ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

3910 SHES SB 17 - SB 20

786

RECORDS CERTIFICATION

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James O. Smith
Signature of Camera Operator

10/31/89
Date

02-519 (REV 8/78)

SB

17

Senate Health, Education and Social Services ~~Committee~~

Legislation Checklist

Bill number: SB 17

Sponsor: Kerrtula

Date referred to committee:

Synopsis completed: 1/10/85

Fiscal note:

Further referrals:

CONTACTS: Joyce

~~Jenny/Beth~~ - Sen. Kerrtula's 4967

Kerry Rodgesburg - Postsecondary Ed. - DOE 2854

4837 Sally Danny - call a reminder of hearing.

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

1/14/85

Date 2 7 85

Mr. President

The Committee on HESS considered SB 17

relating to the applicability of the scholarship loan program to students attending more than one postsecondary educational institution; efd.

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

[X] do pass

[ ] do pass with attached amendment(s)

[ ] replace with/or adopt CS for _____
[ ] new title
[ ] same title and recommends _____

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

Helen Stergalewski

MEMBERS HAVING
OTHER RECOMMENDATIONS

Bruce Vaughn
Chairman

Chairman recommendation

SB 17

Always note if there is or is not a CS

2/21/85 passed Senate 20-0

1. UNDER CURRENT STATUTE, TO QUALIFY FOR A STUDENT LOAN A STUDENT MUST ENROLL FULLTIME IN ONE INSTITUTION OR IN <u>INSTITUTIONS</u> THAT HAVE A CONSORTIUM AGREEMENT.

2. SB 17 REMOVES THE CONSORTIUM AGREEMENT REQUIREMENT. THESE AGREEMENTS ARE VERY INVOLVED, TIME-CONSUMING AND EXPENSIVE. THEY INVOLVE SHARING FACILITIES & PERSONNEL, AND COOPERATIVELY PLANNING ACADEMIC CALENDARS AND PROGRAMS.

3. THIS REQUIREMENT WAS ORIGINALLY INTENDED TO PREVENT STUDENTS FROM GETTING AROUND PROGRAM GOOD-STANDING REQUIREMENTS. HOWEVER, THE DEPARTMENT OF EDUCATION HAS ADOPTED REGULATIONS REQUIRING THE BORROWING STUDENT TO TAKE 75% OF HIS OR HER FULLTIME LOAD IN THE DEGREE-GRANTING INSTITUTION.

THERE IS A ZERO FISCAL NOTE

THE EFFECTIVE DATE IS IMMEDIATE

<u>ATTACHMENTS:</u>
1) COMMITTEE MEMO
2) FISCAL NOTE
3) POST-SECONDARY POSITION PAPER
4) STATUTE TO BE AMENDED
5) DEFINITION OF <u>CONSORTIA</u> IN STATUTE

SB 17 Relating to the applicability of the scholarship loan program to students attending more than one postsecondary educational institution.

To qualify for a student loan a student must enroll fulltime (at least 12 credit hours each term for undergraduates and 9 credit hours for graduate students). If a student enrolls in more than one institution and aggregates the credit hours to be full time, current statute requires that there be a consortium agreement between the institutions. This requirement was originally intended to prevent students from enrolling in a wide variety of institutions and getting around good-standing requirements. However, since state adoption of the federal "75% standard", which requires that a borrower be enrolled for at least 75% of the full-time student requirement in the degree granting institution for which the loan is obtained, the potential for abuse has been eliminated.

The bill was introduced a year ago in response to problems student loan applicants were incurring when they tried to enroll in both the University of Alaska, Anchorage (UAA) and Matanuska-Susitna Community College. Since there was no formal consortium agreement, UAA officials would not release loans for these students. As of January 11, 1985, they have a consortium agreement.

JAN 18 1985

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 17

Title: Re: Scholarship loans to students

Sponsor: Kerttula

Requestor: Senate Hess

Date of Request: 1/16/85

FISCAL DETAIL

Agency Affected: Education

Program Category Affected: Postsecondary Commission

BRU, Program or Subprogram(s) Affected: Student Loan Program

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	N.A.	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	N.A.	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	N.A.	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	N.A.	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact is associated with this bill

Prepared By: Kerry D. Romenesko Phone: 465-2854

Division: Alaska Commission on Postsecondary Education Date:

Approved by Commissioner: Date:

Agency:

Distribution (by Agency preparing fiscal note):

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

7/1/84

ALASKA COMMISSION ON POSTSECONDARY EDUCATION

POSITION STATEMENT ON SB 17

Summary: To qualify for a student loan, a student must enroll full time, that is at least 12 credit hours each term for undergraduate students, and at least nine credit hours each term for graduate students. If a student wishes to enroll in more than one institution and aggregate the credit hours to be full time, the current statute requires that there be a consortium agreement between the institutions.

SB 17 removes the requirement for a formal consortium agreement.

Impact: The result would be negligible. The bill was introduced a year ago in response to problems student loan applicants were incurring when they tried to enroll in both the University of Alaska, Anchorage and Matanuska-Susitna Community College. Since there was no formal consortial agreement, UAA officials would not release loans for these students.

As of January 11, 1985, Matanuska-Susitna Community College and UAA have a consortium agreement. Hence, the problem at which this bill was directed, has been solved.

The bill will not result in students enrolling in a wide variety of institutions and, in effect, getting around program good-standing requirements, because program regulations already exist to address such a situation. (20 AAC 15.040(n) and 20 AAC 15.045(c)). Therefore, the bill successfully removes some unnecessary language in the current statutes and has little program effect.

There is no fiscal impact of the bill.

Position: The Alaska Commission on Postsecondary Education endorses the passage of SB 17.

student loan program for residents of Alaska to attend colleges and universities in Alaska as compared with colleges and universities outside Alaska;

"(2) the result of this lack of incentives is that 64.9 per cent of all undergraduate student loans and 92.9 percent of graduate student loans go to students attending colleges and universities outside Alaska;

"(3) the amount of the average loan to undergraduate students attending colleges and universities in Alaska is lower than the average of similar loans in all but one of the 10 western states and the amount of the average loan for graduate students is the lowest in the West;

"(4) the funds spent on education in Alaskan colleges and universities go further than when the funds are spent out of state; and

"(5) it would be an aid to the Alaskan economy if the funds in the student loan program were spent for education in Alaskan colleges and universities."

Sec. 14.43.135. Discrimination prohibited. The student loan program shall be carried out without regard to the race, creed, sex, color, ancestry, national origin, or membership in fraternal or political organizations of the student applying for the loan. (§ 1 ch 98 SLA 1971; AS 14.40.769)

Sec. 14.43.140. Enforceability of certain contracts with minors. A written obligation entered into by a minor at least 16 years of age, evidencing a loan or other assistance received by the minor from any person for the purpose of furthering the minor's education in a career education program or an institution of higher learning, is enforceable against the minor with the same effect as if the minor were, at the time of its execution, 19 years of age, if the person making the loan has before making the loan a certification from the institution that the minor is enrolled in the institution or has been accepted for enrollment. (§ 1 ch 98 SLA 1971; AS 14.40.771)

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, ch. 58, SLA 1982.

