

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

3308 HJUD HB 194 - HB 211 189



RECORDS CERTIFICATION



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James O. Smith
Signature of Camera Operator

7/25/89
Date

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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

House Judiciary	3/26/85	1:30 pm
" "	3/6/86	1:30 pm

COMMITTEE REPORT
HOUSE

FURTHER: FINANCE

2/13/85

Date: _____

Mr. Speaker:

The Committee on JUDICIARY has had HB 194

"An Act relating to sentencing for certain offenses involving discriminatory harassment."

under consideration and reports it back as follows:

do pass do not pass

do pass with attached amendments(s)

replace with CS for HB 194 (JUD) same title new title

and recommends _____

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

[Handwritten signatures]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Handwritten signatures]

[Handwritten signature]

CHAIRMAN



Rep. M. Miller
(Geno)

REPRESENTATIVE DON CLOCKSIN

Alaska House of Representatives

MAJORITY LEADER

1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-4031

WHILE IN JUNEAU:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3704

M E M O R A N D U M

TO: House Judiciary Committee DATE: March 5, 1986

FROM: Nancy Grcszek *NG* SUBJECT: CS HB 194
Aide to
Representative Don Clocksin

Don asked me to circulate the attached copy of CS to HB 194 which he will propose to the committee tomorrow, March 6, 1986.

Attachment

DRAFT

James ✓

3/5/86

Original sponsor: Rules/Governor

IN THE HOUSE

BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 194 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to a cause of action and sentencing for certain offenses involving discriminatory harassment."

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

* Section 1. AS 09.55 is amended by adding a new section to read:

ARTICLE 8. DISCRIMINATORY HARASSMENT.

Sec. 09.55.650. DISCRIMINATORY HARASSMENT ACTION. (a) A person may maintain an action for discriminatory harassment against another person, or against the parent or legal guardian of a minor, who has caused physical injury to the person or damage to the property of the person, with the intent to intimidate or harass the person because of the person's sex, sexual orientation, race, color, religion, national origin, or physical or mental disability.

(b) Actual and punitive damages may be awarded to a prevailing plaintiff in an action brought under this section. An award of damages against the parent or legal guardian of a minor under this section must be predicated upon conduct of the parent or legal guardian that is at least negligent. An award of damages under this section does not preclude a person from seeking other remedies available under law.

* Sec. 2. AS 12.55.155(c)(22) is amended to read:

(22) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, sexual orientation, color, creed, ancestry, religion, [OR] national origin;

#

DRAFT

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 194 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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7 for certain offenses involving discriminatory harass-
8 ment."

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16 person, with the intent to intimidate or harass the person because of
17 the person's sex, sexual orientation, race, color, religion, national
18 origin, or physical or mental disability.

19 (b) Actual and punitive damages may be awarded to a prevailing
20 plaintiff in an action brought under this section. An award of dam-
21 ages against the parent or legal guardian of a minor under this sec-
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origin;

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHR 194(FIN)
 Title : "An Act relating to a cause of action and certain offenses involving discriminatory harassment."
 Sponsor : Judiciary
 Requestor : House Judiciary
 Date of Request : 4/2/86

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : _____

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

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

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Francis C. Allan *F.C.A.*
 Division : Alaska State Troopers

Phone : 269-5691
 Date : 4/2/86

Approved by Commissioner : *[Signature]*
 Agency : Public Safety

Date : 4/3/86

Distribution (by Agency preparing fiscal note):

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

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

Support


DATE

April 2, 1986

CSHB 194(FIN) - "An Act relating to a cause of action and sentencing for certain offenses involving discriminatory harassment."

Our interpretation of the intent of this legislation is that it is an attempt to curb discriminatory harassment by making it a felony crime.

No additional enforcement activity is anticipated, but the Division supports the legislation as an effective tool in fighting these types of crimes.


Robert J. Sundberg
Commissioner

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 194
 Title : "An Act relating to sentencing for certain offenses involving discriminatory harassment."
 Sponsor : Rules/Governor
 Requestor : House Judiciary
 Date of Request : 3/6/86

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : Alaska State Troopers
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL						
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REVENUE						
----------------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: *K Niles* Kathy Niles, Admin. Assistant Phone: 465-4336
 Division: Commissioner's Office Date: 3/5/86
 Approved by Commissioner: *[Signature]* Date: 3/5/86
 Agency: Public Safety

Distribution (by Agency preparing fiscal note) :

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

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

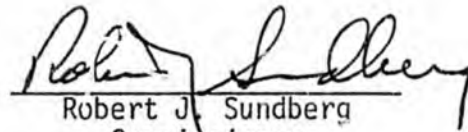
Support

March 5, 1985

HB194 - "An Act relating to sentencing for certain offenses involving discriminatory harassment."

Our interpretation of the intent of this legislation is that it is an attempt to curb discriminatory harassment by making it a felony crime.

No additional enforcement activity is anticipated, but the Division supports the legislation as an effective tool in fighting these types of crimes.


Robert J. Sundberg
Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 194
 Title: Discriminatory Harassment
 Sponsor: Rules/Governor
 Requestor: Governor
 Date of Request: Feb. 5, 1985

FISCAL DETAIL

Agency Affected: Office of the Governor
 Program Category Affected: _____
 Due Process
 BRU, Program or Subprogram(s) Affected: _____
Human Rights Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND		-0-				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared By: Michael A. Nizich, Director Phone: 465-3544
 Division: Administrative Services/ Date: 2/5/85

Approved by Commissioner: *Laura J. Norman* Date: 2/5/85
 Agency: Office of the Governor

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

7/1/84



KENAI POLICE DEPT.

P.O. BOX 3173, KENAI, ALASKA 99611

TELEPHONE 283-7879

April 2, 1985

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

Dear Representative Miller,

The Alaska Association of Chief's of Police at its annual meeting in March of 1985 endorsed the passage of House Bill 184. While this legislation would be somewhat limited in its application, it would be effective in dealing with major criminal enterprises.

We believe that the passage of this piece of legislation, in combination with passage of general conspiracy statute, would greatly enhance the enforcement and prosecutorial resources available to address criminal enterprises.

We request your support, and that of your committee, to accomplish this goal.

Sincerely,

Chief Richard A. Ross
Kenai Police Dept.
President Alaska Chief's of Police

RAR/mp

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 194
 Title: Discriminatory Harassment
 Sponsor: Rules/Governor
 Requestor: Governor
 Date of Request: Feb. 5, 1985

FISCAL DETAIL

Agency Affected: Office of the Governor
 Program Category Affected: _____
 Due Process
 BRU, Program or Subprogram(s) Affected: _____
 Human Rights Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Michael A. Nizich, Director Phone: 465-3544
 Division: Administrative Services Date: 2/5/85
 Approved by Commissioner: *Sandra J. Verma* Date: 2/5/85
 Agency: Office of the Governor

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

7/1/84

BILL SHEFFIELD, GOVERNOR

HUMAN RIGHTS COMMISSION

AGENCY HEADQUARTERS
800 "A" STREET, SUITE 202
ANCHORAGE, ALASKA 99501-3628
(907) 276-7474

NORTHERN REGION
675 SEVENTH AVENUE, STA H
FAIRBANKS, ALASKA 99701
(907) 452-1561

SOUTHCENTRAL REGION
800 "A" STREET, SUITE 204
ANCHORAGE, ALASKA 99501-3628
(907) 274-4692

SOUTHEASTERN REGION
POUCH AH
314 GOLDSTEIN BUILDING
JUNEAU, ALASKA 99811
(907) 465-3560

March 6, 1986

The Honorable M. Mike Miller
Chairman,
House Judiciary Committee
P.O. Box V
Juneau, AK 99811

Re: CS for House Bill 194 (Judiciary)

Dear Representative Miller:

I have received and reviewed the proposed committee substitute for the original bill introduced at the request of the Commission by Governor Sheffield prohibiting certain offenses involving discriminatory harassment, HB 194.

This bill is the result of substantial effort on the part of the Human Rights Commission, the Anchorage Equal Rights Commission and members of a Task Force assembled by state and local commissions over the past two and one half years. This Task Force collected and studied incidents of discriminatory harassment in the state and determined that there was a need for legislation to deal with this problem.

The Alaska Human Rights Commission has advocated for legislation prohibiting acts of discriminatory harassment since 1981. HB 194 represents our third attempt at passage of such legislation. It appears that while all have agreed that this legislation is desirable, considerable debate has taken place about the technical approaches to incorporating the provisions of the criminal section of the bill into the existing criminal code. Most recently, members of your committee have raised concerns about the section of HB 194 which provided for escalation of sentences for criminal acts already punishable by presumptive sentencing. Within the Native community, we have heard serious objections voiced about the impact of presumptive sentencing on Alaska Natives. We are also sensitive to the problem of the increasing numbers of inmates in the correctional institutions and the enormous burden this places on the state. For these reasons we have been amenable to amending HB 194.

Quite simply, there is considerable frustration at this point in moving forward toward our goal of protecting Alaskans from acts of discriminatory harassment by passage of legislation which recognizes the special character of acts motivated by bigotry and prejudice.

Miller
Page 2
March 6, 1986

Nonetheless, the Commission supports the proposed judiciary committee substitute with the following comments:

First, we note that the protections in the committee substitute have been expanded to include sexual orientation. Since this protection was not included in HB 194 as originally proposed, the Commission has not considered this question. Eight years ago, the Alaska Human Rights Commission passed a motion endorsing the addition of "sexual preference" as a protected class to the agency's enabling legislation.

Second, we note that the requirement for the informational copy to the Commission of complaints filed under the remaining civil section has been deleted. The Commission feels strongly about this reporting requirement and urges its inclusion in the substitute bill.

Nationally, reporting provisions for this type of activity are deemed a critical factor in opposing the spread of racial and religious violence. The Alaska Commission and the Discriminatory Harassment Task Force have pledged to monitor incidents of discriminatory harassment in Alaska. The Commission's receipt of informational copies of court actions filed under the proposed committee substitute are essential to our objective. AS 18.80.060(5) gives the Commission the duty "to foster through community effort or goodwill, cooperation and conciliation among the groups and elements of the population of the state". The Commission and the Task Force will work together to develop educational programs based on the information collected as a result of this legislation.

Finally, the Commission hopes that passage of CS HB 194 (Judiciary) will create an awareness in the Legislature and throughout Alaska of a continuing need for even more comprehensive legislation on this subject. The Human Rights Commission, sadly enough, believes that we must increase our vigilance and redouble our efforts to combat the spread of bigotry and racism in Alaska.

Sincerely,

Janet L. Bradley by AMF

Janet L. Bradley
Executive Director

JLB/b



KENAI POLICE DEPT.

