

ALASKA LEGISLATURE COMMITTEE FILES 1905-1900 00/2

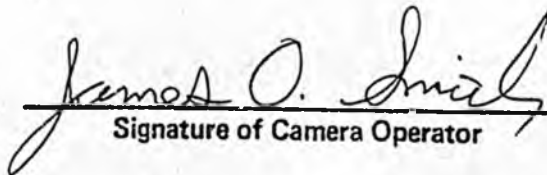
3238 HESS SB 17 - SB 21 11

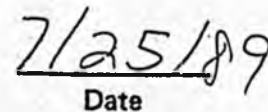


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Signature of Camera Operator


Date

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Introduced: 1/14/85
Referred: Health, Education and
Social Services and
Finance

BY KERTTULA, STURGULEWSKI,
HALFORD, KELLY, FAIKS AND
COGHILL

1 IN THE SENATE

2

SENATE BILL NO. 17

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the applicability of the scholarship loan program to students attending more than one postsecondary educational institution; and providing for an effective date."

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

11 * Section 1. AS 14.43.160(2) is amended to read:

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(2) "full-time student" means an undergraduate or career

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education student who is enrolled and is in regular attendance at

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classes for at least 12 semester hours of credit or the equivalent

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during the semester or a graduate student who is enrolled and is in

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regular attendance at classes for at least nine semester hours of

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credit or the equivalent; any combination of semester hours of credit,

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or the equivalent, aggregating to the requisite number of semester

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hours and undertaken during a semester at two or more public or pri-

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vate institutions of higher education [OPERATING UNDER A CONSORTIUM]

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constitutes full-time student status;

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* Sec. 2. This Act takes effect immediately in accordance with AS 01.-

23

10.070(c).

IN YOUR FILE

-A copy of HB 334

-Staff memo on HB 334

-Newspaper articles:

- 1) Asbestos Found in Infants' Lungs (AP 3/1/85)
- 2) EPA Broadens Base of Asbestos Threat
- 3) Carpenter Claims Material Unsafe

→ POSITION PAPER FROM THE LEAGUE OF WOMEN VOTERS

TO: House HFSS Committee

FROM: Deborah Niedermeyer, Committee Aide

RE: HB 334 forbidding hazardous asbestos in new construction

DATE: 15 April, 1985

Background

Asbestos-containing building materials are still being used in new public buildings. The purpose of this bill is to avoid the problems of asbestos by keeping hazardous asbestos materials out of public buildings or building renovations which go out to bid after the effective date.

While many asbestos-containing materials do not create dangerous fibers once installed, cutting and handling these materials during construction can create fibers which are not only hazardous to workers, but linger in the building as a hazard to the occupants after the building is completed. In some cases, the state must go to the considerable expense of removing the hazard.

This bill

- 1) Forbids the installation of hazardous asbestos in public buildings. (page 1, line 12)
- 2) Requires that both state and municipal bid specifications contain a "no hazardous asbestos" clause and requires contractors to sign a statement that this requirement has been met. (page 2, lines 5-11 and page 3 lines 7-17)
- 2) Requires the Department of Labor to inspect for hazardous asbestos at state building sites and allows the department to halt hazardous asbestos installation. Charges Labor with training state and municipal employees to do asbestos inspections. (page 1-2, lines 13-3)
- 3) Requires municipalities to make asbestos inspections of their own public building sites and allows them to halt the installation of hazardous asbestos. (page 2, lines 4-19)
- 4) Provides a definition of hazardous asbestos. (page 3 lines 19-22 and page 1 lines 21-25)

...problem solved. Now all I have to do is master the

EPA broadens base of asbestos threat

By Science Digest

Crumbling asbestos threatens many more lives than originally thought—it exists in apartments, office buildings and private homes as well as in schools and factories.

The Environmental Protection Agency (EPA) recently surveyed public buildings and apartment complexes in 10 cities, according to an article in a recent issue of Science Digest, and found 20 percent, or 700,000, contained asbestos in an easily crumbled state.

The amount of that asbestos in the air remains to be determined. Until then, says Alvin Alm of the EPA, "there is no cause for alarm." But, he warns, neither is there room for complacency.

Another study funded by the Department of Health and Human Services discovered up to 200,000 California homes with air distribution ducts made of corrugated asbestos paper.

Irving Selikoff of Mount Sinai Medical Center and his colleague, William Nicholson, are investigating whether air forced through the ducts carries asbestos fibers. No one knows if similar ducts have been installed elsewhere.

Asbestos is dangerous when loose particles become airborne. They can become imbedded in the lungs and cause a sometimes fatal scarring of the lungs called asbestosis; mesothelioma, a rare cancer of the chest and abdomen; lung cancer, and other cancers.

At least one person dies from asbestos exposure every 58 minutes, according to Selikoff.

The victims include not only shipyard workers, millers, construction and utility employees and asbestos workers but also schoolchildren.

Recent studies indicate there are 15 million students and 1.4 million workers in schools that contain

loose, easily crumbled asbestos.

The EPA required all schools to undergo asbestos inspection by June, 1983, and to notify parents and employees of the results. It did not mandate any further action under the theory that pressure from parents would force a cleanup.

Alm called the voluntary program highly successful.

"Two-thirds of the schools have already taken action," he said, "and another 23 percent are planning to."

Anthony Mazzocchi, of Parents Against Asbestos Hazards in Schools, called the program "a total disaster."

He claims that without proper guidelines 95 percent of the cleanups are not done properly. He said 19 asbestos-plagued schools in New Jersey did not open last fall for that reason.

Bill Borwegen, director of occu-

pational safety and health for the Service Employees International Union, agrees:

"Abatement is being done in a very shoddy manner, and schools are actually becoming more contaminated as a result."

The federal Occupational Safety and Health Administration (OSHA) is responsible for protecting asbestos workers. OSHA's mandate is not to insure a safe workplace, but only to make it as safe as economically and technically feasible.

"Basically, they are deciding how many people will live and how many will die," Selikoff says, "because there is no known safe level of asbestos."

Asbestos gradually is being replaced by other materials, including fiberglass. No one knows if those substances will prove to be dangerous.

NEWS MINOR, MARCH 17, 85

League of Women Voters of Alaska

9151 Skywood Lane
Juneau, Alaska 99801
April 15, 1985

Representative Koponen, Co-Chairman
Representative Gruenberg, Co-Chairman
House Education and Social Services Committee
Alaska Legislature
Pouch V
Juneau, Alaska 99811

Re: HB 334: Installation of Asbestos in Public Buildings

Dear Representatives Koponen and Gruenberg:

We would like your committee to know that the League of Women Voters of Alaska supports enactment of the subject legislation.

Our support is based on our concern about the severe long-term health hazard posed by friable asbestos where the resulting particles can enter the circulating air in a building and become ingested into people's lungs. The League of Women Voters of the United States has adopted positions supporting protection of the public health against hazardous substances and air pollutants; and the LWVAK relies upon those positions in taking this action.

We have been following the problem of asbestos health hazards for some time, and have been supporting enactment of HB 5 (removal of asbestos health hazards from schools). It would be an ironic and costly situation, indeed, if the State of Alaska were to allow new installations of asbestos to go into State and municipal public buildings, built with public funds, when we now have a good fix on the degree of expense that will be incurred when, at some later time, much if not all of that asbestos will have to be removed in order to protect the health of persons using those buildings. While we also support energy conservation

Representatives Gruenberg and Kopenan
April 15, 1985
Page Two

through proper insulation of buildings and other means, other
much safer materials and methods exist to achieve that end.

Thank you for considering our views.

Sincerely,



Elizabeth Cuadra, Board Member
(Natural Resources Portfolio)

DEC:kn

cc: Committee Members (Taylor, Hurley, Thompson, Pettyjohn and
Hanley)
Paula Ziegler (LWVAK President)

Carpenter claims material in Fairbanks center unsafe

PNM 1/26/85

By SUSAN FISHER
Staff Writer

A local carpenter refusing to work on the South Fairbanks Community Center because of asbestos materials says the city is inviting future hazards, but city and state officials disagree.

The new center, which was to be completed this month, is about a month behind schedule. It will be used for a child care center and community meetings.

At issue are thin wall boards containing asbestos and silica. The tiny particles from either can be hazardous if inhaled. Asbestos is a known cancer-causing substance if exposure is prolonged.

But the Fairbanks city engineer and two state labor officials say there are no hazards to workers installing the boards providing precautions are taken. Once in place, the materials will pose no hazards to people using the building, he said.

The \$1 million center at 24th and Rickert streets is being built with state and federal funds. On Feb. 11, the Fairbanks City Council will hold a public hearing on a bill giving a 20-year lease, for one dollar a year, to the Interdenominational Ministry Alliance, which wants to operate the center.

The Rev. Lennell Cleaver, who chairs the alliance's building committee, said he personally made inquiries after hearing carpenter Ray Halderman's concerns, and he is satisfied there will be no hazards.

"The amount of particles that would escape is an amount that wouldn't hurt anything," Cleaver concludes from his conversations with various officials.

But Ray Halderman, a member of the Carpenters Union, says the city is inviting future risk in using the cement asbestos boards in the center's



POSSIBLE DANGER—Mert Meeker, project manager for Toombs Construction project on the South Fairbanks Community Center, points to the caution warning on a sheet of asbestos wallboard. He is in a room specially sealed off with plastic in order to cut the asbestos. (Staff photo by Charles Mason)

kitchen and bathroom areas. Halderman says he's been raising his concerns to officials the past two months, and he refuses to work at the site.

"They're seeming to say it's not a problem, but I say it's dumb putting this material in," he says, when there are cheaper and less hazardous materials available.

"The main problem is the danger of it being cut after it's installed," Halderman says.

City Engineer John Phillips disagrees. "We haven't been able to find anybody other than Mr. Halderman" who sees a hazard, Phillips says.

The cement asbestos boards were (See **CARPENTER**, Page 3)

CARPENTER. . .

(Continued from page 1)

recommended by architect Roger Cotting, and are specified in the city's contract with Toombs Construction Co.

Phillips has called a number of agencies, including the federal Environmental Protection Agency. The only hazards appear to be during cutting and installation.

"We still have an open mind about this, but no one has recommended that we not use this material," Phillips said Friday.

Meanwhile, two officials with the Alaska Department of Labor's OSHA sections say the contractor's plans for protecting workers go beyond employer requirements. They do not see hazards for building users once construction is finished and the area is thoroughly vacuumed.

Halderman, though, wonders what will happen if someone unwittingly damages, cuts or puts a hole in the boards without knowing of the asbestos fibers and silica particles.

Phillips replies: "The lease agreement for the building contains a clause there will be no additions, alterations, etc. without obtaining the city engineer's written approval in advance."

Mert Meeker, Toombs Construction project manager, says Glasweld, manufactured in Pennsylvania, is specified in the contract.

The boards, about one-eighth-inch thick, come in large sheets. Those are cut to size, and cuts are made for fixtures. Glasweld, contains 51 percent cement, 15 percent asbestos and 34 percent silica, said Meeker.

Among attractive qualities of this product are its resistance to fire, its durability, moisture resistance and easy maintenance. The boards are being installed over sheetrock at the new center.

Meeker expresses concern over the silica, and says the extra precautions, which Toombs will pay out of its own pocket, are as much due to the silica as the asbestos.

Workers will wear disposable coveralls and use respirators to avoid inhaling particles. The work areas will be covered with Visqueen with an air chamber leading to them. Special filters will be placed on the vacuum system, Meeker said.

Toombs Construction and the city engineering office are relying on the free advice of a state OSHA consultant, Pat Patterson, who has been at the job site and made his recommendations.

Bill Blythe, an OSHA industrial hygienist, said installing this type of asbestos product is far less hazardous than, say, removal of older asbestos products, which can make it those older products that are the subject of expensive removals in schools throughout the nation and Alaska.

This board, Blythe said, is "very well bonded."

Once the building is complete, users should not be exposed to hazards. "If people working on it or cutting on it or scraping things off of it, you may generate asbestos fiber, but it's hard to imagine there would be any exposure. The hazard comes from fibers in the air. Just because it's in the building doesn't mean it's in the air," said Blythe.

Asbestos found in infants' lungs

3/1/85

CHICAGO (AP)—Asbestos has been found in the lungs of infants less than 10 months old, suggesting that the flame-retardant mineral fiber linked with lung cancer is "probably everywhere," a researcher says.

"Nobody had ever looked at (possible asbestos exposure in) either children or infants," said Dr. Abida K. Haque, a pathologist at the University of Texas Medical Branch in Galveston.

"I started looking at ones that had died of various diseases," Haque said in a telephone interview Wednesday. "I was surprised that in the first one I looked at, I found a few asbestos bodies."

Asbestos bodies are microscopic fragments of asbestos that become coated with iron and proteins after they lodge in the lung. Over several years, they give rise to fibrous tissue that displaces lung tissue and reduces breathing capacity.

Concentrations of asbestos bodies in some infants were comparable with those in some adult lung-cancer patients, Ha-

que and her colleagues said in a report in the March issue of the American Medical Association's Archives of Pathology and Laboratory Medicine.

"The number (of asbestos bodies) I found was really small," Haque said. "What I was concerned about was the duration of exposure—being exposed when they are small . . . what effect it might have when they are 20 or 30."

The study was based on 17 autopsies on infants ranging in age from 2½ months to 10 months. Ten had died from sudden infant death syndrome and seven had died from pneumonia, skin infections, meningitis and other diseases.

Haque cautioned that the Galveston study was "very preliminary" and that at least 50 to 100 more infants will have to be studied to determine whether the findings are meaningful.

The infants might have been exposed to asbestos sprayed on ceilings, used in incubator gaskets or found in other sites in the home or hospital, Haque said. "It's probably everywhere."

