ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

2482 HJ SB 133 - SB 163

2482

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

While in Juneau
POUCH V
JUNEAU, ALASKA 99811

Senate

VICE CHAIRMAN
SENATE RESOURCES COMMITTEE

MEMBER
SENATE JUDICIARY COMMITTEE

WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE

WESTERN CONFERENCE COUNCIL
OF STATE GOVERNMENTS

April 14, 1983

Senator Bill Ray,
Chairman - Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska 99811

RE: CSSB 133

Dear Senator Ray:

Your man John, my guy Guy and Revisor of Statutes Dave Dierdorff have labored mightily on the captioned bill.

It would be my suggestion that you distribute copies of the committee substitute and the Revisor's letter of March 23rd to all members of the Senate at least one week before the Rules Committee Chairperson intends to calendar it.

In the committee letter of transmittal to the Senate membership, if I may offer another suggestion, you could say that if anyone has any questions about the bill to get in touch with you, me or our staff people prior to the day it is calendared.

It is obviously my intent to get the mother through the Senate without getting bogged down in floor fights or amendments.

Regards,

B -

Robert H. Ziegler, Sr.

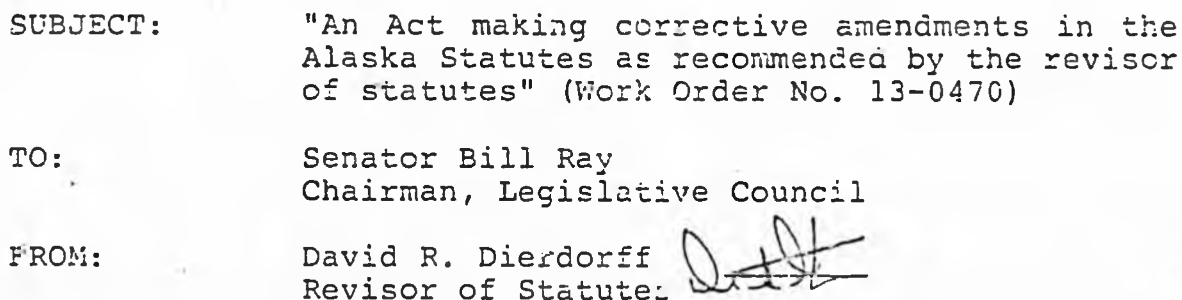
RHZ:lk

Enclosure

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M   February 15, 1983



SUBJECT: "An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes" (Work Order No. 13-0470)

TO: Senator Bill Ray
Chairman, Legislative Council

FROM: David R. Dierdorff
Revisor of Statutes

This bill was prepared by the revisor of statutes under AS 01.05.036 which provides, in part, that the revisor of statutes shall

> ". . . prepare for submission to the legislature legislation for the correction or removal of . . . deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of . . . the statute law of this state."

It is suggested that this memorandum accompany the bill through its legislative course.

SECTIONAL ANALYSIS

Section 1 improves the definition of "municipality" that was first enacted as a part of the Alaska Aeronautics Act of 1949, subsequently rewritten during the bulk formal revision of the Alaska Statutes and amended by the 1974 revisor's bill. The present definition excludes unified municipalities, which we do not believe was intended, and, if interpreted strictly, also excludes home rule cities or boroughs, as there are no classifications of home rule municipalities. The latter problem was the inadvertent result of an amendment made to the revisor's bill as it progressed through the legislature in 1974. The proposed new definition is identical to that which is contained in

the revised municipal code (SB 1) and will be valid whether or not SB 1 passes.

It should be mentioned that this section is but one of 24 sections of the Alaska Statutes which define municipality. Those 24 sections contain ten different definitions. Only eight of the 24 sections contain definitions which are essentially identical; however, all but two or three of the definitions are fairly similar in most respects. Ten of the 24 sections would be repealed by SB 1. It is the revisor's opinion that it would be wise to consider placing a general definition of "municipality" in AS 01.10.060. That would eliminate the need for a definition of "municipality" in other parts of the Alaska Statutes except where the use of the term required some variation from the standard definition.

Section 2 deletes the definition of "domestic fur farm animal" from AS 03.05.010(c)(6). The definition is preceded by a definition of "fur farming" and is limited to the purposes of the paragraph in which it is contained. The term "domestic fur farm animal" does not occur in the paragraph nor does it occur at any other place in the Alaska Statutes.

Section 3 clarifies the term "director" in AS 03.10.-030(e). The term is not defined in AS 03.10 and appears only in this section.

Section 4 repeals all of AS 03.19. This chapter deals exclusively with the small grain incentive program, a program which ended with the crop year 1975. The division of agriculture has confirmed that this material is obsolete and that it is quite unlikely that a program of this type would ever be used in the future.

Sections 5 and 6 clarify responsibilities in the programs related to diseased livestock. When responsibilities in Title 3 were divided between the Departments of Natural Resources and Environmental Conservation by Executive Order in 1981, the sections immediately preceding and following the sections amended by Secs. 5 and 6 of the revisor's bill were changed to place responsibility in the Department of Environmental Conservation. However, by virtue of the definitions applying to Title 3, the word "commissioner" in AS 03.45.060 and AS 03.45.070 must be read as "commissioner of natural resources". Since all sections in AS 03.45 are

part of an integrated scheme, it is our opinion that the failure to change the references to commissioner in these two sections was an oversight. Both sections also make changes in the use of pronouns in accordance with Chapter 58, SLA 1982.

Section 7 repeals references to the Board of Barbers, Board of Hairdressers, Board of Welding Examiners, and Collection Agency Board. The latter two boards were "sunsetted" and the first two were repealed by Chapter 159, SLA 1980.

Section 8 corrects an apparent oversight. When the Board of Hairdressers and Board of Barbers were repealed they were combined into the Board of Barbers and Hairdressers. However, the name of that board was not added to the list in AS 08.01.010, which sets forth the boards subject to AS 08.01.

Section 9 amends AS 08.02.010(a) to correct a reference to nurses and to make consistent the reference to other professions. The term "professional nurse" is no longer defined in AS 08.68.410 as a result of 1982 amendments. The section also contains two changes to remove gender indicating pronouns.

Sections 10 and 11 repeal obsolete references to the Collection Agency Board and the Board of Welding Examiners which are found in the section setting forth the schedules for the sunset of regulatory boards.

Section 12 repeals an obsolete requirement in the chapter on the licensing of public accountants. The paragraph repealed had application only for a period in the 1960's.

Section 13 corrects an error in tense which appears in AS 08.20.140.

Section 14 repeals the chapter on the Collection Agency Board which has been rendered obsolete by operation of the sunset statute. The termination date was June 30, 1980.

Sections 15 and 16 correct internal references in AS 08.36. AS 08.36.310 was repealed and replaced by AS 08.36.315 in 1980.

Section 17 repeals an obsolete definition. The word defined is not used in the chapter and has not been used since prior to the original bulk formal revision of the Alaska Statutes.

Sections 18 and 19 repeal and remove material which has become obsolete through the passage of time and is no longer necessary.

Section 20 amends AS 08.68.270(4) to reflect the changes in the drug laws which went into effect on January 1, 1983. The deleted sections of the Alaska Statutes which were referenced in this paragraph were repealed in the drug legislation passed last session.

Section 21 repeals AS 08.71.220 which is an obsolete portion of the chapter regulating dispensing opticians. The provisions of this section were in the nature of temporary transition provisions for licensing.

Section 22 repeals a subsection of AS 08.80.295 which is obsolete. The mandate of subsection (e) was to extend for a "period of two years following September 16, 1976".

Section 23 amends AS 08.88.201 by deleting the second sentence, which is now obsolete. AS 08.88.191(a) no longer provides for petitions for an additional examination.

Sections 24 and 25 amend provisions in AS 08.88 to reflect the 1980 repeal of AS 08.88.211 and substitute the current references.

Section 26 repeals the chapter on the Board of Welding Examiners which was terminated under the sunset law.

Section 27 corrects a reference to the federal bankruptcy act in the exemptions act passed by the last session of the legislature. Chapter "XIII" refers to the Wage Earner Plan of the old bankruptcy act of 1898. The amendment conforms the reference to the current bankruptcy law. We have also changed the citation to federal law to conform to our present style.

Section 28 makes another correction in the exemptions act. There is no consumer price index for the month of December. The Anchorage index is issued every other month. The index which would be used to establish December price

relationships would, in fact, be the November consumer price index.

Section 29 corrects internal references to reflect the 1982 legislative action repealing the referenced section in AS 09.35 and establishing AS 09.38, the Alaska Exemptions Act.

Section 30 corrects an incorrect reference to the court rules. Rule 2(c) of the District Court Rules of Criminal Procedure has been repealed and replaced by Rule 603(b) of the Rules of Appellate Procedure.

Section 31 makes a change in AS 12.47.030(b) to reflect the fact that the assertion by a criminal defendant of evidence to establish that the defendant was guilty but mentally ill is not a defense to a criminal prosecution. It is, rather, a strategy which involves the presentation of mitigating factors in order to affect the disposition of the matter following a conviction.

Section 32 amends AS 14.07.058(e) to clarify the meaning of the word "board". In AS 14.60, the word "board" is defined for AS 14 to mean the State Board of Education. Consequently, the use of the word with no further identification could be confusing.

Section 33 amends AS 14.17.080 to remove obsolete references. Basic need is no longer defined in AS 14.17.021 and there is no longer any matching under AS 14.17.071. As a matter of fact, AS 14.17.071 has been repealed.

Section 34 also deletes obsolete references that result from the changes in policy in the school foundation program. The second sentence of the amended section is also changed to conform the internal reference to our present style. If appropriate changes were made in AS 29.88.020, this section could be repealed.

Section 35 amends AS 14.17.190(b) to delete a reference to money acquired from school district "local effort". "Local effort" is no longer a required part of the public school foundation act.

Section 36 repeals AS 14.17.225(d) because the underlying statute, AS 14.17.215 was repealed in 1980 by sec. 20, Chapter 26, SLA 1980.

Section 37 repeals the three sections which set forth the minimum teachers' and administrators' salary scales and definitions for the sections. The salary scales are obsolete since salaries are set by negotiation.

Sections 38, 39 and 40 delete obsolete references to the old state-operated-school system and substitute the regional educational attendance area. In Sec. 39, the phrase "school board" is substituted for "district" because "district" is not defined in AS 14. "School board" is.

Section 41 deletes a reference in AS 14.42.015(a)(2) to the Alaska Methodist University and substitutes the successor school, Alaska Pacific University.

Sections 42 and 43 delete references to the old tuition grant program that was declared unconstitutional by the Alaska Supreme Court some time ago and repealed by Chapter 94, SLA 1980 and Chapter 59, SLA 1982.

Section 44 repeals the definition of a phrase that is not used in the scholarship loan program. The term "part-time student" is not used in the Alaska Statutes. HB 174 would introduce the term to AS 14, but a definition is not necessary in the context it appears in HB 174.

Section 45 repeals a chapter that is obsolete and inoperative. When the chapter was enacted in 1972 it was based on participation in "the federal child nutrition act of 1971". However, that federal legislation was never enacted. No programs have been implemented or regulations adopted under this chapter.

Section 46 deletes from AS 14.57.020(b), relating to the state museum collections advisory committee, a sentence which was necessary only during the initial year of operation of the committee.

Sections 47 and 48 correct references to the acknowledgement statute. AS 09.65.012 has been replaced by AS 09.63.020.

Sections 49 and 50 correct an apparent oversight in AS 16.10. The sections presently read as if any fisherman who sells fish without an entry permit or interim use permit is in violation of the sections. However, certain fishermen are not required to have entry permits or interim use

permits, so certain types of fish could legally be sold. The suggested amendments make it clear that fishermen who are not required to hold a permit under AS 16.43 can sell fish without violating these sections.

Section 51 repeals AS 16.10.500 - 16.10.620 on the basis of the decision of the Supreme Court in State v. Alex. Technically, the case only invalidated AS 16.10.530 but the effect was to wipe out the entire program set forth in these sections. The present program is operated under AS 43.76.

Section 52 deletes an obsolete provision in AS 18.23.040 relating to punishment for misdemeanors. The effect of this amendment is to make a violation under this section a class A misdemeanor, through operation of the section relating to unclassified misdemeanors, AS 11.81.250(c). Since the penalty for a class A misdemeanor under is up to one year in jail and a fine of up to $5,000, the penalty would be more severe than under the repealed section referred to presently in AS 18.23.040. Under the repealed section the jail sentence would be the same but the maximum fine would have been only $500. The legislature may wish to amend this section of the bill to retain the old penalty, or consider establishing this as class B misdemeanor, with a maximum fine of $1,000 and a term of imprisonment of not more than 90 days.

Section 53 repeals a reference made obsolete by changes in the school foundation program. See sec. 35 of this memo.

Section 54 corrects an incorrect internal reference in AS 21.60.010(d). The section currently referenced contains a definition of "insurance" rather than a penalty.

Section 55 repeals and reenacts AS 22.05.020 which establishes the composition and general powers of the Supreme Court. The repeal and reenactment deletes obsolete material relating to the number of justices and organizes the section into three subsections for clarity.

Section 56 is a repeal and reenactment of AS 22.10.020, which sets forth the jurisdiction of the superior courts. The sole purpose of the rewriting is to make the section more readable. There have been no substantive changes and it is not the purpose of this section to override any differences between jurisdiction of the superior court set forth by statute and that set forth by court rule. In other

words, in those ways that this material may differ from the rules, the repealed and reenacted statute does not necessarily override should it pass by more than a two-thirds vote.

There are three minor changes which should be noted. In new subsection (a), the words "but not limited to" have been deleted following the word "including". Since the words "include" or "including" are not exclusive words, it is unnecessary to use the term "but not limited to" following such words in the Alaska Statutes. In new (h), the internal reference to the Alaska Native Claims Settlement Act has been changed to conform to present style. The other change is the deletion of a reference to AS 23.10.192 in new subsection (i). That section was repealed in 1980 and the provisions of AS 18.80, which are still referenced, have picked up the provisions of the repealed section.

Section 57 corrects a problem of tense in AS 22.10.040(4).

Section 58 deletes a reference to the legislative board of retirement benefits. That board was repealed in 1980.

Section 59 repeals an obsolete provision in the motor vehicle code. AS 28.10.105(c) was applicable only during 1979.

Sections 60, 61, and 62 delete references to a statute which was repealed when the new criminal code was enacted in 1978. The proper references to the provisions on unlawful evasion have been substituted.

Section 63 revises a definition in the Agreement on Detainers. The term defined, "state" was changed to "party state" through amendments to the original bill. However, the definition was not changed. "State" needs to be defined in this law, as the term is used to include the jurisdictions of the United States which are not states, e.g., Puerto Rico and the District of Columbia. "Party state" does not need to be defined, as it is clear from a reading of the Agreement on Detainers that a party state is a state (as defined) which is a party to the agreement. Without some change, some confusing results occur in reading the law to which the definitions apply. Consequently, the legislature should either adopt the amendment proposed in this section, or adopt the amendment and an additional amendment as follows:

(4) "party state" means a state which is party to this agreement.

Sections 64 and 65 delete references to AS 14.08.161 which has been repealed.

Section 66 repeals AS 37.14.060 - 37.14.100, which comprised Article 2 of AS 37.14. This article was not to be effective until the Board of Regents of the University of Alaska approved certain matters. In fact, the Board of Regents disapproved all matters on August 17, 1978. Consequently, the repealed sections never took effect.

Section 67 corrects an error in the internal references in AS 39.25.120(b) which were created by the repeal and reenactment, with some renumbering, of AS 39.25.150.

Section 68 makes changes in internal references required by the enactment of the Alaska Exemptions Act in 1982.

Section 69 corrects the reference to the head of the Department of Community and Regional Affairs by substituting "commissioner" for "director".

Section 70 corrects the reference in the Alaska Statutes to the United States Board on Geographic Names.

Section 71 deletes a reference to the licensing of embalmers. The referenced provisions were repealed in 1976.

Section 72 supplies the words necessary to make a complete sentence out of the last sentence in AS 44.83.398(f).

Section 73 repeals a reference made obsolete by changes in the school foundation program. See secs. 35 and 53 of this memo.