P.O. BOX 3173, KENAI, ALASKA 99611

TELEPHONE 283-7879

April 2, 1985

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Chairman, House Judiciary Committee
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Dear Representative Miller,

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We believe that the passage of this piece of legislation, in combination with passage of general conspiracy statute, would greatly enhance the enforcement and prosecutorial resources available to address criminal enterprises.

We request your support, and that of your committee, to accomplish this goal.

Sincerely,

Chief Richard A. Ross
Kenai Police Dept.
President Alaska Chief's of Police

RAR/mp



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 13, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that addresses the problem of discriminatory harassment -- that is, wrongful acts committed with the intent to intimidate or harass another because of the race, color, religion, national origin, or physical handicap of that person.

The bill does two things: (1) it establishes a private right of action called "discriminatory harassment" under which a person can bring a civil lawsuit for the damages caused by discriminatory acts, such as the painting of a swastika on a synagogue or on a person's home; and (2) it creates new presumptive and mandatory minimum criminal sentencing provisions to be used when crimes committed are motivated by this sort of discrimination. The thrust behind this bill is to properly identify the character of harassment and violence motivated by racial bias and religious bigotry and to increase the penalties for such acts because of that motivation.

More specifically, the first section of the bill creates a statutory private right of action under which a person can sue another for physical harm or property damage caused with the intent to intimidate or harass another person because of the sex, race, color, religion, national origin, or physical handicap of that person. The court may award actual and punitive damages to a prevailing plaintiff. Creating a special civil action such as this gives specific statutory authority for such an action, rather than the broad authority of common law. It also allows for easier tracking of lawsuits involving discriminatory harassment, because an informational copy of a complaint filed under this statute, along with the answer to it, is to be served on the executive director of the Alaska State Commission for Human Rights.

In the criminal law sections (secs. 2 -- 13 of the bill), the bill creates new presumptive and mandatory minimum sentencing provisions to address sentencing of these types of crimes with dependable consistency.

Under the state criminal code (AS 11 and AS 12), criminal conduct is classified according to its seriousness, and an appropriate penalty level is attached. This bill leaves this statutory scheme intact, but establishes mandatory minimum and presumptive terms that must be imposed if the defendant committed the offense with the intent to intimidate or harass another person because of the person's race, color, religion, national origin or physical handicap. The structure and theory behind this bill is similar to legislation passed in 1983 which established comparable sentences for assaults on a peace officer. (See AS 12.55.125(c)(2), (d) and (e); AS 12.55.135(d) and (e); AS 12.55.155(c)(13) and (e)).

Under current law, a person convicted of a first offense class A felony would ordinarily face a presumptive term of five years imprisonment. If the defendant's criminal act was motivated by discriminatory intent, this bill would require the imposition of a seven-year presumptive sentence. During a presumptive term, the offender is not eligible for probation or parole.

Under current law, presumptive terms are not imposed upon a first conviction for either a class B or class C felony. This bill imposes presumptive sentences upon first offenders convicted of class B or C felonies if the act was committed with discriminatory intent. The class B felony presumptive term is two years, and the class C felony presumptive term is one year.

If a person commits a class A misdemeanor with discriminatory intent, such as assault in the fourth degree, the defendant must be sentenced to serve at least 30 days in jail. Depending upon the defendant's prior criminal record and the facts of the offense, a court may impose up to the maximum of one year in jail.

If a defendant is convicted of a class B misdemeanor that was committed with discriminatory intent, the defendant must be sentenced to serve at least 10 days in jail. Again, depending upon the defendant's prior criminal record and the facts of the offense, a court may impose up to the maximum of 90 days in jail -- except in cases where a lesser maximum sentence is established by law, such as the 10-day maximum

that can be imposed for convictions of disorderly conduct under AS 11.61.110.

Under current law it is an "aggravating factor" in sentencing if the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, ancestry, or national origin. This bill, in sec. 7, adds religion and physical handicap to that list. A presumptive term may be increased if the court finds the existence of an aggravating factor.

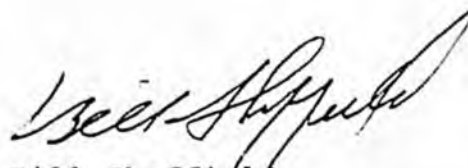
In practice, this aggravating factor may only be used to increase the sentence of a repeat offender, as an aggravating factor may not be considered if it is the same reason that a presumptive sentence must be imposed to begin with. Thus, a person being sentenced for a first felony offense who is facing a certain presumptive term because he committed a crime with discriminatory intent, could not also be subject to aggravation of his sentence for the same reason.

The amendments contained in sec. 5, 8, 9, and 13 are made to ensure that all provisions that deal with some aspect of presumptive sentencing refer to all of the presumptive terms found under AS 12.55.125. As the criminal code has been amended, and presumptive penalties have been added or changed, necessary conforming amendments were not always made or were not made completely. This bill cures past discrepancies, and eliminates the problem for the future, by simply substituting a general reference to "presumptive terms" in several statutes that now contain a list of specific subsections.

Finally the bill provides that the Alaska Court System keep a record of all civil actions and criminal sentencings involving discriminatory intent. In this way, the Human Rights Commission can keep track of the type and number of such incidents occurring in Alaska.

To discourage discriminatory conduct in Alaska and to treat this conduct with the severity and seriousness it deserves, I urge your prompt and favorable action on this bill.

Sincerely,



Bill Sheffield
Governor

TERMS OF IMPRISONMENT AND AUTHORIZED FINES
FIRST OFFENSES UNDER CRIMINAL CODE

<u>FELONY</u>	<u>TERMS OF IMPRISONMENT</u>
"A" felony	2½ - [5-7]* - 20
"B" felony	0 - [2]** - 20
"C" felony	0 - [1]*** - 5

KEY

Number in bracket is presumptive sentence.
Number to left is lowest mitigated sentence.
Number to right is highest aggravated sentence.

*Five year presumptive term if first offense; a seven year presumptive term applies if first A felony conviction, other than manslaughter, and defendant possessed a firearm or used dangerous instrument or caused serious physical injury during the offense or knowingly directed the conduct at a uniformed peace officer or emergency responder engaged in official duties.

**Two year presumptive sentence applies if first B felony conviction and defendant knowingly directed the conduct at a uniformed peace officer or emergency responder engaged in official duties.

***One year presumptive sentence applies if first C felony conviction and defendant knowingly directed the conduct at a uniformed peace officer or emergency responder engaged in official duties.

<u>MISDEMEANOR</u>	<u>MAXIMUM TERM</u>
A misdemeanor	1 year
B misdemeanor	90 days

MAXIMUM FINES-PERSONS

<u>OFFENSE</u>	<u>FINE</u>
Sexual assault I, n .sconduct involving a controlled substance, murder or kidnapping	\$75,000
A, B, or C felony	\$50,000
A misdemeanor	\$ 5,000
B misdemeanor	\$ 1,000
Violation	\$ 300

MAXIMUM FINES-ORGANIZATIONS

All offenses - \$100,000 or 3 times pecuniary gain -
whichever is greater

CLASSIFICATION OF OFFENSES IN CRIMINAL CODE

UNCLASSIFIED FELONIES

Murder I AS 11.41.100 20 - 99 years	Sexual assault I or sexual abuse of minor I AS 11.41.410 & AS 11.41.434
Murder II AS 11.41.110 5 - 99 years	First offense <u>not</u> involving firearms, use of dangerous instrument, or causing serious injury [8] - 30 years
Kidnapping AS 11.41.300 5 - 99 years	First offense involving one of the above [10] - 30 years
Misconduct involving controlled substance I AS 11.71.010 5 - 99 years	

CLASSIFIED FELONIES

A	B	C
Attempted murder I, sexual assault sexual assault of minor, misconduct involving a controlled substance I, kidnapping AS 11.31.100(d) (1)	Attempted A felony AS 11.31.100(d) (2)	Attempted B felony AS 11.31.100(d) (3)
Solicitation of murder, sexual assault I, sexual assault of a minor, misconduct involving a controlled substance II, kidnapping AS 11.31.110(c) (1)	Solicitation of A felony AS 11.31.110(c) (2)	Solicitation of B felony AS 11.31.110(c) (3)
	Assault II AS 11.41.210	Criminally negligent homicide AS 11.41.130
	Sexual assault II AS 11.41.420	Custodial interference I AS 11.41.320

CLASSIFIED FELONIES

A	B	C
Manslaughter AS 11.41.120	Unlawful exploitation of a minor AS 11.41.455	Sexual assault III AS 11.41.430
Assault I AS 11.41.200	Sexual abuse of minor II AS 11.41.436	Assault III AS 11.41.220
Robbery I AS 11.41.500	Robbery II AS 11.41.510	Sexual abuse of a minor III AS 11.41.438
Arson I AS 11.46.400	Extortion AS 11.41.520	Incest AS 11.41.450
Escape I AS 11.56.300	Theft I AS 11.46.120	Coercion AS 11.41.530
Criminal Possession of explosives with intent to commit murder or kidnapping AS 11.61.240(b) (1)	Issuing a bad checks, \$25,000 or more AS 11.46.280(d) (1)	Theft II AS 11.46.130
Promoting person under 16 to engage in prostitution AS 11.66.110(a) (2)	Burglary I AS 11.46.300	Concealment of merchandise, \$500 or more AS 11.46.220(c) (1)
Misconduct involving controlled substance II AS 11.71.020	Arson II AS 11.46.410	Removal of identification marks, \$500 or more AS 11.46.260(b) (1)
	Criminal mischief I AS 11.46.480	Unlawful possession (of altered property), \$500 or more AS 11.46.270(b) (1)
	Forgery I AS 11.46.500	

CLASSIFIED FELONIES

B

C

Scheme to defraud
AS 11.46.600

Defrauding creditors,
\$25,000 or more
AS 11.46.730(c) (1)

Bribery
AS 11.56.100

Receiving a bribe
AS 11.56.110

Perjury
AS 11.56.200

Escape II
AS 11.56.310

Interference with
official proceedings
AS 11.56.510

Receiving a bribe by
Witness or juror
AS 11.56.520

Criminal possession of
explosives with intent
to commit A felony
AS 11.61.240(b) (2)

Promoting prostitution I
AS 11.66.110

Issuing a bad check, \$500
or more
AS 11.461280(d) (2)

Fraudulent use of a credit
card, \$500 or more
AS 11.46.285(b) (1)

Obtaining a credit card by
fraudulent means
AS 11.46.290

Burglary II
AS 11.46.310

Criminal Mischief II
AS 11.46.482

Forgery
AS 11.46.505

Criminal possession of
forgery device
AS 11.46.520

Criminal simulation \$500
or more
AS 11.46.530(b) (1)