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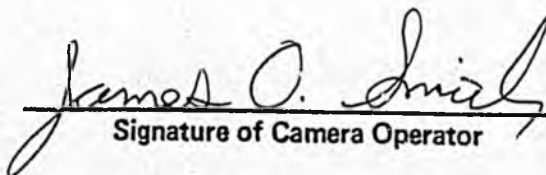
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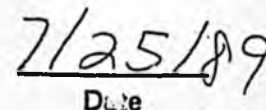


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COMMITTEE REPORT

HOUSE

(7)

FURTHER: JUDICIARY

5/8/85

Date: May 9, 1985

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had CS 20 (HESS) am

"An Act relating to implied consent to preliminary breath test by aircraft and watercraft operators."

under consideration and recommends:

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

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]
[Signature]
Robin L. Taylor (vc)
[Signature]
[Signature]
[Signature]
[Signature]

H-holby

[Signature]
CHAIRMAN

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 20
 Title: An Act relating to implied consent to preliminary breath test...
 Sponsor: Sen. Ray
 Requestor: Sen. HESS
 Date of Request: 2-6-85

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Paul Conger
 Division: Administrative Services

Phone: 465-4338
 Date: 2-6-85

Approved by Commissioner: Michael J. Kle...
 Agency: Public Safety

Date: 2-6-85

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER _ SB 20

Support

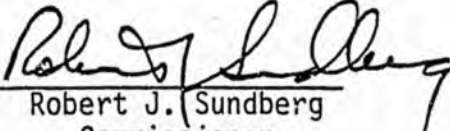
February 1, 1985

SB 20 - "An Act relating to implied consent to preliminary breath test by aircraft and watercraft operators."

The purpose of this legislation is to include aircraft and watercraft operators in the implied consent statute for breath tests.

Passage of this legislation will allow law enforcement officers to administer the preliminary breath test which can provide probable cause to administer an additional test of sufficient validity to stand as court evidence of operating a vehicle, watercraft, or aircraft while intoxicated.

During the past few years numerous instances have taken place where lives have been lost due to watercraft operators and pilots being under the influence of alcohol.


Robert J. Sundberg
Commissioner

STATE OF ALASKA
THE LEGISLATUREPOUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 17, 1984

SUBJECT: Operating watercraft while intoxicated.
(Work Order No. 14-0225)

TO: Senator Bill Ray

FROM: George W. Edwards *GWE*
Legislative Counsel

In response to your request concerning legislation in the area of watercraft operation, I researched existing law and made copies of relevant statutes for your review. Existing law addresses the intoxicated watercraft operator situation in Title 5, Amusements and Sports, at AS 5.25.060 and in Title 28, Motor Vehicles. Under Title 28 all of the drunk-driving laws which apply to motor vehicles apply to aircraft and watercraft as well. Thus it would appear that our existing prohibition against intoxicated watercraft operators is at least as strong as that of other states.

There is however a distinction among vehicle operators made in AS 28.35.031 which may warrant elimination. There operators of motor vehicles, aircraft and watercraft are all required by the implied consent law to submit to a breath test for alcohol. Only motor vehicle operators, however, are required to submit to preliminary breath tests in the field under subsection (b). These preliminary test devices are handheld portable units and I can't think of any practical reason they could not be used on aircraft and watercraft operators under essentially the same circumstances as they are now used on drivers of motor vehicles. These circumstances must include either an accident or a moving violation of law before the preliminary test can be required.

If there is any other help I can give you with regard to this inquiry please let me know.

GWE:ojb
J10/034

(23) "veterans organization" means a civic, service or charitable organization in the state, or a branch or lodge or chapter of a national or state organization in the state, not for pecuniary profit, the membership of which consists of individuals who were members of the armed services or forces of the United States, and which has been in existence for five years before applying for a license under this chapter. (§ 1 ch 27 SLA 1960; am §§ 4, 5 ch 66 SLA 1976; am §§ 6-8 ch 27 SLA 1982; am § 8 ch 59 SLA 1983)

Revisor's notes. — This section was reorganized in 1983 to put the defined words in alphabetical order.

Effect of amendments. — The 1982 amendment inserted "cutboard motor association" and "or nonprofit trade" in paragraph (15), inserted a comma

following "rights to participate" and the language beginning "the specified kinds of games" and ending "\$2 or less and in" in paragraph (16), and added paragraph (22).

The 1983 amendment added paragraph (16).

Chapter 25. Watercraft.

Article

3. General Provisions (§§ 05.25.060, 05.25.090)

Article 3. General Provisions.

Section

60. Prohibited operation
90. Penalties

Sec. 05.25.060. Prohibited operation. (a) A person may not operate a watercraft whether for recreational purposes or any other purpose or manipulate water skis, a surfboard, or a similar device on the waters of the state in a reckless or negligent manner so as to endanger the life or property of another person.

(b) A person may not operate a watercraft whether for recreational purposes or any other purpose in violation of AS 28.35.030 on the waters of the state while under the influence of any intoxicating liquor, narcotic drug, barbiturate or marijuana. (§ 3 ch 63 SLA 1961; am § 1 ch 60 SLA 1976; am § 3 ch 117 SLA 1982)

Effect of amendments. — The 1982 amendment substituted "in violation of AS 28.35.030" for "or manipulate water skis, a

surfboard, or a similar device" in subsection (b).

Sec. 05.25.090. Penalties. A person who violates any provision of this chapter is guilty of a misdemeanor and is punishable by a fine of not more than \$500, or by imprisonment of not more than six months, or by both, for each violation unless that person is convicted of a violation of AS 28.35.030, in which case the sentence shall be in accordance with AS 28.35.030. (§ 10 ch 63 SLA 1961; am § 4 ch 117 SLA 1982)

Sec. 28.35.030. Operating a vehicle, aircraft or watercraft while intoxicated. (a) A person commits the crime of driving while intoxicated if the person operates or drives a motor vehicle or operates an aircraft or a watercraft

(1) while under the influence of intoxicating liquor, or any controlled substance listed in AS 11.71.140 — 11.71.190;

(2) when, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.10 percent or more by weight of alcohol in the person's blood or 100 milligrams or more of alcohol per 100 milliliters of blood, or when there is 0.10 grams or more of alcohol per 210 liters of the person's breath; or

(3) while the person is under the combined influence of intoxicating liquor and another substance.

(b) Driving while intoxicated is a class A misdemeanor.

(c) Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 72 consecutive hours and a fine of not less than \$250 if the person has not been previously convicted in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than \$500 if, within the preceding 10 years, the person has been previously convicted once in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 30 consecutive days and a fine of not less than \$1,000 if, within the preceding 10 years, the person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has more than once been previously convicted of one of the following offenses: (1) driving while intoxicated under this or another law or ordinance with substantially similar elements; (2) refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. The execution of sentence may not be suspended nor may probation be granted except on condition that the minimum imprisonment provided in this section is served. Imposition of sentence may not be suspended. In addition, if the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked in accordance with AS 28.15.181 and the vehicle used in commission of the offense may be forfeited under AS 28.35.036. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of

alcohol education or rehabilitation that the court, after consideration of any information compiled under (d) of this section, finds appropriate.

(d) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under (c) of this section shall supply the Alaska court system with the information regarding the condition and treatment of those persons as the supreme court may require by rule. Information compiled under this subsection is confidential and may only be used by a court in sentencing a person convicted under (c) of this section, or by an officer of the court in preparing a presentence report for the use of the court in sentencing a person convicted under (c) of this section.

(e) A person who is sentenced to imprisonment for 72 consecutive hours upon a first conviction under (c) of this section and who is not released from imprisonment after 72 hours may not bring an action against the state or a municipality or its agents, officers, or employees for damages resulting from the additional period of confinement if

(1) the employee or employees who released the person exercised due care and, in releasing the person, followed the standard release procedures of the prison facility; and

(2) the additional period of confinement did not exceed 12 hours.

(f) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction.

(g) In this section,

(1) "operate an aircraft" means to use, navigate, pilot, or taxi an aircraft in the airspace over this state, or upon the land or water inside this state;

(2) "operate a watercraft" means to navigate or use a vessel used or capable of being used as a means of transportation on water for recreational or commercial purposes on all waters, fresh or salt, inland or coastal, inside the territorial limits or under the jurisdiction of the state. (§ 50-5-3 ACLA 1949; am § 1 ch 107 SLA 1955; am § 1 ch 121 SLA 1967; am § 45 ch 32 SLA 1971; am § 4 ch 74 SLA 1974; am §§ 2, 3 ch 152 SLA 1978; am § 28 ch 94 SLA 1980; am § 10 ch 129 SLA 1980; am § 21 ch 45 SLA 1982; am §§ 13 — 15 ch 117 SLA 1982; am §§ 13 — 15 ch 77 SLA 1983)

Revisor's notes. — In 1984, former subsection (f) was redesignated as present subsection (g) and former subsection (g) was redesignated as present subsection (f).

Cross references. — For sentences for class A misdemeanors, see AS 12.55.035(b)(3) and 12.55.135(a).

Effect of amendments. — The first 1980 amendment, in subsection (a) as it existed prior to the second 1980 amendment, deleted "under AS 11.05.150" from

the end of the third sentence and substituted "AS 28.15.181" for "AS 28.15.110(c)" in the fourth sentence.

The second 1980 amendment rewrote the section.

The first 1982 amendment substituted "or any controlled substance listed in AS 11.71.140 — 11.71.190" for "depressant, hallucinogenic, stimulant or narcotic drug as defined in AS 17.10.230(13) and AS 17.12.150(3)" in subsection (a)(1).

purposes of statute or ordinance making it a criminal offense to operate an automobile while in that condition, 142 ALR 555.

What is a "motor vehicle" within statutes making it an offense to drive while intoxicated, 66 ALR2d 1146.

Right to trial by jury in criminal prosecution for driving while intoxicated or similar offense, 16 ALR3d 1373.

Driving under the influence, or when addicted to the use, of drugs as criminal offense, 17 ALR3d 815.

Applicability, to operation of motor vehicle on private property, of legislation making drunken driving a criminal offense, 29 ALR3d 938.

What amounts to violation of drunken driving statute in officer's "presence" or "view" so as to permit warrantless arrest, 74 ALR3d 1138.

What constitutes driving, operating, or being in control of motor vehicle for purposes of driving while intoxicated statute or ordinance, 93 ALR3d 7.

Reckless driving as lesser included offense of driving while intoxicated or similar charge, 10 ALR4th 1252.

Denial of accused's request for initial contact with attorney — drunk driving cases, 18 ALR4th 705.

Sec. 28.35.031. Implied consent. (a) A person who operates or drives a motor vehicle in this state or who operates an aircraft as defined in AS 28.35.030(g)(1) or who operates a watercraft as defined by AS 28.35.030 (g)(2) shall be considered to have given consent to a chemical test or tests of the person's breath for the purpose of determining the alcoholic content of the person's blood or breath if lawfully arrested for an offense arising out of acts alleged to have been committed while the person was operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated. The test or tests shall be administered at the direction of a law enforcement officer who has reasonable grounds to believe that the person was operating or driving a motor vehicle or operating an aircraft or a watercraft in this state while intoxicated.

(b) A person who operates or drives a motor vehicle in this state shall be considered to have given consent to a preliminary breath test for the purpose of determining the alcoholic content of the person's blood or breath. A law enforcement officer may administer a preliminary breath test at the scene of the incident if the officer has reasonable grounds to believe that a person's ability to operate a motor vehicle is impaired by the ingestion of alcoholic beverages and that the person

- (1) was driving a motor vehicle that is involved in an accident; or
- (2) committed a moving traffic violation.

(c) Before administering a preliminary breath test under (b) of this section, the officer shall advise the person that refusal may be used against the person in a civil or criminal action arising out of the incident and that refusal is an infraction. If the person refuses to submit to the test, the test shall not be administered.

(d) The result of the test under (b) of this section may be used by the law enforcement officer to determine whether the driver should be arrested.

(e) Refusal to submit to a preliminary breath test at the request of a law enforcement officer is an infraction.

v. State, Sup. Ct. Op. No. 1254 (File No. 2761), 548 P.2d 376 (1976).

Rule announced generally to have prospective effect but also to have partial retroactive effect. — See *Lauderdale v. State*, Sup. Ct. Op. No. 1254 (File No. 2761), 548 P.2d 376 (1976).

Applied in *Wilson v. State*, Ct. App. Op. No. 129 (File No. 6222), 650 P.2d 426 (1982).

Quoted in *Simpson v. Municipality of*

Anchorage, Ct. App. Op. No. 57 (File Nos. 4945, 4946, 5288), 635 P.2d 1197 (1981); *Lundquist v. Department of Pub. Safety*, Sup. Ct. Op. No. 2763 (File No. 7075), 674 P.2d 780 (1983); *Jensen v. State*, Ct. App. Op. No. 271 (File No. 7488), 667 P.2d 188 (1983).

Cited in *Coleman v. State*, Ct. App. Op. No. 229 (File No. 7215), 658 P.2d 1364 (1983).

Collateral references. — 60 C.J.S., *suspect chemical sobriety test under Motor Vehicles*, § 164.16. implied consent law, 95 ALR3d 710.

Duty of law enforcement officer to offer

Sec. 28.35.032. Refusal to submit to chemical test. (a) If a person under arrest refuses the request of a law enforcement officer to submit to a chemical test under AS 28.35.031(a), after being advised by the officer that the refusal will, if that person was arrested while operating or driving a motor vehicle for which a driver's license is required, result in the denial or revocation of the license or nonresident privilege to drive, that the refusal may be used against the person in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated, and that the refusal is a misdemeanor, a chemical test shall not be given, except as provided by AS 28.35.035.

(b) [Repealed, § 25 ch 77 SLA 1983.]

(c) [Repealed, § 25 ch 77 SLA 1983.]

(d) [Repealed, § 25 ch 77 SLA 1983.]