Sec. 14.43.160. Definitions. In AS 14.43.090 — 14.43.160

(1) "career education" means a course or program in vocational-technical training or education approved by the commission;

(2) "full-time student" means an undergraduate or career education student who is enrolled and is in regular attendance at classes for at least 12 semester hours of credit or the equivalent during the semester or a graduate student who is enrolled and is in regular attendance at classes for at least nine semester hours of credit or the equivalent; any combination of semester hours of credit, or the equivalent, aggregating to the requisite number of semester hours and undertaken during a semester at two or more public or private institutions of higher education operating under a consortium constitutes full-time student status;

DEFINITION OF CONSORTIUM

Sec. 14.42.045. Compensation and per diem. Members of the commission serve without compensation but are entitled to per diem and travel expenses as may be authorized by law for boards and commissions. (§ 4 ch 78 SLA 1974; AS 14.40.915)

Sec. 14.42.050. Legal counsel. (a) The attorney general is legal counsel for the commission. The attorney general shall advise the commission in legal matters arising in the discharge of its duties and represent the commission in actions to which it is a party. If, in the opinion of the commission, the public interest is not adequately represented by counsel in a proceeding, the attorney general, upon request of the commission, shall represent the public interest.

(b) The commission may employ temporary legal counsel from time to time in matters in which the commission is involved. (§ 3 ch 25 SLA 1976; AS 14.40.917)

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.

Sec. 14.42.055. Consortia. All parties that are signatory to a consortium agreement between the University of Alaska and a private university or college must abide by a decision rendered by the commission when disagreements arise or exist between the parties. For purposes of this section and AS 14.42.030(b)(6), "consortium" means a cooperative arrangement between two or more public or private institutions of higher education specified in agreements or memoranda of understanding to permit sharing of facilities, instructional opportunities, and other educational services in such a way that the integrity of each institution party to the consortium is preserved while at the same time the institutions cooperatively plan the academic calendar, scheduling, use of personnel and facilities, and educational programs and offerings to the maximum advantage of the students and faculties of the institutions that are parties to a consortium. (§ 8 ch 246 SLA 1976; AS 14.40.919)

Revisor's notes. — AS 14.42.030(b)(6) was substituted for AS 14.40.909(b)(6) to conform to the renumbering of that section by the revisor of statutes under AS 01.05.031.

Chapter 43. Scholarship, Loan, and Grant Programs for Postsecondary Students.

Article

DOE REGULATION

AAC [illegible] amended by adding new subsections to read:

(m) A borrower in a flight school program must hold, as a prerequisite for eligibility, a valid private pilot's certificate.

(n) A borrower may be enrolled in more than one institution, but must be enrolled for at least 75% of the full-time student requirement in the degree-granting institution for which the loan is obtained. The combined total of these multiple enrollments must be equivalent to at least full-time enrollment. (Eff. 2/3/77, Register 61; am 5/10/78, Register 66; am 12/7/80, Register 76; am 7/9/82, Register 83; am 11/19/83, Register 88; am / / , Register).

Authority: AS 14.43.105
AS 14.43.120
AS 14.43.140

20 AAC 15.045 (c) is amended to read:

(c) Before delivering the warrant to the borrower, the financial aid officer shall certify, on a form to be provided by the commission, that the borrower is a full-time student in good standing at the institution. If the full-time status is the result of attendance at more than one institution, the certifying institution must certify full-time and good standing status for the multiple enrollments. (Eff. 2/3/77, Register 61; am 12/7/80, Register 76; am 7/9/82, Register 83; am 11/19/83, Register 88; am / / , Register).

Authority: AS 14.43.105

20 AAC 15.060 (a), (b), (c) and (g) is amended to read:

20 AAC 15.060. STATE FORGIVENESS PAYMENTS. (a) Under AS 14.43.120(j), a recipient of a loan is eligible to have up to 50 percent of the total loan and accrued interest paid by the state if the borrower continues Alaskan residency after the successful completion of the course of study for which the loan was granted, and is awarded an appropriate degree, diploma or certificate, and remains, except for brief periods, in the state during the period for which forgiveness is claimed.

From Kertulla's Office

SB17

BILL PURPOSE

1. THIS BILL WILL ENABLE FULL TIME STUDENTS TO RECEIVE LOAN MONEY WHILE ATTENDING MORE THAN ONE SCHOOL, EVEN IF THERE IS NO CONSORTIUM AGREEMENT.

SUMMARY OF STUDENT LOAN PROGRAM

1. FULL TIME STUDENT IS AT LEAST 12 CREDIT HOURS FOR UNDERGRADUATE AND AT LEAST 9 CREDIT HOURS FOR GRADUATE.

2. FULL TIME STUDENT CAN BE ENROLLED IN MORE THAN ONE INSTITUTION BUT AT LEAST 75% OF FULLTIME STUDENT REQUIREMENT MUST BE AT THE DEGREE GRANTING INSTITUTION.

3. AT PRESENT TIME, SCHOOLS MUST HAVE CONSORTIUM AGREEMENT FOR STUDENTS TO BE ABLE TO OBTAIN A LOAN TO USE FOR MORE THAN ONE SCHOOL.

4. COMBINED TOTAL OF MULTIPLE ENROLLMENT MUST BE EQUAL TO AT LEAST FULL TIME ENROLLMENT AS DEFINED ABOVE.

IMPACT

1. RESULT IS NEGLIGIBLE.

2. BILL WAS INTRODUCED LAST YEAR IN RESPONSE TO STUDENT LOAN APPLICANTS TRYING TO ENROLL AT UAA AND MSCC WHO HAD NO FORMAL CONSORTIAL AGREEMENT. UAA OFFICIALS WOULD NOT RELEASE LOANS.

3. UAA AND MSCC NOW HAVE A CONSORTIUM AGREEMENT.

4. OTHER SCHOOLS SUCH AS LANANA VALLEY COMMUNITY COLLEGE AND KENAI COMMUNITY COLLEGE ARE ALSO INVOLVED.

5. BILL WILL NOT RESULT IN STUDENTS ENROLLING IN A WIDE VARIETY OF INSTITUTIONS AND GETTING AROUND GOOD STANDING REQUIREMENTS. PROGRAM REGULATIONS ALREADY EXIST TO ADDRESS SUCH A SITUATION.

6. BILL REMOVES CONSORTIUM LANGUAGE IN CURRENT STATUTES AND HAS LITTLE PROGRAM EFFECT.

SUPPORT

1. THERE IS STRONG PUBLIC SUPPORT FOR THIS BILL. HAVE RECEIVED MORE THAN 55 PUBLIC OPINION MESSAGES AND LETTERS.

2. ALASKA COMMISSION ON POSTSECONDARY EDUCATION ENDORSES THE PASSAGE OF SB17.

JK/jla

SYNOPSIS OF SB 17-SCHOOL CONSORTIUM

SB 17 will allow students to take classes at more than one college while still receiving their student loans even though the colleges do not have a consortium. A consortium is a contractual agreement between schools and can cover anything from the exchange of credits to use of libraries and swimming pools.

At this point students cannot receive their student loan for classes at any school other than their main one unless the schools have a consortium. Before this school year students who lived in the Mat-Su who were attending Anchorage Community College (and received their student loan through ACC) could not get their student loan to pay for classes at the Mat-Su Community College even though it was the very same class with the very same professor as at ACC. This is the situation SB 17 will rectify.

Although the Mat-Su Community College now has a consortium with ACC, this problem still exists on the Kenai because Soldotna Community College does not have a consortium with UAA (***Check with Kerry Romsberg and make sure this is the right school). There are many schools in the lower 48 that do not have consortiums with one another, especially private schools. SB 17 will allow students to pursue classes at more than one instutution without financial penalty.