Offering a false instrument
for recording
AS 11.46.550

CLASSIFIED FELONIES

B

C

Misconduct involving
controlled substance III
AS 11.71.030

Delivery of imitative
controlled substance
AS 11.73.030

Misapplication of property
\$500 or more
AS 11.46.620

Falsifying business records
AS 11.46.630

Commercial bribe receiving
AS 11.46.660

Commercial bribery
AS 11.46.670

Defrauding creditors,
\$500 - \$25,000
AS 11.46.730(c)(2)

Criminal use of computer
AS 11.46.740

Endangering welfare of minor
AS 11.51.100

Perjury by inconsistent
statements
AS 11.56.230

Escape III
AS 11.56.320

Permitting an escape
AS 11.56.370

Promoting contraband I
AS 11.56.375

CLASSIFIED FELONIES

C

Tampering with witness I
AS 11.56.540

Jury tampering
AS 11.56.590

Misconduct by a juror
AS 11.56.600

Tampering with physical evidence
AS 11.56.610

Harming a police dog I
AS 11.56.705

Hindering prosecution I
AS 11.56.770

False Accusation
AS 11.56.805

Terroristic threatening
AS 11.56.810

Riot
AS 11.61.100

Distribution of child pornography
AS 11.61.125

Promoting an exhibition of
fighting animals
AS 11.61.145(a)(1) & (2)

CLASSIFIED FELONIES

C

Misconduct involving weapons I
AS 11.61.200

Criminal possession of explosives
with intent to commit B felony
AS 11.61.240(b) (3)

Unlawful furnishings of explosives
AS 11.61.250

Promoting prostitution II
AS 11.66.120

Promoting gambling I
AS 11.66.210

Possession of gambling records I
AS 11.66.230

Misconduct involving controlled
substance IV
AS 11.71.040

Manufacture or delivery of
imitation controlled substances
AS 11.73.01C

Possession of substance with
intent to manufacture imitation
controlled substance
AS 11.73.020

Advertisement to promote delivery
of controlled substance
AS 11.73.04C



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
General Counsel

303 K Street
Anchorage, AK 99501

March 7, 1985

Representative Mike Miller
Chair, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Miller:

I am writing with regard to HB 194, an act relating to sentencing for certain offenses involving discriminatory harassment, which is presently before the House Judiciary Committee.

This bill establishes a private right of action under which a person can bring a civil lawsuit for damages caused by discriminatory acts. It also creates new presumptive and mandatory minimum criminal sentencing provisions to be used when crimes committed are motivated by discrimination of this type.

Under Section 12 of the proposed legislation, the administrative director of the Alaska Court System is required to report annually to the Alaska Human Rights Commission about both civil suits brought under the proposed statute, and about cases involving sentences imposed which take into account discriminatory harassment. The report must include the number of cases, the types of civil action brought and the amount of damages awarded, the types of crimes involved and sentences imposed, and the geographical distribution of the cases.

Adoption of this section would impose a tremendous clerical burden on the courts. Under current procedures the court system does not have the ability to track this information, so a completely new system would have to be devised. Proper reporting depends on proper identification of the cases involved, which may not always be apparent from pleadings or a judgment. The courts with the bulk of case filings are not automated, so this procedure would have to be accomplished manually. Proposed AS 09.55.650(c) requires that informational copies of a complaint

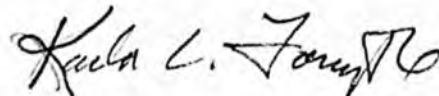
and answer filed under this section must be filed with the Human Rights Commission so to a large extent the court's reporting activities would be duplicative.

Additionally, this provision appears to violate the doctrine of separation of powers. The judicial branch would be required to report to the Human Rights Commission for a purpose unrelated to the court's primary function. The governor's transmittal letter states that "in this way, the Human Rights Commission can keep track of the type and number of such incidents occurring in Alaska." As a practical matter it is unclear what action, if any, the commission would take regarding this information. Also, if the commission is primarily concerned about the extent of discriminatory harassment, court records would reflect only a minor proportion of incidents of this nature.

For these reasons, the court system is opposed to section 12. When this bill is scheduled for hearing before the committee, I would appreciate the opportunity to testify, at which time I will be glad to provide further details about the extent of the burden this new procedure would create for the courts.

Thank you for your consideration of these comments.

Sincerely,



Karla L. Forsythe
General Counsel

KLF:smh

cc: Arthur H. Snowden, II
Art Peterson, Assistant Attorney General

Anch. Daily News Sept. 11, 1985

Suspect on trial in clubbing death

By SHEILA TOOMEY
Daily News reporter

One of two men accused of letting a 55-year-old carpenter pick them up in a bar so they could rob him went on trial for murder Tuesday in Anchorage Superior Court.

Charles Cole, 21 and Matthew Decker, 19, are charged with first-degree murder in the April 3 death of Ray Barker, found clubbed to death in his trailer home at 3440 E. 64 Ave. Cole and Decker were arrested the next day.

In his opening statement against Cole on Tuesday, Assistant District Attorney Gail Fratles said the two defendants were broke and went looking for a victim among homosexual men who frequent several downtown bars.

"They decided to troll a gay bar and pick up somebody and rob them," he said.

"They killed Barker deliberately, he said, and then complained because they got only \$20, a television and Barker's truck.

But defense attorney Mark

Ashburn said the two men played different roles in the crime. Decker, not Cole, set the plan in motion, he said. Decker, not Cole, had a history of going home with gay men and robbing their homes in the middle of the night.

Cole was out of the room when the killing blows were struck, Ashburn said.

The two men found Barker earlier that evening at The Raven, a bar on Gambell Street, and arranged to meet him at another bar, The Jade Room, Fratles said. Barker was "a great big bear of a man . . . a rather gentle, friendly person" who befriended street people "and not necessarily for sexual purposes."

He took the men home and cooked them a fried chicken and green bean dinner. During the dinner, said Ashburn, Barker asked his guests if they "were into sexual activities."

Here the prosecution and defense versions of what hap-

pened that night diverge.

Suspect

Continued from Page C-1

pened that night diverge. Fratles told jurors Decker left the table at a pre-arranged signal, got a weapon from another part of the home, came up behind Barker and brought the club down on his head five times, crushing his skull and killing him.

The murder weapon was a willow branch, about 18 inches long, with a large knot at one end.

But the defense argued Cole was just an observer and left the room while Barker was still alive, after two blows had been struck. When he came back, having cut the telephone cord, the victim was lying in a pool of blood with a rug over his head, Ashburn said.

Color slides taken at the death scene show Barker sprawled on his back, his overturned chair nearby and his dinner napkin still clutched in his hand.

In Ashburn's version, Decker robbed the house and the two drove off in Barker's blue, three-quarter ten pickup, later recovered by police in Bootlegger's Cove.

The day after the murder, someone telephoned Crimestoppers and reported two people he knew were boasting about having robbed and beaten a man. Police put a hidden transmitter on the informant and recorded a conversation between him and the two defendants, which led to their arrest.

Ashburn said the recording will show that the two men did not intend to kill Barker, that they thought they left him alive.

Fratles told jurors the five blows to the victim's head is proof they intended to kill.

Intentional murder — first-degree murder — carries a prison term of from 20 to 30 years. Unintentional killing during the commission of a felony is second-degree murder and carries a prison term of from 5 to 20 years.

The trial continues today before Judge Mark Rowland.

Jury finds Cole guilty of man's murder

By DON HUNTER
Daily News reporter

A Superior Court jury found Charles Cole guilty of first-degree murder Saturday afternoon in the April 3 slaying of 55-year-old Ray Barker.

Prosecutors said Cole, 21, and 19-year-old Matthew Decker had lured Barker, a carpenter, from a downtown bar that caters to homosexuals so they could rob him, and murdered him in the process.

As well as first-degree murder, the jury returned guilty verdicts on counts of second-degree murder and robbery. The first-degree conviction supersedes the second-degree conviction.

The first-degree murder conviction carries a penalty of from 20 years to 99 years in prison.

Cole's sentencing date will

be scheduled on Monday.

The jury had been deliberating on the verdict since being sequestered Friday.

Decker has not yet been tried.

Barker took Decker and Cole to his home and cooked dinner for them. Prosecutor Gail Fratles said during the three-day trial.

While Barker was seated at the table, Decker slipped behind him and clubbed him to death with a willow branch he found in Barker's home, Fratles said.

"Is there anything more pathetic than this man laying out a table for these savages and being struck down at his dinner table?" Fratles asked the jury during closing arguments Friday.

Although he conceded Cole

See Page B3 COLE

Cole found guilty of murder

Continued on Page B3

had not actually struck the blows, Fratles argued Cole should be found guilty of first-degree murder because he had cut a telephone line after the slaying so Barker, if still alive, could not call for help.

Fratles said that showed Cole wanted Barker to die.

Defense attorney Mark Ashburn argued that, at most, Cole should be found guilty of theft. He said Cole had no reason to believe Decker intended to kill Barker.

The person that struck the

blow that caused the death is responsible for the killing," Ashburn said. "This is not Matt Decker's trial."

Fratles produced witnesses who testified that Cole and Decker worked as a team. Decker would lure homosexual men from bars and lead them to a secluded place where he and Cole would rob them, the witnesses said.

Fratles also produced a secretly recorded tape made shortly after Barker's death by an acquaintance of Decker and Cole. On the tape, the two bragged of having robbed and beaten a man.

* ORIGINAL
* SENT: 03/26/85 TIME: 15:13
* FROM: NICHELE MORSETH
* SUBJECT: POM - HB194
* PRINT DATE: 03/26/85 TIME: 15:19
*

16

TO: HOUSE JUDICIARY COMMITTEE
REPS: M.M. MILLER, SUND, GRUENBERG, TAYLOR, CLOCKSIN,
PETTYJOHN, PHILLIPS

INTERIOR DELEGATION
REPS: DAVIS, KOPONEN, M.W. MILLER, RINGSTAD, FRANK
SENS: BENNETT, FAHRENKAMP, COGHILL

FROM: BARBARA J. STALEY
CHAIR, HUMAN RIGHTS COMMISSION, CITY OF FAIRBANKS
PO BOX 832
FBX 99707

PHONE: 479-0166

RE: HOUSE JUDICIARY T/C ON HB 194 - DISCRIMINATORY
HARRASSMENT

MSG: IT WAS WITH DISMAY AND SOME CONSTERNATION THAT A
PUBLISHED HEARING CONCERNING HB 194 WAS ARBITRARILY AND WITHOUT
PRIOR NOTICE CUT SHORT AND PERSONS WHO HAD TAKEN OFF WORK IN
ORDER TO TESTIFY WERE NOT GIVEN THAT OPPORTUNITY - I PROTEST
THAT ARBITRARY ACTION.