(e) The refusal of a person to submit to a chemical test of breath under (a) of this section is admissible evidence in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating or driving a motor vehicle or operating an aircraft or watercraft while intoxicated.

(f) Refusal to submit to the chemical test of breath authorized by AS 28.35.031(a) is a class A misdemeanor.

(g) Upon conviction of a person under this section, the court shall impose a minimum sentence of imprisonment of not less than 72 consecutive hours and a fine of not less than \$250 if the person has not been previously convicted in this or another jurisdiction of driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than \$500 if, within the preceding

Duty to public. — This section does not create a duty by the Department of Public Safety toward the public which, if breached, can form the basis of a civil action for negligence against the department. *Lundquist v. Department of Pub. Safety*, Sup. Ct. Op. No. 2763 (File No. 7075), 674 P.2d 780 (1983).

Limitation for purposes other than DWI prosecutions. — AS 28.35.032(a) cannot be restricted to apply solely to driving while intoxicated prosecutions, and to the extent that the statute, by providing that "a chemical test shall not be given" following a breathalyzer refusal,

affirmatively limits the manner in which evidence of intoxication may be obtained, its limitation must apply with equal force in all prosecutions "arising out of acts alleged to have been committed while the defendant was operating or driving a motor vehicle while intoxicated." *Pena v. State*, Ct. App. Op. No. 245 (File No. 6174), 664 P.2d 169 (1983).

Former subsection (b) construed. — See *Graham v. State*, Sup. Ct. Op. No. 2403 (File No. 4092), 633 P.2d 211 (1981).

Cited in *Wilson v. State*, Ct. App. Op. No. 356 (File Nos. 7523, 7526, 7833), P.2d (1984).

Collateral references. — 7A Am. Jur. 2d, *Automobiles and Highway Traffic*, §§ 122 to 132, 141.

60 C.J.S., *Motor Vehicles*, § 164.16; 61A C.J.S., *Motor Vehicles*, § 593(1).

Requiring submission to physical examination or test as violation of constitutional rights, 25 ALR2d 1407.

Admissibility in criminal case of evidence that accused refused to submit to scientific test to determine amount of alcohol in system, 87 ALR2d 370, 26 ALR4th 1112.

Suspension or revocation of driver's license for refusal to take sobriety test, 88 ALR2d 1064.

Request before submitting to chemical sobriety test to communicate with counsel as refusal to take test, 97 ALR3d 852.

Request for prior administration of additional test as constituting refusal to submit to chemical sobriety test under implied consent law, 98 ALR3d 572.

Sec. 28.35.033. Chemical analysis of blood. (a) Upon the trial of a civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated, the amount of alcohol in the person's blood or breath at the time alleged shall give rise to the following presumptions:

(1) If there was 0.05 percent or less by weight of alcohol in the person's blood, or 50 milligrams or less of alcohol per 100 milliliters of the person's blood, or 0.05 grams or less of alcohol per 210 liters of the person's breath, it shall be presumed that the person was not under the influence of intoxicating liquor.

(2) If there was in excess of 0.05 percent but less than 0.10 percent by weight of alcohol in the person's blood, or in excess of 50 but less than 100 milligrams of alcohol per 100 milliliters of the person's blood, or in excess of 0.05 grams but less than 0.10 grams of alcohol per 210 liters of the person's breath, that fact does not give rise to any presumption that the person was or was not under the influence of intoxicating liquor, but that fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.

1983 SUPPLEMENT

§ 8-738

Effect of amendment. — The 1983 amendment, effective July 1, 1983, deleted "or issue a new certificate preceding "and man" in the first sentence in subsection (b).

As the remainder of the section was not affected by the amendment, it is not set forth above.

Editor's note. — Section 2, ch. 8, Acts 1983.

provides that "the provisions of this act are intended solely to correct technical errors in the law and that there is no intent to revive or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this act."

§ 8-736. Same — Forms; investigations.

(a) The Department shall prescribe and provide suitable forms of applications, certificates of title, notices of security interests, and all other notices and forms necessary to carry out §§ 8-729 through 8-736. (1983, ch. 8.)

Effect of amendment. — The 1983 amendment, effective July 1, 1983, substituted "certificates" for "certificate" in subsection (a).

As the remainder of the section was not affected by the amendment, it is not set forth above.

Editor's note. — Section 2, ch. 8, Acts 1983.

provides that "the provisions of this act are intended solely to correct technical errors in the law and that there is no intent to revive or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this act."

§ 8-738. Operating vessel while intoxicated or while under influence of alcohol and/or drugs.

(a) *Prohibitions enumerated.* — A person may not operate or attempt to operate a vessel while the person:

- (1) Is intoxicated;
- (2) Is under the influence of alcohol;
- (3) Is so far under the influence of any drug, combination of drugs, or combination of drugs and alcohol that the person cannot operate a vessel safely; or
- (4) Is under the influence of any controlled dangerous substance, as defined in Article 27, § 277 of the Code, unless the person is entitled to use the controlled dangerous substance under the laws of this State.

(b) *Evidentiary requirements applicable.* — The evidentiary requirements of §§ 10-302 through 10-307 of the Courts Article are applicable to any violation of this section.

(c) *Defense.* — Unless the person charged with any violation of this section was unaware that the alcohol, drug, combination of drugs, or combination of drugs and alcohol would make the person incapable of safely operating a vessel, it is not a defense to any charge of violating this section that the person is or was entitled to use the alcohol, drug, combination of drugs, or combination of drugs and alcohol under the laws of this State. (1983, ch. 575.)

Editor's note. — Section 2, ch. 575, Acts 1983, provides that the act shall take effect July 1, 1983.

§ 10-204. Public records — Admissibility generally.

Effect of section. — This section simply makes records competent evidence; it does not address their relevance or judicial effect. Carr v. State, 50 Md. App. 209, 437 A.2d 238 (1981). Birth certificate is a public record and no

witness is needed to introduce it. Scott v. State, 43 Md. App. 323, 405 A.2d 420 (1979), modified, 289 Md. 647, 426 A.2d 923 (1981). Cited in Temoney v. State, 290 Md. 251, 429 A.2d 1018 (1981).

§ 10-205. Same — Exceptions.

(a) Confidential records. — Records, reports, statements, notes, or information assembled or obtained by the State Department of Health and Mental Hygiene, the Maryland Commission to Study Problems of Drug Addiction, the Medical and Chirurgical Faculty or its allied medical societies, an in-hospital staff committee, or a national organized medical society or research group that are declared confidential by § 4-102 of the Health-General Article or § 14-602 of the Health Occupations Article, are not admissible in evidence in any proceeding.

(1981, ch. 9, § 1; 1982, ch. 770 § 4.)

Effect of amendments. — The 1981 amendment substituted "§ 1-1 of Article 43 of the Code or § 14-602 of the Health Occupations Article" for "§ 1-1 or § 134 of Article 43 of the Code" near the end of subsection (a). Section 3 of the act provides that it shall take effect July 1, 1981, contingent upon the taking effect of the Health Occupations Article (ch. 8, Acts 1981).

The 1982 amendment, effective July 1, 1982, substituted "that are declared confidential by § 4-102 of the Health-General Article" for "which are declared confidential by § 1-1 of Article 43 of the Code" in subsection (a). As subsection (b) was not affected by the amendments, it is not set forth above.

Subtitle 3. Motor Vehicle Laws.

§ 10-301. Use of radio-micro waves to prove speed of vehicles.

The speed of a motor vehicle may be proved by evidence of a test made upon it with a device designed to measure and indicate the speed of a moving object by means of radio-micro waves. (An. Code 1957, art. 35, § 91; 1973, 1st Sp. Sess., ch. 2, § 1; 1983, ch. 307.)

Effect of amendment. — The 1983 amendment, effective July 1, 1983, substituted "measure and indicate" for "measure, indicate, and record".

§ 10-302. Chemical test for intoxication — Admissibility by analysis.

In a prosecution for a violation of a law concerning a person who is driving or attempting to drive a vehicle in violation of § 21-902 of the Transportation Article, a chemical test of his breath or blood may be administered to the person for the purpose of determining the alcohol content of his blood. (An. Code 1957, art. 35, § 100; 1973, 1st Sp. Sess., ch. 2, § 1; 1977, ch. 14, § 6; ch. 164, § 3; 1980, ch. 41.)

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Effect of amendment. — The 1980 amendment, effective July 1, 1980, substituted "alcohol" for "alcohol" near the end of the section.

University of Baltimore Law Review. — For note, "Maryland's Drunk Driving Laws: An Overview," see 11 U. Balt. L. Rev. 357 (1982).

Legislative intent. — The legislature intended the requirements of this section to apply in prosecutions for the violation of any law concerning a person accused of driving while intoxicated or impaired. State v. Loscomb, 291 Md. 424, 435 A.2d 764 (1981).

Purpose of section. — This section is concerned with the protection of the public, rather than the protection of an accused. State v. Moon, 291 Md. 463, 436 A.2d 420 (1981).

Effect of section is to permit a chemical test

of one's breath or blood whenever there is a violation of any law that involves driving while intoxicated or impaired. Loscomb v. State, 45 Md. App 598, 416 A.2d 1276 (1980), modified, 291 Md. 424, 435 A.2d 764 (1981).

This section and TR § 16-205.1 (c) are in pari materia; they must be construed harmoniously in order to give full effect to each enactment. State v. Loscomb, 291 Md. 424, 435 A.2d 764 (1981).

Schmerber doctrine applied. — For application of Schmerber v. California, 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 908 (1966), holding that the privilege against self-incrimination does not extend to involuntarily obtained blood samples, see State v. Moon, 291 Md. 463, 436 A.2d 420 (1981).

§ 10-303. Same — Time limitation.

University of Baltimore Law Review. — For note, "Maryland's Drunk Driving Laws: An Overview," see 11 U. Balt. L. Rev. 357 (1982).

Legislative intent. — The legislature intended the requirements of this section to apply in prosecutions for the violation of any law concerning a person accused of driving while intoxicated or impaired. State v. Loscomb, 291 Md. 424, 435 A.2d 764 (1981).

Purpose of section. — This section is concerned with the protection of the public, rather than the protection of an accused. State v. Moon, 291 Md. 463, 436 A.2d 420 (1981).

This section and TR § 16-205.1 (c) are in pari materia; they must be construed harmoniously in order to give full effect to each enactment. State v. Loscomb, 291 Md. 424, 435 A.2d 764 (1981).

§ 10-304. Same — Qualifications of person administering test; equipment.

(a) Definitions. — (1) In this section the following words have the meanings indicated.

(2) "Qualified medical person" means any person permitted by law to withdraw blood from humans.

(3) "Qualified person" means a person who has received training in the use of the equipment in a training program approved by the toxicologist under the Postmortem Examiners Commission and who is either a police officer, a police employee, or an employee of the office of the Chief Medical Examiner.

(b) Breath test. — The chemical test of breath shall be administered by a qualified person with equipment approved by the toxicologist under the Postmortem Examiners Commission at the direction of a police officer. The officer arresting the individual may not administer the chemical test of breath.

(c) Blood test. — The blood shall be obtained by a qualified medical person using equipment approved by the toxicologist under the Postmortem Examiners Commission acting at the request of a police officer. The chemical test of blood shall be conducted by a qualified person using equipment approved by the toxicologist under the Postmortem Examiners Commission in a laboratory approved by that toxicologist.

(e) Proof of approved equipment. — For the purpose of establishing that the test was administered with equipment approved by the toxicologist under the

See last page for § 303

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Postmortem Examiners Commission, a statement signed by the toxicologist certifying that the equipment used in the test has been approved by him shall be prima facie evidence of the approval, and the statement is admissible in evidence without the necessity of the toxicologist personally appearing in court.

(1980, ch. 41; 1982, ch. 770, § 4; 1983, ch. 289.)

Effect of amendments. — The 1980 amendment, effective July 1, 1980, rewrote subsection (a), eliminated "making the charge that the person was driving while intoxicated or while his driving ability was impaired by the consumption of alcohol" at the end of subsection (b) and rewrote subsection (c).

The 1982 amendment, effective July 1, 1982, substituted "under the Postmortem Examiners Commission" for "of the office of the Chief Medical Examiner of the Department of Postmortem Examiners" in paragraph (3) of subsection (a), in subsection (b), in both sentences in subsection (c) and in subsection (e) and substituted "approved by that toxicologist" for "approved by the toxicologist of the office of the Chief Medical Examiner of the Department of Postmortem Examiners" in the second sentence of subsection (c).

The 1983 amendment, effective July 1, 1983, added the second sentence in subsection (b).

As the remainder of the section was not affected by the amendments, it is not set forth above.

University of Baltimore Law Review. — For note, "Maryland's Drunk Driving Laws: An Overview," see 11 U. Balt. L. Rev. 357 (1982).

Legislative intent. — The legislature intended the requirements of this section to apply in prosecutions for the violation of any law concerning a person accused of driving while intoxicated or impaired. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

Purpose of section. — This section is concerned with the protection of the public, rather than the protection of an accused. *State v. Moon*, 291 Md. 463, 436 A.2d 420 (1981).

This section and TR § 16-205.1 (c) are in pari materia; they must be construed harmoniously in order to give full effect to each enactment. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

§ 10-305. Same — Type of test administered.

(a) *Type of test administered.* — The type of test administered to the defendant shall be the chemical test of breath except that the chemical test of blood shall be the type of test administered if:

- (1) The defendant is unconscious or otherwise incapable of refusing to take a chemical test for alcohol;
- (2) Injuries to the defendant require removal of the defendant to a medical facility; or
- (3) The equipment for administering the chemical test of breath is not available.

(b) *Person incapable of test refusal.* — Any person who is dead, unconscious, or otherwise in a condition rendering him incapable of test refusal shall be deemed not to have withdrawn consent. (An. Code 1957, art. 35, § 100; 1973, 1st Sp. Sess., ch. 2, § 1; 1981, ch. 240; 1983, ch. 289.)