SB 17 will not allow students to jump from school to school with no thought as to graduating. The Commission on Postsecondary Education has promulgated a "75%" rule requiring students to take at least 75% of their credits at the institution they are geeting their degree at (this is not an onerous burden, as students are only required to take 75% of the mimimum full-time student requirement at the institution. which is usually only twelve credits per semester). The rule is set out at 20 AAC 15.040 (n) and parallels the Federal Student Loan rule.

In conclusion, this simple rule, which will not cost the state any money, will clear up a bureaucratic problem for Alaskan students by allowing them to go to more than one school even though the schools do not have a consortium between them.

Received 1-18-85

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 17

Title: Re: Scholarship loans to students

Sponsor: Kerttula

Requestor: Senate Hess

Date of Request: 1/16/85

FISCAL DETAIL

Agency Affected: Education

Program Category Affected: Postsecondary Commission

BRU, Program or Subprogram(s) Affected: Student Loan Program

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	N.A.	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	N.A.	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	N.A.	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	N.A.	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact is associated with this bill

Prepared By: Kerry D. Romenberg Phone: 465-2854

Division: Alaska Commission on Postsecondary Education Date:

Approved by Commissioner: Date:

Agency

Distribution (by Agency preparing fiscal note):

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

7/1/84

ALASKA COMMISSION ON POSTSECONDARY EDUCATION

POSITION STATEMENT ON SB 17

Summary: To qualify for a student loan, a student must enroll full time, that is at least 12 credit hours each term for undergraduate students, and at least nine credit hours each term for graduate students. If a student wishes to enroll in more than one institution and aggregate the credit hours to be full time, the current statute requires that there be a consortium agreement between the institutions.

SB 17 removes the requirement for a formal consortium agreement.

Impact: The result would be negligible. The bill was introduced a year ago in response to problems student loan applicants were incurring when they tried to enroll in both the University of Alaska, Anchorage and Matanuska-Susitna Community College. Since there was no formal consortial agreement, UAA officials would not release loans for these students.

As of January 11, 1985, Matanuska-Susitna Community College and UAA have a consortium agreement. Hence, the problem at which this bill was directed, has been solved.

The bill will not result in students enrolling in a wide variety of institutions and, in effect, getting around program good-standing requirements, because program regulations already exist to address such a situation. (20 AAC 15.040(n) and 20 AAC 15.045(c)). Therefore, the bill successfully removes some unnecessary language in the current statutes and has little program effect.

There is no fiscal impact of the bill.

Position: The Alaska Commission on Postsecondary Education endorses the passage of SB 17.

be used only for books and supplies, tuition, required fees, room and board.

(c) A promissory note in full amount of the loan award must be signed by the recipient, or by the recipient's parent or legal guardian if the recipient is under 16 years of age. However, liability for the loan is limited to the actual amount of the loan funds disbursed to the recipient, plus interest and collection fees as necessary.

(d) The provisions of this chapter will be incorporated by reference into each promissory note.

(e) Loans will not be granted for more than five full undergraduate school years, or more than five full graduate years, or more than a total of eight full school years of combined undergraduate and graduate study.

(f) The costs incurred in the collection of a defaulted loan, including attorney fees and court costs, shall be borne by the recipient.

(g) Interest on a loan begins to accrue on the date of initial loan disbursement. However, interest wi" be paid for a student during the period before the repayment period of the loan begins and during a period of deferment provided under 20 AAC 15.055.

(h) Interest shall be computed at the annual rate of five percent of the outstanding balance of the loan.

(i) At the time student applies for a loan, the director will provide an anticipated repayment schedule for the total amount of the current loan and any loans received in prior consecutive years. The repayment schedule will be computed from the date the recipient anticipates the completion of his or her full-time course of study. The schedule will include a 12-month optional deferment period, the number and amount of payments, including interest, over the 10 succeeding years; and the annual percentage rate of interest.

(j) For non-collegiate postsecondary programs, the commission applies for standard of good standing used by the institution of attendance. For collegiate programs, the commission applies the cumulative grade point average (G.P.A.) based upon the following minimums, computed for two or more terms:

Student Level	Minimum Requirement
Undergraduate	2.00 cumulative G.P.A.
Graduate	3.00 cumulative G.P.A.

(k) In addition to the requirements established in (j) of this section, a borrower in a collegiate program must successfully complete all course work in which he or she is enrolled while a borrower under AS 14.43, up to the required full-time enrollment in each term of enrollment, and must maintain a grade point average of at least 1.50 or 2.50, for undergraduate and graduate students respectively, for each term in which he or she has borrowed under AS 14.43. If a borrower fails to meet good standing requirements, the borrower is ineligible to receive further loans or loan disbursements until the borrower successfully completes a term of full-time study and meets the minimum grade point average requirement.

(l) A borrower who fails to meet the good standing requirements in (j) and (k) of this section may request from the director a waiver of the requirements for good cause. The request for waiver must be filed on forms provided by the commission for that purpose and must set out the reasons for the request. The director shall determine whether the reasons constitute good cause shown as defined in 20 AAC 15.085(16) and may require documentation from the borrower. In his discretion, the director shall grant or deny the request for waiver.

(m) A borrower in a flight school program must hold, as a prerequisite for eligibility, a valid private pilot's certificate.

(n) A borrower may be enrolled in more than one institution, but must be enrolled for at least 75 percent of the full-time student requirement in the degree-granting institution for which the loan is obtained. The combined total of these multiple enrollments must be equivalent to at least full-time enrollment.

(o) A borrower who has previously received loans under this program, and whose loans are in repayment, must be current in monthly payments through the month immediately preceding

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

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

IN THE SENATE

SENATE BILL NO. 17

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

(2) "full-time student" means an undergraduate or career education student who is enrolled and is in regular attendance at classes for at least 12 semester hours of credit or the equivalent during the semester or a graduate student who is enrolled and is in regular attendance at classes for at least nine semester hours of credit or the equivalent; any combination of semester hours of credit, or the equivalent, aggregating to the requisite number of semester hours and undertaken during a semester at two or more public or private institutions of higher education [OPERATING UNDER A CONSORTIUM] constitutes full-time student status;

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

FOR IMMEDIATE RELEASE

FEBRUARY 7, 1985

KERTTULA'S SCHOLARSHIP LOAN BILL PASSES COMMITTEE

JUNEAU----SENATE BILL 17, AN ACT RELATING TO STUDENTS BEING ABLE TO APPLY THEIR LOANS TO MORE THAN ONE INSTITUTION, INTRODUCED BY SENATOR JAY KERTTULA (D) PALMER, PASSED THE SENATE HEALTH AND SOCIAL SERVICES COMMITTEE FEBRUARY 7, 1985.

THIS ACT WILL ENABLE FULL-TIME STUDENTS TO RECEIVE LOAN MONEY WHILE THEY ARE ATTENDING MORE THAN ONE SCHOOL. "WE HAVE HAD THIS PROBLEM COME UP OFTEN WITH STUDENTS IN OUR DISTRICT SINCE MANY ATTEND BOTH THE UNIVERSITY OF ANCHORAGE AND VARIOUS COMMUNITY COLLEGES IN KENAI, SEWARD OR THE MAT-SU. THIS BILL WILL ENABLE THEM TO RECEIVE LOAN MONIES WHERE THERE IS NO CONSORTIUM AGREEMENT BETWEEN SCHOOLS," KERTTULA SAID.

THIS BILL HAS RECEIVED MUCH SUPPORT FROM BOTH STUDENTS AND THE COMMISSION ON POST-SECONDARY EDUCATION. PLEASE ADDRESS YOUR LETTERS OF SUPPORT TO THE SENATE FINANCE COMMITTEE, SENATORS FAIKS, SACKETT, KERTTULA, ELIASON, FISCHER, HALFORD AND FERGUSON, POUCH V, JUNEAU, ALASKA, 99811.

