13 HJ: FILE NO. 5 - FILE NO. 1 (SENATE BILLS)

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99801

April 2, 1970

MEMORANDUM

TO: Barry W. Jackson, Chairman
House Judiciary Committee

FROM: Arthur H. Peterson
Revisor of Statutes

SUBJECT: HB 786 (notice requirements for regulation-adopting under the APA)

Two objectives must be borne in mind when dealing with a notice requirement for administrative regulations: (1) the need to give the public actual notice of agency action; and (2) the need to allow some administrative flexibility. The present language in AS 44.62.200 would seem to do this, but in light of certain judicial interpretations and the reaction to certain attorney general opinions perhaps some clarification would be helpful. (It should be noted that Judge Occhipinti's September 19, 1969 order in Botner v. Reetz, No. 69-697D, is not in the least bit helpful without reading the memoranda of counsel in that case. He simply says "In reviewing the memoranda of counsel, the Court finds that notice as given after 1961 did not comply with the statutory requirements of setting forth 'either the express terms or an informative summary of the proposed action'." No reasoning is given in the order.)

There are various possible approaches:

(1) HB 786 suggests one aimed at action of the Department of Fish and Game. However, it poses some problems: first, the reference to "(a) of this section" and to "times, dates, numbers and similar items" is slightly confusing because (a)(1) refers to the time, place, etc., for the regulation-adopting proceedings; secondly, "similar items" is extremely vague; thirdly, the list of certain matters that may vary from the notice raises a strong implication that no others may do so, which is not desirable because this part of the APA applies to all state agencies (with limited exceptions); fourthly, the possibility of variation is wide open, the restriction to the same "subject matter" not being an adequate guide to the agency in giving proper public notice (e.g., is the subject matter "fishing regulations", or "fishing regulations on season dates", or "fishing regulations on season dates for Southeastern Alaska", or "fishing regulations on season dates for Southeastern Alaska, District 14"?).

(2) Somewhat similar to HB 786, a new section or subsection could be added expressly allowing variation from the notice; e.g., add (b) to AS 44.62.200 to read something like "A regulation which is adopted, amended or repealed may vary in content from the terms or summary specified in (a)(3) of this section if the subject matter of the regulation remains the same and the original notice was written so as to assure that members of the public are reasonably knowledgeable of the proposed agency action in order for them to determine whether their interests will be affected by it and whether there is cause for them to make their opinions on the matter known to the agency."

(3) It has been suggested that approach no. (2), above, be modified by omitting the last part, so that it would read: "A regulation which is adopted, amended or repealed may vary in content from the terms or summary specified in (a)(3) of this section if the subject matter of regulation remains the same." As indicated in approach no. (1), above, this would require a determination of what the "subject matter" is in each case, without giving any further guidance to the agency or protection to the public.

(4) The "informative summary" could be explained; e.g., amend AS 44.-62.200(3) to read: "either the express terms or an informative, subject-matter summary of the proposed action, which summary shall be written so as to assure that members of the public are reasonably knowledgeable of the proposed action in order for them to determine whether their interests will be affected by it and whether there is cause for them to make their opinions on the matter known to the agency;".

(5) Since the Department of Fish and Game and the problems regarding its regulations are somewhat unique, a special provision dealing with variation in its regulations could be added. However, correspondence with the Alaska Bar Association's Administrative Law Committee indicates that this approach would not be favored since the members of that committee are interested in bringing all state agencies under the APA, presumably with uniform notice requirements, etc.

(6) Perhaps an explanatory intent clause, added to any of the above approaches, would be helpful.

The committee may wish to consider whether the language in approaches no. (2) and (4), above, could be used to invalidate a regulation on the ground that an individual who belatedly discovers that his interests were affected by an agency regulation was not given sufficient information to make his decision before the regulation was adopted. If such an interpretation does not seem likely or reasonable, it is suggested that (2) and (4) are the best approaches of those listed above. Suggestions for different language are invited.

It should be noted that almost any language, short of a provision that omits a notice requirement altogether or one that requires the notice to contain

the regulation verbatim, will necessitate an administrative decision as to what is "an informative summary" or what is the "subject matter" or what is a "minor" variation or what is "reasonable notice", etc. It should also be noted that the Department of Fish and Game's "double meeting" problem seems to be a matter of policy rather than of law. The department uses the first meeting as an information gathering session. It is not apparent how even the original HB 786 deals with that matter.

AHP:ic

WORK DRAFT COPY

JUDICIARY COMMITTEE REPORT

ON

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 786

The original HB 786 was directed at solving certain problems the Board of Fish and Game has been having in its regulation-adopting procedures. The main problem has been the interpretation of "informative summary" in AS 44.62.200(3); notice of proposed regulations is required to contain either the express terms or an informative summary of them. Apparently as a result of certain opinions and advice from the Office of the Attorney General and certain rulings of the superior court in the Third Judicial District, the board feels that a regulation it adopts may not vary at all from the notice given for that regulation, especially when dealing with such things as the bag limits on game animals and the starting times and dates for fishing seasons; it also seems to feel that two meetings are required for the adoption of regulations, the first one being an information-gathering session.

The Judiciary Committee believes that the intent of the existing law does not require this, but that since such administrative difficulty has arisen there should be some clarification of the law. Two objectives must be borne in mind when dealing with a notice requirement for administrative regulations: (1) the need to give the public reasonable notice of agency action; and (2) the need to allow some administrative flexibility. The committee substitute attempts to meet these objectives, providing some guidance for the agencies and protection for the public. It removes two items of uncertainty in the original bill, and removes the possibility of a negative inference arising from the listing of specific matters ("times, dates, numbers and similar items") that may vary from the notice; the committee substitute applies to all types of regulations.

The committee recognizes the difficulty in maintaining the balance between generality and specificity in writing notices which give members of the public sufficient information to decide whether their interests could be affected by the agency action and thus whether to make their opinions known to the agency. It would appear that almost any statutory language, short of a provision that omits a notice requirement altogether or one that requires the notice to contain the regulation verbatim, will necessitate an administrative decision on an issue such as the content of "reasonable notice".

Barry W. Jackson, Chairman

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99801

April 16, 1970

Barry:

You will find attached a new proposed CS for HB 786. This resulted from the discussion between Av Gross, Tom Wardell and Keith Goltz, yesterday, and it looks o.k. to me. The only difference between this one and the one I prepared a week or so ago is that it deletes the reference to "express terms", which they believe has led the court to require that the "informative summary" be something approaching the express terms.

There is also attached a new committee report, based on my earlier one, but including two examples written by Av Gross and a new paragraph on the board's two-meeting procedure (written by me, and concurred in, I believe, by the attorney general's office). Keith Goltz suggests deleting the reference to the attorney general's office in the first paragraph (but I think the reference is accurate and should be left in, as further evidence of the nature of the problem the committee was dealing with in preparing the committee substitute).

A.

Art

Judiciary Committee Report

on

CS for HOUSE BILL NO. 786

The original HB-786 was directed at solving certain problems the Board of Fish and Game has been having in its regulation-adopting procedures. The main problem has been the interpretation of "informative summary" in AS 44.62.200(3); notice of proposed regulations is required to contain either the express terms or an informative summary of them. As a result of certain rulings of the superior court in the Third Judicial District, and, apparently, certain opinions and advice from the Department of Law, under the present language of the statute, the board feels that its notice of proposed regulations must be very detailed and specific and that a regulation it adopts may not vary at all from the notice given for that regulation, especially when dealing with such things as the bag limits on game animals and the starting times and dates for fishing seasons.

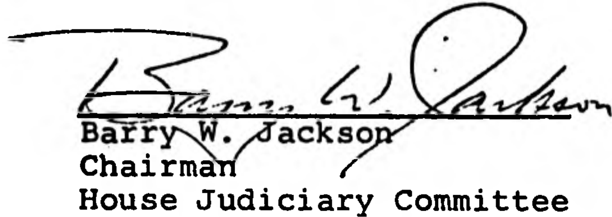
The Judiciary Committee believes that such a restrictive approach is not desirable, and since this administrative difficulty has arisen there should be some clarification of the law. Two objectives must be borne in mind when dealing with a notice requirement for administrative regulations: (1) the need to give the public reasonable notice of agency action; and (2) the need to allow some administrative flexibility. The committee substitute attempts to meet these objectives, providing some guidance for the agencies and protection for the public.

By way of example, the committee believes that notice by an agency that it is going to consider regulations setting a limit on bear in a particular area of the state should be sufficient to support agency action setting any limit, or no limits, in that area. Similarly, notice that the agency will consider a regulation opening the fishing season on a particular date is sufficient notice to support any date, since the subject matter of the regulation (opening the season) remains the same. The committee substitute is directed toward clarification of any confusion that may exist on this point. Moreover, the CS removes two items of uncertainty in the original bill, and removes the possibility of a negative inference arising from the listing of specific matters ("times, dates, numbers, and similar items") that may vary from the notice; the committee substitute applies to all types of regulations.

The committee recognizes the difficulty in maintaining the balance between generality and specificity in writing notices which give members of the public sufficient information to decide whether their interests could be affected by the agency action and thus whether to make their opinions known to the agency. It would appear that almost any statutory language, short of a provision that omits a notice requirement altogether or one that requires the notice to contain the regulation

verbatim, will necessitate an administrative decision on an issue such as the content of "reasonable notice."

The committee notes that the Board of Fish and Game seems to feel that two meetings are required for the adoption of its regulations, the first one being an information-gathering session. This does not appear to be required by law, but is, rather, a matter of policy of the board. Neither the original bill nor the committee substitute deals with this matter, except to the extent that the board should be able to write a notice that would be adequate to permit information-gathering and regulation-adopting at a single meeting. It is the committee's intent that this matter of the number of meetings be left to the discretion of the board. It would appear that the board could adopt meeting procedures, consistent with the law, which would facilitate achieving the objectives stated above.



Barry W. Jackson
Chairman
House Judiciary Committee

HB 787

RESOLUTION NO. 679

A RESOLUTION TO SUPPORT AND ENCOURAGE THE PASSAGE OF HOUSE BILL NO. 787 IN THE LEGISLATURE OF THE STATE OF ALASKA, SIXTH LEGISLATURE - SECOND SESSION.

WHEREAS, the Local Government and Judiciary has prepared and introduced House Bill No. 787 relating to the authority of certain classes of cities and organized boroughs with respect to urban renewal; and

WHEREAS, Legislature of the State of Alaska, Sixth Legislature - Second Session has now before it this House Bill No. 787 under consideration; and

WHEREAS, it is the opinion of the City Council of the City of Fairbanks, Alaska, that such legislation would be favorable to certain classes of cities and organized boroughs to have the power with respect to the planning or undertaking of an urban renewal project in the area which the municipality or public body is authorized to act;

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, AS FOLLOWS:

SECTION 1. That the City Council supports House Bill No 787 and encourages the Legislature of the State of Alaska, Sixth Legislature - Second Session to favorably consider the passage of this legislation.

SECTION 2. That a copy of this resolution be sent to each member of the Legislature of the State of Alaska, Sixth Legislature - Second Session.

PASSED and *APPROVED* this 20th day of April, 1970.

H. A. BOUCHER, Mayor

ATTEST:

WALLIS C. DROZ, City Clerk

HB-801

HUGHES, THORSNESS, LOWE, GANTZ & CLARK
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
807 G STREET
ANCHORAGE, ALASKA 99501

JOHN C. HUGHES
DAVID H. THORSNESS
ROBERT C. LOWE
RICHARD O. GANTZ
MURPHY L. CLARK
ROBERT C. ERWIN

JAMES M. POWELL
BRIAN J. BRUNDIN
GARY W. GANTZ
MARCUS R. CLAPP
KENNETH P. JACOBUS

AREA CODE 907
TELEPHONE 279-4522

April 16, 1970

Representative William L. Hensley
Chairman, Health, Welfare & Education
Committee
House of Representatives
Juneau, Alaska 99801

RE: House Bill No. 801

Dear Willie:

The provisions of House Bill No. 801 have caused some discussion within the University and among the Regents. In particular, we are concerned, not in the aim expressed, but the method of implementing it.

I think we are all in agreement that higher education can be helped and strengthened by the State contracting with private institutions for educational or other services. But I think the sole authority for such contracting, on behalf of the State, should rest in the Board of Regents, and not with the Commissioner of Education. The Regents are now charged with post-secondary education throughout the State and the fragmentation of that responsibility would I think be violative of the constitutional scheme, and it most certainly would lay a basis for problems to develop.

This is not to say that the Regents are the only ones who have any "smarts" regarding post-secondary education. But the scheme is presently to centralize the effort in that area and I believe fragmenting it could only cause duplication, waste, and lead to controversy. And the present set up has shown it is workable and it does not lead necessarily to centralization of effort.

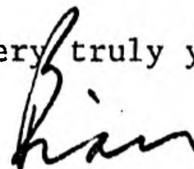
As example, we have recently met with the Board of Education for the State, and we continually coordinate with local boards of education regarding the community college programs throughout the State. This partnership of effort, which finds central direction through the Regents, is working exceedingly well. It would certainly be a mistake to set up separate boards for each community college, for example.

Similarly, we are now engaged in a very progressive and rewarding effort with Alaska Methodist University to provide a consortium of universities in the Anchorage area. To be successful, we will have to make substantial contractual arrangements with AMU for joint use of facilities, sharing of faculty, movement of students between programs and the like. I look for this effort to be equally as or more successful than the joint effort regarding community colleges. Again, however, it would cause nothing but problems if the right to make such contracts was decentralized from the Regents in any way.

You know of the recent efforts between the Regents and Commissioner Hartman and the State Board of Education regarding the programming and management of funds for vocational education through the Commissioner's office and to the community colleges. With such splendid cooperation in this and other areas, there seems no reason to me why similar cooperative efforts could not be continued in the contracting with private institutions. That is if the Commissioner had such a program, it should be no problem to get contracts as needed through the Regents of the University. In doing so, the essential centralization of planning and coordination would be maintained.

I would hope, therefore, that your Committee would not favor enacting House Bill 801. I think no legislation is required, as the Regents already have such authority to enter into such contractual arrangements.

Very truly yours,



Brian J. Brundin, Regent

BJB:kf

HB 803
File 803

LAW OFFICES OF

ALASKA LEGAL SERVICES CORPORATION

111 FOURTH STREET
JUNEAU, ALASKA 99801

TELEPHONE 586-6145

DICKERSON REGAN
SUPERVISING ATTORNEY

ANCHORAGE OFFICE
WILLIAM H. JACOBS
EXECUTIVE DIRECTOR
425 "G" STREET, SUITE 630

April 23, 1970

Representative Barry W. Jackson
Chairman, House Judiciary Committee

Dear Mr. Jackson:

I was shocked to hear from you this morning that the House Judiciary Committee has indicated an unwillingness to consider H.B. 803, relating to the jurisdiction of superior courts.

My dismay is best seen in the light of some past history. Since March 31, 1970, when this bill was first introduced by the Committee, I have been scheduled to appear at least seven times to testify in support of the bill. On several of those occasions I waited for the duration of the committee session, only to be told that there would be no time for consideration of the bill, even though other public witnesses had been heard. On two occasions I extended my stay in Juneau to find that at the eleventh hour that the meeting had been postponed, or that H.B. 803 would not be taken up.

The House Judiciary Committee has been as generous as any other legislative committee in considering bills we have proposed on behalf of indigent clients in Alaska. You have always evidenced an open mind to those proposals, and for that the Committee is to be commended.

It is not too late for action on H.B. 803. The Senate has already passed a substantially similar bill, S.B. 297, and would, I am certain, be willing to concur in a House version which closely parallel it. The Senate bill passed last year, in April, by a vote of 19-1.

Although this legislation does not provide new substantive rights, it is extremely important in terms of the procedures by which violations of the state anti-discrimination statutes can be corrected and enforced. It would provide that individuals complaining of violations be permitted to file an action in state superior court.

The State Human Rights Commission has specifically endorsed this legislation on two separate occasions, December 10, 1969, and March 6, 1970.

HB 803

I urge the Committee to take this bill up at the earliest possible date. Unfortunately I will not be able to remain in Juneau for the remainder of the legislative session. However, should the Committee reconsider, Dick Regan of our Juneau office is available to appear before you at any time on this bill.

Respectfully,

Philip B. Byrne

Philip B. Byrne
Deputy Director

cc: All Members, House Judiciary Committee

HB-803

Comments Of
Alaska Legal Services Corporation
In Support of S.B. 297

This proposal was originally drafted by Alaska Legal Services attorneys and jointly introduced by Senators Josephson, Begich, Miller, Brad Phillips, and Rader. (S.B. 297) It passed the Senate April 7, 1969, with one dissenting vote, and has been referred to the State Affairs and Judiciary Committees of the House.

The State Commission for Human Rights exercises jurisdiction over all violations of existing State anti-discrimination laws. Specifically, its jurisdiction relates to discrimination in employment, whether by an employer, labor organization or employment agency; places of public accomodation; housing; financial practices; and state operations. (A.S. 18.80.210-255). Primary enforcement responsibility is vested in the State Commission for Human Rights. (A.S. 18.80.010 *et seq.*) The Commission, upon the receipt of a complaint from an aggrieved individual or upon its own motion (A.S. 18.80.100) may initiate informal proceedings to achieve conciliation (A.S. 18.80.110) and, if appropriate, issue a cease and desist order against the action and individual or firm as to whose action the hearing was conducted. (A.S. 18.80.120-130). In such proceedings

the Commission, and not the complainant, would exercise control of the presentation. The complainant or the respondent may seek judicial review of the Commission's action (A.S. 18.80.135(a)). Enforcement of the cease and desist order may be judicially obtained, but only at the instance of the Commission (A.S. 18.80.135(b)). In addition to the above, enforcement may be had through criminal prosecution of a person who engages in action prohibited by the substantive provisions of the anti-discrimination laws. (A.S. 18.80.270).

As provisions are now written, it is unclear whether an individual is required to resort to the Commission for Human Rights for relief from discriminatory conduct, or if he is free to seek redress directly through the courts. A second problem is that the terms of the present act do not indicate that relief may be sought as a member of a class, or that the Commission may act against a pattern of discrimination within an industry, labor union, etc., rather than merely dealing with individual instances of discrimination.

The proposed addition specifically states that the Superior Courts of Alaska shall have jurisdiction over causes of action arising under the Alaska discrimination laws, including any collateral issues which are a part of the discriminatory conduct complained of. This would include a pattern of discrimination which might otherwise not be cured if the issues were limited to specific discriminatory acts. For example, an individual who instituted an action against a company to redress racial discrimination would be able to maintain a class action and obtain relief as to all members

of his class, including those who work in a different department.

It further provides for notification to the Commission whenever such a suit is filed, and that the Commission may either intervene in the suit as a party, or inform the Court that it is already acting on the discriminatory act giving rise to the lawsuit. In case of the latter, the court will defer action on the suit until the Commission has determined the issues before it. A limitation of forty-five days in this case is included to ensure the prompt settlement of these issues. The act empowers the Court to enter a preliminary injunction pending Commission action.

If the plaintiff's lawsuit is deferred to Commission action, the plaintiff is given the status of an "aggrieved" party in the event of an adverse decision so as to authorize his participation in or prosecution of an appeal from the Commission's order.