Effect of amendments. — The 1981 amendment, effective July 1, 1981, designated the former provisions of the section as subsection (a), divided the former first sentence into the present first and second sentences, added "to be" in the present first sentence, substituted "the defendant's" for "either his" in the present second sentence in subsection (a), added "due to facilities or equipment not being available" at the end of that sentence, substituted "this

inability" for "his inability" in the last sentence in the subsection, substituted "the trial" for "his trial" therein and added subsections (b) and (c).

The 1983 amendment, effective July 1, 1983, substituted present subsection (a) for former subsections (a) and (b) and redesignated former subsection (c) as present subsection (b).

University of Baltimore Law Review. — For note, "Maryland's Drunk Driving Laws: An

Overview," see 11 U. Balt. L. Rev. 357 (1982).

Legislative intent. — The legislature intended the requirements of this section to apply in prosecutions for the violation of any law concerning a person accused of driving while intoxicated or impaired. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

Purpose of section. — This section is concerned with the protection of the public, rather than the protection of an accused. *State v.*

Moon, 291 Md. 463, 436 A.2d 420 (1981).

This section and TR § 16-205.1 (c) are in *pari materia*; they must be construed harmoniously in order to give full effect to each enactment. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

Applied in *Loscomb v. State*, 45 Md. App. 598, 416 A.2d 1276 (1980), modified, 291 Md. 424, 435 A.2d 764 (1981).

§ 10-306. Same — Admissibility of test results without presence or testimony of technician.

(a) Subject to the provisions of subsection (b), in any criminal trial in which intoxication due to the consumption of alcohol, or being under the influence of alcohol, is an issue, an official copy of the results of a chemical test of breath or blood administered by a person authorized to administer the test, is admissible as substantive evidence, without the presence or testimony of the technician who administered the test.

(1982, ch. 95.)

Effect of amendment.

The 1982 amendment, effective July 1, 1982, deleted "or impairment" following "intoxication" and inserted "or being under the influence of alcohol" in subsection (a).

As subsection (b) was not affected by the amendment, it is not set forth above.

University of Baltimore Law Review. — For note, "Maryland's Drunk Driving Laws: An Overview," see 11 U. Balt. L. Rev. 357 (1982).

Legislative intent. — The legislature intended the requirements of this section to apply in prosecutions for the violation of any

law concerning a person accused of driving while intoxicated or impaired. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

Purpose of section. — This section is concerned with the protection of the public, rather than the protection of an accused. *State v. Moon*, 291 Md. 463, 436 A.2d 420 (1981).

This section and TR § 16-205.1 (c) are in *pari materia*; they must be construed harmoniously in order to give full effect to each enactment. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

§ 10-307. Same — Results of analysis and presumptions.

(a) *In general.* — In a proceeding in which a person is charged with a violation of § 388A of Article 27 or with driving or attempting to drive a vehicle in violation of § 21-902 of the Transportation Article, the amount of alcohol in the person's breath or blood shown in chemical analysis as provided in this subtitle is admissible in evidence and has the effect set forth in subsections (b) through (e) of this section.

(b) *No intoxication presumed.* — If there was in the person's blood at the time of testing 0.05 percent or less by weight of alcohol, as determined by an analysis of the person's blood or breath, it shall be presumed that the defendant was not intoxicated and that the defendant was not driving while under the influence of alcohol.

(c) *No presumption.* — If at the time of testing there was in the person's blood more than 0.05 percent but less than 0.08 percent by weight of alcohol, as determined by an analysis of the person's blood or breath, this fact may not give rise to any presumption that the defendant was or was not intoxicated or

that the defendant was or was not driving while under the influence of alcohol, but this fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(d) *Prima facie evidence of impairment.* — If at the time of testing there was in the person's blood 0.08 percent or more by weight of alcohol, as determined by an analysis of the person's blood or breath, it shall be prima facie evidence that the defendant was driving while under the influence of alcohol.

(e) *Prima facie evidence of intoxication.* — If at the time of testing there was in the person's blood 0.13 percent or more by weight of alcohol, as determined by an analysis of the person's blood or breath, it shall be prima facie evidence that the defendant was intoxicated. (An. Code 1957, art. 35, § 100; 1973, 1st Sp. Sess., ch. 2, § 1; 1974, ch. 691, § 8; ch. 864, § 2; 1975, ch. 9; 1977, ch. 14, § 6; 1978, chs. 423, 454; 1981, ch. 242.)

Effect of amendments.

The 1981 amendment, effective July 1, 1981, substituted "the defendant was not driving while under the influence of alcohol" for "his driving ability was not impaired by the consumption of alcohol" at the end of subsection (b), substituted "the defendant was or was not driving while under the influence of alcohol" for "his driving ability was or was not impaired by the consumption of alcohol" in subsection (b), substituted "0.08 percent" for "0.10 percent" in subsections (c) and (d), substituted "defendant was driving while under the influence of alcohol" for "defendant's driving ability was impaired by the consumption of alcohol" at the end of subsection (d), substituted "0.13 percent" for "0.15 percent" in subsection (e) and clarified language in subsections (b), (c), (d) and (e).

University of Baltimore Law Review. — For note, "Maryland's Drunk Driving Laws: An Overview," see 11 U. Balt. L. Rev. 357 (1982).

Legislative intent. — The legislature intended the requirements of this section to apply in prosecutions for the violation of any law concerning a person accused of driving while intoxicated or impaired. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

Purpose of section. — This section is concerned with the protection of the public, rather than the protection of an accused. *State v. Moon*, 291 Md. 463, 436 A.2d 470 (1981).

This section and TR § 16-205.1 (c) are in

pari materia; they must be construed harmoniously in order to give full effect to each enactment. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

Applicability of section in criminal prosecutions. — The statutory presumptions set forth in this section apply in criminal prosecutions specified in subsection (a) and only when the prerequisites of §§ 10-302 through 10-309 of this article are met. *Fouche v. Masters*, 47 Md. App. 11, 420 A.2d 1279 (1980).

Section not applicable in civil cases. — The jury in a civil case may not apply the presumptions relating to intoxication and impairment set forth in this section. *Fouche v. Masters*, 47 Md. App. 11, 420 A.2d 1279 (1980).

Compliance with section required. — Whenever a person is charged under article 27, § 398, and the basis of the charge is the alleged intoxication of the accused while operating a motor vehicle, no evidence derived from any chemical analysis administered or caused to be administered by the police is admissible in evidence unless there has been compliance with this section. *Loscomb v. State*, 45 Md. App. 595, 416 A.2d 1276 (1980), modified, 291 Md. 424, 435 A.2d 764 (1981).

Proof of unsafe operation is not a necessary element of the offenses of driving while intoxicated or driving while under the influence of alcohol. 68 Op. Att'y Gen. (May 2, 1983).

§ 10-308. Same — Other evidence.

The evidence of the chemical analysis does not limit the introduction of other evidence bearing upon whether the defendant was intoxicated or whether the defendant was driving while under the influence of alcohol. (An. Code 1957, art. 35, § 100; 1973, 1st Sp. Sess., ch. 2, § 1; 1977, ch. 14, § 6; 1981, ch. 242.)

§ 10-301. Use of radio-micro waves to prove speed of vehicles.

The speed of a motor vehicle may be proved by evidence of a test made upon it with a device designed to measure, indicate, and record the speed of a moving object by means of radio-micro waves. (An. Code 1957, art. 35, § 10; 1973, 1st Sp. Sess., ch. 2, § 1.)

REVISOR'S NOTE

This section is new language derived from Article 35, § 101. This section was enacted in 1953. Maryland Laws 1973, ch. 786 removed the requirement of notifying the motorist by highway markings of the presence of radio-micro wave devices used to record speed. Language and style are changed.

Sufficiency of evidence. - The use of radar apparatus, like the use of speedometers, cameras, and X-rays, has now reached such general acceptance by State legislatures, executive departments of state and federal governments, the courts and the public that it is no longer necessary for the prosecution to offer expert testimony to explain the theory and operation of the radar equipment. It is sufficient to show that the equipment has been properly tested and checked, that it was managed by a competent operator, that proper operating procedures were followed, and that proper records were kept. United States v. Drew, 156 F. Supp. 200 (D. Md. 1957).

§ 10-302. Chemical test for intoxication - Admissibility by analysis.

In a prosecution for a violation of a law concerning a person who is driving or attempting to drive a vehicle in violation of § 11-302 of Article 66 1/2 of the Code a chemical test of his breath, blood, urine, or other bodily substance may be administered to the person for the purpose of determining the alcoholic content in his body. (An. Code 1957, art. 35, § 100; 1973, 1st Sp. Sess., ch. 2, § 1.)

REVISOR'S NOTE

This section is new language derived from that section. Style is changed, and the language streamlined.

Maryland Law Review. - For article on chemical tests for alcoholic intoxication, see 17 Md. L. Rev. 193 (1957). For symposium on compulsory use of chemical tests for alcoholic intoxication, see 11 Md. L. Rev. 111 (1954).

For case note on official denial of a blood test as constituting a violation of the process of law, see 23 Md. B. Rev. 232 (1963).

§ 10-303. Same - Time limitation.

The specimen of breath, blood, or urine shall be taken within two hours after the person accused is apprehended. (An. Code 1957, art. 35, § 100; 1973, 1st Sp. Sess., ch. 2, § 1.)

REVISOR'S NOTE

This section is new language derived from Article 35, § 100 (a). Style and language are changed in subdividing this long subsection.

10-301-10-302

FLORIDA

1984 REGULAR SESSION

Ch. 84-188

BOATING SAFETY

Tentative classification changes not available at time of publication

CHAPTER 84-188

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 100

A bill to be entitled

An act relating to boating safety; creating ss. 327.351-327.354, F.S.; prohibiting the operation of a vessel while intoxicated; providing punishment; providing tests to determine intoxication or impairment; providing legislative intent; providing for right to refuse; authorizing use of blood tests in cases of death or serious bodily injury; providing for certain presumptions of impairment; amending s. 327.32, F.S.; providing civil liability for reckless or careless operation of a vessel; amending s. 327.33, F.S.; providing criminal penalties for reckless or careless operation of a vessel; amending s. 327.35, F.S.; providing for fines, imprisonment, and community work projects for persons guilty of operating a vessel while under the influence of alcoholic beverages, chemical or controlled substances; amending s. 327.37, F.S.; prescribing certain safety rules for operating a vessel towing persons on water skis, aquaplanes, innertubes, and sleds; amending s. 327.50, F.S.; prohibiting use of sirens and

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emergency lights on all vessels other than law enforcement, fire, and emergency vessels; amending s. 327.54, F.S.; prohibiting liveries from renting a vessel not containing the safety equipment required by s. 327.50, F.S.; amending s. 327.56, F.S.; authorizing searches of vessels by law enforcement officers to ascertain compliance with safety regulations; amending s. 327.70, F.S.; providing that any authorized law enforcement officer shall enforce ch. 327 and ch. 328, F.S.; amending s. 327.72, F.S.; providing a \$25 fine for the careless operation of a vessel; repealing s. 327.51, F.S., relating to ventilator ducts; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 327.351, Florida Statutes, is created to read:

327.351 Operation of a vessel while intoxicated; punishment.--

(1) It is unlawful for any person, while in an intoxicated condition or under the influence of alcoholic beverages; any chemical substance set forth in s. 877.111; or any substance controlled under chapter 893 to such extent as to deprive him of full possession of his normal faculties, to operate on the waters of this state any vessel. Any person convicted of a violation of this section shall be punished as

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provided in s. 327.35. For the purposes of this subsection, a previous conviction under s. 327.35 shall also be considered a previous conviction for violation of this subsection.

(2) If, however, damage to the property or person of another, other than damage resulting in the death of any person, is done by such intoxicated person under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, or any substance controlled under chapter 893, to such extent as to deprive him of full possession of his normal faculties, by reason of the operation of any vessel mentioned herein, he is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, but the penalty imposed for a violation of this subsection shall be not less than the penalty provided under s. 327.35, and if the death of any human being is caused by the operation of a vessel by any person while so intoxicated, such person shall be deemed guilty of manslaughter and on conviction shall be punished as provided by existing law relating to manslaughter.

(3) A conviction under the provisions of this section shall not be a bar to any civil suit for damages against the person so convicted.

Section 2. Section 327.352, Florida Statutes, is created to read:

327.352 Tests for impairment or intoxication; right to refuse.--

(1)(a) The Legislature declares that operation of a vessel is a privilege that must be exercised in a reasonable manner. In order to protect the public health and safety, it is essential that a lawful and effective means of reducing the

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incidence of boating while impaired or intoxicated be established.

(b) Any person who operates a vessel within this state shall submit to an approved chemical breath test to determine the alcoholic content of the blood, and to a urine test to detect the presence of controlled substances, if that person is lawfully arrested for any offense allegedly committed while operating a vessel while under the influence of alcoholic beverages or controlled substances. The breath test shall be incidental to a lawful arrest and administered at the request of a law enforcement officer who has probable cause to believe such person was operating the vessel within this state while under the influence of alcoholic beverages. The urine test shall be incidental to a lawful arrest and administered at a detention facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has probable cause to believe such person was operating a vessel within this state while under the influence of controlled substances. The urine test shall be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests in a reasonable manner that will ensure the accuracy of the specimens and maintain the privacy of the individual involved. The administration of either test shall not preclude the administration of the other test. The refusal to submit to a chemical breath or urine test upon the request of a law enforcement officer as provided in this section shall be admissible into evidence in any criminal proceeding.

Additions in text are indicated by underling; deletions by ~~strikeouts~~

(c) If the arresting officer does not request a chemical test of the person arrested for any offense allegedly committed while the person was operating a vessel while under the influence of alcoholic beverages or controlled substances, such person may request the arresting officer to have a chemical test made of the arrested person's breath, urine, or blood for the purpose of determining the alcoholic content of the person's blood or the presence of controlled substances, and, if so requested, the arresting officer shall have the test performed.

