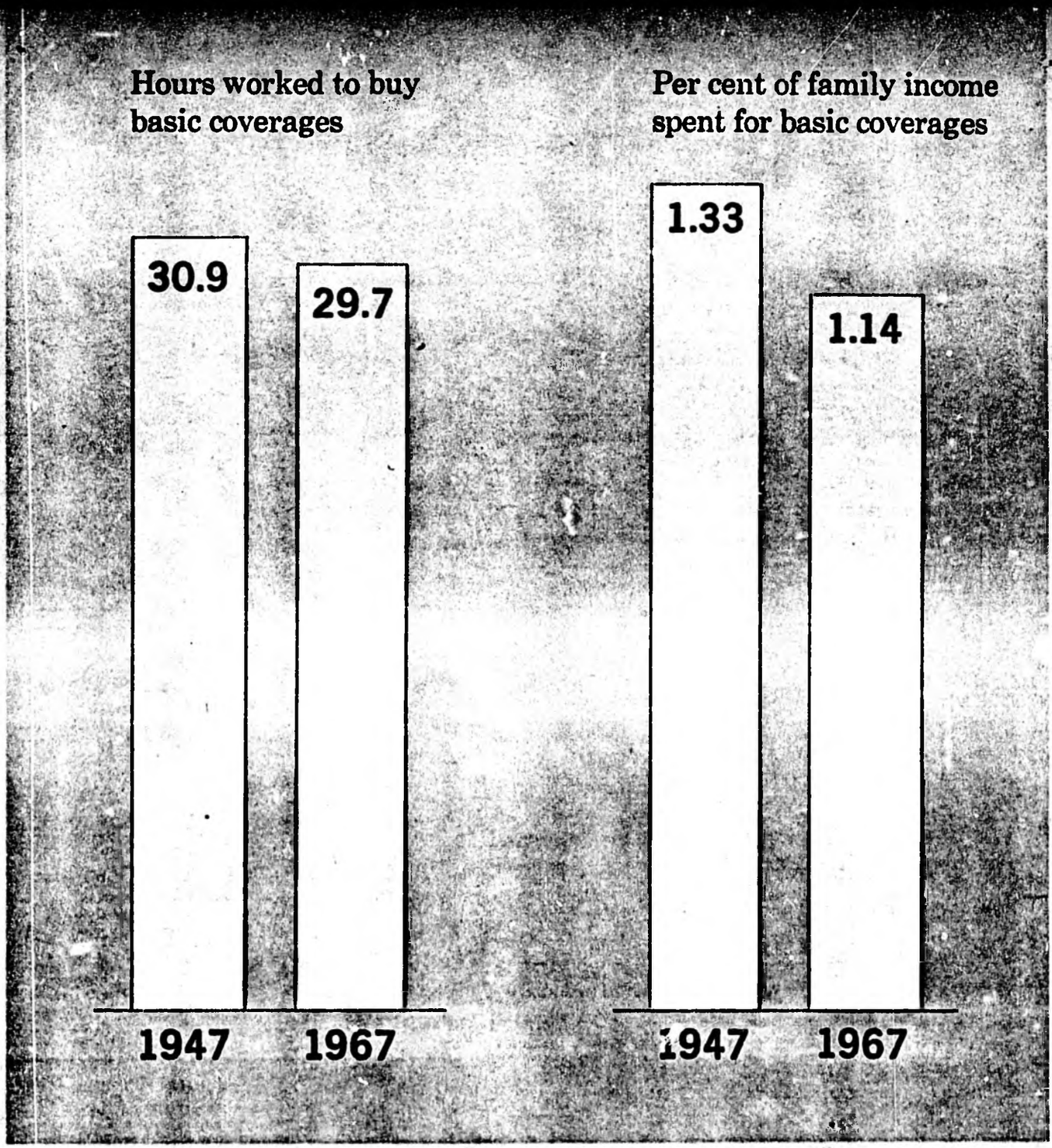
All of these comparisons are based on country-wide averages for private passenger vehicles and Class 1-A drivers. This means the policyholder is an adult who has no under-25 drivers in the family and who does not use his car for business or commuting. About 38 per cent of auto policyholders fit into this rating category. The premium paid by this group is the "base rate" from which all other rates are computed. Another 38 per cent is comprised of adults who drive to work 10 miles or less. They pay the base rate in nonurban areas and about 10 per cent more than the base rate if they live in urban areas.

All other rating categories account for the remaining 24 per cent of policyholders. This group includes young drivers who pay varying surcharges depending on their age, sex and marital status. It also includes low-risk groups such as farmers, who pay about 30 per cent less than Class 1-A rates. In other words, relatively few drivers pay the high rates frequently cited in articles deploring the rising cost of auto insurance.

No doubt these facts run counter to the general impression many persons have about what's happening to the cost of auto insurance. This is especially true of those who look solely at the total bill they pay, without considering what they are receiving for the expenditure.

For example, many families purchase more coverages today than they did 20 years ago. Instead of buying $10,000 auto liability limits, they buy policies with limits of $50,000 or higher to protect their improved financial standing. Higher limits also are purchased to provide better protection to persons who may be injured by the policyholder's negligence, and in recognition of the fact that claims and lawsuits run higher today.

In addition, car owners now buy more optional




*Sources: Mutual Insurance Rating Bureau and U.S. Bureau of Labor Statistics*

coverages to pay for collisions, theft, damage done by vandalism and storms, medical expenses, towing charges, and injuries caused by uninsured motorists.

A third major reason why many families spend more for auto insurance today is the trend toward ownership of two or more cars. Even though policyholders receive a special discount when they insure two or more vehicles under the same policy, the total bill naturally is higher than when the family owned a single vehicle. The increase is greatest when the second car is purchased for use by a young driver, since young drivers as a group cause substantially more accidents and insurance losses than their more experienced and more cautious elders.

In short, people who judge the cost of auto insurance solely by the number of dollars they pay are not always using a valid yardstick. Most families today are much more adequately insured than they were 20 years ago, and are receiving good value for their insurance expenditures. ⊙

*Reprinted from Journal of American Insurance*
AMERICAN MUTUAL INSURANCE ALLIANCE
20 North Wacker Drive
Chicago, Illinois 60606

# ACCIDENT DATA

Compiled By
DEPARTMENT OF PUBLIC SAFETY



| | TOTAL INJ. | TOTAL ACC. | PROP. DAMAGES | INSURANCE COVERAGE YES | NO | UNCERTAIN (not req.) | % UNINSURED |
|---|---|---|---|---|---|---|---|
| 1968 | 1856 | 8056 | 3,971,721 | 9962 | 1090 | 3559 | 9.9 |
| 1967 | 1842 | 7744 | 3,943,083 | 10,567 | 1154 | 2490 | 9.9 |
| 1966 | 1862 | 7470 | 3,331,623 | 9092 | 952 | 2390 | 9.5 |
| 1965 | 1801 | 7343 | 3,285,821 | 9730 | 838 | 2048 | 7.9 |
| 1964 | 1687 | 7028 | 2,864,013 | 9350 | 565 | 2130 | 5.7 |
| 1963 | 1479 | UNKN | 2,375,353 | 5149 | 553 | 781 | 9.4 |

It should be noted that the above percentages apply only to persons involved in accidents reportable under present law.

It has been proven by research that the more "responsible" driver has fewer accidents than his counterpart who is classed as "irresponsible" by society. In other words, the uninsured rate taken from accident reports will be much higher than would appear if an entire cross section of drivers was studied.

# Alaska Association of Insurance Agents, Inc.

SEND REPLY TO:

P. O. Box 1313
Juneau, Alaska 99801

April 9, 1969

Honorable Barry Jackson
Chairman Judiciary Committee
State House of Representatives
Capitol Building
Juneau, Alaska 99801

Dear Chairman Jackson:

The Alaska Association of Insurance Agents is extremely interested in appearing before your Committee when House Bill #309 is up for discussion. The Association is very much against this bill and we wish to have the opportunity to present the facts to you and to your Committee for deliberation.

I will be available to discuss this bill and all of its ramifications with you at your convenience.

Our best regards.

Very truly yours,

Ross P. Duncan
Executive Secretary

RPD:lk

cc: N. E. Segelhorst

Susan note

LAW OFFICES OF
FAULKNER, BANFIELD, BOOCHEVER & DOOGAN
ROOM 201, 311 FRANKLIN STREET
JUNEAU, ALASKA 99801
TEL. 586-2210
AREA CODE 907

HERBERT L. FAULKNER
NORMAN C. BANFIELD
ROBERT BOOCHEVER
FRANK M. DOOGAN
DONALD L. CRADDICK
AVRUM M. GROSS
MICHAEL M. HOLMES

April 1, 1969

The Honorable Barry W. Jackson
Chairman, Judiciary Committee
House of Representatives
State of Alaska
Juneau, Alaska 99801

Re: H. B. No. 309 - Compulsory Vehicle Insurance

Dear Mr. Jackson:

House Bill No. 309 is being reported out of the House Commerce Committee and goes to your committee next.

At a hearing on this bill before the Commerce Committee, Mr. F. O. Eastaugh, the Director of Insurance and I opposed the bill. I represented American Mutual Insurance Alliance, the Director was requested to testify and Mr. Eastaugh represented American Insurance Assocation.

This is a very important bill and although the Alliance is not opposed to the concept of compulsory insurance, because of the experience of other states in its administration, together with the effect it will have on insurance rates and the difficulties of enforcement in Alaska we cannot recommend this bill to the State of Alaska. I have a considerable amount of information regarding this type of statute and would appreciate being given the opportunity of appearing. Please notify me when your committee will consider the bill. I also suggest that you request the Director of Insurance to be present.

Yours very truly,

N. C. Banfield

N. C. Banfield

NCB:db

cc: Chas. A. Brown
C. Clarke Imbler

HB 336

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MICHAEL M. HOLMES

January 28, 1970

The Honorable Barry W. Jackson
Chairman, House Judiciary Committee
House of Representatives
Juneau, Alaska

Re: House Bill No. 336
Comparative Negligence

Dear Mr. Chairman:

As legislative agent for American Mutual Insurance Alliance I wish to state the position of the Alliance on House Bill No. 336. I will be attending a hearing on House Bill No. 202 (the Public Utility bill) and I may not be able to get away to attend your hearing on House Bill No. 336. Therefore, I would like to have this letter read to the Judiciary Committee.

The Alliance neither opposes or supports the substitution of comparative negligence for the contributory negligence doctrine. However, if the comparative negligence doctrine is adopted, then we want to see it done in the most complete and practical manner. Enclosed is a copy of a Model Comparative Negligence Bill which we believe is the most practical and acceptable of the comparative negligence statutes now being used. The provisions of HB 336 are all contained in Section 1 of the Model Bill except for some change in language to make the paragraph more positive in some respects. It also eliminates some unnecessary wording and makes it very clear that no recovery shall be allowed against a person whose negligence is less than that of the person seeking recovery. To state it another way - the negligence of the plaintiff must be less than that of the defendant. Section 1 of the Model Bill also provides for the same principles to apply where a counterclaim is made by a defendant, whereas HB 336 does not specifically mention counterclaims although they probably come within the purview of HB 336.

We are particularly anxious to have the provisions of the Model Bill with respect to special verdicts. It also provides that the court will compute the amount of the judgment. In other words, the special verdicts would determine the amount of the damages and the percentage of negligence of each party and then, the Judge would compute the damages and enter judgment accordingly.

Section 3 of the Model Bill is necessary with respect to joinder of defendants.

Section 4 of the Model Bill limits the actions to those arising out of ownership, maintenance or use of motor vehicles and limits the effect of the Act to causes of action arising prior to the effective date.

We particularly wish to call yourattention to the fact that HB 336 states that contributory negligence "may" not bar recovery. The word "may" should be changed to the word "shall".

The Wisconsin statute is almost identical to HB 336 but contains no reference to the jury or the court without a jury determining the damages as such reference is unnecessary and we think it is advisable that the damages awarded be computed by the Judge after the jury determines the proportion of negligence attributed to each on a comparative basis and the total amount to be awarded.

Yours very truly,

N. C. Banfield

NCB:db

cc: Chas. A. Brown
C. Clarke Imbler

# MODEL COMPARATIVE NEGLIGENCE BILL

An Act to amend the Code of Civil Procedure to adopt a comparative negligence law and to provide for special interrogatories and joinder of parties defendant in automobile tort cases.

Section 1. Comparative negligence. Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence is less than the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished to the amount represented by the percentage by which the negligence of each of the defendants exceeds that of the person seeking recovery, provided that no recovery shall be allowed against any defendant whose negligence is less than that of the person seeking recovery. In the event of a counterclaim by a defendant this section shall apply to the same extent as if the defendant were the party initially seeking recovery.

Section 2. Special Verdicts. The court may, and when requested by either party, before the introduction of any testimony in his behalf, shall direct the jury to find a special verdict. Such verdict shall be prepared by the court in the form of written questions, relating only to material issues of fact and admitting a direct answer, to which the jury shall make answer in writing. The court may also direct the jury, if they render a general verdict, to find upon particular questions of fact.

The court shall make the computation as to the amount of judgment. The jury shall not be informed as to the effect of its findings.

Section 3. Joinder of Defendants. Any party to the action may join as additional defendants any person against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, or whom it is necessary to make a party defendant for the complete determination of settlement of any question in the controversy. Judgment may be given according to the party's respective liabilities.

Section 4. This Act shall apply only to actions arising out of the ownership, maintenance or use of motor vehicles. This Act shall not be construed to extend or apply to causes of action arising prior to the effective date of this Act.

Section 5. This Act shall take effect _____.

6/26/58

# Comparative Negligence: Wisconsin's Answer

by C. R. Heft and C. J. Heft

**Wisconsin uses the doctrine of comparative negligence, under which the defendant, if he is guilty of the greater negligence, pays the plaintiff an award which is diminished by a percentage equivalent to the percentage of the plaintiff's negligence. "No-fault" compensation schemes have been suggested as an alternative to automobile accident tort suits, but why experiment with an untried scheme that dispenses with the adversary system when the Wisconsin doctrine is successfully meeting the test of time?**

TODAY THE DOCTRINE of contributory negligence is under severe criticism, the critics contending that many victims of accidents are either not compensated at all or are not adequately compensated. With regard to automobile accident reparations, the well-publicized no-fault compensation schemes have been put forth as an alternative. For example, Professors Robert E. Keeton and Jeffrey O'Connell have proposed a basic protection plan for traffic victims under which every injured person would be compensated for out-of-pocket losses up to $10,000.[1]

The State of Wisconsin, however, has adopted a doctrine of comparative negligence, and this doctrine lies, geographically, between the no-fault automobile compensation schemes and old-fashioned contributory negligence. But it is not a compromise.

Wisconsin law provides for payment to the plaintiff whenever the defendant is guilty of the greater negligence. Since charitable, governmental, husband-wife, host-guest and parent-child immunities have been eliminated in Wisconsin, more plaintiffs recover, but because the percentage of causal negligence attributed to the plaintiff reduces the award in that amount, they recover less. Wisconsin, then, has put an end to the problems of contributory negligence. And the collateral problems of delays in payment, cost of delivering insurance benefits, elusive insurance coverages and even congestion in the courts do not exist. Why? Because the state's philosophy that a person is, and should be, responsible for injury to another to the extent he caused that injury is honest, fair, just and easy to understand and apply.

The historical origin of contributory negligence in itself explains the doctrine's inadequacy—its inability to meet current social and economic demands and to adapt to change and growth. The doctrine arose during the horseriding days of the seventeenth century. The classic case is *Butterfield* v. *Forrester*, 103 Eng. Rep. 926 (K.B. 1809), in which a horseman was thrown because of an obstruction which it was held he should have seen and avoided. In other words, society was satisfied with the theory that the greater duty was that of the individual to avoid injury to himself. Such being the case, it was further reasoned that a person who was himself at fault was not justified in seeking recovery from others.

What has happened to this reasoning today? On a world-wide basis the doctrine of comparative negligence generally is accepted and is more widespread than that of contributory negligence. The research of Chief Justice E. Harold Hallows of the Wisconsin Supreme Court discloses evidence of comparative negligence in the 1794 Prussian Code, in the 1804 Code of Napoleon, in the 1811 Austrian Civil Code, in 1867 in Portugal, in 1881 in Switzerland and in 1896 in Germany. And despite the fact that English admiralty law goes back to the seventeenth century and contributory negligence days, damages in ship collision cases were divided equally. The Brussels Maritime Convention in 1909 adopted pure comparative negligence in the admiralty cases, and this rule is applied by all the major nations in the world. Other countries which have adopted the apportionment rule are China, Japan, Russia, Persia, Poland, the Philippine Islands and Canadian provinces. Even England, the country that

1. KEETON & O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM—A BLUEPRINT FOR REFORMING AUTOMOBILE INSURANCE (1965).

originated the doctrine of contributory negligence, abolished it by the English Reform Act of 1945.

Logically, what happens when contributory negligence stubbornly persists and many injured persons are deprived of a remedy? Thirty states have adopted railway employer's liability acts, workmen's compensation acts or similar laws liberalizing certain areas of recovery beyond contributory negligence. The Federal Employers' Liability Act and the Merchant Marine Act are examples of the substitution of comparative negligence for contributory negligence. Seven states have adopted the apportionment doctrine.

