

1060 SB 104 - SB 10

TABLE III

## ALASKA SUPREME COURT DISPOSITION OF CASES 1977

	<u>Opinion and Mandate</u>	<u>Summary Disposition by Order</u>	<u>Dismissed by Court or Parties</u>	<u>Review Denied</u>	<u>Total</u>
Appeals					
Civil	120	5	76		201
Criminal & Juvenile	54	1	33		88
Sentence	<u>21</u>	<u>        </u>	<u>19</u>		<u>40</u>
Total Appeals	195	6	128		329
Petitions for Review	16	7	13	67	103
Original Applications	<u>3</u>	<u>4</u>	<u>11</u>	<u>        </u>	<u>18</u>
Total	214	17	152	67	450

TABLE IV

ALASKA SUPREME COURT  
 FILINGS, DISPOSITIONS AND PENDING CASELOAD 1977

<u>Civil Appeals and Cross Appeals</u>		<u>Sentence Appeals</u>	
Pending 12/31/76	218	Pending 12/31/76	16
Filed or Reinstated 1977	<u>251</u>	Filed or Reinstated 1977	<u>63</u>
Total	469	Total	79
<u>Disposition</u>		<u>Disposition</u>	
By Opinion and Mandate	120	By Opinion and Mandate	21
By Summary Order	5	Dismissed	<u>19</u>
Dismissed	<u>76</u>	Total	40
Total	201	Pending 12/31/77	39
Pending 12/31/77	268	<u>Petitions for Review</u>	
<u>Criminal and Juvenile Appeals</u>		Pending 12/31/76	20
Pending 12/31/76	132	Filed 1977	<u>126</u>
Filed or Reinstated 1977	<u>156</u>	Total	146
Total	288	<u>Disposition</u>	
<u>Disposition</u>		Opinion and Mandate	16
By Opinion and Mandate	54	By Summary Order	7
By Summary Order	1	Dismissed or Withdrawn	13
Dismissed	<u>33</u>	Review Denied	<u>67</u>
Total	88	Total	103
Pending 12/31/77	200	Pending 12/31/77	43

TABLE IV (Continued)

Original Applications

Pending 12/31/76	5
Filed or Reinstated 1977	<u>17</u>
Total	22

Disposition

Opinion and Mandate	3
By Summary Order	4
Dismissed	<u>11</u>
Total	18
Pending 12/31/77	4

Total Pending Cases December 31, 1976	391
Total Filings and Reinstatements 1977	<u>613</u>
Total	1004
Total Dispositions 1977	<u>450</u>
Total Pending December 31, 1977	554

TABLE V

ALASKA SUPREME COURT  
REASON FOR CASES PENDING DECEMBER 31, 1977

	C A S E S    A W A I T I N G					STAYED	TOTAL
	RECORDS	BRIEFS	HEARING	DECISION	MANDATE		
<u>Appeals</u>							
Civil Appeals	84	54	22	94	4	10	268
Criminal and Juvenile Appeals	47	62	14	70	1	6	200
Sentence Appeals	<u>6</u>	<u>9</u>	<u>   </u>	<u>19</u>	<u>1</u>	<u>4</u>	<u>39</u>
Total Appeals	137	125	36	183	6	20	507
<u>Petitions for Review</u>		12	1	26	2	2	43
<u>Original Applications</u>	<u>   </u>	<u>   </u>	<u>1</u>	<u>3</u>	<u>   </u>	<u>   </u>	<u>4</u>
TOTAL	137	137	38	212	8	22	554
% of Total	24.6	24.6	6.9	38.3	1.6	4.0	100%

ALASKA SUPREME COURT PENDING CASELOAD 1961-1977

	Total Cases Pending at Year End	Regular and Sentence Appeals	Petitions for Review	Other	Increase or Decrease
1961	78	76	1	1	
1962	75	73	1	1	-3
1963	99	96	2	1	+24
1964	66	57	2	7	-33
1965	85	78	5	2	+19
1966	93	85	2	6	+8
1967	100	91	5	4	+7
1968	122	107	3	12	+22
1969	114	100	11	3	-8
1970	165	145	15	5	+51
1971	182	175	3	4	+17
1972	211	188	18	5	+29
1973	188	172	14	2	-23
1974	216	193	20	3	+28
1975	258	241	16	1	+42
1976	391	366	20	5	+133
1977	554	507	43	4	+163

Percent of Increase	1961-1977	600%
Percent of Increase	1968-1977	354%
Percent of Increase	1976-1977	41%

TABLE VII

ALASKA SUPREME COURT  
MOTION PRACTICE 1977

	TOTAL 1977
Stay Applications Determined by Single Justices	65
Routine Motions Determined by Single Justices	192
Routine Unopposed Motions Determined by Clerk (estimated)*	800
Substantive Motions Determined by Full Court	182
Petitions for Rehearing [Full Court]	<u>35</u>
TOTAL MOTIONS	1274

\*Almost all were unopposed motions to extend  
time to file briefs and other papers.

SUPREME COURT ACTIVITY, 1977

*Clerk's  
file  
1976 filings should  
be 468  
not 466*

The following is the Clerk's annual report of the activity of the Alaska Supreme Court.

I. FILINGS

Total Filings. The total filings in the Alaska Supreme Court increased from 466 in 1976 to 613 in 1977, or an overall increase of 32 per cent. (See Tables I and II for further comparisons.)<sup>1</sup>

Appeal Filings. Of the 613 cases filed or reinstated in 1977, 470 were appeals. Of this number, 251 or 53 per cent were civil appeals or cross-appeals. Criminal and juvenile appeals accounted for 156 filings. There were 63 sentence appeals filed.

Petitions for Review and Originals. A total of 126 petitions for review were filed in 1977 as compared to 86 filed in 1976. There were 17 applications for original relief filed in 1977 as compared to 16 filed in 1976.

II. DISPOSITIONS

A total of 450 cases were disposed of by the Supreme Court in 1977. In 1976, 335 cases were disposed of during the year. (See Tables III and IV for details on 1977 case dispositions.)

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<sup>1</sup> The increase in filings is a continuing trend. For example, 337 cases were filed in 1975. The 1977 filings mark a 73 per cent increase over 1975.

Of the total 450 cases, 214 (or nearly 50 per cent of dispositions) were disposed of by opinion or mandate.<sup>2</sup> This figure may be compared with 148 cases disposed of by opinion and mandate in 1976. A total of 17 cases were disposed of by summary order in 1977.

Of the total dispositions in 1977, 152 were cases dismissed by the Court or by the parties. These dismissals represent about one-third of all dispositions and about one-fourth of all 1977 filings. Other dispositions include 67 (or about one-half of filings) petitions for review denied without opinion.

### III. PENDING CASELOAD

The pending caseload of the Supreme Court at the end of 1977 was 554 cases. This figure may be compared with 391 cases pending at the end of 1976 and 258 pending at the end of 1975. The pending caseload has almost doubled in two years. (See Tables IV, V, and VI for further analysis of the pending caseload.) The 1976-77 increase in pending cases is more than 40 per cent.

Of the 554 cases pending at the end of 1977, 212 or 38 per cent were awaiting decision. About 25 per cent were awaiting record and another 25 per cent were awaiting briefs. (See Table V for more detail.)

### IV. MOTIONS

Over 1,200 motions were processed by the Court in 1977. (See Table VII) Of this number, 182 were substantive motions determined by the full Court and 35 were petitions for rehearing determined by the full Court. A total of 65 stay applications were assigned to individual justices during 1977. The balance of the motions were routine motions determined by a single justice or by the Clerk under the authority of Appellate Rule 14(c).

<sup>2</sup>

The total of 214 case dispositions by opinion does not match the figure of 189 actual opinions filed in 1977. (See Clerk's report of "Opinions by Justice" dated January 17, 1978.) This is true because the 214 dispositions include a separate accounting of appeals and cross-appeals disposed of in single opinions. Also, the 214 dispositions include some opinions filed in 1976 on which mandates did not issue until 1977.

V. TIME PERIODS FOR DISPOSITION OF APPEALS

For 1977 we have attempted to analyze the time periods for bringing appeals to issue and to decision.

Civil Appeals. For 1977, 101 civil appeal opinions were analyzed. The analysis follows:

3

1. Number of Days From Notice of Appeal to Mandate

Greatest Number	1,006 days
Least Number	150 days
Average Number	485 days (or one year, 120 days)

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3

The time periods for resolving appeals in Alaska may be compared to the standards of timely disposition proposed by the American Bar Association in its Standards Relating to Appellate Courts:

Record Preparation	30 days
Briefing	70 days
Argument	(promptly)
Decision	<u>90 days</u>
Total	190 days

The actual time periods may also be compared to the time limits set by appellate rule and by internal procedures:

Record Preparation	40 days
Briefing	80 days
Argument	30 days
Decision	<u>120 days</u>
Total	270 days

2. Number of Days From Notice of Appeal to Certification of Record (Commencement of Briefing)

Greatest Number	497 days
Least Number	1 day
Average Number	120 days
Median	103 days

3. Number of Days From Certification of Record to Completion of Briefing

Greatest Number	354 days
Least Number	5 days
Average Number	135 days

4. Number of Days From Completion of Briefing to Hearing or Submission

Greatest Number	199 days
Least Number	1 day
Average Number	70 days

5. Number of Days From Hearing or Submission to Mandate

A. Number of Days From Hearing or Submission to Circulating Draft Opinion:

Greatest Number	233 days
Least Number	0 days
Average Number	85 days

B. Number of Days From Circulating Draft Opinion to Publication Date:

Greatest Number	189 days
Least Number	6 days
Average Number	65 days

C. Number of Days From Publication Date to Mandate:

Greatest Number	173 days
Least Number	10 days
Average Number	18 days

Criminal Appeals. A less extensive analysis of 54 1977 criminal and juvenile appeals follows:

1. Total Number of Days From Notice of Appeal to Mandate:

Greatest Number	1,076 days
Least Number	294 days
Average Number (or 1 year, 288 days)	593 days
Median Number	578 days

2. Number of Days From Notice of Appeal to Certification of Record (Commencement of Briefing):

Greatest Number	411 days
Least Number	20 days
Average Number	153 days
Median Number	142 days

3. Number of Days From Certification of Record to Completion of Briefing:

Greatest Number	528 days
Least Number	22 days
Average Number	193 days
Median Number	173 days

4. Number of Days From Completion of Briefing to Hearing or Submission:

Greatest Number	220 days
Least Number	4 days
Average Number	65 days
Median Number	49 days

5. Number of Days From Hearing and Submission to Opinion Publication:

Greatest Number	334 days
Least Number	47 days
Average Number	169 days
Median Number	165 days

Sentence Appeals: A total of 21 sentence appeals were classified as follows:

Number of Days From Notice of Appeal to Opinion Publication:

Greatest Number	662 days
Least Number	130 days
Average Number	304 days
Median Number	263 days

VI. TYPE OF DISPOSITION

Civil Appeals. For 1977, 101 civil appeal opinions were classified as to type of disposition. The classification follows:

Cases Affirmed	48
Cases Affirmed in Part, Reversed in Part	18
Cases Reversed	8
Cases Reversed and Remanded	23
Cases Remanded	<u>4</u>
Total	101

Criminal Appeals. For 1977, 54 criminal and juvenile appeal opinions were classified as to type of disposition. The classification follows:

Cases Affirmed	38
Cases Reversed and Remanded	13
Cases Reversed	<u>3</u>
Total	54

Sentence Appeals. The classification of 21 sentence appeal opinions follows:

Sentences Affirmed	15
Sentences Affirmed in Part, Reversed in Part	1
Sentences Reversed and Remanded	4
Sentences Too Lenient	<u>1</u>
Total	21

January 30, 1979

M E M O R A N D U M

TO: Ms. Susan Burke  
Deputy Administrative Director

INFO: Mr. Mel Martin  
Technical Operations

FROM: Robert D. Bacon  
Clerk, Supreme Court

SUBJECT: Caseload of New Intermediate Appellate Court

As you requested, I have brought down to the end of 1978 the statistics which I sent you on December 1, 1978.