These amendments will serve three basic functions:

(1) an individual will be free to pursue his own remedies rather than rely upon Commission action in cases where the Commission is unable to give his problem prompt attention;

(2) class actions directed at patterns or practices will be permitted, rather than requiring enforcement to focus on individual or isolated acts; and

(3) the Commission's enforcement powers will be strengthened by the power to intervene in broad scale attacks upon discrimination.

We believe these amendments to be doubly important because of the limited staff and budget with which the Commission is currently required to operate.

This proposal was unanimously endorsed by the Board of Directors of Alaska Legal Services Corporation with the stipulation that a provision be added setting a nominal damage figure at $250. This could be accomplished by adding a sentence at the end of Section 18.80.340 as follows:

> Upon a judgment for the plaintiff in a case brought under this chapter, the court shall award nominal damages of $250.00 unless actual damages exceeding that amount have been established.

File HB 809 (this bill 809 in coming to mr. 809)

STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S—JUNEAU 99801

April 20, 1970

The Honorable Lester Bronson
Chairman, House Commerce Committee
Alaska State Legislature
Juneau, Alaska 99801

Re: HB 809 and SB 565 - An Act Relating to Personal Property Protection Motor Vehicle Insurance

Dear Representative Bronson:

Reference is made to House Bill 809 which is now pending before your committee.

The Department of Revenue opposes HB 809 as it presently reads for several reasons. A brief summary of some of these reasons follows:

1. Line 23 on page 26 of HB 809 defines department as being the Department of Public Safety. While that department administers the drivers license statutes, the Department of Revenue administers the Motor Vehicle Registration statutes. As such the Department of Revenue would be deeply involved in handling registration of vehicles and insurance under the act. It is not believed that the bill as presently worded distinguishes this sufficiently in the administration of the act.

2. Line 8 of page 27 modifies AS 28.10.050(a) by adding a new paragraph (6) which requires the Department of Revenue obtain from each application for registration proof that the security required by the bill has been obtained. Line 10 on page 27 of the bill amends AS 28.10.100 by stating that the Department of Revenue shall refuse to register the vehicle if the security is not in effect on the vehicle. The present registration procedure does not require any supporting documentation such as this required for financial responsibility. The necessity of handling and to some degree auditing these insurance policies as a prerequisite to licensing would virtually double the cost of administration, and in the instance of the mail-out renewal program would prove even more costly as the Department of Revenue would have to write the taxpayer and request insurance proof whenever it was not received with the mailed-in application. (Because certain sized forms are used at present in filing and insurance policies are generally not printed on that size paper, the bill would require a virtual duplication of files in the Motor Vehicle Division. This will greatly increase the costs of administration.)

Since few insurance policies cover the calendar year and the 5-month grace period we will have many insurance policies expiring and being renewed. Shifts of policies from one company to another and cancellation will increase the cost of labor and material considerably.

3. Because insurance policies vary in their wording and their coverage it would appear necessary to design a standard insurance policy which everyone must follow. To do this the Attorney General's office would be given the power under the statute to design such a policy. Otherwise it would be virtually impossible for our present staff and licensing agents, who are untrained in the interpretation of insurance policies, to ascertain whether a vehicle is properly insured at the time of registration.

4. Lines 6 through 8 on page 26 of HB 809 provide that if a person fails to make payment within 30 days because of an injury or damage shall be grounds for suspension or revocation of the motor vehicle registration and operators license. Revocation of the motor vehicle registration should theoretically be revoked in the Division of Motor Vehicles, but locating the registered owner, cancelling his registration certificate and obtaining the plates back is a far more difficult thing to accomplish. The person and/or vehicle may be out of the state or their whereabouts may not be known.

It is requested that the Department of Revenue be given the opportunity to appear before your committee and clarify these and other factors involved in the administration of HB 809.

Very truly yours,

Vernon L. Snow
Deputy Commissioner

VLS/ge
cc: John Beard
Representative Barry Jackson
Paul Goodrich
Phil Wall
R. D. Stevenson

1

HB 856

STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K, STATE CAPITOL — JUNEAU 99801

May 8, 1970

Honorable Barry Jackson
Chairman
House Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Dear Representative Jackson:

This note accompanies a draft of HB 856 which takes into consideration the amendments proposed by you and members of your committee. They are as follows.

(1) In subsection (a) it will be noted that amendment has been made which would allow the ABC Board to require accommodations greater than 10 rooms for issuance or transfer of a license if in its discretion it felt that 10 rooms would not be a sufficient facility. This provision has the advantage of keeping the size requirements low enough to encourage smaller facilities while providing certain control over possible abuse under the section.

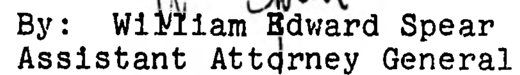
(2) Members of the committee expressed concern that tourist accommodations might be constructed but not used under a sec. 260 license, thus effectively circumventing the quota requirements. It was also noted that a facility should not have the tourist accommodations open on a part year basis but keep the dispensary open all year. Subsection (b) represents a relatively straight forward approach to these problems by requiring the tourist accommodations to be open and suitable for occupation whenever the bar is open. AS 04.10.320(b) (Duration of Licenses) provides for a one-half year license for seasonal operations which would be available to facilities desiring it.

(3) Subsection (c) makes sec. 270 applicable where a license would operate within an organized borough or city and would require assembly or council approval for issuance. This, of course, gives the localities affected some control over what "extra" licenses might be issued within their boundaries.

I hope these amendments meet with your approval.

Sincerely,

G. KENT EDWARDS
ATTORNEY GENERAL



By: William Edward Spear
Assistant Attorney General

GKE:WES:em

DRAFT OF CS for HOUSE BILL NO. 856

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to alcoholic beverage licensing to encourage tourist trade."

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

* Section 1. AS 04.10.260 is amended to read:

Sec. 04.10.260. LICENSING TO ENCOURAGE TOURIST TRADE. (a) The board may, in its discretion, approve the issuance or transfer of a license [INTO AN AREA OUTSIDE AN INCORPORATED MUNICIPALITY] without regard to the quota provisions [of secs. 210 - 290] of this chapter where it appears that the issuance or transfer will encourage the construction or improvement of a hotel, motel, resort or similar business related to the tourist trade having a minimum accomodation of 10 rooms. However, the board may in its discretion require a minimum accomodation of more than 10 rooms as a requirement for a license issuance or transfer under this section.

(b) The accommodations required in (a) shall be available and suitable for commercial occupation at all times during which alcoholic beverages are dispensed in accordance with a license under this section.

(c) An application for the issuance or transfer of a license under (a) of this section is subject to the provisions of sec. 270 of this chapter if the license applied for would be issued within an incorporated municipality.

FORM SA-1B

File
HB-857

MEMORANDUM State of Alaska

TO: The Honorable Barry Jackson
Chairman
House Judiciary Committee
Alaska State Capital Building

DATE : April 28, 1970

FROM: John K. Robertson, Director
Division of Banking, Securities,
Small Loans & Corporations
Department of Commerce

SUBJECT: Summary of Trust Company Bill

In less than a year, the Department has chartered one trust company and is currently considering two other applications. In addition, several application forms have been furnished to interested persons. Prior to this period, the Trust Act (AS 06.25) had never been used. We believe, in some instances at least, the sudden interest in the Act is due largely to the general banking privileges provided under Sec. 06.25.100, low capital requirements and the absence of supervisory and regulatory provisions.

As mentioned, the Department is now considering the "applications" of two trust companies. These "applications" consist of Articles of Incorporation filed under Title 10, List of Stockholders, Affidavit showing $25,000 in paid capital, Directors Oaths and the receipts showing a deposit of securities with the Department of Revenue. According to the statutes, after the trust company has furnished this information, the Department "shall" issue a Certificate authorizing the trust company to engage in business. In other words, in reality, there is no application or "consideration" of the application by the Department. Therefore, the purpose of the proposed trust company bill is to protect the public by preventing weak and unqualified entries into the state's financial system as well as establishing a legal framework within which the Department may provide continuing regulation and supervision.

The following is a brief explanation of the bill by section:

Sec. 1. Beginning capital requirements are increased from $25,000 to $100,000 and the par value is reduced from $100 to $1 per share. This would bring minimum capital requirements into conformance with those established for commercial banks (tends to eliminate weak applicants). Reducing the par value to $1 will allow broader distribution of the capital stock.

Sec. 2. Under the existing statute, a trust company may engage in the general banking business without having demonstrated its ability to do so. The amendments contained in this section would result in a qualification procedure for trust companies, essentially the same as for commercial banks. In other words, standards, i.e., public need and convenience, economic justification, and management capability would be applied. Membership in the Federal Deposit Insurance Corporation would be required of all trust companies engaging in the general banking business. Deposit insurance would not be required of trust companies involved solely in the trust business since the FDIC does not insure a trust company unless it receives deposits not connected with its trust accounts.

Sec. 3. Sec. 06.25.085 is a new section applying certain provisions of

the banking code (AS 06.05) to the regulation, operation, and supervision of trust companies. Specifically, those provisions are:

Article 1 - Banking Code

Powers of the Department over State Banks
Examination by the Department
Bank Reports to the Department

Article II - Banking Code

Handling Deposit Accounts
Reserves against Deposits
Legal Limits and other Limitations on Loans
Liability of Directors
Authorized Investments
Limitation on Borrowing
Investment in Banking Premises and Equipment

Article III - Banking Code

Issue of Capital Notes and Debentures
Application and Approval for Change of Location
Limitation on Payment of Dividends and Restoration of Surplus
Approval of Conversion, Merger, or Consolidations
Prohibited Practices
Department May Seek Injunction

The Trust Company Act is completely void of these operating and supervisory criteria. Such guide lines are essential to trust company management as well as the Department.

Sec. 4. Sec. 06.25.105 is new and provides branching privileges to those trust companies qualifying for deposit insurance.

Sec. 5. AS 06.25.230 is amended, providing that a trust company which is a member of the Federal Deposit Insurance Corporation is not required to maintain the 20% capital reserve. However, it should be noted, that insured trust companies are required to maintain deposit reserves as required under Sec. 200 of the Banking Code.

Sec. 6. AS 06.25.250, covering deposit reserves is repealed as being superfluous since insured trust companies are required to maintain deposit reserves under Sec. 200 of the Banking Code and non-insured trust companies are required to maintain capital reserves under AS 06.25.230.

Sec. 7. Sec. 06.25.255 is new and provides that the Department may restrict or prohibit a trust company from offering a service which it is not qualified to offer.

Sec. 8. Sec. 06.25.315 is new and establishes standards for regulation and supervision of trust companies similar to those set out in the Banking Code.

AB 660

STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S—JUNEAU 99801

March 18, 1970

HB 860

The Honorable Barry Jackson
Chairman, House Judiciary Committee
Alaska State Legislature
Juneau, Alaska 99801

Re: Juror's List - AS 09.20.050

Dear Representative Jackson:

Pursuant to your verbal request that the Departments of Revenue, Fish and Game, and Administration present you with their views respecting possible legislation to clarify problems that have arisen in the administration of Chapter 67 SLA 1969 (AS 09.20.050), I have contacted those other departments. It is our and their recommendation that the legislature consider taking the following action to solve the problems involved in administering Chapter 67 SLA 1969.

1. Since the voters list is made up according to precinct and the precincts have geographical limits within court districts, use of the voters list alone would solve most of the problems. We suggest you consider repealing Chapter 67 SLA 1969 and re-enactment of the prior statute as the simplest course.

2. If the list of voters is not broad enough, we recommend use of the voters registration list since it would increase the number of names available for jurors. Chapter 67 SLA 1969 could be amended to refer only to that list.

3. We question the apparent court system's interpretation of Chapter 67 that a single composite list with no duplications in names is to be furnished. The difficulty in furnishing such a list is finding a common denominator. Voters do not give their social security numbers and that number is not always present in the case of fishing licenses or income tax returns. Unless a common number can be assigned to an individual the only way that a single list could be prepared without duplication of names is to list persons by the sound of their names. Since individuals use their names and initials differently on different documents and many people have the same name or initials duplication occurs.

It is also difficult to present to the courts a list of names which will not contain duplication because of addresses. For example, voters may list their home address whereas the same person may use his mailing address on his income tax return or fishing license.

If Chapter 67 SLA 1969 is to be implemented, three separate lists will be submitted.

4. It is recommended that Chapter 67 be amended to require that the list of residents filing income tax returns and residents purchasing hunting and fishing licenses cover the even numbered years and be submitted by July 1 of the following odd numbered year. The voters list comes from general elections which fall in even numbered years. This would permit the court system and the departments involved to handle the problem of setting up jury lists only once every two years rather than once every year and would reduce the expense of preparing such lists.

If Chapter 67 is to remain in its basic format it is recommended that the statute be amended to provide that the list of persons purchasing resident fishing or hunting licenses cover those purchasing licenses during the previous year. At present it is not clear whether the statute speaks of the current year or the previous year. The Department of Fish and Game advises that the list it is currently preparing is of persons purchasing resident fishing licenses during 1970. A list for 1969 is not prepared. Administratively it would be more practical to furnish the list for the prior year rather than to furnish periodic lists during the year covering new licenses sold during the current year.

5. If Chapter 67 remains, it is recommended that it be amended to read that the income tax return list includes those persons filing returns having an Alaska address with no reference to residency. If this change is not made it is suggested that the term "resident" be defined for the purpose of determining whose income tax returns should be included because the definition of "resident" varies.

AS 09.20.010 states the qualifications of a juror to include that of being a resident of the state. No definition of resident is found in that chapter. However, AS 09.20.050 does refer to voters. AS 15.05.010(3) states that in order to vote the person must have been a resident of the state for at least one year before the election.

AS 16.05.940(14) of the fish and game statute gives an expanded definition of a resident. It reads:

> "(14) "resident" means a person who for 12 consecutive months has maintained a permanent place of abode in the state and who has continually maintained his voting residence in the state; and in the case of a partnership, association, joint stock company, trust, or corporation, "resident" means one that has its main office or headquarters in the state; however, a member of the military service who has been stationed in the state for the preceding 12 consecutive months is a resident for the purposes of this chapter, and the dependent of a resident member of the military service, who has been living in the state for the preceding year is a resident for the purposes of this chapter, and a person who is an alien but who for three years has maintained a permanent place of abode in the state is a resident for the purposes of this chapter;"

Although the income tax chapter (AS 43.20.010) refers to residents and

nonresidents, those terms are not defined in the act. The California definition of a resident for income tax purposes is the general rule followed by most states. It reads as follows:

> "Section 17014. "Resident" includes:
>
> (a) Every individual who is in this State for other than a temporary or transitory purpose.
>
> (b) Every individual domiciled in this State who is outside the State for a temporary or transitory purpose.
>
> Any individual who is a resident of this State continues to be a resident even though temporarily absent from the State."

Some persons file resident tax returns who are sometimes temporarily out of the State and have non-Alaska mailing addresses. Others may file resident returns after they have left the State, covering periods in which they were residents in the State. Chapter 67 SLA 1969 would require the Department of Revenue to include all of those individuals on the list furnished to the court system.

Many persons move into the State during the year and make Alaska their permanent residence. When they file their income tax returns they are considered residents for that part of the year they are in Alaska (part time residents.) Their returns list Alaska addresses. Was it the intent of the legislature that the returns filed by part year residents be included in the list furnished to the court if (1) the return shows an Alaska address, or (2) the person claims to be a part year resident with or without an Alaska address?

Not all income tax returns are filed by April 15 following the year of the taxable period. If a complete list is to be furnished by the Department of Revenue the time for this to be submitted should probably be the close of the year following the tax year.

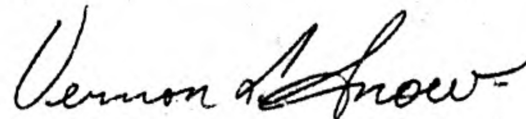
6. The Supreme Court in Green v. State of Alaska File No. 1177 states on page 19 and 20 of its Opinion as follows:

> "In the Third Judicial District selection of juries under the 1969 law will not have to be made before April 30, 1971. But in the First Judicial District, where the last list of jurors was prepared under the original act in January, 1969, the new law will have to be followed by January, 1971. We refer to this matter of implementing the 1969 law in order to advise the executive and legislative branches of our government that if the necessary lists cannot be obtained prior to January, 1971 at the latest, properly constituted juries cannot be selected, with resulting judicial chaos and a severe impairment of the administration of justice."

Since the final date for filing income tax returns is April 15 and in many instances extensions are granted, it will not be possible for the Department of Revenue to furnish a 1970 income tax list to the Third Judicial District by April 30, 1971. The earliest date covering most 1970 returns would be July 1, 1971. It is also questionable whether a list of holders of 1970 fishing and hunting licenses for the year 1970 can be furnished by January, 1971 to the First Judicial District. The Supreme Court did not specify when lists will be required for the Second and Fourth Districts.

If Chapter 67 is not repealed and the previous section re-enacted, it is recommended that the aforesaid changes be made to the act and the date to provide the first lists not be set before July 1, 1971.

Very truly yours,



Vernon L. Snow
Deputy Commissioner

VLS/ge
cc: Members House Judiciary Committee
Commissioner Downes
Commissioner Noerenberg
John Beard
Vern Roberts
Keith Angier
Phil Wall

Carry

Introduced: 5/5/70
Referred: Rules

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 HOUSE BILL NO. 860

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the preparation of jury lists."

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

8 * Section 1. AS 09.20.050 is amended to read:

9 Sec. 09.20.050. JURY LIST. (a) At such times as the presiding
10 judge of the superior court in each judicial district may designate,
11 but not later than September 1 of each odd-numbered year [LESS THAN
12 ONCE EVERY TWO YEARS], the clerk of the superior court in each judicial
13 district shall prepare a list of the names of residents of the district
14 who are qualified by law for jury service. The list shall contain the
15 names of all persons who purchased a resident hunting or fishing
16 license during the preceding year, all persons [RESIDENTS] who filed a
17 state income tax return for the preceding year which showed an Alaskan
18 address, and all persons who have registered to vote in this state
19 [AS WELL AS THOSE PERSONS WHO VOTED IN THE PRECEDING GENERAL ELECTION].
20 If the superior court is located in different cities in the same
21 judicial district, the clerk of the court located in each city shall
22 prepare, at the times designated by the judge but no later than
23 September 1 of each odd-numbered year [AT LEAST EVERY TWO YEARS], a
24 list of names of persons qualified for jury service [. THE LIST SHALL
25 CONTAIN THE NAMES OF ALL PERSONS WHO PURCHASED A RESIDENT HUNTING OR
26 FISHING LICENSE, ALL RESIDENTS WHO FILED A STATE INCOME TAX RETURN FOR
27 THE PRECEDING YEAR, AS WELL AS THOSE PERSONS WHO VOTED IN THE PRECEDING
28 GENERAL ELECTION] and who are residents of that portion of the judicial
29 district designated by the presiding judge.

Standards of residence

(b) The jury list shall be based on the list of persons [, PREPARED BY THE DEPARTMENT OF REVENUE OR THE DEPARTMENT OF FISH AND GAME,] who purchased a resident hunting or fishing license during the preceding year, as prepared by the Department of Fish and Game, the list of persons who filed a resident state income tax return for the preceding year, as prepared by the Department of Revenue, and the [VOTING] list of registered voters, as prepared by the secretary of state. The departments and the secretary of state shall prepare their respective lists by judicial district, and shall submit them to the presiding judge of the superior court in each district no later than July 1 of each odd-numbered year [FROM THE PRECEDING GENERAL ELECTION. A QUESTIONNAIRE FOR PROSPECTIVE JURORS MAY BE ADOPTED AND SUBMITTED TO THEM BY THE ADMINISTRATIVE DIRECTOR OF COURTS].