Section 74 amends the Alaska Securities Act to clarify the time that is available to take an appeal from an administrative order. The Alaska Court Rules of Appellate Procedure allow only 30 days for an appeal from an administrative decision. However, this section of the securities act currently allows 60 days. This is a direct conflict and should be resolved. The applicable appellate rule is Rule 602(a)(2).

Sections 75, 76, and 77 delete obsolete material from three sections of AS 46.30. All of the deleted material is dated and no longer necessary.

Section 78 corrects an internal reference in AS 47.-10.230(f).

Section 79 re[illegible] [illegible] definition in the child support enforcement ch[illegible] [illegible]hat is not used in the chapter. The term defined [illegible] [illegible]sable earnings".

Section 80 mak[illegible] [illegible]nges in internal references required by the new exemption[illegible] statute.

DRD:ljb

Enclosure

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 998[illegible]
907 465 3800

MEMORANDUM May 4, 1983

SUBJECT: Changes in CSSB 133 (Judiciary)

TO: Senator Bill Ray
Chairman, Senate Judiciary Committee

FROM: David R. Dierdorff
Revisor of Statutes

Enclosed with this memo are the revised revisor's memo, which you may wish to use as a committee report, and CSSB 133 (Judiciary) in final form. The changes made since the March 23rd draft are:

1. In Sec. 9 (page 3, line 8), "registered" was substituted for "licensed" to more accurately reflect previous legislative intent.

2. In Sec. 20 (page 5, line 10), "an" was deleted for clarity.

3. Sec. 33 (page 7, line 12), now repeals all of AS 08.99 except AS 08.99.110. That section establishes the piping code for the state and, although we are unable to determine any relationship with other laws, it was the revisor's opinion, shared by the Departments of Law and Labor, that we ought to retain the section until we were certain that it was unnecessary or obsolete. We will editorially transfer it to Title 18 later this year.

4. Sec. 42 (page 10, lines 16 - 21 of the March 23rd draft), was deleted at the request of the Department of Law, as the Department of Education desires that local districts continue the practice of making records of local effort available to the commissioner for audit.

5. In Sec. 43 (page 10, line 17), we have deleted AS 14.20.220 from the list of sections repealed, at the request of the Department of Law. The Department of Education is preparing a major revision of this and other

sections which will retain the provisions of (e) and (g) of the section. Those two subsections are still used by the department and districts for certain purposes.

6. Sec. 57 (page 14, line 12), now proposes the repeal of only AS 16.10.530 rather than all of the sections from AS 16.10.500 to 16.10.620. The section to be repealed is the one held unconstitutional in State v. Alex. The other sections are still valid and being used regularly in a variety of programs.

7. On page 15, line 25 of the draft, a form and style change was made for clarity.

If you have any questions, please feel free to call. Thank you for your assistance in expediting Senate consideration of the bill this session.

DRD:ljb

Enclosures
17/024

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM May 4, 1983

SUBJECT: "An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes" (CSSB 133 (Judiciary))

TO: Senator Bill Ray
Chairman, Senate Judiciary Committee

FROM: David R. Dierdorff
Revisor of Statutes

This bill was prepared by the revisor of statutes under AS 01.05.036 which provides, in part, that the revisor of statutes shall

> ". . . prepare for submission to the legislature legislation for the correction or removal of . . . deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of . . . the statute law of this state."

It is suggested that this memorandum accompany the bill through its legislative course.

SECTIONAL ANALYSIS

Section 1 improves the definition of "municipality" that was first enacted as a part of the Alaska Aeronautics Act of 1949, subsequently rewritten during the bulk formal revision of the Alaska Statutes and amended by the 1974 revisor's bill. The present definition excludes unified municipalities, which we do not believe was intended, and, if interpreted strictly, also excludes home rule cities or boroughs, as there are no classifications of home rule municipalities. The latter problem was the inadvertent result of an amendment made to the revisor's bill as it progressed through the legislature in 1974. The proposed new definition is identical to that which is contained in the revised municipal code (SB 1) and will be valid whether or not SB 1 passes.

It should be mentioned that this section is but one of 24 sections of the Alaska Statutes which define municipality. Those 24 sections contain ten different definitions. Only eight of the 24 sections contain definitions which are essentially identical; however, all but two or three of the definitions are fairly similar in most respects. Ten of the 24 sections would be repealed by SB 1. It is the revisor's opinion that it would be wise to consider placing a general definition of "municipality" in AS 01.10.060. That would eliminate the need for a definition of "municipality" in other parts of the Alaska Statutes except where the use of the term required some variation from the standard definition.

The Senate deleted this section because of the previous passage of SB 189

Section 2 deletes the definition of "domestic fur farm animal" from AS 03.05.010(c)(6). The definition is preceded by a definition of "fur farming" and is limited to the purposes of the paragraph in which it is contained. The term "domestic fur farm animal" does not occur in the paragraph nor does it occur at any other place in the Alaska Statutes.

Section 3 clarifies the term "director" in AS 03.10.-030(e). The term is not defined in AS 03.10 and appears only in this section.

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Sections 5 and 6 clarify responsibilities in the programs related to diseased livestock. When responsibilities in Title 3 were divided between the Departments of Natural Resources and Environmental Conservation by Executive Order in 1981, the sections immediately preceding and following the sections amended by Secs. 5 and 6 of the revisor's bill were changed to place responsibility in the Department of Environmental Conservation. However, by virtue of the definitions applying to Title 3, the word "commissioner" in AS 03.45.060 and AS 03.45.070 must be read as "commissioner of natural resources". Since all sections in AS 03.45 are part of an integrated scheme, it is our opinion that the failure to change the references to commissioner in these two sections was an oversight. Both sections also make

changes in the use of pronouns in accordance with Chapter 58, SLA 1982.

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Section 12 repeals an obsolete requirement in the chapter on the licensing of public accountants. The paragraph repealed had application only for a period in the 1960's.

Section 13 corrects an error in tense which appears in AS 08.20.140.

Section 14 repeals those sections in AS 08.24 which established the Collections Agency Board and a paragraph which defined "board" for the chapter. The board was terminated by operation of the sunset statutes. The termination date was June 30, 1980.

Sections 15 - 21 amend provisions in the law licensing and regulating collection agents to delete references to the terminated Collection Agency Board.

Sections 22 and 23 correct internal references in AS 08.36. AS 08.36.310 was repealed and replaced by AS 08.36.315 in 1980.

Section 24 repeals an obsolete definition. The word defined is not used in the chapter and has not been used since prior to the original bulk formal revision of the Alaska Statutes.

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Sections 31 and 32 amend provisions in AS 08.88 to reflect the 1980 repeal of AS 08.88.211 and substitute the current references.

Section 33 repeals all but one section of the chapter on the Board of Welding Examiners which was terminated under the sunset law. The retained section establishes the piping code of the state.

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Section 43 repeals two sections which set forth the minimum teachers' and administrators' salary scales and definitions. The salary scales are obsolete since salaries are set by negotiation. The definitions section is also obsolete by reason of successive reapportionments. The section which contains minimum salaries for teacher's (AS 14.20.220) is also obsolete, but contains some material still useful to

the Department of Education and school districts. It will be the subject of a bill being prepared by the department proposing substantial revision in that and other sections.

<u>Sections 44, 45 and 46</u> delete obsolete references to the old state-operated-school system and substitute the regional educational attendance area. In sec. 46, the phrase "school board" is substituted for "district" because "district" is not defined in AS 14. "School board" is.

<u>Section 47</u> deletes a reference in AS 14.42.015(a)(2) to the Alaska Methodist University and substitutes the successor school, Alaska Pacific University.

<u>Sections 48 and 49</u> delete references to the old tuition grant program that was declared unconstitutional by the Alaska Supreme Court some time ago and repealed by Chapter 94, SLA 1980 and Chapter 59, SLA 1982.

<u>Section 50</u> repeals the definition of a phrase that is not used in the scholarship loan program. The term "part-time student" is not used in the Alaska Statutes. HB 174 would introduce the term to AS 14, but a definition is not necessary in the context it appears in HB 174.

<u>Section 51</u> repeals a chapter that is obsolete and inoperative. When the chapter was enacted in 1972 it was based on participation in "the federal child nutrition act of 1971". However, that federal legislation was never enacted. No programs have been implemented or regulations adopted under this chapter.

<u>Section 52</u> deletes from AS 14.57.020(b), relating to the state museum collections advisory committee, a sentence which was necessary only during the initial year of operation of the committee.

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not required to hold a permit under AS 16.43 can sell fish without violating these sections.

Section 57 repeals AS 16.10.530 on the basis of the decision of the Supreme Court in State v. Alex. The case only invalidated AS 16.10.530.

Section 58 substitutes the substantive provisions of repealed AS 11.05.010 for the obsolete reference to the repealed provision.

Section 59 repeals a reference made obsolete by changes in the school foundation program. "Local effort" is no longer a required part of the public school foundation law.

Section 60 corrects an incorrect internal reference in AS 21.60.010(d). The section currently referenced contains a definition of "insurance" rather than a penalty.

Section 61 repeals and reenacts AS 22.05.020 which establishes the composition and general powers of the Supreme Court. The repeal and reenactment deletes obsolete material relating to the number of justices and organizes the section into three subsections for clarity.

Section 62 is a repeal and reenactment of AS 22.10.020, which sets forth the jurisdiction of the superior courts. The sole purpose of the rewriting is to make the section more readable. There have been no substantive changes and it is not the purpose of this section to override differences, if any, between jurisdiction of the superior court set forth by statute and that set forth by court rule.

There are three minor changes which should be noted. In new subsection (a), the words "but not limited to" have been deleted following the word "including". Since the words "include" or "including" are not exclusive words, it is unnecessary to use the term "but not limited to" following such words in the Alaska Statutes. In new (h), the internal reference to the Alaska Native Claims Settlement Act has been changed to conform to present style. The other change is the deletion of a reference to AS 23.10.192 in new subsection (i). That section was repealed in 1980 and the provisions of AS 18.80, which are still referenced, have picked up the provisions of the repealed section.

Section 63 corrects a problem of tense in AS 22.10.040(4).

Section 64 deletes a reference to the legislative board of retirement benefits. That board was repealed in 1980.

Section 65 repeals an obsolete provision in the motor vehicle code. AS 28.10.105(c) was applicable only during 1979.

Section 66 amends AS 28.10.411(b) by deleting a reference to repealed AS 42.15.

Sections 67, 68, and 69 delete references to a statute which was repealed when the new criminal code was enacted in 1978. The proper references to the provisions on unlawful evasion have been substituted.

Section 70 revises a definition in the Agreement on Detainers. The term defined, "state" was changed to "party state" through amendments to the original bill. However, the definition was not changed. "State" needs to be defined in this law, as the term is used to include the jurisdictions of the United States which are not states, e.g., Puerto Rico and the District of Columbia. "Party state" does not need to be defined, as it is clear from a reading of the Agreement on Detainers that a party state is a state (as defined) which is a party to the agreement. Without some change, some confusing results occur in reading the law to which the definitions apply. Consequently, the legislature should either adopt the amendment proposed in this section, or adopt the amendment and an additional amendment as follows:

> (4) "party state" means a state which is party to this agreement.

Sections 71 and 72 delete references to AS 14.08.161 which has been repealed.

Section 73 repeals AS 37.14.060 - 37.14.100, which comprised Article 2 of AS 37.14. This article was not to be effective until the Board of Regents of the University of Alaska approved certain matters. In fact, the Board of Regents disapproved all matters on August 17, 1978. Consequently, the repealed sections never took effect.

Section 74 deletes a reference in AS 38.04.065(a) to a statute repealed in 1981 and substitutes a reference to the present notice provisions.

Section 75 deletes from AS 38.04.900(a) provisions which were of a temporary nature and are now obsolete.

Section 76 rewrites the paragraph in AS 38.04.910 which defines "state park" for AS 38.04. The old definition contained specific references to some of the laws designating areas which fall within the definition of state parks, but has not been kept up to date as new areas have been designated. It is our opinion that it would be better to enact a definition such as that proposed in this section and maintain a current list of laws designating the various areas in a note to the section.

Section 77 amends a reference in AS 38.05.057 to the notice provisions of AS 38.05.345. Note that there is still an AS 38.05.345(e), but that the section was substantially rewritten after AS 38.05.057(e)(3) was enacted, resulting in the repeal of the notice provisions of former AS 38.05.-345(e). The present provisions are irrelevant in the context of the reference found in AS 38.05.057(e)(3).

Section 78 deletes the last sentence of AS 38.05.057(g), as the sentence is no longer necessary. AS 38.05.055, referenced in the sentence, has been rewritten and no longer contains any requirements for contracts. AS 38.05.065 now establishes certain terms required for contracts under this section. The deletion of "or his representative" is consistent with the law requiring the deletion of gender indicating pronouns, and is not required in this provision, since other provisions authorize the director to act through designated representatives. See AS 38.05.035.

Section 79 amends AS 38.05.078(e) to reflect the fact that (b) of the section has been repealed. The reference is retained as "former (b)" to insure that the remedies contained in (e) will be available to the state in the event of an action involving a contract for the purchase of land authorized by the repealed subsection.

Section 80 repeals the definition of a term no longer used in the section.

Section 81 amends AS 38.05.079(a) to reflect the repeal of two sections referenced in the subsection. In the case of AS 38.05.047, the reference is retained, but the reader will know that the section is no longer operative. In the case of AS 38.05.305, a reference to AS 38.05.345 was

substituted. That section now contains all of the notice procedures.

Section 82 updates an obsolete internal reference.

Section 83 also updates an obsolete internal reference. A review of the legislative history of AS 38.05.102 (amended by this section) indicates that the spanned reference should be to the entire article on leasing. In any event, AS 38.-05.100 has been repealed.

Section 84 substitutes a reference to AS 38.05.345 for the obsolete reference to repealed AS 38.05.305.

Section 85 makes a number of minor style changes and substitutes a reference to AS 46.15 for an obsolete reference to repealed law.

Section 86 makes the same change to AS 38.08.020 that was made to AS 38.05.057(e)(3) by section 77 of the bill.

Section 87 corrects an error in the internal references in AS 39.25.120(b) which were created by the repeal and reenactment, with some renumbering, of AS 39.25.150.

Section 88 adds the Alaska Power Authority and the Alaska Resources Corporation to the list of agencies included in the definition of "state commission or board" for purposes of the conflict of interest laws. These boards are subject to AS 39.50 by the terms of the laws establishing them, but they were not added to the list in AS 39.50.200. This oversight was brought to our attention by the staff of the Alaska Public Offices Commission. Other matters brought to our attention will be handled through notes to this section in the 1983 supplement or editorial corrections.

Section 89 makes changes in internal references required by the enactment of the Alaska Exemptions Act in 1982.

Section 90 corrects the reference to the head of the Department of Community and Regional Affairs by substituting "commissioner" for "director".

Section 91 corrects the reference in the Alaska Statutes to the United States Board on Geographic Names.

Section 92 deletes a reference to the licensing of embalmers. The referenced provisions were repealed in 1976.

Section 93 supplies the words necessary to make a complete sentence out of the last sentence in AS 44.83.398(f).

Section 94 repeals a reference made obsolete by changes in the school foundation program. See secs. 42 and 60 of this memo.

Section 95 amends the Alaska Securities Act to clarify the time that is available to take an appeal from an administrative order. The Alaska Court Rules of Appellate Procedure allow only 30 days for an appeal from an administrative decision. However, this section of the securities act currently allows 60 days. This is a direct conflict and should be resolved. The applicable appellate rule is Rule 602(a)(2).

Sections 96, 97, and 98 delete obsolete material from three sections of AS 46.30. All of the deleted material is dated and no longer necessary.

Section 99 corrects an internal reference in AS 47.-10.230(f).

Section 100 repeals a definition in the child support enforcement chapter that is not used in the chapter. The term defined is "disposable earnings".

