

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4086 SJUD SB 321 - SB 330 962



# 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

*11/7/89*  
Date

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SENATOR TIM KELLY, VICE-CHAIR  
SENATOR JAN FAIKS  
SENATOR RICK HALFORD  
SENATOR ROBERT ZIEGLER, SR.



JUNEAU, ALASKA 99811  
(907) 465-3717

January 13, 1986

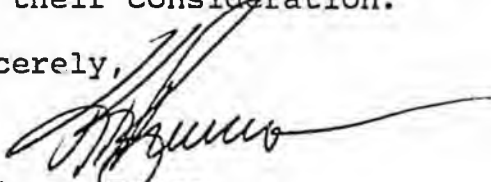
The Honorable Thomas E. Schulz  
Superior Court Judge  
First Judicial District  
415 Main Street, Room 402  
Ketchikan, Alaska 99901

Dear Judge Schulz:

Thank you for your comments regarding CSSB 321, "An Act including magistrates within the jurisdiction of the Commission on Judicial Qualifications."

A copy of your letter has been placed in each members' file for their consideration.

Sincerely,

  
Kevin K. Bruce

KKB/acp



Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT  
415 MAIN STREET, ROOM 402  
KETCHIKAN, ALASKA  
99901

Chambers of  
THOMAS E. SCHULZ, Presiding Judge

January 3, 1986

Kevin K. Bruce  
Senate Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

re: CSSB 321: "An Act including magistrates within  
the jurisdiction of the Commission on  
Judicial Qualifications"

Dear Mr. Bruce:

A copy of Magistrate Linda Hartshorn's letter to you of December 12, 1985, concerning the above legislation pending in the Senate was sent to me. I have objected in the past, and I still object, to including magistrates within the jurisdiction of the Commission on Judicial Qualifications.

Magistrates serve at the pleasure of presiding judges, and I believe that procedures are now in place in every Judicial District in the State concerning disciplinary matters that involve magistrates. If this legislation passes, it can only serve to screw up the system that I believe is working fairly well at the present time.

Very truly yours,

Thomas E. Schulz  
Superior Court Judge

TES:abr

cc: Magistrate Hartshorn



Commission on Judicial  
Conduct

303 K STREET  
ANCHORAGE, ALASKA 99501  
264-0528

January 29, 1986

Mr. Kevin Bruce  
Office of Senator Rodey  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99811

RE: SB 321

Dear Mr. Bruce:

The Commission on Judicial Conduct met on Thursday, January 16, 1986, and discussed SB321, which would place magistrates within the jurisdiction of the Commission on Judicial Conduct. The Commission decided that it would be willing to undertake such a responsibility provided that it is adequately funded both for the investigation of judges and for the investigation of magistrates.

Thank you for your patience and consideration.

Sincerely,

Frank Flavin  
Executive Director



RECEIVED  
In the District Court  
at Wrangell

JAN 09 1986

MAGISTRATE/CLERK

Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT  
415 MAIN STREET, ROOM 402  
KETCHIKAN, ALASKA  
99901

Chambers of  
THOMAS E. SCHULZ, Presiding Judge

January 3, 1986

Kevin K. Bruce  
Senate Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

re: CSSB 321: "An Act including magistrates within  
the jurisdiction of the Commission on  
Judicial Qualifications"

Dear Mr. Bruce:

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Magistrates serve at the pleasure of presiding judges, and I believe that procedures are now in place in every Judicial District in the State concerning disciplinary matters that involve magistrates. If this legislation passes, it can only serve to screw up the system that I believe is working fairly well at the present time.

Very truly yours,

Thomas E. Schulz  
Superior Court Judge

TES:abr

cc: Magistrate Hartshorn



## Trial Courts

State of Alaska

FIRST JUDICIAL DISTRICT

P. O. BOX 869

WRANGELL, ALASKA

99929

December 12, 1985

Kevin K. Bruce  
Senate Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

Re: CSSB 321: "An Act including magistrates within the jurisdiction of the commission on judicial qualifications."

Dear Mr. Bruce:

The majority of magistrates who responded to my request for comments on CSSB 321 had no objection to passage of the bill. However, many concerns and questions were raised which we believe must be addressed prior to an official response from the Association of Alaska Magistrates. I will list those concerns as presented to me.

- 1) The magistrates feel they are treated fairly by presiding judges with no fear of arbitrary or capricious acts. The consensus is that a magistrate would be afforded due process should a problem arise. However, it would be beneficial to know the procedure that would be employed upon the filing of a complaint.
- 2) What are the rules within which the Commission operates? How and when is a complaint determined to be "formal"? When is notification given to the judge?
- 3) Since we serve at the pleasure of the presiding judge, it is requested, should this bill pass, that any complaint filed against a magistrate be immediately copied to the presiding judge.
- 4) If magistrates were placed under the jurisdiction of the Commission, would attorneys fees be paid by the state as is now the practice with other judges?

Kevin K. Bruce  
December 12, 1985  
Page Two

5) If the Commission recommends action after investigating a complaint, does this recommendation go to the supreme court or to the presiding judge? Who makes the final decision?

6) Would passage of this bill mean that magistrates, in the future, would have to stand for retention election?

7) Since this is one of two areas where the statutes still differentiate between magistrates and other judges, would inclusion under the jurisdiction of the Commission also mean inclusion under judicial retirement?