(d) The provisions of s. 316.1932(1)(f), relating to administration of tests for determining the weight of alcohol in the defendant's blood, additional tests at the defendant's expense, availability of test information to the defendant or the defendant's attorney, and liability of medical institutions and persons administering such tests are incorporated into this act.

(2) The results of any test administered pursuant to this section for the purpose of detecting the presence of any controlled substance shall not be admissible as evidence in a criminal prosecution for the possession of a controlled substance.

(3) Notwithstanding any provisions of law pertaining to the confidentiality of hospital records or other medical records, information obtained pursuant to this section shall be released to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of s. 327.35 or s. 327.351 upon request therefor.

Additions in text are indicated by underline; deletions by ~~strikeouts~~

Section 3. Section 327.353, Florida Statutes, is created to read:

327.353 Blood test for impairment or intoxication in cases of death or serious bodily injury; right to use reasonable force.--

(1) Notwithstanding any recognized ability to refuse to submit to the tests provided in s. 327.352, if a law enforcement officer has probable cause to believe that a vessel operated by a person under the influence of alcoholic beverages or controlled substances has caused the death or serious bodily injury of a human being, such person shall submit, upon the request of a law enforcement officer, to a test of his blood for the purpose of determining the alcoholic content thereof or the presence of controlled substances therein. The law enforcement officer may use reasonable force if necessary to require such person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner. "Serious bodily injury" means a physical condition which creates a substantial risk of death; serious, personal disfigurement; or protracted loss or impairment of the function of any bodily member or organ.

(2) The provision of s. 316.1933(2), relating to blood tests for impairment or intoxication are incorporated into this act.

(3)(a) Any criminal charge resulting from the incident giving rise to the officer's demand for testing should be tried concurrently with a charge of any violation arising out of the court. If such charges are tried separately, the fact that such person refused, resisted, obstructed, or opposed

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testing shall be admissible at the trial of the criminal offense which gave rise to the demand for testing.

(b) The results of any test administered pursuant to this section for the purpose of detecting the presence of any controlled substance shall not be admissible as evidence in a criminal prosecution for the possession of a controlled substance.

(4) Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, information obtained pursuant to this section shall be released to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of s. 327.35 or s. 327.351 on request therefor.

Section 4. Section 327.354, Florida Statutes, is created to read:

327.354 Presumption of impairment; testing methods.--

(1) It is unlawful and punishable as provided in s. 327.35 for any person who is under the influence of alcoholic beverages or controlled substances, when affected to the extent that his normal faculties are impaired, to operate a vessel on the waters of this state.

(2) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while operating a vessel while under the influence of alcoholic beverages or controlled substances, when affected to the extent that his normal faculties were impaired or to the extent that he was deprived of full possession of his normal faculties, the results of any test

Additions in text are indicated by underline; deletions by ~~strikeouts~~

administered in accordance with s. 327.352 or s. 327.353 and this section shall be admissible into evidence when otherwise admissible, and the amount of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood or breath, shall give rise to the following presumptions:

(a) If there was at that time 0.05 percent or less by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of alcoholic beverages to the extent that his normal faculties were impaired.

(b) If there was at that time in excess of 0.05 percent but less than 0.10 percent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of alcoholic beverages to the extent that his normal faculties were impaired, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcoholic beverages to the extent that his normal faculties were impaired.

(c) If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, that fact shall be prima facie evidence that the person was under the influence of alcoholic beverages to the extent that his normal faculties were impaired.

The percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 milliliters of blood. The foregoing provisions of this subsection shall not be construed

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as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of alcoholic beverages to the extent that his normal faculties were impaired.

(3) A chemical analysis of a person's blood to determine alcoholic content or a chemical analysis of a person's breath, in order to be considered valid under the provisions of this section, must have been performed substantially in accordance with methods approved by the Department of Health and Rehabilitative Services and by an individual possessing a valid permit issued by the department for this purpose. Any insubstantial differences between approved techniques and actual testing procedures in any individual case shall not render the test or test results invalid. The Department of Health and Rehabilitative Services may approve satisfactory techniques or methods, ascertain the qualification and competence of individuals to conduct such analyses, and issue permits which shall be subject to termination or revocation in accordance with rules adopted by the department.

(4) Any person charged with operating a vessel while under the influence of alcoholic beverages or controlled substances to the extent that his normal faculties were impaired, whether in a municipality or not, shall be entitled to trial by jury according to the Florida Rules of Criminal Procedure.

Section 5. Section 327.32, Florida Statutes, is amended to read:

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327.32 Vessel Boat declared dangerous instrumentality: civil liability.--All vessels boats, of whatever classification, shall be considered dangerous instrumentalities in this state and any operator of such vessels boats shall, during any utilization of said vessels boats, exercise the highest degree of care in order to prevent injuries to others. Liability for reckless or careless negligent operation of a vessel boat shall be confined to the operator person in immediate charge of or operating the vessel boat and not the owner of the vessel boat, unless the owner he is the operator or is present in the vessel boat when any injury or damage is occasioned by the reckless or careless negligent operation of such vessel, whether such recklessness or carelessness negligence consists of a violation of the provisions of the statutes of this state, or disregard negligence in observing such care and such operation as the rules of the common law require.

Section 6. Section 327.33, Florida Statutes, is amended to read:

327.33 Reckless or careless negligent operation of vessel.--

(1) It is unlawful to operate a vessel in a reckless manner. A person is guilty of reckless operation of a vessel who operates any vessel, or manipulates any water skis, aquaplane, or similar device, in willful or wanton disregard for the safety of persons or property; or without due regard, caution, and circumspection; or at a speed or in a manner as to endanger, or likely to endanger, life or limb, or damage the property of, or injure any person. Any person who

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violates a provision of this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person operating a vessel upon the waters of this state shall operate the vessel in a reasonable and prudent manner, having regard for other waterborne traffic, vessel wake, and all other attendant circumstances so as not to endanger the life, limb, or property of any person. Failure to operate a vessel in such a manner shall constitute careless operation. However, vessel wake and shoreline wash resulting from the reasonable and prudent operation of a vessel shall absent negligence not constitute damage or endangerment to property. Any person who violates the provisions of this subsection is guilty of a noncriminal violation as defined in s. 775.08.

(3) ~~(2)~~ Unless otherwise provided in this chapter, the ascertainment of fault in vessel boat operations and marine accidents shall be determined according to the United States Coast Guard Navigation Rules in effect on October 1, 1981, and as thereafter amended.

Section 7. Section 327.35, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 327.35, F.S., for present text.)

327.35 Operating motorboat while under the influence of alcoholic beverages, chemical substances, or controlled substances; penalties.--

(1) It is unlawful and punishable as provided in subsection (2) for:

Additions in text are indicated by underline; deletions by ~~strikeouts~~

(a) Any person who is under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111 or any substance controlled under chapter 893, when affected to the extent that his normal faculties are impaired, to operate a vessel on the waters of this state; or

(b) Any person with a blood alcohol level of 0.10 percent or above to operate a vessel within this state.

(2) Any person who is convicted of a violation of subsection (1) shall be punished:

(a) By a fine of:

1. Not less than \$250 nor more than \$500 for a first conviction;

2. Not less than \$500 nor more than \$1,000 for a second conviction;

3. Not less than \$1,000 nor more than \$2,500 for a third or subsequent conviction; and

(b) By imprisonment for:

1. Not more than 6 months for a first conviction.

2. Not more than 9 months for a second conviction.

3. Not more than 12 months for a third or subsequent conviction.

(3) The court shall require any person convicted of violating this section or s. 327.351 to attend a substance abuse course specified by the court; and the agency conducting the course may refer the person to an authorized agency for substance abuse evaluation and treatment, in addition to any sentence or fine imposed under this section. Such person shall assume reasonable costs for such education, evaluation, and treatment. "Substance abuse" means the abuse of alcohol

or any substance named or described in Schedules I through V of s. 893.03.

(4) With respect to any person convicted of a violation of subsection (1), regardless of any penalty imposed pursuant to subsection (2):

(a) For the first conviction thereof, the court shall order the defendant to participate in public service or a community work project for a minimum of 50 hours.

(b) For the second conviction within a period of 3 years from the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 10 days.

(c) For the third conviction within a period of 5 years from the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 30 days.

Section 8. Sect: 327.37, Florida Statutes, is amended to read:

327.37 Water skis and aquaplanes regulated.--

(1) No person shall operate a vessel on any waters of this state towing a person on water skis, or an aquaplane, or similar device unless there is in such vessel a person in addition to the operator, in a position to observe the progress of the person being towed, or the vessel is equipped with a wide-angle rear view mirror mounted in such manner as to permit the operator of the vessel to observe the progress of the person being towed.

(2) No person shall engage in water skiing, aquaplaning, or similar activity at any time between the hours

Additions in text are indicated by underline; deletions by ~~strikeouts~~

or any substance named or described in Schedules I through V of a. 893.03.

(4) With respect to any person convicted of a violation of subsection (1), regardless of any penalty imposed pursuant to subsection (2):

(a) For the first conviction thereof, the court shall order the defendant to participate in public service or a community work project for a minimum of 50 hours.

(b) For the second conviction within a period of 3 years from the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 10 days.

(c) For the third conviction within a period of 5 years from the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 30 days.

Section 8. Section 327.37, Florida Statutes, is amended to read:

327.37 Water skis and aquaplanes regulated.--

(1) No person shall operate a vessel on any waters of this state towing a person on water skis, or an aquaplane, or similar device unless there is in such vessel a person in addition to the operator, in a position to observe the progress of the person being towed, or the vessel is equipped with a wide-angle rear view mirror mounted in such manner as to permit the operator of the vessel to observe the progress of the person being towed.

(2) No person shall engage in water skiing, aquaplaning, or similar activity at any time between the hours

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from one-half hour after sunset to one-half hour before sunrise.

(3) The provisions of subsections (1) and (2) do not apply to a performer engaged in a professional exhibition or a person preparing to participate in an official regatta, boat race, marine parade, tournament, or exhibition.

(4) No person shall operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, aquaplane, innertube, sled, or similar device may be affected or controlled, in such a way as to cause the water skis, aquaplane, innertube, sled, or similar device or any person thereon to collide or strike against any vessel, bridge, wharf, pier, dock, buoy, platform, piling, channel marker, or any other object, except slalom buoys, ski jumps, or like objects used normally in competitive or recreational skiing.

Section 9. Section 327.50, Florida Statutes, is amended to read:

327.50 Vessel safety regulations; equipment and lighting requirements.--

(1) Every vessel on the waters of this state shall carry safety equipment and conform to uniform lighting requirements in accordance with current United States Coast Guard safety and lighting requirements, as set forth in Titles 33 and 46, Code of Federal Regulations, unless expressly exempt by state law.

(2) The use of sirens or flashing red or blue emergency lights on any vessel is prohibited except on a vessel operated by a law enforcement officer or fire

Additions in text are indicated by underline; deletions by ~~strikeout~~

protection officer in the performance of his official duties or on a vessel used for emergency rescue activity.

Section 10. Section 327.54, Florida Statutes, is amended to read:

327.54 Boat Liveries; safety regulations; penalty.--

(1) No boat livery shall knowingly lease, hire, or rent a vessel boat to any person:

(a) When the number of persons intending to use the vessel boat shall exceed the number deemed to constitute a maximum safety load for the vessel pursuant to the vessel's authorized person's capacity plate boat.

(b) When the horsepower of the motor exceeds the capacity of the vessel boat, making the vessel boat unsafe to operate.

(c) When the vessel boat does not contain the required safety equipment pursuant to s. 327.50 a Coast Guard-approved lifesaving device for each person occupying the boat and other equipment as required for the class of vessel as set forth in s. 327.57.

(d) When the boat does not contain a suitable anchor and anchor line of appropriate size and length.

(e) When the boat does not contain an appropriate paddle or oar.

~~(d)(f)~~ (f) When the vessel boat is not seaworthy.

(2) No boat livery shall close until the last boat has returned. If a vessel boat is unnecessarily overdue, the livery shall notify the proper authorities.

(3) Any person convicted of violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

Additions in text are indicated by underline; deletions by ~~strikeouts~~

(4) Where the boat livery has complied with subsections (1) and (2), his liability shall cease and a person leasing the vessel boat from the livery shall be liable for any violations of this chapter and shall be personally liable for any accident or injury occurring while in charge of such vessel boat.

Section 11. Section 327.56, Florida Statutes, is amended to read:

327.56 Safety inspections; qualified.--No officer shall board any vessel to make a safety inspection if the owner or operator is not aboard. When the owner or operator is aboard, an officer may board a vessel with consent or when he has probable cause or knowledge to believe that a violation of a provision of this chapter has occurred or is occurring. An officer may board a vessel when the operator refuses to display the safety equipment required by law, when requested to do so by a law enforcement officer.

Section 12. Section 327.70, Florida Statutes, is amended to read:

327.70 Enforcement.--

(1) This chapter and chapter 328 shall be enforced by the Division of Law Enforcement of the department and its officers, the Game and Fresh Water Fish Commission and its officers, the sheriffs of the various counties and their deputies, and any other authorized law enforcement officer, all of whom may order the removal of vessels deemed to be an interference or a hazard to public safety, enforce the provisions of this chapter and chapter 328, or cause any

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inspections to be made of all vessels boats in accordance with this chapter and chapter 328, in the water of this state.

(2) Such officers shall have the power and duty to issue such orders and to make such investigations, reports, and arrests in connection with any violation of the provisions of this chapter and chapter 328 as are necessary to effectuate the intent and purpose of this chapter and chapter 328.