	<u>Pending 12/31/78</u>	<u>Filed 1978</u>
CIVIL	297	256
Extradition	3	8
Habeas other than extradition	2	2
Criminal Rule 35	3	3
Civil forfeiture of property used to commi crime	3	3
Civil suit re conditions in prison	1	0
Review proceeding re criminal contempt of District Court	1	1
Other civil	284	239
CRIMINAL	209	135
SENTENCE	51	56
PETITION FOR REVIEW	51	156
Civil	34	104
Criminal	27	52
ORIGINAL	6	27
Civil	4	17
Criminal	2	10
TOTAL	624	630
Within jurisdiction of Court of Appeals*	302	270
Within new jurisdiction of Supreme Court*	322	360

\* We do <sup>NOT</sup> at the present time have an accurate count of matters pending in the Supreme Court which originated in the District Court. Furthermore, this would not be the statistic required for these purposes, since it includes only District Court cases which are appealed a second time from the Superior Court to the Supreme Court. The number of "other civil" cases in this

Ms. Susan Burke  
January 30, 1979  
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table, all of which are included in the last item on the table as within the new jurisdiction of the Supreme Court, includes a small number of cases which originated in the District Court and would not in fact be within the new jurisdiction of the Supreme Court. If you or Mel is able to get from the Superior Court the number of appeals filed with them, it would be a more useful statistic than any that this office might be able to provide on District Court cases.

RDB

*RDB*

M E M O R A N D U M

January 31, 1979

TO: Susan Burke  
Merle Martin

FROM: Beverly Haywood

SUBJECT: Annual Report Preview

Bob Bacon asked me to send along the attached copies of statistics which will form part of our annual report. Sort of a sneak preview!

3A

BH

TABLE I  
1978 RECAPITULATION

	<u>Civil Appeals</u>	<u>Criminal Appeals</u>	<u>Sentence Appeals</u>	<u>Total Appeals</u>	<u>Petitions for Review</u>	<u>Originals</u>	<u>TOTAL</u>
Pending Jan. 1, 1978	268	200	39	507	43	4	554
Filed	253	133	53	439	156	27	622
Reinstated	3	2	3	8	0	0	8
Adjustments <sup>a</sup>	-2	+5	-1	+2	-2	0	0
Closed	225	131	43	399	136	25	560
Pending Dec. 31, 1978	297	209	51	557	61	6	624

a Accounts for cases converted from one category to another during 1978, and for correction of erroneous classifications of certain cases pending January 1, 1978.

TABLE II

## 1978 DISPOSITIONS

	Civil Appeals	Criminal Appeals	Sentence Appeals	Total Appeals	Petitions for Review	Originals	TOTAL
A. By Opinion & Mandate:							
Affirmed	42	56	23	121	8	2	131
Affirmed in part/reversed or remanded in part	24	7	2	33	1		34
Reversed	2	7		9	2	1	12
Reversed and remanded	26	19	2	47	2		49
Remanded only	11	5	3	19			19
Sentence too lenient			1	1			1
Bar disciplinary action						2	2
<u>Total Dispositions by Opinion &amp; Mandate</u>	105	94	31	230	13	5	248
P. By Memorandum Opinion and Judgment:							
Affirmed	6	5	1	12			12
Reversed	1	1		2			2
C. By Summary Order:							
Affirmed	2	1		3	3		6
Reversed or reversed and remanded	8			8	12		20
Other	1	2		3	6	5	14
TOTAL DISPOSITIONS ON MERITS	123	103	32	258	34	10	302
D. Petitions for Review/ Originals denied					85	14	99
E. Dismissals:							
By Agreement or by appellant	69	18	8	95	4		99
By court	27	9	3	39	12	1	52
On motion	6	1		7	1		8
TOTAL DENIALS & DISMISSALS	102	28	11	141	102	15	258
TOTAL CASE DISPOSITIONS	225	131	43	399	136	25	560

TABLE III - HISTORICAL<sup>a</sup>

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
A. FILINGS <sup>b</sup>				
Civil Appeals	151	214	251	256
Criminal Appeals	76	120	156	135
Sentence Appeals	<u>22</u>	<u>32</u>	<u>63</u>	<u>56</u>
Total Appeals	249	366	470	447
Petitions for Review	81	86	126	156
Originals	<u>7</u>	<u>16</u>	<u>17</u>	<u>27</u>
TOTAL	337	468	613	630
B. DISPOSITIONS				
Civil Appeals		141	201	225
Criminal Appeals	> 193	67	88	131
Sentence Appeals	<u>12</u>	<u>33</u>	<u>40</u>	<u>43</u>
Total Appeals	203	241	329	399
Petitions for Review	84	82	103	136
Originals	<u>10</u>	<u>12</u>	<u>18</u>	<u>25</u>
TOTAL	299	335	450	560
C. DISPOSITIONS				
On Merits	c	148	231	302
P/R and Orig. Denied	c	52	67	99
Dismissals	c	<u>135</u>	<u>152</u>	<u>159</u>
TOTAL	299	335	450	560
D. OPINIONS PUBLISHED	122	142	189	237
E. PENDING END OF YEAR				
Civil Appeals	148	218	268	297
Criminal Appeals	76	132	200	209
Sentence Appeal	<u>17</u>	<u>16</u>	<u>39</u>	<u>51</u>
Total Appeals	241	366	507	557
Petitions for Review	16	20	43	61
Originals	<u>1</u>	<u>5</u>	<u>4</u>	<u>6</u>
TOTAL	258	391	554	624

a The figures for cases pending at the end of 1977 plus 1978 filings minus 1978 dispositions do not equal cases pending at the end of 1978 due to reclassifications and corrections. See footnote a to Table I. The same is true from 1975 to 1976.

b Includes reinstatements.

c Breakdown unavailable.

TABLE IV

CASES PENDING: DECEMBER 31, 1978

	<u>Civil Appeals</u>	<u>Criminal Appeals</u>	<u>Sentence Appeals</u>	<u>Total Appeals</u>	<u>Petitions for Review</u>	<u>Originals</u>	<u>TOTAL</u>
Awaiting Record	67	50	8	125			125
Awaiting Briefs	75	70	12	160	14	5	179
With Central Staff	5	3		8			8
Awaiting Hearing/Submission	33	10	1	44	2		46
Awaiting Draft Opinion	54	40	22	116	13		129
Draft Opinion Circulating	38	24	6	68	11		79
Awaiting Decision on Granting Petition for Review or Original					16	1	17
Awaiting Mandate or Decision On Rehearing	11	4	2	17	2		19
Stayed or Remanded	<u>11</u>	<u>8</u>	<u>—</u>	<u>19</u>	<u>3</u>	<u>—</u>	<u>22</u>
TOTAL	297	209	51	557	61	6	624



Alaska Court System

State of Alaska

SUSAN BURKE  
Staff Counsel

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K STREET  
ANCHORAGE, ALASKA 99501

March 12, 1979

Honorable Robert H. Ziegler, Sr.  
Chairman, Senate Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

Re: Senate Bill 104--Court of Appeals

Dear Senator Ziegler:

This is in response to your request for a brief memorandum on the question of whether an intermediate appellate court may be established by the Legislature without an amendment to the state constitution.

Obviously our Supreme Court has never had the opportunity to rule on this precise question, so the primary source of authority is in the language of the constitution itself.

Article IV, sec. 1, provides in part:

The judicial power of the state is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. (Emphasis added).

The only constitutional language that may be viewed as limiting the Legislature's authority to establish courts is the language of Article IV, sec. 2, which provides in part that the supreme court shall be the "highest court of the State, with final appellate jurisdiction". This language would preclude the establishment of a state court with jurisdiction to review supreme court decisions. There is no other language in the constitution that would appear to preclude the establishment of an intermediate appellate court.

Letter to Honorable Robert H. Ziegler, Sr.  
March 12, 1979  
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It has been suggested that the constitution's placement of "final appellate jurisdiction" in the supreme court would require the supreme court to exercise that jurisdiction in all cases decided by an intermediate court of appeals. However, in State v. Browder, 486 P.2d 925 (Alaska 1971), the court strongly suggested that it may properly exercise its final appellate jurisdiction not only through appeals, but through discretionary review as well. The specific question in that case was whether the statute limiting the state's right to appeal in criminal cases also precluded the state from invoking the supreme court's discretionary review jurisdiction. The court held that the state was not barred from invoking the court's discretionary review jurisdiction, first because the statutory limitation appeared to govern only appeals and not an application for discretionary review. Second, the court reasoned that if the statute were construed as barring the state from invoking such review, it would be in conflict with the constitution's grant of "final appellate jurisdiction" to the supreme court.

Implicit in this holding is the proposition that the Legislature may limit the right to direct appeal to the supreme court\* and this limitation will be constitutional so long as the supreme court retains discretionary review authority in all cases. This is precisely the mechanism that is provided for in Senate Bill 104. Finally, although it is not an official statement by the supreme court, the Chief Justice did mention in his recent State of the Judiciary address that the court believed that the establishment of a court of appeals would be permissible under the Alaska Constitution.

I hope this brief review is satisfactory.

Very truly yours,



Susan Burke  
Deputy Administrative Director

SB/nmr

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\*The Alaska Constitution does not grant a right to appeal to the supreme court or to any other court. Nor has a right to appeal ever been held to be a requirement under the U.S. Constitution.