(c) A copy of the jury list shall be transmitted only to each district judge and each superior court judge within the judicial district and shall be used to summon jurors residing within the immediate area of the court and for no other purpose.

(d) A questionnaire for prospective jurors may be adopted and submitted to them by the administrative director of the court system.

* Sec. 2. Jury lists in existence on the effective date of this Act may be used until September 1, 1971; however, these should be corrected and supplemented before September 1, 1971 to the extent reasonably possible in accordance with this Act, as determined by the presiding judge of the superior court in each judicial district.

NO. 1 SENATE BILLS

SCR-27

March 6, 1970

Mel J. Personett, Commissioner
Department of Public Safety
Pouch "N"
Juneau, Alaska 99801

Subject: SCR-27 - Hitchhiking

Dear Commissioner Personett:

After our meeting with you on Thursday, March 5, regarding SCR-27, it was the desire of the committee to relay our expression on this resolution. The committee wishes to see the Department of Public Safety reinstate the old regulation on hitchhiking. Based on your commitment to try and accomplish this, the committee has placed SCR-27 in a "Hold" status.

Sincerely,

Barry W. Jackson
Chairman
House Judiciary Committee

BWJ/mm

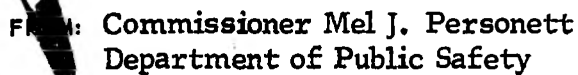
FORM SA-1B

SCR-27

MEMORANDUM State of Alaska

TO: Representative Barry Jackson, Chairman
House Judiciary Committee

DATE : March 24, 1970



FROM: Commissioner Mel J. Personett
Department of Public Safety

SUBJECT: Progress Report - SCR 27

We are currently reviewing all of 13 AAC in view of both SCR 27 and miscellaneous comments from the public and the legal profession.

We anticipate public notice and hearings within the next month or so.

As stated before, the hitchhiking section will be revised to read as previous to the 1969 revision.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

April 24, 1970

M E M O R A N D U M

TO : Rep. Mildred Banfield, Chairman
Subcommittee on Dept. of Public Safety Regulations
House Judiciary Committee

FROM : Arthur H. Peterson, Revisor of Statutes

SUBJECT: Recently proposed changes in regulations of the Department of Public Safety

One of the main legislative concerns about the public safety regulations has been the new (as of December 31, 1969) hitch-hiking regulation. This regulation, currently in effect, reads as follows:

> "13 AAC 02.180. PEDESTRIAN SOLICITING RIDE OR BUSINESS. A person may not stand on or along a highway for the purpose of soliciting a ride, employment, business or a contribution from the occupant of a vehicle."

Since this is such a broad, flat prohibition of hitchhiking, it was suggested by the House Judiciary Committee that if any regulation on this matter is necessary the pre-December 31, 1969 provision should be re-adopted. That provision reads as follows:

> "104.67 PEDESTRIANS SOLICITING RIDES OR BUSINESS. No person shall stand in a roadway in a manner that will distract a driver's attention for the purpose of soliciting a ride, employment or business from the occupant of any vehicle."

The proposed amendment would have 13 AAC 02.180 read as follows:

> "13 AAC 02.180. PEDESTRIAN SOLICITING RIDE OR BUSINESS. A person may not stand on or along a roadway in a manner that will distract a driver's attention for the purpose of soliciting a ride, employment, business or a contribution from the occupant of a vehicle."

This amendment changes "highway" to "roadway", adds "in a manner that will distract a driver's attention" and retains

"or a contribution" which is in the current regulation. And it retains the words "or along", referring to the roadway. "Highway" is a broader term than "roadway" (see 13 AAC 10.115 and 13 AAC 10.280), with the latter meaning just the main traveled portion of a highway; so this part of the amendment is a step in the direction the legislature desired; however, this will have no effect because the words "or along" are retained, thus defeating the legislative intent. The "in a manner . . ." language was taken from the pre-December 31, 1969 provision, and would be helpful if it were not for the "or along". Why the "or a contribution" was put in the current regulation and retained in the proposed one I don't know.

The effect of the regulation, with the proposed amendments, would be to continue the prohibition on hitchhiking (because if you are standing "along" a roadway hitchhiking, your purpose is to attract [or "distract"?] a driver's attention to your need for a ride). It also prohibits such things as hailing a bus, setting up a roadside vegetable or lemonade stand, and soliciting contributions for the blind. It is my opinion, and I believe this was concurred in by Commissioner Personett in his testimony before the House Judiciary Committee (at least with regard to hitchhiking), that there is no need for such broad prohibitions in Alaska. The Department of Public Safety's determination to impose such prohibitions, in the face of the Senate's passage of SCR 27 and the House Judiciary Committee's recommendations on the matter, appears unjustifiable.

It might also be noted that the history note at the end of the proposed 13 AAC 02.180 identifies the amendments as being at the request of the legislature. This does not conform to the Drafting Manual for Administrative Regulations (to which adherence is required by AS 44.62.060(a)), and I don't know why this was done. It should, of course, be deleted before the regulation is printed for distribution in the Alaska Administrative Register.

Another main concern of the committee was the problem involving buses stopping on the highway, prohibited by 13 AAC 02.-340(a). The proposed amendments add an exemption in sec. 340(b) for school bus drivers loading or unloading school children, and add a new subsection establishing a presumption that it was the registered owner who left a vehicle stopped, parked or standing in violation of a statute or traffic regulation. It does not appear that any of the proposed amendments deals with the problem of buses other than school buses stopping on the highway, and the committee's intent in this regard does not appear to have been implemented.

Another matter that has been called to my attention is the group of regulations relating to motorcycles. It has been

suggested that some of these regulations were adopted for the purpose of harrassing motorcycle operators rather than meeting the legitimate needs of the public welfare and safety. For example, 13 AAC 04.280(a)(2) and 295 require motorcycles and motor scooters to be equipped with a windshield which rises at least 15 inches above the handlebars (unless the operator is wearing goggles or a face shield); when this is read in conjunction with 13 AAC 04.290, which prohibits handlebars from being more than 15 inches above the seat, we find that the top of the windshield of a motorcycle with handlebars on the same level as the seat would have to be 15 inches above the seat whereas the top of the windshield of a motorcycle with handlebars 15 inches above the seat would have to be 30 inches above the seat. It is not apparent how this promotes the public welfare or safety. Moreover, some of the requirements alone pose problems; goggles limit vision, as do helmets (13 AAC 04.280(a)(3)) which also muffle sound; a helmet requirement affects only the wearer and not the public, and thus is a criminal restriction serving no public interest; I have been told that, even with regard to the helmet wearer, safety experts do not agree that he is safer with one on, and some courts have held such a requirement invalid. (I have not researched the matter, but please see the attached Law Week notes which offer cases on both sides of the issue.) It seems likely that the safety experts would disagree about the 15-inch handlebar height requirement too. Also, 13 AAC 04.280(a)(1) requires motorcycles and motor scooters to have two rear-view mirrors whereas other vehicles (except for buses and certain large vehicles) need only have one (see 13 AAC 04.220). It is up to the legislature to decide whether regulations of such questionable necessity and even questionable validity should be allowed to stand; AS 44.62.320 provides for legislative annulment of administrative regulations.

AHP:hg
Enclosure

cute these defendants for an aggravated offense under 49 U.S.C. § 322 (c), which adds the element of using any false or fictitious document or other fraudulent device to evade or defeat the Act or its regulations. The defendant contends that in order to show a violation of this aggravated provision, the government must prove fraudulent intent within the context of the common law elements of criminal fraud. However, it is the opinion of this court that Congress, in imposing an aggravated fine for the use of false documents in connection with infractions of I.C.C. rules and regulations, did not intend to create a statutory equivalent of common law fraud. Rather, as a malum prohibitum offense, proof is required to show that the defendants used false documents knowingly and willfully as part of a course of conduct which sought to evade or defeat an I.C.C. regulation. Proof of specific intent to defraud the I.C.C. is not prerequisite to a finding of guilt. A construction of the Act requiring proof of fraudulent intent, or other common law elements of the crime of fraud, 'would result in limitations neither expressed in the statute nor justified in the light of the purpose' of the Act. See United States v. Luxon, 166 F.Supp. 25, 29 (E.D.Ky. 1958), for a similar construction of a statute penalizing the making of a false statement, knowing it to be false, to the Commodity Credit Corporation, for the purpose of influencing action or obtaining money and therefore defeating the statutory purposes of 15 U.S.C. § 714. That provision was held not to evoke the common law elements of fraud. For these reasons, this court concludes that a specific intent to defraud the I.C.C. is not a required element of a 49 U.S.C § 322 (c) offense."

The contention that because freight bills are not required documents for contract carriers under ICC regulations there was no evasion of the regulations by the false bills is invalid. Section 322(c) proscribes any false or fictitious documents used to evade or defeat any ICC regulation. The failure of ICC audits of Indiana Trucking's books and records in 1957 and 1964 to uncover these irregularities has no bearing on this prosecution. There is no evidence that during those periods the practice of using East Chicago, Indiana, as point of origin on freight bills was being followed, and the audits were concerned with accounting rather than operational irregularities. Even if employees of the ICC had such knowledge and the defendants were misled by nonaction on the part of the ICC, neither principles of estoppel nor any other equitable consideration entitles the defendants to immunity from statutory and regulatory proscriptions. A prior ICC proceeding which considered the conduct complained of in this prosecution is not binding in its finding of a "lack of subterfuge." That proceeding was a denial of Indiana Trucking's application for an extension of authority to cover the unauthorized transportation involved in this prosecution, and did not direct itself to the question of knowing and willful use of false documents to defeat or evade ICC regulation.

—USDC NIll; U.S. v. Indiana Trucking, Inc., 5/16/69.

Motor Vehicles

STATE REGULATIONS—

Illinois requirement that motorcyclists and passengers wear protective head gear unconstitutionally exceeds state's police powers since object of requirement is to protect persons riding motorcycles rather than public safety.

[*Text*] "If the evil sought to be remedied by the statute affects public health, safety, morals or welfare, a means reasonably directed toward the achievement of those ends will be held to be a proper exercise of the police power. • • •

"However, the legislature may not, of course, under the guise of protecting the public interest, interfere with private rights." People v. City of Chicago, 413 Ill. 83, 91.

Statutes similar to the one in question have been tested in other jurisdictions. In Rhode Island (State ex rel. Colvin v. Lombardi, 241 A.2d 625), the court held that the legislation was justified in order to assure that flying stones or other windblown objects would not strike the operator and cause a momentary loss of control of the vehicle which could then endanger other traffic."

There have been similar decisions in Massachusetts, North Dakota and Connecticut.

[*Text*] "In Michigan, (American Motorcycle Ass'n v. Davids, 11 Mich. App. 351, 158 N.W.2d 72) the court held a statute requiring a "crash helmet" for both operator and passenger to be unconstitutional. Likewise in Louisiana, (Everhardt v. City of New Orleans, 208 So. 2d 423) the court struck down a statute calling for operators and passengers to wear "safety helmets."

Our statute requires both the operator and each passenger on a motorcycle to wear protective headgear. In the case of a passenger it is clear that the "protective headgear" serves no function of safeguarding the motoring public. The helmet would presumably prevent cranial injuries, or lessen their severity, for the wearer; but its effect on other motorists is most obscure.

The appellant, however, was operating the motorcycle when arrested. In order to determine the purpose and function of the statute in regard to an operator, the entire statutory plan must be considered. • • •

"The Illinois statute contains two requirements: "protective headgear" and a transparent shield or goggles.

"When we consider both of these sections together, the legislative intent becomes clear. The manifest function of the headgear requirement in issue is to safeguard the person wearing it—whether it is the operator or a passenger—from head injuries. Such a laudable purpose, however, cannot justify the regulation of what is essentially a matter of personal safety.—Kluczynski, J.

—Ill SupCt; Illinois v. Fries, 5/23/69.

Municipal Corporations

TORTS—

Victims of police and mob action in Chicago riots have no statutory or common law remedies against city or county.

One plaintiff was allegedly shot by police suppressing mob action and another was injured when a car was set upon by a mob. More than two hundred actions are now pending against the city and the county based on the statutes involved here.

[*Text*] "In 1967 the General Assembly enacted statutes which expressly repealed section 1-4-8 of the Illinois Municipal Code and section 25-3 of the Criminal Code which are the two statutes upon which liability in these cases is predicated. Both of the repealing acts were approved by the Governor. (Laws of 1967, Vol. 2, pp. 3286, 2365.)"

However, the same sessions later enacted a bill amending the repealed section. This amending act was part of a package of 174 bills designed to make formal, technical changes in certain sections for the sake of consistency in publication. We do not think that the legislature intended, by a bill purporting to make no change of substance, to re-enact the repealed section. The legislative purpose of repeal is unmistakable.

The plaintiff nevertheless argued that the repeals can not apply retroactively to bar their actions. This state's Statutory Construction Act provides that no new law shall be construed to repeal a former law, "expressly repealed" or not, under which any right has accrued before the effective date of a new law.

[*Text*] "[T]he Statutory Construction Act does not apply to ex-

Motor Vehicles

STATE REGULATION—

North Dakota requirement that motorcyclist wear crash helmet does not unconstitutionally deprive him of personal freedom.

A motorcyclist who was charged with the offense of failing to wear a crash helmet while riding a motorcycle has asserted that the statute requiring the wearing of a crash helmet deprives him of his personal freedom and his rights guaranteed by the Due Process Clauses of both federal and state Constitutions.

Michigan, [American Motorcycle Assn. v. Davids, 11 Mich. App. 351, 36 LW 2707] and Louisiana have found similar statutes to involve an invalid exercise of the police power of the state based on a test whether there is a "real and substantial relationship between the exercise of those powers • • • and the public health, safety, morals, or the general welfare." This is the proper test, but as in Commonwealth v. Howie 238 N.E.2d 373, 36 LW 2770, and Colvin v. Lombardi, 241 A.2d 625, 36 LW 2732, we reach the opposite result. The safety factor of objects striking the operator of a motorcycle in such a manner as to momentarily cause him to lose control and to menace other vehicles on the highway makes the relationship between the police power and the public safety self-evident. Moreover, we are not convinced that the legislature may not take reasonable measures to prevent persons from becoming public charges in hospital as a result of their disregard of obvious safety precautions.—Erickstad, J.

Teigen, Ch.J., and Knudson, J., dissent.

—ND SupCt; State v. Odegaard, 2/25/69.

Negligence

CONTRIBUTORY NEGLIGENCE—

Oklahoma's requirement that auto seat belts be installed does not render injured passenger's failure to use belts contributory negligence.

[*Text*] "Exhaustive research by counsel, and independent research and investigation by the court, has disclosed no Oklahoma decision on the problem. • • •

"For the reasons advanced in Robinson v. Bone, 285 F.Supp. 423 (D.C. Or. 1968), Miller v. Miller, 160 S.E. 2d 65 (N.C. 1968) and Brown v. Kendrick, 192 So.2d 49 (Fla. App. 1966), I conclude Oklahoma would not allow such failure to be presented either as evidence of contributory negligence, or in mitigation of damages. Such conclusion finds some support in Oklahoma's definition of proximate cause set forth in Cheatham v. Van Dalsen, 350 P.2d 593 (1960) • • •.

"[T]here must be at least some indication that the plaintiff was under a duty to use a seat belt to provide for his own safety, and that failure to use it was a cause of plaintiff's injury, before the Court is required to submit the issue to the jury. The holding here is that, as a matter of law, there is no such duty, nor could such failure be a proximate cause of injury, and submission to the jury of the issue is not required."—Arnow, J.

—USDC NFla; Woods v. Smith, 2/28/69.

Torts

CHARITABLE INSTITUTIONS—

North Carolina Supreme Court's prospective abolition of charitable hospital immunity does not preclude holding hospital liable, to extent of its insurance, for negligence predating abolition.

The complaint alleges that on June 6, 1964, a paying patient of the defendant James Walker Memorial Hospital was frightened when a rat ran across her feet and caused her to fall into a bathtub. Her action to recover for the resulting injuries is based on the hospital's negligence in allowing rats on its premises, and the Orkin Exterminating Company's negligence in failing to rid the premises of rats as required by its contract with the hospital. The district court granted the defendant's motions for summary judgment.

This cause of action arose before the Supreme Court of North Carolina overruled its long-standing doctrine of immunity for charitable hospitals in Rabon v. Rowan Memorial Hospital, Inc., 269 N.C. 1, 152 S.E.2d 485, 35 LW 2485 (1967), limiting the decision's applicability to causes of action arising after January 20, 1967. The question is whether this action is barred by the charitable immunity doctrine or whether it may be prosecuted to the extent that the hospital's trust funds are protected by insurance. Insurance was not involved in Rabon, and no North Carolina court has been presented with the question subsequent to that case.

It is not to be supposed that the North Carolina courts have failed to take into account the underlying philosophy of Rabon, which is to compensate those injured by the negligence of employees of charitable hospitals while at the same time safeguarding these institutions from the dissipation of trust funds. The court refused full retroactive application of the new rule only after expressing concern over the danger to the trust funds of inadequately insured hospitals. Surely this is a clear implication that the new rule of liability for employee's negligence should be operative where this hazard is not present. Nebraska and Illinois, which the Rabon court said it followed, make the immunity unavailable to the extent of insurance protection in causes of action arising prior to abolition of the immunity. Where the hospital has insured itself against the risk, the only possible beneficiary from preserving the immunity would not be the charitable hospital but the paid insurer.

The lack of privity between the plaintiff and Orkin is no defense. It is clear that the hospital was under a legal duty to exercise reasonable care in regard to the safety of its patients, and that Orkin, under its contract, had undertaken to perform a certain aspect of this duty in the hospital's behalf.—Sobeloff, J.

—CA 4; Hill v. James Walker Memorial Hospital, 3/11/69.

CONFLICT OF LAWS—

Indiana's Guest Statute is inapplicable to Missouri action by Missouri passenger against estate of Missouri driver for Indiana collision during their vacation trip.

The driver, her husband, and the passenger, all Missouri residents, were returning from a trip to New York City when the accident occurred on the Indiana turnpike. Missouri does not have a guest statute, but Indiana does. We remand to permit the passenger to submit her case against the driver's estate to the jury on the theory that the relationship between the parties was governed by Missouri law and that the Indiana Guest Statute was not applicable.

The passenger recognizes that Missouri has been following a so-called lex loci delicti rule in the choice of law to be applied. Under this rule, the court applies the law of the place where the tort was committed in everything except procedure, which is governed by the law of the forum. But the passenger claims that Missouri is the state which has the dominant interest in a host-guest relationship between Missouri residents arising from the operation of a Missouri automobile on a trip which began and which ended in Missouri.