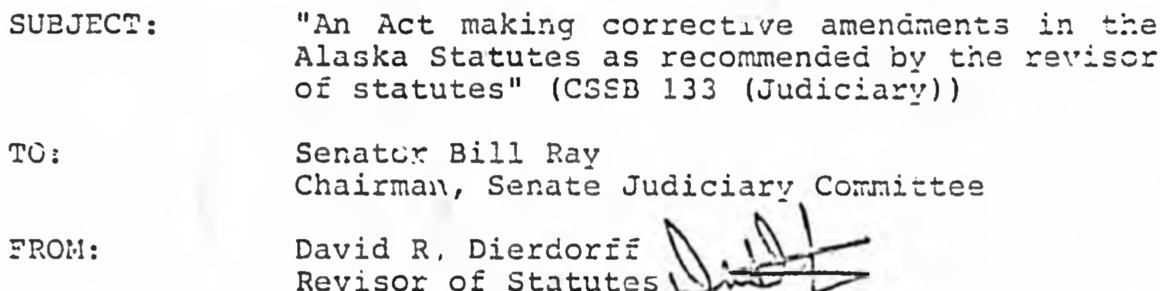
Section 101 makes changes in internal references required by the new exemptions statute.

DRD:ljb

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M — March 23, 1983



SUBJECT: "An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes" (CSSB 133 (Judiciary))

TO: Senator Bill Ray
Chairman, Senate Judiciary Committee

FROM: David R. Dierdorff
Revisor of Statutes

This bill was prepared by the revisor of statutes under AS 01.05.036 which provides, in part, that the revisor of statutes shall

> ". . . prepare for submission to the legislature legislation for the correction or removal of . . . deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of . . . the statute law of this state."

It is suggested that this memorandum accompany the bill through its legislative course.

SECTIONAL ANALYSIS

Section 1 improves the definition of "municipality" that was first enacted as a part of the Alaska Aeronautics Act of 1949, subsequently rewritten during the bulk formal revision of the Alaska Statutes and amended by the 1974 revisor's bill. The present definition excludes unified municipalities, which we do not believe was intended, and, if interpreted strictly, also excludes home rule cities or boroughs, as there are no classifications of home rule municipalities. The latter problem was the inadvertent result of an amendment made to the revisor's bill as it progressed through the legislature in 1974. The proposed new definition is identical to that which is contained in the revised municipal code (SB 1) and will be valid whether or not SB 1 passes.

It should be mentioned that this section is but one of 24 sections of the Alaska Statutes which define municipality. Those 24 sections contain ten different definitions. Only eight of the 24 sections contain definitions which are essentially identical; however, all but two or three of the definitions are fairly similar in most respects. Ten of the 24 sections would be repealed by SB 1. It is the revisor's opinion that it would be wise to consider placing a general definition of "municipality" in AS 01.10.060. That would eliminate the need for a definition of "municipality" in other parts of the Alaska Statutes except where the use of the term required some variation from the standard definition.

Section 2 deletes the definition of "domestic fur farm animal" from AS 03.05.010(c)(6). The definition is preceded by a definition of "fur farming" and is limited to the purposes of the paragraph in which it is contained. The term "domestic fur farm animal" does not occur in the paragraph nor does it occur at any other place in the Alaska Statutes.

Section 3 clarifies the term "director" in AS 03.10.-030(e). The term is not defined in AS 03.10 and appears only in this section.

Section 4 repeals all of AS 03.19. This chapter deals exclusively with the small grain incentive program, a program which ended with the crop year 1975. The division of agriculture has confirmed that this material is obsolete and that it is quite unlikely that a program of this type would ever be used in the future.

Sections 5 and 6 clarify responsibilities in the programs related to diseased livestock. When responsibilities in Title 3 were divided between the Departments of Natural Resources and Environmental Conservation by Executive Order in 1981, the sections immediately preceding and following the sections amended by Secs. 5 and 6 of the revisor's bill were changed to place responsibility in the Department of Environmental Conservation. However, by virtue of the definitions applying to Title 3, the word "commissioner" in AS 03.45.060 and AS 03.45.070 must be read as "commissioner of natural resources". Since all sections in AS 03.45 are part of an integrated scheme, it is our opinion that the failure to change the references to commissioner in these two sections was an oversight. Both sections also make

changes in the use of pronouns in accordance with Chapter 58, SLA 1982.

Section 7 repeals references to the Board of Barbers, Board of Hairdressers, Board of Welding Examiners, and Collection Agency Board. The latter two boards were "sunsetted" and the first two were repealed by Chapter 159, SLA 1980.

Section 8 corrects an apparent oversight. When the Board of Hairdressers and Board of Barbers were repealed they were combined into the Board of Barbers and Hairdressers. However, the name of that board was not added to the list in AS 08.01.010, which sets forth the boards subject to AS 08.01.

Section 9 amends AS 08.02.010(a) to correct a reference to nurses and to make consistent the reference to other professions. The term "professional nurse" is no longer defined in AS 08.68.410 as a result of 1982 amendments. The section also contains two changes to remove gender indicating pronouns.

Sections 10 and 11 repeal obsolete references to the Collection Agency Board and the Board of Welding Examiners which are found in the section setting forth the schedules for the sunset of regulatory boards.

Section 12 repeals an obsolete requirement in the chapter on the licensing of public accountants. The paragraph repealed had application only for a period in the 1960's.

Section 13 corrects an error in tense which appears in AS 08.20.140.

Section 14 repeals those sections in AS 08.24 which established the Collections Agency Board and a paragraph which defined "board" for the chapter. The board was terminated by operation of the sunset statutes. The termination date was June 30, 1980.

Sections 15 - 21 amend provisions in the law licensing and regulating collection agents to delete references to the terminated Collection Agency Board.

Sections 22 and 23 correct internal references in AS 08.36. AS 08.36.310 was repealed and replaced by AS 08.36.315 in 1980.

Section 24 repeals an obsolete definition. The word defined is not used in the chapter and has not been used since prior to the original bulk formal revision of the Alaska Statutes.

Sections 25 and 2_ repeal and remove material which has become obsolete through the passage of time and is no longer necessary.

Section 27 amends AS 08.68.270(4) to reflect the changes in the drug laws which went into effect on January 1, 1983. The deleted sections of the Alaska Statutes which were referenced in this paragraph were repealed in the drug legislation passed last session.

Section 28 repeals AS 08.71.220 which is an obsolete portion of the chapter regulating dispensing opticians. The provisions of this section were in the nature of temporary transition provisions for licensing.

Section 29 repeals a subsection of AS 08.80.295 which is obsolete. The mandate of subsection (e) was to extend for a "period of two years following September 16, 1976".

Section 30 amends AS 08.88.201 by deleting the second sentence, which is now obsolete. AS 08.88.191(a) no longer provides for petitions for an additional examination.

Sections 31 and 32 amend provisions in AS 08.88 to reflect the 1980 repeal of AS 08.88.211 and substitute the current references.

Section 33 repeals the chapter on the Board of Welding Examiners which was terminated under the sunset law.

Section 34 corrects a reference to the federal bankruptcy act in the exemptions act passed by the last session of the legislature. Chapter "XIII" refers to the Wage Earner Plan of the old bankruptcy act of 1898. The amendment conforms the reference to the current bankruptcy law. We have also changed the citation to federal law to conform to our present style.

Section 35 makes another correction in the exemptions act. There is no consumer price index for the month of December. The Anchorage index is issued every other month. The index which would be used to establish December price relationships would, in fact, be the November consumer price index.

Section 36 corrects internal references to reflect the 1982 legislative action repealing the referenced section in AS 09.35 and establishing AS 09.38, the Alaska Exemptions Act.

Section 37 corrects an incorrect reference to the court rules. Rule 2(c) of the District Court Rules of Criminal Procedure has been repealed and replaced by Rule 603(b) of the Rules of Appellate Procedure.

Section 38 makes a change in AS 12.47.030(b) to reflect the fact that the assertion by a criminal defendant of evidence to establish that the defendant was guilty but mentally ill is not a defense to a criminal prosecution. It is, rather, a strategy which involves the presentation of mitigating factors in order to affect the disposition of the matter following a conviction.

Section 39 amends AS 14.07.058(e) to clarify the meaning of the word "board". In AS 14.60, the word "board" is defined for AS 14 to mean the State Board of Education. Consequently, the use of the word with no further identification could be confusing.

Section 40 amends AS 14.17.080 to remove obsolete references. Basic need is no longer defined in AS 14.17.021 and there is no longer any matching under AS 14.17.071. As a matter of fact, AS 14.17.071 has been repealed.

Section 41 also deletes obsolete references that result from the changes in policy in the school foundation program. The second sentence of the amended section is also changed to conform the internal reference to our present style. If appropriate changes were made in AS 29.88.020, this section could be repealed.

Section 42 amends AS 14.17.190(b) to delete a reference to money acquired from school district "local effort". "Local effort" is no longer a required part of the public school foundation act.

Section 43 repeals AS 14.17.225(d) because the underlying statute, AS 14.17.215 was repealed in 1980 by sec. 20, Chapter 26, SLA 1980.

Section 44 repeals the three sections which set forth the minimum teachers' and administrators' salary scales and defi-

nitions for the sections. The salary scales are obsolete since salaries are set by negotiation.

Sections 45, 46 and 47 delete obsolete references to the old state-operated-school system and substitute the regional educational attendance area. In sec. 46, the phrase "school board" is substituted for "district" because "district" is not defined in AS 14. "School board" is.

Section 48 deletes a reference in AS 14.42.015(a)(2) to the Alaska Methodist University and substitutes the successor school, Alaska Pacific University.

Sections 49 and 50 delete references to the old tuition grant program that was declared unconstitutional by the Alaska Supreme Court some time ago and repealed by Chapter 94, SLA 1980 and Chapter 59, SLA 1982.

Section 51 repeals the definition of a phrase that is not used in the scholarship loan program. The term "part-time student" is not used in the Alaska Statutes. HB 174 would introduce the term to AS 14, but a definition is not necessary in the context it appears in HB 174.

Section 52 repeals a chapter that is obsolete and inoperative. When the chapter was enacted in 1972 it was based on participation in "the federal child nutrition act of 1971". However, that federal legislation was never enacted. No programs have been implemented or regulations adopted under this chapter.

Section 53 deletes from AS 14.57.020(b), relating to the state museum collections advisory committee, a sentence which was necessary only during the initial year of operation of the committee.

Sections 54 and 55 correct references to the acknowledgement statute. AS 09.65.012 has been replaced by AS 09.63.020.

Sections 56 and 57 correct an apparent oversight in AS 16.10. The sections presently read as if any fisherman who sells fish without an entry permit or interim use permit is in violation of the sections. However, certain fishermen are not required to have entry permits or interim use permits, so certain types of fish could legally be sold. The suggested amendments make it clear that fishermen who are not

required to hold a permit under AS 16.43 can sell fish without violating these sections.

Section 58 repeals AS 16.10.500 - 16.10.620 on the basis of the decision of the Supreme Court in State v. Alex. Technically, the case only invalidated AS 16.10.530 but the effect was to wipe out the entire program set forth in these sections. The present program is operated under AS 43.76.

Section 59 substitutes the substantive provisions of repealed AS 11.05.010 for the obsolete reference to the repealed provision.

Section 60 repeals a reference made obsolete by changes in the school foundation program. See sec. 42 of this memo.

Section 61 corrects an incorrect internal reference in AS 21.60.010(d). The section currently referenced contains a definition of "insurance" rather than a penalty.

Section 62 repeals and reenacts AS 22.05.020 which establishes the composition and general powers of the Supreme Court. The repeal and reenactment deletes obsolete material relating to the number of justices and organizes the section into three subsections for clarity.

Section 63 is a repeal and reenactment of AS 22.10.020, which sets forth the jurisdiction of the superior courts. The sole purpose of the rewriting is to make the section more readable. There have been no substantive changes and it is not the purpose of this section to override any differences between jurisdiction of the superior court set forth by statute and that set forth by court rule. In other words, in those ways that this material may differ from the rules, the repealed and reenacted statute does not necessarily override should it pass by more than a two-thirds vote.

There are three minor changes which should be noted. In new subsection (a), the words "but not limited to" have been deleted following the word "including". Since the words "include" or "including" are not exclusive words, it is unnecessary to use the term "but not limited to" following such words in the Alaska Statutes. In new (h), the internal reference to the Alaska Native Claims Settlement Act has been changed to conform to present style. The other change is the deletion of a reference to AS 23.10.192 in new sub-

section (i). That section was repealed in 1980 and the provisions of AS 18.80, which are still referenced, have picked up the provisions of the repealed section.

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Section 65 deletes a reference to the legislative board of retirement benefits. That board was repealed in 1980.

Section 66 repeals an obsolete provision in the motor vehicle code. AS 28.10.105(c) was applicable only during 1979.

Section 67 amends AS 28.10.411(b) by deleting a reference to repealed AS 42.15.

Sections 68, 69, and 70 delete references to a statute which was repealed when the new criminal code was enacted in 1978. The proper references to the provisions on unlawful evasion have been substituted.

Section 71 revises a definition in the Agreement on Detainers. The term defined, "state" was changed to "party state" through amendments to the original bill. However, the definition was not changed. "State" needs to be defined in this law, as the term is used to include the jurisdictions of the United States which are not states, e.g., Puerto Rico and the District of Columbia. "Party state" does not need to be defined, as it is clear from a reading of the Agreement on Detainers that a party state is a state (as defined) which is a party to the agreement. Without some change, some confusing results occur in reading the law to which the definitions apply. Consequently, the legislature should either adopt the amendment proposed in this section, or adopt the amendment and an additional amendment as follows:

(4) "party state" means a state which is party to this agreement.

Sections 72 and 73 delete references to AS 14.08.161 which has been repealed.

Section 74 repeals AS 37.14.060 - 37.14.100, which comprised Article 2 of AS 37.14. This article was not to be effective until the Board of Regents of the University of Alaska approved certain matters. In fact, the Board of Regents

disapproved all matters on August 17, 1978. Consequently, the repealed sections never took effect.

Section 75 deletes a reference in AS 38.04.065(a) to a statute repealed in 1981 and substitutes a reference to the present notice provisions.

Section 76 deletes from AS 38.04.900(a) provisions which were of a temporary nature and are now obsolete.

Section 77 rewrites the paragraph in AS 38.04.910 which defines "state park" for AS 38.04. The old definition contained specific references to some of the laws designating areas which fall within the definition of state parks, but has not been kept up to date as new areas have been designated. It is our opinion that it would be better to enact a definition such as that proposed in this section and maintain a current list of laws designating the various areas in a note to the section.

Section 78 deletes a reference to a repealed section and substitutes the substantive provisions of that repealed section. After consultation with the Departments of Law and Natural Resources, we felt that this substitution would more accurately reflect legislative intent and present administrative practices. Note that there is still an AS 38.-05.345(e), but that the section was substantially rewritten after AS 38.05.057(e)(3) was enacted, resulting in the repeal of the provisions of former AS 38.05.345(e). The present provisions are irrelevant in the context of the reference found in AS 38.05.057(e)(3).

Section 79 deletes the last sentence of AS 38.05.057(g), as the sentence is no longer necessary. AS 38.05.055, referenced in the sentence, has been rewritten and no longer contains any requirements for contracts. AS 38.05.065 now establishes certain terms required for contracts under this section. The deletion of "or his representative" is consistent with the law requiring the deletion of gender indicating pronouns, and is not required in this provision, since other provisions authorize the director to act through designated representatives. See AS 38.05.035.

Section 80 amends AS 38.05.073(e) to reflect the fact that (b) of the section has been repealed. The reference is retained as "former (b)" to insure that the remedies contained in (e) will be available to the state in the event

of an action involving a contract for the purchase of land authorized by the repealed subsection.

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Section 83 updates an obsolete internal reference.

Section 84 also updates an obsolete internal reference. A review of the legislative history of AS 38.05.102 (amended by this section) indicates that the spanned reference should be to the entire article on leasing. In any event, AS 38.-05.100 has been repealed.

Section 85 substitutes a reference to AS 38.05.345 for the obsolete reference to repealed AS 38.05.305.

Section 86 makes a number of minor style changes and substitutes a reference to AS 46.15 for an obsolete reference to repealed law.

Section 87 makes the same change to AS 38.08.020 that was made to AS 38.05.057(e)(3) by section 78 of the bill.

Section 88 corrects an error in the internal references in AS 39.25.120(b) which were created by the repeal and reenactment, with some renumbering, of AS 39.25.150.

Section 89 adds the Alaska Power Authority and the Alaska Resources Corporation to the list of agencies included in the definition of "state commission or board" for purposes of the conflict of interest laws. These boards are subject to AS 39.50 by the terms of the laws establishing them, but they were not added to the list in AS 39.50.200. This oversight was brought to our attention by the staff of the Alaska Public Offices Commission. Other matters brought to our attention will be handled through notes to this section in the 1983 supplement or editorial corrections.