## Alaska Court System

State of Alaska

303 "K" STREET  
ANCHORAGE, ALASKA  
99501

ARTHUR H. SNOWDEN II  
ADMINISTRATIVE DIRECTOR

(907) 274-8611

February 2, 1979

Honorable Robert H. Ziegler, Sr.  
Chairman, Senate Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

Re: The Court of Appeals

Dear Senator Ziegler:

This is in response to your request for background information concerning the proposed intermediate appellate court.

In 1977 the supreme court became increasingly aware that the appellate workload was growing beyond the court's ability to handle it effectively and efficiently. Since 1970, following the increase in the supreme court's membership from three to five justices, the court's case filings have risen from 217 to 630, an increase of 300%. Though there have been slight increases in clerical staff, and two central legal staff assistants added, the supreme court is operating with essentially the same personnel it had in 1972 when the case filings were only 249.

During recent years the court has instituted a number of improvements designed to speed up the appellate process and to allow the court to handle better the increasing caseload.<sup>1</sup> Yet even with these improvements, the backlog of cases awaiting decision by the court continues to rise. In 1977 the chief justice requested the administrative office to explore additional solutions to the workload problems. A copy of the report prepared by this office is enclosed, but the report may be briefly summarized here.

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1. These improvements include delegating routine motions to the Clerk of the Court for decision, establishing a strict policy concerning extensions of time for filing briefs, providing a mechanism for parties to agree to a summary decision of their appeals, establishing a screening function for identifying cases that are amenable to summary decision, improving the case status monitoring capabilities, and increased use of per curiam and memorandum decisions.

Among the possible solutions identified in the report were to (1) increase the membership of the supreme court to seven; (2) limit the right of appeal; (3) have the supreme court hear cases in panels of three, with assistance from superior court judges; (4) increase the law clerk staff; and (5) establish an intermediate court of appeals. After reviewing the report, the supreme court determined that increasing the size of the court would not add significantly to its ability to decide more cases. The increased time required to achieve consensus of among more justices and the time required to review more draft opinions would nearly offset the advantage to be gained by having two more justices writing opinions. Limiting the right of appeal was rejected because it was believed that fairness requires that a party be entitled to one appeal. The court also agreed that the use of panels would not provide a significant workload savings and that such savings as would be achieved would only offer a temporary respite. Additionally, the use of panels, particularly if superior court judges were used on the panels, would unduly dilute the supreme court's law-making function. The court decided that an augmented central legal staff could provide some assistance,<sup>2</sup> but it also recognized that placing too much reliance on legal assistants is not desirable and runs the risk of having appeals decided essentially by law clerks and not by the court.

At the time the supreme court reviewed the report in September of 1977 it agreed that an intermediate appellate court was the one solution that offered the best hope of relieving the court's workload while maintaining the supreme court's essential law making function. The court, however, decided to wait one more year before making a final decision whether to seek the establishment of an intermediate appellate court. In the fall of 1978, it was clear that the workload situation on the court had not altered significantly, even though the appellate filings for 1978 increased only slightly over 1977. The court was deciding more cases than in 1977, writing more opinions, and generally working at a killing pace. Yet the backlog was still rising and at the end of 1978 the court had more cases under advisement and awaiting decision than ever before. The inevitable conclusion to be drawn from this is that even at the current rate of appellate filings, the court cannot keep pace. The backlog of cases awaiting

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<sup>2</sup> The court now has two central staff attorneys working under the direction of the Clerk of the Supreme Court.

Letter to Honorable Robert H. Ziegler, Sr.

Page 3

February 2, 1979

decision will continue to rise and the already significant delay in obtaining a decision on appeal will increase even further, even if appellate filings do not increase. Litigants will find themselves waiting not months, but years, for a decision.

A recent study by this office moreover, shows that there will undoubtedly be an increase in appellate filings over the next ten years. This study found an extremely high historical correlation between population growth and increases in appellate filings. Using the most conservative estimates for population growth (i.e., assuming there is no gas pipeline construction, no increase in litigation from the criminal code, etc.), the appellate filings in the supreme court are projected as follows:

	<u>Expected</u>	<u>High</u>
1981	673	844
1982	729	800
1983	784	856
1984	843	915
1985	906	979
1986	969	1043
1987	1013	1106
1988	1098	1174

Clearly the supreme court cannot handle these anticipated future increases.

We have also recently compared the Alaska Supreme Court's current workload with that of several other supreme courts in the nation at the time that those courts sought and obtained legislation in their states to establish intermediate appellate courts. Although such comparisons are less than totally accurate because courts tend not to measure precisely the same things, it does appear that our supreme court is in very close to the same circumstances as these other courts.

For example, Arizona's intermediate appellate court was established in 1965. During 1964, the Arizona Supreme Court had total appellate filings of 672, slightly more than our court's during 1978. However, the Arizona court, with five justices, terminated only 472 cases in 1964, many fewer than the 560 terminated by our court, and wrote only 177 opinions compared to 237 opinions by the Alaska court last year. Similarly, New Mexico's intermediate court was also established in 1965. During 1964 the New Mexico Supreme Court, also with five justices, disposed of 163 cases by written opinion and terminated a total of 435 cases.

Letter to Honorable Robert H. Ziegler, Sr.  
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February 2, 1979

Although the supreme court clerk's office is still completing its 1978 statistical report, we have attached some preliminary 1978 figures and should have a more complete report shortly. Also attached are reports showing the court's activity during recent years, and a report showing a breakdown of how the 1978 case filings would have been distributed between the proposed court of appeals and the supreme court, based on the proposed criminal jurisdiction of the court of appeals.

The final point of discussion concerning the creation of the court of appeals is its cost versus its benefit to litigants. The projected startup expense for this court for the six month period of January 1, 1980 to June 30, 1980, is \$325,000. The annual operating expense is projected at \$555,000.

Other than the judicial positions and immediate supporting staff, no additional positions are needed, as the clerk's office of the court of appeals will be combined with that of the supreme court.

To a large extent the additional expense associated with the court of appeals will be minimized through cost savings in the supreme court and trial courts. For example, the reduction in workload in the supreme court will eliminate the need for the additional legal research personnel requested in the Fiscal Year 1980 budget. By expediting the appeal process, litigants will experience savings in direct expenses as well as benefiting from the prompt final determination of their cases.

We appreciate very much your assistance with the court of appeals bill. If you wish further information, please let us know.

Sincerely,

*Arthur H. Snowden, II*  
Arthur H. Snowden, II *John*

AS/pmr

104

DUNN, BAILY AND MASON

LAWYERS

LOUSSAC-SOHN BUILDING

428 D STREET

ANCHORAGE ALASKA 99501

THEODORE RUSS DUNN  
DOUGLAS B. BAILY  
JULIAN L. MASON III  
ROBERT J. BUCKALEW  
CABOT CHRISTIANSON

TELEPHONE  
AREA CODE 907  
276-4331

March 27, 1979

Mr. Arthur Snowden  
Administrative Director  
303 "X" Street  
Anchorage, Alaska 99501

Dear Art:

I appreciate your letter concerning the proposed intermediate court of appeals. Fortunately, there is no problem which must be resolved.

I wrote Senator Ziegler to express my opinion that administrative appeals (I was primarily concerned with appeals from the Public Utilities Commission, the Transportation Commission, and the Pipeline Commission) should not be subjected to an additional level of appeal as they will be under Senate Bill 104. It was and is my feeling that it would be best for administrative appeals to either skip the superior court and go directly to the new appellate court or continue to go to the superior court as they do now and then skip the appellate court. I sent copies of my letter to the Public Utilities Commission since I appear before the Commission regularly and thought that it would be courteous to make them aware of my feelings about the Bill. I did not realize that the Bill had actually been drafted in your office and therefore did not send you a copy of my letter.

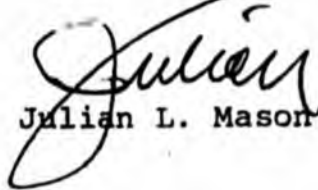
I talked last week with Susan Burke and she pointed out to me that the Bill contains a "transfer" provision which will allow the supreme court by rule to relieve the new appellate court of the burden of administrative appeals. She indicated that the court will, in fact, make such a rule if the Bill is passed. We both agreed that it would be nice for administrative appeals to skip the superior court and go directly to the appellate court and we also agreed that that is a problem for another day.

Mr. Arthur Snowden  
March 27, 1979  
Page Two

Again, I appreciate your letter and I appreciate your  
interest in my comments concerning the Bill.

Sincerely,

D. BAILY & MASON



Julian L. Mason

JLM/lm

cc: Senator Robert Ziegler

ALASKA ACADEMY OF TRIAL LAWYERS  
1015 West 7th Avenue, Anchorage, Alaska 99501  
(907) 279 9571

OFFICERS

President  
L. AMES LUCE

April 4, 1979

Vice - President, Civil  
SANDRA SAVILLE

Vice - President, Criminal  
PAUL DAVIS

Secretary  
DOUGLAS J. SERDAHELY

Treasurer  
WILLIAM M. ERWIN

Representative Fred E. Brown  
Chairman, House Commerce Committee  
Pouch V  
Juneau, Alaska 99811

Re: SB 104 am.

Dear Representative Brown:

It has come to our attention that you are interested in the views of the Alaska Academy on the proposed legislation creating an intermediate court of appeals.

I have reviewed, with great interest the text of SB 104 am. and offer the following comments:

- 1) The case load currently placed upon the Supreme Court is far in excess of the capabilities of any five men, regardless of how hard they work at their task.
- 2) Increasing the number of Supreme Court Justices would, in our opinion, create more rather than less delay in the appeal system. It has been our experience that a smaller committee can reach agreement with far less time expenditure than a larger one. The idea of panels of Justices, all from one court, has the added inherent problem of conflicting rulings.
- 3) The proposed jurisdiction of the "appellate" court would take many of the more time consuming tasks currently performed by the Supreme Court, i.e., sentence review, appeal from administrative agencies.
- 4) The discretionary power of the Supreme Court to grant a further review under Sec. 22.07.030 is a method that has been followed by nearly all states with intermediate courts of appeal, and has allowed the Supreme Court to concentrate on more serious legal issues. We believe it should be made part of any bill.

Representative Fred E. Brown  
Page 2  
April 4, 1979

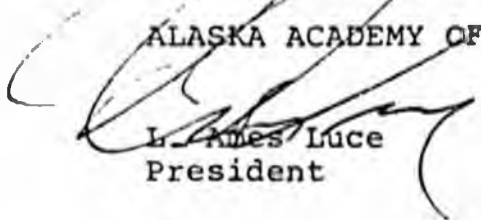
- 5) We have some problems with Sec. 22.05.015: While it is obvious that there will be cases that obviously are going to proceed to the Supreme Court, for example the recently contested primary election, we believe the better procedure would be for the new "appellate" court to certify such cases up to the Supreme Court for decision. This would be in line with the standard chain of appeal and further, would be more efficient in the use of the Court's time. If a case is permitted to go to the Supreme Court for a hearing as to whether the appeal should skip the "appellate" court -- that hearing, the briefs, the arguments and the Supreme Court's deliberations would take almost as much time as an appeal.
- 6) Other than the criticism of the Transfer of Appellate Case section of SB 104 am., we believe the bill would greatly benefit the citizens of Alaska.