The lex loci rule has the advantage of certainty and ease of application. The only exceptions have been where the forum court concluded that the law of the place of the wrong was against the established public policy of the forum state. There has also been an occasional tendency in difficult cases to construe a matter as procedural rather than substantive and on that basis

reference to § 84.01, allow the class of sub-subcontractors to be entitled to a mechanics' lien. * * *

"However, we must construe the Mechanics' Lien Act according to general equitable principles so as to best protect the interest of those enhancing realty, since it is that class for whose benefit the mechanics' lien exists. * * *

"[R]evisions of the Mechanics' Lien Act, § 84, Fla.Stat. F.S.A. (1061), omitted the term, "sub-subcontractor", or any reference to another provision containing such term, from the section defining those entitled to the mechanics' lien. However, the underlying reason for the subsequent revisions was not to change the scope of person entitled to the statutory protection; rather, the revisions were enacted to remedy procedural defects which had led to "hidden l[ien]s" being placed against an owner by persons not in privity, without notice to the owner.

"Moreover, the definition section[s] of all the foregoing statutes have continued to include 'sub-subcontractor' in their terminologies."—Henry, J.

—Fla CtApp 3rd Dist; Ceco Corp. v. Goldberg, 2/25/68.

Motor Vehicles

STATE REGULATION—

Wisconsin's ban on unusual handlebars and requirement that motorcyclists wear safety devices does not unconstitutionally interfere with cyclist's "right to be left alone."

[*Text*] "To the cycling enthusiast the freedom to drive or ride his cycle, hatless or helmetless, is meaningful. * * * Resistance to wearing a prescribed safety helmet is an understandable human reaction. Perhaps almost all of us have a secret admiration for the pint-sized guard on a major football team who, years ago, went out on the gridiron, sans helmet, to face giant-sized opponents. * * *

"It has been suggested that this leaves to the courts '* * * essentially a balancing test between the rights infringed and the benefits to the general welfare with the balance strongly weighed in favor of the general welfare at the start.'

"We are uneasy with this balancing and weighing concept of the judicial role in testing the constitutionality of a police power statute. * * * There is too much of a temptation to a putting of a judicial thumb on the scales with judges substituting their own evaluation of alternatives for that of the legislature. We would hold that, once within the area of proper exercise of police power, it is for the legislature to determine what regulations, restraints or prohibitions are reasonably required to protect the public safety and only the abrogation of a basic and substantial individual liberty would justify judicial intervention to set aside the legislative enactments. * * *

"Over and above the interest the state has in protecting other users of the highways from the danger of involvement in an accident, we further hold that other users of the highway have a definite and legitimate interest in seriousness of the consequences of accidents as well as in the frequency of such mishaps. * * *

"[Although] we do not reach the question of whether it is invariably and inescapably fatal to a public safety statute that it seeks only to protect persons against the consequences of their own actions * * * it is enough to observe that the concept that it is my neck and I have a right to risk it when and where I please has had some limitations placed upon its application." * * *

"There is in the law no sanction for self-destruction, and certainly there is no right on the part of anyone to use public highways for risking or courting or seeking such self-destruction. Protection of the safety of all users of the highway even against the consequences of their own actions is a legitimate use of the police powers of the state. * * *

"[The right of the individual to be left alone by government was] capsulized by a great jurist, Louis Dembitz Brandeis, in these words.

"'The makers of the Constitution sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred as against the government, the right to be left alone—the most comprehensive of rights and the right most valued by civilized man.'

"However, Justice Brandeis hardly intended that such right to be left alone would include the right to camp on a cloverleaf or do one's thing on an expressway. There is no place where any such right to be let alone would be less assertable than on a modern highway."—Hansen, J.

—Wis SupCt; Bisenius v. Karns, 3/7/69.

Physicians and Surgeons

ADVERTISING—

Optometrist's circulars to labor unionists promising optical services at volume discounts are not permissible information on "medical service plan," but health service advertising forbidden by California Business and Professions Code.

An optometrist started an optical service for members of the Los Angeles County Federation of Labor AFL-CIO and their families in which a specific price schedule for eye examination, glasses and contact lenses was adopted. The plan which the optometrist called Union Vision Service charged prices lower than the California Vision Service, a nonprofit corporation which also provided optometric service to unions. Under the schedule glasses would cost $21 per pair less than the average cost in Los Angeles County. He then distributed literature to the union members highlighting the large savings to users of the service and stating that some eye examinations would even be free. He also advertised in a union newspaper. As a result, he obtained access to 515,000 union members and within 18 months attracted 71,000 patients.

The Board of Optometry charged the optometrist with violating the Business and Professions Code. The California Corporation Code does permit the formation of nonprofit corporations for the purpose of defraying or assuming the cost of professional services of licensees of the healing arts, but what is involved here is the method of operation of U.V.S.

Section 651 of the Code makes it unlawful for an optometrist to represent that his service is being rendered at a discount or "is otherwise less than the average fee or price then regularly charged under like conditions by persons so licensed or by other persons for such commodities or services." The optometrist argues that because his operation was like no other he could not be found to have made his offer at prices lower than those "regularly charged under like conditions." "It would be a perversion of the intent of Section 651 to permit advertising under the banner of 'equal treatment for less money' simply because the advertiser can show that in some fashion quite immaterial to the patient, the conditions which permit him to render less expensive service are unlike those of his fellow practitioners with whom he compares himself."

Section 651.3 of the Code prohibits a physician from advertising in any manner which refers to the cost of the price to be paid to him or for any commodities sold by him or for any services performed by him except when it involves "the furnishing of information regarding benefits available and charges therefor, under the coverage of any hospital or medical service of insurance plan." The optometrist claims that he was merely furnishing information concerning benefits and charges under the coverage of a medical service plan. 'Neither this section as a whole nor the proviso has ever been construed. No statutory or judicial def-

involved there, they are not analogous to the exclusion of Negroes from an all white union by a system of nepotism."—Dyer, J.

—CA 5; Asbestos Workers v. Vogler, 1/15/69.

Landlord and Tenant

EVICTION—

Pennsylvania Rent Withholding Act does not immunize from eviction tenants who failed to pay rent into escrow fund.

The Motion to quash the writ of eviction is refused.—Montgomery, J.

Concurrence. The Act provides that the right of the landlord to collect rent shall be suspended for a 6-month period after certification by the appropriate authority that the dwelling is unfit for human habitation. During this suspension period, the rent withheld shall be deposited by the tenant in an escrow account for repairs required to make the building habitable.

The Act specifically does not affect any of the terms of the landlord and tenant relationship save that the tenant need not pay rent to the landlord if he pays it into an escrow account. The duty of the tenant to pay his rent on a timely basis is undisturbed by the statute. Accordingly, the final sentence of the Act which reads "No tenant shall be evicted for any reason whatsoever while the rent is deposited in escrow" must be read to mean that during the 6-month period the tenant is protected against eviction under the Act only if he pays his rent into the escrow account in a timely manner specified by the lease arrangement.

Tenants who seek the protection of the Act in avoiding eviction must have consistently paid their rent into the escrow fund in a timely manner.

[Text] "This case leaves unresolved some of the very difficult questions raised by the statute. For example, it is unclear from the face of the statute:

"1) whether a landlord of a building certified as unfit for human habitation may refuse to renew the lease arrangement of a tenant who has paid his rent in a timely fashion.

"2) under what conditions and authority may moneys deposited in an escrow account pursuant to the statute be used to effect repairs of the dwelling premises.

"3) may escrow payments be made indefinitely until the dwelling is sufficiently repaired with periodic six months disbursements of the accumulated rents to the contributing tenants to the escrow account.

"These questions as well as others bound to arise are best settled by future legislative amendment, although in the absence of such action, it will be the duty of the courts to frame a solution based upon their interpretation of the statute as written. C.f. Note, Rent Withholding in Pennsylvania, 30 Pitt. L. Rev. 148 (1968)."—Hoffman, J.

—Pa SuperCt; National Council of Mechanics v. Roberson 1/28/68.

Motor Vehicles

PARKING LOTS—

Operator of self-service Illinois parking lot is not bailee liable to patron whose car was stolen.

In recent years a new type of self-service parking lot has developed particularly at the larger airports, such as the one from which the car here was stolen. A motorist gains admission to the lot through an entrance gate where he takes a machine-dispensed ticket from an automatic dispenser. The motorist parks in an individual parking place of his choice. There is nothing to prevent his moving the car about within the parking lot. He retains the keys and upon his return drives to an exit gate where he sees the attendant for the first time and pays the parking fee.

This is a case of first impression in this court although there is a great variety of holdings in the area of the liability of operators of parking lot facilities. They usually resolve themselves into two categories, the first where the owner parks his car in a place designated by an attendant or chosen by himself retains the keys and does not actually deliver the car to the lot owner. This constitutes a lease of space. In the second classification a bailment is created where the keys are left in the parked vehicle and tickets are issued identifying the car for redelivery. Precise categorization is not easy. However, in this case it is apparent that no bail or bailee relationship has been established. There was no agreement, either express or by implication, that may be gathered from the circumstances surrounding this transaction. To establish it, there must not only be a delivery of possession but there must also be an acceptance, either actual or constructive, which did not exist here. True, temporary possession in the sense that the motorist leaves the vehicle on the lot may be said to have been given up, but the actual control is retained by taking the keys. There is no acceptance of the vehicle by the lot owner.—House, J.

—Ill SupCt; Wall v. Airport Parking Co. of Chicago, 1/25/69.

STATE REGULATION—

Connecticut's requirement that motorcyclist use crash helmet is not interference with individual's constitutionally-created "zone of privacy."

The gravamen of the argument is the statute is unconstitutional in that it has no relation to public health, welfare and safety, but merely to the health, welfare and safety of the individual.

The cyclist contends that the Fourteenth Amendment, taken in conjunction with the Third, Fourth and Fifth Amendments creates what has been called a "zone of privacy," and that by virtue of the Ninth Amendment, government power is limited by many unenumerated rights of the people. One of the unenumerated rights protected by the "zone of privacy" is the right of an individual to conduct his or her own affairs as he or she chooses as long as such action does not injure or offend other members of society. However, we are of the opinion that the purpose sought to be achieved by requiring protective headgear is a proper subject for legislation. The legislature may enact laws prohibiting that which is harmful to the welfare of the public as long as they are reasonable, even though they may interfere with the liberty of the individual. Whatever infringement of rights incidental to the valid exercise of police power is not unreasonable when the sole object of the legislation is to promote public welfare.

There is also a weakness in the contention that the state has no power to punish an act which harmed no one but the actor. We are of the opinion that the statute prevents a danger that is antisocial—the inherent danger of injury to others in the operation of a motorcycle.

The operation of a motor vehicle including a motorcycle is a privilege which may be denied, and not a right. The legislature may require the operator to waive certain rights and privileges for the protection of other motorists legally upon the highway.—Wise, J.

—Conn CirCt AppDiv; Connecticut v. Burzycki, 1/17/69.

Municipal Corporations

ZONING—

"Halfway House" for rehabilitation of ex-convicts does not qualify as "institution of educational, religious, or philanthropic nature" that would be permissible use in residentical zone of Arkansas City.

The Arkansas Release Guidance Foundation, was incorporated as a nonprofit corporation. Thirteen property owners in the vicinity of the Foundations property filed petitions

SCR-27

June 1, 1970

Mel J. Personett, Commissioner
Department of Public Safety
Pouch "N"
Juneau, Alaska 99801

Dear Commissioner Personett:

After hearing testimony on both sides of the matter, and after reviewing the material you submitted, the House Judiciary Committee requests that the department hold hearings and consider revision or repeal of the following regulations pertaining to motorcycles. 13 AAC 04.280, 285(b), 290, 295, and 300.

While not taking a position on the constitutionality of any of these regulations, the committee is aware that there is a split of judicial opinion and that in some states the helmet requirement has been held invalid as an invasion of the right to privacy. Moreover, during the recent hearings held on these regulations by this committee, no evidence was presented which conclusively established that these requirements promoted either individual safety or the public safety. To the contrary, although examples were given of situations in which a helmet or face shield might be helpful, other examples were given of when they would be a definite hazard; also, windshields and mirrors on "trail bikes" appear to be hazards rather than safety features. There was testimony that a mirror on a motorcycle was of little utility because of vibration; and you agreed that the requirement of two mirrors in 13 AAC 04.280(a) (1) is unnecessary.

The regulation on the height of "handlebars or grips" (13 AAC 04.290) is ambiguous as well as being subject to criticism as an undue restriction on design variation. If there is a certainty that a design variation will result in motorcycles with a steering arrangement that poses a clear threat to the public safety, a regulation something like the following would be more appropriate: "No person may operate a motorcycle or motor scooter on which the handlegrips are at a height which does not reasonably allow for safe control of the vehicle." When the present language is read in conjunction with the regulation on windshields (13 AAC 04.295) some ludicrous results can occur.

With regard to 13 AAC 04.300, the committee believes it is a good idea, and a proper action for the benefit of the public, to specify standards

for the construction of protective headgear, goggles, etc. When a person decides that he wants to wear a helmet, for example, he should be able to rely on the safety of those offered for sale or rent. Since this section refers to the requirement that these items be worn at all times and in all circumstances, this section should be re-written. Also, the reference to sec. 280(a) (3) in 13 AAC 04.285(a) should be deleted.

The committee notes that the federal safety standard on motorcycles (1) does not require a windshield, face shield or goggles—just "eye protection"; (2) does not specify handlebar height or windshield height; and (3) does not require two mirrors.

The committee is concerned about the fact that these regulations, of at least questionable validity, of questionable benefit to the safety of the public and even to the individual, may be selectively enforced to provide a means of harassing a particular segment of the population. We do not believe that this is sound state policy. We expect that the revised regulations will be clearly valid and protective of the public safety, and that to the extent they are designed to protect the individual, due consideration has been given to the right to privacy and the policy which underlies that constitutional right.

Yours truly,

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

BWJ:tmc

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

April 27, 1970

MEMORANDUM

TO : Rep. Mildred Banfield, Chairman
Subcommittee on Dept. of Public Safety Regulations
House Judiciary Committee

FROM : Arthur H. Peterson, Revisor of Statutes

SUBJECT: Recently proposed changes in regulations of the Department of Public Safety (addendum to April 24, 1970 memorandum)

This is a summary of the proposed changes accompanying the department's April 20 notice. My April 24 memorandum to you discusses Items (1), (2) and (3) (regarding hitchhiking, school buses, and a presumption as to certain violations, respectively).

Item (4), by inserting "may not be . . . state highway but" in the first line, prohibits operating a snow vehicle on the roadway, which is only an implication under the present language; it also changes "six feet" to "three feet", so that the vehicle may be operated three feet or more from the edge of the roadway.

Item (5) repeals the prohibition on persons under 14 from operating snow vehicles. AS 05.30 deals with snow vehicles.

Item (6) deletes "or have in his possession an open or unsealed receptacle containing an" which presently appears after the word "drink". Item (7) repeals a provision dealing with "open or unsealed receptacle".

Item (8) deletes the references to 13 AAC 04.155, which is repealed in Item (9). That section presently allows snow removal vehicles of the Department of Highways to use blue flashing lights.

Item (10) adds the words "or certified". That addition is legally unnecessary in light of AS 01.10.060(11), but perhaps it is helpful as a clarification in this regulation.

AHP:hg

Introduced: 2/16/70
Referred: Judiciary

1 IN THE SENATE BY MILLER

2 SENATE CONCURRENT RESOLUTION NO. 27

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - SECOND SESSION

5 Annulling a regulation adopted by the

6 Department of Public Safety.

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

8 WHEREAS under AS 44.62.320, the Legislature, by a concurrent resolution

9 adopted by a vote of both houses, may annul a regulation of an agency or

10 department;

11 BE IT RESOLVED that by this Resolution the Alaska Legislature annuls

12 the Department of Public Safety Regulation relating to a "pedestrian solicit-

13 ing ride or business," 13 AAC 02.180.

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NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given that the Department of Public Safety, under authority vested by AS 18.60.175, proposes to amend regulations in Title 13 of the Alaska Administrative Code as follows:

Title 13, Chapter 20 Article 1. Rescue and Relief of Lost Persons, is amended in its entirety.

The regulations deal with the following topics:

(a) Declaration of intent (of the regulations)
(b) Expenditure limitations (for rescue and relief parties)
(c) Approval of expenditures (what is required for approval)
(d) Commissioner's designee (to authorize search)
(e) Property purchased (becomes state property)
(f) Report of search (requires written report of search operation)
(g) Definitions (used in regulations)

Since it is not practical to print the entire regulations in this notice, interested persons may inspect them at a regional headquarters office of the State Troopers at Anchorage, Fairbanks, or Juneau or obtain a reasonable number of copies by a written request addressed to the Department of Public Safety, Pouch N, Juneau, Alaska.

Notice is also given that any person interested may present oral or written statements or arguments relevant to the action proposed at hearings to be held at Room 423, Capitol Building, Juneau, Alaska; 830 Water Street, Ketchikan, Alaska; 702 East 30th Avenue, Anchorage, Alaska; 1616 Cushman Street, Fairbanks, Alaska; and Alaska State Trooper Office, Nome, Alaska, at 9:00 a.m. on June 1, 1970.

The Department of Public Safety, upon its own motion or at the instance of an interested person, may at the hearing or after it adopt the above proposals substantially as above set out without further notice.

Date April 20, 1970

Mel J. Personett, Commissioner
Department of Public Safety

NOTICE OF PROPOSED CHANGES
IN THE
REGULATIONS OF THE DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given that the Department of Public Safety, under authority vested by AS 28.05.030 and AS 28.20.020 proposes to amend and repeal certain regulations in Title 13 of the Alaska Administrative Code as follows:

(1) 13 AAC 02.180 is amended to read:

13 AAC 02.180. PEDESTRIAN SOLICITING RIDE OR BUSINESS. A person may not stand on or along a roadway in a manner that will distract a driver's attention for the purpose of soliciting a ride, employment, business or a contribution from the occupant of a vehicle. (Eff. before 7/28/59; am 12/15/61, reg. 3; am 8/10/66, reg. 22; am 12/31/69, reg. 31; at Leg. request, am. / / reg.)

Authority: AS 28.05.030

(2) 13 AAC 02.340 (b) is amended to read:

(b) This section does not apply to the driver of a school bus stopped to load or unload a school child or to the driver of a vehicle which is disabled while on a highway in a manner and to an extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in that position; provided, if the vehicle is left unattended, the operator shall leave a notice in or on the vehicle which is visible to a person outside the vehicle or leave the hood of the vehicle in a raised position either of which indicates the vehicle is temporarily disabled. This section does not allow a vehicle to be left unattended in or on a bridge, causeway or tunnel or in a hazardous position on a roadway.

(3) 13 AAC 02.340 is amended by adding a new subsection to read

(c) A vehicle that is stopped, parked or standing in violation of a statute or traffic regulation is considered to have been stopped, parked or left standing by the registered owner of the vehicle, unless at the time of the violation a police officer observes the vehicle being stopped, parked or left standing by a driver who is not the registered owner, in which case any action by the officer shall be directed to that driver. (Eff. before 7/28/59; am 12/15/61, reg. 3; am 8/10/66, reg. 22; am 12/31/69, reg. 31; am / / , reg.)

Authority: AS 28.05.030
Cross Reference: 14 AAC 04.790g
(parking at airports)

(4) 13 AAC 02.455 (c) is amended to read:

(c) A snow vehicle may not be operated on the roadway of a state highway but may be operated on a path or shoulder adjacent to the roadway of a state

highway, provided the snow vehicle is driven three feet or more from the extreme edge of the roadway.