Section 90 makes changes in internal references required by the enactment of the Alaska Exemptions Act in 1982.

Section 91 corrects the reference to the head of the Department of Community and Regional Affairs by substituting "commissioner" for "director".

Section 92 corrects the reference in the Alaska Statutes to the United States Board on Geographic Names.

Section 93 deletes a reference to the licensing of embalmers. The referenced provisions were repealed in 1976.

Section 94 supplies the words necessary to make a complete sentence out of the last sentence in AS 44.83.398(f).

Section 95 repeals a reference made obsolete by changes in the school foundation program. See secs. 42 and 60 of this memo.

Section 96 amends the Alaska Securities Act to clarify the time that is available to take an appeal from an administrative order. The Alaska Court Rules of Appellate Procedure allow only 30 days for an appeal from an administrative decision. However, this section of the securities act currently allows 60 days. This is a direct conflict and should be resolved. The applicable appellate rule is Rule 602(a)(2).

Sections 97, 98, and 99 delete obsolete material from three sections of AS 46.30. All of the deleted material is dated and no longer necessary.

Section 100 corrects an internal reference in AS 47.-10.230(f).

Section 101 repeals a definition in the child support enforcement chapter that is not used in the chapter. The term defined is "disposable earnings".

Section 102 makes changes in internal references required by the new exemptions statute.

DRD:ljb

Enclosure

REVISORS BILL

TO: SENATOR ROBERT H. ZIEGLER SR.

FROM: GUY A. VAN DOREN ADMIN. ASST.

SUBJECT: REVISORS BILL

I have reviewed the origional SB 133 and CSSB 133 (Jud) and submit the following report.

With the exception of the sections listed below, all sections are satisfactory and within the jurisdiction of the revisor's duties.

The only reason specific sections are listed below is if they have been changed from the origional bill or are additions to the origional bill. There are several section upon which I have made comments or observations.

Section 3. I still question, as I did in SB133, whether the words "of the department" on line 26, pg. 1, are necessary. Since the entire section deals with the Department of Natural Resources, I feel the words are redundant.

Section 14 In the origional bill, the entire AS 08.24 was repealed. In checking with the Department of Commerce, it was found that though the Board of Collection Agencies was terminated, the statutes governing collection agency activities are still in effect.

Section 15-21: These sections all amend provisions in the statutes licensing and regulating collection agencies to delete references to the Board which was terminated. They did not appear in the origional bill because the entire 08.24 was deleted in error.

Section 41. NOTE!!! Notes exemptions under 43.25 which must be honored. The more exemptions,,the less taxable real and personal taxes 29.88.020.

Section 59. This section has changed a little from the origional. The revisor spelled out the punishment in this CS, rather than just providing that violations are misdemeanors.

Section.67. This section did not appear in the origional bill, but O.K.

Section.75. This section was not in the origional bill. The revisor indicated that a new book for Title 38 will be issued next year. The revisor is trying to eliminate as many obsolete sections in Title 38 as possible begfore the new book is printed.

Section. 76 New section in CS..See Section 75 explanation In this section, the revisor deleted the obsolete material. He also deleted the pronoun to eliminate the masculine gender by substituting "believed" for "he believes". Since no other sub-section or section in the chapter authorizes the Commissioner to adopt regulations, I suggest that "believed" be deleted. The section would then read: "The Commissioner shall adopt under the Administrative Procedure Act (AS 44.62) regulations necessary to carry out the purposes of this chapter"

Sections 77-87 All new sections added to the origional bill. See Sec.75 For explanation.

Section. 90. O.K. Although, the exemptions listed for livestock, food, fuel, household goods, tools, etc., etc. were enacted in 1949 and the amounts are unrealistically low; therefore, in my opinion, obsolete. The committee may want to look into this for another bill.

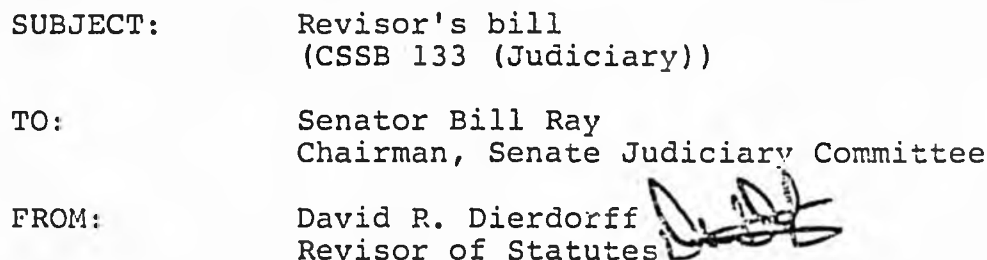
REMAINDER OF THE BILL, FINE..........

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 998[illegible]
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM May 2, 1983



SUBJECT: Revisor's bill
(CSSB 133 (Judiciary))

TO: Senator Bill Ray
Chairman, Senate Judiciary Committee

FROM: David R. Dierdorff
Revisor of Statutes

In light of the changed position of the Department of Natural Resources and the language of CSSB 222 (Resources), the following language should be substituted for Secs. 78 and 87 of CSSB 133 (Judiciary):

> * Sec. 78. AS 38.05.057(e)(3) is amended to read:
>
> (3) notice of the application period and the date of the lottery shall be given in accordance with AS 38.05.345 [AS 38.05.345(e)]; and
>
> * Sec. 87. AS 38.08.020 is amended to read:
>
> Sec. 38.08.020. PUBLIC NOTICE. The director shall publish notice of the availability of the land in the same manner as provided in AS 38.05.345 [AS 38.05.345(e)].

The revisor's memo dated March 23, 1983, would need to be modified by substituting the following text for the discussion of Sec. 78:

> Section 78 amends a reference in AS 38.05.057 to the notice provisions of AS 38.05.345. Note that there is still an AS 38.05.345(e), but that the section was substantially rewritten after AS 38.05.057(e)(3) was enacted, resulting in the repeal of the notice provisions of former AS 38.05.345(e). The present provisions are irrelevant in the context of the reference found in AS 38.05.057(e)(3).

The discussion of Sec. 87 in the revisor's memo does not require a change, as it merely refers back to the above text accompanying Sec. 78.

DRD:ljb
17/015

FILE WITH SB133

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE: 465-2400

April 27, 1983

The Honorable Bill Ray
Chairman
Senate Judiciary Committee
Pouch V
Juneau, AK 99811

Dear Senator Ray:

My staff has reviewed CSSB 133 (Jud) which will be heard in the Judiciary Committee on Monday, May 2. I submit two amendments to that proposed legislation for your consideration. In both cases we have discussed these amendments with Mr. Deardorf, the revisor, and with Tom Koester of the Attorney General's Office. They both agree that the change we are requesting is a matter of policy.

Page 21, Lines 14-20 should read:

*Sec. 78. AS 38.05.057(e)(3) is amended to read:

(3) notice of the application period and the date of the lottery shall be given in accordance with AS 38.05.345[(e)]; and

Page 23, Lines 20-27 should read:

* Sec. 87. AS 38.08.020 is amended to read:

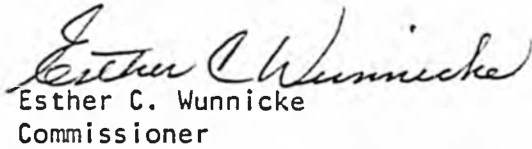
Sec. 38.08.020. PUBLIC NOTICE. The director shall publish notice of the availability of the land in the same manner as provided in AS 38.05.345[(e)].

We are requesting this change rather than the change recommended by the revisor in order to make all public notice requirements consistent as provided in AS 38.05.345. In some cases this may require the department to do somewhat more rigorous public notice than previously required. However, we feel that the result will be less confusion for the public and for department officials implementing these programs.

10-J9LH

If you have any questions about these recommendations, please call my office. We will be available to testify on this bill as requested.

Sincerely,



Esther C. Wunnicke
Commissioner

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
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Senate

Committee on Resources

April 28, 1983

Memo

To: Senator Bill Ray, Chairman Senate Judiciary Committee

From: Senator Bettye Fahrenkamp

Subject: Comments on CSSB 133, Statute Revisions

The following are in response to your request for comments on the above bill scheduled for hearing on May 2, 1983:

1) Section 2 amends the definition of fur farming contained in AS 03.05.010(c)(6). The Resources Committee recently heard and reported out CSHB 187 which also amends this section. This bill includes the same changes but also includes additional clarifying amendments. As this bill appears to have an excellent chance of enactment, I would recommend that prior to any final action on CSSB 133 conforming changes to CSHB 187 be made. Attached is a copy of the relevant section from CSHB 187.

2) Section 77 of CSSB 133 amends the state park definition in AS 38.04.910. The Senate has passed and sent to the House SB 128 which establishes a marine park system within the state park system. I would recommend that the definition of state park in CSSB 133 be amended to include marine park units should SB 128 pass in advance of CSSB 133.

3) Section 78 of CSSB 133 amends 38.05.057(e). The Resources Committee has recently reported SB 222 making changes in Title 38 including this section. The changes in 38.05.057(e) are different than those proposed in CSSB 133 and have been agreed to be DNR and the Statute Revisor. Again, I would recommend that CSSB 133 be changed to conform with SB 222 if that legislation should be enacted prior to CSSB 133.

4) Section 79 of CSSB 133 amends 38.05.057(g). SB 222 makes an additional change in this section. ("director" changed to "commissioner")

5) Section 84 of CSSB 133 amends 38.05.102. SB 222 makes an additional change in this section.

6) Section 86 of CSSB 133 amends 38.05.255. SB 222 makes an additional change in this section.

7) Section 87 of CSSB 133 amends 38.08.020. SB 222 contains an amendment to this same section but in a different, more comprehensive manner. This amendment has been agreed to by the DNR and the Statute Revisor.

Attached are copies of the relevant sections of SB 222 indicating these changes.

Thank you for the opportunity to comment on this bill. I hope that between your committee, the Statute Revisor, and others we can watch the timing of all this legislation and ensure conformity.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: Senate Bill No. 133 Date on Bill: February 21, 1983
Title: "AN Act making corrective amendments to the Alaska Statutes."
Sponsor: Rules Committee
Requestor: Legislative Council

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total								

b. Revenues:

Revenue			(4.1)	(2.7)	(12.9)			

2. Source of funds to offset fiscal impact of bill:

3. Assumptions: See attached sheet.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Darrell Miller Phone: 465-2535
Division: Occupational Licensing Date: March 2, 1983

Approved by Commissioner: Richard A. Lyon Date:
Department: Commerce & Economic Development

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

Assumptions: Senate Bill No. 133, as relates to the repeal of AS 08.24, Collection Agencies.

Section 14, AS 08.24, of this bill repeals the licensing function for Collection Agencies and Collection Agency Operators. Current licensure fees for biennial licensure of Collection Agencies is $200.00, and $100.00 for Collection Agency Operators.

Initial application fees are $100.00 for Collection Agencies and $40.00 for Collection Agency Operators.

Past history reveals a 50 to 60% turnover of licensed operators during any given calendar-year. Collection Agency licensure has remained at a fairly constant level with infrequent turnover.

For the remainder of FY '83, April-June, there are currently 8 Agency and 12 Operator applications on file. The loss of revenue for the remainder of FY '83 is projected to be $4,080.00.

The next biennial license period is June 30, 1984, for FY '85/'86. The projected loss of revenue for FY '84 would be from the anticipated turnover of Collection Agency Operators. Including the application fee of $40.00 and the license fee of $100.00, the loss of revenue is projected to be $2,660.00.

The projected loss of revenue for FY '85 would be $12,860.00 and would cover Collection Agency renewals, Collection Agency Operator renewals, as well as the anticipated turnover of operators.

MEMORANDUM State of Alaska

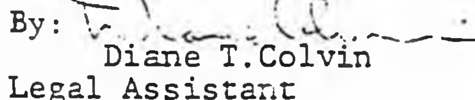
TO: Harry Treager, Director
Division of Occupational Licensing
Department of Commerce and Economic Development

DATE: October 14, 1981

FILE NO: J-66-111-82

TELEPHONE NO: 465-3600 ex 56

FROM: WILSON L. CONDON
ATTORNEY GENERAL

By: 
Diane T. Colvin
Legal Assistant

SUBJECT: Agency responsibility following termination of an occupational licensing board pursuant to AS 08.

You asked for our opinion on the division's responsibilities when a board is terminated pursuant to AS 08.03.010, the sunset law. Your question pertains specifically to the Collection Agency Board, the only board allowed to expire to date under sunset. We believe that basically your duties and responsibilities are not affected by termination of the board, for the reasons given below.

AS 08.03.010 provides a termination date of June 30, 1980 for the Collection Agency Board. Because the Legislature did not affirmatively act to reestablish the board, it automatically expired on the date indicated. Pursuant to AS 08.03.020 it continued in existence until June 30, 1981 for the purpose of "concluding its affairs." AS 08.03.020 further provides that:

> One year after the date of termination, a board not continued shall cease all activities.

No other "guidance" is given by the statutes except by way of reference to AS 44.66.050, concerning legislative oversight. This statute deals generally with review procedures for boards and commissions subject to scrutiny under AS 08.03 and AS 44.66. In regard to boards terminated, AS 44.66.060 provides:

> This chapter shall not cause the termination or dismissal of a claim or right of a citizen against a board, commission or program of an agency terminated under this chapter which is subject to litigation. Claims and rights shall be assumed by the department to which the board or commission terminated under this chapter was attached for administrative purposes.

It should be noted that the Collection Agency Board is somewhat unique in that it had effectively ceased to function before its sunset termination date. According to the performance review of the Collection Agency Board prepared by Legislative Audit

in March 1979, no meetings were held by the board between October 13, 1971 and March 14, 1977. 1/ During this time, the Department of Commerce and Economic Development conducted all licensing functions and handled all administrative matters relating to collection agencies and operators.

There is also a unique feature to Alaska's sunset law in that the automatic termination date under sunset applies to the respective boards or commissions only, not to the accompanying licensing laws. Most of the states that have enacted sunset laws have applied the principle of automatic expiration to all the statutes relating to a particular occupation or profession, thus terminating licensing as well as the boards if the legislature takes no action.

Because AS 08.03.010 applies only to AS 08.24.011, the statute creating the Collection Agency Board and designating board membership, the functions of the Division of Occupational Licensing are essentially unchanged with termination of the Board. This is particularly true in the case of the Collection Agency Board, since it had only minimal authority under the law when it was in existence. Under AS 08.24, the board was specifically empowered to 1) adopt rules and regulations (AS 08.24.031); 2) waive certain license requirements (AS 08.24.100), and 3) investigate applicants (AS 08.24.120). (The latter two powers were shared with the Department, and the first is an implied power of the Department.)

All of the other powers relating to regulation of collection agencies are granted to the Department of Commerce and Economic Development. This differs from most licensing laws, where the board or the commission, not the department, is granted certain powers and required to carry out certain duties.

1/ According to the report, six meetings were held between August 1977 and February 1979. There appears to be a correlation here with the passage of sunset legislation (Chapter 194, SLA 1977 was approved by the Governor on June 18, 1977 and went in effect on September 16, 1977).

Consequently, your division's responsibilities regarding licensing of collection agencies and enforcement of the licensing law have essentially not been affected by the termination of the board. 2/ You should continue all administrative, investigative, licensing and enforcement functions you have conducted in the past. The division was charged with administration and enforcement of the law prior to termination of the board; this has not been changed by expiration of the board.

We would recommend that the Department adopt regulations to carry out its duties under the law. No regulations were ever adopted by the Board, although some were drafted and proposed. We would be happy to work with you on development of any regulations you deem necessary.

It should be noted that the advice given here applies only to a board such as the Collection Agency Board which is limited to an advisory role. Should the Legislature allow one of the boards to terminate that is vested with specific powers and duties, the question of the Division's continuing responsibilities would be a more complicated one. We shall deal with that question when and if the issue arises.

Please contact us if you have further questions on this matter.

DTC/jb

2/ Other than to ensure that no claims or rights against the Board are affected by its termination. (See AS 44.66.060.)