While endorsing the creation of an intermediate court of appeals, we do not view such a court as a cure for all of the ills of the delay in the courts which results in great injustice to our citizens. There is a great need for both a more efficient use of the time of trial court judges and for additional judges- It currently requires nearly two years to bring a civil case to trial under the most ideal circumstances. Then the appeal process requires another two years or more. This bill would greatly reduce the appeal time and you are to be applauded for your efforts in that regard. The two plus year delay in the trial courts would, however, still be with us.

In the near future the delay at the trial court level must be reduced. We believe that such steps as a specific designation of a certain number of Superior Court Judges as civil and a certain number as criminal would be one step which should be considered. Funding of new judgeships, we believe, should at least weigh this as an alternative.

On behalf of all of our clients, we wish to thank you for your efforts, through the proposed creation of an intermediate court of appeals, to provide them with a true access to the courts.

ALASKA ACADEMY OF TRIAL LAWYERS



L. Ames Luce  
President

LAL/cb

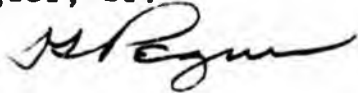
STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 455 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 15, 1979

SUBJECT: Senate Bill 104 (Court of Appeals)  
TO: Senator Robert H. Ziegler, Sr.  
FROM: Donna Spragg Pegues   
Revisor of Statutes

The need for an additional amendment has come to my attention. It should be inserted as a new Sec. 23 and the subsequent sections renumbered as follows.

AMENDMENT

TO: Senate Bill 104

(1) Page 13, line 3 insert new Sec. 23 to read:

\*Sec. 23. AS 39.50.200(2) is amended to read:

"(2) "judicial officer" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court."

(2) Renumber subsequent sections accordingly.

DSP:jdn

You asked me about an intermediate appellate court. My observations are:

1. We don't need it, and can save money if: (a) you withdraw the statutory authority for the S.Ct. to review all sentences; (b) Cut the public defender budget in half (which will eliminate frivolous appeals in the vast majority of cases) or (c) eliminate the P.D. Office and return the system to court appointed private counsel. Retain the PD office only for appeals to the Supreme Court.

Attached is new S.Ct. Order 339 which establishes a right of appeal for EVERYTHING INCLUDING PARKING TICKETS, the court has to inform him of the appeal right, and the Clerk of the Court is obliged to prepare and file the notice of appeal. The S.Ct. is apparently attempting to justify the requirement for an intermediate appellate court by generating more appeal business on every level of the court system.

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 339

Amending Appellate  
Rule 19(b).

IT IS ORDERED:

Rule 19(b) of the Rules of Appellate Procedure is amended to read as follows:

(b) Time for Taking Appeal. An appeal by a defendant may be taken within 30 days after entry of the judgment in accordance with Criminal Rule 32(b). If a motion for a new trial or an arrest of judgment or a motion for reduction, correction, or suspension of sentence pursuant to Criminal Rule 35 has been made within the 30-day period, an appeal from a judgment of conviction may be entered within 30 days after entry of the order deciding the motion. When after trial a court imposes sentence upon a defendant not represented by counsel, the defendant shall be advised of his right to appeal and if he so requests, the clerk shall prepare and file forthwith a notice of appeal on behalf of the defendant. An appeal by the state when authorized by law may be taken within 30 days after entry of the judgment or order appealed from.

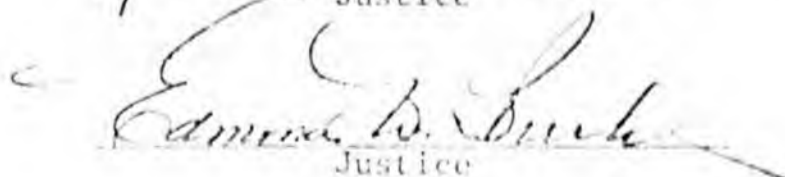
DATED: November 28, 1978

EFFECTIVE DATE: January 1, 1979

  
Chief Justice

  
Justice

  
Justice

  
Justice

  
Justice

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 22, 1979

SUBJECT: Court of Appeals:  
(SB 104)

TO: Senator Robert H. Ziegler

FROM: Billy G. Berrier, Director *BGB*  
Division of Legal Services

You have asked that if the legislature adopted the Court of Appeals bill (SB 104), whether this would preclude changing the court to a constitutional court at a later date. In my opinion establishing the court by law would have no legal effect on later constitutional establishment.

The relevant constitutional provision is Art. IV, Sec. 1, which provides:

"The judicial power of the State is vested in a supreme court, a superior court and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law."

While this is clear authority for establishment of courts by the legislature if this authority were exercised by establishing the Court of Appeals' full power to give the court constitutional status by amendment to the institution would remain.

BGB:nem



SB 104

# Alaska Court System

State of Alaska

305 "K" STREET  
ANCHORAGE, ALASKA  
99501

ARTHUR H. SNOWDEN II  
ADMINISTRATIVE DIRECTOR

(907) 274-8611

March 21, 1979

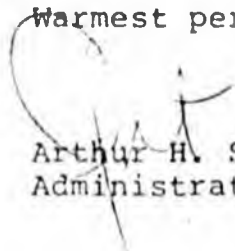
Mr. Julian L. Mason  
429 D Street  
Anchorage, Alaska 99501

Dear Julian:

I have received in the mail, copies of two pieces of correspondence sent to you by Senator Ziegler which alluded to some possible problem with the proposed Court of Appeals. Inasmuch as I don't have the original correspondence on this matter, I don't know what the nature of this problem is.

If you can contact me at your convenience I would be more than willing to try to resolve any problem you may have to your satisfaction.

Warmest personal regards,

  
Arthur H. Snowden, II  
Administrative Director

AHS:cm

cc: Senator Robert H. Ziegler, Sr. ✓



Official Business

# Alaska State Legislature

## Senate

### Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 16, 1979

Mr. Julian L. Mason  
429 D Street  
Anchorage, Alaska 99501

Dear Julian:

Since I wrote you on March 1st, I have not heard word one from anyone concerned.

As a suggestion if you still have problems with SB 104, you should get in touch with your contacts in the House; the bill, in the form in which you have read it, passed the Senate on March 14th on a fifteen to five vote.

I am sure that if you and the court system can iron out your differences, and I hope you can, Representative Charlie Parr, who chairs the House Judiciary committee, will do his best to accommodate you.

Regards,

Robert H. Ziegler, Sr.

RHZ/pkz

cc - Justices, Alaska Supreme Court  
Commissioners, APUC  
Mr. Arthur Snowden



Official Business

# Alaska State Legislature

## Senate

### Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 1, 1979

Mr. Julian L. Mason  
429 D Street  
Anchorage, Alaska 99501

Re: SB 104

Dear Julian:

If you want to have a problem rectified, address your comments to me as a person in a position to do something about it, instead of copying half the people in the country.

The captioned bill was introduced at the request of the Supreme Court. I don't think that anybody in his right mind can argue about the fact that the intermediate, appellate or buffer court, call it what you will, is desperately needed at this time.

Presupposing I am correct in that assertion and presupposing there is something you don't like about the bill, why don't you go see Art Snowden and see if you can't resolve your differences and thereafter advise me as to the terms of your agreement. Then the bill can be easily amended in the Senate Finance committee or on the floor without causing or necessitating the legislature to have to be the ultimate arbitrator to the ultimate detriment of one warring faction or the other.

More simply put, why not iron out all your problems between or among the parties involved and thereafter advise us as to your consensus.

Regards,

Robert H. Ziegler, Sr.

RHZ/pkz

cc - Justices, Alaska Supreme Court  
Commissioners, APUC  
Mr. Arthur Snowden  
Senators Bradley, Meland, Rodey, Sturgulewski and Stimson

# DUNN, BAILY AND MASON

LAWYERS

LOUSSAC-SOIGN BUILDING

429 D STREET

ANCHORAGE, ALASKA 99501

THEODORE RUSS DUNN  
DOUGLAS B. BAILY  
JULIAN L. MASON III  
ROBERT J. BUCKALEW  
CABOT CHRISTIANSON

TELEPHONE  
AREA CODE 907  
276-4331

February 17, 1979

Senator Robert H. Ziegler  
Pouca V  
State Capitol  
Juneau, Alaska 99811

Re: Senate Bill No. 104 (Court of Appeals)

Dear Senator Ziegler:

Section 22.07.020(a)(8) of Senate Bill No. 104 provides that the court of appeals established by the Bill will hear appeals from decisions of administrative agencies. I strongly oppose this provision for the following reasons:

1. Administrative law in Alaska is embryonic and there are literally only a handful of Supreme Court decisions interpreting the powers and duties of our administrative agencies. While the law is in this development state, administrative appeals should be determined by the Supreme Court rather than an intermediate appellate court.

2. The appellate court which would be created by Senate Bill 104 will, as a practical matter, deal primarily with criminal appeals. It will be highly inefficient to ask that court to deal also with the very specialized area of administrative law.

3. Most administrative appeals involve enormous amounts of money and need to be resolved quickly in order to protect both the consumers and the utilities. Senate Bill 104 adds an additional appeal step to what is already a lengthy and tedious appellate process. Although the Supreme Court will not be required to hear appeals from decisions of the intermediate appellate court, it will normally feel compelled to do so because of the large number of people and dollars involved. Consequently, the effect of Bill 104 will be to slow the administrative appeal process without reducing significantly the workload of the Supreme Court.

It is my belief that paragraph 8 should be deleted from Section 22.07.020 of the bill. Alternatively, I recommend

Senator Robert H. Ziegler  
February 15, 1979  
Page Two

that A.S. 44.62 et.seq. be amended to provide that administrative appeals bypass the Superior Court and go directly to the intermediate appellate court.

As you know, I have practiced extensively before the Alaska Public Utilities Commission and represent both utilities and customers of utilities. The opinions expressed in this letter are my own and I have not been compensated by any individual or business to express those views. I sincerely appreciate this opportunity to express my opinion and will be happy to respond to any questions which you or members of your committee may have.

Sincerely,

DUNN, BAILEY & MASON



Julian L. Mason

JLM/ln

cc: Senator W.E. Bradley  
Senator H. D. Meland  
Senator Patrick Kodey  
Senator Arliss Sturgulewski  
Senator Terry Stimson  
Commissioner Stuart Hall, APUC  
Commissioner Marvin Weatherly, APUC  
Commissioner Gordon Zerbetz, APUC  
Commissioner Susan Knowles, APUC  
Commissioner Carolyn Guess, APUC



**Supreme Court**  
**State of Alaska**

January 29, 1979

CHIEF JUSTICE  
JAY A. RABINOWITZ

JUSTICES  
ROGER G. CONNOR  
ROBERT BOOCHEVER  
EDMOND W. BURKE  
WARREN W. MATTHEWS, JR.