Handwritten notes:
L.D.
3/26/85
94
↑



The Association For Stranded Rural Alaskans In Anchorage

(907) 277-7043
Serving Rural Alaskans
, President

2701 Denali Street, Suite 1
Anchorage, Alaska 99503
Mary Wolcoff, Executive Director

April 8, 1986

HOUSE OF REPRESENTATIVE
Attention: Mike M. Miller
P.O. Box V
Juneau, Alaska 99811

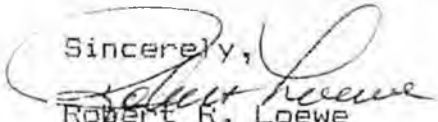
Subject: HB 194 Discriminatory Harassment

Dear Representative Miller:

I am writing to urge you to support the passage of HB 194 which is an Act relating to a cause of action and sentencing for certain offenses involving discriminatory harassment.

It is appalling to me that certain behaviors exhibited by certain segments of our society necessitate this protection. Nonetheless, as a former law enforcement officer, I am all too aware of the reality that those incidents of racial terrorism do happen and our communities around the state are reporting increased activity of this nature.

This bill, in my opinion, is directly specific in its intent to provide a statutory remedy that might otherwise be hidden in a more vast and vague generality of the law. The passage of this bill will bring into focus and enhance the respect for cultural differences, lifestyles and living standards afforded every Alaskan in accordance with constitutional mandates.

Sincerely,


Robert R. Loewe
Crime Prevention Specialist
ASRAA
Member of the Discriminatory Harassment Task Force

cc: Alaska State Human Rights Commission
File

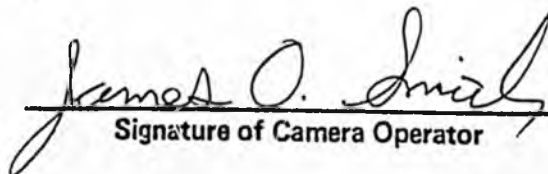


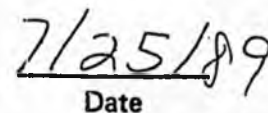
United Way Agency



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 9 8

UNFINISHED BUSINESSHB 242

The Speaker waived the State Affairs Committee referral on HOUSE BILL NO. 242 (automatic data processing; effective date) at the request of the Chairman.

HB 242 is currently in the House Special Committee on Telecommunications and has a further referral to the Finance Committee.

HB 198

The Speaker waived the Judiciary Committee referral on HOUSE BILL NO. 198 (municipal assistance for certain municipalities organized under federal law; effective date) at the request of the Chairman.

HB 198 was taken from the Judiciary Committee and sent to the Finance Committee.

CSHB 115(Jud)

Representative Pettyjohn brought up the reconsideration of COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 115 (Judiciary) (relating to setting of venue by supreme court rule; effective date).

THIRD READING OF HOUSE BILLS

CSHB 115(Jud) was read the third time.

The question to be reconsidered: "Shall CSHB 115(Jud) pass the House?" The roll was taken with the following result:

CSHB 115(JUD) RECONSIDERATION

Yeas:	28	Adams, Foucher, Cato, Collins, Duncan, Fuller, Gruenberg, Harley, Herrmann, Hurley, Jenkins, Larson, Martin, Miller, M.M., Miller, M.W., Navarre, Pearce, Pettyjohn, Phillips, Rieger, Ringstad, Shultz, Sund, Szymanski, Taylor, Thompson, Uehling, Wallis
Nays:	9	Clocksie, Cotten, Davis, Frank, Goll, Grussendorf, Koponen, Harrou, Pourchot



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

199

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL
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 Transportation

2/27/85 7am

UNFINISHED BUSINESS

HB 115

The Speaker waived the Judiciary Committee referral on HOUSE BILL NO. 115 (setting of venue by supreme court rule) at the request of the Chairman.

HB 115 was sent to the Rules Committee for placement on the calendar.

HB 199

The Speaker waived the Judiciary Committee referral on HOUSE BILL NO. 199 (relating to motor vehicles) at the request of the Chairman.

HB 199 was sent to the Rules Committee for placement on the calendar.

HCR 16

Representative Gruenberg added his name as co-sponsor to HOUSE CONCURRENT RESOLUTION NO. 16 (relating to the longevity bonus program).

HB 146

Representative Davis added his name as co-sponsor to HOUSE BILL NO. 146 (relating to housing loans for the permanently disabled).

ENGROSSMENT

HCSSJR 14(Res) was engrossed, signed by the Speaker and the Chief Clerk and transmitted to the Senate for consideration.

MEMO



Phone: 465-3725
Room: 214 Capitol

From the desk of CHIEF CLERK

TO: Judiciary DATE: 3/6/85

Please return the committee copies
of HB 199 and HB 115 to the Chief Clerk
They are being waived to Rules.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 199
 Title: An Act relating to motor vehicles
 Sponsor: Taylor
 Requestor: House Transportation
 Date of Request: 2-25-85

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Life and Property Protection
 BRU, Program or Subprogram(s) Affected: Division of Motor Vehicles

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

No fiscal impact.

Prepared By: Charles R. Hosack Phone: 269-5551
 Division: Motor Vehicles Date: 2-22-85

Approved by Commission: Michael J. Clemens Date: 2-25-85
 Agency: Public Safety

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

7/1/84

DEPARTMENT OF PUBLIC SAFETY

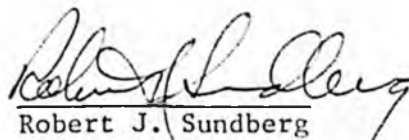
POSITION PAPER

HB-199 SUPPORT

February 22, 1985

This bill has two purposes. First, it will reduce the size of cycle that 14 and 15 year old drivers may operate from 150cc to 50cc. This will bring Alaska statutes in line with the majority of other states in defining a motor-driven cycle and it will also increase highway safety. Over the last five years 14 and 15 year old drivers have been involved in over 10% of the motorcycle accidents while this same age group is less than 1% of the total number of licensed motorcycle operators.

The second purpose would be to allow the holder of a basic driver license to operate a motor-driven cycle without a special endorsement. This would be beneficial for commercial operators who wish to rent mopeds to tourists. To accomplish this purpose the division would need to amend regulations to permit operation of the motor-driven cycle on the basic license. No other changes are necessary.


Robert J. Sundberg
Commissioner

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

January 30, 1985

The Honorable Robin L. Taylor
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Taylor:

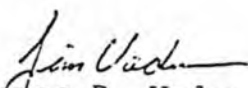
Attached is a recommendation from Director John Lucking concerning moped licenses.

This recommendation will allow companies to rent mopeds to licensed drivers; which is what we believe your intent was.

At the same time, it will allow us to maintain various classes of licenses which we feel are important to public safety. The Administration has requested that we begin to develop testing criteria for heavy commercial vehicle drivers. As you can see from the attached memorandum, our motorcycle testing has reduced fatal motorcycle accidents.

If we can be of further assistance, please let me know.

Sincerely,


James D. Vaden
Deputy Commissioner

MEMORANDUM

State of Alaska

to: James D. Vaden
Deputy Commissioner
Department of Public Safety

DATE: January 23, 1985

FILE NO:

THRU: John H. Lucking, Director
Division of Motor Vehicles *JHL*

TELEPHONE NO: 269-5551

FROM: Charles R. Hosack, Deputy Director
Division of Motor Vehicles *CRH*
Department of Public Safety

SUBJECT: Moped Operator Licenses

I have reviewed the file and the draft bill from Representative Robin Taylor on "Moped Operator Licenses". The draft bill would completely eliminate the classified license so that the basic license would allow a person to drive any vehicle, including motorcycles and mopeds. For a number of reasons this division would oppose the elimination of the classified licensing system, but I do have a proposal that would address Representative Taylor's concerns as well as correct some problems with the current licensing statutes.

There is a definite need for a classified licensing system based on safety issues. The safe operation of two-wheeled vehicles requires different skills and knowledge than those which apply to four-wheeled vehicles and most states recognize this fact. In 1984, 46 states required either a motorcycle license or endorsement and this type of license is strongly supported by the Motorcycle Safety Foundation. The effectiveness of this type of licensing can be seen in Alaska's experience. During the time that the classified licenses have been in effect the number of fatal motorcycle accidents has decreased from 20 in 1978 to 8 in 1982. While not all of this is due solely to the motorcycle license, that program has had a major effect on these numbers.

The same safety rationale is not as strong when applied to mopeds. The moped is generally limited to engines of 50 cc or less and many states also limit the maximum speed to 35 mph and the horsepower to 2 BHP. With these limitations the use of the moped is somewhat restricted and the chances for accidents and injuries are reduced. This is the reason that many states allow the operation of mopeds with only a basic license.

Alaska does not issue a "moped license" but we do issue a permit for operation of a motor-driven cycle. The original intent of this permit was to allow 14 and 15 year old drivers to operate low-powered two-wheeled vehicles. The motor-driven cycle was defined as a vehicle with an engine of less than 150 cc or 5 BHP. With current technology these engines are no longer low-powered and it is possible to operate up to and even exceed the maximum legal speed of 55 mph. I do not believe this type of operation is in keeping with the original intent

of the law. In accident statistics over the last 5 years 14 and 15 year old drivers have been involved in over 10% of the motorcycle accidents while this same age group is less than 1% of the total number of licensed motorcycle operators.

To address this safety concern and Representative Taylor's concern, I would propose that the definition of "motor-driven cycle" in Alaska Statute 28.35.260(a)(9) be changed to read:

(9) "motor-driven cycle means a motorcycle, motor scooter, motorized bicycle, moped, or similar conveyance with a motor attached and having an engine with less than 50 [150] cubic centimeters of displacement or with not to exceed 2 [5] brake-horse power.

At the same time the division would amend 13 AAC 08.150(b)(1) to read:

(1) Class A license - motor-driven cycles, cars buses, trucks, and towed vehicles.

This proposal would bring Alaska in line with most other states by allowing operation of mopeds on a regular license and, at the same time, reduce the size of bike that could be driven by the younger drivers. It also has the added benefit of preserving the classified license system so that the division can react quickly to changing safety needs by adding other classes such as commercial vehicles if the situation arises. This type of change would only require changing regulations rather than changing statutes.

There would be no fiscal impact with this proposal. The only negative aspect would be the impact on those 14 and 15 year old drivers who have a cycle larger than 50 cc. There are currently only 146 licensed drivers in that age group, so the impact would be fairly small.