SB
/139

Introduced: 2/23/83
Referred: Resources and Judiciary

1 IN THE SENATE BY THE RESOURCES COMMITTEE

2 SENATE BILL NO. 139

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act repealing the licensing of big game trans-
7 porters."

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

9 * Section 1. AS 08.54.190(a) is amended to read:
10 (a) A master guide, registered guide, class-A assistant guide,
11 or assistant guide [OR TRANSPORTER] license expires on December 31,
12 following issuance.

13 * Sec. 2. AS 08.54.200(d) is amended to read:
14 (d) No person who is disciplined under this section may engage
15 in any guiding [OR TRANSPORTING] activity during the period of license
16 revocation or disciplinary action. No person licensed under this
17 chapter may hire or work for a guide whose license is suspended or
18 revoked under this section.

19 * Sec. 3. AS 08.54.210 is amended to read:
20 Sec. 08.54.210. UNLAWFUL ACTS. (a) It is unlawful for
21 (1) a master guide, registered guide, class-A assistant
22 guide, or assistant guide [OR TRANSPORTER] to fail to timely report to
23 the Department of Public Safety, division of fish and wildlife protec-
24 tion, and in no event later than 30 days, violations by a client of a
25 state fish, game or guiding statute or regulation;
26 (2) a master guide, registered guide, class-A assistant
27 guide, or assistant guide [OR TRANSPORTER] to aid the commission of a
28 violation of this chapter or of AS 16.05 or a regulation promulgated
29 under either chapter, or permit the commission of a violation in the

1 guide's [OR TRANSPORTER'S] sight without attempting to prevent it,
2 short of using force, and without reporting it;
3 (3) a person to guide [OR TRANSPORT] as defined in this
4 chapter without being licensed under this chapter and without having
5 the license in actual possession; [HOWEVER, FOR PURPOSES OF TRANSPORT-
6 ING BY AIR, IN THE CASE OF A CORPORATION, COMPANY, PARTNERSHIP OR
7 OTHER BUSINESS ENTITY, THE LICENSE MAY REMAIN AT THE PRINCIPAL PLACE
8 OF BUSINESS OF THE BUSINESS ENTITY;]
9 (4) a person to advertise as or represent to be a licensed
10 master guide, registered guide, class-A assistant guide, or assistant
11 guide [OR TRANSPORTER] without being currently licensed, or to falsely
12 advertise services;
13 (5) a person to guide as defined in this chapter without
14 having a current valid hunting and fishing license in the person's
15 possession; [.]
16 (6) a master or registered guide to employ or supervise
17 more than three assistant guides at the same time; [.]
18 (7) a person to guide as defined in this chapter without
19 paying a fee as prescribed in AS 16.05.340(e).
20 (b) A person who violates (a)(1) - (6) of this section is guilty
21 of a misdemeanor and upon conviction is punishable by a fine of not
22 more than $1,000 or by imprisonment for not more than one year, or by
23 both, and the person's license may be revoked for a period up to five
24 years. However, a person who engages in guiding [OR TRANSPORTING]
25 activity during the period the person's license is suspended or re-
26 voked under this chapter is guilty of a felony punishable, upon con-
27 viction, by a fine of not more than $5,000 and by imprisonment for not
28 less than one year nor more than three years. In addition to punish-
29 ment for a felony, all guns, fishing tackle, boats, aircraft,

1 automobiles or other vehicles, camping gear and other equipment and
2 paraphernalia used in, or in aid of, guiding [OR TRANSPORTING] activi-
3 ty engaged in during the period of suspension or revocation shall be
4 confiscated by persons authorized to enforce this chapter. A person
5 who violates (a)(7) of this section, upon conviction, is subject to
6 the same license revocation provision as for a violation of (a)(1) -
7 (6) of this section and, in addition, is punishable by a fine of not
8 more than $5,000, or by imprisonment for not more than one year, or by
9 both.
10 * Sec. 4. AS 08.54.142, 08.54.144, 08.54.146, 08.54.170(c), and 08.54.-
11 240(5) are repealed.

SB
163

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST
Bill/Resolution No.: SB 163
Title: Use of Child Restraints
Sponsor: Sen. V. Fischer
Requestor: Sen. Transportation

II. FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Life & Prop Pro
BRU, Program of Subprogram(s) Affected:
Highway Safety Planning Agency

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis No Fiscal Impact Anticipated

Prepared By: Paul Conger
Phone: 465-4338
Division: Administrative Services
Date: 3/16/83
Approved by Commissioner: [signature]
Date: 3/23/83
Department: Public Safety

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3/8/83

Alaska State Legislature

HOUSE OF REPRESENTATIVES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Committee on Judiciary

Dave Templin, Physician Coord.
for EMS. + Indian Heath Services
Anch. 265-9263.

Dr. George Longenbaugh.
Sitka 747-3446 St Director
of Trauma Prog of Surg.

Committee on Judiciary

Child Restr

SB 163

Bakhal

EMS.

Corlis Taylor

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Dr. Jann Hall, St. Med.
Direct for EMS. Rep. AK Chap
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333-4171

Kodiak EMS

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Senator Vic Fischer

Alaska State Legislature
1024 W. 6th Avenue, Suite 204C
Anchorage, Alaska 99501 (907) 278-3654
During Session • Pouch V • Juneau, Alaska 99811 (907) 465-4954

MEMORANDUM

TO: Members, House Judiciary Committee

FROM: Senator Vic Fischer

DATE: March 26, 1984

RE: SB 163, HB 262, HB 464 (Child Safety Devices)

Dr. Clinton Lillibridge, of the American Academy of Pediatricians, asked that I send you a copy of the attached article on child safety device law.

UNIVERSITY OF

COLORADO LAW REVIEW

CHILD SAFETY IN AUTOMOBILES: MANDATORY RESTRAINT-USE LAWS

Automobile safety is an issue of long-standing concern, but only recently has special attention been focused on the safety needs of young children, to whom cars pose one of the largest public health threats in the country.[1] This threat would be greatly diminished if each pre-school aged child were properly secured in a child restraint device (CRD) each time he or she traveled in a motor vehicle.

A CRD is a car seat, padded shell, or harness which is designed to protect infants and young children in the event of an accident, and which is usually secured in place by a vehicle's existing lap belts.[2] These devices are fairly inexpensive and readily available, yet they are rarely used. In fact, a leading study found that less than ten percent of children transported in motor vehicles were adequately protected against the possibility of injury.[3]

A growing awareness of this public health problem has resulted in passage of legislation mandating the use of CRDs in two states[4] and proposed legislation in twenty-eight others.[5] This Comment will examine the laws mandating the use of CRDs and the legal issues which may arise from them. The efficacy of the various statutes will be analyzed as well as their constitutional validity under state police powers. An evaluation of the potential impact of CRD laws on auto-

1. See text accompanying notes 6-8 *infra*.

2. Some CRDs are designed solely for use by infants while others protect only toddlers capable of sitting alone. Many restraint devices are convertible and can be used from birth until the child weighs more than forty to fifty pounds, at four or five years of age. For a complete description and evaluation of many of the CRDs marketed today, *see* MICHIGAN'S MOTOR VEHICLE OCCUPANT PROTECTION PROGRAM, MICHIGAN TRAFFIC SAFETY INFORMATION COUNCIL, A DETAILED REVIEW OF CURRENTLY MARKETED INFANT AND CHILD RESTRAINTS (1979); *Child Restraint Systems*, 42 CONSUMER REPORTS 314 (1977).

3. *See* Williams, *Observed Child Restraint Use in Automobiles*, 130 AM. J. DISEASES OF CHILDREN 1311 (1976).

4. CRD-use laws are in effect in Tennessee and Rhode Island. See notes 33 and 41 *infra*.

5. Child restraint bills have been proposed in the following states: Alabama, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, South Dakota, Virginia, Washington, West Virginia, and Wisconsin. *See* ACTION FOR CHILD TRANSPORTATION SAFETY, SUMMARY OF PROPOSED CHILD RESTRAINT LEGISLATION AND ALTERNATIVE MODEL LAWS (1979, updated May, 1980) [hereinafter cited as ACTS].

mobile accident litigation will follow. Before turning to those issues, however, the problem to which CRD laws are addressed will be more fully described.

THE PROBLEM

Motor vehicle accidents cause death and injury to more children than any other single cause, including childhood diseases.[6] In 1979 alone, 1159 children under the age of five died, and at least fifty times that number were injured, in such accidents in the United States.[7] Colorado contributed fourteen fatalities and 835 recorded injuries to that toll.[8] These high numbers are due primarily to two factors: the physical characteristics of young children and the positions they usually occupy as unrestrained passengers in motor vehicles.

The unique center of gravity and small size of young children make them particularly vulnerable to serious injuries in automobile crashes.[9] A child's head makes up a great proportion of his overall body weight, and this, coupled with an inability to brace himself with his short arms and legs, greatly increases the likelihood that he will be propelled head-first in the direction of any impact point. The result is a high incidence of head injuries and related deaths among accident victims in this age group.[10] In fact, such injuries can occur even in the absence of an actual accident when an unsecured child is thrown against the automobile's interior by a sudden swerve or application of the brakes.[11] Larger and heavier passengers, on the other hand, are less likely to be shifted by abrupt driving maneuvers.

The physical characteristics of very young children also tend to

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6. Automobile accidents are the leading cause of death and serious injury for all children beyond one month of age. *See* Sheiness & Charles, *Children as Passengers in Automobiles: The Neglected Minority on the Nation's Highways*, 56 PEDIATRICS 271 (1975).

7. DEPARTMENT OF TRANSPORTATION, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA), HIGHWAY SAFETY 1979: REPORT ON ACTIVITIES UNDER THE HIGHWAY SAFETY ACT OF 1966 (1980). This report contains only death statistics. Injury statistics are not published but are kept on file by NHTSA. The National Electronic Injury Surveillance System file kept at NHTSA shows that 60,408 pre-schoolers injured by motor vehicles were transported to emergency rooms in 1979. Telephone interview with Grace Hazzard, data retrieval specialist, National Center for Statistics and Analysis, NHTSA, Sept. 16, 1980.

8. MOTOR VEHICLE DIV., COLO. DEP'T OF REV., STANDARD SUMMARY OF MOTOR VEHICLE TRAFFIC ACCIDENTS (1979).

9. *See* Karwacki & Baker, *Children in Motor Vehicles: Never Too Young to Die*, 242 J. A[illegible] MED. ASSOC. 2848 (1979); Alter, *Unsafe at Any Age? Children and Car Safety*, PARENTS MAGAZINE, Feb. 1979, *reprinted in* INSURANCE INSTITUTE FOR HIGHWAY SAFETY (IIHS) STATUS REPORT 8 (Mar. 19, 1979).

10. Karwacki & Baker, *supra* note 9.

11. Alter, *supra* note 9, at 9.

and the forward-moving weight of the person holding him.[18] This same crushing action can occur when a seatbelt is fastened around both the adult and the child on his lap. In a collision, the weight of the adult is forced against the child penned in the seatbelt with him, and the probability of serious abdominal injury to the child is greatly increased.[19]

The final variation of on-lap travel is a seatbelted adult holding an unrestrained child on his lap. In this position, the adult does not crush the child in an accident, but is powerless in most cases to prevent other harm to the child, for even the smallest infant weighs the equivalent of several hundred pounds at the instant of impact, and is likely to be torn from even the strongest of human arms.[20] In short, holding a child can never be an adequate safety alternative to the use of an appropriate restraint device.

The need for CRDs will not be obviated by the automatic restraint systems which federal legislation will require on all new cars by 1984.[21] While manufacturers will be able to satisfy the requirements by providing either automatic seatbelts or airbags in their vehicles, neither option is fully adequate for child safety needs. Automatic seatbelts designed for average sized adults will not offer even minimal protection to infants. Airbags, on the other hand, will diminish the threat to children riding in the front seat, but present legislation does not require airbag installation for the protection of rear seat passengers, a class composed largely of children.[22] Furthermore, airbags will provide little protection in side- and rear-impact collisions and rollovers.[23]

Finally, unlike a CRD, an airbag would not play a role in preventing the occurrence of an accident. A study conducted at the University of North Carolina concluded that more than two hundred

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18. *Id.* at 3.

19. *Id.* at 4.

20. The force that a child will exert upon impact can be roughly calculated by multiplying the child's weight and the vehicle's speed together. For instance, a fifteen pound infant will exert a force of three hundred pounds in a twenty mile per hour collision. *See* IIHS, *An Evaluation of Adult Clasping Strength for Restraining Lap-Held Infants*, discussed in IIHS STATUS REPORT 6 (Mar. 19, 1979).

21. Automatic restraint systems are being phased in over several years with large cars being targeted first. All new cars will have to meet the requirement by the 1984 model year. 49 C.F.R. § 571.208 (1979).

22. One survey found that about seventy percent of the nearly 9000 children observed in motor vehicles were riding in the back seat. Riesinger & Williams, *Evaluation of Programs Designed to Increase the Protection of Children in Cars*, 62 PEDIATRICS 280, 286 (1978).

23. *See* Comment, *Occupant Protection in Automobiles*, 27 AM. U. L. REV. 635 (1978) for a thorough discussion of automatic restraint systems.

of that state's traffic accidents in 1977 were caused by unrestrained children who had distracted the driver of the vehicle in which they were riding. Children who fell off the seat or interfered with the operation of the motor vehicle were, in many instances, found to have been the direct cause of a crash.[24]

All of the problems discussed above would be greatly alleviated by the use of CRDs. Experts in the field generally agree that the number of children killed and injured in automobile accidents would be minimized—some claim by as much as ninety percent—if CRDs were consistently and properly used.[25] Yet recent data shows that only seven percent of the children riding on the nation's roads are adequately secured for protection against possible harm.[26] Parents who wear their own seatbelts while transporting their children have been found to use child restraints more than any other group. Yet even in that situation, only twenty-two percent of the passenger children were secured by a CRD or seatbelt.[27] The great number of children harmed, coupled with the low voluntary usage rate of adequate restraints, has led to a growing interest in a statutory solution to this public health problem.

THE STATUTES

The field of automobile safety is one which legislators enter with trepidation. Traditional public hostility toward regulation of individual driving habits has led to a reluctance to impose safety requirements on individual drivers. Public sentiment was so strong against the federally mandated seatbelt-ignition interlock system,[28] for example, that Congress was forced to repeal the measure less than a

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24. This study was summarized in MICHIGAN ASSOCIATION FOR TRAFFIC SAFETY, FORMATS, *Child Passenger Safety News* (Feb. 1980)

25. A study of crashes done in Washington state by Dr. Robert G. Scherz, for example, concludes that "[t]he difference between deaths and disabling injuries between the restrained and unrestrained pre-school children was highly significant. If all of the children in the 0-5 age group had been restrained at the time of the accident, then the . . . deaths may have been reduced from 124 to 13 (down 90%) and disabling injuries reduced from 716 to 238."

Alter, *supra* note 9, at 10.

The reduction in injuries in the Washington study is about 33%, a rate very similar to that obtained by analyzing accidents involving children under fifteen years of age in North Carolina. The North Carolina study found that "[u]se of restraints reduced the injury rate by 39% in the front seat and by 31% in back." Williams & Zador, *supra* note 16, at 10.

26. Williams, *supra* note 3.

27. *Id.* at 1314.

28. The seatbelt-ignition interlock system prevented a vehicle's engine from being started until seatbelts were buckled. An annoying buzzer sounded if seatbelts were unfastened while the seat was occupied.

year after it went into effect.[29] This public hostility explains the absence of mandatory seatbelt-use laws in any of the states.

The somewhat warmer reception given to CRD-use laws in state legislatures is undoubtedly due to the age of those who would benefit from such legislation. Because infants and young children are completely dependent on others for their well-being, state law has historically provided for their health and safety when those charged with their care fail adequately to do so.[30] The effectiveness and practicality of extending state protection to children as automobile passengers will be evaluated by examining the various CRD statutes which have been proposed.