P. O. BOX 850  
FAIRBANKS, ALASKA  
99707  
907-452-1550  
907-456-5201

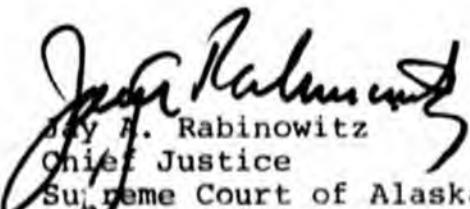
Honorable Robert H. Ziegler, Sr.  
Senator, State of Alaska  
Pouch V  
Juneau, Alaska 99811

Dear Senator Ziegler:

On behalf of my colleagues and myself, I want to thank you for taking the time to meet with us last week. We all are deeply appreciative of your understanding of the need for an intermediate appellate court and delighted that you have agreed to sponsor this legislation. In short, our profound thanks for your continued understanding and sensitivity to the problems of Alaska's Judicial System.

Best wishes.

Sincerely,

  
Jay A. Rabinowitz  
Chief Justice  
Supreme Court of Alaska

JAR:dw

P.S. I should also convey my thanks for sending copies of SJR's 3 and 4.

THE LEGISLATURE OF THE STATE OF ALASKA  
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST **SB 104**  
Bill/Resolution No. \_\_\_\_\_  
Title An Act Establishing the Intermediate Court of Appeals  
Requested by Senate Judiciary Committee Date 2/9/79

II. FISCAL DETAIL  
Agency Affected Alaska Court System  
Program Category Affected Due Process  
Budget Request Unit(s) Affected Alaska Court System

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES		177.5	376.2	398.8	422.7	448.1
200 TRAVEL		15.0	31.8	33.7	35.7	37.9
300 CONTRACTUAL		57.2	121.3	128.5	136.3	144.4
400 COMMODITIES		5.0	10.6	11.2	11.9	12.6
500 EQUIPMENT		25.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>		<b>279.7</b>	<b>539.9</b>	<b>572.2</b>	<b>606.6</b>	<b>643.0</b>

FUNDING (Thousands of Dollars)

GENERAL FUND		279.7	539.9	572.2	606.6	643.0
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		10	10	10	10	10
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Attachment I - FY 80 Budget Detail

IV. DATE February 12, 1979 PREPARED BY Richard Barrier  
AGENCY Alaska Court System  
PHONE 264-0545

Original Legislative Finance  
cc Budget and Management

ATTACHMENT I - FY 80 BUDGET DETAIL

This budget detail for FY 80 is based on the assumption that the effective date of this bill will be July 1, 1979 and that the intermediate court will be operational on January 1, 1980. The fiscal note incorporates all new costs associated with the intermediate court.

With the creation of the intermediate court, and the lessening of the Supreme Court caseload, it will be possible to reduce the FY 80 Supreme Court budget in a number of areas. The request for legal externs, \$30,078, can be deleted, travel expenses reduced by \$20,000, and contractual costs reduced by \$15,000 on an annual basis. Additionally, the Supreme Court is considering reductions in other budget areas, including the deletion of the central legal staff positions in the Supreme Court office, \$85,493, and several budget items in the Trial Court and Administration components.

Personnel:	3 judges: \$54,370 + \$5,900 benefits	\$180,810
	3 secretaries, range 13: \$17,940 + \$5,971 benefits	71,733
	3 law clerks, range 15: \$20,796 + \$6,652 benefits	82,344
	1 court clerk, range 10: \$14,820 + \$5,227 benefits	<u>20,047</u>
		<u>\$354,934</u>
Travel:		\$30,000
Contractual:	Space rental - 4,500 sq. ft. at \$1.10	\$59,400
	Phone, postage	20,000
	Equipment rental	30,000
	Other misc.	<u>5,000</u>
		114,400
Commodities:		10,000
Equipment:		<u>25,000</u>
		534,334

FY 80 EXPENSE

One-time costs:	Equipment	\$ 25,000
Operating Costs:	(1/2 year)	<u>254,667</u>
		\$279,667

A M E N D M E N T #1

OFFERED IN THE SENATE:

BY: Senate Judiciary Committee

To: Amend SENATE BILL No. SB 104

HOUSE BILL No. \_\_\_\_\_

PAGE: 13

LINE: 3

(1) Page 13, line 3, insert new Sec. 23 to read:

\*Sec 23. AS 39.50.200 (200) is amended to read:

"(2) "judicial officer" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court."

(2) Renumber subsequent sections accordingly.

AMENDMENT #1

OFFERED IN THE SENATE:

By: Commerce Committee

To: \_\_\_\_\_ SENATE BILL No. 164

HOUSE BILL No. \_\_\_\_\_

PAGE: 1

LINE: 14

*pg 1, line 14:*

After the word "phone", delete the word "and" and insert the words "or electric"

After the word "transmission", insert the words "and distribution"

Page 2, Line 3:

After the word "transmission", insert the words "or distribution"

Q. What is waste heat?

A. Waste heat is the term commonly used for energy that is rejected from various industrial sources. It usually results from the burning or other consumption of fossil fuels; however, it may also result from nuclear power plants or represent the unused heat from geothermal sources. The waste heat rejected from a process using fossil fuel usually exceeds the amount of the energy that is put to useful work such as the production of electricity. For example, most electrical power generation facilities that operate with fossil fuels have only a 30 per cent efficiency and the remainder is rejected as hot water or hot air.

Q. What is the extent of unused heat in Alaska?

A. The quantity is enormous at the present time and it will increase greatly as the pipelines, refinery and other power plants are placed into operation. It is estimated that each pumping station along the Trans-Alaska Pipeline could heat 2000 homes. The estimate for the North Pole Petroleum refinery is that 10,000 homes could be heated. Canadian sources estimate that each pumping station associated with their Mackenzie Valley Pipeline will produce enough clean waste heat to meet the requirements for 15 to 20 acres of greenhouse vegetable production. However, there has not been an inventory made of the present and future status of the waste heat that will be rejected and that could be used in the state.

Q. What are some proposed uses?

A. Agriculture, fisheries and aquaculture, forestry, processing and district heating in commercial and domestic areas. High temperature waste heat also may be useful in some cases for the generation of electricity where uses can be found for the remaining lower temperature heat so that vapor and thermal pollution is not a problem. For example, it would be technically possible to generate electricity from the high temperature waste from the North Pole Petroleum refinery. However, if this is done the reject energy would be in a form that could not be injected into the upper atmosphere and would create a vapor or ice fog problem during winter months. Agriculture and district heating could provide a use for this remaining low temperature reject energy.

#### Agriculture

The high temperature reject heat could be useful for forage and grain drying and may provide the necessary component that would make potato processing feasible in the state and therefore, expand potato production.

Heat energy consisting of hot air, hot water or steam and at temperatures ranging from 80°F to 800°F would be useful for greenhouse

production and vegetable and plant production in areas that would support horticulture crop production resulting from soil warming. The use of the heat in greenhouses and then during the summer months in the soil for crop production is necessary to all wise proposals that suggest a near total use for the energy. This crop use is probably necessary because it can utilize the low temperature energy and would utilize the heat as less is needed for other uses. It appears to be an important part of every systems approach to utilizing this resource because the near total use of the resource will make the collection and distribution more economical for each use.

#### Aquaculture, Forestry Processing and District Heating

The use of heat to improve production of fisheries through hatchery rearing and in fish production ponds is suggested. The heat requirement for forestry, processing industries and in district heating of homes and businesses is obvious if the heat can be collected and distributed. The more complete use that would result by greenhouse and soil heat use would provide a better economic picture for the above uses.

Q. Is our environment suitable for the types of intensive crop production that is suggested?

A. During the four summer months it is superior to most other areas of the nation. The northern latitudes are recognized to have the highest photosynthetic production rate in the world during these four summer months. If the season can be lengthened and/or the soil warmed, the productive capacity can be further increased, and this photosynthetic advantage further exploited.

Q. Why hasn't the greenhouse industry developed without the waste heat use?

A. It is one of Alaska's major agricultural industries at the present time, but it has been developed through the use of fossil fuels which are even higher in cost than they are in the rest of the nation.

Q. There are indications that hundreds of acres of greenhouse and soil heated vegetable production is possible. Could all of these products be marketed in Alaska?

A. No. Besides providing Alaskans with vegetables and ornamental plants, it would be necessary to market cut flowers such as roses, carnations, chrysanthemums and etc. on national and world markets. It is proposed that this could be done competitively during 5-6 months of the year because of Alaska's superior environment for greenhouse production and through the use of waste energy.

Q. Why do you feel that it is important to examine national and world markets for cutflowers?

A. Because it appears to be necessary at the present time in order to make more complete use of our unused resource. It also would add to the stability of our economy to have a renewable resource such as this contributing to the state's economy. It would also decrease the nation's consumption of fossil fuels now used for this purpose in the present greenhouse growing areas.

Q. What will be the temperature of the Waste Heat?

A. The temperature of the reject heat energy will vary with the type of industry and will range from about 80°F to above 800°F. It will be exhausted as hot air, hot water or steam.

It is expected that not all reject energy could be utilized at this time because of accessibility problems, the lack of adjacent growing areas and the lack of technology. A systems approach with agriculture as a major user appears to give the best potential.

Q. What is the urgency in the legislation now in process?

A. We must promote the use or it will not happen. The potential for use must be designed into the system in the beginning in order to develop the most economical recovery system. For example the oil pipeline pumping stations were not designed with reject heat use in mind, and, therefore, it will cost more to recover the heat.

Although the technology appears to be available at the present time to make economical use of the energy, it is necessary to demonstrate this and to improve this technology.

FISCAL NOTE

I. REQUEST House CS for Senate Bill No. 104 (Judiciary) am H  
 Bill/Resolution No. \_\_\_\_\_  
 Title Intermediate Appellate Court  
 Requested by Alaska Judicial Council Date March 14, 1980

II. FISCAL DETAIL Alaska Judicial Council  
 Agency Affected \_\_\_\_\_  
 Program Category Affected same  
 BRU, Program, or Subprogram(s) Affected same  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)  
EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES	----	----	-0-	----	----	----
200 TRAVEL	-----	\$15,190	-----	----	----	----
300 CONTRACTUAL	----	1,024	-----	----	----	----
400 COMMODITIES	----	----	-0-	----	----	----
500 EQUIPMENT	----	----	-0-	----	----	----
600 LAND & STRUCTURES	---	----	-0-	----	----	---
700 GRANTS, CLAIMS, ETC.	----	----	-0-	---	-----	----
TOTAL		\$16,214				

FUNDING (Thousands of Dollars)

GENERAL FUND	-----	\$16.2	-----	----	-----	----
FEDERAL FUNDS	----	----	----	----	-----	----
OTHER (Specify Fund Source)	---	----	----	-----	----	-----

POSITIONS Not Applicable

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Judicial Selection Process, Appellate Court

This fiscal note is prepared for expenses expected to be incurred during May and June of FY'80. Should the timing of the judgeship application process be such that it moves into FY'81, it will be essential to have the balance of funds in this note available during that fiscal year.

