

GENERAL INVESTIGATIVE DIVISION  
CONFIDENTIAL FILED  
1903-1900 8072  
3259 HJUD HB 3 - HB 17 135



Official Business

# Alaska State Legislature

House of Representatives

Representative Mike Szymanski


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While in Session:  
Pouch V  
State Capitol  
Juneau, Alaska 99801

January 22, 1985

TO: Representative Katie Hurley  
Chairperson, House State Affairs Committee

FROM:  Representative Mike Szymanski

SUBJECT: House Bill 3

The intent of HB 3 is to provide law enforcement officials another tool for use in combatting drunk driving. There can be little doubt that the presence of open alcoholic beverage containers in a vehicle increases the probability of consumption while driving and correspondingly, the possibility of an alcohol related accident.

Currently, Alaska has no open container statute on the books. For while 13AAC 02 545 prohibits drinking while driving, nothing prohibits open alcoholic beverage containers in the passenger compartments of moving vehicles.

Nineteen other states have an open container law (see attached analysis), some of which have been in existence since the 1930's. House Research contacted Utah and Hawaii where laws were recently enacted.

Utah enacted its law in 1981 in an effort to alleviate confusion resulting from the inconsistency of numerous local ordinances governing drinking and driving. Hawaii, which also enacted its law in 1981, did so in response to police accident reports which frequently cited empty alcohol containers at the scene.

Given Alaska's disproportionate number of alcohol related accidents, I would greatly appreciate your consideration of this important measure.

From: U.S. Department of Transportation, National Highway  
 Traffic Safety Administration  
 "Alcohol-Highway Safety: A Digest of State Alcohol-  
 Highway Safety Related Legislation 1983"

ANALYSIS BY STATES—HIGH-INTEREST LEGISLATION (Continued)

State	Dram Shop	Open Container	Community Service	Mandatory Jail—1st Offense	Mandatory Jail—2nd or Other Offense
ALABAMA	Statute				
ALASKA	Statute				
ARIZONA	No		X	X	X
ARKANSAS	No				
CALIFORNIA	No	X			X
COLORADO	Statute		X		
CONNECTICUT	Statute				X
DELAWARE	No				
DISTRICT OF COLUMBIA	Case law				
FLORIDA	Case law		X		
GEORGIA	Statute				
HAWAII	Case law	X	X		
IDAHO	Case law	X			
ILLINOIS	Statute	X			
INDIANA	Case law				X
IOWA	Statute				X
KANSAS	No	X			
KENTUCKY	Case law				X
LOUISIANA	No		X	X	X
MAINE	Statute			X	X
MARYLAND	No	X			
MASSACHUSETTS	Statute				
MICHIGAN	Statute	X	X		
MINNESOTA	Statute	X			
MISSISSIPPI	Case law				
MISSOURI	Case law				
MONTANA	No	X			X
NEBRASKA	No				X
NEVADA	No				X
NEW HAMPSHIRE	No				X
NEW JERSEY	Case law		X		
NEW MEXICO	Case law				X
NEW YORK	Statute				
NORTH CAROLINA	No	X			X
NORTH DAKOTA	Statute	X			
OHIO	Statute	X			

ANALYSIS BY STATES—HIGH-INTEREST LEGISLATION (Continued)

State	Dram Shop	Open Container	Community Service	Mandatory Jail—1st Offense	Mandatory Jail—2nd or Other Offense
OKLAHOMA	No	X			
OREGON	Statute	X			
PENNSYLVANIA	Statute		X	X	X
PUERTO RICO	No				
RHODE ISLAND	Statute				
SOUTH CAROLINA	No	X			
SOUTH DAKOTA	No	X			
TENNESSEE	Case law		X	X	X
TEXAS	No				
UTAH	Statute	X	X		
VERMONT	Statute				
VIRGINIA	No				X
WASHINGTON	Case law	X		X	X
WEST VIRGINIA	No		X	X	X
WISCONSIN	No	X			
WYOMING	Statute			X	X
	Case law-12 Statute -20	19	11	8	20

2-4

Introduced: 1/14/85  
Referred: State Affairs and  
Judiciary

BY SZYMANSKI, BOUCHER, DUNCAN,  
M.M.MILLER AND NAVARRE

1 IN THE HOUSE

2 HOUSE BILL NO. 3

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 open containers of alcoholic  
7 beverages in motor vehicles."

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

9 Section 1. AS 28.35 is amended by adding a new section to article 2  
10 to read:

11 Sec. 28.35.029. OPEN CONTAINER. (a) A person may not operate a  
12 motor vehicle when there is an open bottle can or other receptacle  
13 containing an alcoholic beverage in the passenger compartment of the  
14 vehicle.

15 (b) In this section

16 (1) "motor vehicle" means a vehicle for which a driver's  
17 license is required;

18 (2) "open" includes having a broken seal;

19 (3) "passenger compartment" means the area of a motor  
20 vehicle normally occupied by the driver and passengers and includes a  
21 utility or glove compartment accessible to the driver or a passenger  
22 while the vehicle is being operated.

23 (c) A person who violates (a) of this section is guilty of an  
24 infraction.




ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Pouch Y, State Capitol  
Juneau, Alaska 99811  
(907) 465-3991

February 14, 1985

MEMORANDUM

TO: Representative Mike Szymanski

FROM: Sharman Haley   
Legislative Analyst

RE: Open Container Laws in Other States  
Research Request 85-174

Per your request, I have reviewed statutes from other states with open container laws to determine how they apply to vehicles that do not have a trunk, such as stationwagons, hatchbacks, or recreational vehicles.

North Dakota, Minnesota, Wisconsin, Washington, California, Hawaii, and Oregon statutes have language similar to HB 3, making it unlawful to have an open container of alcoholic beverage in the passenger area of a motor vehicle. The cargo area of a stationwagon or hatchback is included in the prohibition unless it is actually enclosed, for example, the spare tire compartment. Washington, California, Hawaii, and Oregon statutes specifically exclude living quarters in recreational vehicles, campers, or motor homes. The Kansas statute is similar in scope but worded differently from these four. A captain in the Oregon State Highway Patrol stated that officers in Oregon are encouraged to use their discretion and not apply the law strictly when there is no reason to believe that the alcohol is being consumed; for example, a half bottle of wine, corked and stowed out of reach among picnic supplies in the cargo area of a stationwagon occupied by sober adults, would not be cause for citation.

North and South Carolina statutes specifically allow open containers to be transported in the cargo area or the area behind the last upright seat in a stationwagon, hatchback, or similar vehicle. Michigan law provides that a container of alcohol on which the seal is broken may be transported in a vehicle without a trunk if the container is encased or enclosed. The South Dakota statute simply provides that the open container must be "so removed" that no occupant has access to it while the vehicle is in motion.

Representative Szymanski  
February 14, 1985  
Page Two

Idaho, Montana, and Illinois prohibit the transport of open containers of alcohol altogether, even in the trunk.

Copies of the referenced statutes are attached. If you have further research needs, please contact us.

SH

Attachments

or club licensees duly authorized to sell beer under the provisions of this code;

(c) exhibit, publish, or display or permit to be exhibited, published, or displayed any form of advertisement or any other announcement, publication, or price list of or concerning liquor or where or from whom the same may be had, obtained, or purchased unless permitted to do so by the rules of the department and then only in accordance with such rules.

(2) This section shall not apply to:

(a) the department, any act of the department, any state liquor store; or

(b) the receipt or transmission of a telegram or letter by any telegraph agent or operator or post-office employee in the ordinary course of his employment as such agent, operator, or employee.

History: En. Sec. 65, Ch. 105, L. 1933; re-en. Sec. 2815.124, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1974; amd. Sec. 1, Ch. 274, L. 1975; Sec. 4-170, R.C.M. 1947; redes. 4-3-103 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-103.

**16-3-104. Common carriers to purchase beer from brewer or wholesaler.** It shall be unlawful for the operator of any common carrier or its employees to make sale of or dispose of any beer or malt liquors except such as shall have been lawfully acquired or purchased from a duly licensed brewer or wholesaler.

History: En. Sec. 37, Ch. 106, L. 1933; re-en. Sec. 2815.41, R.C.M. 1935; Sec. 4-338, R.C.M. 1947; amd. and redes. 4-3-104 by Sec. 67, Ch. 387, L. 1975; R.C.M. 1947, 4-3-104.

**16-3-105. Restrictions on liquor in hotels.** Except in the case of liquor or beer kept or consumed in premises for which a license has been granted under the law and which form a part of a hotel, no person shall:

(1) keep or consume liquor in any part of a hotel other than a private guest room;

(2) keep or have any liquor in any room in a hotel unless he is a bona fide guest of the hotel and is duly registered in the office of the hotel as an occupant of that room.

History: En. Sec. 64, Ch. 105, L. 1933; re-en. Sec. 2815.123, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1974; Sec. 4-169, R.C.M. 1947; redes. 4-3-105 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-105.

**16-3-106. Conveyance of liquors — opening liquor during transit forbidden.** (1) It shall be lawful to carry or convey liquor to any state store and to and from any warehouse or depot established by the department for the purposes of this code, and when permitted to do so by this code and the rules made thereunder and in accordance therewith, it shall be lawful for any common carrier or other person to carry or convey liquor sold by a vendor from a state store or beer, when lawfully sold by a brewer, from the premises wherein such beer was manufactured or from premises where the beer may be lawfully kept and sold to any place to which the same may be lawfully delivered under this code and the rules made thereunder.

(2) No common carrier or any other person shall open, break, or allow to be opened or broken any package or vessel containing liquor or drink or use or allow to be drunk or used any liquor therefrom while being carried or conveyed.

History: En. Sec. 17, Ch. 105, L. 1933; re-en. Sec. 2815.76, R.C.M. 1935; Sec. 4-122, R.C.M. 1947; amd. and redes. 4-2-103 by Sec. 12, Ch. 387, L. 1975; R.C.M. 1947, 4-2-103.

**16-3-201. Power other than** to purchase, sell or dispose of or character of article other than in the manner prescribed. History: En. Sec. 5, L. 1933; amd. and redes. 4-3-201 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-201.

**16-3-202. Be** the department is authorized to purchase. History: En. Sec. 4, L. 1937; amd. Sec. 1, Ch. 152, L. 1974; Sec. 4-170, R.C.M. 1947; redes. 4-3-202 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-202.

**16-3-203 thro**

**16-3-211. Mo** premises. Every person who purchases before the 15th day of the month described by the department the amount of beer more than the amount of beer purchased in the previous month and at any time to make a check and otherwise check the content of beer manufactured. History: En. Sec. 7, L. 1937; amd. and redes. 4-3-203 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-203.

**16-3-212. Br** for any brewer to sell to a wholesaler. History: En. Sec. 9, L. 1937; R.C.M. 1935; Sec. 4-313, L. 1974; 4-3-204.

**16-3-213. Br** exception. It shall be lawful for any person to sell any permit to sell any declared intention of beer; provided that no person shall prohibit breweries from selling in original package. History: En. Sec. 11, L. 1947; redes. 4-3-205 by Sec. 120, Ch. 387, L. 1975; R.C.M. 1947, 4-3-205.

**16-3-214. Be** restrictions contained in the United States of America.

# ILLINOIS

## 95½ § 11-501 ILLINOIS VEHICLE CODE Note 78 Vehicle Code § 11-501

settle report or certify a bystander's report of proceedings. People v. Ruzin- 270.

### § 11-502. Transportation of alcoholic liquor—Penalty

No person shall transport, carry, possess or have any alcoholic liquor in or upon or about any motor vehicle except in the original package and with the seal unbroken. A person convicted of violating this Section shall be fined not less than \$25 nor more than \$500.

P.A. 76-1586, § 11-502, eff. July 1, 1970.

#### Historical Note

This section as enacted carries forward the identical text of former section 111.2 of chapter 95½.

The first sentence of this section was originally enacted as part of the Liquor Control Act, effective January 31, 1931.

Repealed in 1967, it was at the same time reenacted as section 111.2. The

second sentence was also added in the year.

#### Prior Laws:

Laws 1933-34, Second Sp.Sess., p. art. VI, § 19.  
Ill.Rev.Stat.1965, ch. 43, § 110.  
Laws 1967, p. 1535, § 1 adding § 111.  
Ill.Rev.St.1967, ch. 95½, § 111.2.