FOR MORE INFORMATION CONTACT JOYCE KERTTULA AT 465-3771.

Introduced: 1/23/85
Referred: house Special Committee on
State Loans and Health,Education &
Social Services

IN THE HOUSE

BY DAVIS,HURLEY,KOPONEN,LARSON,
GRUENBERG AND SZYMANSKI

HOUSE BILL NO. 96

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

(2) "full-time student" means an undergraduate or career education student who is enrolled and is in regular attendance at classes for at least 12 semester hours of credit or the equivalent during the semester or a graduate student who is enrolled and is in regular attendance at classes for at least nine semester hours of credit or the equivalent; any combination of semester hours of credit, or the equivalent, aggregating to the requisite number of semester hours and undertaken during a semester at two or more public or private institutions of higher education [OPERATING UNDER A CONSORTIUM] constitutes full-time student status;

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

federation of teachers
2533 providence, anchorage, alaska 99508-4670, (907) 562-2660

FEB 7 1985

February 5, 1985

Senator Betty Fahrenkamp
Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

The Alaska Community Colleges Federation of Teachers, fully supports the intent of Senate Bill #17, "An Act relating to the applicability of the scholarship loan program to students attending more than one postsecondary educational institution; and providing for an effective date."

The present interpretation that prohibits financial aid students from freely choosing courses from various Alaskan Institutions of higher education has imposed real hardships on a number of students.

This will give the student maximum flexibility in case of closed sections in urban areas and a much greater selection of courses in rural areas.

Sincerely,

Ralph

Ralph McGrath
President

RM/bg

alaska community colleges'
american fed. of teachers, local 2404, america fed. of labor — congress of industrial organizations
anchorage
bethel
fairbanks
galena
juneau/douglas
kenai/soldotna
ketchikan
kodiak
kotzebue
nome
palmer/wasilla
sitka/islands
valdez

Alaska State Legislature

Senate

JAN 30 1985

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

DATE: January 30, 1985

Dear Bettye,

TO: Senator Bettye Fahrenkamp, Chair
Health, Education & Social Services Committee

FROM: Senator Jay Kerttula

Jay Kerttula

At your earliest convenience, would you please schedule SB 17, for hearing by the HESS Committee. This bill relates to the applicability of the scholarship loan program to students attending more than one postsecondary educational institution. Attached is the backup information we have at this time, however, more information will be forthcoming.

Please let me know if you have any questions.

Thank you.

ALASKA STATE LEGISLATURE

INTERIM OFFICE:
P.O. BOX 81435
FAIRBANKS, ALASKA 99708

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4930/4941

CHAIRMAN
1983 INTERIOR DELEGATION

MEMBER
TRANSPORTATION
HEALTH, EDUCATION AND SOCIAL SERVICES
LABOR SUBCOMMITTEE
JOINT OIL AND GAS
RURAL EDUCATION ATTENDANCE AREAS

Representative Mike Davis
House District 19

HOUSE BILL 174

The purpose of House Bill 174 is to allow students to combine credits from the postsecondary schools which they are concurrently attending in order to be eligible for student loans.

This bill primarily addresses a problem in Fairbanks, in which students attending either the University of Alaska or Tanana Valley Community College cannot combine their total number of credits in order to reach the number of credits necessary to achieve full-time student status.

The greater purpose of this bill is to allow students more flexibility in determining which courses they will take while attending college. This legislation in effect acknowledges the close interrelationship between community colleges and universities, and the healthy diversity of programs and courses in both of these institutions. In all cases, a student must be enrolled full-time in a degree program from an accredited school in order to be eligible for a student loan.

The provisions of HB 174 are already partially in effect in both Anchorage and Juneau. In Anchorage, a consortium agreement exists between the University of Alaska and Anchorage Community College in which an undergraduate student taking a total of 12 credits between both schools is eligible for a student loan. In Juneau, the relationship between the University of Alaska and Juneau-Douglas Community College is such that there is again no difficulty in a student being able to receive a loan while taking a combined full-time credit load.

No opposition to this dual enrollment was voiced by the administration at UAA, ACC, UAF, or JDCC. Indeed, the feelings from these schools are extremely positive toward such a program. Verification of student grades is facilitated in these university-community college arrangements in that each school is able to directly access the student records of the companion school.

Dean Roger Worsley of ACC suggested that a student take 75 percent of the course load, or nine credits, from the parent institution in order to clarify which school is ultimately responsible for maintaining a student's complete academic records and for issuing student loan checks. According to Dr. Kerry Romesberg, a regulation within the Postsecondary Commission is expected to be enacted soon which will stipulate that this condition be followed. This regulation will also limit the amount of paperwork that financial aid officers will have to deal with for dual enrollment students.

A question has been posed several times as to whether or not credits from correspondence courses could be applied toward student loan eligibility under provisions of this bill. Under present regulations, students are allowed to apply these courses toward loan eligibility requirements at the discretion of the parent institution. These courses must be approved by the parent institution, and they must be administered by an accredited school.

The language of this bill differs slightly from the wording in Senate Bill 197 in that HB 174 refers to applying only credits, not credits or hours, toward student loan eligibility requirements. By accepting only credits, financial aid officers would not be subject to the time-consuming procedure of converting hours to credits.

The purpose of this bill, again, is simply to allow those students who are in financial need the opportunity to take full advantage of the academic programs offered at the schools in their area.

Introduced: 2/8/83
Referred: Health, Education & Social Services, House Special Committee on State Loans and Finance

IN THE HOUSE

BY DAVIS, DUNCAN, KOPONEN, MALONE, SZYMANSKI AND ZHAROFF

HOUSE BILL NO. 174

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to student loan eligibility."

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

* Section 1. AS 14.43.120(c) is amended to read:

(c) To maintain a loan the student must continue to be enrolled as a full-time student in good standing <u>or as a part-time student in good standing in more than one institution for a total number of credits equivalent to a full-time student</u> in a career education program, college or university designated under (b) of this section. The commission shall adopt regulations defining "good standing" for purposes of this subsection.

STATE OF ALASKA
FISCAL NOTE

Revision Date 5-5 , 1983

I. REQUEST

Bill/Resolution No.: HB174
Title: Act: Student Loan Eligibility
Sponsor: Davis, et al
Requestor: House HESS

II. FISCAL DETAIL

Agency Affected: Education
Program Category Affected: Postsecondary Comm.
BRU, Program of Subprogram(s) Affected:
Student Loan Admin, Student Loan Program

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	N.A.	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Kerry D. Romesburg Phone: 465-2854
Division: Alaska Commission on Postsecondary Education Date: 5-5-83

Approved by Commissioner: Date:
Department:

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

May 5, 1983

Analysis (HB174):

Allowing multiple enrollments should enable additional people to apply, but we have no way of determining what that number would be. We also have indication that some schools will require such cross-documentation that those students will face weeks and months of delays in receiving funds. Therefore, we have left the fiscal impact at zero.

University of Alaska, Juneau
11120 Glacier Highway
Juneau, Alaska 99801 (907) 789-2101

To: Chancellor Paradise

From: Dianne Schmitt, Financial Aid Officer

Date: February 15, 1983

RE: LEGISLATION REGARDING THE ALASKA STUDENT LOAN PROGRAM

Senate Bill # 118 reduces the time a student must be in the state before applying for a loan, but also limits loans to students who apply before graduation from high school. The one year residency requirement (reduced from two years) will put a stop to litigation in that area. However, the requirement for all loan applicants to apply while still in high school will be a detriment to the spirit of the loan program and establish a new justification for litigation.