A. Assumptions

The amount of funding requested is based upon the assumption that one additional Judicial Council meeting will be required to select the new candidates for positions created by this bill, and that 2 of the appointees to the new positions will come from existing judges thus creating the need for a second additional Council meeting to fill those vacancies.

(see continuation sheets)

IV. DATE March 14, 1980 PREPARED BY James G. White  
 AGENCY Alaska Judicial Council  
 PHONE Anchorage 279-2526  
 Original: Legislative Finance  
 cc: Budget and Management  
Prime Sponsor (First Legislator Named)

B. Program Summary

1. Positions: No positions.

2. Other Expenditures

a) Travel. Creation of the intermediate appellate court will require two additional Council meetings, one to select the nominees for the appellate court itself, and the other to replace any appointees who come from the existing judges (it is expected that at least one and perhaps two appointees may be trial court judges). The average costs per Council meeting are:

John Longworth (Petersburg)	\$500.00
Marcus R. Clapp (Fairbanks)	300.00
Robert Moss (Homer)	220.00
W. Carpeneti (Juneau)	<u>450.00</u>

Total, travel & per diem <u>per meeting</u>	\$1,470.00
--	------------

x 2 meetings	<u>      x      2</u>
--------------	-----------------------

Total, meetings	\$2,940.00
-----------------	------------

In addition to Council member expenses, it is expected that some applicants may travel to Anchorage to be interviewed. The Council also pays expenses for applicants. It is estimated that as many as 7 applicants per available position will travel, at an average cost of \$350/trip. Since it is possible that 5 vacancies are likely to exist, the total costs are:

\$350/applicant x 5 vacancies	
x 7 applicants/vacancy	= 35 x \$350 = \$12,250

Total travel expenses necessitated by creation of the new court:

Council meetings	\$2,940.00
Applicants	<u>\$12,250.00</u>
	<u>\$15,190.00</u>

b) Contractual.

Each vacancy will require a peer evaluation survey of applicants conducted among Bar Association members. The Judicial Council presently contracts with the Urban Observatory in Anchorage to perform this survey at a cost of \$512.00 per survey. Since several applicants can be included in each survey, it should only be necessary to perform two (one for each Council meeting).

Total cost for peer evaluation survey:

2 surveys at \$512.00/survey=	<u>\$1,024.00</u>
-------------------------------	-------------------

3. Funding. Funds are requested from the state general fund for this purpose.

C. Computations.

See above.

D. Economic Impact. Not applicable.

E. Attachments. None.

SB

110

COMMITTEE REPORT  
SENATE

2/6/79

FURTHER: None

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

Mr. President:

The Committee on JUDICIARY has had SB 110  
availability of an abstract of a driver's record

under consideration and (a majority of the committee) (the committee)  
reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends D 110
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

\_\_\_\_\_

\_\_\_\_\_

*John Kay*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

*John Kay*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

John Kay  
CHAIRMAN

STATE OF ALASKA  
Inter-Department Route Slip

TO:  
MAIL STATION NUMBER \_\_\_\_\_

DEPARTMENT \_\_\_\_\_

ATTENTION \_\_\_\_\_

- |  |  |
|--|--|
| <input type="checkbox"/> Approval      | <input type="checkbox"/> Note & Return       |
| <input type="checkbox"/> Signature     | <input type="checkbox"/> Initial & Return    |
| <input type="checkbox"/> Comment       | <input type="checkbox"/> Return As Requested |
| <input type="checkbox"/> Contact Me    | <input type="checkbox"/> Return For Approval |
| <input type="checkbox"/> Prepare Reply | <input type="checkbox"/> Necessary Action    |
| <input type="checkbox"/> For Your File | <input type="checkbox"/> Your Information    |

Remarks:

*Sen. Ziegler  
Judiciary Com.  
#107 cap.*

FROM:  
MAIL STATION NUMBER \_\_\_\_\_

DEPARTMENT \_\_\_\_\_

BY \_\_\_\_\_ DATE \_\_\_\_\_

## BILL ANALYSIS

ASSIGNMENT DATE \_\_\_\_\_

UNASSIGNED \_\_\_\_\_

<b>DEPARTMENT</b>	<b>SPONSOR (PRINCIPAL)</b>	<b>BILL NO.</b>
Public Safety	Commerce Committee	CS SB 110
<b>DEPARTMENT POSITION</b>		
Support - With amendment		
<b>DIVISION DIRECTOR</b>	<b>DATE</b>	<b>COMMISSIONER</b>
Robert Rowan <i>RR</i>	4/21/80	William R. Nix <i>WN</i>
<b>GOVERNOR'S OFFICE USE</b>		
<input type="checkbox"/> POSITION NOTED	<input type="checkbox"/> POSITION APPROVED	<input type="checkbox"/> POSITION DISAPPROVED
BY:	DATE:	
<b>SUMMARY</b>		
(1) RELATED BILLS (SIMILAR OR CONFLICTING)    None		
(2) OTHER AGENCIES AFFECTED BY BILL    Division of Insurance		
(2) a. ORGANIZATIONAL SUPPORT FOR BILL  Insurance Industry		(2) b. ORGANIZATIONAL OPPOSITION TO BILL
<b>(3) PROGRAM EFFECTS OF BILL</b>		
Would have to set up procedures, possibly by regulation, to verify an individual had given authorization to have his driving record released prior to providing same to anyone who inquires, generally an insurance company.  Would make accident reports received by DMV confidential.		
<b>(4) FISCAL IMPACT:</b>		
<input checked="" type="checkbox"/> NONE <input type="checkbox"/> FISCAL ANALYSIS ATTACHED		
<b>(5) AMENDMENTS PROPOSED:</b>		
Attached. Copy of proposed amendment given to Senator Bennett 3/6/80.		

**(6) COMMENTS:**

Fully support intent of the bill, which is to allow insurance companies to continue to receive driving records necessary for equitable insurance rates. If insurance companies could not receive driving records, the automobile insurance rates for most of the general motoring public would increase by a considerable amount.

Reason for proposed amendment is to allow smoother operation for designation of who can obtain driving record. Would require less paperwork and be easier to manage by DMV, and easier for general motoring public when applying for insurance.

DMV had fiscal note attached, however, has agreed to withdraw same. If not amended, will attempt to handle insurance companies by administrative regulation.

PROPOSED AMENDMENT TO CSSB 110

\*Section 1. AS 28.15.151(d) is amended to read:

(d) The department shall, upon request and payment of a fee determined by the commissioner, furnish a driver or a person designated by the driver with an abstract of the driver's record as provided in (c) of this section. Further provided however, that when motor vehicle insurance is applied for by a person or on his behalf, and such application contains a statement that a traffic violation report may be obtained by the insurer, then such person shall be deemed to have given his or her consent for the insurer to obtain a traffic violation report on the applicant or any person named in the application as a driver of the insured motor vehicle. The department shall provide a method to determine that licensees have given their consent for traffic violation reports to be obtained by insurers as herein provided.

Eliminate Section 3 (effective date), and remove "and providing for an effective date" from the title. This will allow DMV time to prepare for change, which includes printing of authorization cards, establishing regulations, etc.

THE LEGISLATURE OF THE STATE OF ALASKA  
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSSB 110  
 Title Act relating to the availability of an abstract of a driver's record  
 Requested by Senator John Sackett Date 2=20=80

II. FISCAL DETAIL

Agency Affected Department of Public Safety  
 Program Category Affected Life and Property Protection  
 BRU, Program, or Subprogram(s) Affected Driver Services  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80 *	FY 81	FY 82+	FY 83+	FY 84+	FY 85 +
100 PERSONAL SERVICES		19.0	19.0	19.0	19.0	19.0
200 TRAVEL		0	0	0	0	0
300 CONTRACTUAL		8.3	8.3	8.3	8.3	8.3
400 COMMODITIES		.5	.5	.5	.5	.5
500 EQUIPMENT		0	0	0	0	0
600 LAND & STRUCTURES		0	0	0	0	0
700 GRANTS, CLAIMS, ETC.		0	0	0	0	0
<b>TOTAL</b>		<b>27.8</b>	<b>27.8</b>	<b>27.8</b>	<b>27.8</b>	<b>27.8</b>

FY80\*=Bill has immediate effective date - FY80 cost would be 1/12 of FY81 per month after effective date.  
 FY82/83/84/85+ - Cost of living increase not included.

FUNDING (Thousands of Dollars)

GENERAL FUND		27.8	27.8	27.8	27.8	27.8
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		1	1	1	1	1
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

- A: Each request for driving record must be accompanied by release authorization card unless request is from driver.
- B: 100 - One position, Document Processing Clerk I, to review all requests (approx. 72,000 annually), and return all without authorization cards. Must then film authorizations and update microfilm index. Salary - \$15,156; Benefits - \$3,789 = \$18,945
- 300 - Print forms for release authorization (100,000) - \$350  
 Postage \$1,100  
 Terminal to update microfilm: terminal lease 2,040  
 DP Chargeback 4,800  
 \$8,290
- 400 - Microfilm and office supplies \$500

IV. DATE 2-21-80 PREPARED BY Bill Brown  
 AGENCY Motor Vehicles, Public Safety  
 PHONE 465-4335

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

**Sec. 28.15.121. Restricted driver's license.** (a) The department, upon issuing a driver's license, may for good cause impose restrictions suitable to the licensee's driving ability with respect to special mechanical control devices required on a motor vehicle which the licensee drives. The department may impose other restrictions applicable to the licensee that it determines to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(b) The department may issue a special restricted license or may set out restrictions on the usual license form.

(c) The department may, upon receiving satisfactory evidence of a violation of the restrictions on a license restricted or issued under this section, suspend the restricted license for a period not to exceed 30 days.

(d) No person may drive a motor vehicle in violation of the restrictions imposed on a restricted license. (§ 19 ch 178 SLA 1978)

**Sec. 28.15.131. License to be carried and exhibited on demand.** Every licensee shall have his driver's license in his immediate possession at all times when driving a motor vehicle, and shall present for inspection his license upon the demand of a peace officer or other authorized representative of the department who identifies himself as such. However, a person charged with violating this section may not be convicted if he produces in court or in the office of the arresting or citing officer, a driver's license previously issued to him which was valid at the time of his arrest or citation. (§ 19 ch 178 SLA 1978)

A licensing statute cannot be used as a means for obtaining information or evidence not related to the licensing requirement. *Schraff v. State*, Sup. Ct. Op. No. 1223 (File No. 2263), 544 P.2d 834 (1975), decided under former AS 28.15.090.