The Existing Laws

Two states have succeeded in passing CRD legislation: Tennessee[31] and Rhode Island.[32] The pioneering Tennessee statute, which went into effect at the beginning of 1978, requires that all children under the age of four be secured in a CRD when riding in a vehicle owned and operated by their parents.[33] Exemptions are allowed for children riding on other passengers' laps, and for children riding in recreational vans and certain trucks.[34] The penalty for breaking this law is a moderate fine; and proof of the violation cannot be raised in civil suits for negligence.[35]

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29. 15 U.S.C. § 1410b(b)(1)(B) (1976).
30. See text accompanying notes 83-92 *infra*.
31. TENN. CODE ANN. § 55-9-214(b) (1980).
32. R. I. GEN. LAWS § 31-22-22 (1980).
33. TENN. CODE ANN. § 55-9-214 (1980):

(b) Effective January 1, 1978, every parent or legal guardian of a child under the age of four (4) years residing in this state shall be responsible, when transporting his child in a motor vehicle owned by that parent or guardian operated on the roadways, streets or highways of this state, for providing for the protection of his child and properly using a child passenger restraint system meeting federal motor vehicle safety standards, or assuring that such child is held in the arms of an older person riding as a passenger in the motor vehicle. Provided that the term "motor vehicle" as used in this paragraph shall not apply to recreational vehicles of the truck or van type. Provided further that the term "motor vehicle" as used in this paragraph shall not apply to trucks having a tonnage rating of one (1) ton or more. Provided that in no event shall failure to wear a child passenger restraint system be considered as contributory negligence, nor shall such failure to wear said child passenger restraint system be admissible as evidence in the trial of any civil action.

(c) Violation of any provision of this section is hereby declared a misdemeanor and anyone convicted of any such violation shall be fined . . . not less than two dollars ($2.00) nor more than ten dollars ($10.00) for each violation of subsection (b) of this section.

34. *Id.*
35. *Id.*

From a safety standpoint, the most controversial provision of this law is the so-called "babes-in-arms" exemption.[36] Holding a child in a passenger's arms has been shown to be an entirely inadequate substitute for the use of a restraint,[37] and there is hope among the original sponsors of the Tennessee law that this exemption will be repealed at some future date.[38] Unfortunately, similar provisions were included in bills introduced in four other states.[39]

A second aspect of the Tennessee law which may lessen its effectiveness is that it applies only to parents who are transporting their own children. Although the majority of children less than four years old are likely to be driven by a parent whenever they ride in a vehicle, this provision may nevertheless lead to enforcement problems. Since most children carry no identification, the temptation for any parent or guardian to simply assert that he is, for example, the child's uncle or babysitter when stopped for a possible violation is evident. A police officer faced with such a statement would in many cases lack probable cause to go forward and issue a citation.[40]

Tennessee's final exempting provision, which excludes trucks and vans from the law's application, was probably viewed as a practical necessity because of the limited seating which is available in those vehicles. The addition of a further provision requiring that restraints be used if seating were available would strengthen the protective purpose of the law while still acknowledging these practical concerns.

A CRD-use law with quite different provisions went into effect in Rhode Island in July of 1980.[41] Unlike the Tennessee statute, this

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36. The exemption allowed for children who ride on another passenger's lap was added as an amendment by one of the bill's opponents. He argued that the happiest day of his daughter's life was when she brought her new baby home from the hospital in her arms and that the law would deny this pleasure to other new mothers. It was feared that the law would not be passed if the exemption were removed. R. Sanders, *Effective Interaction With State Legislatures* (paper presented at the Child Passenger Safety Conference, U. of Tenn. Transp. Center, May 10, 1978, available from Action for Child Transportation Safety).

37. See text accompanying notes 17-20 *supra*.

38. Sanders, *supra* note 36.

39. This language was included in bills introduced in Illinois, Louisiana, New Hampshire, and New Jersey, none of which passed. ACTS, *supra* note 5.

40. Probable cause exists when the facts and circumstances within the officer's knowledge are sufficient in themselves to warrant a belief by a man of reasonable caution that an offense has been committed. Brinegar v. United States, 338 U.S. 160, 175-76 (1949). More than mere suspicion is required. Henry v. United States, 361 U.S. 98, 101 (1959).

41. R. I. GEN. LAWS § 31-22-22 (1980):

> Child Passenger Restraint Systems. Any person transporting a child three (3) years of age or under in the front seat of a motor vehicle operated on the roadways, streets or highways of this state, will provide for the protection of the child and

law applies to all persons driving in Rhode Island and therefore avoids the potential enforcement problems posed by a "parents-only" provision. The unique feature of Rhode Island's law is that it requires CRD use by children under the age of four only while they are riding in the front seat of a vehicle.[42] The law thus addresses the most hazardous practices of unrestrained, or on-lap, front seat travel, but fails to provide protection for the majority of child passengers: those who ride in the back seat.[43] A more stringent bill, to be introduced in the South Dakota legislature,[44] would provide the added protection. That bill would require that children ride in the back seat *and* be secured in the vehicle's available seatbelts whenever possible. Should it be necessary for a child to be transported in the front seat, a restraint device appropriate for the child's age and size, such as is required in Rhode Island, would have to be used.

Pending Legislation: Some Further Options

The majority of CRD legislation introduced in other states is similar to the Tennessee law, but without the "babes-in-arms" exemption.[45] These statutes typically would require that a parent who is driving his own vehicle must have his young children secured in CRDs. The protected class of children is most often limited to those younger than four years, or alternatively, to those who weigh less than forty pounds.[46] These age and weight limitations provide convenient lines for the legislators to draw, since they encompass the class

properly use a child passenger restraint system approved by the United States Department of Transportation under Federal Standard 213, provided that in no event [shall] failure to wear a child passenger restraint system be considered as contributory negligence, nor [shall] such failure to wear said child passenger restraint system be admissible as evidence in the trial of any civil action.

Any person deemed to be in violation of this section shall be issued a citation with a fine of fifteen ($15.00) dollars and it will be recorded on said person's driving record within the rules and regulations governing Section 31-43.

42. *Id.*

43. While one study found that a "back seat location reduced the injury rate by 28% among unrestrained child passengers and by 18% among restrained children," it further concluded that restrained children are safer than those who are unrestrained, regardless of their position in a vehicle. Williams & Zador, *supra* note 16, at 71.

44. The South Dakota proposal is described in ACTS, *supra* note 5.

45. Arizona H.B. 2418 (defeated in committee); Colorado H.B. 1440 (defeated in the House); Michigan substitute for H.B. 5327; Minnesota H.B. 156 and S.B. 274; Nebraska Leg. B. 79; North Carolina H.B. 1018 (defeated); North Dakota H.B. 1490 (defeated); Oregon H.B. 2667 (defeated in the House); Washington H.B. 199 and S.B. 2895 (withdrawn by sponsors); Wisconsin Asmb. B. 747. The sponsors of many of the defeated bills plan to reintroduce their respective proposals. ACTS, *supra* note 5.

46. *Id.*

of passengers for whom CRDs are typically designed.[47] Also, by drafting legislation concerned with CRD use only, legislators can minimize the political and public opposition which would accompany a more far-reaching restraint-use law.

The four year age limit is not universal, however. California has a bill pending which would encourage the use of appropriate restraint systems for all children under the age of sixteen.[48] This bill is designed primarily to educate the public and would allow law enforcement officers to issue verbal hazard warnings, but not citations, to non-complying motorists. Other age variations are found in the South Dakota legislation mentioned above,[49] which would apply to children up to thirteen years of age, and in a Maryland bill which would require restraint use for the protection of children who are less than eight.[50]

Proposed CRD laws also vary in their determination of who will be responsible for complying with their respective terms. As noted, the majority would hold only parents or legal guardians liable for the failure to use restraint devices. Statutes with broader coverage usually are written to apply to all resident drivers,[51] or to the drivers of all vehicles which are registered in the enacting state.[52] One novel variation is the New York proposal,[53] which would impose a penalty on both the driver of a vehicle in which an unrestrained child was riding, and the vehicle owner who knowingly permitted a child to be transported in that manner.

Other provisions which may be incorporated into some proposed statutes include a ban on carrying passengers in the cargo areas of hatchbacks, station wagons, and pickup trucks,[54] and on the practice of buckling one seatbelt around two people.[55] One exemption under consideration in some states allows children with medical problems

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47. See note 2 *supra*.

48. California Asmb. B. 1198, ACTS, *supra* note 5.

49. See note 44 and accompanying text *supra*.

50. Maryland H.B. 33, ACTS, *supra* note 5.

51. *See, e.g.*, Maryland H.B. 33, ACTS, *supra* note 5.

52. *See, e.g.*, Colorado H.B. 1440, ACTS, *supra* note 5.

53. New York S.B. 2623, ACTS, *supra* note 5.

54. *See, e.g.*, Massachusetts S.B. 1269 which would prohibit the carrying of passengers in open trucks. ACTS, *supra* note 5. This particular provision has been enacted by city ordinance in Ogden, Utah. This five year old law forbids persons from riding in any portion of a motor vehicle not designed or intended for use by passengers. It further makes it illegal to operate a motor vehicle while any person is standing on the vehicle's seats. MICHIGAN ASSOCIATION FOR TRAFFIC SAFETY, FORMATS, *Child Passenger Safety News* 4 (Apr. 1980).

55. *See, e.g.*, Maryland H.B. 33; Washington H.B. 199 and S.B. 2895, ACTS, *supra* note 5.

which may make the use of a CRD impossible, to travel without being secured in such a device.[56] To avoid possible abuse of this provision, a doctor's certificate of exemption would be required by some statutes.[57]

In combining any of these provisions into a workable child restraint law, the interest in maximizing safety should be balanced against considerations of fairness and practicality. The statutes must be flexible. For example, a large family that can afford only a small car with inadequate seating for all family members should not be subject to a penalty each time they venture onto the public roads. A law which requires the use of CRDs for available seating and which further requires all unrestrained children to ride in the back seat might best accomodate both safety concerns and tight family budgets.

Flexibility and compromise is also necessary in striking a reasonable balance between the strictness of a restraint law's provisions and the determination of who will be subject to the law's terms. For example, a requirement that CRDs be obtained and used would be less controversial under a law that applies only to parents and legal guardians, rather than to all in-state drivers. Conversely, statutes which apply to all drivers might require only that the vehicle's available seatbelts be used for the protection of children. Under a law of the latter type, parents could still be encouraged to obtain CRDs by other means, such as by allowing a tax credit as an incentive for their purchase. The tax credit incentive is presently under consideration in some states.[58]

Costs and Enforcement

The burden which would be imposed on members of the public by requiring them to obtain CRDs should not be viewed as an insurmountable problem. The cost of these devices, generally between twenty and forty-five dollars,[59] is not unreasonable when it is consid-

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56. Members of Action for Child Transportation Safety find exemptions for "physical or medical" reasons unacceptable and argue that children unable to sit in the typical car seat style CRD — because of a bulky cast or perhaps some birth defect — are nevertheless entitled to protection. They suggest larger shield or harness type restraints as alternatives. ACTS, *supra* note 5. *See also* L. Schneider, J. Melvin, C.E. Cooney, *Impact Sled Test Evaluation of Restraint Systems Used in Transportation of Handicapped Children* (paper presented to the Society of Automotive Engineers, Detroit 1979) discussed in IIHS STATUS REPORT 5 (Mar. 19, 1979).

57. *See, e.g.*, Colorado H.B. 1440; Massachusetts S.B. 1097, ACTS, *supra* note 5.

58. *See, e.g.*, Michigan S.B. 394, ACTS, *supra* note 5.

59. See note 2 *supra*.

ered that a CRD provides up to four years of protection and that each CRD can be re-used by several children. The price of the device could simply be considered, along with license plates, safety inspections, and insurance, as one of the costs of owning and operating a motor vehicle.

On the other hand, CRD legislation would probably receive greater public acceptance if it were accompanied by programs designed to minimize the cost of compliance. Legislative efforts toward this end could include the tax credit mentioned above and, possibly, Medicaid coverage of CRD purchases for the poor. It has been suggested that Medicaid payments for CRDs could be justified under the same theory that applies to childhood vaccinations—that such devices constitute effective preventive medicine.[60]

As an alternative to government help, many innovative private programs offer means of keeping compliance costs down. Examples include CRD rental programs which have been successfully established in several parts of the country, as well as programs which offer used restraint devices for sale at minimal cost.[61] A different approach has been implemented by one insurance company which provides CRDs to its insured families without charge, thereby spreading the cost of the devices among all of its policy holders.[62] Thus, several possibilities exist in both the government and private sectors which could minimize the financial burden imposed by CRD-use laws.

A final concern about the practicality of these statutes centers on the enforcement problems that they may present, although these problems appear to be no greater than those which accompany many other traffic regulations. As in the case of driving without a valid license, which is against the law[63] but usually goes undetected, CRD violations might often be found only after the driver of the car is stopped for another infraction. More likely, an officer would simply

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60. Action for Child Transportation Safety is among those groups exploring the possibility of Medicaid payments for CRD purchases. Allowing such payments was urged by the safety coordinator of a pediatric preventive medicine program in testimony before the House Commerce Subcommittee on Oversight and Investigation. IIHS STATUS REPORT 7 (May 17, 1979).

61. Several such programs are described in *Child Passenger Safety News*, *supra* note 24.

62. Robert E. Vanderbeek, president of the League General Insurance Companies of Southfield, Michigan told the House Commerce Subcommittee on Oversight and Investigation that "[t]he program . . . makes economic sense and we believe will be cost effective — it will pay for itself through reduced claims." IIHS STATUS REPORT 6 (May 17, 1979).

63. *See, e.g.*, COLO. REV. STAT. § 42-2-101 (1973).

notice a child standing on the seat of a vehicle or riding on another person's lap and then pull that vehicle over in order to issue a ticket to the driver. Children traveling in dangerous positions are often visible to other motorists on the road and no extraordinary surveillance techniques would be needed by police charged with halting that practice.

THE POLICE POWER

Each state possesses authority to pass laws which protect the health, safety, or welfare of the public.[64] This authority is an inherent aspect of the state's sovereignty and is known as its police power.[65] In determining the validity of any legislation passed pursuant to this power, courts typically employ a two-step analysis. Such a law will be upheld if it furthers a legitimate state objective and if the means employed to attain it are reasonably related to that end.[66]

A Legitimate Objective

An appropriate state objective has been held to be any one which promotes or protects the public welfare.[67] This definition is elastic enough to encompass the wide variety of laws which are enacted in response to changing public needs. The shift from an agrarian to an industrial society, for example, created the need for regulations such as workmen's safety, pure food, and urban housing and sanitation laws.[68] More recently, the public welfare concept has been expanded to include rent control laws,[69] anti-deceptive credit practice laws,[70] and anti-billboard and landmark preservation statutes

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64. *See* Berman v. Parker, 348 U.S. 26, 32 (1954); East New York Bank v. Hahn, 326 U.S. 230, 232 (1945), Nebbia v. New York, 291 U.S. 502, 523 (1934); License Cases, 46 U.S. (5 How.) 504, 583 (1847).

65. The term "police power" appears to have been first used by Justice Marshall in Brown v. Maryland, 25 U.S. (12 Wh.) 419, 433 (1827). It is a residuary power, one which was retained by the states after certain enumerated powers had been transferred to the new federal government.

66. "To justify the state in . . . interposing its authority in behalf of the public, it must appear, first, that the interests of the public . . . require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals." Goldblatt v. Hempstead, 369 U.S. 590, 594-95 (1962) *quoting* Lawton v. Steele, 152 U.S. 133, 137 (1894).

67. *See, e.g.*, In re Interrogatories of the Governor, 97 Colo. 587, 595, 52 P.2d 663, 667 (1935) which notes that this power is as "broad as the public welfare."

68. *See* Morissette v. United States, 342 U.S. 246, 253-54 (1952).

69. Hutton Park Gardens v. West Orange Town Council, 68 N.J. 543, 350 A.2d 1 (1975).

70. Birkenfield v. City of Berkeley, 17 Cal.3d 129, 550 P.2d 1001, 130 Cal. Rptr. 465 (1976)

designed to protect the aesthetic features of an area.[71]

Regulations such as these can be viewed as an attempt to redress an unequal balance of power. When members of the public are faced with some threat with which they cannot deal on an individual level, the constitutional niche known as the police power has enabled the state to attempt to protect their well-being by regulating the conduct of those who do have the power and ability to mitigate the potential harm. Thus, the acts of the employer, the manufacturer, and the polluter may be regulated for the benefit of the worker, the consumer, and the public at large.