Wisconsin torts law has evolved toward a pure form of comparative negligence over the years and has opened the state's forums to many injured persons who had no legal remedy or even a theoretical cause of action before. Wisconsin has abolished implied assumption of risk and gross negligence, and these areas are included as ordinary negligence in the comparison or apportionment. It has abolished religious, charitable, governmental and parent-child immunities. A host owes his guest the duty of ordinary care, and the state does not impute negligence to the guest. The basic philosophy is that tortfeasors ought to be liable to the extent they have injured or damaged others. The wrongdoer should pay for the damages caused by his wrong. Wisconsin believes that the adversary system is the surest method of determining the truth and that the system should not be so limited by rules of law that justice cannot be done. On the other hand, a plaintiff who is himself a tortfeasor should not profit from his own wrong.

**Suggested Comparisons of Negligence Between Drivers in Ordinary Cases**

| | *Defendant* | *Plaintiff* |
|---|---|---|
| *Rear End* | 100% | |
| *Intersection* | | |
| Uncontrolled | 60% | 40% |
| Stop Sign | 85% | 15% |
| Signal Light | 90% | 10% |
| *Left Turn* | | |
| Oncoming | 80% | 20% |
| *Failure to Yield* | 70% | 30% |
| *Improper Passing* | 75% | 25% |
| *Wrong Side of Road* | 90% | 10% |
| *Improper Turn* | 80% | 20% |

## How Does Apportionment Work?

Section 895.045 of Wisconsin Statutes, "Contributory Negligence; When Bars Recovery", provides:

> Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death, or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributable to the person recovering.

Originally, the jury was instructed to diminish the damages in proportion to the amount of negligence attributable to the recovering party. In 1949, however, the statute was amended so that now the jury finds the facts, finds the percentage of negligence attributable to each party, compares the negligence and finds the damages sustained by the plaintiff without regard to the comparison. Then the court does the mathematics and applies the percentages of negligence to the amount specified in the damage question, reduces the recovery and orders judgment.

A few examples will suffice to illustrate how comparative negligence is applied. Assume that in each example the total damage suffered by the plaintiff is $10,000 and the causal negligence of each party is the percentage set forth.

*Example 1:* Plaintiff—40 per cent. Defendant—60 per cent. Plaintiff recovers $6,000. His damages of $10,000 are reduced by 40 per cent or the amount of his causal negligence.

*Example 2:* Plaintiff—60 per cent. Defendant—40 per cent. No recovery by the plaintiff.

*Example 3:* Plaintiff—50 per cent. Defendant—50 per cent. No recovery. The Wisconsin law is stated in terms of greater negligence, so equal negligence does not permit recovery.

Assume damages are $10,000 and the plaintiff guest sues both defendant drivers of the vehicles that were in the accident. The percentage of causal negligence are as stated.

*Example 4:* Plaintiff—40 per cent. Defendant driver A—10 per cent. Defendant driver B—50 per cent. As between the plaintiff (40 per cent) and defendant A (10 per cent), the plaintiff collects nothing from defendant. A. As between the plaintiff (40 per cent) and defendant B (50 per cent), the plaintiff recovers $6,000. A joint tortfeasor is liable for the entire amount of the plaintiff's recovery. The plaintiff's negligence is not compared to that of all defendants as a whole, but only to that of each defendant individually.

*Example 5:* Assume the plaintiff and defendant A and defendant B are all equally negligent. No recovery.

*Example 6:* Assume the plaintiff is 10 per cent negligent, defendant A 50 per cent negligent and defendant B 40 per cent negligent. Plaintiff recovers $9,000 or 10 per cent less than the total damages of $10,000. As between the defendants, defendant A contributes $5,000 and defendant B $4,000 for a total of $9,000. The plaintiff can recover the total amount from either tortfeasor, and as between the tortfeasors there is contribution in the percentages and amounts just stated.[2]

The comparative negligence concept tends to prompt an accurate investigation in order to determine the percent-

2. *Walker* v. *Kroger Grocery & Baking Company*, 214 Wis. 519, 252 N.W. 721 (1934); *Schweun* v. *Laraine Hotel Company*, 14 Wis. 2d 601, 111 N.W. 2d 495 (1961); *Reber* v. *Hanson*, 260 Wis. 632, 51 N.W. 2d 505 (1952).

ages of fault for apportionment. This preparation results in a greater number of settlements. The adjacent table illustrates suggested prorations in typical automobile accident cases. The unusual case is treated on its own merits. The first hypothetical case is the rear-end collision. In this table the defendant is deemed negligent in the greater degree, and the negligence of the plaintiff is the lesser percentage which represents the percentage used in diminishing plaintiff's recovery.

## Special Verdict Procedure

The special verdict is a statutory procedure, § 270.27 Wis. Stat., and is a necessary corollary to comparative negligence. An example follows:

*Question No. 1:* Immediately prior to the accident, was the defendant negligent in any of the following respects:

(a) As to speed?
Answer: _____

(b) As to lookout?
Answer: _____

*Question No. 2:* If you have answered any subdivision of Question No. 1 "yes", then answer the corresponding subdivision of this question:

Was such negligence a cause of the collision in any of the following respects:

(a) As to speed?
Answer: _____

(b) As to lookout?
Answer: _____

*Question No. 3:* Immediately prior to the accident, was the plaintiff negligent in any of the following respects:

(a) As to lookout?
Answer: _____

(b) As to failing to yield the right of way?
Answer: _____

*Question No. 4:* If you have answered any subdivision of Question No. 3 "yes", then answer the corresponding subdivision of this question:

Was such negligence a cause of the collision in any of the following respects:

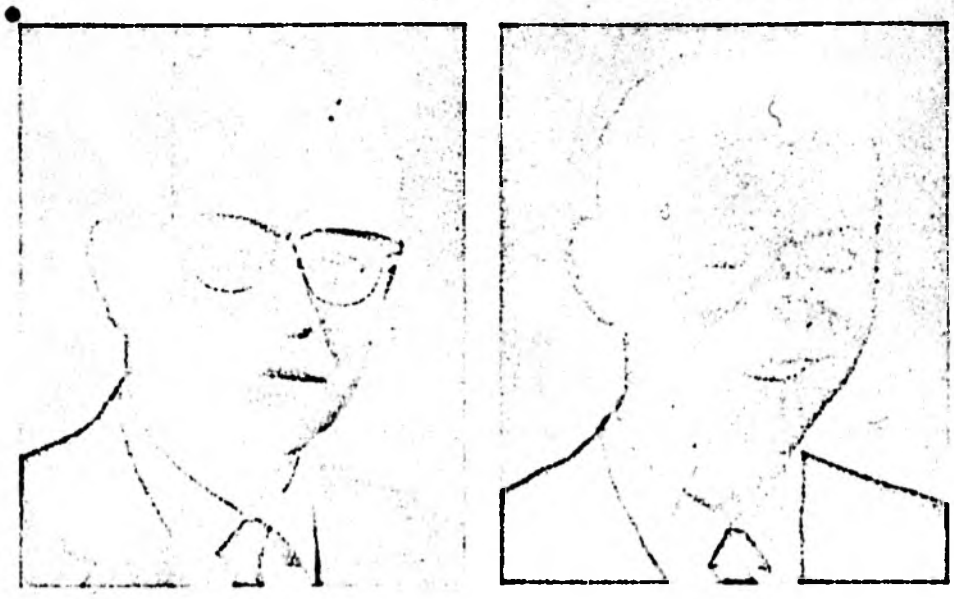
(a) As to lookout?
Answer: _____

(b) As to failing to yield the right of way?
Answer: _____

*Question No. 5:* If you have answered any subdivisions of Questions Nos. 2 and 4 "yes", then answer this question:

Taking the combined negligence that caused the accident as 100 per cent, what percentage of that negligence was attributable to:

Defendant _____%
Plaintiff _____%
Total 100%



Carroll R. Heft (left) of the Wisconsin Bar has been actively engaged in trial work since 1925. He is a graduate of Lawrence College (B.A. 1920) and the University of Wisconsin School of Law (J. D. 1923). He has served as president of the Federation of Insurance Counsel (1961-1962) and chairman of the Negligence Section of the State Bar of Wisconsin, and he is, at present, a member of the American Bar Association's House of Delegates. Charles James Heft (right) has been active in trial work in Wisconsin for the past ten years. He holds B.B.A. (1956) and LL.B. (1958) degrees from the University of Wisconsin. He is a member of the Association of Insurance Attorneys, the Federation of Insurance Counsel and the International Association of Insurance Counsel. The authors are members of a law firm in Racine.

*Question No. 6:* What sum of money would reasonably compensate the plaintiff for:

(a) Medical expenses for injuries resulting from the accident: $_____

(b) Wage loss sustained from the injuries resulting from the accident: $_____

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| Dissenting Jurors: (name of jurors) | Number of Question to Which Juror Dissents: |
|---|---|
| _____ | _____ |
| _____ | _____ |

Dated this _____ day of _____, A. D., 19__.

_____
Foreman or Forelady

## Contribution — or Spreading the Burden

Contribution is an important part of comparative negligence. Wisconsin has always had common law contribution. As between tortfeasors common law contribution meant that all tortfeasors contributed equally. "The pot should not call the kettle black."

In Wisconsin, the anomaly was that we had a comparative negligence statute, and we had common law contribution. When the plaintiff guest sued drivers A and B, and driver A was found 95 per cent negligent and driver B 5 per cent negligent, it was illogical to say that drivers A and B should share the award to the plaintiff on a fifty-fifty basis.

This very case finally came to the Wisconsin Supreme Court. It was a left-turn case. The plaintiff, Mrs. Bielski, was a guest passenger in her husband's car. Two cars were approaching each other. When the Bielski car was seventy to eighty feet from the intersection, the defendant, Schulze, made a left turn across the pathway of the Bielski vehicle. The jury found the left turning vehicle 95 per cent negligent and the Bielski vehicle 5 per cent negligent. The total award was $25,000. Under the rule then existing, contribution required the Bielski carrier to pay $12,500, although its assured was

only 5 per cent negligent. The case went to the supreme court. Chief Justice Hallows wrote the opinion.

The court pointed out that Wisconsin was unique in possessing devices of procedure and practice which made a new rule realistically just. The use of the special verdict, the joining of automobile insurance carriers, the pleadings permitting contribution, the fixing of a percentage of the plaintiff's contributory negligence, constituted a procedure in which it was possible to do equity and natural justice.

So Chief Justice Hallows held in that opinion that henceforth contribution would be determined in proportion to the percentages of causal negligence attributed to each in the comparison question. Consequently Bielski, driver A, who was 5 per cent negligent, would pay 5 per cent of the jury award, and in addition thereto, he would pay only 5 per cent of the contribution as between the drivers themselves. In other words, Bielski's automobile liability carrier paid 5 per cent of $25,000 or $1,250 and not 50 per cent of $25,000, $12,500, as under old common law contribution. Of course, Schulze, driver B, would pay 95 per cent of the award to the plaintiff and 95 per cent of the total sum due in contribution as between the drivers.

This decision, *Bielski* v. *Schulze*, 16 Wis. 2d 1, 102 N.W. 2d 393 (1960), is one of the greatest decisions in Wisconsin jurisprudence. It recognizes the need for change and accomplishes it.

## Damages—the New Rule

As a part of the Wisconsin concept, a very practical trial technique was evolved in *Powers* v. *Allstate Insurance Company*, 10 Wis. 2d 78, 102 N.W. 2d 393 (1960). Prior to the *Powers* case, it had been customary in cases of excessive awards to fix the lowest amount that an unprejudiced jury, properly instructed, might award for damages and then to grant the plaintiff the opportunity of accepting that amount or having a new trial. But there was an alternative.

First of all, the right to the trial by jury had to be preserved because it is a constitutional right, and it existed prior to the time of the adoption of the Wisconsin Constitution in 1848. The power of courts to set aside excessive verdicts and to grant new trials was firmly established even before the adoption of the United States Constitution.

In the *Powers* case the court adopted a rule which again illustrates the justice of Wisconsin's comparative negligence doctrine. The new rule is that when an excessive verdict is not due to perversity or prejudice and is not the result of error occurring during the course of trial, the plaintiff should be granted the option of remitting the excess over and above such sum as the court determines as the reasonable amount of plaintiff's damages or of having a new trial on the issue of damages. In the *Powers* case, the award of $5,000 for permanent injury was deemed excessive in light of the evidence and that sum was reduced to $3,000.

In *Spleas* v. *Milwaukee Transport Company*, 21 Wis. 2d 635, 124 N.W. 2d 593 (1963), this technique was again applied. An award of $15,000 to a 64-year-old maintenance man who suffered a back injury was deemed excessive, and a fair appraisal of the nature and seriousness of the injuries permitted an award of $10,000, which was deemed reasonable and which included pain and suffering.

Space does not permit further elaboration as to the results of the application of this doctrine, but some awards have been increased and some excessive awards have been diminished. However, the real point is that Wisconsin's treatment of excessive awards permits greater supervision over the awards of juries. There is, of course, the right to grant a new trial in the event of prejudice or error, but Wisconsin does not indulge in permitting the creation of an excessive jury award by flamboyant means and then permitting the award to stick. Justice requires supervision over jury verdicts. The judicial system permits the jury to find the facts, but within the guidelines pronounced by law, and when those guidelines are exceeded, court supervision is required.

Many who practice in the contributory negligence states contend that juries practice comparative negligence by awarding a negligent plaintiff less in damages. This is contrary to the theory of contributory negligence. Is it not better for a jury to find the percentages of causal negligence attributable to each party and make that finding known? Is it not better for a jury to find the total damages and make that amount known? Is it fair to ask a jury to be so sophisticated and learned that the jurors will wink at the court's instructions on contributory negligence, make a comparison regardless of the instructions and reduce the plaintiff's award accordingly? Is it even honest?

Why not have the jury find the percentages of causal negligence and find the damages? Then the court, knowing the percentages, can reduce the award by those percentages, and one knows the correct result is reached. Is this not the better procedure?

The Wisconsin plan was born in 1931 and has grown from infancy to manhood. This experience is available for study and adoption. Why should any state experiment with "no-fault" administrative schemes which have not been tried or tested? Why should we depart from our well-grounded concept of the adversary system in the open courtroom? Departure could even be dangerous—the beginning of the end of certain cherished rights.

## Summary of the Wisconsin Plan

Wisconsin has, and we recommend, the following:

(1) The Wisconsin comparative negligence doctrine that permits recovery against one who is guilty of the greater negligence;

(2) The elimination of assumption of risk;

(3) The elimination of gross negligence;

(4) The elimination of governmental immunity;

(5) The elimination of charitable immunity;

(6) The elimination of parental immunity;

(7) The concept that a host owes the guest a duty of ordinary care;

(8) A financial responsibility law which keeps off the highways those who cannot pay for the economic loss they cause;

(9) An application of the special verdict technique which leaves the jury to find the facts and the court to do the mathematics and render judgment.

We further recommend Wisconsin's practices with regard to contribution, covenants not to sue, releases and court supervision over verdicts.

The authors of this article have a combined experience of approximately fifty years practicing under both contributory negligence and comparative negligence. The above conclusions are tempered with that experience. We believe the comparative negligence concept superior both prior to and during litigation. Investigation and preparation must be prompt and skillful in the search not only for liability, but also for the apportionment of the negligence causing the occurrence. The injured party can never complain that he is without a forum, even if the tortfeasor be the government, a hospital, a husband, a parent or a host. The climate is one of openness and is conducive to settlements. If litigation must be, the trial procedure is conducive to a just result without prejudice, guesswork, confusion or mystery.

We have often said the Wisconsin plan permits one to say what he believes and to believe in what he says.

## Calendar of Association Meetings

### Annual

| | |
|---|---|
| Dallas, Texas | August 11-15, 1969 |
| (See complete information and registration form on page 1121 of the November, 1968, issue.) | |
| St. Louis, Missouri | August 10-14, 1970 |
| New York, New York | July 1-10, 1971 |
| and London, England* | July 14-22, 1971 |
| San Francisco, California | August 4-11, 1972 |
| Washington, D. C. | August 3-10, 1973 |

### Spring, 1969

| | |
|---|---|
| Washington, D. C. | May 21-24, 1969 |
| (Budget Committee, May 21-22; Administration Committee, May 22; Board of Governors, May 23-24.) | |

### Fall, 1969

| | |
|---|---|
| Chicago, Illinois | October 15-18, 1969 |
| (Budget and Administration Committee, October 15, 1969; Board of Governors, October 16-17, 1969; Section Officers Conference, October 18, 1969.) | |

### Midyear

| | |
|---|---|
| Atlanta, Georgia | February 18-24, 1970 |
| Chicago, Illinois | February 4-9, 1971 |
| New Orleans, Louisiana | February 3-8, 1972 |
| Chicago, Illinois | February 15-20, 1973 |
| Houston, Texas | February 1-5, 1974 |

* — The Board of Governors has adopted the following priority rule because of the possibility that more members will desire to attend the 1971 Annual Meeting in London than can be accommodated in the available hotel space:

"Registration priority for the portion of the 1971 Annual Meeting to be held in London, England, shall be given to Association members who are members of the House of Delegates, Councils of Sections of the Association, Standing and Special Committees of the Association, and to members who shall have attended either three of the five annual meetings held between 1966 and 1970 or two of the three annual meetings held between 1968 and 1970."