#### Cross References

Bail for illegal transportation of alcoholic liquor, see ch. 110A, § 526.  
Court appearance required for violation of this section, see ch. 110A, § 551.  
Driver's license in lieu of bail see ch. 110A, § 526.

#### Law Review Commentaries

Problem of the drinking driver. Roger C. Cramton, 1968, 34 A.B.A.J. 995.

#### Library References

Automobiles § 321-359.  
U.S. Motor Vehicles §§ 585 et seq., 596 et seq.

I.L.P. Automobiles and Motor Vehicles § 339.

#### Notes of Decisions

Construction and application of prior laws 1  
Constructive possession 2  
Evidence 3  
Sentence and punishment 4

"penal" in the same sense as a criminal statute. People v. Graf, 1968, 93 Ill. App.2d 13, 235 N.E.2d 886.

The act prohibited in ch. 43, § 110 (repealed) providing that no person shall transport, carry, possess, or have any alcoholic liquor in or upon or about any motor vehicle except in original package with seal unbroken was not a crime in the absence of specific description of prohibited conduct as an offense in this act or in any other statute and in view of fact that no penalty for violation of the section was made part thereof or any other section of the Draft Shop

#### 1. Construction and application of prior laws

Chapter 43, § 110, (repealed. Now this section) was "penal" only insofar as the act imposed civil liability without fault for damages upon dram shop keeper and owner of real estate wherein the dram shop was located; the act was not "penal"

REC

see, now, second sentence of the act. Id.

under Dram Shops Act, ch. 43, (repealed) was not a criminal offense for transporting alcoholic liquor in a motor vehicle except in the original package with seal unbroken was not made a crime as required by the criminal code. Id. § 1-7, in effect authorizing imprisonment for not exceeding one year, or a fine not exceeding \$1,000, or both, if no penalty otherwise provided. Id.

#### 2. Constructive possession

To apply doctrine of constructive possession in automobile of liquor without license, there must be a showing that defendant had immediate and exclusive control of area where items were possessed were situated. People v. 1969, 116 Ill.App.2d 252, 252 N.E.2d 1112.

#### 3. Evidence

Evidence that defendant guest in automobile of front seat of parked automobile between owner-driver and deputy sheriff arrested and his relatives, in automobile in warrants and placed defendant

### § 11-503. Reckless

(a) Any person who drives a motor vehicle in disregard for the safety of others.

(b) Every person convicted of violating this section upon a first conviction by imprisonment for not more than 90 days or a fine of not more than \$500, or both, and on a second conviction by imprisonment for not more than 6 months, or by a fine of not more than \$1,000, or both.

P.A. 76-1586, § 11-503, eff.

Except for the increase in the maximum fine for the first offense to \$25 made by the 1967 amendment, former section 145 of Chapter 111 is identical with the subsection 145 as enacted in 1945.

Compiler's notes. Section 804-A of S.L. 1939, ch. 222, added by S.L. 1939, ch. 217, § 1, and providing that any person may lawfully possess and store alcoholic liquors lawfully purchased for the personal use of himself, his family and guests, was repealed by S.L. 1947, ch. 178, § 3.

Collateral References.

45 Am. Jur. 2d, Intoxicating Liquors, §§ 7, 18  
48 C.J.S., Intoxicating Liquors, §§ 7, 10.

23-505. Transportation of alcoholic beverages. — Alcoholic liquor lawfully purchased may be transported, but no person shall break open, or allow to be broken or opened any container of alcoholic liquor, or drink, or use, or allow to be drunk, or used any alcoholic liquor therein while the same is being transported. [1939, ch. 222, § 805, p. 465.]

Collateral References.

45 Am. Jur. 2d, Intoxicating Liquors, § 343.

23-506. Permissive uses subject to regulation. — Any person shall have the privilege of the permissive uses hereinbefore referred to in this article without payment of fee, subject to such reasonable general regulations as the dispensary may promulgate for the purpose of preventing any abuses of the privileges thereby permitted. [1939, ch. 222, § 806, p. 465.]

Compiler's notes. For words "this article" see compiler's notes, § 23-501.

Collateral References.

45 Am. Jur. 2d, Intoxicating Liquors, §§ 57, 61.

23-507. Manufacturers' licenses. — The dispensary may grant a license to a manufacturer of alcoholic liquor for sale to the dispensary and to customers outside of the state, subject to such regulations as the dispensary may adopt. The fee for such permit shall be \$100. [1939, ch. 222, § 807, p. 465.]

Collateral References.

45 Am. Jur. 2d, Intoxicating Liquors, §§ 41, 48, 56, 127.  
48 C.J.S., Intoxicating Liquors, § 125.

23-508. Manufacturer's bond. — As a condition precedent to the issuance of a manufacturer's license, the applicant shall post a bond, written by a surety company authorized to do business in Idaho, in the penal sum of \$1,000, conditioned for the faithful observation of the provisions of this act and the regulations of the dispensary promulgated thereunder. For a violation of the conditions thereof, said bond shall be forfeited to the state of Idaho, and any recovery thereon shall be covered into the liquor fund. [1939, ch. 222, § 808, p. 465.]

Compiler's notes. The words "this act" refer to S.L. 1939, ch. 222, compiled herein as §§ 23-101 — 23-807.

23-509. No manufac liquor of any testing or sa

Collateral Refe  
45 Am. Jur  
§§ 247, 265.  
48 C.J.S., Int

23-510. In power at all hereunder. [

23-511. [Re

Compiler's n  
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23-512. S and regulati of alcoholic  
(a) To a re mechanical  
(b) To a l practitioner medicinally  
(c) To a pe for administ  
(d) To a pe experiments  
(e) For oth specifically p  
296, § 3, p.

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1963, ch. 296  
23-511 respecti

23-513. 7 the dispensi [1939, ch. 22

23-514. 7 subject to be property; n alienable or applicant ar the same. T

# SOUTH DAKOTA

35-1-9

ALCOHOLIC BEVERAGES

**35-1-9. Storage of beverages restricted to licensed premises — Exceptions.** No licensee under this title shall keep or store any alcoholic beverages at any place within the state other than on the premises where he is authorized to operate, except that any such licensee may store such alcoholic beverages in a warehouse licensed under § 35-4-44 or with a bonded warehouse which has qualified under § 35-4-45, such storage to be subject to such rules and regulations as may be issued by the secretary in compliance with chapter 1-26 with reference thereto, and except that as to localities where there is no such bonded warehouse, the secretary may by rules and regulations adopted in compliance with chapter 1-26 provide for storage of malt beverages.

Source: SDC 1939, § 5.0120; SL 1971, ch 211, § 11; revised pursuant to SL 1972, ch 15, § 4.

**Cross-References.**

Distiller's and bonded warehouses storage in, §§ 35-4-44, 35-4-45.  
 Rules and regulations, procedure for adoption, §§ 1-26-4 to 1-26-14.

**35-1-9.1. Possession of unsealed package in vehicle as misdemeanor.** It is a Class 2 misdemeanor for any person to have a package or any receptacle containing an alcoholic beverage in his possession in a motor vehicle unless the seal of the original package remains unbroken or the alcoholic beverage is so removed that no occupant of the motor vehicle shall have access to it while the vehicle is in motion.

Source: SL 1935, ch 134, § 29; SDC 1939, § 5.0227 (1); SDCL, § 35-4-87; SL 1971, ch 211, § 4, 1977, ch 190, § 124.

**Cross-References.**

Punishment of classified misdemeanors, § 22-6-2.

**Opinions of Attorney General.**

Possession of unsealed package in automobile on highway unlawful, Report 1949-50, p. 370.

**Collateral References.**

Construction and validity of statute or ordinance making it an offense to consume, possess or have alcoholic beverages in opened package in motor vehicle, 35 ALR 3d 1418; 57 ALR 3d 1071.

**35-1-10. Severability of provisions.** If any section, part, or provision of this title, or the application thereof to any party or class, or to any circumstance, shall be held to be invalid for any cause whatsoever, the remainder of this title or the application to parties or circumstances other than those as to which it is held to be invalid, shall not be affected thereby and shall remain in full force and effect as though no part thereof had been declared to be invalid.

Source: SL 1935, ch 134, § 49; SDC 1939, § 5.0123.

## CHAPTER 35-2

### LICENSING POLICIES AND PROCEDURES

Section 35-2-1      Application forms and verification      Information and eligibility shown

- 35-2-1.1      Application
- 35-2-1.2      Application disapproval
- 35-2-2      Fee account
- 35-2-2.1      Agreement
- 35-2-3      Hearing
- 35-2-4      Request
- 35-2-5      Time and
- 35-2-5.1      Return of permit
- 35-2-5.2      Endorsement
- 35-2-5.3      Waiting
- 35-2-6      Repealed
- 35-2-6.1      Minimum — De
- 35-2-6.2      Character
- 35-2-6.3      Ownership
- 35-2-6.4      Manufacture
- 35-2-6.5      Relative
- 35-2-6.6      Intoxicant
- 35-2-7      Transfer location
- 35-2-8      Continuation
- 35-2-9      Sale of stock
- 35-2-10      Violation
- 35-2-11      Repealed
- 35-2-11.1      Recommendation
- 35-2-11.2      Notice of violation
- 35-2-12      Investigation
- 35-2-13      Right of
- 35-2-14 to 35-2-18      Repealed
- 35-2-19      Terminal
- 35-2-20      Waiting or em
- 35-2-21      Suspension
- 35-2-22, 35-2-23      Repealed

For prior law on 1903, §§ 2854 to 2857; ch 72, §§ 3, 4; RPolC

Section 278, ch 2, secretary of revenue change the title of officers in cities and changes throughout

Definition of terms: False application as below § 35-1-7

# MICHIGAN

## LIQUOR LAW

436.35

were negligent by furnishing intoxicant to other minor defendants without a doctor's prescription, and that two minor defendants were guilty of negligence by opening a can of beer and handing an open can of beer to driver of automobile while it was in motion, contrary to section 750.141a and this section, sections were pertinent and indispensable to maintenance of personal injury action. *Id.*

at substituted for "minor"

P.A.1972, No. 13, adding § 436.33.

### 436.34a Open liquor containers in vehicles on highways

Sec. 34a. A person shall not transport or possess any alcoholic liquor in a container which is open, uncapped, or upon which the seal is broken, within the passenger compartment of a vehicle on the highways of this state. If the vehicle does not have a trunk or compartment separate from the passenger compartment a container which is open, uncapped, or upon which the seal is broken shall be encased or enclosed.

liquors §§ 222,

highways, parks

This section shall not apply to any chartered passenger vehicle licensed by the Michigan public service commission.

P.A.1933, Ex.Sess., No. 3, § 34a, added by P.A.1973, No. 49, § 1, Imd. Eff. July 1, 1973.

RES OF AMUSE- public high- be consumed sell for con-

#### Library References

Intoxicating Liquors § 138. M.L.P. Liquors § 41.  
C.J.S. Intoxicating Liquors § 234.

#### Notes of Decisions

##### 1. Search and seizure

Where police officer stopped automobile driven by defendant after observing a moving violation and, while his partner approached driver's door, officer approached passenger side where flashlight revealed that passenger had open can of beer in violation of statute, offi-

cer then ordered passenger out of automobile and placed him under arrest, and when passenger alighted from automobile, heroin was exposed in plain view, such heroin was not obtained by means of unreasonable search and seizure. *People v. Edwards* (1977) 252 N.W.2d 522, 73 Mich.App. 579.

### 436.35 Armories, air bases, naval installations and state military reservation

Sec. 35. The commanding general, Michigan national guard, is hereby authorized to publish by general order such regulations and restrictions as to the transportation, possession, sale and use of liquors of any alcoholic content in armories, air bases and naval installations owned or leased by the state or provided by the federal government by either lease, license or use permit and used by outside parties of a nonmilitary or state governmental nature and on the state military reservation during the field training periods of the Michigan national guard, either in state or federal service, as shall in his opinion be for the best interests of the military service.

liquors § 222.

court. *Lover v* N.W.2d 69

right to sell or es to a strong ould not control alcohol was dis-

ged that defend- tavern owners.