(5) 13 AAC 02.455(g) is repealed.

(6) 13 AAC 02.545(a) is amended to read:

13 AAC 02.545. DRINKING WHILE DRIVING. A person may not drink an intoxicating beverage while operating a motor vehicle.

(7) 13 AAC 02.545(b) is repealed.

(8) 13 AAC 04.145(b) and (c) are amended to read:

(b) Except as required or authorized in §§ 90, 100 and 150(b) of this chapter, a person may not drive or move a vehicle or equipment with a lamp or device displaying a red or blue light visible from directly in front of the center of the vehicle or equipment.

(c) A flashing light is prohibited except as required or authorized in §§ 35, 90, 95, 100(a), 105, 110(d) and 150(b) of this chapter. (Eff. before 7/28/59; am 12/15/61, reg. 3; am 8/10/66, reg. 22; am 12/31/69, reg. 31; am. / / , reg.)

Authority AS 28.05.030

(9) 13 AAC 04.155 is repealed, and existing 13 AAC 04.160 is repositioned as 13 AAC 04.155.

(10) 13 AAC 08.105 is amended to read:

13 AAC 08.105. FORM OF NOTICE. A written notice, including a notice of suspension, is considered delivered to that person 10 days after it is registered or certified and deposited in the United States mail, postage prepaid, addressed to that person at his last known address as shown by the most recent records of the department. (Eff. 12/31/69, reg. 31; am. / / , reg.)

Authority: AS 28.20.020
Cross Reference: AS 28.20.050(c) & (d)
AS 28.20.090(a)
AS 28.20.400(c)

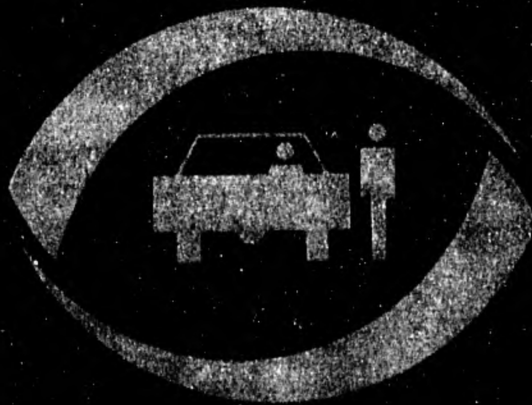
Notice is also given that any person interested may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at Room 423 of the Capital Building, Juneau, Alaska; 830 Water Street, Ketchikan, Alaska; 702 East 30th Avenue, Anchorage, Alaska; 1616 Cushman Street, Fairbanks, Alaska; and the Alaska State Trooper office, Nome, Alaska, at 9:00 a.m. on June 1, 1970.

The Department of Public Safety, upon its own motion or at the instance of any interested person, may at the hearing or after it adopt the above proposals substantially as above set out without further notice.

Date April 20, 1970

Mel J. Personett, Commissioner
Department of Public Safety

Highway Safety Program Standards



U. S. Department of Transportation ● Federal Highway Administration ● National Highway Safety Bureau

HIGHWAY SAFETY PROGRAM STANDARDS

HIGHWAY SAFETY PROGRAM STANDARD 1 PERIODIC MOTOR VEHICLE INSPECTION

Each State shall have a program for periodic inspection of all registered vehicles or other experimental, pilot, or demonstration program approved by the Secretary, to reduce the number of vehicles with existing or potential conditions which cause or contribute to accidents or increase the severity of accidents which do okcur, and shall require the owner to correct such conditions.

I. The program shall provide, as a minimum, that:

A. Every vehicle registered in the State is inspected either at the time of initial registration and at least annually thereafter, or at such other time as may be designated under an experimental, pilot, or demonstration program approved by the Secretary.

B. The inspection is performed by competent personnel specifically trained to perform their duties and certified by the State.

C. The inspection covers systems, sub-systems, and components having substantial relation to safe vehicle performance.

D. The inspection procedures equal or exceed criteria issued or endorsed by the National Highway Safety Bureau.

E. Each inspection station maintains records in a form specified by the State, which include at least the following information:

1. class of vehicle
2. date of inspection
3. make of vehicle
4. model year
5. vehicle identification number
6. defects by category
7. identification of inspector
8. mileage or odometer reading

F. The State publishes summaries of records of all inspection stations at least annually, including tabulations by make and model of vehicle.

II. The program shall be periodically evaluated by the State and the National Highway Safety Bureau shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD 2 MOTOR VEHICLE REGISTRATION

Each State shall have a motor vehicle registration program, which shall provide for rapid identification of each vehicle and its owner; and shall make available pertinent data for accident research and safety program development.

I. The program shall be such that every vehicle operated on public highways is registered and the following information is readily available for each vehicle:

A. Make

B. Model year

C. Identification number (rather than motor number)

D. Type of body

E. License plate number

F. Name of current owner

G. Current address of owner

H. Registered gross laden weight of every commercial vehicle

II. Each program shall have a records system that provides at least the following services:

A. Rapid entry of new data into the records or data system.

B. Controls to eliminate unnecessary or unreasonable delay in obtaining data.

C. Rapid audio or visual response upon receipt at the records station of any priority request for status of vehicle possession authorization.

D. Data available for statistical compilation as needed by authorized sources.

E. Identification and ownership of vehicle sought for enforcement or other operation needs.

III. This program shall be periodically evaluated by the State, and the National Highway Safety Bureau shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD 3 MOTORCYCLE SAFETY

For the purposes of this standard a motorcycle is defined as any motor-driven vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding tractors and vehicles on which the operator and passengers ride within an enclosed cab.

Each State shall have a motorcycle safety program to insure that only persons physically and mentally qualified will be licensed to operate a motorcycle; that protective safety equipment for drivers and passengers will be worn; and that the motorcycle meets standards for safety equipment.

I. The program shall provide as a minimum that:

A. Each person who operates a motorcycle:

1. Passes an examination or reexamination designed especially for motorcycle operation.

2. Holds a license issued specifically for motorcycle use or a regular license endorsed for each purpose.

B. Each motorcycle operator wears an approved safety helmet and eye protection when he is operating his vehicle on streets and highways.

C. Each motorcycle passenger wears an approved safety helmet, and is provided with a seat and footrest.

D. Each motorcycle is equipped with a rear-view mirror.

E. Each motorcycle is inspected at the time it is initially registered and at least annually thereafter, or in accordance with the State's inspection requirements.*

II. The program shall be periodically evaluated by the State for its effectiveness in terms of reductions in accidents and their end results, and the National Highway Safety Bureau shall be provided with an evaluation summary.

*See Periodic Motor Vehicle Inspection Standard

HIGHWAY SAFETY PROGRAM STANDARD 4 DRIVER EDUCATION

Each State, in cooperation with its political subdivisions, shall have a driver education and training program. This program shall provide at least that:

I. There is a driver education program available to all youths of licensing age which:

A. Is taught by instructors certified by the State as qualified for these purposes.

B. Provides each student with practice driving and instruction in at least the following:

1. Basic and advanced driving techniques including techniques for handling emergencies.

2. Rules of the road, and other State laws and local motor vehicle laws and ordinances.

3. Critical vehicle systems and sub-systems requiring preventive maintenance.

4. The vehicle, highway and community features:

a. that aid the driver in avoiding crashes,

b. that protect him and his passengers in crashes,

c. that maximize the salvage of the injured.

5. Signs, signals, and highway markings, and highway design features which require understanding for safe operation of motor vehicles.

6. Differences in characteristics of urban and rural driving including safe use of modern expressways.

7. Pedestrian safety.

C. Encourages students participating in the program to enroll in first aid training.

II. There is a State research and development program including adequate research, development and procurement of practice driving facilities, simulators and other similar teaching aids for both school and other driver training use.

III. There is a program for adult driver training and retraining.

IV. Commercial driving schools are licensed and commercial driving instructors are certified in accordance with specific criteria adopted by the State.

V. The program shall be periodically evaluated by the State, and the National Highway Safety Bureau shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD 5 DRIVER LICENSING

Each State shall have a driver licensing program: (a) to insure that only persons physically and mentally qualified will be licensed to operate a vehicle on the highways of the State, and (b) to prevent needlessly removing the opportunity of the citizen to drive. The program shall provide, as a minimum, that:

I. Each driver holds only one license, which identifies the type(s) of vehicle(s) he is authorized to drive.*

II. Each driver submits acceptable proof of date and place of birth in applying for his original license.

III. Each driver:

A. Passes an initial examination demonstrating his:

1. Ability to operate the class(es) of vehicle(s) for which he is licensed.

2. Ability to read and comprehend traffic signs and symbols.

3. Knowledge of laws relating to traffic (rules of the road) safe driving procedures, vehicle and highway safety features, emergency situations that arise in the operation of an automobile, and other driver responsibilities.

4. Visual acuity, which must meet or exceed State standards.

B. Is reexamined at an interval not to exceed four years, for at least visual acuity and knowledge of rules of the road.

IV. A record on each driver is maintained which includes positive identification, current address, and driving history. In addition, the record system shall provide the following services:

A. Rapid entry of new data into the system.

B. Controls to eliminate unnecessary or unreasonable delay in obtaining data which is required for the system.

C. Rapid audio or visual response upon receipt at the records station of any priority request for status of driver license validity.

D. Ready availability of data for statistical compilation as needed by authorized sources.

E. Ready identification of drivers sought for enforcement or other operational needs.

V. Each license is issued for a specific term, and must be renewed to remain valid. At time of issuance or renewal each driver's record must be checked.

VI. There is a driver improvement program to identify problem drivers for record review and other appropriate actions designed to reduce the frequency of their involvement in traffic accidents or violations.

VII. There is:

A. A system providing for medical evaluation of persons whom the driver licensing agency has reason to believe have mental or physical conditions which might impair their driving ability.

B. A procedure which will keep the driver license agency informed of all licensed drivers who are currently applying for or receiving any type of tax, welfare or other benefits or exemptions for the blind or nearly blind.

C. A medical advisory board or equivalent allied health professional unit composed of qualified personnel to advise the driver license agency on medical criteria and vision standards.

VIII. The program shall be periodically evaluated by the State and the National Highway Safety Bureau shall be provided with an evaluation summary. The evaluation shall attempt to ascertain the extent to which driving without a license occurs.

HIGHWAY SAFETY PROGRAM STANDARD 6 CODES AND LAWS

Each State shall develop and implement a program to achieve uniformity of traffic codes and laws throughout the State. The program shall provide at least that:

I. There is a plan to achieve uniform rules of the road in all of its jurisdictions.

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*See Motorcycle Safety Standard

II. There is a plan to make the State's unified rules of the road consistent with similar unified plans of other States. Toward this end, each State shall undertake and maintain continuing comparisons of all State and local laws, statutes and ordinances with the comparable provisions of the Rules of the Road section of the Uniform Vehicle Code.

HIGHWAY SAFETY PROGRAM STANDARD 7 TRAFFIC COURTS

Each State in cooperation with its political subdivisions shall have a program to assure that all traffic courts in it complement and support local and statewide traffic safety objectives. The program shall provide at least that:

I. All convictions for moving traffic violations shall be reported to the State traffic records system.

II. **Program Recommendations**

A. All individuals charged with moving hazardous traffic violations are required to appear in court.

B. Traffic courts are financially independent of any fee system, fines, costs, or other revenue such as posting or forfeiture of bail or other collateral resulting from processing violations of motor vehicle laws.

C. Operating procedures, assignment of judges, staff and quarters insure reasonable availability of court services for alleged traffic offenders.

D. There is a uniform accounting system regarding traffic violation notices, collection of fines, fees and costs.

E. There are uniform rules governing court procedures in traffic cases.

F. There are current manuals and guides for administration, court procedures, and accounting.

HIGHWAY SAFETY PROGRAM STANDARD 8 ALCOHOL IN RELATION TO HIGHWAY SAFETY

Each State, in cooperation with its political subdivisions, shall develop and implement a program to achieve a reduction in those traffic accidents arising in whole or in part from persons driving under the influence of alcohol. The program shall provide at least that:

I. There is a specification by the State of the following with respect to alcohol related offenses:

A. Chemical test procedures for determining blood-alcohol concentrations.

B. (1) The blood-alcohol concentrations, not higher than .10 percent by weight, which define the terms "intoxicated" or "under the influence of alcohol," and

(2) A provision making it either unlawful, or presumptive evidence of illegality, if the blood-alcohol concentration of a driver equals or exceeds the limit so established.

II. Any person placed under arrest for operating a motor vehicle while intoxicated or under the influence of alcohol is deemed to have given his consent to a chemical test of his blood, breath, or urine for the purpose of determining the alcohol content of his blood.

III. To the extent practicable, there are quantitative tests for alcohol:

A. On the bodies of all drivers and adult pedestrians who die within four hours of a traffic accident.

B. On all surviving drivers in accidents fatal to others.

IV. There are appropriate procedures established by the State for specifying:

A. The qualifications of personnel who administer chemical tests used to determine blood, breath, and other body alcohol concentrations.

B. The methods and related details of specimen selection, collection, handling, and analysis.

C. The reporting and tabulation of the results.

V. The program shall be periodically evaluated by the State, and the National Highway Safety Bureau shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD 9 IDENTIFICATION AND SURVEILLANCE OF ACCIDENT LOCATIONS

Each State, in cooperation with county and other local governments, shall have a program

for identifying accident locations and for maintining surveillance of those locations having high accident rates or losses.

I. The program shall provide, as a minimum, that:

A. There is a procedure for accurate identification of accident locations on all roads and streets.

1. To identify accident experience and losses on any specific sections of the road and street system.

2. To produce an inventory of:

a. High accident locations.

b. Locations where accidents are increasing sharply.

c. Design and operating features with which high accident frequencies or severities are associated.

3. To take appropriate measures for reducing accidents.

4. To evaluate the effectiveness of safety improvements on any specific section of the road and street system.

B. There is a systematically organized program:

1. To maintain continuing surveillance of the roadway network for potentially high accident locations.

2. To develop methods for their correction.

II. The program shall be periodically evaluated by the State and the National Highway Safety Bureau shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD 10 TRAFFIC RECORDS

Each State, in cooperation with its political subdivisions, shall maintain a traffic records system. The statewide system (which may consist of compatible sub-systems) shall include data for the entire State. Information regarding drivers, vehicles, accidents, and highways shall be compatible for purposes of analysis and correlation. Systems maintained by local governments shall be compatible with, and capable of furnishing data to the State system. The State system shall be capable of providing summaries, tabulations and special analyses to local governments on request.

The record system shall include: (a) certain basic minimum data and (b) procedures for statistical analyses of these data.

The program shall provide as a minimum that:

I. Information on vehicles and system capabilities includes (conforms to Motor Vehicle Registration Standard):

A. Make

B. Model year

C. Identification number (rather than motor number)

D. Type of body

E. License plate number

F. Name of current owner

G. Current address of owner

H. Registered gross laden weight of every commercial vehicle

I. Rapid entry of new data into the records or data system

J. Controls to eliminate unnecessary or unreasonable delay in obtaining data

K. Rapid audio or visual response upon receipt at the records station of any priority request for status of vehicle possession authorization

L. Data available for statistical compilation as needed by authorized sources

M. Identification and ownership of vehicles sought for enforcement or other operational needs

II. Information on drivers and system capabilities includes (conforms to Driver Licensing Standard):

A. Positive identification

B. Current address

C. Driving history

D. Rapid entry of new data into the system

E. Controls to eliminate unnecessary or unreasonable delay in obtaining data which is required for the system

F. Rapid audio or visual response upon receipt at the records station of any priority request for status of driver license validity

G. Ready availability of data for statistical compilation as needed by authorized sources

H. Ready identification of drivers sought for enforcement or other operational needs

III. Information on types of accidents includes:

A. Identification of location in space and time

B. Identification of drivers and vehicles involved

C. Type of accident

D. Description of injury and property damage.

E. Description of environmental conditions

F. Causes and contributing factors, including the absence of or failure to use available safety equipment.

IV. There are methods to develop summary listings, cross tabulations, trend analyses and other statistical treatments of all appropriate combinations and aggregations of data items in the basic minimum data record of drivers and accident and accident experience by specified groups.

V. All traffic records relating to accidents collected hereunder shall be open to the public in a manner which does not identify individuals.

VI. The program shall be periodically evaluated by the State and the National Highway Safety Bureau shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD 11 EMERGENCY MEDICAL SERVICES

Each State, in cooperation with its local political subdivisions, shall have a program to insure that persons involved in highway accidents receive prompt emergency medical care under the range of emergency conditions encountered. The program shall provide, as a minimum, that:

I. There are training, licensing, and related requirements (as appropriate) for ambulance and rescue vehicle operators, attendants, drivers, and dispatchers.

II. There are requirements for types and numbers of emergency vehicles including supplies and equipment to be carried.

III. There are requirements for the operation and coordination of ambulances and other emergency care systems.

IV. There are first aid training programs and refresher courses for emergency service personnel, and the general public is encouraged to take first aid courses.

V. There are criteria for the use of two-way communications.

VI. There are procedures for summoning and dispatching aid.

VII. There is an up-to-date, comprehensive plan for emergency medical services, including:

A. Facilities and equipment

B. Definition of areas of responsibility

C. Agreements for mutual support

D. Communications systems

VIII. This program shall be periodically evaluated by the State and the National Highway Safety Bureau shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD 12 HIGHWAY DESIGN, CONSTRUCTION AND MAINTENANCE

Every State in cooperation with county and local governments shall have a program of highway design, construction, and maintenance to improve highway safety. Standards applicable to specific programs are those issued or endorsed by the Federal Highway Administrator.

I. The program shall provide, as a minimum that:

A. There are design standards relating to safety features such as sight distance, horizontal and vertical curvature, spacing of decision points, width of lanes, etc., for all new construction or reconstruction, at least on expressways, major streets and highways, and through streets and highways.

B. Street systems are designed to provide a safe traffic environment for pedestrians and motorists when subdivisions and residential areas are developed or redeveloped.

C. Roadway lighting is provided or upgraded on a priority basis at the following locations:

1. Expressways and other major arteries in urbanized areas.

2. Junctions of major highways in rural areas.

3. Locations or sections of streets and highways having high ratios of night-to-day motor vehicle and/or pedestrian accidents.

4. Tunnels and long underpasses.

D. There are standards for pavement design and construction with specific provisions for high skid resistance qualities.

E. There is a program for resurfacing or other surface treatment with emphasis on correction of locations or sections of streets and highways with low skid resistance and high or potentially high accident rates susceptible to reduction by providing improved surfaces.

F. There is guidance, warning and regulation of traffic approaching and traveling over construction or repair sites and detours.

G. There is a systematic identification and tabulation of all rail-highway grade crossings and a program for the elimination of hazards and dangerous crossings.

H. Roadways and the roadsides are maintained consistent with the design standards which are followed in construction, to provide safe and efficient movement of traffic.

I. Hazards within the highway right-of-way are identified and corrected.

J. There are highway design and construction features wherever possible for accident prevention and survivability including at least the following:

1. Roadsides clear of obstacles, with clear distance being determined on the basis of traffic volumes, prevailing speeds, and the nature of development along the street or highway.

2. Supports for traffic control devices and lighting that are designed to yield or break away under impact wherever appropriate.