The CRD statutes fit easily into this pattern. In passing these laws, states are seeking to protect a particularly powerless class of people by regulating the behavior of those in the best position to minimize the risk to that class. Insofar as they seek to promote safety, these statutes are at the core of the police power doctrine.[72]

Highway Regulations. Specifically, CRD legislation is addressed to the problem of highway safety, an area in which the states have extensively exercised their rule-making powers.[73] Since the arrival of the automobile, both drivers and vehicles have been subjected to a variety of statutory requirements designed to protect the driving and riding public. In evaluating the validity of CRD laws as highway safety regulations, a useful analogy can be drawn from the motorcycle helmet laws which, like CRD laws, mandated the use of specialized equipment.

The controversial helmet laws, which swept the country approximately a decade ago, were sustained as valid police power legislation by the overwhelming majority of courts which faced the issue.[74] The Colorado Supreme Court's discussion in the case of *Love v. Bell*[75] is typical of many of these opinions. As with most of the courts across the country which addressed the problem, the Colorado

71. Penn Central Transp. Co. v. New York, 438 U.S. 104, 129 (1978); John Donnelly & Sons v. Mallar, 453 F. Supp. 1272 (S.D. Me. 1978).

72. Kelley v. Johnson, 425 U.S. 238, 247 (1976).

73. South Carolina Highway Dep't v. Barnwell Bros., 303 U.S. 177 (1938); Bibb v. Navajo Freight Lines, 359 U.S. 520 (1959); People v. Brown, 174 Colo. 513, 485 P.2d 500 (1971); Zaba v. Motor Vehicle Div., 183 Colo. 335, 516 P.2d 634 (1973).

74. Helmet statutes were struck down in only two of the thirty-three states in which they were challenged. Illinois, People v. Fries, 42 Ill.2d 446, 250 N.E.2d 149 (1969) and Michigan, American Motorcycle Association v. Davids, 11 Mich. App. 351, 158 N.W.2d 72 (1968). The Michigan Supreme Court upheld a very similar municipal law several years later in City of Adrian v. Poucher, 398 Mich. 316, 247 N.W.2d 798 (1976). The helmet cases are collected in 32 A.L.R.3d 1270.

75. 171 Colo. 27, 465 P.2d 118 (1970).

court studiously avoided the most salient issue which grew out of the helmet legislation, the issue of whether mandatory self-protection and of regulating a person for his own good was a valid state objective.[76] Instead, the court sought to find some benefit which the helmet statutes provided to other highway users in order to sustain the law. It found one such benefit in the economic area, noting the "laws may be passed within the police power to protect the public from financial loss."[77] In drawing upon a record which showed a higher frequency of serious head injuries and deaths among bare-headed riders than among those who wore helmets, the court ruled that the law protected the public's financial health since it prevented motorists involved in accidents with motorcycles "from being required to respond in damages more heavily than might be the case if the motorcycle driver and passenger were wearing helmets."[78] Other courts also employed the "financial health" argument and cited increased public medical and welfare costs which would have to be paid to disabled cyclists, as well as higher insurance rates.[79]

Most of the helmet law opinions did not rest solely on this economic protection analysis, but also sought some connection between helmets and the public's physical well-being. Many courts found such a connection in the "flying debris" theory, which is based upon the hypothesis that an unprotected cyclist might be struck in the head by loose gravel or other objects thrown up by passing vehicles, thereby causing the cyclist to lose control and possibly cause an accident.[80] The courts were unswayed by the argument that such a chain of events had never been known to have occurred.

If CRDs are substituted for helmets in the analysis above, the reasoning employed in the typical helmet case not only remains valid but is, in fact, strengthened. As with helmets, CRDs offer the potential for mitigating physical, and therefore, financial damages resulting from highway accidents. More importantly, a CRD law would not leave a court having to strain for a "loose gravel" rationale in

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76. Few courts were willing to ground their opinions on the self-protecting aspect of helmet legislation. Two cases which did discuss this issue were People v. Carmichael, 56 Misc. 2d 388, 288 N.Y.S.2d 931 (1968) (state has an interest in preserving strong, healthy citizens) and State v. Mele, 103 N.J. Super. 353, 247 A.2d 176 (1968) (state has an interest in protecting people from their own carelessness).

77. 171 Colo. at 33, 465 P.2d at 121.

78. 171 Colo. at 33, 465 P.2d at 121-22.

79. *See, e.g.*, State v. Anderson, 3 N.C. App. 124, 164 S.E.2d 48 (1968), *aff'd*, 275 N.C. 168, 166 S.E.2d 49 (1969).

80. *See* 171 Colo. at 33-34, 465 P.2d at 122 and the cases cited therein.

searching for a connection between the regulation and the physical safety of non-regulated members of the public. In contrast to the helmet law discussions on this point, the potential beneficiaries of CRD legislation are not hypothetical, their existence is clearly documented in the "0-4 years" column of each state's accident reports.

The mandatory helmet statutes are perhaps on the periphery of valid police legislation. They raise the difficult problem of the extent to which an individual can be regulated for his own good. Shifting political attitudes on just this point have resulted in the repeal of helmet laws in twenty-eight of the forty-nine states which originally enacted them.[81] The notion of protecting a person against himself is not a factor in CRD legislation, however, for in requiring the use of child restraints the state is attempting to protect those too young to make rational choices in their own best interest. In this vein, it is interesting to note that of those states which repealed helmet laws, nearly two-thirds reenacted such legislation applicable only to minors.[82]

Parens Patriae. The state's interest in the well-being of its youth is of ancient origin. Plato believed that the good of the state as a whole justified the regulation of child-rearing practices.[83] His pupil, Aristotle, differed on this point, suggesting that regulations were necessary only to protect the interests of the individual child.[84] These two theories have survived to the present and are often meshed with a third concern, an interest in preserving the family structure as the basic unit in society.[85]

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81. California is the only state never to have enacted helmet legislation. A summary of the recent status of helmet laws in this country, including dates of enactment, repeal and pending legislation is compiled in IIHS STATUS REPORT 5-8 (Apr. 30, 1979).

82. *Id.*

83. PLATO, REPUBLIC Bk. V (E. Hamilton & H. Cairns, eds., THE COLLECTED DIALOGUES OF PLATO 1961, at 698-702), *mentioned in* Meyer v. Nebraska, 262 U.S. 390, 401-2 (1923).

84. ARISTOTLE, POLITICS 32-33 discussed in Kleinfeld, *The Balance of Power Among Infants, Their Parents and the State*, 4 FAM. L. Q. 410, 411-12 (1970).

85. See text accompanying notes 105-08, *infra*. An example of the interweaving of these ideals is the preamble to the Colorado Children's Code. COLO. REV. STAT. § 19-1-102 (1973): The general assembly declares that the purposes of this title are:

> (a) To secure for each child subject to these provisions such care and guidance, preferably in his own home, as will best serve his welfare and the interests of society;
>
> (b) To preserve and strengthen family ties whenever possible, including improvement of home environment;
>
> (c) To remove a child from the custody of his parents only when his welfare and safety or the protection of the public would otherwise be endangered; and
>
> (d) To secure for any child removed from the custody of his parents the necessary

The Platonic theory was mentioned more often in early cases dealing with child-related legislation than it is today. For instance, in sustaining the state's compulsory schooling law, the Colorado Supreme Court in 1927 stated flatly that "[t]he state, for its own protection, may require children to be educated. This needs no citation."[86] This "good-of-the-state" approach is also reflected in statutory provisions, such as those which override parental objections to immunization whenever a community is threatened with an epidemic.[87]

Statutes usually demonstrate a more Aristotelian concern for the welfare of individual children, rather than for the state as a whole. Examples are child abuse laws,[88] child labor laws,[89] and those mandating specific medical procedures to prevent blindness[90] and mental retardation[91] in newborns. The "child protection" rationale is also cited frequently by state courts since the United States Supreme Court has stated that "[t]he well-being of its children is of course a subject within the State's constitutional power to regulate. . . ."[92]

Although CRD legislation arguably benefits the state as a whole by preserving the health of future productive citizens and by reducing the number of those who might require long-term public aid because of automobile injuries, its primary purpose is to prevent needless harm from being inflicted upon young children. This latter goal is an entirely appropriate one, as has previously been shown. The question that remains is whether requiring individual drivers to obtain and use child restraints is a reasonable method of attaining that objective.

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care, guidance, and discipline to assist him in becoming a responsible and productive member of society.

86. Vollmar v. Stanley, 81 Colo. 276, 280, 255 P. 610, 613 (1927).

87. *See, e.g.*, COLO. REV. STAT. §§ 25-4-303 to -305 (1973 & Supp. 1978).

88. *See, e.g.*, COLO REV. STAT. §§ 19-10-101 to -115 (1973) which deal with reporting abuse, and COLO. REV. STAT. § 18-6-401 (1973 & Supp. 1979) describing the crime of child abuse.

89. *See, e.g.*, COLO. REV. STAT. §§ 8-12-101 to -117 (1973 & Supp. 1979), the Colorado Youth Employment Opportunity Act of 1971, which details the types of employment that youths of various ages may engage in.

90. *See, e.g.*, COLO. REV. STAT. §§ 25-4-303 to -305 (1973), requiring that the eyes of all newborns be treated with a prophylaxis within one hour of birth.

91. *See, e.g.*, COLO. REV. STAT. § 25-4-801 (1973): "The general assembly declares that, as a matter of public policy of this state and in the interest of public health, every newborn infant should be tested for phenylketonuria and other metabolic defects in order to prevent mental retardation resulting therefrom. . . ."

92. Ginsberg v. New York, 390 U.S. 629, 639 (1968).

Reasonable Means

The legislature is given wide discretion in implementing its goals, and a presumption of validity attaches to each statute it enacts.[93] In order to rebut this presumption, an opponent must prove that a law, when applied, violates some provision of the state or federal constitution,[94] or that the law does not reasonably relate to the state's objective in passing it.[95] The question of its "reasonableness" is, in fact, the central issue in any challenge to a police power regulation.[96]

Most statutes promulgated under the police power seek to protect public welfare by regulating conduct in the manufacturing and professional sectors. Individual behavior may also legitimately be regulated so long as the burden imposed does not infringe on a fundamental right.[97] A mere showing "that in its operation a police measure may increase their labor, decrease the value of their property or otherwise inconvenience individuals" will not suffice to render a law void.[98] Securing a child in a CRD before each automobile trip may at times be inconvenient, but the question of concern to a reviewing court would be whether a law mandating that action infringes upon a fundamental right.

An opponent of CRD legislation could claim that any one of several rights are infringed upon by such a law: the right to parental autonomy[99] and privacy;[100] the right to equal protection under the

93. Kelly v. Johnson, 425 U.S. 238 (1976); Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421, 423 (1952); Prince v. Massachusetts, 321 U.S. 158, 168-70 (1944).

94. Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421 (1952); Jackson v. Massachusetts, 197 U.S. 11, 25 (1905); City of El Paso v. Simmons, 379 U.S. 497, 508-09, *rehearing denied*, 380 U.S. 926 (1964).

95. *See* Paris Adult Theatre I v. Slayton, 413 U.S. 49 (1973); NAACP v. Alabama, 377 U.S. 288 (1964); Goldblatt v. Town of Hempstead, 369 U.S. 590 (1962).

96. "The legislature may devise *reasonable* schemes for regulations of activities which affect the health and safety of the public." People ex rel. Dunbar v. Kogul, 179 Colo. 394, 399, 501 P.2d 738, 740 (1972) (emphasis in original).

97. Fundamental rights are those rights "implicit in the concept of ordered liberty." Palko v. Connecticut, 302 U.S. 319, 325 (1937).

98. In re Interrogatories of the Governor, 97 Colo. 587, 596, 52 P.2d 663, 667 (1935). One example of a law which puts the burden of compliance on individuals is COLO. REV. STAT. § 33-31-105 (1973 & Supp. 1979). This law makes it the duty of a boat owner or operator — not of the boat manufacturer — to provide an adequate life preserver for each person on board.

99. Parental rights are afforded constitutional protection against unwarranted or unreasonable interference by the state. Planned Parenthood v. Danforth, 428 U.S. 52, 73 (1976); Wisconsin v. Yoder, 406 U.S. 205 (1972); Meyer v. Nebraska, 262 U.S. 390 (1923). *See also* Smith v. Organization of Foster Families, 431 U.S. 816, 842-44 (1977); Ginsberg v. New York, 390 U.S. 629, 639 (1968).

law;[101] and the right to free and unrestricted travel between the states.[102] The last claim can be quickly dispensed with by once again analogizing to the helmet cases, which consistently held that the right to travel was not unreasonably restricted by requiring motorcyclists to obtain and use a relatively inexpensive piece of safety equipment.[103] This right was not infringed even though the helmet statutes were written to apply to all, and not just resident, motorcyclists travelling on the enacting state's roads.[104] The CRD laws are not as broad as the helmet statutes since they typically apply only to resident parents or to those driving vehicles registered in the enacting state. Non-resident tourists therefore would not be subject to the law's provisions.

Parental Autonomy and Privacy. The allocation of power between parent and state in making decisions concerning the best interests of the child is always a sensitive issue. Supreme Court cases have "consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society."[105] Indeed, the integrity of the family unit has found protection in the Due Process[106] and Equal Protection[107] Clauses of the fourteenth amendment and in the ninth amendment.[108]

Despite this high regard for the family unit, laws which restrict parental autonomy in order to further the welfare of children are usually sustained. Such laws are struck down only if they are arbitrary and capricious. For example, a law attempting to promote good citizenship by banning the teaching of foreign languages in elementary schools was struck down in *Meyer v. Nebraska* on these grounds.[109] Similarly, if the state's objective in passing the law is not sufficiently compelling to overcome a parental objection based on a

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100. Fundamental rights include the "right of personal privacy, or a guarantee of certain areas or zones of privacy." Roe v. Wade, 410 U.S. 113, 152 (1973). The source of this right is not specifically defined, but is derived from the first, third, fourth, fifth, and ninth amendments, the penumbra of the Bill of Rights, and the guarantee of liberty in the fourteenth amendment. Griswold v. Connecticut, 381 U.S. 479, 481-85 (1965).

101. U.S. CONST. amend. XIV.

102. The states may not enact rules and regulations which unreasonably burden the right to travel freely between the states. Shapiro v. Thompson, 394 U.S. 618 (1969).

103. *See, e.g.*, Love v. Bell, 171 Colo. 27, 36, 465 P.2d 118, 123 (1970).

104. *See, e.g.*, COLO. REV. STAT. § 42-4-231 (1973) (repealed 1977).

105. Ginsberg v. New York, 390 U.S. 629, 639 (1968).

106. Meyer v. Nebraska, 262 U.S. 390, 399 (1923).

107. Skinner v. Oklahoma, 316 U.S. 535, 541 (1942).

108. Griswold v. Connecticut, 381 U.S. 479, 496 (1965) (Goldberg, J., concurring).

109. 262 U.S. 390 (1923).

freedom of religion claim it will be held void.[110]

CRD statutes could not be invalidated under either theory. These laws are narrowly drawn, requiring the use of an effective, readily available device designed specifically for the purpose of protecting children in motor vehicles, and are therefore not vulnerable to charges of arbitrariness or caprice. Nor could these laws, which are essentially traffic safety regulations, conceivably be subject to any objections based on religious grounds. In short, the statement that it is "fundamental . . . that parental rights must yield to the interest and welfare of the child"[111] would appear to be particularly uncontroversial when applied to the issue of highway safety.

Parental rights are based to a large extent on the broader claim of a right to privacy—the "right to be let alone."[112] This broader right itself is not unreasonably infringed upon by traffic regulations, as aptly pointed out by the Wisconsin Supreme Court:

> There is no place where any such right to be let alone would be less assertible than on a modern highway. . . . When one ventures onto such a highway, he must be expected and required to conform to public safety regulations and controls, including some that would neither have been necessary nor reasonable in the era of horse-drawn vehicles.[113]

Equal Protection. CRD statutes distinguish between children less than four years old and all other highway users. If a court were convinced that no rational basis existed for this distinction, it could void such legislation on the ground that it denies the public equal protection under the law. A statutory discrimination will not be invalidated, however, if any state of facts reasonably can be conceived to justify it.[114]

When reviewing CRD legislation, a court could rely on several supporting factors to sustain the legislature's classification. A court could find that members of the statutorily created class of children four years of age or younger face a greater risk of injury or death than do others in accident situations, are incapable of making ra-

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110. Wisconsin v. Yoder, 406 U.S. 205 (1972).