Chapters  
 18 through 18B

**§ 18B-401. Manner of transportation.**

(a) **Opened Containers.** — It shall be unlawful for a person to transport fortified wine or spirituous liquor in the passenger area of a motor vehicle in other than the manufacturer's unopened original container. It shall be unlawful for a person who is driving a motor vehicle on a highway or public vehicular area to consume in the passenger area of that vehicle any malt beverage or unfortified wine. Violation of this subsection shall constitute a misdemeanor punishable by a fine of twenty-five dollars (\$25.00) to five hundred dollars (\$500.00), imprisonment for not more than 30 days, or both.

(b) **Taxis.** — It shall be unlawful for a person operating a for-hire passenger vehicle as defined in G.S. 20-4.01(27)b, to transport fortified wine or spirituous liquor unless the vehicle is transporting a paying passenger who owns the alcoholic beverage being transported. Not more than four liters of fortified wine or spirituous liquor, or combination of the two, may be transported by each passenger. A violation of this subsection shall not be grounds for suspension of the driver's license for illegal transportation of intoxicating liquors under G.S. 20-16(a)(8).

(c) **Definitions.** — The definitions in Chapter 20 of the General Statutes apply in interpreting this section. If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. In the case of a station wagon, hatchback or similar vehicle, the area behind the last upright back seat shall not be considered part of the passenger area. (1923, c. 1, s. 25; C.S., s. 3411(y); 1937, c. 49, ss. 14, 16; c. 411; 1967, c. 222, ss. 1, 7; c. 1256, s. 3; 1969, c. 598, ss. 2, 3; c. 1018; 1971, c. 872, s. 1; 1977, c. 176, s. 1; c. 586; 1979, c. 607, s. 1; 1981, c. 412, s. 2; c. 747, s. 45; 1983, c. 435, s. 7.)

**Editor's Note.** — Session Laws 1983, c. 435, s. 1, provides that the act shall be known as the Safe Roads Act of 1983.

Section 41 of the act provides: "The original inclusion and ultimate deletion in the course of passing this act of statutory liability for certain persons who sell or furnish alcoholic beverages to intoxicated persons does not reflect any legislative intent one way or the other with respect to the issue of civil liability for negligence by persons who sell or furnish those beverages to such persons."

Section 42 of the act provides: "Prosecutions for offenses occurring before the effective date of this act and administrative actions affecting drivers' licenses based on these offenses are not abated or affected by the repeal or amendment in this act of statutes creating or punishing the offense or authorizing administrative action concerning a driver's license, and the statutes that would be applicable but for the amendments and repeals in

the act remain applicable to those prosecutions and administrative actions."

Section 45 of the act contains a severability clause.

Section 46 of the act provides that except as provided in s. 42 (quoted above) and s. 43 (relating to §§ 1-54, 18B-120 through 18B-129, 18B-900 and 18B-1003) the act becomes effective Oct. 1, 1983.

**Effect of Amendments.** — The 1983 amendment, in subsection (a), rewrote the subsection catchline and substituted the present first and second sentences for a former second sentence, which read "It shall be unlawful to transport fortified wine or spirituous liquor in the passenger area of a motor vehicle if the cap or seal on the container has been opened or broken," and in subsection (c) substituted "Definitions" for "Definition" in the subsection catchline and inserted the present first and second sentences.

Constitution § 18A-26. -- 7 basis" for dist of alcoholic l passenger veh transportation not unconstit applied to defe N.C. App. 372. Guilty Kno must be inter common-law p

**§ 18B-40:**

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**§ 18B-40:**

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# SOUTH CAROLINA

## § 61-5-10 ALCOHOL AND ALCOHOLIC BEVERAGES

facilities for seating not less than forty persons simultaneously at tables for the service of meals.

(2) "Furnishing lodging" shall refer only to those businesses which rent accommodations for lodging to the public on a regular basis consisting of not less than twenty rooms.

HISTORY: 1962 Code § 4-29.4; 1972 (57) 2213.

## § 61-5-20. When transportation, possession and consumption is lawful; sale and consumption in containers of two ounces or less.

Notwithstanding any other provision of law, it shall be lawful, subject to the provisions of § 61-5-30, for any person who is twenty-one years of age or older to transport, possess or consume lawfully acquired alcoholic liquors in accordance with the following:

(1) Any person may transport alcoholic liquors to and from any place where alcoholic liquors may be lawfully possessed or consumed; but if the cap or seal on the container has been opened or broken, it shall be unlawful to transport such liquors in any motor vehicle, except in the luggage compartment or cargo area.

(2) Any person may possess or consume alcoholic liquors:

(a) In a private residence, hotel room or motel room;

(b) Or on any other property not engaged in any business or commercial activity, at private gatherings, receptions, or occasions of a single and isolated nature, and not on any repetitive or continuous basis, with the express permission of the owner and any other person in possession of such property, and to which the general public is not invited; *provided, however*, this shall not be construed to permit or in any way authorize the possession or consumption of alcoholic liquors on premises open to the general public for which a license has been obtained pursuant to subsections (3) and (4) of this section.

(c) In separate and private areas of an establishment whether or not such establishment includes premises which are licensed pursuant to subsections (3) and (4) of this section, where specific individuals have leased such areas for a function not open to the general public.

(3) Nonprofit organizations with limited membership, not open to the general public, established for social, benevolent, patriotic, recreational or fraternal purposes may be licensed to sell alcoholic liquors and beverages in sealed containers of two ounces or less. Members or guests of members of such organizations may consume alcoholic liquors and beverages sold in such containers upon

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General penalty provisions, see ch. 41, art. 9  
Nuisances, see 41-723.

**41-801.** Common and other carriers to furnish director with duplicate bill of lading or receipt; penalty for failure. Every railroad, express or transportation company, or other common contract or private carrier or contract hauler, their agents, employees or servants, shall furnish to the director a duplicate bill of lading or receipt, showing the name of the consignor and the consignee, date, place received, destination, and quantity of alcoholic liquor received by them for shipment to any point within this state. Upon failure to comply with the provisions of this section, such railroad, express or transportation company, or other common contract or private carrier or contract hauler, their agents, employees or servants, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of fifty dollars (\$50) for each offense.

History: L. 1949, ch. 242, § 90; March 9.

Research and Practice Aids:

Intoxicating Liquors—112½.

C.I.S. Intoxicating Liquors § 206.

**41-802.**

History: L. 1949, ch. 242, § 91; Repealed, L. 1969, ch. 180, § 21-4701; July 1, 1970.

Source or prior law:

21-2128.

Revisor's Note:

New act, see 21-4109.

**CASE ANNOTATIONS**

1. Mentioned in holding driving while intoxicated is violation of "intoxicating liquor law" for purposes of K.S.A. 41-311. *Keck v. Cheney*, 196 K. 535, 537, 413 P.2d 119.

**41-803.** "Open saloon" defined and prohibited; penalty. (a) It shall be unlawful for any person to own, maintain, operate or conduct either directly or indirectly, an open saloon.

(b) As used in this section, "open saloon" means any place, public or private, where alcoholic liquor is sold or offered or kept for sale by the drink or in any quantity of less than two hundred (200) milliliters (fluid ounces) or sold or offered or kept for sale for consumption on the premises where sold, but does not include any club licensed pursuant to article 25 of chapter 41 of the Kansas Statutes Annotated.

(c) Any violation of the provisions of this section is a misdemeanor punishable by a fine of not more than five hundred dollars (\$500) and by imprisonment for not more than ninety (90) days.

History: L. 1949, ch. 242, § 92, L. 1975, ch. 187, § 2; L. 1978, ch. 189, § 13; L. 1979, ch. 152, § 4; July 1.

Research and Practice Aids:

Hatcher's Digest, Intoxicating Liquors §§ 42, 120

Law Review and Bar Journal References:

"Liquor Regulation, Racial Discrimination, and Private Clubs in Kansas," Elizabeth Dyson, 13 K.L.R. 135 (1964).

"Wyatt Earp and the Winelist: Is a Restaurant an 'Open Saloon'?", Barkley Clark, 47 J.B.A.K. 63 (1978).

**CASE ANNOTATIONS**

1. Dispensing alcoholic liquors by the drink in exchange for coupons constitutes open saloon hereunder. *State v. Larkin*, 173 K. 112, 118, 119, 123, 244 P.2d 686.

2. Information charging defendant with commission of offense in language of statute sufficient. *State v. Thomas*, 177 K. 230, 231, 277 P.2d 577.

3. Prosecution hereunder and under 21-915 and 21-916, failure to instruct under 21-934; effect. *State v. Tague*, 188 K. 462, 363 P.2d 454.

4. Cited in upholding constitutionality of the private club act (41-2601 et seq.); liquor pool not a sale constituting "open saloon." *Tri-State Hotel Co. v. Londerholm*, 195 K. 748, 749, 752, 753, 754, 755, 757, 408 P.2d 877.

5. Mentioned; action by passenger train corporation (Amtrak) to enjoin enforcement of state liquor laws. *National Railroad Passenger Corporation v. Miller*, 358 F.Supp. 1321, 1323, 1325.

6. 1978 amendments to this section and to 41-2601 et seq. authorized maintenance of open saloon in violation of Kansas constitution. *State, ex rel. Schneider v. Kennedy*, 225 K. 1, 2, 586 P.2d 276, 225 K. 13, 14, 15, 17, 18, 19, 25, 27, 37, 587 P.2d 844.

**41-804.** Transportation of liquor in opened containers unlawful; exceptions; penalty. (a) No person shall transport in any vehicle upon a highway or street any alcoholic liquor unless such liquor is:

(1) In the original unopened package or container, the seal of which has not been broken and from which the original cap, cork or other means of closure has not been removed;

(2) in the locked rear trunk or rear compartment, or any locked outside compartment which is not accessible to any person in the vehicle while it is in motion; or

(3) in the exclusive possession of a passenger in a vehicle which is a recreational vehicle, as defined by K.S.A. 1980 Supp. 75-1212, or a bus, as defined by K.S.A. 8-1-406, who is not in the driving compartment of such vehicle or who is in a portion of such

his direction or control may withdraw blood or pierce human tissue. A licensed physician, or a qualified person acting under his direction or control, shall not be held civilly liable for withdrawing any bodily substance, in a medically acceptable manner, at the request of a peace officer. [Formerly 483.640]

**487.830 Reports of chemical analyses; expenses of conducting chemical tests.** (1) An individual who performs a chemical analysis of breath, blood or urine under ORS 487.805 or 487.835 shall prepare and sign a written report of the findings of the test which shall include the identification of the police officer upon whose request the test was administered.

(2) Any individual having custody of the report mentioned in this section shall, upon request of the person tested, furnish that person or that person's attorney, a copy of the report.

(3) The expense of conducting a chemical test as provided by ORS 487.805 and 487.835 shall be paid by the governmental unit on whose equipment the test is conducted or by the governmental unit upon whose request the test was administered if no governmental unit's equipment is used to conduct the test. [Formerly 483.646; 1981 c.806 §7; 1983 c.822 §6]

**487.835 Chemical test with or without consent.** Nothing in ORS 487.805 is intended to preclude the administration of a chemical test described in this section. A police officer may obtain a chemical test of the blood to determine the amount of alcohol in any person's blood or a test of the person's blood or urine, or both, to determine the presence of a controlled substance in the person as provided in the following:

(1) If, when requested by a police officer, the person expressly consents to such a test.

(2) Notwithstanding subsection (1) of this section, from a person without the person's consent if:

(a) The police officer has probable cause to believe that the person was driving while under the influence of intoxicants and that evidence of the offense will be found in the person's blood or urine; and

(b) The person is unconscious or otherwise in a condition rendering the person incapable of expressly consenting to the test or tests requested. [Formerly 483.636; 1981 c.806 §8; 1983 c.822 §7]

## ALCOHOLIC LIQUOR IN VEHICLES

**487.837 "Motor vehicle" defined for purpose of ORS 487.837 to 487.843.** As used in ORS 487.837 to 487.843, "motor vehicle" does not include a motor vehicle operated by a publicly owned transit system or a motor vehicle operated by a common carrier and used primarily to carry passengers for hire. [Formerly 483.775]

**487.839 Drinking alcoholic liquor in vehicle on highway prohibited.** (1) No person shall drink any alcoholic liquor in a motor vehicle when the vehicle is upon a highway.

(2) A person who violates this section commits a Class B traffic infraction. [Formerly 483.780; 1977 c.882 §63]

**487.841 Possessing open liquor container in vehicle on highway prohibited.** (1) No person shall have in his possession on his person, while in a motor vehicle upon a highway, any bottle, can, or other receptacle containing any alcoholic liquor, which has been opened, or a seal broken, or the contents of which have been partially removed.