DEPARTMENT OF PUBLIC SAFETY
COMMISSIONER'S OFFICE
Juneau, Alaska

JAN 28 1985

or to court-appointed counsel. The action is brought in the name of the state; it is commenced by the filing of a complaint by a law enforcement official; it is prosecuted by the district attorney. The exceptions appear to merely codify existing constitutional law. *State v. Claytor*, Sup. Ct. Op. No. 1734 (File No. 3983), 584 P.2d 1111 (1978).

Applied in *Manderson v. State*, Ct. App. Op. No. 198 (File No. 6894), 655 P.2d 1320 (1983).

Stated in *Francis v. Municipality of Anchorage*, Ct. App. Op. No. 70 (File No. 5659), 641 P.2d 226 (1982).

Cited in *Lowry v. State*, Ct. App. Op. No. 181 (File Nos. 6328, 6434), 655 P.2d 780 (1982).

Collateral references. — 7A Am. Jur. 61A C.J.S., Motor Vehicles, §§ 588 to 2d, Automobiles and Highway Traffic, 595.
§ 204.

Sec. 28.40.100. Definitions for title. (a) Unless otherwise specifically defined or unless the context otherwise requires, in this title and in regulations adopted under this title

(1) "cancel" means the annulment or termination by formal action of the department of a certification, registration, license, permit or privilege issued or allowed under this title or regulations adopted under this title, because of an error or defect in the document issued or the application for issuance or because the person holding the document is no longer entitled to it;

(2) "commissioner" means the commissioner of public safety;

(3) "department" means the Department of Public Safety;

(4) "driver" means a person who drives or is in actual physical control of a vehicle;

(5) "driver's license", or "license" when used in relation to driver licensing, means a license, permit or privilege, whether or not a person holds a valid license issued in this or another jurisdiction, to drive a motor vehicle under the laws of this state;

(6) "highway" means the entire width between the boundary lines of every way that is publicly maintained when a part of it is open to the public for purposes of vehicular travel, including but not limited to every street and the Alaska state marine highway system but not vehicular ways or areas;

(7) "motor vehicle" means a vehicle which is self-propelled except a vehicle moved by human or animal power;

(8) "motorcycle" means a vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground; the term does not include a tractor;

(9) "motor-driven cycle" means a motorcycle, motor scooter, motorized bicycle, or similar conveyance with a motor attached and having an engine with less than 150 cubic centimeters of displacement or with not to exceed five brake-horsepower;

(10) "municipality" means a home rule or general law borough or city including, but not limited to, a unified municipality organized under AS 29.68;

obtain an additional endorsement for another class of license must make an application for a change or endorsement, and must submit to an appropriate examination for the change or endorsement for which the licensee is applying. An applicant for a change in classification or an endorsement must pay the appropriate fee set out in AS 28.15.211.

(e) Repealed 3/30/84.
(Eff. 8/15/75, Reg. 55; am 3/30/84, Reg. 89)
Authority: AS 28.05.011
AS 28.15.041

13 AAC 08.160. MEDICAL CERTIFICATION
REQUIRED FOR CERTAIN LICENSES AND
PERMITS. Repealed 3/30/84.

ARTICLE 4.
TRAFFIC VIOLATIONS DEMERIT
POINT SYSTEM

- Section
- 210. Demerit point schedule
- 220. Point accumulation—Application to driver record; coverage
- 230. Suspension or revocation of driving privilege—Duration
- 240. Driver improvement interview
- 250. Driver improvement recommendations—Application by department
- 260. (Repealed)
- 265. Suspension for failure to appear for driver improvement interview or failure to comply with recommendations made in driver improvement interview
- 270. (Repealed)
- 275. Form of notice of suspension for point accumulation
- 280. (Repealed)
- 285. Administrative review of suspension for point accumulation
- 290. Definitions

13 AAC 08.210. DEMERIT POINT SCHEDULE. For purposes of administratively identifying habitually reckless or negligent drivers and habitual or frequent violators of traffic laws and in order to identify problem drivers, the following violations will be accorded these corresponding numerical weights upon conviction:

Violation or Type of Violations	Point Value
(1) driving while license cancelled, suspended, or revoked, or in violation of license limitation	10
(2) driving while intoxicated	10
(3) reckless driving	10
(4) speed contest-racing	10
(5) fleeing or attempting to elude a police officer	10
(6) leaving scene of accident	9
(7) negligent driving	6
(8) failure to yield right-of-way to authorized emergency vehicle	6
(9) failure to stop for school bus while bus is loading or unloading	6
(10) failure to obey official traffic control device in school zone, playground crosswalk, or park	6
(11) speeding:	
in school zone or playground	
crosswalk	6
3 to 9 miles per hour over limit	2
10 to 19 miles per hour over limit	4
20 or more miles per hour over limit	6
(12) violation of oversize or overweight permit pertaining to restriction on speed:	
3 to 9 miles per hour over limit	2
10 to 19 miles per hour over limit	4
20 or more miles per hour over limit	6
on hours of operation	3
(13) careless driving	4
(14) following too closely	4
(15) failure to stop or yield	4
(16) all others	2

(Eff. 11/4/74, Reg. 52; am 3/29/75, Reg. 53; am 12/1/78, Reg. 68; am 9/28/80, Reg. 76; am 3/28/82, Reg. 81)

Authority: AS 28.15.221

mailed by registered or certified mail to the last known address of the addressee as shown in the department's records, is considered delivered upon return of the receipt or upon return of the notice as undeliverable, unclaimed, or refused. (Eff. 12/31/69, Reg. 31; am 7/23/70, Reg. 35; am 1/26/79, Reg. 69)

Authority: AS 28.05.121
AS 28.20.020
AS 28.20.090

13 AAC 08.110. PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE. The department will require proof of financial responsibility for the future in the following cases, in addition to those specifically required by statute:

(1) the driver or owner of a vehicle subject to registration in this state involved in an accident resulting in death, injury, or property damage in excess of \$500 to the property of any one person, if in the department's opinion there is a reasonable possibility that the driver or owner would be held liable for damages by a court;

(2) a person, who, as a result of a conviction or forfeiture of bail for offenses under AS 28.15.181, has his operator's license suspended or revoked;

(3) a person who is convicted or forfeits bail on a charge of driving while his license is suspended, revoked, or cancelled;

(4) a person who fails to satisfy a judgment arising from a motor vehicle accident which occurred either in or outside this state. (Eff. 1/26/79, Reg. 69)

Authority: AS 28.20.020 AS 28.20.260
AS 28.20.230 AS 28.20.330
AS 28.20.240 AS 28.20.340

**ARTICLE 3.
CLASSIFIED DRIVER'S LICENSES**

- Section
- 140. Unlawful use of classified license
- 150. Classes of licenses
- 160. (Repealed)

13 AAC 08.140. UNLAWFUL USE OF CLASSIFIED LICENSE. It is unlawful for a holder of a classified driver's license to operate a

motor vehicle other than the type of motor vehicle which the person is permitted to operate under 13 AAC 08.150 according to the classification or endorsement on the person's license. (Eff. 8/15/75, Reg. 55; am 3/30/84, Reg. 89)

Authority: AS 28.05.011
AS 28.15.041

13 AAC 08.150. CLASSES OF LICENSES. (a) An applicant for a classified license, or for an endorsement to a classified license must submit to an examination appropriate to the class of license or endorsement for which the person is applying.

(b) The classifications of driver licenses, and the vehicles which a holder of each class or subclass of license may operate, are as follows:

(1) Class A license – Cars, buses, trucks, and towed vehicles.

(A) repealed 3/30/84;

(B) repealed 3/30/84;

(C) repealed 3/30/84;

(D) repealed 3/30/84;

(2) Class B license – Motorized cycles. A person holding a Class "B" driver's license may only operate the vehicles designated in one of the following subclassifications as indicated upon the person's license:

(A) B-1: motorcycles, motor-driven cycles, and motorized bicycles, singly or in combination with trailers or sidecars designed to be used with these vehicles;

(B) B-2: motor-driven cycles and motorized bicycles.

(c) To operate a school bus transporting school children, a person is required to have a valid Class A license, and a valid school bus driver permit as prescribed in AS 28.15.041(b) and 13 AAC 08.005 – 13 AAC 08.060. This permit is the "license" referred to in AS 28.15.041(b).

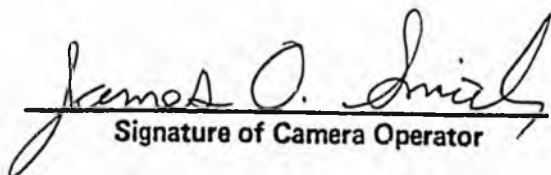
(d) A holder of a classified license who wishes to change the classification on the license, or to

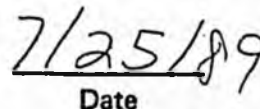


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May, 1986

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

5-6-1985

1:30 pm

5-9-85

1:00 pm

"

"

POSITION PAPER OF
ALASKA CHAPTER
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

ON

HB 211

NOTICE PROVISIONS TO PRIME CONTRACTORS

BY

SUBCONTRACTOR SUPPLIERS



The Alaska Chapter Associated General Contractors of America represents more than 850 companies including most of general contracting companies engaged in commercial construction. We appreciate the opportunity to present A.G.C.'s view on notice provisions to prime contractors by subcontractors.

The A.G.C. supports the inclusion of a "second tier notice" provision in the Little Miller Act.

Under existing law, a person with no direct contractual relationship with a general contractor, but who supplies material to a subcontractor, may make a claim against the payment bond by giving the general contractor written notice within 90 days from the last date on which the person furnished material. A general contractor has no way of knowing who may have supplied materials to a subcontractor. Accordingly, a general contractor has no easy way to assure that a subcontractor has paid all his suppliers. Certification by a subcontractor that all materialmen have been paid is no assurance if the certifying subcontractor is or becomes insolvent. The only "iron clad" safeguard for a general contractor is to delay payment to all subcontractors until 90 days after they have supplied materials. This solution would do little to harmonize relations and increase cooperation between general contractors and subcontractors.

Under existing law, a general contractor cannot determine, in advance of a claim being filed, which persons may be eligible to file a claim. Timely notice to the general contractor of the supplier's status and existence will allow a general contractor to assure that a subcontractor has paid all suppliers.

In summary, the A.G.C. believes that the notice provisions of this bill will ensure that commerce is conducted in a more enlightened and commercially reasonable manner.

The A.G.C. urges this Committee pass out of Committee the bill.

Chapter 25. Contractors' Bonds.