As the UAJ Financial Aid Officer, I must oppose this bill for several reasons. 1) It is sometimes difficult for high school students to decide if they want to go to college. I know there will be many young people who will neglect to fill out the application before high school graduation and later decide to go to college. This bill is asking all seventeen year old students in Alaska to decide their life goal without experiencing life beyond the academic setting. 2) Many students do not consciously choose a career path until several years after high school and after many life experiences. This bill would not afford this type of student the same opportunity as that provided for students who begin college shortly after high school. 3) Many students wait several years after graduation from a baccalaureate program before persuing graduate study. This bill does not mention graduate study; therefore, I am assuming that it could also be interpreted to eliminate loans for post-baccalaureate students.

House Bill # 56 asks for the loan interest rate to be raised to 7% and for the loan to be limited to the cost of tuition, room and board. This bill is acceptable.

House Bill # 174 says that a student may attend classes at two institutions to accumulate the 12 credits required for the loan program. This bill is acceptable and also beneficial to many of the students in Southeast Alaska.

Anchorage Community College A Unit of the University of Alaska System

April 13, 1983

Representative Mike Davis
Pouch V
Juneau, Alaska 99811

Dear Representative Davis:

I am writing at the request of Kerry Howard to indicate my support of HB174 in concept. I believe that students should be allowed to count credits from more than one institution toward fulfilling the requirement for eligibility for the state student loan program.

However, I believe that there should be in place a consortium agreement between the two institutions as is now in existence between ACC/UAA. This agreement should require that 75 percent of the credits required for qualification should be taken at the parent institution. The parent institution is the institution which is disbursing the aid.

In the past, we have had problems in federal programs with students receiving aid from more than one institution. This is not the problem with the state loan, as there is only one check in this case. However, there is a lot of paperwork and staff time required in handling the state loan program. If a student were required to take 75 percent or nine credits from the parent institution, there would be an inherent commitment on the part of that student to attend that particular institution.

Another reason for this requirement is the necessity to certify academic eligibility between semesters. If a student is taking credits from more than one institution, a parent institution is required to obtain grade reports from all other institutions prior to certifying eligibility. This is simpler if consortium agreements are in effect. The time between semesters is short and the grade reporting process is lengthy. Reciprocal agreements between institutions for the release of grades is a complicated process covered by the privacy acts.

In summary, consortium agreements between cooperating institutions, with a parent institution requirement of 75 percent of the credits required for eligibility, would be a good addition to your bill in my view. Another desired addition would be for the parent institution to receive some support costs for facilitating the state loan program. Federal aid programs provide a percentage of dollars distributed to be used to administer their funds. The Alaska State Loan Program requires a lot of work on the part of our staff, but no funds are appropriated for this purpose. Our success in acquiring additional staff

2533 Providence Avenue • Anchorage, Alaska 99508-4670 • Telephone 907/~~263-1200~~ 786-1200

Alaska Statewide Student Association
P.O. BOX 548
DOUGLAS, ALASKA 99824
REPRESENTING STUDENTS OF THE UNIVERSITY OF ALASKA STATEWIDE SYSTEM

ASSA requests that the following section be added to SPONSOR SUBSTITUTE FOR HOUSE BILL 56:

AS 14.43.120(c) is amended to read:

(c) To maintain a loan the student must continue to be enrolled as a full-time student in good standing or as a part-time student in good standing in more than one institution for a total number of credits equivalent to a full-time student in a career education program, college, or university designated under (b) of this section. The commission shall adopt regulations defining "good standing" for purposes of this subsection.

At present, students enrolled at both UAF and TVCC, UAA and ACC, or Sitka CC and Sheldon Jackson may not receive scholarship loans unless they have a total of twelve credit hours at one or the other institution. This amendment would allow these perfectly legitimate, full-time students to be eligible for the loans.

Thank you.

KCK

ASSA

FINANCIAL AID OFFICE

UNIVERSITY OF ALASKA, FAIRBANKS
Fairbanks, Alaska 99701

1982-83 ALASKA STUDENT LOAN INFORMATION

As a result of recent action by the Alaska Commission on Postsecondary Education, schools are no longer required to complete Part B of the Alaska Student Loan Application.

You may submit your application (two white copies) directly to the State Loan Office, retaining the yellow student copy, the cover sheets and this letter.

BE SURE THAT YOUR APPLICATION IS COMPLETELY FILLED OUT -- over 50% of the Alaska Student Loan applications are returned to the student because of omissions. When your application is received in Juneau, you will receive a blue post card with the date received indicated. This does not mean your application is complete; only that it has been received. You will next receive a promissory note in triplicate. Sign and date the note, list the dates of disbursement (8-20-82 for Fall 1982 semester and 1-1-83 for Spring 1983 semester), keep the marigold copy, and return the white and pink copies to Juneau.

Normally, the Financial Aid Office receives Alaska Student Loan checks in time to release funds at Registration. Before releasing checks, we must determine academic eligibility for each recipient. If you are currently enrolled at the University of Alaska-Fairbanks, you must be in good standing (2.0 semester and cumulative grade point average for undergraduates and 3.0 semester and cumulative grade point average for graduate students) to be eligible for your Fall 1982 check. Entering and transfer students must be admitted IN GOOD STANDING to a program leading toward a degree or certificate. Recipients must be full-time (12 credits for undergraduate, 9 credits for graduate students) and must complete 12 and 9 respectively each semester they receive a loan to be eligible for the following term.

Courses in the following areas cannot be counted toward the full-time financial aid requirement: Tanana Valley Community College, correspondence, extension, or television.

The eligibility requirements listed above reflect current Alaska State laws and regulations. NO EXCEPTIONS CAN BE MADE BY THE UNIVERSITY OF ALASKA-FAIRBANKS FINANCIAL AID OFFICE.

Any questions regarding the status of your application should be directed to the Alaska Student Loan Office in Juneau, since the Financial Aid Office acts only as a disbursing and certifying agency.

through the University budget process has not been good. A five or ten percent overhead distribution to institutions handling a large volume of state loan checks would certainly be beneficial.

Sincerely,

Roger L. Worsley, Dean
Educational Services

263-1200

RLW:cb

cc: Dr. Ed Biggerstaff, Chancellor
Clay Walker, ACCSA

UNIVERSITY OF ALASKA, FAIRBANKS
Fairbanks, Alaska 99701

March 9, 1983

Representative Mike Davis
Alaska State Office Building
Pouch V
Juneau, AK 99811

Dear Representative Davis:

This letter is in response to your request that I provide information regarding any administrative problems that colleges and universities might encounter should House Bill 174 be enacted.

As you probably know, the loan regulations already permit schools to combine credits provided a consortium or formal transfer agreement exists between the schools involved. This permits schools to voluntarily combine credits for loan recipients. However, it is my impression that HB 174 would require that schools accept concurrent enrollment from other schools in addition to their own for the purposes of establishing academic eligibility for the Alaska Student Loan.