(2) A person who violates this section commits a Class B traffic infraction. [Formerly 483.785; 1977 c.882 §64]

**487.843 Keeping open liquor container in vehicle on highway prohibited unless container is in area normally unoccupied by operator or passengers.** (1) It is unlawful for the registered owner of any motor vehicle, or the driver if the registered owner is not then present in the vehicle, to keep in a motor vehicle when the vehicle is upon any highway, any bottle, can, or other receptacle containing any alcoholic liquor, which has been opened, or a seal broken, or the contents of which have been partially removed, unless the bottle, can, or other receptacle is kept in the trunk of the vehicle, or kept in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk. For the purposes of this section, a utility compartment or glove compartment is considered within the area occupied by the driver and passengers. This section shall not apply to the living quarters of a camper or a motor home.

(2) A person who violates this section commits a Class B traffic infraction. [Formerly 483.790; 1977 c.882 §65]

(e) Any person violating this section shall be guilty of a misdemeanor. [L 1981, c 152, pt of §1]

[§291-3.2] Consuming or possessing intoxicating liquor while a passenger in a motor vehicle. (a) No person shall consume any intoxicating liquor while a passenger in any motor vehicle upon any public street, road, or highway

(b) No person shall possess, while a passenger in a motor vehicle upon any public street, road, or highway, any bottle, can, or other receptacle containing any intoxicating liquor which has been opened, or a seal broken, or the contents of which have been partially removed.

(c) As used in this section, "intoxicating liquor" means the same as that term is defined in section 281-1.

(d) This section shall not apply to the living quarters of a trailer or camper.

(e) Any person violating this section shall be guilty of a petty misdemeanor. [L 1981, c 152, pt of §1]

[§291-3.3] Storage of opened container containing intoxicating liquor. (a) No person shall keep in a motor vehicle, when such vehicle is upon any public street, road, or highway, any bottle, can, or other receptacle containing any intoxicating liquor which has been opened, or a seal broken, or the contents of which have been partially removed or fully removed, unless such container is kept in the trunk of the vehicle, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the vehicle is not equipped with a trunk. A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers.

(b) As used in this section, "intoxicating liquor" means the same as the term is defined in section 281-1.

(c) This section shall not apply to a recreational or other vehicle not having a separate trunk compartment, or to the living quarters of a trailer or camper.

(d) Any person violating this section shall be guilty of a violation. [L 1981, c 152, pt of §1]

§291-4 Driving under influence of intoxicating liquor. (a) A person commits the offense of driving under the influence of intoxicating liquor if:

- (1) The person operates or assumes actual physical control of the operation of any vehicle while under the influence of intoxicating liquor; or
- (2) The person operates or assumes actual physical control of the operation of any vehicle with 0.10 per cent or more, by weight of alcohol in the person's blood.

(b) A person committing the offense of driving under the influence of intoxicating liquor shall be sentenced as follows without possibility of probation or suspension of sentence:

- (1) For a first offense, or any offense not preceded within a five-year period by a conviction under this section, by:
  - (A) A fourteen-hour minimum alcohol abuse rehabilitation program including education and counseling, or other comparable program deemed appropriate by the court; and

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Misdemeanor

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§ 25: Amended Stats 1983 ch 1005 § 1

to be subd (a), (2) substituted "driving" for "in" in

s beginning at page 25 of the bound volume.

§ 23223. Possession of opened receptacle while in motor vehicle

No person shall have in his or her possession on his or her person, while in  
a motor vehicle upon a highway, any bottle, can, or other receptacle,  
containing any alcoholic beverage which has been opened, or a seal broken,  
or the contents of which have been partially removed.

§ 23122.5 amended and renumbered Stats 1981 ch 940 § 26

Amendments:

1981 Amendment: Added "or her" wherever it appears

Review of 1981 Legislation. 13 Pacific LJ 787

§ 23224. Possession of alcohol in vehicle by persons under age

(a) No person under the age of 21 years shall knowingly drive any motor  
vehicle carrying any alcoholic beverage, unless the person is accompanied by  
a parent or legal guardian or is employed by a licensee under the Alcoholic  
Beverage Control Act (Division 9 (commencing with Section 23000) of the  
Business and Professions Code), and is driving the motor vehicle during  
regular hours and in the course of the person's employment.

(b) No passenger in any motor vehicle who is under the age of 21 years  
shall knowingly possess or have under that person's control any alcoholic  
beverage, unless the passenger is accompanied by a parent or legal guardian  
or is employed by a licensee under the Alcoholic Beverage Control Act  
(Division 9 (commencing with Section 23000) of the Business and Profes-  
sions Code), and the possession or control is during regular hours and in the  
course of the passenger's employment.

(c) If the vehicle used in any violation of subdivision (a) or (b) is registered  
to an offender who is under the age of 21 years, the vehicle may be  
impounded at the owner's expense for not less than one day nor more than  
30 days for each violation.

(d) The driver's license of any person under 21 years of age convicted of a  
violation of this section shall also be suspended for not less than 15 days nor  
more than 30 days.

§ 23123.5 amended and renumbered Stats 1981 ch 940 § 28.

Amendments:

1981 Amendment: In addition to making technical changes, substituted (1) "an offender who is" for  
"such person" in subd (c), and (2) "The driver's license of any person under 21 years of age convicted of  
a violation of this section shall also be" for "Any such person under 21 years of age found guilty under  
this section shall also have his driver's license" in subd (d).

Review of 1981 Legislation. 13 Pacific LJ 787

§ 23225. Storage of opened receptacle

It is unlawful for the registered owner of any motor vehicle, or the driver if  
the registered owner is not then present in the vehicle, to keep in a motor  
vehicle, when the vehicle is upon any highway, any bottle, can, or other  
receptacle containing any alcoholic beverage which has been opened, or a  
seal broken, or the contents of which have been partially removed, unless  
the container is kept in the trunk of the vehicle, or kept in some other area  
of the vehicle not normally occupied by the driver or passengers, if the  
vehicle is not equipped with a trunk. A utility compartment or glove  
compartment shall be deemed to be within the area occupied by the driver  
and passengers.

This section shall not apply to the living quarters of a housecar or camper.

WASHINGTON

46.61.5151 Sentence under RCW 46.61.515—Intermittent fulfillment of—Restrictions. A sentencing court may allow persons convicted of violating RCW 46.61.502 or 46.61.504 to fulfill the terms of the sentence provided in RCW 46.61.515 (1) or (2) in nonconsecutive or intermittent time periods. However, the first twenty-four hours of any sentence under RCW 46.61.515(1) and the first forty-eight hours of any sentence under RCW 46.61.515(2) shall be served consecutively unless suspended or deferred as otherwise provided by law. [1983 c 165 § 33.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

46.61.516 Qualified probation department defined. A qualified probation department means a probation department for a district or municipal court that has a sufficient number of qualified alcohol assessment officers who meet the requirements of a qualified alcoholism counselor as provided by rule of the department of social and health services, except that the required hours of supervised work experience in an alcoholism agency may be satisfied by completing an equivalent number of hours of supervised work doing alcohol assessments within a probation department. [1983 c 150 § 2.]

46.61.517 Refusal of blood alcohol content test—Admissibility as evidence—Conditions. The refusal of a person to submit to a test of the alcoholic content of his blood under RCW 46.20.308 is admissible into evidence at a subsequent criminal trial without any comment and with a jury instruction, where applicable, that there shall be no speculation as to the reason for the refusal and that no inference is to be drawn from the refusal. [1983 c 165 § 27.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

46.61.518 Penalty assessments—Disposition of gross proceeds. The gross proceeds of the penalty assessments provided for in RCW 46.61.515(2) shall be separately accounted for and transmitted to the city or county treasurer, as the case may be, by the court collecting the same, in the manner and at the times that fines and bail forfeitures are transmitted to such treasurers. The city and county treasurers shall also separately account for such moneys, place them in a separate fund, and shall transmit to the state treasurer monthly and without deduction the gross amount of such penalty assessments received, which shall be credited forthwith to the highway safety fund of the state treasury. [1974 ex.s. c 130 § 3.]

46.61.519 Alcoholic beverages—Drinking or open container in vehicle on highway—Exceptions. (1) It is a traffic infraction to drink any alcoholic beverage in a motor vehicle when the vehicle is upon a highway.

(2) It is a traffic infraction for a person to have in his possession while in a motor vehicle upon a highway, a

bottle, can, or other receptacle containing an alcoholic beverage if the container has been opened or a seal broken or the contents partially removed.

(3) It is a traffic infraction for the registered owner of a motor vehicle, or the driver if the registered owner is not then present in the vehicle, to keep in a motor vehicle when the vehicle is upon a highway, a bottle, can, or other receptacle containing an alcoholic beverage which has been opened or a seal broken or the contents partially removed, unless the container is kept in the trunk of the vehicle or in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle does not have a trunk. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.

(4) This section does not apply to a public conveyance that has been commercially chartered for group use or to the living quarters of a motor home or camper or, except as otherwise provided by RCW 66.44.250 or local law, to any passenger for compensation in a for-hire vehicle licensed under city, county, or state law. [1983 c 165 § 28.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

46.61.520 Vehicular homicide—Penalty. (1) When the death of any person ensues within three years as a proximate result of injury proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner or with disregard for the safety of others, the person so operating such vehicle is guilty of vehicular homicide.

(2) Vehicular homicide is a class B felony punishable under chapter 9A.20 RCW. [1983 c 164 § 1; 1975 1st ex.s. c 287 § 3; 1973 2nd ex.s. c 38 § 2; 1970 ex.s. c 49 § 5; 1965 ex.s. c 155 § 63; 1961 c 12 § 46.56.040. Prior: 1937 c 189 § 120; RRS § 6360-120. Formerly RCW 46.56.040.]

Severability—1970 ex.s. c 49: See note following RCW 9.69.100. Suspension or revocation of license upon conviction of vehicular homicide or assault resulting from operation of motor vehicle RCW 46.20.285, 46.20.291

46.61.522 Vehicular assault—Penalty. (1) A person is guilty of vehicular assault if he operates or drives any vehicle:

(a) In a reckless manner, and this conduct is the proximate cause of serious bodily injury to another; or

(b) While under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, and this conduct is the proximate cause of serious bodily injury to another.

(2) "Serious bodily injury" means bodily injury which involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.

(3) Vehicular assault is a class C felony punishable under chapter 9A.20 RCW. [1983 c 164 § 2.]

other than a certificate or other sticker issued by order of a governmental agency. Such permitted sticker shall not cover more than 15 square inches of glass surface and shall be placed in the lower left-hand corner of the windshield, the left corner being on the driver's left when seated behind the wheel.

(b) No person shall drive any motor vehicle upon a highway with any object so placed or suspended in or upon the vehicle so as to obstruct the driver's clear view through the front windshield.

(c) No person shall drive any motor vehicle upon a highway so loaded or with any object so placed or suspended in or upon the vehicle so as to obstruct the driver's clear vision through the rear window unless such vehicle is equipped with an outside rear view mirror meeting the requirements of s. 347.40.

(d) Signal lamps used by authorized emergency vehicles shall not be considered a violation of this section.

(4) The windshield, side wings and side and rear windows of a motor vehicle shall be kept reasonably clean at all times.

**346.89 Inattentive driving.** (1) No person while driving a motor vehicle shall be so engaged or occupied as to interfere with the safe driving of such vehicle.

(2) No person shall drive any motor vehicle equipped with any device for visually receiving a television broadcast when such device is located in the motor vehicle at any point forward of the back of the operator's seat or when such device is visible to the operator while driving the motor vehicle.

**346.90 Following emergency vehicle.** The operator of any vehicle other than one on official business shall not follow an authorized emergency vehicle responding to a call or alarm closer than 500 feet or drive into or park his or her vehicle within the block where, or within 300 feet of the driveway entrance or similar point of access to a driveway or road on which, fire apparatus has stopped in response to an alarm. The personal vehicles of members of a volunteer fire department answering the alarm are considered on official business.

History: 1975 c. 253, 421.

**346.91 Crossing fire hose.** No person without the consent of the fire department official in command shall drive a vehicle over any unprotected hose of a fire department when such hose is laid down on any street, private driveway or streetcar track to be used at any fire or alarm of fire.