3. Protective devices that afford maximum protection to the occupants of vehicles wherever fixed objects cannot reasonably be removed or designed to yield.

4. Bridge railings and parapets which are designed to minimize severity of impact, to retain the vehicle, to redirect the vehicle so that it will move parallel to the roadway, and to minimize danger to traffic below.

5. Guardrails, and other design features which protect people from out-of-control vehicles at locations of special hazard such as playgrounds, schoolyards and commercial areas.

K. There is a post-crash program which includes at least the following:

1. Signs at freeway interchanges directing motorists to hospitals having emergency care capabilities.

2. Maintenance personnel trained in procedures for summoning aid, protecting others from hazards at accident sites, and removing debris.

3. Provisions for access and egress for emergency vehicles to freeway sections where this would significantly reduce travel time without reducing the safety benefits of access control.

II. This program shall be periodically evaluated by the State for its effectiveness in terms of reductions in accidents and their end results, and the National Highway Safety Bureau shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD 13 TRAFFIC CONTROL DEVICES

Each State, in cooperation with its county and local governments, shall have a program relating to the use of traffic control devices (signs, markings, signals, etc.) and other traffic engineering measures to reduce traffic accidents.

I. The program shall provide, as a minimum, that:

A. There is a method:

1. To identify needs and deficiencies of traffic control devices.

2. To assist in developing current and projected programs for maintaining, upgrading, and installing traffic control devices.

B. Existing traffic control devices on all streets and highways are upgraded to conform with standards issued or endorsed by the Federal Highway Administrator.

C. New traffic control devices are installed on all streets and highways, based on engineering studies to determine where devices are needed for safety. Such devices conform with standards issued or endorsed by the Federal Highway Administrator.

D. There are programs for preventive maintenance, repair, and daytime and nighttime inspection of all traffic control devices.

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E. Fixed or variable speed zones are established, at least on expressways, major streets and highways, and through streets and highways, based on engineering and traffic investigations.

II. This program shall be periodically evaluated by the State and the National Highway Safety Bureau shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD 14 PEDESTRIAN SAFETY

Every State in cooperation with its political subdivisions shall develop and implement a program to insure the safety of pedestrians of all ages. The program shall provide, as a minimum, that:

I. There is a continuing statewide inventory of pedestrian-motor vehicle accidents, identifying specifically:

A. The locations and times of all such accidents.

B. The age of all of the pedestrians injured or killed.

C. Where feasible, to determine whether the exterior features of the vehicle produced or aggravated an injury.

D. The color and shade of clothing worn by pedestrians when injured or killed, and the visibility conditions which prevailed at the time.

E. The extent to which alcohol is present in the blood of fatally injured pedestrians 16 years of age and older.

F. Where possible, to determine, the extent to which pedestrians involved in accidents have physical or mental disabilities.

II. There are established statewide operational procedures for improving the protection of pedestrians through reduction of potential conflicts with vehicles:

A. By application of traffic engineering practices including pedestrian signals, signs, markings, parking regulations and other pedestrian and vehicle traffic control devices.

B. By land-use planning in new and redevelopment areas for safe pedestrian movement.

C. By provision of pedestrian bridges, barriers, sidewalks and other means of physically separating pedestrian and vehicle pathways.

D. By provision of environmental illumination at high pedestrian volume and/or potentially hazardous pedestrian crossings.

III. There is established a statewide program for familiarizing drivers with the pedestrian problem and with ways to avoid pedestrian collisions.

A. The program content shall include emphasis on:

(1) Behavior characteristics of the three types of pedestrians most commonly involved in accidents with vehicles: (i) children; (ii) persons under the influence of alcohol; (iii) the elderly

(2) Accident avoidance techniques that take into account the hazardous conditions, and behavior characteristics displayed by each of the three high risk pedestrian groups listed in subparagraph (1).

B. Emphasis on this program content shall be included in:

(1) all driver education and training courses

(2) driver improvement courses

(3) driver license examinations

IV. There are statewide programs for training and educating all members of the public as to safe pedestrian behavior on or near streets and highways.

A. For children, youths and adults enrolled in schools, beginning at the earliest possible age.

B. For the general population via the public media.

V. There is a statewide program for the protection of children walking to and from school, entering and leaving school buses, and in neighborhood play.

VI. There is a statewide program for establishment and enforcement of traffic regulations designed to achieve orderly pedestrian and vehicle movement and to reduce vehicle-pedestrian conflicts.

VII. This program shall be periodically evaluated by the States, and the National Highway Safety Bureau shall be provided with an evaluation summary.

HIGHWAY SAFETY PROGRAM STANDARD 15 POLICE TRAFFIC SERVICES

Every State in cooperation with its political subdivisions shall have a program to insure efficient and effective police services utilizing traffic patrols: to enforce traffic laws; to prevent accidents; to aid the injured; to document the particulars of individual accidents; to supervise accident cleanup and to restore safe and orderly traffic movement.

I. The program shall provide as a minimum that there are:

A. Uniform training procedures in all aspects for police supervision of vehicular and pedestrian traffic related to highway safety, including use of appropriate instructional materials and techniques for recruit, advanced, in-service and special course training.

B. Periodic in-service training courses for uniformed and other police department employees assigned to traffic duties dealing with:

(1) administration and management of police, vehicular and pedestrian traffic services.

(2) analysis, interpretation and use of traffic records data.

(3) insurance of prompt reliable post-accident response, including skilled aid to the injured.

(4) accomplishing post-accident responsibilities.

C. Procedures for the selective assignment of trained police personnel to supervise vehicular and pedestrian traffic duties including enforcement patrols in hazardous or congested areas based on time and location of:

(1) traffic volume.

(2) accident experience.

(3) traffic violation frequency.

(4) emergency and service needs.

D. Procedures for investigating, recording and reporting accidents pertaining to:

(1) the human, vehicular, and highway causative factors in individual accidents.

(2) the human, vehicular, and highway causative factors of injuries and deaths, including failure to use safety belts.

(3) the efficiency of the post-accident response.

E. Procedures for recognizing and reporting, to the appropriate agencies, hazardous highway defects and conditions, including:

(1) condition of drivers.

(2) operational condition of motor vehicles.

(3) defective signs, signals, controls, construction and maintenance deficiencies.

a. Data listed in (3) above shall be readily available to the public.

F. Appropriate agreements by the State and its political subdivisions regarding primary responsibility and authority for police traffic supervision, and cooperative responsibilities where concurrent jurisdictional boundaries and problems exist, and appropriate participation of each law enforcement agency in the comprehensive highway safety program of the State and its political subdivisions.

II. The programs shall be periodically evaluated by the State, and the National Highway Safety Bureau shall be provided with an evaluation summary.

III. Nothing in this standard shall preclude the use of personnel other than police officers in carrying out the minimum requirements in accordance with laws and policies established by State and/or local governments.

HIGHWAY SAFETY PROGRAM STANDARD 16 DEBRIS HAZARD CONTROL AND CLEANUP

Each State in cooperation with its political subdivisions shall have a program which provides for rapid, orderly, and safe removal from the roadway of wreckage, spillage, and debris resulting from motor vehicle accidents, and for otherwise reducing the likelihood of secondary and chain-reaction collisions, and conditions hazardous to the public health and safety.

I. The program shall provide as a minimum that:

A. Operational procedures are established and implemented for:

(1) enabling rescue and salvage equipment personnel to get to the scene of accidents rapidly and to operate effectively on arrival:

a. on heavily traveled freeways and other limited access roads;

b. in other types of locations where wreckage or spillage of hazardous materials on or adjacent to highways endangers the public health and safety;

(2) extricating trapped persons from wreckage with reasonable care—both to avoid injury or aggravating existing injuries;

(3) warning approaching drivers and detouring them with reasonable care past hazardous wreckage or spillage;

(4) safe handling of spillage or potential spillage of materials that are:

a. radioactive
b. flammable
c. poisonous
d. explosive
e. otherwise hazardous.

(5) removing wreckage or spillage from roadways or otherwise causing the resumption of safe, orderly traffic flow.

B. Adequate numbers of rescue and salvage personnel are properly trained and retrained in the latest accident cleanup techniques.

C. A communications system is provided, adequately equipped and manned, to provide coordinated effort in incident detection, and the notification, dispatch, and response of appropriate services.

II. The program shall be periodically evaluated by the State, and the National Highway Safety Bureau shall be provided with an evaluation summary.

U.S.C.A.

"Sec. 2. Only at the request of a State, a political subdivision thereof, or a Federal department or agency, shall the Secretary furnish information contained in the register established under the first section of this Act, and such information shall be furnished only to the requesting party and only with respect to an individual applicant for a motor vehicle operator's license or permit.

"Sec. 3. As used in this Act, the term 'State' includes each of the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands, the Canal Zone, and American Samoa."

...ORDER NO. 10858

...373, as amended by Ex.Ord.No.10968, Oct. 10, ...te under this section, which established the ...Safety, was revoked by section 16 of Ex.Ord. ..., set out as a note under section 1652 of Title

...ORDER NO. 10898

...by Ex.Ord.No.10986, Jan. 12, 1962, 27 F.R. 430; ...ov. 28, 1967, 32 F.R. 16247

...RTMENTAL HIGHWAY SAFETY BOARD

(4) The Postmaster General.
(5) The Secretary of Labor.
(6) The Secretary of Health, Education, and Welfare.
(7) The Chairman of the Interstate Commerce Commission.
(8) The Administrator of General Services.

* * * * *

(d) Four members of the Board shall constitute a quorum thereof.

* * * * *

...and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub.L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

...hway purposes of lands or interests in

Government patent by which United States withdrew from entry tract of land for use by state as highway right-of-way, which was valid on its face, could not be collaterally attacked by landowners claiming fee ownership of land in area of highway right-of-way. Id.

4. Approval of application

Application by state for right-of-way across unimproved and unreserved lands consisting of map of right-of-way area was in effect, upon approval of application, patent from United States government. Allison v. State, 1966, 420 P.2d 289, 101 Ariz. 418.

...ue to airport

...and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub.L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

...ic enhancement

* * * * * *

...3 per centum of the funds apportioned ...ays for any fiscal year shall be allocated

to that State out of funds appropriated under authority of this subsection, which shall be used for landscape and roadside development within the highway right-of-way and for acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to such highways, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to the highway right-of-way reasonably necessary to accommodate the traveling public, without being matched by the State. The Secretary may authorize exceptions from this requirement, upon application of a State and upon a showing that such amount is in excess of the needs of the State for these purposes. Any funds not used as required by this subsection shall lapse.

There is authorized to be appropriated to carry out this subsection, out of any money in the Treasury not otherwise appropriated, not to exceed $120,000,000 for the fiscal year ending June 30, 1966, not to exceed $120,000,000 for the fiscal year ending June 30, 1967, and not to exceed $20,000,000 for the fiscal year ending June 30, 1970. The provisions of chapter 1 of this title relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds shall apply to the funds authorized to be appropriated to carry out this subsection after June 30, 1967.

As amended Pub.L. 89-574, § 8(b), Sept. 13, 1966, 80 Stat. 768; Pub.L. 90-495, § 6(f), Aug. 23, 1968, 82 Stat. 818.

1968 Amendment. Subsec. (b). Pub.L. 90-495 added provisions authorizing an appropriation of not to exceed $20,000,000 for the fiscal year ending June 30, 1970.

1966 Amendment. Subsec. (b). Pub.L. 89-574 substituted provisions making applicable to the funds authorized to be appropriated to carry out this subsection after June 30, 1967, the provisions of chapter 1 of this title relating to the obligation, period of availability, and expenditure of Federal-aid primary highway funds for provisions prohibiting the use of any part of the Highway Trust Fund in carrying out this subsection.

Effective Date of 1968 Amendment. Amendment by Pub.L. 90-495 effective Aug. 23, 1968, see section 37 of Pub.L. 90-495, set out as a note under section 502 of this title.

Transfer of Functions. All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub.L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

Legislative History. For legislative history and purpose of Pub.L. 89-574, see 1966 U.S.Code Cong. and Adm.News, p. 2890. See, also, Pub.L. 90-495, 1968 U.S. Code Cong. and Adm.News, p. 3482.

§ 320. Bridges on Federal dams

Transfer of Functions. All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub.L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

CHAPTER 4.—HIGHWAY SAFETY

Sec.
401. Authority of the Secretary.
402. Highway safety programs.
403. Highway safety research and development.
404. National Highway Safety Advisory Committee.

Library references: Automobiles ⟹5(1) et seq.; Highways ⟹105 et seq.; C.J.S. Highways § 14 et seq., 571; C.J.S. Motor Vehicles § 232.

§ 401. Authority of the Secretary

The Secretary is authorized and directed to assist and cooperate with other Federal departments and agencies, State and local governments, private industry, and other interested parties, to increase highway safety. Added Pub.L. 89-564, Title I, § 101, Sept. 9, 1966, 80 Stat. 731.

Transfer of Functions. All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in

this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub.L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation

National Highway Safety Agency; Creation; Appointment of Director; Duties of Director. Section 201 of Pub.L. 89-564, as amended by Pub.L. 89-670, § 8 (h), Oct. 15, 1966, 80 Stat. 943; Pub.L. 90-83, § 10(b), Sept. 11, 1967, 81 Stat. 224, provided that: "The Secretary shall carry out the provisions of the Highway Safety Act of 1966 (including chapter 4 of title 23 of the United States Code) [enacting this chapter, amending sections 105 and 307 of this title, repealing sections 135 and 313 of this title and enacting material set out as notes under this section and sections 303, 307, 402 and 403 of this title] through a National Highway Safety Bureau (hereinafter referred to as the 'Bureau'), which he shall establish in the Department of Commerce [Transportation]. The Bureau shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be a citizen of the United States, and shall be appointed with due regard for his fitness to discharge efficiently the powers and the duties delegated to him. The Director shall have no pecuniary interest in or own any stock in or bonds of any enterprise involved in (1) manufacturing motor vehicles or motor vehicle equipment, or (2) constructing highways, nor shall he engage in any other business, vocation, or employment. The Director shall perform such duties as are delegated to him by the Secretary. On highway matters the Director shall consult with the Director of Public Roads. The President is authorized to carry out the provisions of the National Traffic and Motor Vehicle Safety Act of 1966 [section 1381 et seq. of Title 15, Commerce and Trade] through the Bureau and Director authorized by this section."

Annual Report to Congress on Administration of Highway Safety Act of 1966. Section 202 of Pub.L. 89-564 provided that:

"(a) The Secretary shall prepare and submit to the President for transmittal to the Congress on March 1 of each year a comprehensive report on the administration of the Highway Safety Act of 1966 (including chapter 4 of title 23 of the United States Code) [which enacted this chapter, amended sections 105 and 307 of this title, repealed sections 135 and 313 of this title, and enacted material set out as notes under this section and sections 303, 307, 402, and 403 of this title] for the preceding calendar year. Such report should include but not be restricted to (1) a thorough statistical compilation of the accidents and injuries occurring in such year; (2) a list of all safety standards issued or in effect in such year; (3) the scope of observance of applicable Federal standards; (4) a statement of enforcement actions including judicial decisions, settlements, or pending litigation during the year; (5) a summary of all current research grants and contracts together with a description of the problems to be considered by such grants and contracts; (6) an analysis and evaluation of completed research activities and technological progress achieved during such year together with the relevant policy recommendations flowing therefrom; (7) the effectiveness of State highway safety programs (including local highway safety programs) and (8) the extent to which technical information was being disseminated to the scientific community and consumer-oriented material was made available to the motoring public.

"(b) The annual report shall also contain such recommendations for additional legislation as the Secretary deems necessary to promote cooperation among the several States in the improvement of highway safety and to strengthen the national highway safety program."

Submission to Congress by January 10, 1968, of Detailed Estimates of Cost of Carrying Out Highway Safety Act of 1966. Section 207 of Pub.L. 89-564 provided that: "In order to provide the basis for evaluating the continuing programs authorized by this Act [which enacted this chapter, amended sections 105 and 307 of this title, repealed sections 135 and 313 of this title, and enacted material set out as notes under this section and sections 303, 307, 402, and 403 of this title], and to furnish the Congress with the information necessary for authorization of appropriations for fiscal years beginning after June 30, 1969, the Secretary, in cooperation with the Governors or the appropriate State highway safety agencies, shall make a detailed estimate of the cost of carrying out the provisions of this Act. The Secretary shall submit such detailed estimate and recommendations for Federal, State, and local matching funds to the Congress not later than January 10, 1968."

Short Title. Section 208 of Pub.L. 89-564 provided that: "This Act [which enacted this chapter, amended sections 105 and 307 of this title, repealed sections 135 and 313 of this title, and enacted material set out as notes under this section and sections 303, 307, 402, and 403 of this title] may be cited as the 'Highway Safety Act of 1966'."

National Highway Safety Bureau. Administration of National Traffic and Motor Vehicle Safety Act through the Bureau and its Director, see Ex.Ord. No.11357, June 6, 1967, 32 F.R. 8225, set out as a note under section 1392 of Title 15, Commerce and Trade.

Legislative History. For legislative history and purpose of Pub.L. 89-564, see 1966 U.S.Code Cong. and Adm.News, p. 2741.

§ 402. Highway safety programs

(a) Each State shall have a highway safety program approved by the Secretary, designed to reduce traffic accidents and deaths, injuries, and property damage resulting therefrom. Such programs shall be in accordance with uniform standards promulgated by the Secretary. Such uniform standards shall be expressed in terms of performance criteria. Such uniform standards shall be promulgated by the Secretary so as to improve driver performance (including, but not limited to, driver education, driver testing to determine proficiency to operate motor vehicles, driver examinations (both physical and mental) and driver licensing) and to improve

pedestrian performance. In addition such uniform standards shall include, but not be limited to, provisions for an effective record system of accidents (including injuries and deaths resulting therefrom), accident investigations to determine the probable causes of accidents, injuries, and deaths, vehicle registration, operation, and inspection, highway design and maintenance (including lighting, markings, and surface treatment), traffic control, vehicle codes and laws, surveillance of traffic for detection and correction of high or potentially high accident locations, and emergency services. Such standards as are applicable to State highway safety programs shall, to the extent determined appropriate by the Secretary, be applicable to federally administered areas where a Federal department or agency controls the highways or supervises traffic operations. The Secretary shall be authorized to amend or waive standards on a temporary basis for the purpose of evaluating new or different highway safety programs instituted on an experimental, pilot, or demonstration basis by one or more States, where the Secretary finds that the public interest would be served by such amendment or waiver.

(b) (1) The Secretary shall not approve any State highway safety program under this section which does not—

(A) provide that the Governor of the State shall be responsible for the administration of the program.

(B) authorize political subdivisions of such State to carry out local highway safety programs within their jurisdictions as a part of the State highway safety program if such local highway safety programs are approved by the Governor and are in accordance with the uniform standards of the Secretary promulgated under this section.

(C) provide that at least 40 per centum of all Federal funds apportioned under this section to such State for any fiscal year will be expended by the political subdivisions of such State in carrying out local highway safety programs authorized in accordance with subparagraph (B) of this paragraph.

(D) provide that the aggregate expenditure of funds of the State and political subdivisions thereof, exclusive of Federal funds, for highway safety programs will be maintained at a level which does not fall below the average level of such expenditures for its last two full fiscal years preceding the date of enactment of this section.