WENDELL P. KAY
LESTER W. MILLER, JR.
ROBERT M. LIBBEY
REGINALD J. CHRISTIE, JR.
WILLIAM H. FULD
MILTON M. SOUTER

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ANCHORAGE, ALASKA 99501

TELEPHONE
272-7471

January 27, 1970

Mr. Wendell P. Kay
House of Representatives
Juneau, Alaska

Dear Wendell:

You have asked our comments on pending legislation which will affect the parties involved in personal injury litigation. The uniform contribution among tort feasors act would, in my opinion, clarify existing law. Recent decisions of the Supreme Court are in line with the provisions of this act and I believe it is fair to all parties involved in a tort claim.

You have also asked our comments on the comparative negligence statute which is presently before the Judiciary Committee. Unfortunately, the relatively short notice makes it impossible for any of us to be present to testify. I hope you will make the following comments known to the committee.

First, let us point out that the comparative negligence statute should accomplish two major goals. It would eliminate the often unjust and harsh result of an injured person being denied any compensation because he was slightly negligent as compared to the greater negligence of the act of tort feasor. All of the commentators agree that the rule of contributory negligence is a harsh rule which grew up during the industrial revolution to protect capital short industry from having to pay for the injuries inflicted upon its victims. The rule of contributory negligence as an absolute bar to recovery has no place in today's society where the potential tort feasor can easily protect himself.

Perhaps more important, many cases would not go to Court and once in Court would be settled if the adjustor and the defense attorney knew that contributory negligence would not be an absolute defense but would merely reduce the damages. In a majority of cases the hardest issue to evaluate is whether the slight negligence of the claimant should or will result in no liability for the potential defendant. I predict that if we were to adopt a rule of comparative negligence such as Wisconsin, we would be taking a step to eliminate or at least reduce Court congestion.

A rule of comparative negligence would apply to all claims arising out of negligence. It would not deny any person compensation for injuries but would merely reduce compensation by the amount of their contributory

negligence. Comparative negligence is the rule followed in Admiralty and in an increasing number of States.

Although contributory negligence as an absolute bar was a doctrine developed by the Courts, the Courts have shown a great reluctance to abolish the rule and adopt comparative negligence. Therefore, it would seem appropriate for the Legislature to enact this legislation.

I have read quite a few articles on the subject in law journals and law school publications and I don't recall ever reading any article critical of comparative negligence. Most of the commentators find contributory negligence an historical anachronism which should be abolished. In terms of a just result and in terms of financial benefit to the community and the Court system, I think we could predict a slow but sure return.

The adoption of a comparative negligence statute would be a small step in law reform. It would not be a disruptive step since the students of the subject point out that juries in fact often follow the rule of comparative negligence in reaching their result. But we should seek to eliminate a situation where jurors feel compelled to disregard the law. We should certainly eliminate the situation where a drunk driver going through a red light can escape liability because the person going through the green light didn't look to the left or right.

I hope you receive favorable testimony on this bill. I really can't foresee any reasonable opposition although some insurance companies may claim it will cost insurers money. I believe an increase in any claims paid would be more than offset by the reduction in verdicts and also by greater rate of settlement, hence reduced legal and adjusting fees. I am in the process of gathering material on the subject, meanwhile.

I hope you can use this letter as my statement on the matter.

Very truly yours,

William H. Fuld

WHF:dat

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FRANK M. DOOGAN
DONALD L. CRADDICK
AVRUM M. GROSS
MICHAEL H. HOLMES

March 28, 1969

The Honorable Barry W. Jackson
Chairman, Judiciary Committee
House of Representatives
State of Alaska
Pouch V
Juneau, Alaska

Re: House Bill No. 336

Dear Mr. Jackson:

On behalf of American Mutual Insurance Alliance which I represent before the legislature, I would like to have the privilege of appearing and testifying in opposition to House Bill No. 336.

The Alliance has opposed a similar or identical bill on several occasions and we believe your committee will follow the action taken by previous sessions of the legislature when the facts on comparative negligence are presented.

I would appreciate being advised of when I may appear.

Yours very truly,

N. C. Banfield

NCB:db

Judiciary Committee Report

on

House Bill No. 316

In the present law, in the United States and in Idaho, a suit for the recovery of damages resulting from an injury is completely barred if the injured party, but in any degree negligent himself. Exceptions are developed principally in which the party defendant (the injury was seriously negligent, and the injured party was slightly negligent. Under such circumstances, the injured person would recover both.

While [illegible] a number of states are making [illegible] a more reasonable rule which would permit recovery by the injured person, but would diminish his recovery in proportion to the degree of negligence attributable to him. This is known as the doctrine of "comparative negligence" and has now been adopted by seven states. The comparative negligence rule, we feel, provides a greater degree of justice than is now afforded by the contributory negligence doctrine.

Harry W. Jackson
Chairman
House Judiciary Committee

# Comparative Negligence: Wisconsin's Answer

by C. R. Heft and C. J. Heft

**Wisconsin uses the doctrine of comparative negligence, under which the defendant, if he is guilty of the greater negligence, pays the plaintiff an award which is diminished by a percentage equivalent to the percentage of the plaintiff's negligence. "No-fault" compensation schemes have been suggested as an alternative to automobile accident tort suits, but why experiment with an untried scheme that dispenses with the adversary system when the Wisconsin doctrine is successfully meeting the test of time?**

TODAY THE DOCTRINE of contributory negligence is under severe criticism, the critics contending that many victims of accidents are either not compensated at all or are not adequately compensated. With regard to automobile accident reparations, the well-publicized no-fault compensation schemes have been put forth as an alternative. For example, Professors Robert E. Keeton and Jeffrey O'Connell have proposed a basic protection plan for traffic victims under which every injured person would be compensated for out-of-pocket losses up to $10,000.[1]

The State of Wisconsin, however, has adopted a doctrine of comparative negligence, and this doctrine lies, geographically, between the no-fault automobile compensation schemes and old-fashioned contributory negligence. But it is not a compromise.

Wisconsin law provides for payment to the plaintiff whenever the defendant is guilty of the greater negligence. Since charitable, governmental, husband-wife, host-guest and parent-child immunities have been eliminated in Wisconsin, more plaintiffs recover, but because the percentage of causal negligence attributed to the plaintiff reduces the award in that amount, they recover less. Wisconsin, then, has put an end to the problems of contributory negligence. And the collateral problems of delays in payment, cost of delivering insurance benefits, elusive insurance coverages and even congestion in the courts do not exist. Why? Because the state's philosophy that a person is, and should be, responsible for injury to another to the extent he caused that injury is honest, fair, just and easy to understand and apply.

The historical origin of contributory negligence in itself explains the doctrine's inadequacy—its inability to meet current social and economic demands and to adapt to change and growth. The doctrine arose during the horseriding days of the seventeenth century. The classic case is *Butterfield* v. *Forrester*, 103 Eng. Rep. 926 (K.B. 1809), in which a horseman was thrown because of an obstruction which it was held he should have seen and avoided. In other words, society was satisfied with the theory that the greater duty was that of the individual to avoid injury to himself. Such being the case, it was further reasoned that a person who was himself at fault was not justified in seeking recovery from others.

What has happened to this reasoning today? On a world-wide basis the doctrine of comparative negligence generally is accepted and is more widespread than that of contributory negligence. The research of Chief Justice E. Harold Hallows of the Wisconsin Supreme Court discloses evidence of comparative negligence in the 1794 Prussian Code, in the 1804 Code of Napoleon, in the 1811 Austrian Civil Code, in 1867 in Portugal, in 1881 in Switzerland and in 1896 in Germany. And despite the fact that English admiralty law goes back to the seventeenth century and contributory negligence days, damages in ship collision cases were divided equally. The Brussels Maritime Convention in 1909 adopted pure comparative negligence in the admiralty cases, and this rule is applied by all the major nations in the world. Other countries which have adopted the apportionment rule are China, Japan, Russia, Persia, Poland, the Philippine Islands and Canadian provinces. Even England, the country that

1. KEETON & O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM—A BLUEPRINT FOR REFORMING AUTOMOBILE INSURANCE (1965).

originated the doctrine of contributory negligence, abolished it by the English Reform Act of 1945.

Logically, what happens when contributory negligence stubbornly persists and many injured persons are deprived of a remedy? Thirty states have adopted railway employer's liability acts, workmen's compensation acts or similar laws liberalizing certain areas of recovery beyond contributory negligence. The Federal Employers' Liability Act and the Merchant Marine Act are examples of the substitution of comparative negligence for contributory negligence. Seven states have adopted the apportionment doctrine.

Wisconsin torts law has evolved toward a pure form of comparative negligence over the years and has opened the state's forums to many injured persons who had no legal remedy or even a theoretical cause of action before. Wisconsin has abolished implied assumption of risk and gross negligence, and these areas are included as ordinary negligence in the comparison or apportionment. It has abolished religious, charitable, governmental and parent-child immunities. A host owes his guest the duty of ordinary care, and the state does not impute negligence to the guest. The basic philosophy is that tortfeasors ought to be liable to the extent they have injured or damaged others. The wrongdoer should pay for the damages caused by his wrong. Wisconsin believes that the adversary system is the surest method of determining the truth and that the system should not be so limited by rules of law that justice cannot be done. On the other hand, a plaintiff who is himself a tortfeasor should not profit from his own wrong.

## How Does Apportionment Work?

Section 895.045 of Wisconsin Statutes, "Contributory Negligence; When Bars Recovery", provides:

> Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death, or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributable to the person recovering.

**Suggested Comparisons of Negligence Between Drivers in Ordinary Cases**

| | *Defendant* | *Plaintiff* |
|---|---|---|
| *Rear End* | 100% | |
| *Intersection* | | |
| Uncontrolled | 60% | 40% |
| Stop Sign | 85% | 15% |
| Signal Light | 90% | 10% |
| *Left Turn* | | |
| Oncoming | 80% | 20% |
| *Failure to Yield* | 70% | 30% |
| *Improper Passing* | 75% | 25% |
| *Wrong Side of Road* | 90% | 10% |
| *Improper Turn* | 80% | 20% |

Originally, the jury was instructed to diminish the damages in proportion to the amount of negligence attributable to the recovering party. In 1949, however, the statute was amended so that now the jury finds the facts, finds the percentage of negligence attributable to each party, compares the negligence and finds the damages sustained by the plaintiff without regard to the comparison. Then the court does the mathematics and applies the percentages of negligence to the amount specified in the damage question, reduces the recovery and orders judgment.

A few examples will suffice to illustrate how comparative negligence is applied. Assume that in each example the total damage suffered by the plaintiff is $10,000 and the causal negligence of each party is the percentage set forth.

*Example 1:* Plaintiff—40 per cent. Defendant—60 per cent. Plaintiff recovers $6,000. His damages of $10,000 are reduced by 40 per cent or the amount of his causal negligence.

*Example 2:* Plaintiff—60 per cent. Defendant—40 per cent. No recovery by the plaintiff.

*Example 3:* Plaintiff—50 per cent. Defendant—50 per cent. No recovery. The Wisconsin law is stated in terms of greater negligence, so equal negligence does not permit recovery.

Assume damages are $10,000 and the plaintiff guest sues both defendant drivers of the vehicles that were in the accident. The percentage of causal negligence are as stated.

*Example 4:* Plaintiff—40 per cent. Defendant driver A—10 per cent. Defendant driver B—50 per cent. As between the plaintiff (40 per cent) and defendant A (10 per cent), the plaintiff collects nothing from defendant. A. As between the plaintiff (40 per cent) and defendant B (50 per cent), the plaintiff recovers $6,000. A joint tortfeasor is liable for the entire amount of the plaintiff's recovery. The plaintiff's negligence is not compared to that of all defendants as a whole, but only to that of each defendant individually.

*Example 5:* Assume the plaintiff and defendant A and defendant B are all equally negligent. No recovery.

*Example 6:* Assume the plaintiff is 10 per cent negligent, defendant A 50 per cent negligent and defendant B 40 per cent negligent. Plaintiff recovers $9,000 or 10 per cent less than the total damages of $10,000. As between the defendants, defendant A contributes $5,000 and defendant B $4,000 for a total of $9,000. The plaintiff can recover the total amount from either tortfeasor, and as between the tortfeasors there is contribution in the percentages and amounts just stated.[2]

The comparative negligence concept tends to prompt an accurate investigation in order to determine the percent-

2. *Walker* v. *Kroger Grocery & Baking Company*, 214 Wis. 519, 252 N.W. 721 (1934); *Schwenn* v. *Lamine Hotel Company*, 14 Wis. 2d 601, 111 N.W. 2d 495 (1961); *Reber* v. *Hanson*, 260 Wis. 632, 51 N.W. 2d 505 (1952).

ages of fault for apportionment. This preparation results in a greater number of settlements. The adjacent table illustrates suggested prorations in typical automobile accident cases. The unusual case is treated on its own merits. The first hypothetical case is the rear-end collision. In this table the defendant is deemed negligent in the greater degree, and the negligence of the plaintiff is the lesser percentage which represents the percentage used in diminishing plaintiff's recovery.

## Special Verdict Procedure

The special verdict is a statutory procedure, § 270.27 Wis. Stat., and is a necessary corollary to comparative negligence. An example follows:

*Question No. 1:* Immediately prior to the accident, was the defendant negligent in any of the following respects:

(a) As to speed?
Answer: _____

(b) As to lookout?
Answer: _____

*Question No. 2:* If you have answered any subdivision of Question No. 1 "yes", then answer the corresponding subdivision of this question:

Was such negligence a cause of the collision in any of the following respects:

(a) As to speed?
Answer: _____

(b) As to lookout?
Answer: _____

*Question No. 3:* Immediately prior to the accident, was the plaintiff negligent in any of the following respects:

(a) As to lookout?
Answer: _____

(b) As to failing to yield the right of way?
Answer: _____

*Question No. 4:* If you have answered any subdivision of Question No. 3 "yes", then answer the corresponding subdivision of this question:

Was such negligence a cause of the collision in any of the following respects:

(a) As to lookout?
Answer: _____

(b) As to failing to yield the right of way?
Answer: _____

*Question No. 5:* If you have answered any subdivisions of Questions Nos. 2 and 4 "yes", then answer this question:

Taking the combined negligence that caused the accident as 100 per cent, what percentage of that negligence was attributable to:

Defendant _____%
Plaintiff _____%
Total 100%

Carroll R. Heft (left) of the Wisconsin Bar has been actively engaged in trial work since 1925. He is a graduate of Lawrence College (B.A. 1920) and the University of Wisconsin School of Law (J. D. 1923). He has served as president of the Federation of Insurance Counsel (1961-1962) and chairman of the Negligence Section of the State Bar of Wisconsin, and he is, at present, a member of the American Bar Association's House of Delegates. Charles James Heft (right) has been active in trial work in Wisconsin for the past ten years. He holds B.B.A. (1956) and LL.B. (1958) degrees from the University of Wisconsin. He is a member of the Association of Insurance Attorneys, the Federation of Insurance Counsel and the International Association of Insurance Counsel. The authors are members of a law firm in Racine.

*Question No. 6:* What sum of money would reasonably compensate the plaintiff for:

(a) Medical expenses for injuries resulting from the accident: $_____

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| Dissenting Jurors: (name of jurors) | Number of Question to Which Juror Dissents: |
|---|---|
| _____ | _____ |
| _____ | _____ |

Dated this____day of_____, A. D., 19__.

_____
Foreman or Forelady

## Contribution — or Spreading the Burden

Contribution is an important part of comparative negligence. Wisconsin has always had common law contribution. As between tortfeasors common law contribution meant that all tortfeasors contributed equally. "The pot should not call the kettle black."

In Wisconsin, the anomaly was that we had a comparative negligence statute, and we had common law contribution. When the plaintiff guest sued drivers A and B, and driver A was found 95 per cent negligent and driver B 5 per cent negligent, it was illogical to say that drivers A and B should share the award to the plaintiff on a fifty-fifty basis.

This very case finally came to the Wisconsin Supreme Court. It was a left-turn case. The plaintiff, Mrs. Bielski, was a guest passenger in her husband's car. Two cars were approaching each other. When the Bielski car was seventy to eighty feet from the intersection, the defendant, Schulze, made a left turn across the pathway of the Bielski vehicle. The jury found the left turning vehicle 95 per cent negligent and the Bielski vehicle 5 per cent negligent. The total award was $25,000. Under the rule then existing, contribution required the Bielski carrier to pay $12,500, although its assured was

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The court pointed out that Wisconsin was unique in possessing devices of procedure and practice which made a new rule realistically just. The use of the special verdict, the joining of automobile insurance carriers, the pleadings permitting contribution, the fixing of a percentage of the plaintiff's contributory negligence, constituted a procedure in which it was possible to do equity and natural justice.

So Chief Justice Hallows held in that opinion that henceforth contribution would be determined in proportion to the percentages of causal negligence attributed to each in the comparison question. Consequently Bielski, driver A, who was 5 per cent negligent, would pay 5 per cent of the jury award, and in addition thereto, he would pay only 5 per cent of the contribution as between the drivers themselves. In other words, Bielski's automobile liability carrier paid 5 per cent of $25,000 or $1,250 and not 50 per cent of $25,000, $12,500, as under old common law contribution. Of course, Schulze, driver B, would pay 95 per cent of the award to the plaintiff and 95 per cent of the total sum due in contribution as between the drivers.