Our primary concern at UAF is that the collection of the information needed to certify good academic standing and satisfactory progress would be so cumbersome and time consuming that our students would experience a considerable delay in actually receiving their state loan checks. I am attaching a sample copy of the "Record of Disbursement and Receipt" form which accompanies each state loan check and which the school's Financial Aid Officer must sign before disbursing the check to the student. Please note that the school must certify that the student is/was enrolled in a degree or diploma or certificate program as a full time student and is maintaining satisfactory progress as determined by school policy. HB 174 would put schools in the position of making this certification only after a lengthy and cumbersome administrative process of 1.) collecting certification of enrollment and fee statements from each school the student is attending, 2.) collecting official transcripts at the end of each term from each school the student is attending, 3.) official evaluation of transfer credits at the end of each term by the home institution's registrar, and 4.) a combining of credits earned together with a revision of the semester and cumulative g.p.a. Even large schools with sophisticated computer capability would have to do most of this work by hand and on a student by student basis. We expect that the enactment of this bill would cause a delay in delivering ASL checks to all students of at least three to four weeks after registration. In addition, all of the certification activity would take place at the time of registration when we are most heavily involved with getting students registered for classes and assisting students with various financial aid problems.

I would also like to mention that under HB 174, our students would not be limited to a TVCC/UAF dual enrollment. We would also be required to include UA correspondence work and any other accredited school's correspondence study. There is even the possibility that an out-of-state school would offer a special extension course in Fairbanks. Chapman College did just that a few years ago when it offered MBA coursework in the Fairbanks area.

A student attending school out of state in a large metropolitan area could easily enroll in a three credit course at each of four schools. It would be very time consuming to combine those credits at one school if all of the schools had a different starting and ending date. There is also the very real possibility that there could be a combination of quarter and semester credits to evaluate. There are some schools outside that have discussed the possibility of withdrawing themselves from eligibility for the Alaska Student Loan because the regulations are so different then accepted financial aid standards for the aid their school offers. I believe there is a real risk that other schools may simply choose to not accept another state's imposition of academic regulation on their institution and opt out of participation in the Alaska Student Loan program. It is extremely difficult to serve student's needs in a timely manner when faced with a variety of conflicting financial aid standards.

Finally, I would like to confirm that UAF Financial Aid applicants for the current academic year were advised well ahead of time that they would be required to carry a minimum of 12 UAF credits per semester (undergraduates) in order to be eligible for the loan at this school. We accomplished this by publishing news releases in the student newspaper, and by attaching an instruction sheet to each Alaska Student Loan application form that was given out from this office. Because ASL regulations require a minimum of 12 credits to maintain eligibility, we suggest to students that they carry those 12 credits with UAF, then take any desired coursework from other schools in addition to that minimum course load. This gives them the flexibility of exploring other schools and subjects while maintaining their eligibility for the loan at UAF.

I hope this information is useful to you. Please call us if you have further questions. Our office phone number is 474-7256. We appreciate this opportunity to express our views and we look forward to working with you.

Sincerely,

Carol Thomson

Carol M. Thomson
Financial Aid Advisor

/ct
enclosure

cc: Members of the Fairbanks Legislative Delegation

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

HESS 2-7-85 1:38pm

SB 17

STATEWIDE ASSEMBLY

(907) 474-7323

University of Alaska
Statewide System of Higher Education
103 Bunnell Building
303 Tanana Drive
Fairbanks, Alaska 99701

MAR 4 - 1985

February 25, 1985

Bettye Fahrenkamp
State Capitol, Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

On February 15, The Student Affairs Committee, of the University of Alaska Statewide Assembly proposed a motion in the support of HB96 and Senate Bill 25, indicating that:

> "The ability for students to be elegibile for Alaska Student Loans while taking 12 credits combined between 2 or more institutions is of tremendous importance to the Students and the State of Alaska."

The Statewide Assembly passed this motion and is hereby transmitting the intent to you for your information.

The Assembly is an elected body of students, faculty, staff and alumni from throughout the University of Alaska system that freely and openly discusses University issues and assists in ensuring academic excellence and the highest quality learning and working environment.

Sincerely,

Doreen D. Dailey

Doreen Dailey, Chairman
Statewide Assembly

DD/mw
CC: President O'Dowd
Wendy Redman, Director of Government Affairs

TO: Bettye

FM: Edie
RE: SB 17
DT: 2/7/85

SB 17 changes the definition of "full-time student" as it is used for student loan eligibilty, by elminating the words "operating under a consortium agreement." Undergraduates have to have 12 credit hours per term and graduates have to have 9 hours per term in order to be eligible for a student loan.

If the total of their semester credits are being earned in more than one institution, the institutions, under current statute, have to have a consortium agreement. The purpose of this is to prevent students with loans from abusing the system by taking courses all over the place.

However, regulations that have just been adopted require that 75% of credits earned per semester have to be earned at the degree-giving institution, so the consortium requirement language isn't necessary anymore.

Q1 WHAT IS A CONSORTIUM AGREEMENT?

It is a cooperative arrangement between two or more public or private institutions of higher education to permit sharing of facilities, instructional opportunities, and other educational services in such a way that the integrity of each institution party to the consortium is preserved while at the same time the institutions cooperatively plan the academic calendar, scheduling, use of personnel and facilities, and educational programs and offerings to the maximum advantage of the students and faculties of the institutions that are parties to a consortium.

Q2 WHAT HAPPENS TO THE EXISTING CONSORTIUM AGREEMENTS IF THIS BILL PASSES?

They continue on. The bill is not changing consortium agreements, it is only saying that for the purposes of student loan eligibility, taking credits from more than one institution does not require a consortium agreement between the primary institution and each additional one.

Q3 WILL IT AFFECT THE EXISTING STUDENT LOANS THAT WERE GRANTED UNDER CONSORTIUM AGREEMENTS?

no

Q4 HOW MANY CONSORTIUM AGREEMENTS ARE THERE IN THE STATE?

Univerity of Alaska and Anchorage Community College
University of Alaska and Alaska Pacific University
Matanuska Community College and ~~Sheldon Jackson~~ UAA

Q5 HOW MANY STUDENTS HAVE LOST THEIR ELIGIBILITY FOR STUDENT LOANS BECAUSE OF A LACK OF CONSORTIUM AGREEMENTS?

3 to 7 a year for the last 4 years

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

10/31/89
Date

02-519 (REV 8/78)

SB

20

Senate Health, Education and Social Services Committee

Legislation Checklist

Bill number: SB 20

Sponsor: RAY

Date referred to committee: 1/14/85

Synopsis completed: 1/21

Fiscal note:

Further referrals: Judiciary, Finance

CONTACTS:

Paula Scavara - Sen. Ray 4451

Frank Gordon - DPS - 4322

Gail Hutchison

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

HESS 4-4-85 1:48pm

Sandra

Alaska State Legislature

BETTYE FAHRENKAMP Chairman
ARLISS STURGULEWSKI Vice Chairman
JOE JOSEPHSON
PAUL FISCHER
EDNA ARMSTRONG-DE VRIES

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Health, Education and Social Services

M E M O R A N D U M

TO: Members, Senate Committee on Health, Education and Social Services

FROM: Committee Staff

RE: Committee Meeting, April 4, 1985

DATE: April 3, 1985

On Thursday, April 4, at 1:30 pm in the Beltz Room, the Senate Committee on Health, Education and Social Services will hear the following bills:

SB 3, Relating to hearsay evidence in prosecutions for certain sexual offenses; and amending Rule 6(r), Alaska Rules of Criminal Procedure.

SB 3 is scheduled for committee action. It would allow hearsay evidence to be admitted at grand jury in prosecutions for sexual assault, sexual abuse, and unlawful exploitation of a minor. The child must be under the age of 10, and the child must either testify before the grand jury or be unavailable as defined in the bill. The draft committee substitute would delete "a lack of memory on the subject matter" as a definition of unavailable.

SB 20, Relating to implied consent to preliminary breath test by aircraft and watercraft operators.