(E) provide for comprehensive driver training programs, including (1) the initiation of a State program for driver education in the school systems or for a significant expansion and improvement of such a program already in existence, to be administered by appropriate school officials under the supervision of the Governor as set forth in subparagraph (A) of this paragraph; (2) the training of qualified school instructors and their certification; (3) appropriate regulation of other driver training schools, including licensing of the schools and certification of their instructors; (4) adult driver training programs, and programs for the retraining of selected drivers; and (5) adequate research, development and procurement of practice driving facilities, simulators, and other similar teaching aids for both school and other driver training use.

(2) The Secretary is authorized to waive the requirement of subparagraph (C) of paragraph (1) of this subsection, in whole or in part, for a fiscal year for any State whenever he determines that there is an insufficient number of local highway safety programs to justify the expenditure in such State of such percentage of Federal funds during such fiscal year.

(c) Funds authorized to be appropriated to carry out this section shall be used to aid the States to conduct the highway safety programs approved in accordance with subsection (a), shall be subject to a deduction not to exceed 5 per centum for the necessary costs of administering the provisions of this section, and the remainder shall be apportioned among the several States. For the fiscal years ending June 30, 1967, June 30, 1968,

and June 30, 1969, such funds shall be apportioned 75 per centum on the basis of population and 25 per centum as the Secretary in his administrative discretion may deem appropriate and thereafter such funds shall be apportioned as Congress, by law enacted hereafter, shall provide. On or before January 1, 1969, the Secretary shall report to Congress his recommendations with respect to a nondiscretionary formula for apportionment of funds authorized to carry out this section for the fiscal year ending June 30, 1970, and fiscal years thereafter. After December 31, 1969, the Secretary shall not apportion any funds under this subsection to any State which is not implementing a highway safety program approved by the Secretary in accordance with this section. Federal-aid highway funds apportioned on or after January 1, 1970, to any State which is not implementing a highway safety program approved by the Secretary in accordance with this section shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State is implementing an approved highway safety program. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of the preceding sentence to a State. Any amount which is withheld from apportionment to any State under this section shall be reapportioned to the other States in accordance with the applicable provisions of law.

(d) All provisions of chapter 1 of this title that are applicable to Federal-aid primary highway funds other than provisions relating to the apportionment formula and provisions limiting the expenditure of such funds to the Federal-aid systems, shall apply to the highway safety funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section. In applying such provisions of chapter 1 in carrying out this section the term "State highway department" as used in such provisions shall mean the Governor of a State for the purposes of this section.

(e) Uniform standards promulgated by the Secretary to carry out this section shall be developed in cooperation with the States, their political subdivisions, appropriate Federal departments and agencies, and such other public and private organizations as the Secretary deems appropriate.

(f) The Secretary may make arrangements with other Federal departments and agencies for assistance in the preparation of uniform standards for the highway safety programs contemplated by subsection (a) and in the administration of such programs. Such departments and agencies are directed to cooperate in such preparation and administration, on a reimbursable basis.

(g) Nothing in this section authorizes the appropriation or expenditure of funds for (1) highway construction, maintenance, or design (other than design of safety features of highways to be incorporated into standards) or (2) any purpose for which funds are authorized by section 403 of this title. Added Pub.L. 89–564, Title I, § 101, Sept. 9, 1966, 80 Stat. 731, and amended Pub.L. 90–495, § 13, Aug. 23, 1968, 82 Stat. 822.

1968 Amendment. Subsec. (c). Pub.L. 90-495 substituted "December 31, 1969" for "December 31, 1968" as the last day on which the Secretary may apportion funds to States which are not implementing highway safety programs approved by the Secretary and substituted "January 1, 1970" for "January 1, 1969" as the date after which funds apportioned to States not having approved safety programs shall be reduced until a safety program is implemented.

Effective Date of 1968 Amendment. Amendment by Pub.L. 90-495 effective Aug. 23, 1968, see section 37 of Pub.L. 90-495, set out as a note under section 502 of this title.

Transfer of Functions. All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub.L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

Authorization of Appropriations. Section 101 of Pub.L. 89-564 provided that: "For the purpose of carrying out section 402 of title 23, United States Code [this section], there is hereby authorized to be appropriated the sum of $67,000,000 for the fiscal year ending June 30, 1967; $100,000,000 for the fiscal year ending June 30, 1968; and $100,000,000 for the fiscal year ending June 30, 1969."

Report to Congress by July 1, 1967, on Initial Standards. Section 203 of Pub.L. 89-564 provided that: "The Secretary of Commerce shall report to Congress, not later than July 1, 1967, all standards to be initially applied in carrying out section 402 of title 23 of the United States Code [this section]."

Study of Relationship Between Consumption of Alcohol and Highway Safety; Report to Congress On or Before July 1, 1967. Section 204 of Pub.L. 89-564 provided that: "The Secretary of Commerce shall make a thorough and complete study of the relationship between the consumption of alcohol and its effect upon highway safety and drivers of motor vehicles, in consultation with such other government and private agencies as may be necessary. Such study shall cover review and evaluation of State and local laws and enforcement methods and procedures relating to driving under the influence of alcohol, State and local programs for the treatment of alcoholism, and such other aspects of this overall problem as may be useful. The results of this study shall be reported to the Congress by the Secretary on or before July 1, 1967, and shall include recommendations for legislation if warranted."

National Highway Safety Bureau. Provisions of section to be carried out by National Highway Safety Bureau in the Department of Transportation headed by a Director, see section 201 of Pub.L. 89-564, set out as a note under section 401 of this title.

Legislative History. For legislative history and purpose of Pub.L. 89-564, see 1966 U.S.Code Cong. and Adm.News, p. 2741. See, also, Pub.L. 90-495, 1968 U.S. Code Cong. and Adm.News, p. 3182.

§ 403. Highway safety research and development

The Secretary is authorized to use funds appropriated to carry out this section to carry out safety research which he is authorized to conduct by subsection (a) of section 307 of this title. In addition, the Secretary may use the funds appropriated to carry out this section, either independently or in cooperation with other Federal departments or agencies, for (1) grants to State or local agencies, institutions, and individuals for training or education of highway safety personnel, (2) research fellowships in highway safety, (3) development of improved accident investigation procedures, (4) emergency service plans, (5) demonstration projects, and (6) related activities which are deemed by the Secretary to be necessary to carry out the purposes of this section. Added Pub.L. 89–564, Title I, § 101, Sept. 9, 1966, 80 Stat. 733.

Transfer of Functions. All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub.L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

Authorization of Additional Appropriations. Authorization of appropriation of additional sum of $10,000,000 for the fiscal year ending June 30, 1967, $20,000,000 for the fiscal year ending June 30, 1968, and $25,000,000 for the fiscal year ending June 30, 1969, for the purpose of carrying out this section and section 307(a) of this title, see section 105 of Pub.L. 89-564, set out as a note under section 307 of this title.

Form and Use of Reports of Highway Traffic Accidents or Research Projects in Court; Availability to Public. Section 106 of Pub.L. 89-564 provided that: "All facts contained in any report of any Federal department or agency or any officer, employee, or agent thereof, relating to any highway traffic accident or the investigation thereof conducted pursuant to chapter 4 of title 23 of the United States Code [this chapter] shall be available for use in any civil, criminal, or other judicial proceeding arising out of such accident, and any such officer, employee, or agent may be required to testify in such proceedings as to the facts developed in such investigation. Any such report shall be made available to the public in a manner which does not identify individuals. All completed reports on research projects, demonstration projects, and other related activities conducted under sections 307 and 403 of title 23, United States Code [this section and section 307 of this title], shall be made available to the public in a manner which does not identify individuals."

National Highway Safety Bureau. Provisions of section to be carried out by National Highway Safety Bureau in the Department of Transportation headed by a Director, see section 201 of Pub.L. 89-564, set out as a note under section 401 of this title.

§ 404. National Highway Safety Advisory Committee

(a) (1) There is established in the Department of Transportation a National Highway Safety Advisory Committee, composed of the Secretary or an officer of the Department appointed by him, who shall be Chairman, the Federal Highway Administrator, and thirty-five members appointed by the President, no more than four of whom shall be Federal officers or employees. The appointed members, having due regard for the purposes of this chapter, shall be selected from among representatives of various State and local governments, including State legislatures, of public and private interests contributing to, affected by, or concerned with highway safety, including the national organizations of passenger car,

bus, and truck owners, and of other public and private agencies, organizations, or groups demonstrating an active interest in highway safety, as well as research scientists and other individuals who are expert in this field.

(2) (A) Each member appointed by the President shall hold office for a term of three years, except that (i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (ii) the terms of office of members first taking office after the date of enactment of this section shall expire as follows: Twelve at the end of one year after the date such committee members are appointed by the President, twelve at the end of two years after the date such committee members are appointed by the President, and eleven at the end of three years after the date such committee members are appointed, as designated by the President at the time of appointment, and (iii) the term of any member shall be extended until the date on which the successor's appointment is effective. None of the members appointed by the President who has served a three-year term, other than Federal officers or employees, shall be eligible for reappointment within one year following the end of his preceding term.

(B) Members of the Committee who are not officers or employees of the United States shall, while attending meetings or conferences of such Committee or otherwise engaged in the business of such Committee, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized in section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 73b–2) for persons in the Government service employed intermittently. Payments under this section shall not render members of the Committee employees or officials of the United States for any purpose.

(b) The National Highway Safety Advisory Committee shall advise, consult with, and make recommendations to, the Secretary on matters relating to the activities and functions of the Department in the field of highway safety. The Committee is authorized (1) to review research projects or programs submitted to or recommended by it in the field of highway safety and recommend to the Secretary, for prosecution under this title, any such projects which it believes show promise of making valuable contributions to human knowledge with respect to the cause and prevention of highway accidents; and (2) to review, prior to issuance, standards proposed to be issued by order of the Secretary under the provisions of section 402(a) of this title and to make recommendations thereon. Such recommendations shall be published in connection with the Secretary's determination or order.

(c) The National Highway Safety Advisory Committee shall meet from time to time as the Secretary shall direct, but at least once each year.

(d) The Secretary shall provide to the National Highway Safety Committee from among the personnel and facilities of the Department of Commerce such staff and facilities as are necessary to carry out the functions of such Committee.

Added Pub.L. 89–564, Title I, § 101, Sept. 9, 1966, 80 Stat. 733, amended Pub.L. 90–150, Nov. 24, 1967, 81 Stat. 507.

References in Text. The date of enactment of this section, referred to in subsec. (a) (2) (A), is September 9, 1966.

Section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 73b–2), referred to in subsec. (a) (2) (B), was classified to section 73b–2 of Title 5, and is now classified to sections 5703 and 5707 of Title 5, Government Organization and Employees.

1967 Amendment. Subsec. (a) (1). Pub.L. 90–150, § 1(1), substituted "Department of Transportation" for "Department of Commerce", increased number of Committee appointees from twenty-nine to thirty-five, and provided for selection of members from representatives of national organizations of passenger car, bus, and truck owners.

Subsec. (a) (2) (A). Pub.L. 90–150, § 1(2), substituted provisions for expiration of term of office of initial appointees one, two, and three years after date of appointment for twelve, twelve, and eleven members, respectively, for former provisions for such expiration one, two, and three years following enactment date of Sept. 9, 1966, for ten, ten, and nine members, respectively, and prohibited reappointment within one year after end of preceding term of member serving a three-year term of office.

Transfer of Functions. All functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this title and under specific related laws and parts of laws set out in the notes in this title relating generally to highways and highway and traffic safety were transferred to and vested in the Secretary of Transportation by Pub.L. 89–670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655(a) (1), (6) of Title 49, Transportation.

Legislative History: For legislative history and purpose of Pub.L. 90–150, see 1967 U.S.Code Cong. and Adm.News, p. 541.

CHAPTER 5.—HIGHWAY RELOCATION ASSISTANCE

Sec.
501. Declaration of policy.
502. Assurances of adequate relocation assistance program.
503. Administration of relocation assistance program.
504. Federal reimbursement.
505. Relocation payments.
506. Replacement housing.
507. Expenses incidental to transfer of property.
508. Relocation services.
509. Relocation assistance programs on Federal highway projects.
510. Authority of Secretary.
511. Definitions.

§ 501. Declaration of policy

Congress hereby declares that the prompt and equitable relocation and reestablishment of persons, businesses, farmers, and nonprofit organizations displaced as a result of the Federal highway programs and the construction of Federal-aid highways is necessary to insure that a few individuals do not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole. Therefore, Congress determines that relocation payments and advisory assistance should be provided to all persons so displaced in accordance with the provisions of this title.

Added Pub.L. 90–495, § 30, Aug. 23, 1968, 82 Stat. 830.

Effective Date. Section effective Aug. 23, 1968, see section 37 of Pub.L. 90–495, set out as a note under section 502 of this title.

Short Title. Section 1 of Pub.L. 90–495 provided that: "This Act [enacting this chapter and sections 135, 139, 140, and 141 of this title, amending sections 101, 101 note, 103, 104, 108, 112, 113, 115, 116, 120, 125, 128, 129, 131, 135, 136, 138, 205, 319, and 402 of this title, section 630 of Title 15, Commerce and Trade, and section 1653 of Title 49, Transportation, repealing section 133 of this title, and enacting provision set out as notes under this section and sections 101, 104, 108, 125, 131, 502, and 510 of this title] may be cited as the 'Federal-Aid Highway Act of 1968'."

Eminent Domain. Section 32 of Pub.L. 90–495 provided that: "Nothing contained in chapter 5 of title 23, United States Code [this chapter], shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of damages not in existence on the date of enactment of such chapter 5 [Aug. 23, 1968]."

Legislative History. For legislative history and purpose of Pub.L. 90–495, see 1968 U.S.Code Cong. and Adm.News, p. 3482.

§ 502. Assurances of adequate relocation assistance program

The Secretary shall not approve any project under section 106 or section 117 of this title which will cause the displacement of any person, business, or farm operation unless he receives satisfactory assurances from the State highway department that—

(1) fair and reasonable relocation and other payments shall be afforded to displaced persons in accordance with sections 505, 506, and 507 of this title;

(2) relocation assistance programs offering the services described in section 508 of this title shall be afforded to displaced persons; and

(3) within a reasonable period of time prior to displacement there will be available, to the extent that can reasonably be accomplished, in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary d[illegible]llings, as defined by the Secretary, equal in number to the num[illegible]er of and available to such displaced families

QUESTION PRESENTED

Whether a State requirement that any person riding upon or operating a motorcycle on the streets or highways of the State shall wear upon his head a protective head device of a type approved by the State is unconstitutional under the Fourteenth Amendment.

BACKGROUND

Twenty-three U.S.C. § 402(a) (P. L. 89-564, the Highway Safety Act of 1966) requires each State to have a highway safety program approved by the Secretary of Transportation and in accordance with uniform standards promulgated by him.

Highway Safety Program Standard 4.4.3 released by the Secretary on June 26, 1967, and entitled Motorcycle Safety, (23 C.F.R. Part 204) requires each State to have a motorcycle safety program providing as a minimum, inter alia, that when a motorcycle is being operated on streets and highways, each motorcycle operator and passenger shall wear an approved safety helmet. Latest available information [1/] indicates that as of September 1, 1969, 41 states had enacted motorcycle protective headgear statutes ("headgear legislation" hereafter) of this type providing criminal penalties upon violation. Additionally an unknown number of cities may have enacted similar municipal ordinances.

As of January 1, 1970, there have been decisions in response to 43 known separate court challenges of State and municipal headgear legislation. In 31 instances legislation has been upheld, and in 12 it has been declared unconstitutional. [2/] Headgear legislation has been upheld by 11 State Supreme Courts (Vermont, Missouri, Florida, Washington, Oregon, North Carolina, Rhode Island, Massachusetts, Louisiana, North Dakota, and Wisconsin), 12 appellate courts (three in New York, two in New Jersey, and one each in Hawaii, Pennsylvania, Texas, Maryland, Ohio, Washington, and Connecticut), and 8 trial courts (two each in Pennsylvania, Kansas and New York, one each in South Dakota and Minnesota). Headgear legislation has been declared unconstitutional by 1 State Supreme Court (Illinois), 3 appellate courts (one each in Idaho, Arizona and Michigan), and 8 trial courts (two in New York, and one each in Ohio, Florida, Missouri, Kentucky, Colorado, and Michigan).

1/ Insurance Institute of Highway Safety, Legislative Review 1970, p. 20.

2/ This figure is computed on the basis of the last known decision in each case. Such decision, of course, may represent an appellate reversal, or be subject to reversal on appeal.

Additionally, it is the opinion of the Attorney General of Oklahoma that the State's headgear legislation is unconstitutional and the opinion of the Attorney General of New Mexico that a proposed city ordinance would be invalid if applied to citizens over 18 years of age.

The Supreme Court has never agreed to review one of these cases on the merits. However, in June 1969 the Court in Bisenius v. Karns dismissed an appeal (89 S. Ct. 2033 (1969)) attacking the constitutionality of the Wisconsin statute "for want of a substantial federal question". Such a disposition means that the Court viewed the decision below, upholding constitutionality, to be correct.

I

THE UNITED STATES SUPREME COURT VIEWS A STATE SUPREME COURT DECISION UPHOLDING CONSTITUTIONALITY OF HEADGEAR LEGISLATION TO BE CORRECT

During its 1968-69 term, the United States Supreme Court denied two petitions for certiorari in cases upholding headgear legislation 1/ and dismissed an appeal in a third case "for want of a substantial federal question", Bisenius v. Karns, 165 N.W. 2d 377 (S. Ct. Wisc. 1969), appeal dismissed, 89 S. Ct. 2033 (1969). The appellant had attacked Wisconsin's headgear legislation (§ 347.485(1)(a) Stats.) as a restriction upon individual liberty and as exceeding the police power of the state, alleging that both violated the due process clause of the Fourteenth Amendment.

The Supreme Court's dismissal of appeal "for want of substantial federal question" means that the Court views the decision below to be correct, and that no substantial question on the merits was raised. 2/

The issues raised in Bisenius are essentially the same as those raised in other suits challenging the constitutionality of headgear legislation.

1/ Everhardt v. City of New Orleans, 217 So. 2d 400 (S. Ct. La. 1968) reversing 208 So. 2d 423 (La. App. 1968), cert. denied 89 S. Ct. 1775 (1969); Mass. v. Howie, 238 N.E. 2d 373 (S. Jud. Ct. Mass. 1968), cert. denied 89 S. Ct. 485 (1968).

2/ Stern and Gressman, Supreme Court Practice 195 (3rd ed. 1962)

II

THE PRESUMPTION IN FAVOR OF THE CONSTITUTIONALITY OF A STATUTE IS ESPECIALLY APPOSITE WHEN A STATE STATUTE IMPLEMENTS THE EXPRESS COMMAND OF THE CONGRESS OF THE UNITED STATES.

There is a "long established presumption in favor of the constitutionality of a statute", Brandeis J., Ashwander v. Tennessee Valley Authority, 297 U.S. 288 at 354, (1936). This presumption has been recognized by the Supreme Court since the earliest days of the United States. Calder v. Bull, 3 Dall. 386, 399, (1798). In the words of Mr. Chief Justice Waite: "Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt." Sinking-Fund Cases, 99 U.S. 700, 718, (1879). Accord: Marshall C.J., Dartmouth College v. Woodward, 4 Wheat. 518, 625 (1818); Washington, J., Ogden v. Saunders, 12 Wheat. 213, 270 (1827).