This decision, *Bielski* v. *Schulze*, 16 Wis. 2d 1, 102 N.W. 2d 393 (1960), is one of the greatest decisions in Wisconsin jurisprudence. It recognizes the need for change and accomplishes it.

## Damages—the New Rule

As a part of the Wisconsin concept, a very practical trial technique was evolved in *Powers* v. *Allstate Insurance Company*, 10 Wis. 2d 78, 102 N.W. 2d 393 (1960). Prior to the *Powers* case, it had been customary in cases of excessive awards to fix the lowest amount that an unprejudiced jury, properly instructed, might award for damages and then to grant the plaintiff the opportunity of accepting that amount or having a new trial. But there was an alternative.

First of all, the right to the trial by jury had to be preserved because it is a constitutional right, and it existed prior to the time of the adoption of the Wisconsin Constitution in 1848. The power of courts to set aside excessive verdicts and to grant new trials was firmly established even before the adoption of the United States Constitution.

In the *Powers* case the court adopted a rule which again illustrates the justice of Wisconsin's comparative negligence doctrine. The new rule is that when an excessive verdict is not due to perversity or prejudice and is not the result of error occurring during the course of trial, the plaintiff should be granted the option of remitting the excess over and above such sum as the court determines as the reasonable amount of plaintiff's damages or of having a new trial on the issue of damages. In the *Powers* case, the award of $5,000 for permanent injury was deemed excessive in light of the evidence and that sum was reduced to $3,000.

In *Spleas* v. *Milwaukee Transport Company*, 21 Wis. 2d 635, 124 N.W. 2d 593 (1963), this technique was again applied. An award of $15,000 to a 64-year-old maintenance man who suffered a back injury was deemed excessive, and a fair appraisal of the nature and seriousness of the injuries permitted an award of $10,000, which was deemed reasonable and which included pain and suffering.

Space does not permit further elaboration as to the results of the application of this doctrine, but some awards have been increased and some excessive awards have been diminished. However, the real point is that Wisconsin's treatment of excessive awards permits greater supervision over the awards of juries. There is, of course, the right to grant a new trial in the event of prejudice or error, but Wisconsin does not indulge in permitting the creation of an excessive jury award by flamboyant means and then permitting the award to stick. Justice requires supervision over jury verdicts. The judicial system permits the jury to find the facts, but within the guidelines pronounced by law, and when those guidelines are exceeded, court supervision is required.

Many who practice in the contributory negligence states contend that juries practice comparative negligence by awarding a negligent plaintiff less in damages. This is contrary to the theory of contributory negligence. Is it not better for a jury to find the percentages of causal negligence attributable to each party and make that finding known? Is it not better for a jury to find the total damages and make that amount known? Is it fair to ask a jury to be so sophisticated and learned that the jurors will wink at the court's instructions on contributory negligence, make a comparison regardless of the instructions and reduce the plaintiff's award accordingly? Is it even honest?

Why not have the jury find the percentages of causal negligence and find the damages? Then the court, knowing the percentages, can reduce the award by those percentages, and one knows the correct result is reached. Is this not the better procedure?

The Wisconsin plan was born in 1931 and has grown from infancy to manhood. This experience is available for study and adoption. Why should any state experiment with "no-fault" administrative schemes which have not been tried or tested? Why should we depart from our well-grounded concept of the adversary system in the open courtroom? Departure could even be dangerous—the beginning of the end of certain cherished rights.

## Summary of the Wisconsin Plan

Wisconsin has, and we recommend, the following:

(1) The Wisconsin comparative negligence doctrine that permits recovery against one who is guilty of the greater negligence;

(2) The elimination of assumption of risk;

(3) The elimination of gross negligence;

(4) The elimination of governmental immunity;

(5) The elimination of charitable immunity;

(6) The elimination of parental immunity;

(7) The concept that a host owes the guest a duty of ordinary care;

(8) A financial responsibility law which keeps off the highways those who cannot pay for the economic loss they cause;

(9) An application of the special verdict technique which leaves the jury to find the facts and the court to do the mathematics and render judgment.

We further recommend Wisconsin's practices with regard to contribution, covenants not to sue, releases and court supervision over verdicts.

The authors of this article have a combined experience of approximately fifty years practicing under both contributory negligence and comparative negligence. The above conclusions are tempered with that experience. We believe the comparative negligence concept superior both prior to and during litigation. Investigation and preparation must be prompt and skillful in the search not only for liability, but also for the apportionment of the negligence causing the occurrence. The injured party can never complain that he is without a forum, even if the tortfeasor be the government, a hospital, a husband, a parent or a host. The climate is one of openness and is conducive to settlements. If litigation must be, the trial procedure is conducive to a just result without prejudice, guesswork, confusion or mystery.

We have often said the Wisconsin plan permits one to say what he believes and to believe in what he says.

## Calendar of Association Meetings

### Annual

| | |
|---|---|
| Dallas, Texas | August 11-15, 1969 |
| (See complete information and registration form on page 1121 of the November, 1968, issue.) | |
| St. Louis, Missouri | August 10-14, 1970 |
| New York, New York and London, England* | July 1-10, 1971<br>July 14-22, 1971 |
| San Francisco, California | August 4-11, 1972 |
| Washington, D. C. | August 3-10, 1973 |

### Spring, 1969

| | |
|---|---|
| Washington, D. C. | May 21-24, 1969 |
| (Budget Committee, May 21-22; Administration Committee, May 22; Board of Governors, May 23-24.) | |

### Fall, 1969

| | |
|---|---|
| Chicago, Illinois | October 15-18, 1969 |
| (Budget and Administration Committee, October 15, 1969; Board of Governors, October 16-17, 1969; Section Officers Conference, October 18, 1969.) | |

### Midyear

| | |
|---|---|
| Atlanta, Georgia | February 18-24, 1970 |
| Chicago, Illinois | February 4-9, 1971 |
| New Orleans, Louisiana | February 3-8, 1972 |
| Chicago, Illinois | February 15-20, 1973 |
| Houston, Texas | February 1-5, 1974 |

* — The Board of Governors has adopted the following priority rule because of the possibility that more members will desire to attend the 1971 Annual Meeting in London than can be accommodated in the available hotel space:

"Registration priority for the portion of the 1971 Annual Meeting to be held in London, England, shall be given to Association members who are members of the House of Delegates, Councils of Sections of the Association, Standing and Special Committees of the Association, and to members who shall have attended either three of the five annual meetings held between 1966 and 1970 or two of the three annual meetings held between 1968 and 1970."

WENDELL P. KAY
LESTER W. MILLER, JR.
ROBERT M. LIBBEY
REGINALD J. CHRISTIE, JR.
WILLIAM H. FULD
MILTON M. SOUTER

LAW OFFICES OF
KAY, MILLER & LIBBEY
SUITE 500
FIRST NATIONAL BUILDING
P. O. BOX 1178
ANCHORAGE, ALASKA 99501

TELEPHONE
272-7471

January 27, 1970

Mr. Wendell P. Kay
House of Representatives
Juneau, Alaska

Dear Wendell:

You have asked our comments on pending legislation which will affect the parties involved in personal injury litigation. The uniform contribution among tort feasors act would, in my opinion, clarify existing law. Recent decisions of the Supreme Court are in line with the provisions of this act and I believe it is fair to all parties involved in a tort claim.

You have also asked our comments on the comparative negligence statute which is presently before the Judiciary Committee. Unfortunately, the relatively short notice makes it impossible for any of us to be present to testify. I hope you will make the following comments known to the committee.

First, let us point out that the comparative negligence statute should accomplish two major goals. It would eliminate the often unjust and harsh result of an injured person being denied any compensation because he was slightly negligent as compared to the greater negligence of the act of tort feasor. All of the commentators agree that the rule of contributory negligence is a harsh rule which grew up during the industrial revolution to protect capital short industry from having to pay for the injuries inflicted upon its victims. The rule of contributory negligence as an absolute bar to recovery has no place in today's society where the potential tort feasor can easily protect himself.

Perhaps more important, many cases would not go to Court and once in Court would be settled if the adjustor and the defense attorney knew that contributory negligence would not be an absolute defense but would merely reduce the damages. In a majority of cases the hardest issue to evaluate is whether the slight negligence of the claimant should or will result in no liability for the potential defendant. I predict that if we were to adopt a rule of comparative negligence such as Wisconsin, we would be taking a step to eliminate or at least reduce Court congestion.

A rule of comparative negligence would apply to all claims arising out of negligence. It would not deny any person compensation for injuries but would merely reduce compensation by the amount of their contributory

negligence. Comparative negligence is the rule followed in Admiralty and in an increasing number of States.

Although contributory negligence as an absolute bar was a doctrine developed by the Courts, the Courts have shown a great reluctance to abolish the rule and adopt comparative negligence. Therefore, it would seem appropriate for the Legislature to enact this legislation.

I have read quite a few articles on the subject in law journals and law school publications and I don't recall ever reading any article critical of comparative negligence. Most of the commentators find contributory negligence an historical anachronism which should be abolished. In terms of a just result and in terms of financial benefit to the community and the Court system, I think we could predict a slow but sure return.

The adoption of a comparative negligence statute would be a small step in law reform. It would not be a disruptive step since the students of the subject point out that juries in fact often follow the rule of comparative negligence in reaching their result. But we should seek to eliminate a situation where jurors feel compelled to disregard the law. We should certainly eliminate the situation where a drunk driver going through a red light can escape liability because the person going through the green light didn't look to the left or right.

I hope you receive favorable testimony on this bill. I really can't foresee any reasonable opposition although some insurance companies may claim it will cost insurers money. I believe an increase in any claims paid would be more than offset by the reduction in verdicts and also by greater rate of settlement, hence reduced legal and adjusting fees. I am in the process of gathering material on the subject, meanwhile.

I hope you can use this letter as my statement on the matter.

Very truly yours,

William H. Fuld

WHF:dat

3100

FORM Ec-2
1000M 6-66

# STATE OF ALASKA
## Inter-Department Route Slip

TO:
DEPT.: State Legislature

ATTN.: Representative Jackson

| | |
|---|---|
| ☐ Approval | ☐ Note & Return |
| ☐ Signature | ☐ Initial & Return |
| ☐ Comment | ☐ Return As Requested |
| ☐ Contact Me | ☐ Return For Approval |
| ☐ Prepare Reply | ☐ Necessary Action |
| ☐ For Your File | ☒ Your Information |

Remarks:

From:
Dept.: Commerce Date 4/10/70

By: Commissioner Kubley

HB 338

# MEMORANDUM State of Alaska

TO: Walter L. Kubley
Commissioner
Department of Commerce

DATE : 6 April 70

SUBJECT: Comments on CSHB 338

FROM: Don Hall
Executive Director
Public Service Commission

I can see some real problems if CSHB 338 is passed in its present form. I, therefore, strongly urge that you make a copy of this memorandum available to Mr. Barry Jackson, Chairman of the Judiciary Committee. Read what I have to say on the subject and see if you don't agree with me.

Under present laws and regulations the utilities have many restrictions placed on them regarding construction along, over and under State Highways. The present regulations, however, do allow the utilities to negotiate with the State Department of Highways; and to date no impasses have been encountered.

Should CSHB 338 be enacted into law the utility companies would be completely without representation.

There is no question that the State Department of Highways has a very difficult task in attempting to serve the public and provide the best roads possible; however, the utilities also have a public commitment.

I do not feel it would be in the public's interest to pass CSHB 338. The added savings in time and monies to the State Department of Highways would certainly be outweighed by an added cost to the utility companies which, in turn, would have to be borne by the consumers.

I would strongly urge a committee of Highway and Utility people be formed, who could jointly prepare a more acceptable bill and a bill which would protect the interest of the general public, the State Department of Highways and the Utilities.

By: Don Hall

JUDICIARY COMMITTEE REPORT

on

AS FOR HOUSE BILL NO. 733

This bill seeks to alleviate problems the Department of Highways is having in dealing with highway encroachments, including those of public utilities and private individuals and including situations involving new construction as well as maintenance and use of existing highways. Presently there is no statute covering encroachments other than those of a utility or other than those involved in new construction. By defining "encroachment" and providing for notice of removal after accomplishment, and summary removal, the bill gives the department the authority to order the removal or relocation of an encroachment and, if the owner does not comply with the order or if the encroachment obstructs traffic, to remove the encroachment itself.

Both the original bill and the committee substitute provide for the reimbursement of the department when it has to remove the encroachment after the owner has failed to comply with the order. The reimbursement consists of the expenses of removal, costs incurred because of the noncompliance, and the cost of a court action. Both bills also provide for a penalty of $10 for each day of noncompliance after service of the notice. These encroachment and reimbursement provisions do not affect the right of a property owner to receive just compensation for land that is taken in an exercise of the right of eminent domain.

The committee substitute adds a provision (based on California Streets and Highways Code, sec. 670(b)) allowing for the issuance of revocable, written permits for encroachments. This authority would normally be used where the encroachment does not interfere with the construction, maintenance, or use of the highway, and it must be in accordance with regulations of the department. This bill also changes the 15-day notice provision in the original bill to a 30-day provision. In addition, the committee substitute deletes the department's enforcement-action provision and the criminal penalty provisions in the original bill because they are unnecessary in light of the civil penalty and the removal authority and reimbursement of the department. However, purposeful obstruction of traffic is prohibited by AS 28.35.160, with a criminal penalty specified in AS 28.35.190 and 28.35.230. Proposed AS 19.25.250 and 19.25.270 in this bill are derived from California Streets and Highways Code, secs. 731 and 732, respectively.

Harry W. Judkins, Chairman

FORM 6A-11

HB338

# MEMORANDUM

# State of Alaska

TO: Edgar A. Spruce, Jr.
Claims Engineer
Department of Highways
Juneau

DATE : January 6, 1970

FROM: Richard P. Kerns RPK
Assistant Attorney General
Chief, Highways Section
Anchorage

SUBJECT: Encroachment Legislation

Enclosed is a copy of our proposed form of encroachment legislation along with a copy of a memo to me from Donna Spragg.

We consider some of the important aspects of our revised proposed legislation to be that it provides for the authorization of encroachments by agreement or permit. We also did not see any purpose in having provision for an action to abate where we provide for summary removal.

Also, it is our thought that with the summary removal aspects of the proposed legislation, there is no real purpose served by including a misdemeanor provision.

RPK:sm

Encls.

FORM SA 18

# MEMORANDUM

# State of Alaska

TO: Richard P. Kerns
Chief, Highway Section
Anchorage AGO

DATE : January 6, 1970

FROM: Donna Spragg
Assistant Attorney General
AGO Anchorage

SUBJECT: Encroachment Legislation

As you suggested, the original House Bill No. 338 is patterned after the California statutes governing encroachments on highways.

However, a California Statute (Streets and Highways Code Section 670(b)) allows for the issuance of written permits authorizing the permittee to "place, change or remove an encroachment". The Alaska legislation as originally introduced does not include any such section providing for permits.

The California statute (Streets and Highways Code Sections 670, 724) provides that the maintenance of an unauthorized encroachment is a misdemeanor. The Alaska legislation as originally introduced also called for a misdemeanor penalty.

The California Statute (Streets and Highways Code Section 721) also called for summary removal when an encroachment was not removed before the expiration of 5 days from the service of notice. The California section also calls for summary removal when an encroachment obstructs or prevents the use of the highway by the public. The original Alaska legislation (see proposed Sec. 19.25.220) has similar provisions.

The California Statute (Streets and Highways Code Section 722) provides that the department may remove an encroachment upon the failure of the owner to comply with a notice or demand of the department. A similar section is found in proposed Sec. 19.25.230 of House Bill No. 338.

California Streets and Highway Code Section 723 also allows an action for abatement when an owner disputes or denies the existence of an encroachment or refuses to remove or permit the removal of the encroachment. (See House Bill 338, Sec. 19.25.240 for a similar section.)

No cases were found in the Annotated California Code construing the above statutes.

Attached is another proposed committee substitute for House Bill No. 338. This bill modifies the current proposed legislation:

1. By providing for permits for the construction and maintenance of encroachments. Apparently the drafter of the original House Bill 338 considered that the statute covering utility encroachment was sufficient authorization for encroachment permits. However, I believe our draft clarifies the question of permits and ties in with the regulations which may be found in Title 17 of the Alaska Administrative Code Section 201.

2. By eliminating the provision making maintenance of an unauthorized encroachment a misdemeanor. This provision seems superfluous.

3. By eliminating the authority of the department to summarily remove an encroachment which is not removed after notice. This provision also seems superfluous since the department has this authority under the attached revised section 19.25.250, entitled "Removal After Noncompliance: Removal Expense".

4. By eliminating the section calling for abatement of an encroachment as a nuisance. Here again, this section seems superfluous since the department already has the power to remove an encroachment as noted above.

I know that you will want to consider the sections of the proposed bill in relation to the original bill. I will be pleased to discuss this matter with you at your convenience.

DS/smk
encl. as stated.

Introduced: 3/28/69
Referred: State Affairs
and Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE
BY REQUEST

CS FOR HOUSE BILL NO. 338

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the protection and use of state highways and roads; and providing for an effective date."