**346.92 Illegal riding.** (1) No person shall drive a vehicle when any person other than an employe engaged in the necessary discharge of his duty is upon any portion thereof not designed or intended for the use of passengers.

(2) No person other than an employe engaged in the necessary discharge of his duty shall ride upon any portion of a vehicle not designed or intended for the use of passengers.

(3) This section does not apply to persons riding within truck bodies in spaces intended for merchandise or to the operator of any such vehicle.

**346.93 Intoxicants in vehicle.** No underage person, as defined under s. 125.02 (20m), may knowingly possess, transport or have under his or her control any alcohol beverage in any motor vehicle unless the person is employed by a liquor licensee, wholesaler, retailer, distributor, manufacturer or certifier and is possessing, transporting or having such beverage in a motor vehicle in his or her control during regular working hours and in the course of employment.

History: 1971 c. 213 s. 8, 1983 a. 74.

This section discussed: 86 Atty. Gen. 215.

**346.935 Intoxicants in motor vehicles.** (1) No person may drink alcohol beverages in any motor vehicle when the vehicle is upon a highway.

(2) No person may possess on his or her person, in a privately owned motor vehicle upon a public highway, any bottle or receptacle containing alcohol beverages if the bottle or receptacle has been opened, the seal has been broken or the contents of the bottle or receptacle have been partially removed.

(3) The owner of a privately owned motor vehicle, or the driver of the vehicle if the owner is not present in the vehicle, shall not keep, or allow to be kept in the motor vehicle when it is upon a highway any bottle or receptacle containing alcohol beverages if the bottle or receptacle has been opened, the seal has been broken or the contents of the bottle or receptacle have been partially removed. This subsection does not apply if the bottle or receptacle is kept in the trunk of the vehicle or, if the vehicle has no trunk, in some other area of the vehicle not normally occupied by the driver or passengers. A utility compartment or glove compartment is considered to be within the area normally occupied by the driver and passengers.

(4) (a) In this subsection

1. "Chauffeur" has the meaning designated in s. 343.01 (2) (c).

2. "Limousine" means any motor vehicle for charter or hire which is operated by a chauffeur

and driver than proper  
(b) This in a limousine under s. 343.01 (2) (c) History: 1983 a. 74.

346.94 (b) DRIVING vehicle shall except at lished driv local auth

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Subd. 10. Research programs. No person is guilty of a violation of this section committed while participating in a research or demonstration project conducted by the Minnesota highway safety center created pursuant to section 136.147. This subdivision applies only to conduct occurring while operating a state-owned vehicle under the supervision of personnel of the center on the grounds of the center.

History: 1957 c 297 s 1; 1961 c 454 s 9; 1967 c 283 s 1; 1967 c 569 s 1; 1969 c 744 s 1; 1971 c 244 s 1; 1971 c 893 s 1,2; Ex 1971 c 27 s 6; 1973 c 421 s 1; 1973 c 494 s 8; 1975 c 370 s 1; 1976 c 298 s 2; 1976 c 341 s 1; 1978 c 727 s 2; 1981 c 9 s 1; 1982 c 423 s 2-8; 1983 c 134 s 1; 1983 c 177 s 1; 1983 c 306 s 1-4; 1984 c 430 s 2,3; 1984 c 622 s 5-9; 1984 c 654 art 5 s 58

#### 169.122 OPEN BOTTLE LAW; PENALTY.

Subdivision 1. No person shall drink or consume intoxicating liquors or nonintoxicating malt liquors in any motor vehicle when such vehicle is upon a public highway.

Subd. 2. No person shall have in his possession on his person while in a private motor vehicle upon a public highway, any bottle or receptacle containing intoxicating liquor or nonintoxicating malt liquor which has been opened, or the seal broken, or the contents of which have been partially removed.

Subd. 3. It shall be unlawful for the owner of any private motor vehicle or the driver, if the owner be not then present in the motor vehicle, to keep or allow to be kept in a motor vehicle when such vehicle is upon the public highway any bottle or receptacle containing intoxicating liquors or nonintoxicating malt liquors which has been opened, or the seal broken, or the contents of which have been partially removed except when such bottle or receptacle shall be kept in the trunk of the motor vehicle when such vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. A utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passengers.

Subd. 4. Whoever violates the provisions of subdivision 1 to 3 is guilty of a misdemeanor.

History: 1959 c 255 s 1-4

#### 169.123 CHEMICAL TESTS FOR INTOXICATION.

Subdivision 1. Peace officer defined. For purposes of this section and section 169.121, the term peace officer means a state patrol officer, university of Minnesota peace officer, a constable as defined in section 367.40, subdivision 3, or police officer of any municipality, including towns having powers under section 368.01, or county.

Subd. 2. Implied consent; conditions; election as to type of test. (a) Any person who drives, operates, or is in physical control of a motor vehicle within this state consents, subject to the provisions of this section and section 169.121, to a chemical test of his blood, breath, or urine for the purpose of determining the presence of alcohol or a controlled substance. The test shall be administered at the direction of a peace officer. The test may be required of a person when an officer has probable cause to believe the person was driving, operating, or in physical control of a motor vehicle in violation of section 169.121 and one of the following conditions exist: (1) the person has been lawfully placed under arrest for violation of section 169.121, or an ordinance in conformity with it; or (2) the person has been involved in a motor vehicle accident or collision resulting in property damage, personal injury, or death; or (3) the person has refused to take the screening test provided for by section 169.121, subdivision b; or (4) the screening test was administered and recorded an alcohol concentration of 0.10 or more.

accidents, or by any person reporting and for other state agency purposes, or relating to the deposit of persons driving or treatment may disclose when such identity files his presence at

filed in connection relating to the deposit of lists of such

in this section criminal, arising out shall furnish upon and of any court, a has or has not been

er, any information pursuant to this authorized official or

ees, report of police or other employee, or portions of responsibility for accident or damage to property,

to analyze accident intervals, statistical circumstances of traffic

accident reports. Any ordinance require all file with a design copy of any report such reports shall subject to the provi-

39-08-17. Magistrates to report convictions to highway commissioner. Every magistrate in this state shall make a full and complete report to the commissioner within ten days after any person has been convicted of reckless driving or of driving a motor vehicle while under the influence of intoxicating liquor or a controlled substance, or of failure to stop in event of an accident involving injury or death to any person.

Source: S.L. 1955, ch. 253, § 15; R.C. 1943, § 39-0817; S.L. 1975, ch. 319, § 7.

39-08-18. Open bottle law — Penalty. No person shall drink or consume alcoholic beverages, as defined in section 5-01-01, in or on any motor vehicle when such vehicle is upon a public highway or in an area used principally for public parking. No person shall have in his possession on his person while in or on a private motor vehicle upon a public highway or in an area used principally for public parking, any bottle or receptacle containing such alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed. It shall be unlawful for the owner of any private motor vehicle or the driver, if the owner be not then present in or on the motor vehicle, to keep or allow to be kept in a motor vehicle when such vehicle is upon the public highway or in an area used principally for public parking a bottle or receptacle containing such alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed except when such bottle or receptacle shall be kept in the trunk of the motor vehicle when such vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. A utility compartment or glove compartment shall not be deemed to be within the area occupied by the driver and passengers. The provisions of this section shall not prohibit the consumption or possession of alcoholic beverages in a house car, as defined by subsection 23 of section 39-01-01, if the consumption or possession occurs in the area of the house car used as sleeping or living quarters and that area is separated from the driving compartment by a solid partition, door, curtain, or some similar means of separation; however, consumption is not authorized while the house car is in motion. Any person violating the provisions of this section shall be assessed a fee of twenty dollars; however, the licensing authority shall not record the violation against the driving record of such person unless he was the driver of the automobile at the time that the violation occurred.

Source: S.L. 1947, ch. 10, § 1, 2; R.C. 1943, § 39-0818; S.L. 1965, ch. 275, § 1; S.L. 1973, ch. 301, § 21; 1979, ch. 331.

Collateral References. Construction of statute or ordinance making it an offense to possess or have alcoholic beverages in opened package in motor vehicle, 35 ALR 34118.

Note. The provisions of section 5-01-21 have been transferred to this section.

39-08-19. Penalty for harassment of domestic animals. Any person operating a motorcycle, snowmobile, or other motor vehicle as defined in



# RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

*James O. Smith*  
Signature of Camera Operator

*7/25/89*  
Date

HB

80

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

*H. Judiciary 1/30/85 1:30 pm*



DEPARTMENT OF PUBLIC SAFETY

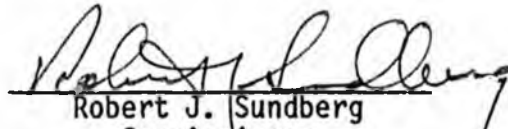
POSITION PAPER - HB 8

Support

January 24, 1985

We do support House Bill 8 with recommendations for change in the present wording. This bill as presently worded, "with the intent to exhaust, frighten or harass the game" could be extremely difficult to enforce. It could also be extremely difficult to prove that the intent of a person was to exhaust, frighten or harass game.

It could well be that the true intent of a person was for reasons other than to exhaust, frighten, or harass game, such as taking pictures of game animals. We have proposed the following wording: It is a class A misdemeanor to intentionally drive, chase, herd or pursue game while using an aircraft, snowmachine, motor driven boat or motorized vehicle.

  
Robert J. Sundberg  
Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

Bill/Resolution No.: HB 8  
 Title: Relating to harassment of game  
 Sponsor: M.M. Miller, Goll & Grussendorf  
 Requestor: House Judiciary  
 Date of Request: 1-28-85

FISCAL DETAIL

Agency Affected: Public Safety  
 Program Category Affected: Fish & Wildlife Protection  
 BPU, Program or Subprogram(s) Affected: Fish & Wildlife Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME						
PART-TIME						
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

Prepared By: Captain J. R. Nutgrass *JRN* Phone: 269-5532  
 Division: Fish & Wildlife Protection Date: 1/24/85

Approved by Commissioner: *Michael J. C...* Date: 1-28-85  
 Agency: Department of Public Safety

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

*Kayler*

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

Bill/Resolution No.: HB 8  
Title: An Act relating to harassment of game  
Sponsor: Miller/Goll, Grussendorf  
Requestor: \_\_\_\_\_  
Date of Request: \_\_\_\_\_

FISCAL DATA

Agency Affected: Fish and Game; FWP  
Program Category Affected: Natural Resource Management  
BRU, Program or Subprogram(s) Affected: Game

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						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Phil Koehl Phone: 465-4109  
Division: Game Date: 1/28/85

Approved by Commissioner: *Donnell* Date: 1-30-85  
Agency: Department of Fish and Game

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

7/1/84

Hein  
1/28/85✓

Original sponsors: M.M. Miller, Goll,  
Grussendorf and Szymanski

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 8 (Judiciary)

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 harassment of game."

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

8 \* Section 1. AS 16.05 is amended by adding a new section to read:

9 Sec. 16.05.783. HARASSMENT OF GAME. (a) It is a class A misde-  
10 meanor for a person to use an aircraft, snowmachine, motor driven boat  
11 or other motorized vehicle to drive, chase, herd, pursue, molest, or  
12 harass game.

13 (b) The provisions of (a) of this section do not apply to  
14 employees or agents of the department in the performance of duties of  
15 the department.  
16  
17  
18  
19  
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21  
22  
23  
24  
25  
26  
27  
28  
29

Offered: 2/4/85  
Referred: Resources

Original sponsors: M.M. Miller, Goll,  
Grussendorf and Szymanski

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2

CS FOR HOUSE BILL NO. 8 (Judiciary)

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 harassment of game."

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

8 \* Section 1. AS 16.05 is amended by adding a new section to read:

9           Sec. 16.05.783. HARASSMENT OF GAME. (a) It is a class B misde-  
10 meanor for a person to recklessly drive, herd, molest or harass game  
11 while the person is using an aircraft, snowmachine, motor driven boat  
12 or other motorized vehicle.

13           (b) It is an affirmative defense to a criminal charge under (a)  
14 of this section that a person was acting to protect life or property.

15           (c) The provisions of (a) of this section do not apply to an  
16 employee, agent or permittee of a department or agency of the state or  
17 federal government acting in the course of that person's employment,  
18 authority or duties, or to a person acting in accordance with regula-  
19 tions of the department.

*90 date  
\$1000*

Article 5. General Principles of Criminal Liability.