Section

10. Bonds of contractors for public buildings or works

20. Rights of persons furnishing labor or material

Section

25. Optional municipal exemption

NOTES TO DECISIONS

This chapter is modeled after the federal Miller Act. State ex rel. Palmer Supply Co. v. Walsh & Co., Sup. Ct. Op.

No. 1583 (File No. 2816), 575 P.2d 1213 (1978).

Collateral references. — 17 Am. Jur. 2d, Contractors' Bonds, §§ 43-138; 64 Am. Jur. 2d, Public Works and Contracts, §§ 105-136.

72 C.J.S. Supplement, Public Contracts,

§§ 41-61, 81A C.J.S., States, §§ 172-193.

Right of contractor with federal, state, or local public body to letter's immunity from tort liability. 9 ALR3d 382.

Sec. 36.25.010. Bonds of contractors for public buildings or works. (a) Except as provided in AS 44.33.300, before a contract exceeding \$100,000 for the construction, alteration, or repair of a public building or public work of the state or a political subdivision of the state is awarded to a general or specialty contractor, the contractor shall furnish to the state or a political subdivision of the state the following bonds, which become binding upon the award of the contract to that contractor:

(1) a performance bond with a corporate surety qualified to do business in the state, or at least two individual sureties who shall each justify in a sum equal to the amount of the bond; the amount of the performance bond shall be equivalent to the amount of the payment bond;

(2) a payment bond with a corporate surety qualified to do business in the state, or at least two individual sureties who shall each justify in a sum equal to the amount of the bond for the protection of all persons who supply labor and material in the prosecution of the work provided for in the contract; when the total amount payable by the terms of the contract is not more than \$1,000,000, the payment bond shall be in a sum of one-half the total amount payable by the terms of the contract; when the total amount payable by the terms of the contract is more than \$1,000,000 and not more than \$5,000,000, the payment bond shall be in a sum of 40 percent of the total amount payable by the terms of the contract; when the total amount payable by the terms of the contract is more than \$5,000,000, the payment bond shall be in the sum of \$2,500,000.

(b) This section does not limit the authority of a contracting officer to require a performance bond or other security in addition to those, or in cases other than the cases specified in (a) of this section.

(c) When no payment bond has been furnished, the contracting department shall not approve final payments to the contractor until the contractor files a written certification that all persons who supplied labor or material in the prosecution of the work provided for in the contract have been paid. (§ 1 ch 49 SLA 1953; am § 1 ch 77 SLA 1964; am § 14 ch 142 SLA 1972; am §§ 1, 2 ch 180 SLA 1976; am § 8 ch 277 SLA 1976; am 34 ch 108 SLA 1982)

Revisor's notes. — Subsection (a)(2) of this section has the figure of \$2,500,000 as in the enrolled bill. The 1953 session laws incorrectly carried the figure as \$2,800,000.

Effect of amendments. — The 1982 amendment substituted "\$100,000" for "\$50,000" near the beginning of the introductory paragraph of subsection (a).

NOTES TO DECISIONS

Purpose. — The purpose of this section and AS 36.25.020 is to protect persons who furnish labor or material for a state public works project from the risks of nonpayment. In exchange for providing such protection, the state is assured that material and labor will be readily furnished for its projects. State ex rel. White v. Neal & Sons, Sup. Ct. Op. No. 733 (File No. 1364), 489 P.2d 1016 (1971).

Like its federal counterpart, Alaska's statute is designed to protect persons who furnish labor or material for a state public works project from the risks of nonpayment. State ex rel. Palmer Supply Co. v. Walsh & Co., Sup. Ct. Op. No. 1583 (File No. 2816), 575 P.2d 1213 (1978).

Weight given to federal case law interpreting federal act. — In resolving disputes brought under this section, the supreme court will give more weight to principles derived from federal case law interpreting the Miller Act than to general common-law principles governing debtor-creditor relations. State ex rel. Palmer Supply Co. v. Walsh & Co., Sup. Ct. Op. No. 1583 (File No. 2816), 575 P.2d 1213 (1978).

Rights of persons furnishing labor or material. — See notes under AS 36.25.020.

Bonds required. — A payment bond as well as a performance bond is required for public contracts by this section. State ex rel. White v. Neal & Sons, Sup. Ct. Op. No. 733 (File No. 1364), 489 P.2d 1016 (1971).

Presumption. — Since under this sec-

tion the awarding of the contract, and necessarily the making of payments under the contract, is conditioned upon the furnishing of a payment and performance bond, it may be concluded from the fact that payments were made under the contract that the required bond had been furnished the state. Such a conclusion is based upon the presumption that official duty has been regularly performed and that state officials would not have awarded the contract and made progress payments had the required bond not been filed. United Bonding Ins. Co. v. Castle, Sup. Ct. Op. No. 497 (File No. 876), 444 P.2d 454 (1968).

State duty to investigate validity of bonds. — The State of Alaska has the duty to investigate the validity of payment and performance bonds on state construction projects. Arctic Contractors v. State, Sup. Ct. Op. No. 1420 (File Nos. 2595, 2657), 564 P.2d 30 (1977).

For cases arising after 1972, there is no doubt about who has the duty to check the validity of public construction contract bonds since in 1972 AS 36.05.035 was enacted placing the burden of verifying such bonds on the state or its political subdivision. Arctic Contractors v. State, Sup. Ct. Op. No. 1420 (File Nos. 2595, 2657), 564 P.2d 30 (1977).

Although absent from this section, the burden on the contracting officer to determine the vitality of the surety can be read into the language "the contractor shall furnish to the state . . . a performance bond with a corporate surety qualified to do

business in the state..." Arctic Contractors v. State, Sup. Ct. Op. No. 1420 (File Nos. 2595, 2657), 564 P.2d 30 (1977).

Construction contractors have a continuing obligation to provide the required bonds even if the state does not discover defects in the bonds until after their acceptance. Arctic Contractors v. State, Sup. Ct. Op. No. 1420 (File Nos. 2595, 2657), 564 P.2d 30 (1977).

Burden of proof as to agency. — The purpose of this section and AS 36.25.020 is best served by placing the burden of proof as to agency on the insurance company, particularly in light of the insurance company's far superior access to the facts surrounding the agency. State ex rel. White v. Neal & Sons, Sup. Ct. Op. No. 733 (File No. 1364), 489 P.2d 1016 (1971).

Subrogation right of surety. — A surety who completes a contract or satisfies the claims of laborers and materialmen has established a subrogation right to all funds, progress payments, or retained percentages which are in the hands of the contractee. Reliance Ins. Co. v. Alaska State Hous. Auth., 323 F. Supp. 1370 (D. Alas. 1971).

Subrogation right of surety. — A surety who completes a contract or who satisfies the claims of laborers and materialmen has a superior equitable interest over one who made a loan to the contractor of monies which did not have to be applied to the construction contract. The surety, in such cases, has established a subrogation right to those funds retained by the obligee containing retained percentages. Reliance Ins. Co. v. Alaska State Hous. Auth., 323 F. Supp. 1370 (D. Alas. 1971).

The contractor or principal of the surety agreement cannot give an assignee a greater right in a retained percentage than that given the surety so long as the surety performs under the agreement. Reliance Ins. Co. v. Alaska State Hous. Auth., 323 F. Supp. 1370 (D. Alas. 1971).

Where the surety had assumed and completed the principal's contract and claimed monies due and payable to the contractor in the way of a progress payment at the time of default, and the assignee of the contractor had also made claim to the progress payment, the surety's claim to the progress payments was granted. Reliance Ins. Co. v. Alaska State Hous. Auth., 323 F. Supp. 1370 (D. Alas. 1971).

Debtor's power to designate account to which his payment should be applied. — A debtor, who is under a duty to a third person to apply funds he tenders to his creditor to a particular account, has

the power to so designate that account as the one to which payment should be applied. The creditor is under a correlative duty to apply the money as directed by his debtor, even though he does not consent to the debtor's wishes. This principle does not depend upon misconduct or fraud. State ex rel. Palmer Supply Co. v. Walsh & Co., Sup. Ct. Op. No. 1583 (File No. 2815), 575 P.2d 1213 (1978).

Creditor's duty to apply payment to certain account. — Where there is sufficient evidence that a creditor knew or at least had reason to know that money received from a debtor came from a third party for application to a particular job account, the creditor was under a duty to apply the payment to such account. State ex rel. Palmer Supply Co. v. Walsh & Co., Sup. Ct. Op. No. 1583 (File No. 2816), 575 P.2d 1213 (1978).

Cases interpreting the Miller Act hold that when a creditor knows, or has reason to know, that the money paid to him is received from a particular bonded project, it is the creditor's duty to apply the payment received against the account for that project. State ex rel. Palmer Supply Co. v. Walsh & Co., Sup. Ct. Op. No. 1583 (File No. 2816), 575 P.2d 1213 (1978).

State did not waive right to require replacement bonds. — State did not waive its right to require and was not estopped from requiring the contractor on a 1962 construction project to obtain new bonds as replacements for bonds found defective after they had been accepted by the state and after the contractor had commenced work. Arctic Contractors v. State, Sup. Ct. Op. No. 1420 (File Nos. 2595, 2657), 564 P.2d 30 (1977).

Collateral references. — What is "accident" within provision of bond or contract indemnifying against damage or injury to person or property by accident in performance of building or construction contract. 12 ALR 1409.

Validity of condition in bond of contractor for public work which is beyond requirements of statute or ordinance with respect to claims of third persons. 18 ALR 1227.

Recovery of premiums paid on bond of contractor for public improvement not legally authorized. 42 ALR 307.

Rental of equipment at within contractor's bond. 44 ALR 381.

Contractor's bond as covering clothing, food, or lodging for laborers. 46 ALR 511; 65 ALR 260.

Effect of affirmative provision in public contractor's bond excluding statutory conditions. 47 ALR 502; 89 ALR 457.

Contractor's bond, and claims for injuries to person or property. 67 ALR 990.

Claims for repairs or replacements of machinery, tools, and equipment as within contractor's bond. 67 ALR 1232.

Availability in action by third person for damages against public contractor, of provisions in contract as to care to be exercised or precautions to be taken for protection of third persons. 69 ALR 522.

Effect of payment to subcontractors or materialmen by owner or contractor, or by sureties on contractor's bond, within four months of principal contractor's bankruptcy, as a voidable preference. 70 ALR 983.

Construction of paving contract or contractor's bond in respect of the contractor's obligation as to repairs. 72 ALR 644.

Right as between surety on contractor's bond and assignee of money to become due on contract. 76 ALR 917.

Effect of recitals or provisions of bond to secure performance of contract as an interpretation of the terms of the contract. 76 ALR 941.

Construction and effect of provision in bond purporting to protect contractee in building contract against release of surety. 77 ALR 229.