This presumption applies to an Act of a State legislature as well as an Act of Congress, and "all reasonable doubts will be resolved in favor of the lawful exercise of their powers by the representatives of the people." State of North Carolina v. Anderson, 164 S.E. 2d 48 (1968) upholding that State's helmet legislation. The presumption extends to a city ordinance as well. Everhardt v. City of New Orleans 217 So. 2d 400 (S. Ct. La. 1968), reversing 208 2d 423 (La. App. 1968) cert. denied 89 S. Ct. 1775 (1969).

The presumption of constitutionality seems especially apposite when a State enacts legislation as a complement to an Act of Congress. The Highway Safety Act of 1966 (P. L. 89-564) was enacted "To provide for a coordinated national highway safety program through financial assistance to the States to accelerate highway traffic safety programs . . . ." It requires that "Each State shall have a highway safety program . . . designed to reduce traffic accidents and deaths . . . ." These programs "shall be in accordance with uniform standards promulgated by the Secretary." 23 U.S.C. § 402 a)

Pursuant to the authority granted him by the Act the Secretary released Highway Safety Program Standard 4.4.3 (23 C.F.R. Part 204, Highway Safety Program Standard No. 3) title "Motorcycle Safety." The purpose of the Standard was

> "To assure that motorcycles, motorcycle operators, and their passengers meet standards which contribute to safe operation and protection against injuries."

The background of the Standard shows the imperative need for such a Standard:

> "Deaths and injuries from motorcycle accidents doubled between 1963 and 1965. This fact is particularly alarming when it is understood that most of those killed and injured were young people under the age of 25. Motorcycle registrations have jumped from 574,080 in 1960 to 1,914,700 in 1966. By 1970 the annual increase is expected to reach 1 million per year. Motorcycle safety takes on grave dimensions in view of the fact that since 1960 the rate of motorcycle fatalities has increased at about the same rate as the number of motorcycles."

The Standard requires that "Each State shall have a motorcycle safety program to insure . . . that protective safety equipment for driver and passengers will be worn," specifically, "as a minimum," that

> "B. Each motorcycle operator wears an approved safety helmet and eye protection when he is operating his vehicle on streets and highways.
>
> "C. Each motorcycle passenger wears an approved safety helmet . . . ."

This, then, is the Federal Standard that the State legislation was enacted to implement at the express command of the Congress.

III

THE POLICE POWER OF A STATE INCLUDES THE POWER TO REQUIRE A MOTORCYCLIST TO WEAR PROTECTIVE HEADGEAR.

Headgear legislation stems from the police power of a State. The police power includes the power to enact laws within constitutional limits to promote the public safety and health, but from its nature it is incapable of exact definition. See e.g. Berman v. Parker 348 U.S. 26 (1954). It is one of the least limitable of governmental powers, and a proper exercise thereof may involve limitation of the use and enjoyment of private property without violation of the due process clause of the Constitution. See e.g. Queenside Hills Realty Co. v. Saxl, 328 U.S. 80 (1945).

The public streets, roads, and highways of a State are the property of all the people of a State, and a State has plenary power over the regulation of the use of such for the safety and best interests of the public. The Supreme Court has recognized and given sanction to the State exercise of its police power over use of the public way for more than 40 years:

> "Motor vehicles are dangerous machines, and, even when skillfully and carefully operated, their use is attended by serious dangers to persons and property. In the public interest the state may make and enforce regulations reasonably calculated to promote care on the part of all . . . who use its highways."
> Hess v. Pawloski, 274 U.S. 352, at 356 (1927).

Protection of a motorcyclist and his passenger while on the public roads then is within the legitimate concern of the State and not an area reserved to the individual. Legislation requiring the use of protective headgear by both cyclist and passenger is reasonably related to the end envisioned of reducing deaths and injuries to cyclists and passengers upon the public roads. Therefore State headgear legislation is a valid exercise of the police power by a State. See Massachusetts v. Howie, 238 N.E. 2d 373 (S. Jud. Ct. Mass., 1968); 89 S. Ct. 485 cert. denied 1968); State v. Edwards, Case No. 582370, Mun. Ct. Hennepin Cty. Minn. (1968).

IV

A STATE STATUTE REQUIRING A MOTORCYCLIST AND PASSENGER TO WEAR PROTECTIVE HEADGEAR DOES NOT VIOLATE THE FOURTEENTH AMENDMENT.

A. EVEN IF THE PRIMARY OBJECT OF HEADGEAR LEGISLATION IS TO PROTECT AN INDIVIDUAL FROM HIMSELF, SUFFICIENT PUBLIC INTEREST EXISTS TO JUSTIFY THIS STATUTE AND THERE IS NO VIOLATION OF THE DUE PROCESS CLAUSE.

If headgear legislation bears no relationship to the general welfare but has the sole effect of requiring an individual to protect himself from himself, it will establish a restriction upon personal liberty such as to constitute a denial of due process.

But such legislation is based upon sufficient public interest to constitute a valid exercise of the State police power.

The unprotected motorist presents a potential traffic hazard to the public at large. Unlike the operator of an enclosed motor vehicle a cyclist without a helmet is unprotected against falling objects such as tree branches. He is also unprotected against flying stones or gravel from the wheels of other moving vehicles. If struck in the head an unprotected cyclist could be so affected as to lose control of the vehicle and be the cause of death or injury to himself and other users of the highway. Everhardt v. City of New Orleans, supra; State ex rel. Colvin v. Lombardi, 241 A. 2d 625 (S. Ct. R. I. 1968).

Further, once a cyclist, passenger, or other person is injured because of the action of an unprotected cyclist, there is a tangible effect upon the public. There is an effect upon insurance rates, public hospital services, income tax revenues because of lost manhours of employment, public services to the disabled, and national defense since many motorcyclists are young men.

Severe injuries may result in an individual becoming a public charge; his death may call into force the State's welfare responsibility for his widow and children. State v. Lombardi, supra; People v. Newhouse, 287 N.Y.S. 2d 713 (1968).

The interdependence of the acts of an individual and the interest of the State has long been recognized. "The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected, the State must suffer." New York Central R. Co. v. White, 243 U.S. 188 at 206-07 (1916). Accordingly States have legislated in many situations where there is a demonstrable risk to an individual which can be substantially reduced by requiring himto take certain protective measures. State laws prohibiting self-maiming and attempted self-destruction are well known. Additionally many States require safety devices to be worn by window cleaners, eye protection for welders, hard hats for those involved in demolition work, life preservers to be worn while water skiing, and nets protecting aerial performers from the effects of accidental falls. Headgear legislation belongs to this class of legislation.

B. HEADGEAR LEGISLATION DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE SINCE THE DISTINCTION BETWEEN MOTORCYCLES AND OTHER VEHICLES IS BASED UPON SUBSTANTIAL DIFFERENCES AND THEREFORE REASONABLE IN LIGHT OF ITS PURPOSE.

Headgear legislation restricts the liberty of only one class of users of the public highway: motorcyclists and their passengers. There is no similar restriction upon the liberty of operators and passengers of other motor vehicles.

But headgear legislation does not violate the equal protection clause because the distinction between motorcycles and other vehicles such as bicycles and automobiles is based upon substantial differences and is reasonable in light of its purpose:

> "The power-driver cycle is a unique machine. It is capable of moderate to high speeds by motor vehicle standards, with the hazards inherent in speeds at which the vehicle is driven. A bicycle is limited in its speed by the nature of the power which propels it. An automobile differs from a motorcycle in

providing a shell surrounding the motorists. Both bicycles and automobiles can be dangerous to the riders, but the hazards of speed on the one hand and lack of an enclosure on the other hand do distinguish the motorcycle from both the bicycle and the automobile and make the hazard of operation distinguishable from both the bicycle and the automobile. Just because both the bicyclist and the motorist are subjected to hazards of head and face injuries does not mean that in order to make Sec. 347.485 valid it must apply to bicyclists and motorists. The degrees of hazards differ and therein lies the distinction. A classification is not unreasonable because it does not affect everyone who has any exposure to an evil." Bisenius v. Karns, Case No. 124423(Cty. Ct. Wisc. 1968).

C. HEADGEAR LEGISLATION DOES NOT VIOLATE THE DUE PROCESS CLAUSE SINCE IT IS CLEAR AND DEFINITE ENOUGH TO GIVE UNEQUIVOCAL WARNING OF THE RULE TO BE OBEYED.

Even though headgear legislation may require the wearing of a helmet of a type approved by a designated State official, such a statute is sufficiently definite, clear, and positive to give unequivocal warning to citizens of the rule which is to be obeyed.

A statute does not have to specify precise helmet performance requirements in order to be clear and definite, since the use and nature of protective helmets in industry, athletics, and the military service is known generally to the public. People v. Schmidt, 54 Misc. 2d 702, 283 NYS 2d 290 (1967). It is sufficient that the regulations, or proposed regulations of the designated State official "indicates that the requirements will be definite and certain with standards based upon tests to be made of the various headgear." Bisenius v. Karns, Case No. 124423 (Cty. Ct. Wisc. 1968).

D. HEADGEAR LEGISLATION DOES NOT VIOLATE THE DUE PROCESS CLAUSE SINCE IT LAWFULLY DELEGATES POLICE POWER TO AN ADMINISTRATIVE OFFICIAL.

The established rule is that the legislature may delegate to a subordinate body the discretionary power to execute and administer a law, provided a reasonably clear standard is formulated to govern the exercise of discretion by the subordinate body. The test is the completeness of the statute so that no part of the legislative function is left to the judgment of a delegate. People v. Carmichael, 288 NYS 2d 931 (1968) rev. 279 NYS 2d 272 (1967). Even though a standard by its nature is a general one it is valid if it is capable of reasonable application under the circumstances. Headgear legislation constitutes a lawful delegation of the police power since it describes the job to be done, who must do it, and the scope of his authority. Bowles v. Willingham, 321 U.S. 502, 575 (1944).

Numerous examples of legislative delegation of powers pertaining to vehicle and traffic standards can be found in State laws. In New York, for example, the Commissioner of Motor Vehicles may make rules and regulations prescribing standards of brake efficiency, brake linings, hydraulic brake fluid, commercial vehicle lighting, emergency equipment, school bus equipment, splash guards, safety belts and shoulder harnesses, and traffic hazard warning devices. 3/

3/ Subject to sec. 103(d) of P.L. 89-563 (The National Traffic and Motor Vehicle Safety Act of 1966).

APPENDIX
I

MOTORCYCLE PROTECTIVE HEADGEAR STATUTES

A typical statute requiring use of protective headgear by motorcycle operators and/or passengers might read:

> No person shall ride upon or operate a motorcycle on the streets or highways of this State (city) without wearing upon his head a protective head device (crash helmet, safety headgear, protective helmet) of a type approved by the Director of Public Safety (Commissioner, City Council Department of Health).[1]

The following 40 States have enacted statutes of this type:

Alabama	Kentucky	North Dakota
Arizona	Louisiana	Ohio
Arkansas	Maine	Oklahoma
Colorado	Maryland	Oregon
Connecticut	Massachusetts	Pennsylvania
Delaware	Minnesota	Rhode Island
Florida	Missouri	South Carolina
Georgia	Nebraska	South Dakota

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[1] The legislature of Michigan, in response to a decision of the Court of Appeals on April 30, 1968, holding its protective headgear statute unconstitutional, enacted a new statute on June 12, 1968, which reads:

> A motorcycle and a motor driven cycle shall be equipped with, and carry when it is being operated, a number of crash helmets equal to the number of drivers and passengers carried during operation. Helmets shall be approved by the department of State police. The department shall promulgate rules for the implementation of this section in accordance with the provisions of [here follows a lengthy citation]

Hawaii	New Hampshire	Tennessee
Idaho	New Jersey	Texas Utah
Illinois	New Mexico (under 18)	Vermont
Indiana	New York	Washington
Kansas	North Carolina	Wisconsin

The factual situations in the cases are virtually identical: the operator of a motorcycle was apprehended while operating a motorcycle upon the public streets without wearing on his head a protective head device as required by law.

APPENDIX

II

Courts and Cases

The following is a listing and citation of motorcycle protective headgear legislation opinions known as of January 1, 1970

I. United States Supreme Court

1. Krafft v. New York, 90 S. Ct. 198 (1969), certiorari denied.

2. Bisenius v. Karns, 89 S. Ct. 2033 (1969), appeal dismissed "for want of a substantial federal question."

3. Everhardt v. City of New Orleans, 89 S. Ct. 1775 (1969), certiorari denied.

4. Massachusetts v. Howie, 89 S. Ct. 485 (1968), certiorari denied.

II. State

A. Supreme or Highest Courts

1. State v. Solomon, _____ A. 2d _____ (S. Ct. Vt. 1969) upholding 23 V.S.A. § 1256.

2. State v. Darrah, _____ S.W. 2d _____ (S. Ct. Mo. 1969) upholding § 301.010 R.S. Mo. and reversing 1968 decision of Sedalia Mun. Ct.

3. State v. Eitel, 227 So. 2d 489 (S. Ct. Fla. 1969), reversing Small Claims - Magistrate Cts., Palm Beach Cases Nos. 68M-7013/14, 68M-7234 (1968) and upholding F. S. 317.981.

4. State v. Laitinen, 459 P. 2d 789 (S. Ct. Wash. 1969) holding constitutional RCW 46.37.530(3).

5. State v. Fetterly 456 P. 2d 996 (S. Ct. Oreg. 1969), holding constitutional ORS 483.443(1).

6. People v. Fries, 250 NE. 2d 149 (S. Ct. Ill., 1969) Docket No. 41624, holding unconstitutional Ill. Rev. Stat. 1967, ch. 971/2 Par. 189c(a).

7. State v. Anderson, 166 S.E. 2d 49 (S. Ct. N.C. 1969), affirming 164 S.E. 2d 48 (1968) reversing decision of Superior Ct., Guilford Cty., and upholding G.S. 20-140.2(b).

8. Bisenius v. Karns 165 N.W. 2d 377 (S. Ct. Wisc., 1969) upholding § 347.485 (1) and (2), Stats., 1967. Appeal dismissed, 89 S. Ct. 2033 (1969).

9. State v. Odegaard 165 N.W. 2d 677 (S. Ct., N.D., 1969), upholding N.D.C.C. § 39-21-48.

10. Everhardt v. City of New Orleans 217 So. 2d 400 (S. Ct. La. 1968), reversing 208 So. 2d 423 (La. App. 1968), upholds city ordinance which is similar to state statute, R.S. 32:190. Cert. denied 89 S. Ct. 1775 (1969).

11. Massachusetts v. Howie, 238 N.E. 2d 373 (S. Jud. Ct. Mass., 1968), Memorandum decision upholding Massachusetts statute. Cert. denied 89 S. Ct. 485 (1968).

12. State ex rel Colvin v. Lombardi 241 A. 2d 625 (S. Ct. R. I., 1968), upholding G. L. 1956, § 31-10.

B. Appellate Courts

1. Commonwealth v. Arnold, (Pa. Super. Ct. 1969) upholding P. L. 58, section 625.1 as amended, and reversing Clearfield Cty. Ct. (1969) decision.

2. State v. Betts (Warren Cty. Ct., Ohio, 1969) holding unconstitutional § 4511.53 Revised Code.

3. People v. Krafft (Onondaga Cty. Ct. 1969) upholding subdivision 6, section 381 of Vehicle and Traffic Law; cert. denied, 90 S. Ct. 198 (1969).

4. People v. Thoreson, (Maricopa Cty. Ct. 1969), holding Arizona law unconstitutional.

5. State v. ________ (Seneca Cty. Ct., Ohio, 1969) upholding § 4511.53 Revised Code (See Cycle News East, Nov. 4, 1967, p. 30).

6. People v. Albertson, Dist. Ct. (1969) holding Idaho statute unconstitutional, reversing Cty. Ct.

7. State v. Krammes, 252 A.2d 223 (1969) upholding N.J. S.A. 39: 3-76.7.

8. Ex Parte Smith, 441 S.W. 2d 544 (1969) upholding Art. 6701c-3 V.A.C.S., Texas.

9. State v. Myers, (Balto. Cty. Ct. 1969), affirming 1968 decision of Magistrate Ct. upholding Md. headgear and goggle legislation.

10. State v. Burzycki, 37 Law Week 2448, Conn. Cir. Ct. App. Div. (1969) File No. MV 10-63528 AP upholding Conn. Gen Stat. § 14 289(e), petition for appeal to S. Ct. Conn. denied, 252 A2d 812 (1969).

11. State v. Mele, 247 A. 2d 176 (1968) upholding N.J.S.A. 39: 3-76.7.

12. American Motorcycle Association and Farnum v. Davids and State Police, 158 N.W. 2d 72 (Mich. Ct. of Appeals, 1968), reversing 1967 decision of Circuit Ct., Ingham Cty., and holding unconstitutional PA 1949, No. 300, § 6581(d) as added by PA 1966, No. 207 (CL 1948 § 257, 658[d].

13. People v. Carmichael, 288 N.Y.S. 2d 931 (1968) reversing 279 N.Y.S. 2d 272 (1967) and upholding subdivision 6, section 381, of Vehicle and Traffic Law.

14. State v. Zektzer, Sup. Ct. King Cty. No. 47101 (Wash. 1967) upholding Ch. 232, Sec. 4 Subd. 3, Laws of 1967, and reversing City of Seattle v. Zektzer, Seattle Mun. Ct. (1967).

15. People v. Schmidt, 283 N.Y.S. 2d 290 (Cty. Ct., Erie Cty. 1967) upholding subdivision 6, section 381 of Vehicle and Traffic Law. Appeal dismissed 295 N.Y.S. 2d 936 (1968).

C. Trial Courts

1. Sheneman v. Commonwealth (Dauphin Cty. Ct. Pa. 1969) upholding P. L. 58, section 625.1 as amended.

2. Commonwealth v. Molter, (Delaware Cty. Ct. Pa. 1969) No. S.A. #7, upholding P. L. 58, Section 625.1 as amended.

3. Colo. Motorcycle Ass'n v. Love, Hogan, (Denver Cty. Ct. 1969) holding Colo. law unconstitutional.

4. Commonwealth v. Coffman (Jefferson Cty. Ct., Ky. 1969) holding unconstitutional KRS 189.285.

5. City of Wichita v. White, Cases Nos. MC 150-151, (D. Ct. Sedgwick Cty. 1969) upholding city ordinance; on appeal Kansas Supreme Ct. (Case No. 45676).

6. S.D. Motorcycle Dealers Ass'n and Haight v. Parker, (S. D. Cir. Ct. 1968) upholding Section 4 of Chapter 215 of the 1967 Session Laws.

7. State v. Babbs, (Martin Cty. Ct., Fla. 1968) holding unconstitutional F.S. 317.981.

8. State v. Edwards, Case No. 582370 (Mun. Ct. Hennepin Cty., 1968) upholding Minn. Stat. 169.974, subd. (4)a.

9. People v. Newhouse, 287 N.Y.S. 2d 713 (City Ct. of Ithaca, N.Y. 1968) upholding subdivision 6, section 381 of Vehicle and Traffic Law.