Under Title 28, all drunk driving laws which apply to motor vehicles apply to aircraft and watercraft as well. Operators of motor vehicles, aircraft and watercraft are required to submit to a breath test for alcohol. However, only motor vehicle operators are required to submit to preliminary breath tests in the field. SB 20 would made watercraft and aircraft operators subject to the administration of a preliminary

breath test by a law enforcement officer at the scene of an incident.

SB 51, Relating to state aid for school construction.

SB 51 received a preliminary hearing by the Senate HESS Committee on March 21, 1985. A draft committee substitute, which would base eligibility for state funding on project need, has been prepared. In addition, the existing grant program would be amended to require a 10% local contribution; the existing debt retirement program would be amended to allow 80% state reimbursement. Expenditure of state funds would be prohibited for specific single purpose facilities.

A summary and sectional analysis are attached.

SCR 3, Background checks on school district employees who come into contact with children.

SCR 3, which urges local school districts to implement background checks on employees who come into contact with children, has been scheduled for committee action. A committee substitute, which clarifies that "employees" includes those under contract with school districts (such as bus drivers), has been prepared.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER _ SB 20

Support

February 1, 1985

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

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

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

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

Robert J. Sundberg
Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 20

Title: An Act relating to implied consent to preliminary breath test...

Sponsor: Sen. Ray

Requestor: Sen. HESS

Date of Request: 2-6-85

FISCAL DETAIL

Agency Affected: Public Safety

Program Category Affected: Administration of Justice

BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Paul Conger

Phone: 465-4338

Division: Administrative Services

Date: 2-6-85

Approved by Commissioner: for Michael A. Cole

Date: 2-6-85

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

FILE WITH SB 5

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M December 17, 1984

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

TO: Senator Bill Ray

FROM: George W. Edwards GWE
Legislative Counsel

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

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

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

GWE:ojb
J10/034

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

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

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

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

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

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

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

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

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

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

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

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

(g) In this section,

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

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

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

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

Effect of amendments. — The first 1980 amendment, in subsection (a) as it existed prior to the second 1980 amendment, deleted "under AS 11.05.150" from the end of the third sentence and substituted "AS 28.15.181" for "AS 28.15.210(c)" in the fourth sentence.

The second 1980 amendment rewrote the section.

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

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

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

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

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

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

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

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

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

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

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

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

(1) was driving a motor vehicle that is involved in an accident; or

(2) committed a moving traffic violation.

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

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

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

FLORIDA

BOATING SAFETY

Tentative classification changes not available at time of publication

CHAPTER 84-188

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 100

A bill to be entitled

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

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

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

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

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

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

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

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

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

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

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

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

incidence of boating while impaired or intoxicated be established.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

327.354 Presumption of impairment; testing methods.--

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

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

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

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

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

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

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

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

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

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

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

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

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

327.33 Reckless or careless negligent operation of vessel.--

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

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

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

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

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

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

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

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

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

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

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

(a) By a fine of:

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

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

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

(b) By imprisonment for:

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

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

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

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

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

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

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

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

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

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

327.37 Water skis and aquaplanes regulated.--

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

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

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

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

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

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

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

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

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

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

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

327.54 Boat Liveries; safety regulations; penalty.--

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

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

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

(c) When the vessel boat does not contain the required safety equipment pursuant to s. 327.50 a Coast Guard-approved lifesaving device for each person occupying the boat and other equipment as required for the class of vessel as set forth in s. 371.57.

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

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

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

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

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

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

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

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

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

327.70 Enforcement.--

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

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

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

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

327.72 Penalties.--

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

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

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

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

Approved by the Governor June 13, 1984.
Filed in Office Secretary of State June 14, 1984.

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

MARYLAND

17-86A-19 CRIMINAL JUSTICE/COURTS/CORR
Operation of a Vessel While Intox.

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

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

Editor's note. — Section 2, ch. 8, Acts 1983, provides that "the provisions of this act are intended solely to correct technical errors in the law and that there is no intent to revive or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this act."

§ 8-736. Same — Forms; investigations.

(a) The Department shall prescribe and provide suitable forms of applications, certificates of title, notices of security interests, and all other notices and forms necessary to carry out §§ 8-723 through 8-736. (1983, ch. 8.)

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

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

Editor's note. — Section 2, ch. 8, Acts 1983, provides that "the provisions of this act are intended solely to correct technical errors in the law and that there is no intent to revive or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this act."

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

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

(1) Is intoxicated;

(2) Is under the influence of alcohol;

(3) Is so far under the influence of any drug, combination of drugs, or combination of drugs and alcohol that the person cannot operate a vessel safely; or

(4) Is under the influence of any controlled dangerous substance, as defined in Article 27, § 277 of the Code, unless the person is entitled to use the controlled dangerous substance under the laws of this State.

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

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

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

§ 10-204. Public records — Admissibility generally.

Effect of section. — This section simply makes records competent evidence; it does not address their relevance or judicial effect. Carr v. State, 50 Md. App. 209, 437 A.2d 238 (1981).

Birth certificate is a public record and no witness is needed to reproduce it. Scott v. State, 43 Md. App. 323, 405 A.2d 320 (1979), modified, 289 Md. 647, 426 A.2d 923 (1981).

Cited in Temoney v. State, 290 Md. 251, 429 A.2d 1018 (1981).

§ 10-205. Same — Exceptions.

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

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

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

The 1982 amendment, effective July 1, 1982, substituted "that are declared confidential by § 4-102 of the Health-General Article" for "which are declared confidential by § 1-1 of Article 43 of the Code" in subsection (a).

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

Subtitle 3. Motor Vehicle Laws.

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

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

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

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

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

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

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

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

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

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

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

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

§ 10-303. Same — Time limitation.

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

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

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

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

See last page for § 303

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The defendant is unconscious or otherwise incapable of refusing to take a chemical test for alcohol;

(2) Injuries to the defendant require removal of the defendant to a medical facility; or

(3) The equipment for administering the chemical test of breath is not available.

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

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

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

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

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

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

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

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

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

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

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

(1982, ch. 95.)

Effect of amendment.

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

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

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

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

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

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

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

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

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

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

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

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

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

Effect of amendments.

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

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

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

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

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

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

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

Compliance with section required. — Whenever a person is charged under article 27, § 388, and the basis of the charge is the alleged intoxication of the accused while operating a motor vehicle, no evidence derived from any chemical analysis administered or caused to be administered by the police is admissible in evidence unless there has been compliance with this section. Loscomb v. State, 45 Md. App. 598, 416 A.2d 1276 (1980), modified, 291 Md. 424, 435 A.2d 764 (1981).

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

§ 10-308. Same — Other evidence.

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

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

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

REVISOR'S NOTE

This section is new language derived from Article 35, § 91. This section was enacted in 1953. Maryland Laws 1973, ch. 786 removed the requirement of notifying the motorist by highway markings of the presence of radio-micro wave devices used to record speed. Language and style are changed.

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

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

In a prosecution for a violation of a law concerning a person who is driving or attempting to drive a vehicle in violation of § 11-902 of Article 66½ of the Code a chemical test of his breath, blood, urine, or other bodily substance may be administered to the person for the purpose of determining the alcoholic content in his body. (An. Code 1957, art. 35, § 100; 1973, 1st Sp. Sess., ch. 2, § 1.)

REVISOR'S NOTE

This section is new language derived from Article 35, § 100 (a). This is the first sentence in that section. Style is changed, and the language shortened.

Maryland Law Review. – For article on chemical tests for alcoholic intoxication, see 17 Md. L. Rev. 193 (1957).