111. Stjernholm v. Mazaheri, 180 Colo. 352, 356, 506 P.2d 155, 157 (1973). *See also* Fulton v. Martensen, 129 Colo. 125, 267 P.2d 658 (1954); Graham v. Francis, 83 Colo. 346, 265 P. 690 (1928).

112. Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting).

113. Bisenius v. Karns, 42 Wis. 2d 42, 55, 165 N.W.2d 377, 384 (1969), *appeal dismissed*, 395 U.S. 709 (1969).

114. Dandridge v. Williams, 397 U.S. 471, 485 (1970), *rehearing denied*, 398 U.S. 914 (1970).

tional choices to further their self-preservation, and are not afforded the same degree of protection by existing safety belts as are older passengers for whom such belts are designed.[115] Furthermore, although all legislatively imposed age restrictions are arbitrary to some extent, the class delineated by CRD legislation is not unreasonable since it corresponds to that class for which CRDs are designed and manufactured.[116] These factors could support a finding that a state of facts sufficient to justify the statutory distinction exists.

Finally, it should be noted that although all automobile passengers could benefit by mandatory seatbelt laws, the fact that such laws have not been enacted is insufficient to void CRD laws under the Equal Protection Clause. A law will not be invalidated for violating that Clause merely because the legislature has not "comprehensively remedied all problems at once—it is entitled to proceed one step at a time."[117]

In sum, CRD legislation is valid under both the "ends" and the "means" prongs of the police powers analysis. The state is operating in traditional areas when it seeks further highway and child safety, and no fundamental rights are threatened when the state mandates the use of appropriate equipment in attempting to attain that safety objective.

Civil Proceedings

Aside from the constitutional issues, the legal ramifications which could attend CRD legislation in certain civil cases remain to be examined.[118] Although the only two CRD laws currently in force expressly provide that a breach of their respective terms may not be

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115. See text accompanying notes 9-25 *supra*.

116. See note 2 *supra*.

117. Bushnell v. Sapp, 194 Colo. 273, 280, 571 P.2d 1100, 1104 (1977).

118. CRD statutes could also have an impact on certain criminal proceedings, particularly vehicular homicide and vehicular assault cases. Drunk driving typically is a misdemeanor, but if death to another results, it may be filed as vehicular homicide, a felony. If a drunk driver collides with a vehicle in which an unsecured child is riding and the collision results in the death of that child, a decision to file a felony charge against the drunk driver may pose problems. In Colorado, for example, such a charge can be brought only against a person whose wrongful acts were the "sole proximate cause" of a highway death. Goodell v. People, 137 Colo. 507, 509, 327 P.2d 279, 280 (1958). If the child would not have died had he been properly secured in a CRD, then the failure to use that device would be another proximate cause of his death. Hence, felony charges could not be lodged against the drunk motorist.

The problem is not merely a speculative one, for prosecutors in Michigan have contacted state highway officials to seek advice on this particular issue. Telephone interview with David Shinn, Driver and Vehicle Admin., Mich. Dep't of State, July 1980.

raised in any civil action,[119] future enacting states may pass such laws without this limitation. The discussion below evaluates the impact which a CRD statute without a "no liability" clause could have in negligence lawsuits.

Civil Liability

Negligence per se. In the absence of CRD legislation, a suit for negligence brought on behalf of a child injured in an automobile accident against the child's driver would face serious obstacles. Typically, in order to support a negligence claim, the burden is on the plaintiff to establish by a preponderance of the evidence that the defendant owed him a certain standard of care, that the standard was breached, and that the breach was a cause of the harm suffered.[120] Without a CRD law in force the plaintiff's burden on the question of "standard of care" would be substantial. He would have to assume the burden of educating and persuading six or twelve peers from the community on the practicality and wisdom of CRDs. The fact that the community as a whole has shown little inclination to use child restraints indicates the size of the plaintiff's task in proving this element of the case.

Were a CRD-use law in existence, however, the mere fact of its enactment would greatly lessen the plaintiff's burden. In passing that law, the legislature would have established in specific language the appropriate standard of care which was owed by the defendant, and that question would be removed from the jury's consideration.[121] In other words, the plaintiff could show that the defendant acted negligently simply by showing that the defendant breached the statute. The only further burden the plaintiff would have in this negligence per se claim would be to show a causal link between the harm suffered and the negligent act or omission.[122]

As previously shown,[123] proof of causation should not be difficult, particularly if the child's injuries resulted from his ejection from the vehicle, or from his collision with some portion of its inte-

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119. See notes 33 and 41 *supra*.

120. *See* cases cited in W. PROSSER, HANDBOOK OF THE LAW OF TORTS 143 (4th ed. 1971).

121. *See, e.g.*, Martin v. Herzog, 228 N.Y. 164, 126 N.E. 814 (1920); Konow v. Southern Pacific, 105 Ariz. 386, 465 P.2d 366 (1970); Zerby v. Warren, 297 Minn. 134, 210 N.W.2d 58 (1973); Stahl v. Cooper, 117 Colo. 468, 190 P.2d 891 (1948).

122. *See, e.g.*, Plains Transport of Kansas v. Baldwin, 217 Kan. 2, 535 P.2d 865 (1975); Pratt v. Thomas, 80 Wash. 2d 117, 491 P.2d 1285 (1971); Hamilton v. Gravinsky, 28 Colo. App. 408, 474 P.2d 185 (1970), *modified*, 174 Colo. 206, 483 P.2d 385 (1971).

123. See text accompanying notes 10-25 *supra*.

tempts to shift some of the responsibility for the harm done to the injured child to that third party, but no doctrine would provide this original defendant with complete immunity from liability. Contributory or comparative negligence statutes which limit or totally bar the payment of compensation to a plaintiff would be inapplicable to CRD related lawsuits. Those statutes apply only when the plaintiff has been shown to have contributed to his injuries by his own careless actions.[130] A pre-school aged child is, in many states, legally incapable of negligence,[131] and his failure to look out for his own safety cannot be raised as a defense in any suit in which that child is a plaintiff.[132]

Nor can the defendant obtain complete immunity from liability by claiming contributory negligence due to the carelessness of a plaintiff child's parents. The "doctrine that the negligence of the parents of a child of tender years shall be imputed to the child" was dismissed in one early case as "not only unsound, but absurd and inhuman,"[133] and that doctrine is universally rejected today.

The child's driver, on the other hand, stands a better chance of claiming immunity if he is brought into the negligence case as a third party defendant. If he is unrelated to the plaintiff he can seek to avoid liability under any guest statutes which exist in that state. These laws, which are no longer as prevalent as they once were, prevent a person from suing his "host" driver for any injuries sustained while riding as a non-paying passenger in that driver's vehicle.[134] The laws have been justified in part by an "assumption of the risk" type of theory and for that reason have often been held inapplicable to young children.[135] The child's driver has a much better chance of claiming immunity, and therefore of imposing the full cost of compensating the child on any other defendants, if he is the plaintiff

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130. *See, e.g.*, COLO. REV. STAT. § 13-21-111 (1973 & Supp. 1979). The Colorado court has made it clear that "[t]he comparative negligence statute is inapplicable where no negligence on the part of the plaintiff can be proven." Denham v. Kampman, 37 Colo. App. 233, 236, 547 P.2d 263, 266 (1975), *aff'd*, 192 Colo. 448, 560 P.2d 91 (1977).

131. *See, e.g.*, Lewis v. Buckskin Joes, 156 Colo 46, 396 P.2d 933 (1964) (children of "very tender years" are incapable of negligence and assume no risks).

132. *See, e.g.*, Majors v. J.C. Penney Co., 31 Colo. App. 568, 506 P.2d 399 (1972) (six year old child incapable of contributory negligence)

133. Denver City Tramway Co. v. Brown, 57 Colo 484, 493, 143 P. 364, 368 (1914). *See also* W. PROSSER, HANDBOOK OF THE LAW OF TORTS 490 (4th ed. 1971).

134. *See* Brown v. Merlo, 8 Cal. 3d 855, 506 P.2d 212, 106 Cal. Rptr. 388 (1973).

135. *See, e.g.*, Burhans v. Witbeck, 375 Mich. 253, 134 N.W.2d 225 (1965); Wood v. Morris, 109 Ga. App. 148, 135 S.E.2d 484 (1964); Green v. Jones, 136 Colo. 512, 319 P.2d 1083 (1957)

such lawsuits will tend to preserve family harmony.[142] In any CRD related action, the plaintiff would necessarily be a very young child, incapable of maliciously plaguing his parents with lawsuits. The decision to bring a suit on his behalf will most likely be made by the child's parents, with an awareness that their liability insurer will be the true defendant. Under those circumstances, commencing an action is not evidence of a family's internal strife, but rather of the "provident management of its affairs."[143]

The invalidity of the first two arguments, which ignore the existence of liability insurance, must be conceded before credence can be given to the third argument: allowing children to sue their parents will lead to widespread collusion and fraud against insurance companies.[144] A trust in the jury system and its ability to distinguish between valid and fraudulent claims is the first step which must be taken to reject the argument. The courts have consistently reaffirmed that trust and have relied on juries to prevent injustice to insurance companies in automobile cases between husbands and wives[145] and between close friends.[146] No readily apparent reason exists for refusing to extend that trust to cases involving a parent and child.[147] Indeed, an attempt by a parent to defraud an insurance company in a case which centered on the lack of CRD use would be quite difficult. Because of his age, the plaintiff could not be an active participant in the scheme and could not be counted on to convincingly fake a nonexistent harm.

The strongest reason for abrogating parental immunity, at least under the limited circumstances of a CRD law, is largely unrelated

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142. The family harmony argument originated in Roller v. Roller, 37 Wash. 242, 79 P. 788 (1905), a much maligned case in which a daughter was prevented from bringing a civil action for rape against her father based on the family harmony theory.

143. Badigan v. Badigan, 9 N.Y.2d 472, 479, 174 N.E.2d 718, 723, 215 N.Y.S.2d 35, 41 (1961) (Fuld, J., dissenting).

144. *See* Windauer v. O'Connor, 13 Ariz. App. 442, 477 P.2d 1157 (1971), *modified*, 107 Ariz. 267, 485 P.2d 561 (1971); Breimmeke v. Kilpatrick, 336 S.W.2d 68 (Mo. 1960); Small v. Rockfield, 66 N.J. 231, 330 A.2d 335 (1974).

145. *See, e.g.*, Rains v. Rains, 97 Colo. 19, 46 P.2d 740 (1935) (abolished interspousal immunity in the context of an automobile negligence case).

146. *See, e.g.*, Johnson v. Hassett, 217 N.W.2d 771 (N.D. 1974) in which the court noted the "good sense of the juries" as a protection against fraud in the absense of a guest statute

147. In abrogating parental immunity, one court stated: "Even assuming that a few fraudulent and collusive claims will slip through judges and juries (and there is no impirical [*sic*] evidence that the assumption is valid) we believe that this price would not be too great since the alternative is to continue a prophylactic rule which indiscriminately bars all claims." France v. A.P.A. Transp. Corp., 56 N.J. 500, 505, 267 A.2d 490, 493 (1970).

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March 16, 1984

Representative Charlie Bussell
House Judiciary Committee
Pouch V
Juneau, AK 99811

Re: House Bill 464 regarding child passenger restraints (Cato's bill)

Dear Representative Bussell:

In our telephone conversation on Friday, March 9th, you indicated you were philosophically opposed to such legislation as it interfered with the family's responsibility to care for their own children.

I disagree with this opinion for the following reasons:

Twenty percent of accidents in which unrestrained children are involved are actually caused by the child. Alaska Department of Highway Safety statistics show that 253 serious injuries and 9 deaths occur to children each year (1979 - 1981 data). This translates into approximately 50 serious injuries and 2 deaths caused because people are not acting responsibly by buckling in their children. Philosophically, I can permit you to swing your fist all you want as long as you don't hit anyone innocent. When your fist contacts my nose, that's no longer a matter of your relationship with your fist. That action then becomes a matter of public concern.

This is not a matter of inconvenience to the parents. This is smashed heads, crushed babies, bleeding, dying, agony! Education programs and seat loaner programs achieve only 15-19% compliance in many states that have tried this approach over many years.

Many children are killed and more children are maimed from riding in automobiles than any other risk. In fact, the second and third causes of death (congenital malformations, prematurity and sudden infant death syndrome) combined do not add up to the carnage produced by the automobile.

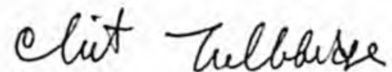
You, as a legislator, can do more to save lives than the combination of all the pediatricians in Alaska.

Your refusal to support this issue strongly is parallel to being passive regarding the murder of unborn children by the abortionists.

Representative Charlie Bussell
March 16, 1984
Page Two

The pediatricians of Alaska, in their quarterly meeting March 8th, unanimously supported passage of House Bill 464. I look forward to hearing that you also support it.

Sincerely yours,



Clinton B. Lillibridge, M.D.
State Chairman

CBL:ken

BRIEFING PAPER CS SB 163 (Rules)

The Department of Health and Social Services has two vested interests in seeing this bill enacted this session:

1) it will improve the health status of our children and
2) it will probably save the Department money.

Point No. 1. Regarding health status: Accidents kill and injure more Alaskan children than any other disease, infection, or condition. When we examine the specifics of these accidents using the tools of epidemiology and common sense it is clear that ~~the greatest~~ major reductions can be derived from occupant protection on our streets and highways. Child safety devices (car seats) have been available for 10-15 years. When properly used we know they save infants and children from death and injury in event of a crash or sudden stop.

Experience has shown that utilization of car seats improves somewhat with just education and loaner programs. But, the biggest improvements have been experienced only after enactment of mandatory child safety device legislation. Tennessee has led the nation in this mandatory approach. Their experience over a seven year period has demonstrated a 55% reduction of highway fatalities of children under 4 years of age, from an average of 15-20 deaths per year before mandatory usage to 6-10 deaths per year after enforcement. This enforcement has leveled off at approximately 4,000 citations per year in Tennessee. That is an average of one child's life saved for every 500 citations. Would your child's life be worth that investment?

According to the Michigan EMS Office, one year after a child passenger safety law went into effect in April, 1982, which required children under 4 years old to be restrained in approved passenger safety devices while travelling in automobiles, the death rate for children under 4 dropped 35 percent. A survey during this same period showed that use of child restraints rose from 6% to 82%.

An article in *Pediatrics* in 1981 reported a study by R.G. Schurtz in Washington State that showed when children under 4 are properly restrained in automobiles, deaths in crashes can be reduced by up to 90% and injuries can be reduced up to 63%.

The issue of protection of civil rights has been raised as an argument against passage of this bill. we submit the same argument, protection of an individual's rights, can be made *for* passage if you consider the child's rights, a child who cannot exercise his/her own right to health and growing up to be a productive citizen. If parents fail to protect the child's interests, then the state has an obligation to do so - particularly in an instance of this nature where the protection is cheap, not intrusive, and actually contributes to improved behavior of children.

At the recent meeting of the Regional EMS Coordinators and State Advisory Council on EMS in Juneau a couple of weeks ago, they unanimously endorsed legislation to require child restraints in automobiles. Emergency medical responders report that they have seen too many accidents in which small children were seriously injured or killed because they were not properly restrained in child passenger safety devices. One member reported a case in Fairbanks a couple of years ago where an infant was crushed in his mother's arms when she hit the dashboard in an auto crash. Any preventable death or serious injury is tragic, but it is even more tragic when this happens to an infant or small child, especially when it often can be so easily prevented.

According to the Insurance Institute for Highway Safety, 42 states have passed some type of child restraint legislation. Most states provide for citations if parents are transporting an unrestrained child in an automobile, but there usually is no fine if they prove they have obtained a child restraint device within a certain period of time. These laws are not meant to be punitive, rather, they are designed to protect the lives of small children who cannot look out for their own well-being. Furthermore, many parents still may not be aware of the hazards of transporting unrestrained children in cars. No doubt the mother in Fairbanks, whose infant died in her arms, would rather have had a citation, than a dead child. She probably didn't realize that carrying the infant in her arms was potentially lethal.