Claim for medical or hospital services to employees as within coverage of contractor's bond. 81 ALR 1051.

Statutory conditions prescribed for public contractor's bond as part of bond which does not in terms include them. 89 ALR 446.

Necessity of giving obligee notice of claim or action or making it a party to action by laborer, materialman or subcontractor upon bond of contractor for public work. 96 ALR 1185.

What constitutes "public work" within statute relating to contractor's bond. 101 ALR 565.

Workmen's compensation insurance premiums as within coverage of contractor's bond. 102 ALR 135; 164 ALR 1468.

Loss of profit of subcontractor, laborer, or materialman as within coverage of contractor's bond. 119 ALR 1281.

Money loaned or advanced to contractor as within coverage of bond of building or construction contractor. 127 ALR 974; 164 ALR 782.

Contractor's bond as covering insurance premiums other than workmen's compensation insurance. 129 ALR 1087.

Who is contractor or subcontractor, as distinguished from materialman, for purposes of mechanic's lien, contractor's bond, or other provision or securing compensation under construction contract. 141 ALR 321.

Bond of contractor for eradication or control of termites or other pests or vermin. 43 ALR2d 1237.

Liability on bid bond for public works. 70 ALR2d 1370.

Responsibility of construction contractor or his bond to contractee for defects or insufficiency of work attributable to plans and specifications furnished by latter, his engineer or architect. 6 ALR3d 1394.

Construction of attorneys' fees provision in contractor's bond. 8 ALR3d 1438.

Building contractor's liability, upon bond or other agreement to indemnify owner, for injury to death of third persons resulting from owner's negligence. 27 ALR3d 663.

Liability of builder or subcontractor for insufficiency of building resulting from latent defects in materials used. 61 ALR3d 792.

Liability of subcontractor upon bond or other agreement indemnifying general contractor against liability for damage to person or property. 68 ALR3d 7.

Validity and construction of "no damage" clause with respect to delay in building or construction contract. 74 ALR3d 187.

Construction contract provision excusing delay caused by "severe weather". 85 ALR3d 1085.

Sec. 36.25.020. Rights of persons furnishing labor or material.
(a. A person who furnishes labor or material in the prosecution of the work provided for in the contract for which a payment bond is furnished under AS 36.25.010 and who is not paid in full before the expiration of 90 days after the last day on which the labor is performed or material is furnished for which the claim is made, may sue on the payment bond for the amount unpaid at the time of the suit.

(b) However, a person having direct contractual relationships with a subcontractor but no contractual relationship express or implied with the contractor furnishing the payment bond has a right of action on the payment bond upon giving written notice to the contractor within 90 days from the last date on which the person performed labor or furnished material for which the claim is made. The notice must state with substantial accuracy the amount claimed and the name of the person to whom the material was furnished or for whom the labor was performed. The notice shall be served by mailing it by registered mail, postage prepaid, in an envelope addressed to the contractor at any place where the contractor maintains an office or conducts business, or the contractor's residence, or in any manner in which a peace officer is authorized to serve summons.

(c) A suit brought under this section shall be brought in the name of the state or the political subdivision of the state for the use of the person suing in the superior court. No suit may be started after the expiration of one year after the date of final settlement of the contract. The state or political subdivision of the state is not liable for costs or expenses of the suit. (§ 2 ch 49 SLA 1953; am § 15 ch 142 SLA 1972)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

NOTES TO DECISIONS

Purpose. — The purpose of this section and AS 36.25.010 is to protect persons who furnish labor or material for a state public works project from the risks of nonpayment. In exchange for providing such protection, the state is assured that material and labor will be readily furnished for its projects. State ex rel. White v. Neal & Sons, Sup. Ct. Op. No. 733 (File No. 1364), 489 P.2d 1016 (1971).

Like its federal counterpart, Alaska's statute is designed to protect persons who furnish labor or material for a state public works project from the risks of nonpayment. State ex rel. Palmer Supply Co. v. Walsh & Co., Sup. Ct. Op. No. 1583 (File No. 2816), 575 P.2d 1213 (1978).

This section is substantially similar to 40 U.S.C. 270(a) et seq., the "Miller Act." Hyundai Constr. Co. v. Kalmbach, Inc., Sup. Ct. Op. No. 845 (File No. 1604), 502 P.2d 856 (1972).

"Final settlement" means that the contract has been completed and that there has been a specific administrative act authorizing payment. Safeco Ins. Co. of Am. v. Honeywell, Inc., Sup. Ct. Op. No.

2460 (File Nos. 5112, 5127), 639 P.2d 996 (1982).

It is appropriate to look at federal case law interpreting the previously similar Miller Act, (40 U.S.C. § 270(a) et seq.) ch. 642, § 2, 49 Stat. 793 when interpreting the phrase "final settlement" as used in subsection (c) of this section. Safeco Ins. Co. of Am. v. Honeywell, Inc., Sup. Ct. Op. No. 2460 (File Nos. 5112, 5127), 639 P.2d 996 (1982).

Bonds of contractors for public buildings or works. — See notes under AS 36.25.010.

Reliance on valid payment bond. — Persons who furnish labor and materials for the state's projects do so in reliance on the existence of a valid payment bond. State ex rel. White v. Neal & Sons, Sup. Ct. Op. No. 733 (File No. 1364), 489 P.2d 1016 (1971).

Evidence raising presumption that bond was executed. — See State ex rel. White v. Neal & Sons, Sup. Ct. Op. No. 733 (File No. 1364), 489 P.2d 1016 (1971).

The award of a state public works contract and the making of payments

under that contract raise a presumption that the required bond has been furnished; thus, a laborer or materialman should not have to inquire into the validity of the bond before furnishing labor or materials. Such a burden of inquiry would surely result in a reluctance to readily furnish materials or labor. To avoid this reluctance and the possible delays caused thereby, the state has provided special protections to laborers and materialmen in this section and AS 36.25.010. State ex rel. White v. Neal & Sons, Sup. Ct. Op. No. 733 (File No. 1364), 489 P.2d 1016 (1971).

Burden of proof as to agency. — The purpose of this section and AS 36.25.010 is best served by placing the burden of proof as to agency on the insurance company, particularly in light of the insurance company's far superior access to the facts surrounding the agency. State ex rel. White v. Neal & Sons, Sup. Ct. Op. No. 733 (File No. 1364), 489 P.2d 1016 (1971).

A person furnishing labor or materials on a state public works project does not deal directly with the surety company or its purported agent. In many cases he does not even deal directly with the prime contractor who obtained the bond. He is in a relatively poor position to inquire into whether an agent with whom the prime contractor dealt had authority to bind the insurance company appearing as surety on the bond. The insurance company has far better access to the facts surrounding the nature of the purported agency relationship than does a laborer or materialman on a state public works project. State ex rel. White v. Neal & Sons, Sup. Ct. Op. No. 733 (File No. 1364), 489 P.2d 1016 (1971).

For rule as to burden of proof on the agency where a laborer or materialman brings suit on a payment bond pursuant to this section, see State ex rel. White v. Neal & Sons, Sup. Ct. Op. No. 733 (File No. 1364), 489 P.2d 1016 (1971).

Debtor's power to designate account to which his payment should be applied. — A debtor, who is under a duty to a third person to apply funds he tenders to his creditor to a particular account, has the power to so designate that account as the one to which payment should be applied. The creditor is under a correlative duty to apply the money as directed by his debtor, even though he does not consent to the debtor's wishes. This principle does not depend upon misconduct or fraud. State ex rel. Palmer Supply Co. v. Walsh & Co., Sup. Ct. Op. No. 1583 (File No. 2816), 575 P.2d 1213 (1978).

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Cases interpreting the Miller Act hold that when a creditor knows, or has reason to know, that the money paid to him is received from a particular bonded project, it is the creditor's duty to apply the payment received against the account for that project. State ex rel. Palmer Supply Co. v. Walsh & Co., Sup. Ct. Op. No. 1583 (File No. 2816), 575 P.2d 1213 (1978).

Collateral references. — Freight charges on material as within mechanic's lien statute giving lien for labor or material, or within contractor's bond securing such claims. 30 ALR 466.

Nature of remedy to enforce obligation under bond of public contractor for labor or material. 43 ALR 561.

Failure of public authorities to take contractor's bond as required by law, as rendering them liable to laborers or materialmen. 64 ALR 678.

Right to benefit of contractor's bond or mechanic's lien statute for labor or material furnished to contractor or subcontractor, as affected by acceptance from him of written obligation. 66 ALR 342.

Labor and materials furnished to subcontractor as within the coverage of principal contractor's bond for public improvements. 70 ALR 308; 92 ALR2d 1250.

Right of person furnishing material or labor to maintain action on contractor's bond to owner of public body, or on owner's bond to mortgagee. 77 ALR 21; 118 ALR 57.

Right or duty of obligee of contractor's bond to enforce condition thereof for benefit of laborers and materialmen. 77 ALR 217.

Claim under subcontract by which subcontractor agrees to furnish a man and truck, or other specified instrumentality, at an unapportioned compensation, as within contractor's bond conditioned for payment of claims for labor. 79 ALR 1253.

Material or labor employed in construction of concrete forms as basis of mechanics' lien or claim under contractor's bond. 84 ALR 460.



CONSTRUCTION, INC.

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Recd 3/4/85

February 26, 1985

Representative Mike Navarre, Chairman
House Labor & Commerce Committee
Juneau, Alaska 99801

Dear Sir:

The Little Miller Act provides for employees, all tiers of subcontractors, suppliers and materialmen to seek relief by filing a lien against the general contractor's payment bond on public works projects, if such notice is filed within 90 days of the last acts or charges. As the law now stands these people are allowed to seek this relief regardless of the circumstances, including negligence on their part, disputes, or any other reason if they have not been paid.

In many instances the projects are completed and paid in full by the general contractor before this ninety day period expires.

A case that happened to our company which is still in litigation, documentation can and will be furnished if you request, happened like this. A subcontractor on one of our projects leased a piece of equipment from an equipment dealer. The equipment was leased for a minimum guaranteed ninety days with option to purchase within the ninety days. A major portion of the lease payments to apply to the purchase if the purchase option was exercised. Our company was not privy to this agreement.

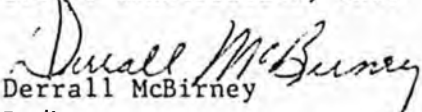
Seven and one half months after the equipment arrived jobsite we received notice from the equipment dealer of non payment and of his intent to file lien against our bond. At that time the subcontractor had received all monies due him on this contract. We feel that if the notifications of intent was required to be filed sooner, say within 15 days of the first act or charge that problems such as this would not happen or if they did it would be negligence on the part of the general contractor instead of the equipment dealer, who, in this case will probably win this litigation.