Section

- 600. General requirements of culpability
- 610. Construction of statutes with respect to culpability
- 615. Offenses defined by age or value
- 620. Effect of ignorance or mistake upon liability

Section

- 630. Intoxication as a defense
- 640. Application of AS 11.81.600 — 11.81.630

Sec. 11.81.600. General requirements of culpability. (a) The minimal requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform an act which the person is capable of performing.

(b) A person is not guilty of an offense unless the person acts with a culpable mental state, except that no culpable mental state must be proved

(1) if the description of the offense does not specify a culpable mental state and the offense is

- (A) a violation; or
- (B) designated as one of "strict liability"; or

(2) if a legislative intent to dispense with the culpable mental state requirement is present. (§ 10 ch 166 SLA 1978; am § 27 ch 102 SLA 1980)

Effect of amendments. — The 1980 amendment rewrote subsection (b).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS 28, 1980.

CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

For discussion of culpable mental states relating to violation of fish and game laws, see Reynolds v. State, Ct. App. Op. No. 182 (File No. 6432), 655 P.2d 1313 (1982).

Quoted in Neitzel v. State, Ct. App. Op. No. 172 (File No. 6243), 655 P.2d 325 (1982).

Sec. 11.81.610. Construction of statutes with respect to culpability. (a) [Repealed, § 44 ch 102 SLA 1980.]

(b) Except as provided in AS 11.81.600(b), if a provision of law defining an offense does not prescribe a culpable mental state, the culpable mental state that must be proved with respect to

- (1) conduct is "knowingly"; and
- (2) a circumstance or a result is "recklessly."

(c) When a provision of law provides that criminal negligence suffices to establish an element of an offense, that element is also established if a person acts intentionally, knowingly, or recklessly. If acting recklessly suffices to establish an element, that element also is established if a person acts intentionally or knowingly. If acting knowingly suffices to establish an element, that element is also estab-

lished if a person acts intentionally. (§ 10 ch 166 SLA 1978; am § 44 ch 102 SLA 1980)

Effect of amendments. — The 1980 amendment repealed subsection (a).

#### NOTES TO DECISIONS

Application of subsection (b) to second-degree murder statute. — Since AS 11.41.110(a)(2) does not specifically establish a mental element for the result ("death") or the surrounding circumstances ("under circumstances manifesting an extreme indifference to the value of human life") involved in second-degree murder, a "reckless" mental state is to be imputed to those two factors

based on application of subsection (b) of this section. *Neitzel v. State*, Ct. App. Op. No. 172 (File No. 6243), 655 P.2d 325 (1982).

For discussion of culpable mental states relating to violation of fish and game laws, see *Reynolds v. State*, Ct. App. Op. No. 182 (File No. 6432), 655 P.2d 1313 (1982).

**Sec. 11.81.615. Offenses defined by age or value.** Whenever a provision of law defining an offense requires a determination of the age of the victim or the value of property or services, it is not a defense to the lowest class of offense established by the evidence that the age of the victim is less than the age which would make the offense a higher class of offense or that the value of the property or services exceeds the value which would make the offense a higher class of offense, and a person may be charged and convicted accordingly. (§ 10 ch 166 SLA 1978)

#### NOTES TO DECISIONS

Restitution based on actual loss. — Where a defendant is charged with a lesser offense but the evidence establishes that he committed a greater offense, a restitutionary award based on the actual loss to

the victim is appropriate, even though the loss exceeds the maximum property-value figure which defines the lesser offense. *Fee v. State*, Ct. App. Op. No. 187 (File No. 6951), 656 P.2d 1202 (1982).

**Sec. 11.81.620. Effect of ignorance or mistake upon liability.**  
(a) Knowledge, recklessness, or criminal negligence as to whether conduct constitutes an offense, or knowledge, recklessness, or criminal negligence as to the existence, meaning, or application of the provision of law defining an offense, is not an element of an offense unless the provision of law clearly so provides. Use of the phrase "intent to commit a crime", "intent to promote or facilitate the commission of a crime", or like terminology in a provision of law does not require that the defendant act with a culpable mental state as to the criminality of the conduct that is the object of the defendant's intent.

(b) A person is not relieved of criminal liability for conduct because the person engages in the conduct under a mistaken belief of fact, unless

# Alaska State Legislature



## House of Representatives House Judiciary Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-4990

### LETTER OF INTENT

February 2, 1985

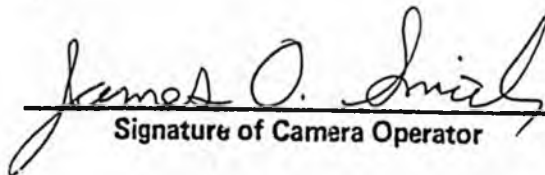
In recommending that CS for House Bill No. 8 (Judiciary) do pass, it is the intent of the House Judiciary Committee that the term "recklessly" in subsection (a) be construed in the manner set forth in AS 11.81.610(c), which deals with the construction of statutes with respect to culpability.

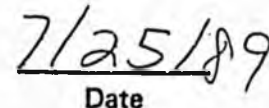
M. Mike Miller, Chairman  
House Judiciary Committee



# RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

  
Signature of Camera Operator

  
Date

H B

1 7

# STATE OF ALASKA THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY

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JUNEAU, ALASKA 99811  
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary 2/11/85 1:30 pm  
" " 2/12/85 1:30 pm

2

COMMITTEE REPORT

HOUSE

2/13

Rules

(7)

FURTHER:

1/14/85

Date: 2-12-85

The Committee on Judiciary has had HB 17

"An Act relating to multiple convictions for motor vehicle theft and joyriding."

under consideration and recommends:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HB 17 (old)  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

W. W. Hill

W. J. ...

Robert Taylor

...

...

...

...

...

...

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

...

...

...

...

...

...

W. W. Hill  
CHAIRMAN

Edwards  
2/8/85 ✓

Original sponsors: Uehling and Szymanski

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 17 (Judiciary)

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 multiple convictions for motor  
7 vehicle theft and joyriding."

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

9 \* Section 1. AS 11.46.484(c) is amended to read:

10 (c) A person convicted under (a)(2) of this section [WHO HAS  
11 BEEN PREVIOUSLY CONVICTED UNDER THAT PARAGRAPH OR UNDER FORMER  
12 AS 28.35.010] is guilty of a class C felony if, within the preceding  
13 seven years, the person was convicted under

14 (1) the provisions of (a)(2) of this section;

15 (2) former AS 28.35.010;

16 (3) the provisions of AS 11.46.482(a)(4);

17 (4) an offense involving the theft of a propelled vehicle  
18 under AS 11.46.120 - 11.46.140 or AS 11.46.160 - 11.46.190; or

19 (5) a law or ordinance of this or another jurisdiction with  
20 elements substantially similar to those of the offenses described in  
21 (1) - (4) of this subsection.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: February 15, 1985

**REQUEST:**

Bill/Resolution No.: H.B. 17  
 Title: "An Act relating to multiple convictions for motor vehicle theft and joyriding"  
 Sponsor: Representative Uehling  
 Requestor: (H) Judiciary  
 Date of Request: February 1, 1985

**FISCAL DETAIL:**

Agency Affected: DEPARTMENT OF CORRECTIONS  
 Program Category Affected: \_\_\_\_\_  
 Administration of Justice  
 BRU, Program or Subprogram(s) Affected: Offender Confinement, Reformation, and Supervision

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		17.9	18.8	19.7	20.7	21.7
400 SUPPLIES		14.6	15.3	16.1	16.9	17.8
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	32.5	34.1	35.8	37.6	39.5

<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
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<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-
----------------	-----	-----	-----	-----	-----	-----

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	32.5	34.1	35.8	37.6	39.5
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	32.5	34.1	35.8	37.6	39.5

**POSITIONS:**

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

**ANALYSIS:** Attach a separate page if necessary.

See attached narrative.

Prepared By: William W. Ludwig  
 Division: Deputy Commissioner for Administration

Phone: 465-3376  
 Date: February 15, 1985

Approved by Commissioner: Roger V. Endell by William W. Ludwig  
 Agency: DEPARTMENT OF CORRECTIONS

Date: February 15, 1985

Distribution (by Agency preparing fiscal note):

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

ANALYSIS

I. Assumptions:

Based upon statistics provided by Anchorage Police Officer Davis, the following assumptions have been made:

1. Anchorage accounts for 83% of the annual arrests for auto theft.
2. The arrests have averaged 100 per year.
3. Of all 100 arrests for all types of auto theft, 15 are for joyriding.
4. Of the 15 arrestees, 3 have prior offenses.
5. Projecting the Anchorage area statistics to the statewide level results in 120 arrests per year for all auto theft crimes with 4 people being subject to this legislation.
6. It is assumed that the number of persons incarcerated under this bill would be 4.
7. It is assumed that incarceration of these 4 persons will require no additional bed space.
8. It is assumed that the cost of living will increase by 5% per year.

II. Program Summary:

A. The annual cost of care is computed as follows:

4 X 365 X 22.28	=	32,500
32.5 X 1.05	=	34.1
34.1 X 1.05	=	35.8
35.8 X 1.05	=	37.6
37.6 X 1.05	=	39.5
Total	=	179.5

III. Economic Impact:

Enactment of this bill will not have a significant impact on the State's economy.

IV. Impact on Local Government:

This bill has no apparent impact on local government units.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: 1/29/85

REQUEST  
 Bill/Resolution No.: HB 17  
 Title: "An Act relating to multiple convictions...for motor vehicles..."  
 Sponsor: Repr. Uehling  
 Requestor: House Judiciary  
 Date of Request: 1/24/85

FISCAL DETAIL  
 Agency Affected: Department of Law  
 Program Category Affected: Administration of Justice  
 BRU, Program or Subprogram(s) Affected: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

<b>CAPITAL</b>						
----------------	--	--	--	--	--	--

<b>REVENUE</b>						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

This bill amends AS 11.46.484(c) to provide that a person convicted under (a)(2) of that section who has been previously convicted of an offense having similar elements or of an offense involving the theft of a motor vehicle under AS 11.46.100-11.46.190 is guilty of a class C felony. The effect of the amendment is to provide for the inclusion of convictions of similar offenses in other jurisdictions in arriving at the offense level for repeat offenses in Alaska.

*Richard I. Pegues*

(Continued)

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: 1/29/85

Approved by Commissioner: *Richard I. Pegues / for* Norman C. Gorsuch Date: 1/29/85  
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

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

FISCAL NOTE  
HB 17 (Cont'd.)  
Page 2

Analysis (Cont'd.)

Although this bill will cause a small increase in the number of offenses handled by state prosecutors, the changes caused by the bill will not be significant enough to warrant a fiscal note increase in the prosecution budget. Cummulatively, however, bills of this nature will have the effect of diverting prosecution resources from prosecuting more serious offenses.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

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

**REQUEST:**

Bill/Resolution No.: H.B. 17  
 Title: "An Act relating to multiple convictions for motor vehicle theft and joyriding"  
 Sponsor: Representative Uehling  
 Requestor: (H) Judiciary  
 Date of Request: February 1, 1985

**FISCAL DETAIL:**

Agency Affected: DEPARTMENT OF CORRECTIONS  
 Program Category Affected: \_\_\_\_\_  
 Administration of Justice  
 BRU, Program or Subprogram(s) Affected: Offender Confinement, Reformation, and Supervision

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

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

<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
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<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

**ANALYSIS:** Attach a separate page if necessary.

The Department of Corrections currently has one person with a prior conviction serving a two year sentence for Criminal Mischief III. This is the same sentence which would have been required if this offense was a Class C Felony.

Prepared By: William W. Ladwig  
 Division: Deputy Commissioner for Administration

Phone: 465-3376  
 Date: February 4, 1985

Approved by Commissioner: [Signature]  
 Agency: DEPARTMENT OF CORRECTIONS

Date: February 4, 1985

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

.155

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST  
 Bill/Resolution No.: HB 27  
 Title: "...multiple convictions  
 for joyriding."  
 Sponsor: Rep. Uehling  
 Requestor: House Judiciary  
 Date of Request: 2-6-85

FISCAL DETAIL Public Safety  
 Agency Affected: \_\_\_\_\_  
 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						
500 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See attached analysis.