Section 13. Section 327.72, Florida Statutes, is amended to read:

327.72 Penalties.--

(1) Any violation of the provisions of s. 327.33(2) ~~s. 327.57(1)(a) and 2~~ shall be deemed a noncriminal violation, as defined in s. 775.08(3), punishable by a fine of \$25.

(2) Any person failing to comply with the provisions of this chapter or chapter 328 not specified in subsection (1) or not paying the fine specified in subsection (1) within 10 days, except as otherwise provided in this chapter or chapter 328, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 14. Section 327.51, Florida Statutes, is hereby repealed.

Section 15. This act shall take effect October 1, 1984.

Approved by the Governor June 13, 1984.

Filed in Office Secretary of State June 14, 1984.

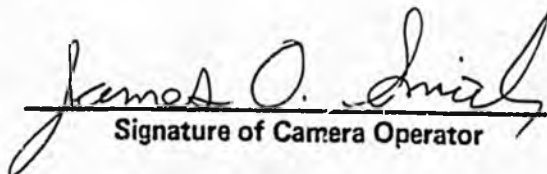
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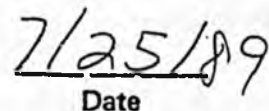


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Offered: 4/18/85
Referred: Judiciary

Original sponsors: Ferguson, Kelly,
Faiks, et al

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2

CS FOR SENATE BILL NO. 21 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to criminal background checks; and
7 providing for an effective date."

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

9 * Section 1. AS 12.62.035(a) is amended to read:

10 (a) Notwithstanding any other provision of law, an interested
11 person [AS DEFINED IN (e) OF THIS SECTION] may request from the com-
12 mission records of all convictions of an individual for crimes that
13 might pose a risk of harm to a child if the individual [INVOLVING
14 CONTRIBUTING TO THE DELINQUENCY OF A MINOR AND ANY SEX CRIMES OF A
15 PERSON WHO] holds or applies for a position in which the individual
16 [PERSON] has or would have supervisory or disciplinary power over a
17 minor. The commission shall authorize the disclosure of the informa-
18 tion to the requesting interested person and shall provide a copy of
19 the information to the individual [PERSON] who is the subject of the
20 request.

21 * Sec. 2. AS 12.62.035(e)(1) is repealed and reenacted to read:

22 (1) "crime that might pose a risk of harm to a child"
23 includes a violation or attempted violation of present or former
24 Alaska statutes regarding the offenses now designated as murder,
25 manslaughter, negligent homicide, assault, reckless endangerment,
26 kidnapping, sexual assault, sexual abuse of a minor, unlawful ex-
27 ploitation of a minor, incest, indecent exposure, robbery, arson,
28 endangering the welfare of a minor, contributing to the delinquency of
29 a minor, distribution of child pornography, promoting prostitution,

1 and felony offenses involving distribution of controlled substances;
2 it also includes a violation or attempted violation of the laws of
3 another jurisdiction if the offense would have been one of the crimes
4 listed in this paragraph if committed in this state;

5 * Sec. 3. AS 12.62.035 is amended by adding a new subsection to read:

6 (f) In addition to the information for which disclosure is
7 authorized under (a) of this section, the commission may disclose the
8 existence of an outstanding warrant for the arrest of the person who
9 is the subject of the request if the warrant is for a crime that might
10 pose a risk of harm to a child.

11 * Sec. 4. AS 25.23.100(d) is amended to read:

12 (d) Except as provided in (g) and (i) of this section, an inves-
13 tigation shall be made by the department or any other qualified agency
14 or person designated by the court to inquire into the conditions and
15 antecedents of a minor sought to be adopted and of the petitioner for
16 the purpose of ascertaining whether the adoptive home is a suitable
17 home for the minor and whether the proposed adoption is in the best
18 interest of the minor. The department shall request a state and
19 national criminal record background check by the Department of Public
20 Safety on each person who seeks to adopt a minor.

21 * Sec. 5. AS 47.35 is amended by adding a new section to read:

22 Sec. 47.35.058. CRIMINAL RECORD BACKGROUND CHECKS. (a) For
23 each person working or applying for work as a staff member of a facil-
24 ity and for each adult occupant who works or resides in a facility,
25 the department shall

26 (1) request a state and national criminal record background
27 check by the Department of Public Safety;

28 (2) require a signed release authorizing the department to
29 obtain the person's criminal records and to investigate reports,

1 arrests, and convictions that indicate past behavior by the person
2 that may pose a risk of harm to a child or to a dependent adult; and

3 (3) require the person to reveal, subject to the penalty
4 for unsworn falsifications under AS 11.56.210, any pending trial of
5 the person, or any allegation or charge against the person or con-
6 viction of the person of a crime that might pose a risk of harm to a
7 child, as defined in AS 12.62.035, regardless of whether the allega-
8 tion resulted in criminal charges being filed or whether the charge
9 was dismissed or whether the conviction was later set aside or cleared
10 from the person's record.

11 (b) The department shall request a state and national criminal
12 record background check on each facility administrator, each adult
13 occupant of a foster home or family child care home, and each facility
14 operator other than a board member of an incorporated facility who
15 does not participate in the day-to-day operation of the facility. The
16 department may license or continue to license only provisionally, and
17 a facility may employ or continue to employ only provisionally, a
18 person subject to a criminal record background check under this sub-
19 section until the state criminal record background check has been
20 completed and the department has determined, on the basis of the state
21 check and other information available to the department, that the
22 person does not pose a risk of harm to a child or dependent adult. A
23 person subject to a criminal record background check under this sub-
24 section may not be licensed under AS 47.35.040 or permanently employed
25 by a facility until the department has reviewed the state and national
26 criminal record background check and has determined that the person
27 does not pose a risk of harm to a child or dependent adult. Notwith-
28 standing the requirements of this subsection, the department may
29 authorize temporary emergency placement of a child or dependent adult

1 in a foster home before reviewing either the state or national crimi-
2 nal record background check.

3 (c) An operator of a facility other than a foster home or family
4 child care home shall, under the authority of AS 12.62, request a
5 state and national criminal record background check on each staff
6 member and each adult occupant of the facility. The facility operator
7 may employ or continue to employ a staff member only provisionally,
8 and may allow an adult occupant to reside in the facility only provi-
9 sionally, until the operator has reviewed the state and national
10 criminal record background check and has determined that the staff
11 member or adult occupant does not pose a risk of harm to a child or
12 dependent adult. A facility operator shall remove from the facility a
13 staff member or adult occupant whom the operator has determined poses
14 a risk of harm to a child or dependent adult.

15 (d) The department shall pay the cost of the state and national
16 criminal background check of a foster home applicant who cares for
17 children in state custody or cares for a dependent adult in state
18 protective care. The cost of any other state and national criminal
19 background check required under this section shall be paid by the
20 facility operator or the job applicant.

21 (e) In this section, "family child care home" means a small
22 nursery providing child care for six or fewer children who are not
23 related to the facility operator.

24 * Sec. 6. This Act takes effect immediately in accordance with AS 01.-
25 10.070(c).

1 exploitation of a minor, incest, indecent exposure, robbery, arson,
2 endangering the welfare of a minor, contributing to the delinquency of
3 a minor, distribution of child pornography, promoting prostitution,
4 and felony offenses involving distribution of controlled substances;
5 it also includes a conviction for a violation or attempted violation
6 of the laws of another jurisdiction if the offense would have been one
7 of the crimes listed in this paragraph if committed in this state;

8 * Sec. 3. AS 12.62.035(e)(2) is amended to read:

9 (2) "interested person" means a corporation, company,
10 partnership, firm, association, organization, business trust, or
11 society, as well as a natural person, that employs, enters into a
12 contract with, or receives an application for [SOLICITS THE] employ-
13 ment of a person to serve with or without compensation in a position
14 in which the person has or would have supervisory or disciplinary
15 power over a minor or a dependent adult;

16 * Sec. 4. AS 12.62.035 is amended by adding a new subsection to read:

17 (f) In addition to the information that may be disclosed under
18 (a) of this section, the commission may disclose the existence of an
19 outstanding warrant for the arrest of an individual if the warrant is
20 for a crime the conviction of which would indicate that the individual
21 might pose a risk of harm to a minor or a dependent adult.

22 * Sec. 5. This Act takes effect immediately in accordance with AS 01.-
23 10.070(c).

Version #2
Hein
4/10/86 ✓

Original sponsors: Ferguson, Kelly,
Faiks, et al

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 21 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to criminal background checks; and
7 providing for an effective date."

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

9 * Section 1. AS 12.62.035(a) is amended to read:

10 (a) Notwithstanding any other provision of law, an interested
11 person [AS DEFINED IN (e) OF THIS SECTION] may request from the com-
12 mission records of all convictions of an individual that indicate that
13 the individual might pose a risk of harm to a minor or a dependent
14 adult if the individual [INVOLVING CONTRIBUTING TO THE DELINQUENCY OF
15 A MINOR AND ANY SEX CRIMES OF A PERSON WHO] holds or applies for a
16 position in which the individual [PERSON] has or would have super-
17 visory or disciplinary power over a minor or dependent adult. A
18 request must be accompanied by a release signed by the individual.

19 The commission shall authorize the disclosure of the information to
20 the requesting interested person and shall provide a copy of the
21 information to the individual [PERSON] who is the subject of the
22 request.

23 * Sec. 2. AS 12.62.035(e)(1) is repealed and reenacted to read:

24 (1) "conviction of an individual that indicates that the
25 individual might pose a risk of harm to a minor or a dependent adult"
26 means a conviction for a violation or attempted violation of present
27 or former Alaska statutes regarding the offenses now designated as
28 murder, manslaughter, negligent homicide, assault, reckless endanger-
29 ment, kidnapping, sexual assault, sexual abuse of a minor, unlawful

1 exploitation of a minor, incest, indecent exposure, robbery, arson,
2 endangering the welfare of a minor, contributing to the delinquency of
3 a minor, distribution of child pornography, promoting prostitution,
4 and felony offenses involving distribution of controlled substances;
5 it also includes a conviction for a violation or attempted violation
6 of the laws of another jurisdiction if the offense would have been one
7 of the crimes listed in this paragraph if committed in this state;

8 * Sec. 3. AS 12.62.035(e)(2) is amended to read:

9 (2) "interested person" means a corporation, company,
10 partnership, firm, association, organization, business trust, or
11 society, as well as a natural person, that employs, enters into a
12 contract with, or receives an application for [SOLICITS THE] employ-
13 ment of a person to serve with or without compensation in a position
14 in which the person has or would have supervisory or disciplinary
15 power over a minor or a dependent adult;

16 * Sec. 4. AS 12.62.035 is amended by adding a new subsection to read:

17 (f) In addition to the information that may be disclosed under
18 (a) of this section, the commission may disclose the existence of an
19 outstanding warrant for the arrest of an individual if the warrant is
20 for a crime the conviction of which would indicate that the individual
21 might pose a risk of harm to a minor or a dependent adult.

22 * Sec. 5. This Act takes effect immediately in accordance with AS 01.-
23 10.070(c).

COMMITTEE REPORT

HOUSE

JUDICIARY

(7)

FURTHER: FINANCE

5/11/85

Date: May 17, 1986

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had CSSB 21 (HESS)

"An Act relating to criminal background checks; and providing for an effective date."

under consideration and recommends:

do pass

do not pass

do pass with attached amendments(s)

replace with CS for CSSB 21 (HESS)

same title
 new title

and recommends do pass

AND attaches a "Letter of Intent"

New Fiscal Note

reports it back without recommendation

Zero Fiscal Note Attached

referred to the _____

Committee

MEMBERS SIGNING

DO PASS

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

MEMBERS HAVING

OTHER RECOMMENDATIONS:

[Signature]
CHAIRMAN

MEMORANDUM

TO: HOUSE HESS COMMITTEE

FROM: NANCY BENNETT, COMMITTEE STAFF

DATE: APRIL 17, 1986

RE: HCS FOR CSSB 21 (HESS) - CRIMINAL HISTORY
BACKGROUND CHECKS.

You have a draft Committee Substitute before you which is very similar to the provisions of HB 308, which the HESS Committee introduced and passed last year. The bill is essentially the same as portions of HB 88, introduced by the Governor last year.

The bill draft solves several problems:

1. Deals with the immediate problem on background checks by expanding the list of crimes which can be released for a criminal history background check. You may recall testimony from last year that persons checked for school district hire have sometimes turned up with records of murder or prostitution - and that information may not be released at this time.
2. Allows release of information on outstanding warrants.
3. Includes dependent adults in the definition so that state grantees for adult protective services (developmentally disabled, mentally retarded and mentally ill) will be able to request background checks on employees. This was added at the request of Protection and Advocacy for the Developmentally Disabled (P.A.D.D.), who has received complaints from non-profit organizations providing services to dependent adults who cannot request checks under the existing statute because it is limited to people working with minors. These agencies have been told they can reduce their insurance premiums by completing these checks. The Department of Health and Social Services agrees that dependent adults are particularly susceptible to abuse and assault.
4. The fiscal impact of this version of the bill should be much less than for the Senate passed version because we are not mandating checks for any particular group.

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

POIICH H-05
JUNEAU, ALASKA 99811
PHONE: (907) 465-3170

DIVISION OF FAMILY AND YOUTH SERVICES

October 31, 1985

The Honorable M. Mike Miller
Alaska State House
House Judiciary
Room 122
Pouch V
Juneau, AK 99811

Dear Representative Miller:

Frank Barthel has briefed me on the House Judiciary Committee hearing on October 24, 1985 in Anchorage. I would have responded to the committee's questions sooner; however, I just returned to the office this week.