Your help in correcting this deficiency in the Little Miller Act would be greatly appreciated.

If there are any questions please call.

Very truly yours,

C.J.M. Construction, Inc.


Derrall McBirney
DM/bg

INTRODUCTION OF BILLS (House)(cont'd)

HB 210 (cont'd)

payment shall, subject to appropriation, be paid the the surviving spouse by the right of survivorship unless a different beneficiary is designated. If no spouse survives and no beneficiary is named the lump sum shall be paid to the decedent's estate. The payment must include all permanent fund dividend contributions made by the individual, plus interest, but shall not include any credits to the account made following appropriations by the legislature to the annuity investment fund or interest on the annuity credits (Senate version provides for equitable distribution of the decedent's lump sum payment among the accounts of all individuals of the same age).

Introduced February 18 and referred to State Affairs, Judiciary, Finance.

Contractors' Payment Bonds
(materials, equipment & supplies)

HOUSE BILL NO. 211, by Reps. Frank, Clocksin, M. W. Miller, Navarre and Rieger. Would require a contractor who is bidding on a state job that exceeds \$100,000 to furnish a payment bond for the protection of all persons who supply labor, materials, supplies or equipment (currently the bond must cover people who supply labor and material). The bond becomes binding upon the award of the contract. The person furnishing labor, materials, supplies, or equipment who is not paid in full 90 days after the work is completed or materials, supplies or equipment is furnished, may sue on the payment bond for the amount unpaid at the time of the suit (currently covers only labor and material).

Section outlining the rights of a contractor furnishing labor or material is rewritten (AS 36.25.020(b)) to more specifically spell out the rights of a person who contracts with a subcontractor, but who has no contractual relationship with the contractor. That person has a right of action on the payment bond for materials, supplies or equipment furnished if proper notice is given. Notice must be given not later than 30 days after the first date on which the materials, supplies or equipment were provided and must state that the person has supplied or is supplying materials, supplies or equipment for which the person may make a claim. The notice must name the subcontractor and building or project for which materials, etc., have been supplied, give a general description and must state that the bond may be held for payment if the person supplying materials, supplies or equipment is not paid.

The person contracting with the subcontractor also must give notice not later than 90 days after the last day materials, supplies or equipment for which the claim is made, stating the name of the subcontractor, the building or project and a description of materials, and must state with substantial accuracy the amount claimed.

Does not provide an effective date (takes effect 90 days after Governor signs bill).

Introduced February 18 and referred to Labor & Commerce, Judiciary, Finance.

Representative Steve Frank
February 15, 1985

Bill Summary:

"an act relating to contractor's bonds" HB 211

Under existing law on public projects, a person having no direct contractual relationship with a general contractor, but who supplies labor or material to a sub-contractor, may make a claim by giving the general contractor written notice within 90 days from the last date on which the person performed labor or furnished material. A general contractor has no way of knowing who may have supplied materials to a subcontractor. Accordingly, a general contractor has no easy way to assure that a subcontractor has paid all his suppliers. Certification by a subcontractor that all labor and materialmen have been paid is no assurance if the certifying subcontractor is or becomes insolvent. The only "iron clad" safeguard for a general contractor is to delay payment to all subcontractors until 90 days after they have supplied labor or materials. This solution does little to harmonize relations and increase cooperation between general contractors and subcontractors.

The change proposed in the bill will not preclude claims of a subcontractor's supplier against a general contractor's payment bond. However, timely notice to the general contractor of the supplier's status will become a prerequisite to filing a claim. This notice requirement will allow a general contractor to ensure that a subcontractor has paid all suppliers.

As proposed, a general contractor will know which persons may possibly have claims against his payment bond prior to a claim being made. Under existing law, a general contractor cannot determine, in advance of a claim being filed, which persons, may be eligible to file a claim.

The proposed revisions will still provide protection to the subcontractor's material and equipment suppliers however, to take advantage of that protection, the material and equipment suppliers must take the initiative in assuring that the contractor is aware of their existence.

The bill will put some responsibility on the supplier, because they are the beneficiary of the system. These suppliers are business people with the ability to provide notice as a normal part of a business transaction and it should not be an undue burden on the supplier.

NOTE: This bill would not affect persons supplying labor to a subcontractor. That is to say they would still have 90 days, after the last date they supplied labor, to file claim without a requirement to provide prior notice.

M E M O R A N D U M

TO: All Members, House Labor and Commerce Committee

FROM: Roger Poppe, Committee Staff

DATE: February 28, 1985 Thursday

SUBJECT: Overview, HB 211

On February 29, 1985, the House Labor and Commerce Committee met in Room 102 of the Capitol Building on HB 211, An Act relating to Contractor's payment of bonds.

There was a bill submitted last year, HB 540 by Bettisworth, that dealt with this issue, and received the support of AGC. Initially, this bill said that workers or suppliers must make any claims against the contractor within 10 days from the time that materials were furnished or work commenced. The Department of Labor was opposed to this bill for this and other points, and so the bill was revised, but it died in Senate Judiciary.

The bill before you is in essence the revised version of HB 540 from last year, according to the Department of Labor. As it reads now, it will not impact them and so they have no opposition to it. Apparently, in the private sector, workers and suppliers can put a claim against the property itself; this bill deals with the public sector, where the only real recourse deals with putting a claim in against the contractor's bond.

SECTIONAL ANALYSIS OF HB211: "An Act relating to contractors' payment bonds." By Frank, Clocksin, M.W. Miller, Navarre and Rieger

SECTION 1: This section clarifies the current statutes by adding supplies and equipment.

Any contractor, prior to entering into a contract (exceeding \$100,000) for construction, alteration or repair, on any public project shall furnish a performance bond and a payment bond. The payment bond serves as protection for persons who supply labor, materials, supplies and equipment to the subcontractor for work provided for in the contract.

SECTION 2: This section, as does section 1, clarifies the current statutes by adding supplies and equipment.

In the event a person, who has furnished labor, materials, equipment or supplies, has not been paid in full by the subcontractor before 90 days after the last day labor is performed or materials equipment or supplies are furnished, the person may sue on the contractors payment bond for the amount owed him.

SECTION 3: This section changes the notice provisions in this statute.

The present law only requires a notice 90 days after material equipment or supplies were last provided. This bill requires an additional notice be given to contractors. This addition is a notice of right to claim which must be made within 30 days of the first date materials supplies or equipment were furnished (so that contractors will be aware of potential claims against their payment bond). Notice of actual claim is still required within 90 days of the date materials, supplies or equipment were last provided (as is currently in statutes).

This bill would not affect persons supplying labor. That is to say they would still have 90 days, after the last date they supplied labor, to file a claim without a requirement to provide prior notice.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HR 211
 Title: "An Act relating to
 contractors' payment bonds."
 Sponsor: Frank, Clocksin et al.
 Requestor: House Labor & Commerce
 Date of Request: 2/19/85

FISCAL DETAIL

Agency Affected: Labor
 Program Category Affected: _____
Public Protection
 BRU, Program or Subprogram(s) Affected:
Labor Standards & Safety
Wage and Hour Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

<u>FULL-TIME</u>						
<u>PART-TIME</u>						
<u>TEMPORARY</u>						

ANALYSIS: Attach a separate page if necessary

Prepared By: ^{RB} Robert J. Bacolas, Jr. *R. Bacolas* Phone: 465-4870
 Division: Labor Standards & Safety Date: 2/21/85
 Approved by Commissioner: *Jim Robinson* Date: 2/21/85
 Agency: Labor

Distribution (by Agency preparing fiscal note):

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

Bill No. House Bill No. 211
Title "An Act relating to contractors' payment bonds."


Date February 26, 1985
Contact: Eileen Plate
465-2700
Bob Bacolas
465-4870

House Bill No. 211 makes editorial changes to provisions in Title 36 with respect to action against a contractor's payment bond by persons performing labor for subcontractors on public construction projects.

The bill also contains a number of more significant changes to Title 36 with respect to action against a contractor's payment bond by persons who furnish materials, supplies, or equipment to subcontractors on public construction projects. Inasmuch as persons who furnish materials, supplies or equipment on public construction projects fall outside of the department's authority or responsibility as far as collection of monies due them, we have no comments on these particular provisions.

The Department's position on House Bill 211 is neutral. It will not have a fiscal impact on the Department.

APPROVED:


Jim Robison, Commissioner
Department of Labor

Sec. 44.33.300. Waiver of certain provisions. When the governor has by proclamation declared an area impacted by an economic disaster, the following provisions regarding public contracts may be waived to the extent specified in the proclamation:

(1) the requirement of a contractor's bond as prescribed in AS 36 25.010 may be waived if the contract amount does not exceed \$100,000;

(2) the public bid requirements as contained in AS 19.10.170, 19.10.190, 19.30.191(b), and AS 35.15.010 — 35.15.030 may be waived if the contract is to be performed by a contractor whose principal office is in the designated area and the contract amount does not exceed \$50,000;

(3) the general policy to require all construction to be under bid contract as contained in AS 35.15.010 may be waived if the contract is to be performed by the state, another governmental entity, or a nonprofit entity. (§ 1 ch 277 SLA 1976)

Sec. 44.33.305. Regulations. The department, after consultation with the Department of Labor, may adopt regulations to implement AS 44.33.285 — 44.33.310. (§ 1 ch 277 SLA 1976)

Sec. 44.33.310. Definitions. In AS 44.33.285 — 44.33.310,

(1) "base period" means any 10 years after 1950, not necessarily continuous, and if the economic disaster is caused by a fisheries failure the period shall consist of years during which a fishery produced at economically representative levels as determined by the Department of Fish and Game;

(2) "department" means the Department of Commerce and Economic Development;

(3) "economic disaster" means that the annual income to workers in the designated area dropped below the average annual income for the base period for workers in the designated area and the drop in income is of such magnitude that the average family income of all residents of the designated area as determined by the department is below the Federal Social Security Administration Poverty Guideline, adjusted by the department to reflect subsistence economic patterns and appropriate cost-of-living differentials; the availability of alternate employment shall be considered in determining whether an economic disaster has occurred under this paragraph. (§ 1 ch 277 SLA 1976)

Editor's notes. — The "Federal Social Security Administration Poverty Guideline" referred to in (3) of this section is probably an obsolete reference. The federal Department of Health and Human

Services does issue an annual revision of poverty income guidelines, however. See, for instance, Federal Register, Vol. 48, No. 34, page 7010 (2/17/83).

Secs. 44.33.320 — 44.33.380. Residential Care Facility Revolving Loan Fund. [Repealed, § 72 ch 113 SLA 1982.]