Prepared By: Francis C. Allan <sup>G.C.A.</sup>  
 Division: Alaska State Troopers  
 Approved by Commissioner: [Signature]  
 Agency: Department of Public Safety  
 Phone: 269-5691  
 Date: 2-1-85  
 Date: 2-6-85

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

7/1/84

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

MEMORANDUM

January 29, 1985

SUBJECT: Sectional analysis of HB 17  
TO: Representative M. Mike Miller  
Chair, House Judiciary Committee  
FROM: George W. Edwards *GWE*  
Legislative Counsel

Section 1 AS 11.46.484(c) is amended by deleting language that described relevant previous convictions as those under this section and former AS 25.35.010 and by replacing it with broader language that includes among relevant previous convictions all offenses having similar elements and state motor vehicle theft offenses.

GWE:ojb  
J11/036

January 25, 1985

JAN 29 1985

Representative Mike Miller  
Chairman, House Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

Dear Representative Miller,

The Anchorage Police Department Employees Association has been involved with and supportive of Representative Rick Uehling in submitting a Bill to broaden utilization of greater Penalties upon second conviction for Motor Vehicle Theft and Joyriding. The result of this collective effort is HB17.

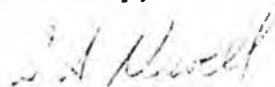
We understand that this Bill will come before your Committee. We request and encourage the Committees passing of this legislation.

The Anchorage Police Department Employees Association, Alaska Peace Officers Association and the Alaska Chiefs of Police are supportive of this Bill.

For additional information please contact Investigator Lyle Davis or Investigator Anne Newell, 264-4141, Anchorage Police Department, 625 C Street, Anchorage, Alaska 99501.

Thank you for your consideration in this matter.

Sincerely,



S. A. Newell  
APDEA Legislative Committee

SAN:vka

Enclosure: Letter of Explanation  
Current Statistics and  
Ordinances



TONY KNOWLES  
MAYOR

# ANCHORAGE POLICE DEPARTMENT

625 C STREET • ANCHORAGE, ALASKA 99501-3599  
TELEPHONE (907) 279-1441



BRIAN S. PORTER  
CHIEF

January 25, 1985

JAN 28 1985

Representative Mike Miller  
Chairman, House Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

RE: House Bill No. 17  
"An Act Relating to Multiple Convictions for Motor Vehicle Theft  
and Joyriding

Dear Representative Miller,

Alaska Statute 11.46.484 (a)(2) Criminal Mischief in the Third Degree written, causes a person who has been previously convicted of this offense, or the old Title 28.35.010 (Driving a vehicle without owner's consent) to be charged with a Class "C" Felony.

Since the enactment of this Statute [11.45.484(a)(2)] in 1982, several problems have been encountered that have severely limited the felony prosecution for this offense. This Statute fails to take into consideration:

1. Convictions for the like offense of "Joyriding" (Driving a vehicle without the owner's consent). Other states and jurisdictions have Statutes or Ordinances for the offense of "Driving a vehicle without the owner's consent" (Joyriding), but with the restrictive language of AS 11.46.484(a)(2) prior convictions in other states and jurisdictions may not be used in determining an upgraded charge (felony).
2. Convictions of AS 11.46.482(a)(4) Criminal Mischief in the Second Degree, involving a stolen motor vehicle. The only difference between Criminal Mischief in the Second Degree [AS 11.46.482(a)(4)] (Felony) and Criminal Mischief in the Third Degree [AS 11.46.484(a)(2)] (Misdemeanor), is if the owner of the stolen vehicle incurs expenses in the amount of \$500 or more the Criminal Mischief in the Second Degree is charged.
3. Convictions of AS 11.46.100-190 Theft in the First-Third Degree. Not all people charged with stealing a motor vehicle are charged under the Criminal Mischief Statutes, depending on what they ultimately do to or with the vehicle, they can be charged under the Theft Statutes.

The Theft Statutes are utilized when it can be shown that the thief had the intent to permanently deprive the owner of his stolen vehicle, such as altering the vehicle identification numbers or dismantling the vehicle out.

Anchorage accounts for 44% of the vehicles registered in Alaska, and 83% of the vehicle thefts.

Registered vehicles (Anchorage)

1982	150,973
1983	172,911
1984	186,744

Auto Thefts (Anchorage)

		Dollar Amount
1982	1120 vehicles	\$2,563,800
1983	1433 vehicles (+28%)	3,744,000
1984	1562 vehicles (+ 9%)	4,634,000

In Anchorage, during 1984, your chance of having your vehicle stolen was "1" out of "119". The National average was "1" out of 158 and Seattle only had a rate of "1" out of 335.

I strongly urge your support for House Bill No. 17. I have worked as an auto theft investigator for the past 12 years and I feel that this Bill will help to reduce auto theft in Alaska. House Bill No. 17 is also supported by the Alaska Chief of Police, Alaska Peace Officers Association and the Anchorage Police Department Employees Association.

Sincerely,



Investigator Lyle L. Davis  
Anchorage Police Department  
Auto Theft Unit

LLD:vka  
Attachments

stantial, was clearly adequate and measured up to the standards which the court of appeals has laid down in such cases. *Yoho v. United States*, 14 Alaska 174, 202 F.2d 241 (9th Cir. 1953).

**Prosecution could waive felony and prosecute for misdemeanor.** — If on trial a misdemeanor (e.g., larceny) turned

out to be a felony (e.g., robbery), then the prosecution could in such cases waive the felony, and prosecute only for the constituent misdemeanor, supposing the misdemeanor be proved. *Perkins v. United States*, 16 Alaska 471, 237 F.2d 857 (9th Cir. 1956).

**Sec. 11.46.120. Theft in the first degree.** (a) A person commits the crime of theft in the first degree if the person commits theft as defined in AS 11.46.100 and the value of the property or services is \$25,000 or more.

(b) Theft in the first degree is a class B felony. (§ 4 ch 166 SLA 1978)

#### NOTES TO DECISIONS

**Sentence upheld.** — Trial court did not err in sentencing defendant to 10 years' imprisonment with five years suspended and ordering her to pay \$300,000 restitution upon her conviction of embezzlement by an employee for money taken prior to January 1, 1980, and of theft in the first degree for money taken after January 1, 1980, the effective date for the revised criminal code. *Karr v. State*, Ct. App. Op. No. 230 (File No. 7011), 660 P.2d 450 (1983).

While no violence was involved, trial court properly found that appellant's

embezzlement of \$140,000 from her employer over a one-year period was among the most serious conduct prescribed by the statute and served to distinguish it from prior cases in which substantial sentences for embezzlement were disapproved, and eight-year sentence with four years suspended was not excessive. *Brezenoff v. State*, Ct. App. Op. No. 226 (File No. 7117), 558 P.2d 1355 (1983).

Cited in *Furham v. State*, Sup. Ct. Op. No. 2251 (File No. 3475), 629 P.2d 35 (1980).

**Sec. 11.46.130. Theft in the second degree.** (a) A person commits the crime of theft in the second degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is \$500 or more but less than \$25,000;

(2) the property is a firearm or explosive; or

(3) the property is taken from the person of another.

(b) Theft in the second degree is a class C felony. (§ 4 ch 166 SLA 1978)

#### NOTES TO DECISIONS

**Failure to preserve evidence.** — Convictions for second-degree theft were reduced to convictions for third-degree theft where the state failed to preserve the scrap copper which was the object of the theft. *Hatfield v. State*, Ct. App. Op. No. 257 (File Nos. 6371, 6732), 663 P.2d 987 (1983).

Applied in *Neil v. State*, Ct. App. Op.

No. 77 (File No. 5565), 642 P.2d 1361 (1982); *Williams v. State*, Ct. App. Op. No. 106 (File No. 5993), 648 P.2d 603 (1982).

Quoted in *Frankson v. State*, Ct. App. Op. No. 92 (File No. 6029), 645 P.2d 225 (1982).

Stated in *Leuch v. State*, Sup. Ct. Op. No. 2419 (File No. 5255), 633 P.2d 1006 (1981).

Cited in *Williams v. State*, Sup. Ct. Op. (File No. 6870), 655 P.2d 1319 (1982); No. 2147 (File No. 3901), 614 P.2d 1384 (1980); *Namen v. State*, Ct. App. Op. No. 264 (File No. 5662), 665 P.2d 557 (1983).

**Sec. 11.46.140. Theft in the third degree.** (a) A person commits the crime of theft in the third degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is \$50 or more but less than \$500; or

(2) the property is a credit card.

(b) Theft in the third degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

#### NOTES TO DECISIONS

**Failure to preserve evidence.** — Convictions for second-degree theft were reduced to convictions for third-degree theft where the state failed to preserve the scrap copper which was the object of the theft. *Hatfield v. State*, Ct. App. Op. No. 257 (File Nos. 6371, 6732), 663 P.2d 987 (1983).

**Remand for vacation of sentence.** — Where defendant appealed from convictions and sentences simultaneously entered for the offenses of first-degree robbery and theft by taking in the third degree on the ground that all of the elements involved in his conviction of theft by taking in the third degree were necessarily included in his conviction for the of-

fense of first-degree robbery and thus, the imposition of separate sentences on the theft and robbery charges was precluded by double jeopardy, and on appeal the state confessed error as to this issue and requested that the judgment and commitment entered as to the lesser offense of theft be vacated upon remand to the superior court, the court remanded for that purpose. *Dunn v. State*, Ct. App. Op. No. 158 (File Nos. 5567, 5697), 653 P.2d 1071 (1982).

Cited in *Law v. State*, Sup. Ct. Op. No. 2301 (File No. 4552), 624 P.2d 284 (1981); *Wasson v. State*, Ct. App. Op. No. 141 (File No. 6072), 652 P.2d 117 (1982).

**Sec. 11.46.150. Theft in the fourth degree.** (a) A person commits the crime of theft in the fourth degree if the person commits theft as defined in AS 11.46.100 and the value of the property or services is less than \$50.

(b) Theft in the fourth degree is a class B misdemeanor. (§ 4 ch 166 SLA 1978)

**Sec. 11.46.160. Theft of lost or mislaid property.** (a) A person commits theft of lost or mislaid property if the person obtains property of another knowing that the property was lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient and the person fails to take reasonable measures to restore the property to the owner with intent to deprive the owner of the property.

(b) As used in this section "reasonable measures" includes notifying the identified owner or a peace officer. (§ 4 ch 166 SLA 1978)

(b) Failure to control or report a dangerous fire is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

**Sec. 11.46.480. Criminal mischief in the first degree.** (a) A person commits the crime of criminal mischief in the first degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) with intent to cause a substantial interruption or impairment of a service rendered to the public by a utility or by an organization which deals with emergencies involving danger to life or property, the person damages or tampers with property of that utility or organization and causes substantial interruption or impairment of service to the public;

(2) with intent to damage property of another by the use of widely dangerous means, the person damages property of another in an amount exceeding \$100,000 by the use of widely dangerous means; or

(3) the person intentionally damages an oil or gas pipeline or supporting facility.

(b) Criminal mischief in the first degree is a class B felony. (§ 4 ch 166 SLA 1978)

**Cross references.** — For liability for destruction of property by minors, see AS 34.50.020.

#### NOTES TO DECISIONS

Stated in *Wertz v. State*, Sup. Ct. Op. No. 2069 (File No. 4683), 611 P.2d 8 (1980).

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**Collateral references.** — 52 Am. Jur. 2d, Malicious Mischief, § 1 et seq.

**Sec. 11.46.482. Criminal mischief in the second degree.** (a) A person commits the crime of criminal mischief in the second degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) with intent to damage property of another, the person damages property of another in an amount of \$500 or more;

(2) the person tampers with an oil or gas pipeline or supporting facility or an airplane or helicopter with reckless disregard for the risk of harm to or loss of the property;

(3) the person recklessly creates a risk of damage in an amount exceeding \$100,000 to property of another by the use of widely dangerous means; or

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(4) the person drives, tows away, or takes the propelled vehicle of another and the vehicle or any other property of another is damaged or the owner incurs reasonable expenses as a result of the loss of use of the vehicle in a total amount of \$500 or more.