**Sec. 28.15.141. Duplicate driver's license.** If a valid driver's license issued under this chapter is lost or destroyed, the person to whom the license was issued may, upon payment of the required fee, obtain a duplicate license. A person who recovers an original license for which a duplicate has been issued shall immediately surrender the duplicate to the department. (§ 19 ch 178 SLA 1978)

**Sec. 28.15.151. Records to be kept by the department.** (a) The department may maintain a file of

- (1) every driver's license application, license or permit and duplicate driver's license issued by it;
- (2) every license which has been suspended, revoked, canceled, limited, restricted, or denied, and the reasons for those actions; and
- (3) all accident reports required to be forwarded to the department under this title.

(b) The department may also maintain a file of all accident reports, abstracts of court records of convictions of vehicle, driver and traffic offenses, and other information which the department considers necessary to carry out the purposes of this chapter.

(c) The department shall, upon request, subject to the applicable provisions of AS 12.62 and (f) of this section and without charging a fee,

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- 171. Suspending  
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- 181. Court sus;  
limitation

**Sec. 28.15.**  
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*Knudsen v. City*  
No. 21 (File No.  
overruled on ot  
State, Sup. Ct. C

furnish a municipal, state or federal administrative or judicial agency with a certified abstract of the driving record of a driver. The abstract shall include a listing of accidents in which the driver has been determined by the department or a court of competent jurisdiction to have been liable, convictions of vehicle, driver and traffic offenses, any actions taken upon his license, and information relating to financial responsibility.

(d) The department shall, upon request and payment of a fee determined by the commissioner, furnish a driver with an abstract of the driver's record as provided in (c) of this section.

*Repealed*  
*Repealed*

(e) An insurance carrier may not require a person to furnish an abstract of his driving record to the carrier as a condition for providing the person with motor vehicle insurance.

(f) Except as provided otherwise in this section, information and records under this section are declared confidential and private. (§ 19 ch 178 SLA 1978)

**Article 2. Cancellation, Suspension, Revocation or Limitation of Drivers' Licenses.**

<b>Section</b>	<b>Section</b>
161. Cancellation of driver's license	191. Court reports to department
171. Suspending privileges of a person licensed in another jurisdiction; reporting convictions, suspensions, and revocations	201. Limitation of driver's license
181. Court suspensions, revocations, and limitations	211. Periods of limitation, suspension or revocation; opportunity for hearing and surrender of license

**Sec. 28.15.161. Cancellation of driver's license.** (a) The department shall cancel a driver's license upon determination that

- (1) the licensee is not medically or otherwise entitled to the issuance or retention of the license, or has been adjudged incompetent to drive a motor vehicle;
- (2) there is an error or defect in the license;
- (3) the licensee failed to give the required or correct information in his application; or
- (4) the license was obtained fraudulently.

(b) The licensee may apply for a new license at any time after cancellation upon removal of the cause for the cancellation. (§ 19 ch 178 SLA 1978)

**Intent of act.** — This act plainly expresses the intent that all revocations and suspensions of operators' licenses be the act of the Department of Public Safety. *Knudsen v. City of Anchorage*, Sup. Ct. Op. No. 21 (File No. 58), 358 P.2d 375 (1960), overruled on other points in *Roberts v. State*, Sup. Ct. Op. No. 574 (File No. 992), 458 P.2d 340 (1969), *Glasgow v. State*, Sup. Ct. Op. No. 616 (File No. 1049), 469 P.2d 682 (1970), and *Baker v. City of Fairbanks*, Sup. Ct. Op. No. 618 (File No. 1141), 471 P.2d 386 (1970). These cases were decided under former AS 28.15.170.

**Am. Jur., ALR and C.J.S. references.** — 5 Am. Jur., Automobiles, § 157 et seq.; 5A

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF PUBLIC SAFETY

DIVISION OF MOTOR VEHICLES AND DRIVERS SERVICES

P. O. BOX 960  
ANCHORAGE, ALASKA 99507

January 31, 1980

The Honorable Robert H. Ziegler, Sr.  
Chairman, Senate Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

RE: SB 110

Dear Senator Ziegler:

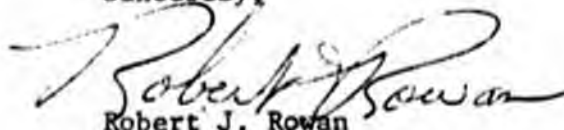
The Division of Motor Vehicles, Department of Public Safety, fully supports the intent of Senate Bill 110. This bill will allow insurance companies to continue to receive abstracts of individuals driving records necessary for equitable insurance rates.

The passage of Senate Bill 110 will not have any fiscal impact on the operating expense of this division. We were furnishing this information to the insurance companies prior to passage of Chapter 178, SLA 1978 and we have continued to furnish the information to insurance companies under court injunction since that time.

To the best of my knowledge, driving records are a basic element in determining insurance ratings. Without this information being available to the insurance companies I am sure the automobile insurance rates for most of us would increase by a considerable amount.

I hope that you will consider the need for passage of this bill. We would be happy to present testimony before your committee and would be happy to furnish you with further information on this subject at any time.

Sincerely,

  
Robert J. Rowan  
Director

cc: William Nix, Commissioner  
Kenneth C. Moore, Div. of Insurance  
Bill Brown

**DEPARTMENT OF COMMERCE &  
ECONOMIC DEVELOPMENT**

*DIVISION OF INSURANCE*

*POUCH D*

*JUNEAU, ALASKA 99811*

January 29, 1980

Honorable Robert Ziegler  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Dear Senator Ziegler:

Senate Bill 110, which is currently in the Senate Judiciary Committee, has our full support. It will allow insurance companies to continue to obtain vital insurance underwriting information necessary for orderly and fair application of insurance rates.

If the bill fails to pass and insurance companies are prohibited from obtaining the records, we foresee several possible results which will adversely affect many citizens who have been careful and safe drivers. First, lack of driving records may result in a knee jerk reaction which causes insurers to discontinue new business. It may result in heavy industry reliance on other criteria such as age, sex, and marital status. It may cause certain companies to withdraw their preferred driver programs thus throwing excellent drivers into standard or substandard markets.

Throughout the country, insurance regulators are seeking the most reliable rating criteria. To my knowledge each of them has retained driving records as a basic element in insurance rating. Frankly, I find it hard to conceive of auto insurance not based on driving records.

I hope you will consider the urgent need for the early passage of this bill and schedule it for hearings in the very near future. We look forward to presenting testimony before your committee and would be happy to furnish you with further information on this subject at any time.

Sincerely,

  
Kenneth C. Moore  
Director

KCM/va12/4

OF COUNSEL  
M. E. MONAGLE

## Robertson, Monagle, Eastaugh & Bradley

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F. O. EASTAUGH  
J. B. BRADLEY  
WILLIAM G. RUDDY  
L. B. JACOBSON  
MICHAEL T. THOMAS  
JAMES F. CLARK  
PAUL M. HOFFMAN  
J. P. TANGEN  
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T. A. SOFO  
D. ELIZABETH CUADRA  
HAROLD E. SNOW, JR.

A PROFESSIONAL CORPORATION

Attorneys at Law

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WM. RONALD HULEN

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April 5, 1979

The Honorable Robert Ziegler  
Chairman, Judiciary Committee  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Re: SB 110

Dear Senator Ziegler:

This letter is written on behalf of the American Insurance Association, in support of SB 110 or any substitute for that bill which would assure reasonable access to drivers' records by insurance companies.

The background of this legislation and an explanation of its necessity are set out briefly in the attached statement, and in the statements of Richard Block and Roger Grummett.

The current bill would make drivers' records a public record. The bill was drafted that way in response to concerns by the Department of Public Safety that limiting access would burden the department with a substantial record-keeping responsibility. We are not sure that is necessarily so, and we recognize that unfettered access to records may not be desirable. The insurance companies do not need the records to be totally open - only open to review if a person is an applicant for insurance.

We are also aware that others have legitimate need for access. For example, certificated motor carriers must review drivers' records as part of a mandatory federal safety program.

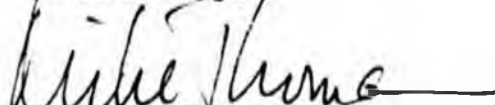
The Honorable Robert Ziegler  
Page Two

April 5, 1979

With these things in mind, we submit a draft of a bill which could be substituted for the present SB 110 language. The effect of this bill would be to leave it to the driver to ascertain who will have access. It would, however, recognize that insurance carriers and others do depend on access for decisions they make, and should not be forced to take a particular action - such as issue a policy - without the facts disclosed by the record.

I would be pleased to provide any other information you and the committee may desire. We know the deadline has passed for action by the full Senate this year, but would greatly appreciate a hearing in your committee at your earliest opportunity.

Sincerely,



M. T. Thomas

MTT/pl

cc: Senator Dankworth  
Senatory Meland  
Senator Bennett  
Senator Ray

STATEMENT OF MIKE THOMAS  
(REPRESENTING THE AMERICAN INSURANCE ASSOCIATION)  
CONCERNING SB 110

---

On the last day of the Tenth Legislature, FCCS CSSB 471 was passed by both houses of the Legislature. That bill had gone to Free Conference as a 3-page bill dealing with motor vehicle fees, and came back as an 84-page bill made up of what had been SB 471, SB 321 (a revision of the Motor Vehicle Code) and SB 594 (extending an industrial incentive tax credit). SB 321 had been referred to Senate Judiciary and Finance Committees, and on the last day of the Session it was still in Senate Judiciary.

Within SB 321, and therefore in the version of SB 471 that passed, was a new AS 28.15.151, a copy of which is attached as Exhibit A. That section limits access to drivers' records maintained by DMV, to certain other agencies and to the driver himself. It expressly forbids insurance companies from requiring access to the records as a condition of selling insurance to the driver.

Insurance companies, of course, rely heavily on the drivers' record to determine whom to insure and what rates to charge. All their rating plans depend on access to those records. In fact, in other states, companies are criticized heavily for using factors other than driving records, such as age, sex or neighborhood, as underwriting criteria. If companies don't know who are good drivers and who are not, they will have to set rates assuming that some unknown number of applicants will be risks that are so bad they would not be written voluntarily, or would be written only with a substantial surcharge, as in the assigned risk pool. The rates that would result would of course be higher, and very unfair to those with good records. They could lead in turn to more uninsured motorists (now estimated at 25-40%), and less competition by insurers in Alaska.