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

"Section 1. AS 19.25.020(a) is amended to read:

(a) If, incident to the construction of a highway project on a federal-aid primary or secondary system, or the interstate system including its extensions in an urban area, the department determines and orders that a utility facility located in, over, along, or under a road right-of-way must be changed, relocated, or removed, the utility owning or in charge of the facility shall change, relocate or remove it <u>within a reasonable time set by the department</u>. <u>If the utility does not change, relocate or remove a utility facility within the time set by the department, the facility specified in the order shall be considered an unauthorized encroachment subject to the provisions of secs. 220 - 250 of this chapter</u> [AS SOON AS POSSIBLE IN ACCORDANCE WITH THE ORDER].

"Sec. 2. AS 19.05.130 is amended by adding a new paragraph to read:

(13) "encroachment" includes a tower, pole, pole line, pipe, pipeline, driveway, private road, fence, billboard, stand or building, or structure or object of any kind or character not particularly mentioned in this section, which is placed in, under or over a portion of the highway.

*Sec. 3. AS 19.25 is amended by adding new sections to read:

ARTICLE 4. ENCROACHMENTS IN HIGHWAYS.

Sec. 19.25.200. ENCROACHMENT PERMITS. An encroachment may be constructed, placed, changed or maintained across or along a highway only in accordance with regulations prescribed by the department. No encroachment may be constructed, maintained, or changed until it is authorized by a written permit issued by the department.

Sec. 10.25.210. RELOCATION OR REMOVAL OF ENCROACHMENT. If, incident to the construction or maintenance of a state highway, the department determines and orders that a encroachment previously authorized by written permit must be changed, relocated, or removed, the owner of the encroachment shall change, relocate or remove it within a reasonable time set by the department. If the owner does not change, relocate or remove an encroachment within the time set by the department, the encroachment shall be considered an unauthorized encroachment subject to the provisions of Secs. 220 - 250 of this chapter.

Sec. 19.25.220. REMOVAL OF ENCROACHMENTS. If an unauthorized encroachment exists in, under or over a state highway, the department may require the removal of the encroachment in the manner provided in secs. 220 - 250 of this chapter.

Sec. 19.25.230. NOTICE OF REMOVAL. Except as otherwise provided in secs. 200 210 and 240 of this chapter, notice shall be given to the owner, occupant or person in possession of the encroachment, or to any other person causing or permitting the encroachment to exist, by serving upon such person a notice containing a demand for the immediate removal of the encroachment. The notice shall describe the encroachment complained of with reasonable certainty as to its character and location. In lieu of service upon the person, service of the notice may be made by registered mail and by posting, for a period of 10 days, a copy of the notice on the encroachment described in the notice.

Sec. 19.25.240. SUMMARY REMOVAL. The department may immediately remove from a state highway an encroachment which obstructs or prevents the use of the highway by the public.

Sec. 19.25.250. REMOVAL AFTER NONCOMPLIANCE. REMOVAL EXPENSE. The department may remove an encroachment upon the failure of the owner to comply with a notice or demand of the department under the provisions of secs. 20, 210 and 230 of this chapter, and shall have an action to recover the expenses of removal, costs incurred by the state for a claim filed with the department by a highway construction contractor for costs due to delay because an encroachment was not changed, removed, or relocated in accordance with the order of the department, costs and expenses of suit and the sum of $10 for each day the encroachment remains after the expiration of 10 days from the date of service of the notice or demand.

*Sec. 4. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.

G

HB 339

# STATE OF ALASKA
# THE LEGISLATURE
## LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

March 23, 1970

M E M O R A N D U M

TO: Barry W. Jackson, Chairman
House Judiciary Committee

FROM: Arthur H. Peterson AHP
Revisor of Statutes

SUBJECT: SCSCSHB 339 am (putative fathers)

The Senate Judiciary Committee's substitute returned to the original form of HB 339 -- a simple repealer of AS 11.35.110, the section that prohibits the mother of a deserted or abandoned illegitimate child from verifying a complaint against a putative father in a criminal, nonsupport action. The House Judiciary Committee's substitute, offered April 25, 1969, amended rather than repealed AS 11.35.110; the amendment specifically allowed the mother to verify the complaint.

I believe the legal effect of both approaches is the same. AS 11.35.100, which is not touched in either version of the bill, states, "Sections 10 - 90 of this chapter apply to an illegitimate child and its putative father." Section 50 of that chapter designates who may make a complaint; it says, "by the deserted wife, or on her behalf, or on behalf of the minor child, by anyone having personal cognizance of the facts...." The mother of an "illegitimate" child would not be a "deserted wife", but she surely would be someone "having personal cognizance of the facts". If she can make the complaint she can "verify" it. Thus the mother of an "illegitimate" child could verify the complaint against the putative father were it not for the prohibition in AS 11.35.110. After repealing that prohibition there would seem to be no reason why she could not verify the complaint. Perhaps the House Judiciary Committee, in proposing its substitute, thought that the intent would be more clearly expressed by specifically including the mother; however, I think that is already done by sec. 100; I don't remember the committee discussion, and there is no explanatory committee report.

In a floor amendment offered by Terry Miller, the Senate changed the bill title to simply refer to the section number being repealed. Both as a matter of law and of determining legislative intent, I don't think this changes the effect of the bill.

AHP/sm

HB 344

Post Office Box 8-603
Anchorage, Alaska 99504
February 26, 1970

Honorable Barry W. Jackson
Alaska State House of Representatives
Pouch V State Capitol Building
Juneau, Alaska 99801

Dear Representative Jackson:

The Nancy Lake Recreation Area, containing over 21,000 acres with approximately 100 lakes, was formed by the session laws of 1966. Four years later, with no access open to the public, the Parks and Recreation Department is requesting an additional 2,000 acres including Rainbow Lake.

There is one subdivision of 55 lots already on this lake, with cabins and improvements on about half of these lots. There are 20 cabins and homes already built and the other four property owners plan to subdivide their property on Rainbow Lake. The Department of Fish and Game advises that it is not feasible to restock this lake and the trout are already fewer in number and smaller, due to increasing fishing pressure. The shallow areas in this lake restrict the potential of boating activity. The shoreline is over 95 per cent privately owned, therefore it can not be used for hiking or riding trails. This lake is too small to serve the future plans of the private property owners and the Parks and Recreation Department. The conjested condition would result in pollution and loss of property value to the private property owners as well as a loss of tax revenue to the Matanuska Susitna Borough.

The Parks and Recreation Department has not held any local public hearings regarding their request for additional acreage, and they have not submitted any practical long range use plan for the Rainbow Lake Area.

House Bill 344, which is in legislative process, would straighten out the northern boundary of the Nancy Lake Recreation Area. Approximately 700 Alaskan voters have signed a petition supporting HB 344, to this date. The Matanuska Susitna Borough has passed a resolution supporting HB 344. Representative Kerttula informed me the Parks and Recreation Department had assured him they would not take Rainbow Lake into the recreation area. Disregarding all the opposition, the Parks and Recreation Department continues to insist on encroaching on private property owners and the borough tax base.

February 26, 1969

If Rainbow Lake is included in the recreation area what would prevent the Parks and Recreation Department from taking in Long Lake, Shirley Lake, Crystal Lake and othersthat are already subdivided and rapidly developing. The people are watching, very closely, to see if the Legislators and the Governor are supporting the people or if one department is dominating the Governor, the Legislature, and the people.

I would appreciate your reply at your earliest convenience. Please inform me as to your stand regarding HB 344.

Sincerely,

R. C. Tuer

# Matanuska-Susitna Borough, Inc.

BOX B, PALMER, ALASKA 99645 • PHONE 745-3246

BOROUGH ASSEMBLY


February 23, 1970

Honorable Jalmar Kerttula
Speaker, House of Representatives
Juneau, Alaska

Dear Mr. Speaker:

Several residents and property owners in the Nancy Lake/ Rainbow Lake area have appeared before the Planning and Zoning Commission and before the Borough Assembly requesting support of HB 344. Upon recommendation of the Planning and Zoning Commission, the Assembly has adopted a resolution urging passage of this bill which suggests altering Nancy Lake Recreation Area boundaries.

Mr. Vroman indicated that, in the future, the Borough may feel that Borough lands could be exchanged with the State, if the State still wishes to acquire additional lands for golf course and park entrance as indicated by the State Parks and Recreation Department. However, at the present time, the Borough wishes to retain the areas proposed for the two above uses.

For your information, we are enclosing a copy of the Resolution adopted by the Assembly and request that HB 344 be given favorable consideration in the House.

Thank you for your assistance to residents of this area.

Yours respectfully,

Evelyn Thompson

Borough Clerk

Same letter to:

Senator Jan Koslosky
Mr. Bill Ray, Finance Committee
Mr. Joe McGill, Resources Committee
Senator Brad Phillips, President of Senate

CC: Mr. R. C. Tuer
Box 8603
Anchorage

MATANUSKA-SUSITNA BOROUGH
ASSEMBLY

Resolution Serial No. 70-5

A RESOLUTION OF THE ASSEMBLY OF THE MATANUSKA-SUSITNA BOROUGH URGING THE CURRENT LEGISLATURE, STATE OF ALASKA, ADOPT HB 344 CHANGING THE NORTH BOUNDARY OF NANCY LAKE RECREATION AREA.

WHEREAS, the established Nancy Lake recreation area is proposed for development by the State of Alaska, and

WHEREAS, residents and property owners in the Matanuska-Susitna Borough; and particularly in the Nancy Lake area, feel that the north boundary of the park should extend as described in HB 344, and

WHEREAS, residents and property owners have appeared before the Planning and Zoning Commission, and the Borough Assembly, and the Planning and Zoning Commission has recommended to the Borough Assembly that it urge the passage of HB 344,

NOW, THEREFORE, BE IT RESOLVED that the Assembly of the Matanuska-Susitna Borough urge the current legislature, State of Alaska, adopt HB 344 changing the north boundary of Nancy Lake recreation area, and

BE IT FURTHER RESOLVED that copies of this resolution be forwarded to local legislators and appropriate committees of the Legislature.

PASSED AND APPROVED by the Matanuska-Susitna Borough Assembly this 18 day of February, 1970.

Harold Newcomb
Assembly President

ATTEST:

Evelyn Thompson
Borough Clerk

Robert H. Vroman
Borough Chairman

(SEAL)

Post Office Box 8-603
Anchorage, Alaska 99504
February 6, 1970

Honorable Jalmar Kerttula
Alaska State Representative
Pouch V
State Capitol Building
Juneau, Alaska 99801

Dear Representative Kerttula:

You assured me the Parks and Recreation Dept. agreed not to push into the Rainbow Lake Area. As you can see by the enclosed maps they are now trying to include Rainbow Lake in the Nancy Lake Recreation Area.

Mr. Ted Smith now agrees the canoe trail planned to connect the park with Rainbow Lake, Long Lake and Willow Creek is not feasible. The shoreline of this lake is already over 95 per cent privately owned, therefore it can not be used for riding and hiking trails as Mr. Smith recommended. The shallow areas restrict the potential boating activity on the lake. The trout are getting smaller and fewer in number and the Fish and Game Department advises that it is not feasible to restock the lake.

This lake is too small to serve the future plans of the private property owners and the recreation area too. I firmly believe that Rainbow Lake would add very little value to the recreation area but it does have a future potential of providing a large number of permanent home sites and improving the tax base of the Matanuska Susitna Borough. At present this borough has one of the poorest tax bases in the state. If the Parks and Recreation Department expands north of the township line into the area that is already rapidly developing through private interests it will seriously harm the future tax base of this borough.

In regard to the recreation department loosing federal funds based on the original size of the park the areas south and west of the present boundary could be extended in some areas with no conflict of interest. I seriously doubt that the Federal Government would increase the funding for the additional 2,000acres requested, due to the tight money in Washington and the improved financial situation in Alaska.

The present boundary of the Nancy Lake Recreation Area is very irregular, encouraging trespassing and is a fire hazard to private property. The addition proposed by the State of Alaska would be even more irregular and difficult to enforce.

The present park boundary does infringe and include some of our private property, therefore legally it must be changed.

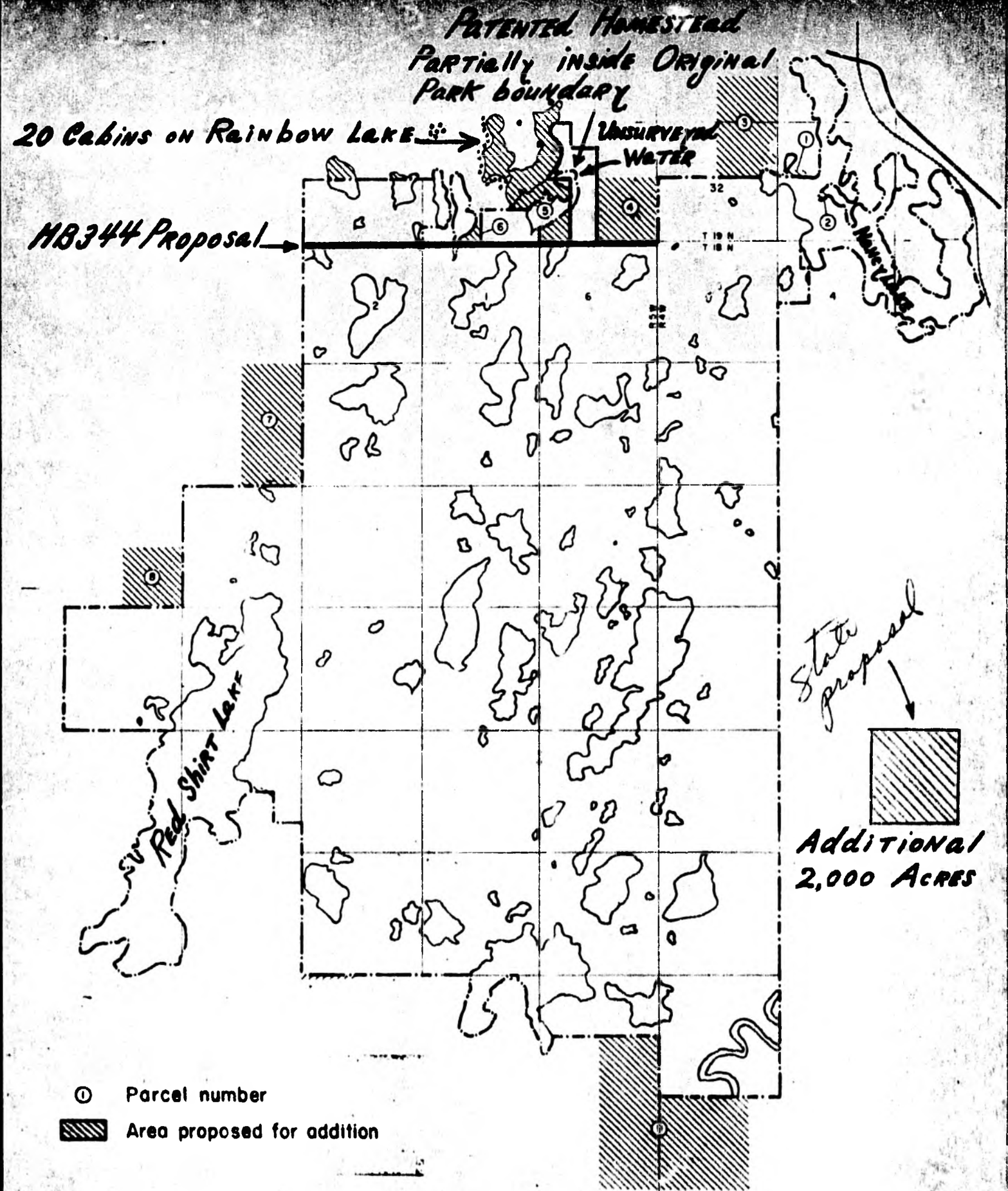
If Rainbow Lake were included in the park it would be a serious mistake because this would constitute a stalemate. The lake would be of very little value to the recreation area or the private property owners, due to overcrowded conditions, which eventually causes pollution and poor resale value.

Recreation areas are a necessity and an asset to the area, if properly planned. If not they can be detrimental to the future development of the area.