For case note on official denial of a blood test as constituting a violation of due process of law, see 23 Md. L. Rev. 282 (1963).

For symposium on compulsory use of chemical tests for alcoholic intoxication, see 14 Md. L. Rev. 111 (1954).

§ 10-303. Same — Time limitation.

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

REVISOR'S NOTE

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

INDIANA

HOUSE BILL 1131

.30

INTRODUCED BY

Repr. [illegible]

[illegible] read first time and

referred:

DIGEST

Adds IC 14-1-4 to specify that it is a Class C misdemeanor to operate watercraft while intoxicated; to increase the penalty for subsequent offenses (Class D felony), offenses that result in serious bodily injury (Class D felony), and offenses that result in death (Class C felony); to require the convicted person to refrain from operating a watercraft for a specified period of time; to prescribe penalties for refusal to submit to a chemical test and for operating a watercraft after being ordered not to do so; and to establish a procedure for the use of chemical tests in enforcement of this offense. Adds IC 9-11-1-9 to remove watercraft from the scope of the general drunk driving statute. Repeals IC 14-1-1-21, which is superseded. Effective September 1, 1984.

A BILL FOR AN ACT to amend the Indiana Code concerning drunk driving.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 14-1-4 is added to the Indiana Code as a NEW chapter to read as follows:

Chapter 4. Operating a Watercraft While Intoxicated.

Sec. 1. As used in this chapter:

"Chemical test" means an analysis of a person's blood, breath, urine, or other bodily substance for the determination of the presence of alcohol or a controlled substance.

"Controlled substance" has the meaning set out in IC 35-48-1.

"Intoxicated" means under the influence of:

(1) alcohol;

(2) a controlled substance;

(3) any drug other than alcohol or a controlled substance; or

(4) any combination of alcohol, controlled substances, or drugs;

such that there is an impaired condition of thought and action and the loss of normal control of a person's faculties to such an extent as to endanger any person.

"Law enforcement officer" has the meaning set out in IC 35-41-1 and includes conservation officers employed by the department of natural resources.

"Prima facie evidence of intoxication" includes evidence that at the time of an alleged violation there was ten hundredths percent (.10%), or more, by weight of alcohol in the person's blood.

"Relevant evidence" includes evidence that at the time of the alleged violation there was at least five hundredths percent (.05%), but less than ten hundredths percent (.10%), by weight of alcohol in the person's blood.

"Serious bodily injury" has the meaning set out in IC 35-48-1.

"Watercraft" means a device for transportation by water.

blood; or

(2) while intoxicated;

commits a Class C misdemeanor.

Sec. 3. A person who violates section 2 of this chapter commits a Class D felony if:

(1) he has a previous conviction under this chapter; or

(2) the offense results in serious bodily injury to another person.

Sec. 4. A person who violates section 1 of this chapter commits a Class C felony if the crime results in the death of another person.

Sec. 5. A person who operates a watercraft after he has been ordered not to operate a watercraft under this chapter commits a Class A misdemeanor.

Sec. 6. (a) In addition to any criminal penalties imposed for a misdemeanor under this chapter, the court shall order the person to not operate a watercraft for at least one (1) year.

(b) In addition to any criminal penalty imposed for a felony under this chapter, the court shall order the person to not operate a watercraft for at least two (2) years.

Sec. 7. A person who operates a watercraft in waters over which Indiana has jurisdiction impliedly consents to submit to the chemical test provisions of this chapter as a condition of operating a watercraft in Indiana. If a person refuses to submit to a chemical test under this chapter, the court shall order the person to not operate a watercraft for at least one (1) year.

Sec. 8. A law enforcement officer who has probable cause to believe that a person has committed an offense under this chapter shall offer the person the opportunity to submit to a chemical test. It is not necessary for the law enforcement officer to offer a chemical test to an unconscious person. A law enforcement officer may offer a person more than one (1) chemical test under this chapter. However, all tests must be administered within three (3) hours after the officer had probable cause to believe the person violated this chapter. A person must submit to each chemical test offered by a law enforcement officer in order to comply with the implied consent provisions of this chapter.

Sec. 9. (a) If the chemical test results in relevant evidence that the person is intoxicated, he may be arrested for an offense under this chapter. If the chemical test results in prima facie evidence that the person is intoxicated, he shall be arrested for an offense under this chapter.

(b) A person who refuses to submit to a chemical test may be arrested for an offense under this chapter.

(c) At any proceeding under this chapter, a person's refusal to submit to a chemical test is admissible into evidence.

Sec. 10. (a) The provisions of IC 9-11-4-5 concerning the certification and use of chemical breath tests apply to the use of such tests in a prosecution under this chapter.

(b) The provisions of IC 9-11-4-6 apply to chemical tests performed under this chapter.

Sec. 11. If a person refuses to submit to a chemical test under this chapter, the law enforcement officer shall inform the person that his refusal will result in

of this chapter occurs shall represent the state in any proceeding under this chapter.

Sec. 13. At any proceeding concerning an offense under this chapter, evidence of the amount by weight of alcohol that was in the blood of the person charged with the offense at the time of the alleged violation, as shown by an analysis of his breath, blood, urine, or other bodily substance, is admissible.

SECTION 2. IC 9-11-1-9 is added to the Indiana Code as a NEW section to read as follows: Sec. 9. "Vehicle" means a device for transportation by land or air.

SECTION 3. IC 14-1-1-21 is repealed.

H/ESS Comm. Sub.

SB 20 - RELATING TO IMPLIED CONSENT TO PRELIMINARY BREATH TEST BY AIRCRAFT AND WATERCRAFT OPERATORS.

**UNDER CURRENT STATUTE, ONLY MOTOR VEHICLE OPERATORS ARE REQUIRED TO SUBMIT TO PRELIMINARY BREATH TESTS IN THE FIELD.

** SB 20 WOULD REQUIRE OPERATORS OF AIRCRAFT & WATERCRAFT TO SUBMIT TO PRELIMINARY BREATH TESTS BECAUSE ALL OTHER DRUNK DRIVING LAWS PERTAIN TO THEM. THE ONLY DIFFERENCE IN TREATMENT BETWEEN THE MOTOR VEHICLE OPERATOR AND THE AIR OR WATER CRAFT OPERATOR IS THE PRELIMINARY FIELD TEST.

** THE HESS CS PROVIDES A DEFINITION FOR UNLAWFUL TO MEAN A VIOLATION OF ANY FEDERAL, STATE, OR MUNICIPLE STATUTE, REGULATION, OR ORDINANCE.

NO FISCAL NOTE

DEPARTMENT OF LAW
PROPOSED CS FOR SECTION 4
OF CSSB 20 (HESS)

amdt #1
pg 2 line
delete & insert Sec. 4

Sec. 4. AS 28.35.031 is amended by adding a new subsection to read:

(g) For purposes of (b) of this section, "unlawfully" means in violation of any federal, state, or municipal statute, regulation or ordinance, except for violations which do not provide reason to believe that the operator's ability to operate the aircraft or watercraft was impaired by the ingestion of alcoholic beverages.

~~Adopted~~

adopted

COMMITTEE REPORT

SENATE

FURTHER: JUDICIARY
FINANCE

1/24/85

Date 4-4-85

Mr. President

The Committee on HESS considered SB 20

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

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

[X] do pass

[ ] do pass with attached amendment(s)

[X] replace with/or adopt CS for SB 20
[ ] new title
[X] same title and recommends Do Pass

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Chairman

Chairman recommendation