Presently when criminal history clearance checks are requested of foster parents and all adult members of the foster home plus administrators of residential facilities, a criminal history consent form signed by the applicant (see attached consent form) is sent to the state (central) office of the Division of Family and Youth Services. A designated state office clerk who has the responsibility of requesting and receiving criminal history information, gives the consent form a log number and logs the date the request was received, the date the consent form was sent to the Department of Public Safety (DPS) for a criminal clearance, and the date DPS responds. If there is no criminal history the original consent form is returned to the licensing worker. If a criminal history is received it is noted in the log book, the licensing worker is called and the charges, date of charges, and disposition of the case is stated over the phone. The consent form is xeroxed, the xeroxed copy plus the criminal history received from DPS is filed in the state office and the original consent form is mailed to the licensing worker. License workers, who review criminal history clearances, are trained and procedures are in place for confidentiality of records. Frank Barthel has been receiving a copy of the criminal history information. However, in order to have only one copy in our office the designated criminal history clerk will keep all criminal history records in a locked filing cabinet. Security of criminal history records is a concern of the division. Except for a few cases, (for example recently an applicant had three pages of criminal activity), the actual criminal record is not sent to the field workers.

On the division's consent form it is stated that one is not automatically denied a license because of a criminal record. Once a licensing worker receives word that an applicant has a criminal history the worker must examine the nature of the offenses, the number of offenses and when the

offenses occurred. The licensing worker will discuss the criminal history with the applicant and if the applicant has a probation officer, ask the latter his/her's assessment of the applicant. If the worker and the supervisor feel that an applicant has rehabilitated himself and is no longer a threat, a license may be issued. On the other hand if the record indicates potential risk to children the applicant is encouraged to reconsider applying for a foster home license or to resubmit a license application once the threat is no longer in the home. In some cases, once a person is asked to complete a criminal history consent form they either decline or they take the consent form home and never complete their application. If an applicant, who is a potential risk to children, proceeds with his application the licensing worker would hold further consultation with the worker's supervisor and possibly the regional manager. If denial of a license is agreed upon often the Department of Law is also consulted.

As for the expungement of records, the division would in many cases have no problem with destroying our copies of criminal history records once those records were, by statute, officially expunged. However, in some cases the division should maintain the records because the division's primary responsibility is the safety of children. For example, last year a child was sexually abused by a husband of an operator of a family child care home. The husband had been convicted and jailed for sexually abusing a child in another state. However, that particular state had a policy of expunging a criminal record if a convicted criminal demonstrated proper behavior for a specific length of time. The division learned of the husband's past criminal behavior, but was advised that a license could not be denied to the wife because officially the husband's criminal sexual abuse record did not exist. As a result, a young child suffered harm and the state was sued. Hence, if the division learns that an individual has the potential of sexually or physically abusing children that information should be kept on file. Should that individual apply for a foster home license or live in a home of a person applying for a foster home license the licensing worker would deny the applicant a license or devise a protection plan where the person has no contact with children.

As for day care operators, according to the DPS less than five child (day) care centers have requested criminal history checks under AS 12.62.035 in little over a year. The number of requests may increase, however, as the new child care facilities' regulations (7 AAC 50.120 - 7 AAC 50.275) go into effect. Under 7 AAC 50.205 (g) an individual may not be employed if the individual "has been convicted of a crime of violence or moral turpitude within the previous 10 years." Furthermore, the city of Soldotna is considering adopting an ordinance requiring criminal history clearances for employees of child care centers. Should other municipalities pass similar ordinances, there would be an increase in criminal history clearance requests. According to DPS, once they receive a the criminal history sheet they screen the criminal information and release the pertinent information allowable under AS 12.62.035. The child care operator must destroy the criminal history records six months after they receive the criminal information. No guidelines have been established as to how to

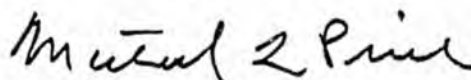
October 31, 1985

secure the records during the six month hold period; however, if the records are improperly used, the child care operator could be sued (see AS 12.62.060). Furthermore, DPS stamps the criminal history request form with the statement that the criminal history is confidential and misuse can result in a fine or imprisonment.

Except for sole proprietor, the board of directors does an employment check on all child care operators. The operator must furnish references which are then checked. Furthermore, the board of the child care center can, as an employer, request a AS 12.62.035 criminal history clearance on the administrator. The board would be subject to the same rules of confidentiality. The division does the employment check on a sole proprietor.

The division recognizes and agrees with the House Judiciary Committee's concern about the proliferation and confidentiality of criminal history records. The division trains and does everything within its power to protect these records. By statute and regulations, the child care operators must also maintain the records in a confidential matter or suffer the consequences.

Sincerely,



Michael L. Price
Director

MLP/FB/sa

Enclosures

cc: Hayden Kaden

Connie J. Sipe
Deputy Commissioner

Norma Lang
Special Assistant to the Commissioner

Pat O'Brien
SS Program Officer

LICENSING RECORD CLEARANCE REQUEST
ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF FAMILY AND YOUTH SERVICES

SS or YS
REGION _____
Worker _____
Field Office or
Private Agency _____

INSTRUCTIONS: Please read reverse side. Complete a separate request for each applicant and adult household member

APPLICANT/LICENSEE/ADULT HOUSEHOLD MEMBER INFORMATION:

LAST NAME FIRST NAME MIDDLE NAME JR., III, ETC.

ALSO KNOWN AS, ALIASES, MAIDEN NAME, PREVIOUS MARRIED NAME(S)

DATE OF BIRTH SEX SOCIAL SECURITY NUMBER

ADDRESS CITY STATE ZIP CODE

HAVE YOU OR ANY MEMBER OF YOUR HOUSEHOLD EVER BEEN CONVICTED OF A CRIME? YES NO
HAVE YOU OR ANY MEMBER OF YOUR HOUSEHOLD BEEN CHARGED WITH A CRIMINAL OFFENSE? YES NO

IF YES, PLEASE EXPLAIN BELOW: (INDICATE TYPE AND DATE OF CONVICTION OR CRIMINAL CHARGE)

HAVE YOU BEEN PREVIOUSLY LICENSED TO CARE FOR A CHILD(REN) OR AN ADULT(S)? IF YES, PLEASE INDICATE LOCATION AND TYPE OF CARE:

HAS THERE EVER BEEN A CASE OF SUBSTANTIATED ABUSE OR NEGLECT IN WHICH YOU OR ANY MEMBER OF YOUR HOUSEHOLD WERE INVOLVED? YES NO

I hereby authorize the Alaska Department of Health and Social Services, Division of Family and Youth Services to submit my name and descriptive information to the Alaska Department of Public Safety for a criminal history search. I also certify that the information I have given on this form is, to the best of my ability, true and correct.

SIGNATURE OF APPLICANT/ADULT HOUSEHOLD MEMBER DATE

RECORDS CLEARANCE: (DIVISION OF FAMILY AND YOUTH SERVICES REGIONAL OFFICE USE ONLY.)

PROTECTIVE SERVICES: NO YES (DETERMINATION ATTACHED)

PREVIOUS LICENSE: NO YES (LIST NUMBER AND LOCATION)

LAW ENFORCEMENT CLEARANCE:

LICENSING RECORD CLEARANCE REQUEST

Alaska Statute 47.35.010-080 and regulations for child foster homes, adult foster homes, residential child care facilities, and adult residential care facilities authorize the Division of Family and Youth Services to be satisfied that applicants for a foster home license and administrators of residential facilities are of reputable character, have sound judgement, are free from mental health problems, and are free from serious criminal history. In a foster home all members of the household 18 years or older must also be free of serious problems, including criminal history. If an adult joins a household during licensure, for an anticipated stay exceeding three weeks, a clearance request is to be submitted for that individual. The review of background records assists the Division in making a licensing determination. A failure on the part of an applicant to provide the Division with information and authorization requested on this form may be sufficient cause to deny issuance of a license.

There are two purposes of this form. First, the form will produce a Department of Public Safety check regarding the possible existence of an arrest resulting in a criminal charge and/or a criminal conviction record. Second, the form may produce a Division of Family and Youth Services file check regarding the possible existence of a substantiated child or adult abuse or neglect record. Division files also provide a check against current or previous licensing status of the applicant in the State of Alaska.

The existence of a criminal history record, or a substantiated child or abuse and neglect record does not necessarily disqualify an applicant for licensure. However, it does provide the Division with information which will be carefully evaluated to ensure that the applicant is able to meet licensing requirements.

If a license is denied, a renewal of a license is refused, or a license is revoked based upon a review of the records and a consequent determination of inability to provide adequate or appropriate care to persons being served in the licensed facility, the applicant or licensee will be furnished with a summary of findings on which the decision was made.

Under state statute and regulations child abuse or neglect and criminal history records are confidential with the exception of use in a licensing administrative or court hearing under the Alaska Administrative Procedures Act. This license record clearance form is treated as a confidential part of the licensing file. The Alaska Department of Public Safety affixes the following stamp in red to each form processed:

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

POUCH H-05
JUNEAU, ALASKA 99811
PHONE: (907) 465-3170

DIVISION OF FAMILY AND YOUTH SERVICES

March 28, 1985

The Honorable Max Gruenberg
House Hess
Pouch V
Juneau, AK 99811

Dear Representative Gruenberg:

This is in follow-up to the testimony of Pat O'Brien on House Bill 308 related to criminal history background checks and the conversation following the meeting between Representative Gruenberg and Ms. O'Brien of my staff.

One concern expressed by Ms. O'Brien during the testimony was that it would not be possible to obtain FBI criminal history clearances on foster home applicants and other adult members of a foster home prior to licensure in emergency child placement situations. A child may need protective placement in a community where no foster home is available. Committee response to the concern was that the law only requires the department to request the criminal history background search, not to receive the results of the search prior to licensure. Representative Gruenberg you offered to issue a letter of legislative intent to this effect.

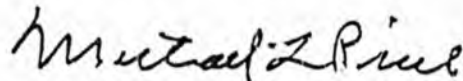
Representative Gruenberg and Pat O'Brien had a conversation following the meeting regarding the change in definition of an "interested person" in AS 12.62 to include individuals who contract for a service. The committee intent in including this provision was explained as giving parents the opportunity to obtain a criminal history background search on family child care operators and child care center employees. While the approach is innovative and may be the best that can be achieved at this time, it will not in most cases meet the needs of parents to reduce risk to their children in child care settings. Child care is difficult to find, particularly family child care homes. In all likelihood, if a parent asked for a criminal history background search on a family child care home operator, the parent would be told to take their child elsewhere. Second, there are up to six sets of parents utilizing a family child care home and consequently there is a potential for six parents to request a criminal history background search on the same family child care home provider. That number multiplies according to the number of licensed spaces in a child care center. Finally, in a family child care home, it is rarely the applicant caregiver but instead an adult member living in the home who poses the greatest risk to children in care. There is no provision in the law for the other adult members of the household to be subjected to a criminal history clearance.

March 28, 1985

The department appreciates the committee's recognition that most child foster homes serve children in state custody. The provision for payment for FBI criminal history searches in child foster homes will assist the division in obtaining and retaining foster homes. As discussed during and following the hearing, there are a number of serious complexities to implementing an FBI criminal records clearance that will place an additional work load on both the Department of Health and Social Services and the Department of Public Safety. A fiscal note is being prepared.

Thank you for your continuing interest in child protection and reducing risks to child in child care. Please let me know if I may provide any further information.

Sincerely,



Michael L. Price
Director

MLP:PJOB:paj

SECTIONAL ANALYSIS OF HOUSE BILL 308 - CRIMINAL HISTORY BACKGROUND CHECKS; EFD

- SECTION 1 Provides that criminal history background checks on individuals applying for a position working with children will disclose convictions for "crimes that might pose a risk of harm to a child" (HB 88)
- SECTION 2 In the definition of crimes that might pose a risk of harm to a child, the following crimes were removed from the list provided in HB 88: criminal non-support and driving while intoxicated. (HB 88)
- SECTION 3 Adds language to the definition of "interested person" to indicate that a person who enters into a contract with someone to be in a supervisory position with children may request a criminal background check on that person.
- SECTION 4 This section was section 9 in HB 88, the only change being that information on outstanding warrants could be given out only for the crimes listed in Section 2.
- SECTION 5 Amends the adoption statute to require a criminal background check on any person seeking to adopt a child. (Walsh suggestion)
- SECTION 6 Provides for mandatory criminal background checks on foster parent applicants (for every adult living in the home) both in-state and through the national computer. The cost of the check (estimated at \$20 for state and national) will be born by the department.
- SECTION 7 Immediate effective date.

U

COMMITTEE REPORT
HOUSE

(7)

FURTHER: JUDICIARY

3/20/85

Date: 26 March 1985

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had HB 308

"An Act relating to criminal background checks; and providing for an effective date."

under consideration and recommends:

[] do pass [] do not pass

[] do pass with attached amendments(s)

[] replace with CS for HB 308 (HESS) [] same tit [] new titl.

and recommends do pass

[] AND attaches a "Letter of Intent" [] New Fiscal Note [] Zero Fiscal Note Attached

[] reports it back without recommendation

[] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]
CHAIRMAN



Alaska State Legislature
House of Representatives
COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

OFFICIAL BUSINESS

POUC
JUNEAU, AK 99
465-37

LETTER OF INTENT

It is the intent of the House Health, Education and Social Services Committee, in passing Committee Substitute for HB 308, that the Revisor of Statutes shall make the appropriate changes in Sections 1 through 3 consistent with HB 183.

Representative Max F. Gruenberg, Jr., Co-Chair

Representative Niilo Koponen, Co-Chair

Representative Robin Taylor, Vice-Chair

Representative Katie Hurley

Representative David Thompson

Representative Robin Taylor

Representative Fritz Pettyjohn

Representative Alyce Hanley

POSITION PAPER

COMMITTEE SUBSTITUTE FOR HOUSE BILL 308 (HESS)

This bill relates to criminal background checks for persons supervising, caring for or adopting children.