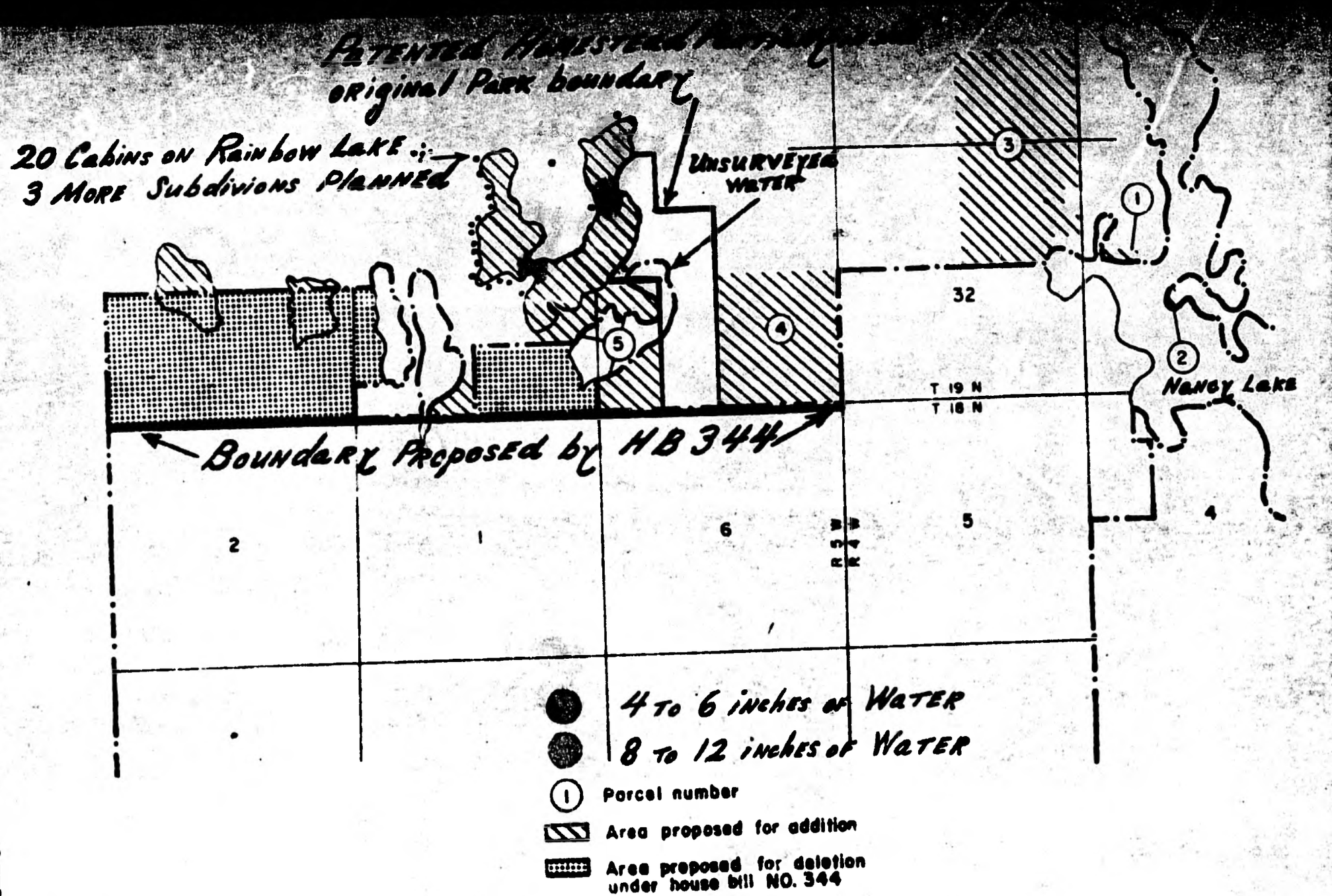
Again I request that you give House Bill 344 serious consideration and your full support.

Sincerely,

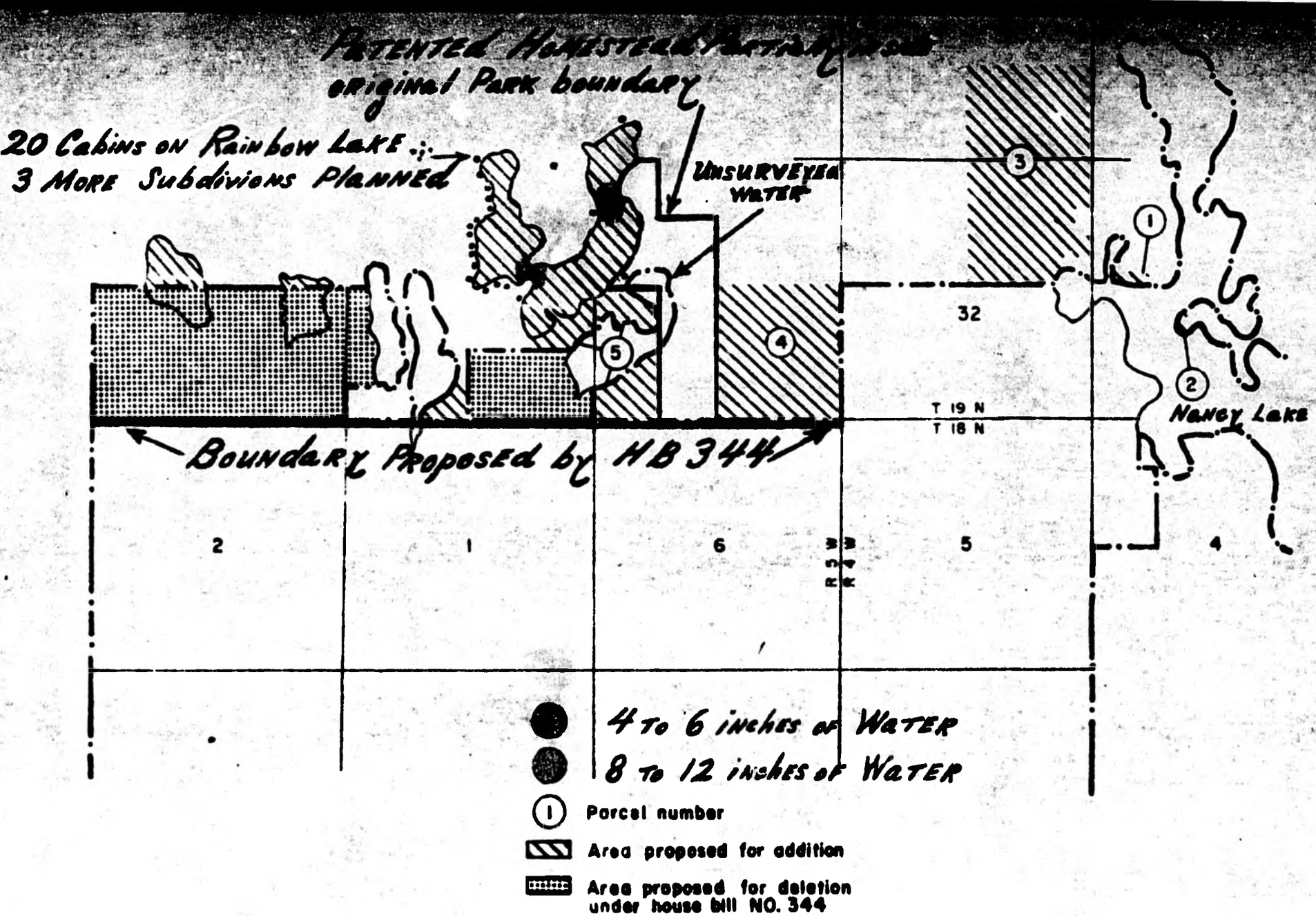
R. C. Tuer




**BOUNDARY REVISIONS**
**NANCY LAKE RECREATION AREA**




BOUNDARY REVISIONS
NANCY LAKE RECREATION AREA
(North Boundary)




**BOUNDARY REVISIONS**
**NANCY LAKE RECREATION AREA**
(North Boundary)

R. C. TUER
P. O. BOX 8-603
ANCHORAGE, ALASKA

February 27, 2969

Honorable Selmar Kerttula
Alaska State Representative
Pouch V
State Capitol Building
Juneau, Alaska 99801

Dear Representative Kerttula:

Enclosed you will find a copy of the letter that I wrote August 11, 1967, to Mr. Roscoe Bell who was the Director, Division of Lands, at that time. As of this date no action has been taken to correct the errors in the Nancy Lake Recreation Area boundaries as passed by the Alaska State Legislature, Sessions Laws 1966, Chapter #61.

Enclosed you will find a copy of the original plat map of May 2[illegible], 1917, and a B.L.M. aerial photogrammatric map U.S. Department of Interior, Geological Survey 1958. You will notice in Section 31 T. 19N, R 4W, there is quite a discrepency between these two maps. Mr. Homer R. Robinson, former Alaska Director of the B.L.M., informed me the original plat map shall stand as sutmitted if it is accepted by the B.L.M. Surveyor General.

Our homestead Patent #1234958 issued January 31, 1964, inc[illegible] one (1) and two (2) which is one-half (1/2) mile of the east shore of Rainbow Lake and the southeast one-fourth (1/4) of the NW¼, and the east ½ of the SW¼ in Section 31, T. 19N, R4W, Seward Meridian. This is the property inside the penned line that is drawn on the enclosed aerial photo[illegible].

The B.L.M. claims there is 1[illegible]1.88 acres of land in this original homestead; therefore, I had to pay the B.L.M. for the 1.88 acres over 160 acres. Rainbow Lake is surveyed, only a small part of Lake #1 is surveyed, and Lakes #2, 3 & 4 are completely unsurveyed.

You will notice in the Sessions Laws of 196[illegible], Chapter #[illegible], the Nancy Lake Recreation Area boundary meanders completely around Lakes #1 (1) and two (2). Not only is Lake #2 over 90% private Property; in addition the original plat which according to B.L.M. law is the official plat map,

this lake is not a body of water but actually terra firma. Because the Nancy Lake Recreation Area cannot legally meander a lake that is classified as terra firma under an original homestead patent, and additional reasons that I mentioned in my letter to Mr. Bell, I believe this boundary should be corrected.

This situation will prevent improvement or subdividing of private property and in turn, will have an adverse effect on the Matanuska Valley Borough. The situation will naturally become more complicated in the future when the property value increases.

I have discussed this matter many times with Mr. Smith, who is in charge of Parks and Recreation, Anchorage office. These discussions with Mr. Smith started approximately three years ago when the Nancy Lake Recreation Area was in the planning stage. He agreed there are a number of errors in the Nancy Lake Recreation Area boundaries that should be corrected. To my knowledge, the Alaska Division of Lands has taken no action whatsoever to correct these errors, although the Department is well aware of these errors.

I am definitely in favor of long range recreation planning and The Nancy Lake Recreation Area as a whole, if the planning is done properly. I am also aware of the fact that the boundary in question was created by the State Legislature in 1966. I, therefore, request that a bill be submitted to amend the north boundary of the Nancy Lake Recreation Area to extend due west on the township line between townships 18 and 19 where the present boundary intercepts this same township line. This boundary would be much easier to define, maintain and patrol as well as resolving a legal aspect that could become quite complicated. I firmly believe this boundary amendment would serve the best interests of all parties concerned, including the State of Alaska.

Sincerely,

R. C. Tuer

B. L. M Laws Relating to Surveys



plat shall be recorded in books to be kept for that purpose; and a copy thereof shall be kept open at the public survey office for public information, and other copies shall be sent to the places of the sale and to the Bureau of Land Management. (R. S. sec. 2395; Mar. 3, 1925, 43 Stat. 1144; 43 U. S. C. sec. 751).

Boundaries and contents of public lands, how ascertained.

The boundaries and contents of the several sections, half sections, and quarter sections of the public lands shall be ascertained in conformity with the following principles:

First. All the corners marked in the surveys returned by the Director shall be established as the proper corners of sections, or subdivisions of sections, which they were intended to designate, and the corners of half and quarter sections, not marked on the surveys, shall be placed as nearly as possible equidistant from two corners which stand on the same line.

Second. The boundary lines, actually run and marked in the surveys returned by the Director, shall be established as the proper boundary lines of the sections or subdivisions for which they were intended, and the length of such lines as returned shall be held and considered as the true length thereof. And the boundary lines which have not been actually run and marked shall be ascertained by running straight lines from the established corners to the opposite corresponding corners; but in those portions of the fractional townships, where no such opposite corresponding corners have been or can be fixed, the boundary lines shall be ascertained by running from the established corners due north and south or east and west lines, as the case may be, to the water course, Indian boundary line or other external boundary of such fractional township.

Third. Each section or subdivision of section, the contents whereof have been returned by the Director, shall be held and considered as containing the exact quantity expressed in such return; and the half sections and quarter sections, the contents whereof shall not have been thus returned, shall be held and considered as containing the one-half or the one-fourth part, respectively, of the returned contents of the section of which they may make part. (R. S. sec. 2396; Mar. 3, 1925, 43 Stat. 1144; 43 U. S. C. sec. 752).

Lines of division of half-quarter sections, how run.

In every case of the division of a quarter section the line for the division thereof shall run north and south, and the corners and contents of half-quarter sections which may thereafter be sold shall be ascertained in the manner and on the principles directed and prescribed by the section preceding, and fractional sections containing one hundred and sixty acres or upwards shall in like manner, as nearly as practicable, be subdivided into half-quarter sections, under such rules and regulations as may be prescribed by the Secretary of the Interior, and in every case of a division of a half-quarter section, the line for the division thereof shall run east and west, and the corners and contents of quarter-quarter sections, which may thereafter be sold, shall be ascertained, as nearly as may be, in the manner and on the principles directed and prescribed by the section preceding; and fractional sections containing fewer or more than one hundred and sixty acres shall in like manner, as nearly as may be practicable, be subdivided into quarter-quarter sections, under such rules and regulations as may be prescribed by the Secretary of the Interior (R. S. sec. 2397; 43 U. S. C. sec. 753).

Rivers and streams.

All navigable rivers, within the territory occupied by the public lands, shall remain and be deemed public highways; and, in all cases where the opposite banks of any stream not navigable belong to different persons, the stream and the bed thereof shall be common to both. (R. S. sec. 2476; 43 U. S. C. sec. 931).

# Alaska Water Rights Act

Sec. 46.15.060. EXISTING RIGHTS. A water right acquired by law before the effective date of this chapter or a beneficial use of water on the effective date of this chapter, or made within five years before the effective date, or made in conjunction with works under construction on the effective date, under a lawful common law or customary appropriation or use, is a lawful appropriation under this chapter. The appropriation is subject to applicable provisions of this chapter and rules and regulations adopted under this chapter.

Our homestead Patent #1334958 was issued Jan. 31, 1964, the State water rights act was not effective until 1966

Sec. 46.15.070. NOTICES, OBJECTIONS. (a) Upon receipt of an application, the commissioner shall prepare a notice containing the location and extent of the proposed appropriation, the name and address of the applicant and other information he considers pertinent. The notice shall state that within 15 days of publication or service of notice, persons may file with the director written objections, stating the name and address of the objector, and any facts tending to show that rights of the objector or the public interest would be adversely affected by the proposed appropriation.

(b) The commissioner shall publish the notice at the applicant's expense in one issue of a newspaper of general distribution in the area of the state in which the water is to be appropriated. The commissioner shall also have notice served personally or by certified mail upon an appropriator of water or applicant for or holder of a permit who, according to the records of the division of lands may be affected by the proposed appropriation and may serve notice upon any governmental agency, political subdivision or person, provided, however, that notice shall be served upon the

Post Office Box 8-603
Anchorage, Alaska
August 11, 1967

Director Division of Lands
344 [redacted]
Anchorage, [redacted] 99501

Dear Mr. Bell:

The present north boundary of the Nancy Lake Recreation Area is very irregular in as much as it does not follow the section lines or half section lines in general as the east, west and south boundary lines do at present. This irregular north boundary could make it quite expensive and difficult to define, patrol and enforce this boundary.

The boundary of the recreation area, as approved by the legislature meanders the unnamed lake in the southeast quarter of Section 36 and the southwest quarter of Section 31. Only part of this lake is surveyed according to the original plat map of 1917, therefore part of the lake is considered [redacted], on which I hold patent. At the time I filed for patent I requested a resurvey, but received no cooperation from either the Bureau of Land Management or the Alaska State Division of Lands.

The question is how can the State of Alaska patrol or enforce a boundary that meanders a lake that is only partially surveyed when part of that lake is private terra firma? Who would be responsible for trespassing damages or fire damages to private property if the State of Alaska insists on such an irregular and poorly defined boundary.

The Nancy Lake Recreation Area would include approximately 27 lakes, comprising approximately 5000 acres of water area excluding this unnamed lake in question. This lake contains no fish and could not be poisoned for restocking, and I firmly believe that it would be more of a detriment than an asset to the recreation area.

[redacted] a good logical suggestion based on a point to point line to define the [redacted] mile exclusive fisheries zone. This same principle should be applied to the Nancy Lake Recreation Area boundary. There is at present, according to your office, a number of errors in the boundary of the recreation are as passed by the legislature. I request that your office request the legislature to include in the corrections a straight line north boundary, using the south section lines of Section 31; Township 19North; Range 4 West; and the south section lines of Sections 36 and 35 as the north boundary of the recreation area. According to the master development plan submitted by Huddleston and Associates of Denver, this would not conflict in any manner with the development of the Nancy Lake Recreation Area.

I would appreciate a letter from your office regarding this matter at your earliest convenience. I would also like to know if the boundaries of the [redacted] to be fenced, or how does your office intend to define and mark [redacted]

Sincerely,

R. C. Tuer

1-27-70

# JUDICIARY COMMITTEE REPORT

ON

## HOUSE BILL NO. 346

This bill, proposing a statutory change comparable to the constitutional change proposed in HJR 51, would become law if the constitutional amendment proposed in that resolution is approved by the voters. Upon the effective date of both measures, no one would be disenfranchised for reasons of inability to read or speak English.

Barry W. Jackson, Chairman

HB 360

# MEMORANDUM State of Alaska

TO: The Honorable Barry W. Jackson
Chairman, House Judiciary Committee
Alaska State Legislature
Juneau, Alaska

DATE : April 8, 1969

FROM: R. D. Stevenson
Chief, Excise Tax Section
Department of Revenue
Alaska Office Building
Juneau, Alaska

SUBJECT: House Bill No. 360, An Act relating to coin-operated devices and providing for an effective date

Reference is made to the attached copy of Schedule of Revenue, Five Year Projection and Cash Flow for the Fiscal Year Ending June 30, 1970 and a copy of a memorandum covering coin-operated device receipts issued during the calendar year 1968. This information was transmitted to the Department of Administration for inclusion in the document entitled "State of Alaska - Revenue Sources - 1968-1974" and is shown on pages 26-27 and 52, copies of which are attached.