The application of AS 28.15.151 has been enjoined by the Superior Court, pending reconsideration of that provision by the Legislature. In entering the injunction, the Court found that there were "serious and substantial" questions concerning the manner in which SB 471 was passed, and further found that an injunction was in the public interest. The Court had before it affidavits of Richard L. Block, then Director of Insurance, and Roger Grummett, then President of the Alaska Independent Insurance Agents and

Brokers, Inc., a trade association of most of the independent agents and brokers in the State. Pertinent excerpts from those affidavits are attached as Exhibits B and C. (Full copies of all pleadings are available).

Nobody wants or intends to go forward with the lawsuit, since it raises questions that would go to the validity of all of SB 471, and not just the section we are concerned with here.

What we ask is only that insurance companies - and perhaps others with legitimate need - be given access to the drivers' records. As set out more fully in the statements of Mr. Block and Mr. Grummett, we think that such access is essential if we are to try to keep insurance rates rationally related to the risk insured, and if we are to encourage competition in the Alaska insurance markets.

EXCERPT FROM AFFIDAVIT OF RICHARD L. BLOCK

The effect of Section 28.15.151 of Chapter 178, SLA 1978, and particularly subparagraphs (e) and (f) of that section, is to deny access by insurance companies to drivers' records maintained on drivers licensed in the State of Alaska, either directly or indirectly. That denial of access would have predictable and adverse effects upon large numbers of persons buying insurance in the State of Alaska, and upon the insurance industry itself.

Most rating plans for the sale of automobile insurance within the State of Alaska which are presently approved by my Division and in effect assume access to driving records as a basis for underwriting. The driving records are used both to screen for acceptable risks and to set rates. Companies set their own internal policies as to what risks they will voluntarily write, and drivers with records reflecting traffic violations or traffic accidents are often required to procure insurance from alternate insurance programs offered by the insurer or pay scheduled surcharges. Many companies also offer a range of rates depending on driving records, offering premium credits for the same coverage in the event the driver has a clean driving record.

There is in operation in the State of Alaska an "assigned risk plan" for private passenger automobiles and an "assigned risk pool" for commercial automobile risks to insure that persons that want automobile insurance but do not meet underwriting criteria of the carriers are able to buy insurance. Risks are allocated to the companies who write automobile insurance in the State, and those companies are allowed to charge a substantially higher rate, recognizing the increased risk that persons who do not meet company underwriting standards present.

The effect of Section 151 would be to prohibit the use of driving records as a criteria for underwriting and thereby to invalidate the underlying assumptions in the rating plans presently approved. The indirect effect would be to force the companies to write insurance for an unknown number of persons who did not meet their underwriting criteria, persons who would normally be placed in the assigned risk pool. Some companies, especially those who now as a matter of company underwriting policy, write only better risks, would have to consider whether they could or would write on this completely different basis in the State of Alaska. All companies would be forced to file new rating plans taking into consideration the lack of access to driving records.

Predictably, companies would seek approval of rates which would be high enough to provide for the inclusion of risks which the companies have found by experience to be unprofitable at any rate lower than the assigned risk pool rates. Should the Division approve these rate filings, substantial numbers of insureds would be forced to pay substantially in excess of current rates and substantially in excess of what the experience of their hazard class dictates, thus making the rate unfairly discriminatory and violative of AS 21.36.080. If the Division disapproves, many insurers could be expected to withdraw from writing in this State further exacerbating the now tenuous automobile insurance market in this State.

The enforcement of Section 151 would have a definite tendency to make automobile insurance less competitive and more expensive within the State of Alaska, particularly for those persons who have average or better than average driving records.

EXCERPTS FROM AFFIDAVIT OF ROGER GRUMMETT

The principals of my company, and indeed all insurance agents actively engaged in the business in this State, are quite concerned about the impact of Section 23.13.151 of Chapter 178, SLA 1978. If it goes into effect on October 15, 1978, it will have a severe impact on all facets of automobile insurance in the State.

There will undoubtedly be a severe restriction in available market, since virtually all companies writing private passenger automobile insurance base their underwriting and rating on past driving experience and motor vehicle reports. Denial of access to those reports will result in a substantial loss of business to the companies presently in the market, and therefore will result in very restricted markets for the consumer. It is likely that the restricted market will mean overall higher rates for those consumers that are still able to obtain automobile insurance through standard companies. As a matter of fact, we have already received notice from one of our major underwriters, indicating that because of the passage of the statute, they will not accept any new private passenger automobile business. The restriction in market, which has already begun, will also undoubtedly have adverse impact on those drivers who have clean records, not only because of the restriction in markets and lessening of competition, but also because the carriers will have to charge higher rates to cover the unknown risks.

There will also be a substantial amount of lost revenue to the brokers and agents in the State of Alaska. Attempting to market any individual private passenger automobile risk will become very time consuming and expensive for the brokers. Further, many accounts that are not written in standard markets will undoubtedly wind up in the assigned risk pool, which charges a higher rate to the insured but develops a lower commission rate. It is also quite likely that a number of individuals will choose to do without insurance due to the higher rates, which is not only a poor result for the remainder of the driving public, but will result in additional lost revenue to agents and brokers.

SB 110  
TESTIMONY OF THE DIVISION OF INSURANCE  
BEFORE THE SENATE JUDICIARY COMMITTEE  
FEBRUARY 12, 1980

The Division of Insurance supports this legislation. AS 28.15.151 was added to the statutes with 19 Ch. 178 SLA 1978. That statute bars access to motor vehicle records by insurance companies. The effect of the statute is presently under a temporary restraining order issued by the court. The proposal before you would, again, permit insurers access to motor vehicle records.

Almost all automobile insurance rating plans used in Alaska and, indeed in most other states, use motor vehicle data in the rating plan as a means to distribute their auto insurance premium needs. The driver with moving violations is likely to be paying a higher premium for his insurance than is the driver with no moving violations, and we view that as appropriate. If the motor vehicle records are denied insurers, then all of the automobile rating structures on file with the Division of Insurance will have to be replaced with one that no longer considers that information. The effect of this will be to redistribute those surcharge premiums, currently being applied to drivers with violations, to all drivers, resulting in an increase of premium for the driver with no violations on record. Additionally, most carriers utilize motor vehicle record information in their selection of business, even aside from the rating of that selection. This selection has generally resulted in some wide variations in rates amongst insurers. With removal of this tool of selectivity, it is expected that the companies with lower rate structures will have increases in their rate structures as the experience on the new selection is felt. We do not believe that this result is desirable. We would urge that the committee act to continue availability of this data to insurers.

Failure to pass this or a similar bill will result in a vacation of the temporary restraining order already mentioned by the court. The impact of that on our program will be substantial since many new rating proposals will have to be reviewed for propriety, compliance with statute and waiting of new forms of discrimination for fairness. Further, the statistical studies and data available for previous years in Alaska will no longer be usable. This will leave Alaska automobile rate levels in doubt for at least three or four years to come. Passage of this particular legislation is very important.

PROPOSED AMENDMENT TO SB 110

\* Section 2. AS 28.15.151(d) is amended to read:

(d) The department shall, upon request and payment of a fee determined by the Commissioner, furnish a driver or any person or firm designated by the driver, with an abstract of the driver's record as provided in (c) of this section.

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF PUBLIC SAFETY

DIVISION OF MOTOR VEHICLES AND DRIVERS SERVICES

P. O. BOX 960  
ANCHORAGE, ALASKA 99507

January 31, 1980

The Honorable Robert H. Ziegler, Sr.  
Chairman, Senate Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

RE: SB 110

Dear Senator Ziegler:

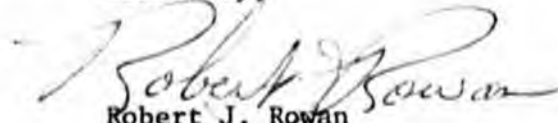
The Division of Motor Vehicles, Department of Public Safety, fully supports the intent of Senate Bill 110. This bill will allow insurance companies to continue to receive abstracts of individuals driving records necessary for equitable insurance rates.

The passage of Senate Bill 110 will not have any fiscal impact on the operating expense of this division. We were furnishing this information to the insurance companies prior to passage of Chapter 178, SLA 1978 and we have continued to furnish the information to insurance companies under court injunction since that time.

To the best of my knowledge, driving records are a basic element in determining insurance ratings. Without this information being available to the insurance companies I am sure the automobile insurance rates for most of us would increase by a considerable amount.

I hope that you will consider the need for passage of this bill. We would be happy to present testimony before your committee and would be happy to furnish you with further information on this subject at any time.

Sincerely,

  
Robert J. Rowan  
Director

cc: William Nix, Commissioner  
Kenneth C. Moore, Div. of Insurance  
Bill Brown

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

POUCH D

JUNEAU, ALASKA 99811

January 29, 1980

Honorable Robert Ziegler  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Dear Senator Ziegler:

Senate Bill 110, which is currently in the Senate Judiciary Committee, has our full support. It will allow insurance companies to continue to obtain vital insurance underwriting information necessary for orderly and fair application of insurance rates.

If the bill fails to pass and insurance companies are prohibited from obtaining the records, we foresee several possible results which will adversely affect many citizens who have been careful and safe drivers. First, lack of driving records may result in a knee jerk reaction which causes insurers to discontinue new business. It may result in heavy industry reliance on other criteria such as age, sex, and marital status. It may cause certain companies to withdraw their preferred driver programs thus throwing excellent drivers into standard or substandard markets.

Throughout the country, insurance regulators are seeking the most reliable rating criteria. To my knowledge each of them has retained driving records as a basic element in insurance rating. Frankly, I find it hard to conceive of auto insurance not based on driving records.

I hope you will consider the urgent need for the early passage of this bill and schedule it for hearings in the very near future. We look forward to presenting testimony before your committee and would be happy to furnish you with further information on this subject at any time.

Sincerely,

  
Kenneth C. Moore  
Director

KCM/va12/4

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April 5, 1979

The Honorable Robert Ziegler  
Chairman, Judiciary Committee  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Re: SB 110

Dear Senator Ziegler:

This letter is written on behalf of the American Insurance Association, in support of SB 110 or any substitute for that bill which would assure reasonable access to drivers' records by insurance companies.

The background of this legislation and an explanation of its necessity are set out briefly in the attached statement, and in the statements of Richard Block and Roger Grummett.

The current bill would make drivers' records a public record. The bill was drafted that way in response to concerns by the Department of Public Safety that limiting access would burden the department with a substantial record-keeping responsibility. We are not sure that is necessarily so, and we recognize that unfettered access to records may not be desirable. The insurance companies do not need the records to be totally open - only open to review if a person is an applicant for insurance.

We are also aware that others have legitimate need for access. For example, certificated motor carriers must review drivers' records as part of a mandatory federal safety program.