Secs. 1, 2 and 3

Existing AS 12.62.035 authorizes the release of certain criminal conviction records for persons who hold, or are applying for, paid or volunteer positions which would give them supervisory or disciplinary power over a child. Sections 1, 2 and 3 of this bill expand the types of convictions that may be reported to include all crimes that might pose a risk to children. Section 3 allows the state to inform an inquiring employer if there is a pending warrant for the arrest of the employee. These three sections contain the essential elements in the bill introduced by the Governor (HB 38) and so have the continuing support of the administration.

Secs. 4 and 5

These sections would require a petitioner for an adoption and an applicant for a child or adult foster home license be subject to a criminal history background search by the Department of Health and Social Services prior to the adoption or, in the case of foster care, prior to license issuance.

The department strongly supports reducing risk to adoptive children, foster children and dependent adults in foster care. There are problems with criminal background checks through the fingerprinting process. The Governor's Criminal Justice Working Group recommended that criminal history background checks for licensee's not be included in the administration's child protection package until some of those procedural and legal problems could be resolved. Concerns expressed include:

- the high cost of fingerprinting; there is a \$12.00 charge for the FBI clearance and an estimated \$8.00 state processing charge. These costs would impact local police departments and the Department of Public Safety;
- logistics costs associated with obtaining fingerprints particularly in remote locations both for the Department of Public Safety and the Department of Health and Social Services;
- the Department of Public Safety has stated that the rejection of unacceptable fingerprints runs as high as 20% causing extensive delays in the process;
- even if the fingerprints are acceptably rolled, up to ten weeks is required for processing for results;

- results may be as long as three months out-of-date depending on FBI processing timeframes;
- some professionals have raised civil liberties questions regarding fingerprinting.

Because these issues have been raised, the department wishes to advise the committee of the possible difficulties and hardships of such a new policy.

With regard to criminal history clearance on adoptive homes, there are an estimated 800 non-stepparent adoptions each year. Most of those adoptions are private adoptions handled by attorneys. Only one quarter of all adoptions involve studies by the Department of Health and Social Services or licensed private adoption agencies. Currently the department is not involved in the other 600 private adoptions per year, other than to receive notice from the petitioners under AS 25.23.100 at least 20 days before the hearing. At this point, DHSS has no tracking system on the notices for private adoptions. The department would need to notify attorneys of this new requirement and establish a tracking system to allow time for processing the criminal history background clearances. The proposed statute does not require the court to delay the adoption pending the criminal history background check, consequently many adoptions would be final before receipt of the check results. The 20 day notice period coupled with a ten week processing period should a court desire the results of the FBI records check would delay the adoption proceedings. Finally, the department is not certain that the state can legally release FBI records to the court or adoptive parties under federal regulations. The Department of Public Safety should be consulted on confidentiality provisions.

Presently, the Division of Family and Youth Services within the department requires a criminal history background check to be completed by all applicants for a foster home license and all adult members of a foster home household. This is a state, not an FBI, criminal history records clearance. The authority for the department is contained in AS 12.62.010, AS 12.62.030, and 6 AAC 60.070(c). Under this authority the Division of Family and Youth Services has a users agreement to access state criminal history background checks based on name, social security number and birthdate rather than fingerprinting. Sec. 5 of this bill would not withdraw the department's current ability to do state criminal history background checks, but would require that a new system of fingerprinting and obtaining FBI record checks be utilized prior to licensure issuance. Presently the department is receiving criminal history hits on approximately 6% of all the applicants and adults residing in foster home. Most criminal history information obtained on applicants does not pose a substantial risk to children. The criminal histories give department personnel an opportunity to discuss the circumstances and rehabilitation following a violation. For example, there may be an adult son in the home with substantial numbers.

Position Paper
CS HB 308
Page 3

of violations. In these cases the criminal history background checks allow the department an opportunity to counsel those persons out of applying for foster care until the son is no longer residing in the home. In only two cases has a license been denied based on criminal history background findings. Current processing under the state system runs up to 30 days.

The department currently issues provisional licenses prior to obtaining criminal history background checks because of emergency situations where a child must be placed before the licensing study can be completed. In these cases references are obtained, a visit is made to the home and a signed application is completed but there is no time for a criminal history clearance. When a child has been removed from an unsafe home and there is no licensed foster home available to take that child, issuance of a license under an emergency condition is appropriate. The department would need to continue that practice pending FBI criminal history clearances.

Recommendations

The department urges passage of Secs. 1, 2 and 3 of this bill to provide ability of employers supervising children to obtain criminal history background checks on their employees. The costs of Secs. 4 and 5 of the bill are not in the Governor's proposed FY 86 budget.

RECOMMENDED:

Michael L. Price
Michael L. Price, Director
Division of Family
and Youth Services

DATE:

March 28, 1985

APPROVED:

John R. Pugh
John R. Pugh, Commissioner
Department of Health
and Social Services

DATE:

4/1/85

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: 3/28/85

REQUEST

Bill/Resolution No.: CS HB No. 308
 Title: An Act relating to back-
 around checks
 Sponsor: HESS
 Requestor:
 Date of Request: 3/26/85

FISCAL DETAIL

Agency Affected: Health and Social Services
 Program Category affected: Social Services
 BRU, Program or Subprogram(s) Affected: Social Services BRU - Southcentral, Northern and Central Office Components

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		76.1	79.1	82.3	85.6	89.0
200 TRAVEL		6.6	6.9	7.1	7.4	7.7
300 CONTRACTUAL		37.4	29.1	30.3	31.5	32.7
400 SUPPLIES		1.2	1.3	1.3	1.4	1.4
500 EQUIPMENT		6.7				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		128.0	116.4	121.0	125.9	130.8
CAPITAL		-0-				
REVENUE		-0-				

FUNDING: (Thousands of Dollars)

GENERAL FUND	128.0	116.4	121.0	125.9	130.8
FEDERAL FUNDS					
OTHER					
TOTAL	128.0	116.4	121.0	125.9	130.8

POSITIONS:

FULL-TIME	1	1	1	1	1
PART-TIME	2	2	2	2	2
TEMPORARY	-0-				

ANALYSIS: Attach a separate page if necessary

See Attached

Prepared By: Michael L. Price Phone: 465-3170
 Division: Family and Youth Services Date: 3/28/85

Approved by Commissioner: John Day Date: 4/1/85
 Agency: _____ JCC

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget

IV. ANALYSIS

A. Assumptions

This legislation would require the department to implement FBI criminal record checks which include fingerprinting for adoptive parents and foster home license applicants and all adult members of a foster home. Because no system exists for this process and because there are numerous legal and logistics problems in implementing it, a full time professional position, Social Worker IV, will be required in the Central Office to work closely with the Department of Public Safety, division field offices, private adoption agencies and the Alaska Bar Association to secure implementation. In addition there will need to be extensive work with the Department of Law regarding confidentiality provisions and potential litigation. There are currently 1,016 child and adult foster homes with an average of 2.3 adults in each home. Public Safety has advised that we process clearances at each biennial licensure evaluation. With a 15% turnover rate this will result in 1,725 clearances in foster homes per year at \$20 per clearance. (\$12.50 FBI processing) (\$7.50 for contracted state processing). The 800 new adoptions per year x 2 adults will not require fingerprint processing charges. There will be a handling burden on offices in Fairbanks and Anchorage, requiring two permanent part-time positions, Clerk Typist III's, in those offices.

B. Program Summary

New positions required by this legislation will be as follow:
 Social Worker IV in Juneau;
 Clerk Typist III, permanent part-time, one each in Anchorage and Fairbanks

C. Computations

Personal Services - Social Worker IV	\$ 48.8
Clerk Typist III	27.3
Travel	6.6
Contractual	37.4

1,016 x 15% divided by 2 x 2.3 =		
1,344 x \$20.00	=	\$26,880
Space Expense for S.W.		4,950
Space Expense for CT	2,250 x 2 =	4,500
General Contractual		1,100
		\$37,430

Supplies	1.2
Equipment - first year only	6.7
	\$128.0

Note: For successive fiscal years, space would be budgeted by Department of Administration. Computations for successive fiscal years at 4%.

D. Economic Impact

There will be no impact on the State economy.

E. Impact On Local Governments

There will be an economic impact on some local police departments.

1.	POSITION TITLE SOCIAL WORKER IV			
2.	TYPE OF POSITION PTP	STAFF MONTHS 12	RP NUMBER	FCM NUMBER
3.	CONTINUATION LEVEL		ADDITION	
4.	TYPE OF EXPENDITURE			AMOUNT
	1	2		3
	PERSONAL SERVICES			
5.	Salary	37.4		
6.	Benefits	11.4		
7.	Supplemental Benefits			
8.	Fixed Benefits			
9.	TOTAL PERSONAL SERVICES	01		48.8
10.	Travel	02		6.6
11.	Contractual	03		5.4
12.	Commodities	04		.4
13.	Equipment	05		1.5
14.	Other			
15.	TOTAL COST			62.7

RANGE/STEP 18A	ORG. UNIT CGU	PAGE/LINE	GOV.	APPROV.	DISAST.
BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT	LEG.		

JUSTIFICATION

Personal Services based on FY 86 PAC'S.

Travel based on 2 trips annually to the following:
From Juneau to Bethel, Nome, Ketchikan, Anchorage and Fairbanks.

Contractual, Supplies and Equipment based on FY 86 Budget submission data.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		C.F. Match 1003	
18.		General Funds 1004	62.7
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR BSH USE ONLY
KEY NUMBER _____

REQUEST FOR
NEW POSITION

AGENCY Health and Social Services
Social and Economic Assistance
PROGRAM for the General Population

BRU Social Services

COMPONENT Central Office

FY 86

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1.	POSITION TITLE Clerk Typist III				RANGE/STEP BA	ORG. UNIT GGU	PAGE/LINE	COV.	APPROV.	DISAPP.		
2.	TYPE OF POSITION PPT	STAFF MONTHS 6	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.				
3.	CONTINUATION LEVEL				JUSTIFICATION							
4.	TYPE OF EXPENDITURE				Personal Services calculations based on PAC'S. Calculations for Contractual, Supplies and Equipment based on FY 86 Budget submission.							
	1		2								3	
	PERSONAL SERVICES											
5.	Salary		9.8									
6.	Benefits		2.6									
7.	Supplemental Ben' s											
8.	Fixed Benefits											
9.	TOTAL PERSONAL SERVICES		01								12.4	
10.	Travel		02								-0-	
11.	Contractual		03								2.6	
12.	Commodities		04								.4	
13.	Equipment		05								2.6	
14.	Other											
15.	TOTAL COST										18.0	
	RECEIPT CODE	FUNDING SOURCE										
16.		Federal Receipts 1002										
17.		G.F. Match 1003										
18.		General Funds 1004		18.0								
19.		I-A Receipts 1005										
20.		Program Receipts 1028										
21.		Other										
FOR USE ONLY												
KEY NUMBER _____												

**REQUEST FOR
NEW POSITION**

AGENCY Health and Social Services
Social and Economic Assistance
 PROGRAM for the General Population

 BRU Social Services

 COMPONENT Southcentral Region

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FY 86

1.	POSITION TITLE Clerk Typist III				RANGE/STEP 8A	BARG. UNIT CGU	PAGE/LINE	GOV.	APPROV.	DISAJT.
2.	TYPE OF POSITION PMT	STAFF MONTHS 6	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE				Personal Services calculation based on PAC'S.					
	1		2		3					
	PERSONAL SERVICES				Calculations for Contractual, Supplies and Equipment based on FY 86 Budget submission.					
5.	Salary		11.0							
6.	Benefits		3.9							
7.	Supplemental Benefits									
8.	Fixed Benefits									
9.	TOTAL PERSONAL SERVICES		01		14.9					
10.	Travel		02		-0-					
11.	Contractual		03		2.6					
12.	Commodities		04		.4					
13.	Equipment		05		2.6					
14.	Other									
15.	TOTAL COST				20.5					
	RECEIPT CODE		FUNDING SOURCE							
16.			Federal Receipts 1002							
17.			G.F. Match 1003							
18.			General Funds 1004		20.5					
19.			I-A Receipts 1005							
20.			Program Receipts 1028							
21.			Other							
FOR B&M USE ONLY KEY NUMBER _____										

REQUEST FOR
NEW POSITION

AGENCY Health and Social Services
Social and Economic Assistance
PROGRAM for the General Population

BRU Social Services

COMPONENT Northern Region

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FY 86

POSITION PAPER

COMMITTEE SUBSTITUTE for SENATE BILL 21 (HESS)

This bill relates to criminal background checks for persons supervising, caring for or adopting children.

Secs. 1, 2 and 3

Existing AS 12.62.035 authorizes the release of certain criminal conviction records for persons who hold, or are applying for, paid or volunteer positions which would give them supervisory or disciplinary power over a child. Sections 1, 2 and 3 of this bill expand the types of convictions that may be reported to include all crimes that might pose a risk to children. Section 3 allows the state to inform an inquiring employer if there is a pending warrant for the arrest of the employee. These three sections contain the essential elements in the bill introduced by the Governor (HB 88) and so have the continuing support of the administration.

Secs. 4 and 5

Section 4 would require a criminal history background search on all petitioners for adoption.

Section 5 would require a criminal history background search on an applicant for a facility license, as defined in AS 47.35, or for facility employment. Either the Department of Health and Social Services or the facility would request the criminal clearance prior to license issuance or employment on a permanent status.

The department strongly supports reducing risk to adoptive children, foster children, children in child care facilities and dependent adults in foster care. There are problems with criminal background checks through the fingerprinting process. The Governor's Criminal Justice Working Group recommended that criminal history background checks for licensee's not be included in the administration's child protection package until some of those procedural and legal problems could be resolved. Concerns expressed include:

- the high cost of fingerprinting; there is a \$12.00 charge for the FBI clearance and an estimated \$8.00 state processing charge. These costs would impact local police departments and the Department of Public Safety;
- logistics costs associated with obtaining fingerprints particularly in remote locations both for the Department of Public Safety and the Department of Health and Social Services;