Chapter 135, SLA 1966 provided for a phase-out of class 2 coin-operated devices (so-called pinball machines) on June 30, 1969. Revenue estimates were necessarily prepared based on this premise.

House Bill No. 360 provides for an extension until June 30, 1972 (from June 30, 1969) for the phase-out of class 2 coin-operated devices. During the calendar year 1968 there were 297 receipts issued for class 2 coin-operated devices with fees (excluding penalty and interest) collected in amount of $34,626.00.

EFFECT ON TREASURY:

1. If the bill were passed, refunds in amount of $17,300 shown on the attached Cash Flow for the Fiscal Year Ending June 30, 1970 would not be made in July of 1969 as would be the case if the bill were not passed for the reason that if the phase-out date of June 30, 1969 is not changed, taxpayers who were issued full year 1969 licenses for class 2 devices would be entitled to refund for one half of the fee paid.

2. Revenue estimates for the fiscal years ending on June 30, 1970; June 30, 1971 and June 30, 1972 would be revised upwards as follows:

| Fiscal Year Ending | Original Estimate | Revised Estimate | Gain in Revenue |
|---|---|---|---|
| June 30, 1970 | $ 31,000.00 | $ 82,900.00 | $ 51,900.00 |
| June 30, 1971 | 48,000.00 | 82,600.00 | 34,600.00 |
| June 30, 1972 | 48,000.00 | 65,300.00 | 17,300.00 |
| Totals | $127,000.00 | $230,800.00 | $103,800.00 |

Shared revenue to boroughs and cities of first, second and third class pursuant to the provisions of AS 43.35.050 would increase during the three fiscal years involved if the bill were passed. The statute provides that 50 per cent of the gross revenue from this source, excluding distributors fees and penalties and less the amount expended by the state in collection shall be refunded to such political subdivisions.

RDS:se
Attachments

SA-15

State o laska
Department of Administration
Budget & Management Division
(Rev 8-68)

SCHEDULE OF R NUE
FIVE YEAR PROJ CTION
and
CASH FLOW FOR THE FISCAL YEAR ENDING JUNE 30, 1970

| | Code |
|---|---|
| Department REVENUE | 04 |
| Division | |
| Program | |

Receipt Title Amusement & Gaming Device License  Receipt Code 226  Fund 100

| ACTUAL | ESTIMATED | | | | | | |
|---|---|---|---|---|---|---|---|
| FY 1968 | FY 1969 Budget Estimate | FY 1969 Revised Estimate | FY 1970 Revised Estimate | FY 1971 Revised Estimate | FY 1972 Revised Estimate | FY 1973 Revised Estimate | FY 1974 Estimate |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| $ 33,604 | $ 87,000 | $ 84,000 | $ 31,000 | $ 48,000 | $ 43,000 | $ 50,000 | $ 50,000 |

FY 1969-70 CASH FLOW BY MONTH (Block 4 above)

| July | August | September | October | November | December |
|---|---|---|---|---|---|
| MINUS $ 17,300 | $ 500 | $ 500 | $ 100 | $ 300 | $ 3,000 |

| January | February | March | April | May | June | Total |
|---|---|---|---|---|---|---|
| $ 10,000 | $ 30,000 | $ 1,900 | $ 700 | $ 700 | $ 600 | $ 31,000 |

Citation: AS 43.35.010-090, as amended by CH. 135, SLA 1966

Program: Revenues are deposited in the general fund. Subsequently, fifty per cent of the amount of the tax, less administrative costs, collected within an organized borough or cities of the first, second or third class, is refunded.

Rate:

| | |
|---|---|
| Class 1 coin-operated device (so-called amusement device) | $ 48.00 annually on a calendar year basis |
| Class 2 coin-operated device (so-called pinball machine) | $120.00 annually on a calendar year basis |
| Class 3 coin-operated device (so-called slot machine) | $240.00 annually on a calendar year basis |
| Annual distributors fees | $ 50.00 annually on a calendar year basis |
| Transfer fee | $ 5.00 |

The statutes provide for a monthly sliding scale on devices placed into operation after the first of the year.

SA-12
State of Alaska
Department of Administration
Budget & Management Div.
(Rev. 5-68)

STATEMENT OF PROGRAM

For the Fiscal Year Ending June 30, 1970

| | | Code |
|---|---|---|
| Department | REVENUE | 04 |
| Division | | |
| Program | | |

Page 2-SA-15, AMUSEMENT & GAMING DEVICE-Receipt Code 226, Fund 100

Basis for Estimates: No Class 3 coin-operated device licenses have been issued during FY 1966-67 or 1967-68 as the operation of so-called slot machines in states that do not have legalized gambling is illegal according to Federal statutes. Chapter 135, SLA 1966 provides for a phase-out of Class 2 coin-operated devices (so-called pinball machines) on June 30, 1969. It is anticipated that in the period December 1968 through February of 1969 that $34,600 will be received for full year 1969 calendar year licenses for Class 2 coin-operated devices. Providing that the phase-out date of June 30, 1969 is not changed, taxpayers who were issued full year 1969 licenses for Class 2 devices would be entitled to refund for one-half of the fee paid, or $17,300 in July of 1969, or in the beginning of the fiscal year 1969-70. Receipts from Class 1 devices are estimated at $47,300 for FY 1970. For Fiscal Years 1971, 1972, 1973 and 1974 revenues are restricted to receipts from Class 1 coin-operated devices. Gross revenues before refunding to political subdivisions for the four preceding fiscal years are as follows:

| Fiscal Year | Gross Revenues |
|---|---|
| 1967-68 | $ 83,604 |
| 1966-67 | 86,773 |
| 1965-66 | 50,251 |
| 1964-65 | 64,739 |

FORM SA-1B
12-65M 8/67

# MEMORANDUM

# State of Alaska

TO: R. D. Stevenson, Chief
Excise Tax Section

DATE : October 22, 1968

FROM: Marilla Gemmer, Supervisor
Delinquent Accounts

SUBJECT: Coin Operated Devices
Receipts issued & Fees collected

Figures shown below are for the year 1968 for the period of December 11, 1967 to October 21, 1968, inclusive:

| No. of Receipts Issued | Class | Total Fees Collected | Total Fees Incl. P & I |
|---|---|---|---|
| 1051 | I | $47,800.00 | $48,560.40 |
| 297 | II | 34,626.00 | 35,344.00 |
| 8 | Distributors Fees | 400.00 | 423.50 |
| 2 | Transfer Fees | 10.00 | 10.00 |
| Total Fees Collected for all Classifications | | $82,836.00 | $84,337.90 |

Revenue Code

224 Motor Freight Carrier Permits (Continued)

Allocation:
Revenue from Motor Freight Carrier permits are paid to the General Fund.

Citation:
AS 42.10.240, AS 42.15.055 as amended by Ch. 143, SLA 1966.

Basis for Estimate:
Revenue estimates are based on only carrier certified by the Alaska Transportation Commission. Larger collection in the past were due to the indiscriminate collection of weight fee regardless of whether or not the carriers were certified.

The 1968-69 fiscal year and subsequent years are viewed downward to reflect the expected collections.

Revenue Code

226 Amusement and Gaming Device License

Rate:

| | |
|---|---|
| Amusement Devices | $ 48.00 |
| Pinball Machine | 120.00 |
| Coin Operated Devices (Strict element of Chance) | 240.00 |
| Annual Distributor's Fee | 50.00 |
| Transfer Fee | 5.00 |

Licenses are issued on a calendar year basis.

Allocation:
Revenues are deposited in the General Fund. Subsequently, fifty per cent of the amount of the tax, less administrative costs, collected within an organized borough or cities of the first, second or third class, is refunded.

Citation:
AS 43.35.010-090 as amended by Ch. 135, SLA 1966.

Basis for Estimate:
No class 3 coin-operated device licenses have been issued during FY 1966-67 or 1967-68 as the operation of so-called slot machines in states that do not have legalized gambling is illegal according to Federal status. Chapter 135, SLA 1966 provides for a phase-out of class 2 coin-operated devices (so-called pinball machines) on June 30 1969.

Revenue Code

226 Amusement and Gaming Device License (Continued)

It is anticipated that in the period December 1968 through February 1969 that $34,600 will be received for full year 1969 calendar year licenses for Class 2 coin-operated devices. Providing that the phase-out date of June 30, 1969 is not changed, taxpayers who were issued full year 1969 licenses for Class 2 devices would be entitled to refund for one-half of the fee paid, or $17,300 in July of 1969, or in the beginning of the fiscal year 1969-70. Receipts from Class 1 devices are estimated at $47,300 for FY 1970. For fiscal years 1971, 1972, 1973 and 1974 revenues are restricted to receipts from Class 1 coin-operated devices.

Revenue Code

270-282 Commercial Fishing Licenses

Rate:

Commercial fishing licenses are divided into licenses on individuals and licenses on vessels and gear.

| | Resident | Non-Res | Revenue Code |
|---|---|---|---|
| Vessel Licenses | $10.00 | $ 30.00 | 270 |
| Gear Licenses are as follows: | | | |
| Troll Line Licenses | 15.00 | 45.00 | 271 |
| Set or Long Line Licenses | 25.00 | 50.00 | 272 |
| Drift Gill Net Licenses: | | | |
| 1st 100 fathoms, or fraction | 10.00 | 30.00 | 273 |
| Each additional 50 fathoms or fraction | 5.00 | 15.00 | 273 |
| Set or Stake Gill Net Licenses: | | | |
| 1st 50 fathoms, or fraction, & each additional 50 fathoms or fraction | 5.00 | 15.00 | 274 |
| Beach or Drag Seine Licenses: | | | |
| 1st 100 fathoms, or fraction | 10.00 | 30.00 | 275 |
| Each additional 50 fathoms or fraction | 5.00 | 15.00 | 275 |
| Purse Seine & Hand Seine Licenses: | | | |
| 1st 100 fathoms or fraction | 40.00 | 120.00 | 276 |
| Each additional 50 fathoms or fraction | 10.00 | 30.00 | 276 |
| Beam Trawl Licenses: | 50.00 | 150.00 | 277 |
| Otter Trawl Licenses: | 50.00 | 150.00 | 278 |
| Shellfish Pot Licenses: | | | |
| 1st 100 pots | 15.00 | 45.00 | 279 |
| Each additional 100 pots or less | 15.00 | 45.00 | 279 |
| Clam Digger Licenses: | 5.00 | 15.00 | 280 |
| Fisherman Licenses: | 10.00 | 30.00 | 281-82 |
| Commercial Fish - Scallop Dredge | 50.00 | 150.00 | 283 |

SECTION II

DETAIL OF STATE REVENUES
FISCAL YEARS 1968-74

| CODE | REVENUE SOURCE | ACTUAL F.Y. 1968 | ESTIMATED F.Y. 1969 Budget Estimate | F.Y. 1969 Revised Estimate | F.Y. 1970 Revised Estimate | F.Y. 1971 Revised Estimate | F.Y. 1972 Revised Estimate | F.Y. 1973 Revised Estimate | F.Y. 1974 Estimate |
|---|---|---|---|---|---|---|---|---|---|
| | | | GENERAL FUND - UNRESTRICTED REVENUE (con't) | | | | | | |
| **BUSINESS LICENSES, FEES AND PERMITS** | | | | | | | | | |
| 201 | Corporation Licenses and Fees | $ 116,365 | $ 106,700 | $ 120,000 | $ 122,000 | $ 124,000 | $ 126,000 | $ 128,000 | $ 130,000 |
| 202 | Insurance Licenses and Fees | 142,354 | 124,000 | 145,000 | 148,000 | 151,000 | 154,000 | 158,000 | 161,000 |
| | Sub-Total | $ 258,719 | $ 230,700 | $ 265,000 | $ 270,000 | $ 275,000 | $ 280,000 | $ 286,000 | $ 291,000 |
| **Regulatory Boards** | | | | | | | | | |
| 203 | Accountant License and Fees | $ 8,230 | $ 7,300 | $ 1,500 | $ 8,500 | $ 2,700 | $ 9,700 | $ 3,900 | $ 10,900 |
| 204 | Barbers License and Fees | 4,756 | 4,200 | 6,500 | 2,000 | 7,500 | 2,000 | 8,900 | 2,000 |
| 205 | Basic Sciences and Fees | 1,565 | 1,400 | 1,600 | 1,900 | 2,200 | 2,500 | 2,800 | 3,100 |
| 206 | Chiropractor License and Fees | 100 | 400 | 800 | 100 | 900 | 100 | 1,000 | 100 |
| 207 | Dentist License and Fees | 687 | 4,000 | 8,300 | 2,800 | 10,700 | 2,800 | 12,500 | 3,500 |
| 208 | Electrical Contractor License and Fees | 2,350 | 14,000 | 17,100 | 2,500 | 20,000 | 3,300 | 25,100 | 4,200 |
| 209 | Veterinary Licenses and Fees | 110 | 600 | 1,400 | 300 | 1,700 | 300 | 2,100 | 300 |
| 210 | Medical License and Fees | 4,978 | 9,500 | 10,000 | 5,000 | 10,300 | 5,000 | 10,700 | 5,000 |
| 211 | Hairdressers License and Fees | 12,585 | 16,400 | 6,700 | 22,000 | 6,700 | 28,700 | 6,700 | 35,400 |
| 212 | Nurses License and Fees | 16,777 | 16,400 | 24,600 | 10,000 | 25,400 | 10,000 | 26,200 | 10,000 |
| 213 | Optometrists License and Fees | 160 | 2,000 | 2,300 | 400 | 3,000 | 400 | 3,300 | 400 |
| 214 | Pharmacists License and Fees | 5,332 | 1,400 | 1,000 | 10,000 | 1,000 | 11,000 | 1,000 | 12,000 |
| 216 | Real Estate License and Fees | 33,959 | 18,200 | 14,000 | 48,900 | 14,000 | 68,400 | 14,000 | 89,900 |
| 217 | Embalmers License | 1,225 | 1,200 | 1,200 | 1,200 | 1,200 | 1,200 | 1,200 | 1,200 |
| 218 | Security Registration Fees | 22,264 | 25,000 | 25,000 | 25,000 | 25,000 | 25,00 | 25,000 | 25,000 |
| 219 | Small Loan Company License and Fees | 3,900 | 3,100 | 3,400 | 3,400 | 3,400 | 3,400 | 3,400 | 3,400 |
| 220 | Motor Vehicle Dealer Registration Fees | 3,075 | 3,300 | 3,300 | 3,300 | 3,300 | 3,300 | 3,400 | 3,400 |
| 222 | Psychologist License and Fees | 285 | 1,200 | 300 | 600 | 200 | 700 | 200 | 1,000 |
| 223 | Aircraft Registration Fees | 38,171 | 28,000 | 38,000 | 39,000 | 40,000 | 41,000 | 42,000 | 43,000 |
| 224 | Motor Freight Carrier Permits | 56,440 | 182,200 | 52,400 | 52,400 | 57,400 | 57,400 | 62,400 | 62,400 |
| 225 | Athletic Licenses and Fees | 80 | | 100 | 100 | 100 | 100 | 100 | 100 |
| 226 | Amusement and Gaming Device License | 81,604 | 87,000 | 86,000 | 31,000 | 48,000 | 48,000 | 50,000 | 50,000 |
| 227 | Lottery Permits and Fees | 3,860 | 4,400 | 4,000 | 4,200 | 4,400 | 4,600 | 4,800 | 5,000 |
| 228 | Construction Contractor Certificates and Fees | | | 50,000 | 57,500 | 65,000 | 72,500 | 80,000 | 87,500 |
| 229 | Employment Agency Application Fees | 50 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 230 | Branding Domestic Animal Fees | 73 | | | 200 | | | | |
| 231 | Log Brand Registration Fees | 145 | 200 | 200 | 200 | 200 | 200 | 200 | 200 |
| 232 | Trademark Registration and Certificates | 330 | 400 | 400 | 400 | 400 | 400 | 400 | 400 |
| 233 | Collection Agency Fees | | | 5,500 | 900 | 5,700 | 900 | 6,900 | 900 |
| 235 | Radio and Telephone Charges | | | 6,400 | 6,400 | 6,400 | 6,400 | 6,400 | 6,400 |
| 236 | Boiler Inspection Fees and Permits | | | 30,000 | 50,000 | 50,000 | 50,000 | 50,000 | 50,000 |
| 237 | Engineers and Architects Fees and Permits | | | 22,000 | 23,000 | 24,000 | 25,000 | 26,000 | 27,000 |
| | Sub-Total | $ 305,091 | $ 432,100 | $ 422,100 | $ 413,300 | $ 440,900 | $ 484,400 | $ 480,500 | $ 543,800 |

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

JUNEAU
ALASKA 99801

# MEMORANDUM

February 13, 1969

Mr. Jackson:

Your request for a bill to anticipate the expiration of some pinball machine law was not very specific. A bill distinguishing between machines used for gambling and those which are not is attached, along with the relevant explanatory pages from this office's January 1966 Legislative Oversight report. You will note that this bill does not prevent that automatic expiration.