(b) Criminal mischief in the second degree is a class C felony. (§ 4 ch 166 SLA 1978; am § 13 ch 102 SLA 1980)

**Cross references.** — For liability for destruction of property by minors, see AS 34.50.020.

**Effect of amendments.** — The 1980 amendment rewrote paragraph (4) in subsection (a).

**Legislative history reports.** — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

## NOTES TO DECISIONS

**For case construing former AS 11.20.520, making malicious destruction of property a crime, see Hensel v. State, Sup. Ct. Op. No. 1983 (File No. 2432), 604 P.2d 222 (1979).**

**For case construing former AS 11.20.525, making stealing, removing or damaging parts of an aircraft a crime, see Catlett v. State, Sup. Ct. Op. No. 1752 (File No. 3213), 585 P.2d 553 (1978).**

**Sentence upheld.** — See Austin v. State, Ct. App. Op. No. 18 (File No. 5341), 627 P.2d 657 (1981).

**Applied in Deal v. State, Ct. App. Op. No. 209 (File No. 6812), 657 P.2d 404 (1983).**

**Stated in Wertz v. State, Sup. Ct. Op. No. 2069 (File No. 4683), 611 P.2d 8 (1980).**

**Cited in State v. Grogan, Sup. Ct. Op. No. 2356 (File No. 5199), 628 P.2d 570 (1981); Tritt v. State, Ct. App. Op. No. 009 (File No. 4983), 625 P.2d 882 (1981); Deal v. State, Ct. App. Op. No. 225 (File No. 6776), 659 P.2d 625 (1983).**

**Collateral references.** — 52 Am. Jur. 2d, Malicious Mischief, § 1 et seq.

**Sec. 11.46.484. Criminal mischief in the third degree.** (a) A person commits the crime of criminal mischief in the third degree if, having no right to do so or any reasonable ground to believe the person has such a right

(1) with intent to damage property of another, the person damages property of another in an amount of \$50 or more but less than \$500;

(2) the person drives, tows away, or takes the propelled vehicle of another;

(3) having custody of a propelled vehicle under a written agreement with the owner of the vehicle which includes an agreement to return the vehicle to the owner at a specified time, the person knowingly retains or withholds possession of the vehicle without the consent of the owner for so long a period beyond the time specified as to render the retention or possession of the vehicle an unreasonable deviation from the agreement; or

(4) the person tampers with a fire protection device in a building which is a public place.

(b) Except as provided in (c) of this section, criminal mischief in the third degree is a class A misdemeanor.

(c) A person convicted under (a)(2) of this section who has been previously convicted under that paragraph or under former AS 28.35.010 is guilty of a class C felony. (§ 4 ch 166 SLA 1978; am § 1 ch 18 SLA 1979; am §§ 7, 8 ch 143 SLA 1982)

**Cross references.** — For liability for destruction of property by minors, see AS 34.50.020.

**Effect of amendments.** — The 1979 amendment added paragraph (4) to subsection (a).

The 1982 amendment added "Except as provided in (c) of this section, criminal" to the beginning of subsection (b) and added subsection (c).

#### NOTES TO DECISIONS

**Restitution in excess of \$500.** — A person pleading guilty to criminal mischief in the third degree can be required, pursuant to AS 12.55.045 and AS 12.55.100(a), to pay an amount of restitution in excess of \$500 so long as the payment is made to an aggrieved party and the amount does not exceed the actual damages or loss caused by the crime for which conviction was had. *Fee v. State*, Ct. App. Op. No. 187 (File No. 6951), 656 P.2d 1202 (1982).

**Separate punishment where defendant fired at cabin and truck.** — Separate punishment upon conviction of two counts of misconduct involving weapons in the second degree, and two counts of criminal mischief in the third degree, where the evidence established that defendant had fired a rifle at a cabin and a pickup truck did not violate the double jeopardy provisions of this section since there were sufficient and significant differences between the intent in the two firings.

*Leonard v. State*, Ct. App. Op. No. 168 (File No. 5989), 655 P.2d 766 (1982).

**For case construing former AS 11.20.525, making stealing, removing or damaging parts of an aircraft a crime, see** *Catlett v. State*, Sup. Ct. Op. No. 1752 (File No. 3213), 585 P.2d 553 (1978).

**For case construing former AS 28.35.010, prohibiting driving a vehicle without owner's consent, see** *State v. G.L.P.*, Sup. Ct. Op. No. 1786 (File No. 2978), 590 P.2d 65 (1979); *Bell v. State*, Sup. Ct. Op. No. 1885 (File No. 3612), 573 P.2d 908 (1979); *Sheakley v. State*, Ct. App. Op. No. 87 (File No. 4936), 644 P.2d 864 (1982).

Applied in *Blackmon v. State*, Ct. App. Op. No. 160 (File No. 6141), 653 P.2d 669 (1982).

Quoted in *Frankson v. State*, Ct. App. Op. No. 92 (File No. 6029), 645 P.2d 225 (1982).

**Collateral references.** — 52 Am. Jur. 2d, Malicious Mischief, § 1 et seq.

**Sec. 11.46.486. Criminal mischief in the fourth degree.** (a) A person commits the crime of criminal mischief in the fourth degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) with reckless disregard for the risk of harm to or loss of the property or with intent to cause substantial inconvenience to another, the person tampers with property of another;

*Sgt. Liba*  
**MUNICIPALITY  
OF ANCHORAGE**

**POLICE  
DEPARTMENT**

**MUNICIPAL CRIMINAL CODE  
(ARRESTABLE OFFENSES  
FROM TITLE 9 INCLUDED)**

**JANUARY 1984**

receipt issued for and accompanied by the article or articles of merchandise or thing or things of value. (Adapted from GAAB 18.05.040.)

**8.05.560 Solicitation to Illegal Act.**

It is unlawful to solicit a person for the purpose of committing any illegal act. (GAAB 18.05.010R.)

**8.05.580 Switchblade Knives.**

It is unlawful for a person to sell, offer for sale, display or carry about his person, a knife which has a blade which can be opened by a spring mechanism, exertion of pressure on the handle, or by gravity. This section does not apply to any officer of the United States, the State of Alaska or the municipality whose carrying or displaying of such a knife is necessary in the course of his official duties. (Adapted from CAC 8.50.010 and new.)

**8.05.590 Telephones — Illegal Use of.**

It is unlawful for any person to anonymously or repeatedly telephone another person for the purpose of annoying, molesting, or abusing through patently offensive and profane language, or harassing that person or his family. (Adapted from AS 11.45.035, am AO 82-134.)

**8.05.600 Theft of Vehicle and Joyriding.**

Any person who drives or takes a motor vehicle not his own without the consent of the owner thereof, and with intent to either permanently or temporarily deprive the owner thereof of his possession of the vehicle, whether with or without intent to steal the same, or any person who is a party or accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a misdemeanor. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of the vehicle by the same or a different person. (Adapted from CVC 10851 Calif. Vehicle Code.)

**8.05.610 Unauthorized Duplication of Keys.**

It is unlawful for any person to make a duplicate of a key bearing the inscription "do not duplicate" or "it is unlawful to duplicate this key," unless authorized to do so by the owner of the lock which the key fits. (CAC 8.32.010.)

**8.05.620 Unauthorized Entry.**

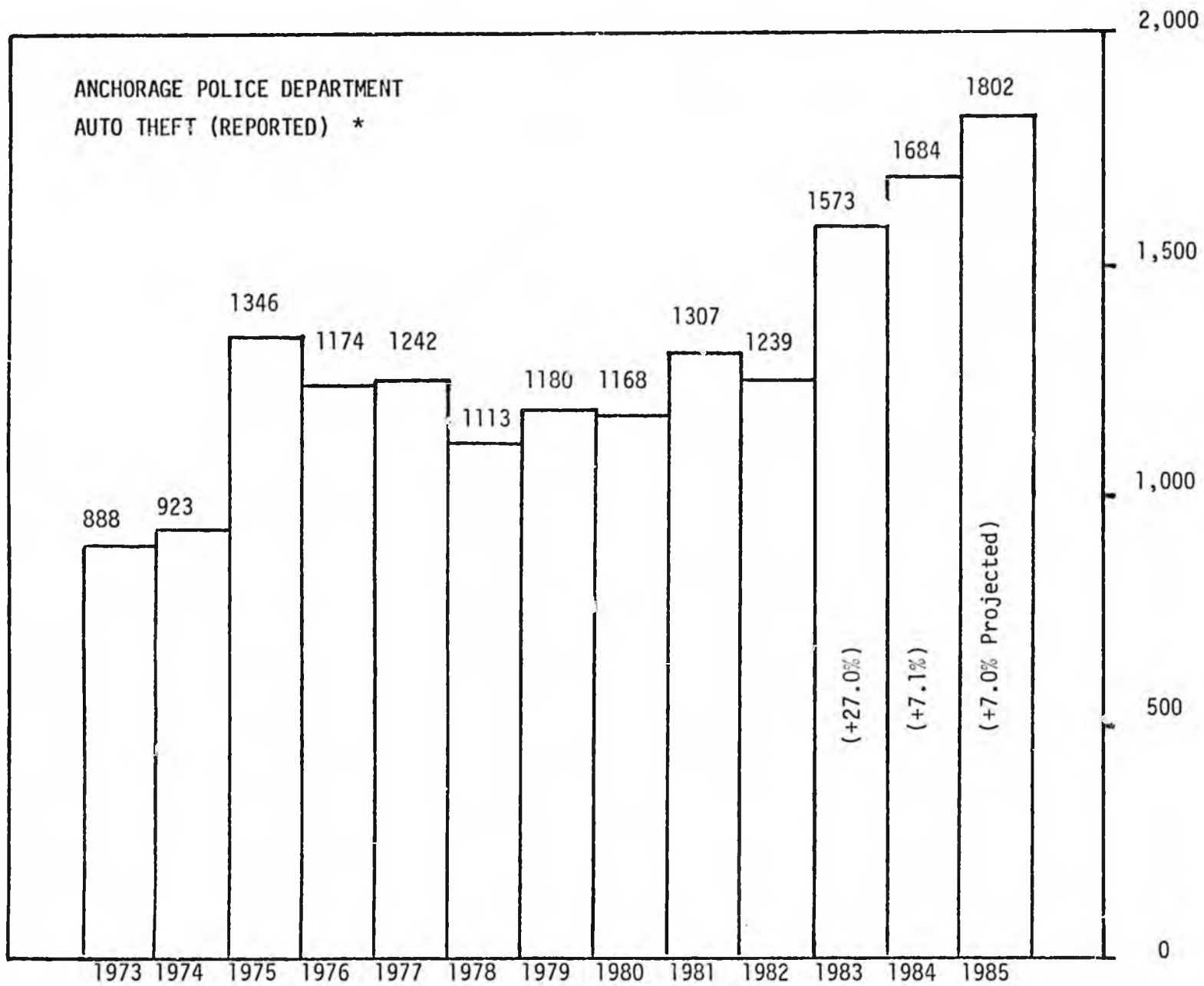
A. It is unlawful for any person to enter, use or occupy any occupied or unoccupied dwelling, house, tent, hotel, office, store, shop, warehouse, barn, factory or other building, boat, ship, railroad car or structure, or apartment, cottage, clubhouse, bathhouse, hunting or fishing lodge, garage or any other structure or use any personal property therein, except with the consent of the owner of the facility or his agent. However, a person may enter, use or occupy an unoccupied structure specified in this section without the consent of the owner if:

1. the entry, use or occupancy of the facility is for an emergency in the case of immediate and dire need; and
2. the person contacts the owner or agent within 15 days after using the facility or, if the owner is unknown, the Anchorage Police Department, and makes a report of the time of entry, use or occupancy of the facility and any damage to the facility or personal property, unless a notice waiving the necessity for such report is posted in the facility by the owner or his agent.

B. In this section, "occupied" means that the premises is being used by one or more persons entitled to its enjoyment and use, and this includes actual as well as constructive occupancy. (Adapted from AS 11.20.135.)

**8.05.660 Vehicle — Tampering With.**

It is unlawful for any person, either individually or in concert with one or more other persons, willfully to:



\* (includes reports later found to be false)

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 17

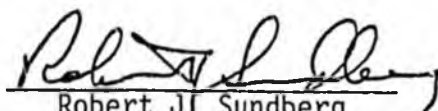
Support

February 1, 1985

HB 17 - "An Act relating to multiple convictions for motor vehicle theft and joyriding."

This legislation broadens the parameters of criminal activity that are to be considered in determining previous convictions involving joyriding.

This wording change will allow more serious charges to be brought against joyriding suspects which should bring the importance of this crime to the public's attention and thus lessen the number of occurrences due to the fear of prosecution as a more serious crime.

  
Robert J. Sundberg  
Commissioner