Sec. 1, Ch. 135 SLA 1966 amended AS 43.35.090(2), the definition of "coin-operated device class 2", by inserting the words "but free plays shall not be construed as a thing of value". As you know, AS 43 is the taxation title, and AS 43.35 taxes coin-operated devices and punchboards but does not legalize gambling (see AS 43.35.070 and 43.35.140). I believe the intent of Ch. 135 SLA 1966 was to counter the effect of State v. Pinball Machines, Alaska, 404 P 2d 923 (1965), which held that free plays constituted a thing of value, which in turn made the use of any pinball machines that awarded free plays "gambling", the result of which was to justify the seizure and destruction of the machines under AS 11.45.040. The attached pages analyze that court opinion.

Sec. 3, Ch. 135 SLA 1966 stated, "This Act shall not remain in existence beyond June 30, 1969." The result of this expiration will be to leave AS 43.35.090(2) as it was before the 1966 amendment. Since that amendment does not seem to me to have been the best way to counter the effect of State v. Pinball Machines, I doubt that much will be lost by allowing the expiration to go into effect, if your attached bill passes. If you disagree, we could easily add a section to the bill, repealing Sec. 3, Ch. 135 SLA 1966. (Or is it possible that you would only want to repeal that expiration clause?)

Arthur H. Peterson
Revisor of Statutes

of the Code can begin without delay. In other words, instead of being authorized to merely create a plan of revision, as provided in HB 256, it is recommended that the Legislative Council be given authority to begin work immediately with each department and agency on a revision of its regulations. It is also recommended that the Council be assigned the responsibility of rewriting the instructions on drafting techniques and prescribing a uniform system of indexing, numbering and arrangement of text to be used in lieu of those instructions and requirements now contained in Title 1 of the Administrative Code. Each of these tasks it is believed can be performed by the Council within its present staff structure.

Under the staff's proposed additions to HB 256, the interim powers and responsibilities vested in the Legislative Council would terminate when the revision of the Code is accomplished. At that time the Council would then submit to the Legislature the method it recommends for the future promulgation, publication, and distribution of administrative regulations.

A bill to effectuate the recommended proposal is contained in Appendix 7.

## III. REVIEW OF STATE SUPREME COURT DECISIONS

This part of the report contains analyses of four recent state supreme court opinions and the Council's recommendations based on these analyses.

### A. STATE v. PINBALL MACHINES [Sup. Ct. Op. No. 298 - August 19, 1965]

1. Fact Situation. Various pinball machines in the cities of Anchorage and Fairbanks were seized as gambling implements under the authority of AS 11.45.040. Essentially, the machines featured a coin insertion to activate the machine, the shooting of balls by a player, the dropping of balls into holes, the lighting of numbers on a bingo-type card, the varying of odds by a mechanism within the machine and the winning of free games by chance. No pay-off in money or things of monetary value was found to have been made to winning players. Winners only acquired the right to continue playing the game without paying additional money until the number of free games won were used up.

2. Statutes Involved. The only statute involved in these cases that is pertinent to the legislative problem to be discussed is AS 11.45.040 which states:

> The commissioner of public safety, a member of the division of state police, or a police or peace officer designated by the commissioner shall seize and destroy a gambling implement.

3. Superior Court Decisions. The superior court at Fairbanks held that a pinball machine is a gambling implement per se, while the superior court at Anchorage held that it is not.

4. Supreme Court Decision. The Supreme Court agreed with the superior court in Fairbanks and held that pinball machines are gambling implements which are subject to seizure and destruction under the law. According to the court, the essential elements of gambling are price, chance and prize, and whenever some tangible thing is "used or mainly designed or suited for gambling" it is a gambling implement. In applying these criteria to pinball machines the court noted that since a person must insert money into a pinball machine to activate it, the element of price is present and because the number of free games one may win is uncertain, the element of chance is also present. Moreover, a prize was won, even though the free games accumulated had no real monetary value, because, said the court:

> It is not the essence of gambling that the element of prize have a monetary value. If that which one seeks to attain, regardless of whether it has value in money, may be attained by chance after the payment of a price, then one is gambling.

5. Legislative Problem. This case indicates that there is a need for the legislature to either define what it considers to be a "gambling implement" or to at least make clear its position regarding pinball machines as gambling implements.

Under the court's present criteria almost any game which a person pays to play or see can fall into the catagory of gambling because of the presence of price, chance and prize. In fact, a literal application of the definition adopted in this case would require the conclusion that even bubble gum machines, which have little trinkets interspersed among the gum, are gambling instruments

when used by someone who inserts his penny with the hope of attaining one of the trinkets.

Therefore, the Legislative Council recommends that legislative action be taken to narrow the court's definition of a "gambling implement" which has been established in this case.

Research indicates that there are certain mechanical features in a pinball machine used for gambling purposes, in the more conventional sense of "gambling", which are unnecessary if a machine is used only for amusement. The features peculiar to pinball machines actually used for making pay-offs are:

1 - A capability of awarding as many as 1,000 free games. Bona fide amusement devices never award more free games than can, within reason, be actually played off -- 25 at the maximum and more usually 10 or 5;

2 - A button connected to the free-game circuit which allows free games to be "knocked off" or "run off" without being played;

3 - A device to record the number of free games "knocked off." This is a crucial and expensive feature of gambling machines that is totally useless on a machine used only for amusement. To understand the significance of this feature, it is important to note that typically the pinball machine is not owned by the location owner, but by an operator who owns a number of machines which he may move about from location to location. The operator gets his machines, usually on credit, from a distributor who has purchased them from the manufacturer. The recording of "knocked off" games makes possible an accounting between the operator and the location owner; the location owner is given a cash credit for the number of free games he, in turn, paid off to the player - usually a cash pay-off.

4 - A provision for mulitple coin insertion for increasing the odds on winning free games. If the machine were being played purely for "amusement," the insertion of more coins to play one game would not be necessary since it adds nothing to the skill required in playing the game; and

5 - Special electro-mechanical devices which allow the machines

to be adjusted manually or automatically to raise or lower the frequency of winning free games. One such device is known as a "reflex unit." It operates constantly to adjust the odds--unbeknownst to the player--to protect the "house." After a series of pay-offs the unit begins to disconnect circuits in the odds-fixing mechanism to reduce the chance of increasing the odds with each coin; after a period of slow play the unit reverses and reopens circuits to make it progressively easier to win a greater number of games again.

Since the mechanical makeup of pinball machines used for gambling purposes can be distinguished from those used solely for amusement it is believed that the latter should be excluded from the provisions of AS 11.45.040 unless actually used in the making of pay-offs. Defining "gambling implement" in this way appears to be more in keeping with the legislative intent of AS 11.45.040 than use of the broader definition now sanctioned by the court. A bill to effectuate the recommended proposal is contained in Appendix 5.

B. WADE v. DWORKIN [Sup. Ct. Op. No. 306 - November 4, 1965]

1. Fact Situation. The Secretary of State denied an application for a recount of votes for the House of Representatives' race of November, 1964, in the sixteenth election district on the ground that the application was not received within the time set by law for filing such applications.

The state canvass of the election in question was completed and certified to the Secretary of State on November 19, 1964. The application, which had been signed by ten qualified voters of the sixteenth election district (one of whom was the appellee, Lazer Dworkin), was mailed on November 23, 1964, (four days after the canvass) and received by the Secretary of State on November 25th, which was six days after certification of the state canvass (one of those six days being an intervening Sunday).

2. Statutes Involved. This case involved the following statutes:

(a) AS 15.20.430, which states in part

A defeated candidate or 10 qualified voters who believe there has been a mistake made by an election official or by the canvassing board in counting the votes in an

File

April 18, 1969
1426 O. St.
Anchorage, #99501

Rep. Berry Jackson
Chairman Judiciary Committee
House of Representatives
Juneau, Alaska

Dear Mr. Jackson,

Enclosed is a letter that I have submitted to the Anchorage Times. I hope that after you have read same that you will find it worthwhile to show to your nine member committee, I sincerely appreciate your stand in this matter.

I know that myself along with the rest of the people of Alaska who are for good clean government will applaud what ever you do to defeat this pinball bill #360.

Yours truly,

Chuck Dix

Chuck Dix Anchorage,

C O P Y

LET'S TILT HB. #360

Dear Editor,

I have just read with appalling disgust the article in the Times dated April 10, entitled "PINBALL MEASURE QUIETLY DROPPED INTO HOUSE HOPPER." 1. This is an attempt to force the extension of an illegal business on the residents of Alaska. 2. This illegal bill was drawn up by and with the full knowledge of ONE and maybe more of the lawmakers of the State of Alaska. 3. It defies the wishes of the majority of the residents of Alaska as statewide gambling was defeated at the poles a few years ago by a large margin. 4. It defies the Alaska Supreme Court which said that pinball machines were illegal and could not be licensed in the Sate of Alaska. 5. It breaks the pinballs boys' agreement that if the law makers would just give them an extension to get their money out of their investment THEY, THE PINBALL CROWD would be happy. This was done by the 1966 legislature. This extension will expire June 30, 1969, WE HOPE.

How can the law makers of Alaska justify even considering such an illegal bill in the first place, when they have already gone out into left field in allowing an illegal business to operate for 3 years. The one or more who are responsible for this bill should be made public and an explanation demanded how as LAW MAKERS they are able to produce illegal bills such as HB #360. The 1969 legislature can only erase this blight that was forced upon them by the introduction of this bill by once and for all "TILTING HB #360." I say a vote of thanks to the Anchorage Times for bringing this piece of GARBAGE out into the open.

Chuck Dix

Chuck Dix
Anchorage

C O P Y

# STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL / POUCH K, STATE CAPITOL — JUNEAU 99801

April 14, 1969

The Honorable Barry W. Jackson
Alaska State Representative
House of Representatives
Juneau, Alaska

Dear Mr. Jackson:

House Bill 360, now before the Legislature, will extend the expiration date of 135 SLA 1966. In light of this, you have asked for an opinion on the effect that 135 SLA 1966 has upon the legality of operating pinball machines in the State of Alaska.

135 SLA 1966 amended AS 43.35.090(2) by inserting the words "but free plays shall not be construed as a thing of value." Sections 2 and 3 of the Act provide:

> It is the intention of the legislature that this bill shall in no way be considered an attempt or intent to liberalize or to exempt the state from the limitations imposed by 15 U.S.C. secs. 1171-1178.
>
> This Act shall not remain in existence beyond June 30, 1969.

The legislative intent for enacting SB 282 (135 SLA 1966) is found in the "Report of House Judiciary Committee on Senate Bill No. 282, 1966 House Journal 870, where the majority of the committee stated:

> The proponents of this bill feel that the statement in the bill that free plays shall not be construed as a thing of value will indicate a legislative intent that pinball machines are not gambling implements by eliminating the 'prize' which is one of the three essential elements of gambling.
>
> This may or may not be so. (Emphasis added)

It must be noted from the above text of the majority committee report, that whether or not the proponents desired goal would be accomplished was in some doubt.

The above cited committee report fully recognised the problem in amending the taxation statutes to attempt to define a phrase in a criminal statute.

Thus, the determinative issue to be resolved in deciding whether or not the proponents of SB 282 accomplished their goals, is whether or not a taxation statute (AS 43.35) and specifically a definitional section in that statute, defining "coin-operated device class 2" will be considered by a court when attempting to define a phrase used in a criminal statute, specifically the phrase "gambling implements" as used in AS 11.45.040.

AS 43.34.010 in part provides:

> A person who maintains for use or permits the use on premises under his control of a coin-operated . . . class 2 . . . shall first pay a tax as follows: . . . (2) $120 a year for each <u>coin-operated device class 2</u>. . . . (Emphasis added)

For a definition of "coin-operated device class 2" it is necessary to look to AS 43.35.090, the section in question, which in part states:

> <u>In this chapter</u>
>
> * * *
>
> (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; (Emphasis added)

It could be argued that by stating "in this chapter" the above definitional section would not be used to define any terms outside of AS 43.35, but only used to define "coin-operated device class 2" as that phrase is used in AS 43.35.010. It should also be noted that AS 43.34.090 (2) is a definition of a "coin-operated device class 2" and not a definition of a "gambling implement."

The issue at hand was well settled by the Alaska Supreme Court in State v. Pinball Machines, 404 P.2d 923 (1965). The Court held

> . . . it is too well settled for argument that a business expressly condemned and made unlawful by statute is not made lawful by the fact that a tax is imposed with respect to the operation of such business. (p. 927)

In other words, a business that is unlawful (operation of a gambling implement) is not made lawful because of a tax imposed on the maintenance for use of the gambling implement.

The Court then held:

> AS 43.34.090(2) which contains the definition of a class 2 coin-operated device, is nothing more than that--a definition of that which must exist before the tax becomes applicable. Such a definition of a term cannot logically be construed as a legislative statement on the uses and purposes to which a pinball machine may be put.
>
> As part of the same statute which defines a class 2 coin-operated device, AS 43.35.070 states that:
>
> > This chapter does not legalize gambling or the possession of a gambling device.
>
> . . . .
>
> The above quoted statutory provision makes it clear that the use or possession of a

> pinball machine is not made lawful by the mere fact that such a machine is defined by law for tax purposes. (Emphasis added) (Supra, p. 928)

AS 43.35.070 referred to in the Court's opinion makes it clear that whatever is provided or stated in the future or past in AS 43.35, it is not meant to legalize gambling or possession of gambling devices. It could be argued, therefore, that regardless of the legislative intent in an amendment to AS 43.35.090(2), AS 43.34.070 restricts the use of that section and any of its amendments to the definition of a "coin-operated device class 2" as used in AS 43.34.010.

In view of the reasoning expounded by Alaska's Supreme Court in the above cited case, it is the opinion of this office that 135 SLA 1966 probably did not legalize "free play" pinball machines, even though a few arguments could be made to the effect that it did.

Very truly yours,

G. KENT EDWARDS
ATTORNEY GENERAL

By B. Richard Edwards
B. Richard Edwards
Assistant Attorney General

GKE:BRE:jt

Alaska State Legislature

REPRESENTATIVE
BARRY JACKSON

P. O. BOX 348
FAIRBANKS, ALASKA 99701

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99801

HB 360

297 machines in 1918

TREND

| | |
|---|---|
| 614 | 1962 |
| 462 | 1963 |
| 327 | 1964 |
| 311 | 1965 |
| | 1966 |
| | 1967 |
| 297 | 1968 |

draft HB 363

# Judiciary Committee Report

on

# House Bill 363

This bill modifies the procedural requirements for execution upon the assets of a judgment debtor, where no attorney has appeared or where judgment was obtained by default. In such cases many people, particularly the indigent or unlearned, are completely unaware that state and federal law exempt a basic minimum of property from execution to satisfy a judgment. Existing law, however, also permits execution without any notification to the judgment debtor of those rights.

This defeats the established policy of this State, which is intended to enable judgment debtors to retain minimal income and property for their support. A more effective procedure is needed to insure the use of existing exemption rights by indigents and those unaware of their rights.

First, the bill prohibits property from being sold or otherwise disposed of pursuant to a writ of execution for a period of 15 days. This waiting period will not unduly burden the judgment creditor in that assets capable of movement or seizure will be protected by the Court.

Second, it provides for a prompt hearing on exemptions claimed, if possible within three days after the judgment debtor has received notice.

Third, the debtor in such cases must receive a notice specifying the property seized or to be sold, which notice must be filed in Court with proof of service. The notice must contain an explanation, capable of being understood by a layman, of the various exemptions which exist and a form on which the claimed exemptions may be asserted.

The bill provides that the Alaska Supreme Court prescribe the proper forms to be used. Attached to this Report are sample forms, noted with approval by the Committee, and it is urged that such forms be adopted by the Court to the extent consistent with existing style and form of pleadings and other papers prescribed by the Court.

SAMPLE NOTICE FORM

IN THE _____ COURT OF THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

Plaintiff,

v.

Defendant.

No. _____

A Writ of Execution has been issued against you. The following property claimed to be your property has been seized:

_____

_____

_____

_____

A copy of the Writ of Execution is attached to this notice.

Final sale or disposition of this property will be sought fifteen (15) days after you receive this notice.

Certain of your property may be exempt from execution under Alaska or Federal law. These exemptions are explained below. If the execution is directed against exempt property, you may prevent loss of this property by following these steps within fifteen (15) days:

1. Fill out the attached "Assertion of Exemption" form, indicating which of the property stated in the Writ of Execution you claim as exempt, and sign the form.

2. Mail or deliver the form to the clerk of the

Court _____, room _____,

_____, Alaska.

3. Mail or deliver copies of the form to the plaintiff or his attorney. (See above).

4. Mail or deliver a copy of the form to any person having possession of any property you claim as exempt. For instance, your employer, if you claim that your wages are exempt.

If these steps are followed within fifteen (15) days of the date you received this notice, the property you claim as exempt will not be disposed of. You will then be notified that a hearing will be held to determine whether the property is exempt.

Explanation of Exemptions:

The form is used only to claim an exemption as to property stated in the Writ of Execution.

If the property stated in the writ of execution includes any of the following items, fill out the forms and deliver or mail copies as explained above.

The first item on the form, A.1., should be checked and filled in if the writ of execution states that your wages, or other money owed to you, is to be attached. A single person may keep $200 after taxes, in any thirty (30) day period, the head of household may keep $350 after taxes. Therefore, add all the money you have earned, even if you haven't been paid, <u>from all sources</u> in the last thirty (30) days.