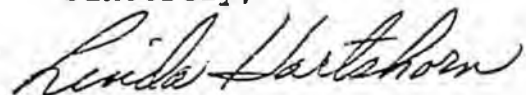
As you can see, there are many questions that need to be answered before we can make the decision to support or oppose this legislation. The general feeling is that it would be good to know there is a fixed procedure for dealing with complaints. However, there is no perception of unfairness or lack of due process under the current system.

The Commission is sending to me their operating manual and annual report, which includes rules and procedures. When this information is received and the above concerns are addressed, we will be able to present a response to your request. I understand that the Court System and the Commission have not yet taken a stand on the bill. We will get ours to you as soon as possible.

I believe the reference in the bill to "Commission on Judicial Qualifications" should be changed to "Judicial Conduct Commission".

Please give me a call at 874-2311 if you have any questions.

Sincerely,



Linda Hartshorn, Magistrate  
for The Association of  
Alaska Magistrates

cc: All Magistrates

MEMORANDUM

TO: All Magistrates Date: October 23, 1985

FROM: Linda Hartshorn

RE: SB 321: "An Act including magistrates within the jurisdiction of the commission on judicial qualifications." (Now called the Judicial Conduct Commission)

Hello to everyone! It seems like a long time since we were all together in Anchorage.

I have received a request from Kevin Bruce, legislative aide to Senator Patrick Rodey, for some input from the Association of Alaska Magistrates on Committee Substitute for Senate Bill 321. Enclosed are copies of:

- 1) The request from Mr. Bruce;
- 2) A position paper prepared by the sponsor of the bill;
- 3) A memorandum to Senator Rodey and the Senate Judiciary Committee from Legislative Counsel Michael Ford giving some background on the bill; and
- 4) A copy of the committee substitute for the bill as the Senate Judiciary Committee intends to introduce it this session.

Original SB 321 would have included only those magistrates who sit in a location where a superior court holds regular sessions; the committee substitute would include all magistrates. All magistrates received a copy of the original bill with a May 24, 1985 memorandum from Karla Forsythe in which she requested our comments. The request from Kevin Bruce is the only contact from the legislature asking for the position of the Association.

The position paper and Mr. Ford's memorandum set out the background and intent of the legislation. If you have any questions about the bill or its intent, please feel free to contact me at 874-2311 or Mr. Bruce at 465-3793.

It is important that we respond to this request and I would be pleased to compose the official response from the Association. However, to do this I need your input so the response will be an accurate reflection of the feelings of all the magistrates.

Please review the enclosed materials and get back to me with your comments as soon as possible. I intend to respond by November 15, 1985, as the Judiciary Committee needs this information well in advance of the next session.

Thank you.



Linda Hartshorn



POSITION PAPER  
SB321

The intent of the sponsor in introducing SB321, "An Act including magistrates within the jurisdiction of the commission on judicial qualifications" is threefold in nature.

First, as magistrates are not currently under the jurisdiction of the Commission on Judicial Qualifications, there is no uniform or central authority for cataloging and resolving complaints lodged against these judicial officers. At the present time, complaints are forwarded to the presiding judge of each judicial district for disposition. The supervision of and method of processing complaints against magistrates may vary from district to district, essentially creating inequities in the system, both for magistrates and the public.

This "due process" inequity is the second reason for the bill's introduction. Magistrates deserve a uniform procedure for responding to complaints levied against them, as well as a method of safeguards against possible arbitrary and capricious acts by presiding judges.

Finally the bill proports to enhance the judicial independence of magistrates by providing this separate and distinct forum for airing complaints. The Supreme Court has determined, of course, that serving at the pleasure of the presiding judge does not impair the independence of magistrates to adjudicate cases impartially. (Buckalew v. Holloway 604 P. 2d 240 1979)

Without quibbling with the court's decision in this matter, the sponsor is convinced that having an independent review and recommendation by the Commission will better serve the interests of justice and preserve the independence of these judicial officers.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
ROT 465-3600

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

September 24, 1985

SUBJECT: Magistrates

TO: Senator Pat Rodey  
Senate Judiciary Committee

FROM: Michael F. Ford *M.F.*  
Legislative Counsel

I have enclosed a copy of Buckalew v. Holloway, 604 P.2d 240 (Alaska 1979). This case held that magistrates are judges, at least regards the reference in article IV, section 4, of the Alaska Constitution. The court also held that having the magistrate serve at the pleasure of the presiding judge does not violate the constitutional objective of an independent judiciary. The reasons given by the court were that the legislature is not bound by that concept, and that the influence of the presiding judge is not a form of political patronage. The court did not discuss exactly what due process a magistrate was entitled to, but did indicate that a magistrate was not without legal recourse, including constitutional due process requirements.

The court did not rule on the issue of whether magistrates are within the jurisdiction of the Commission on Judicial Qualifications, but indicated that assuming that jurisdiction did exist, it would not conflict with the power of removal by the presiding judge. I cannot understand how a magistrate could be a judge for article VI, section 4, and not also be a judge for article IV, section 10, of the Alaska Constitution. However, as the court failed to rule on this point, CSSB 321 (Jud) would seem to clear up any possible confusion over the issue.

MFF:lmb  
M1/021

Enclosure

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 321 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act including magistrates within the jurisdiction  
7 of the commission on judicial qualifications."

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

9 \* Section 1. AS 22.30.080(2) is amended to read:

10 (2) "judge" means a justice of the supreme court, a judge  
11 of the court of appeals, a judge of the superior court, [OR] a judge  
12 of the district court, or a magistrate who is the subject of an inves-  
13 tigation or proceeding under sec. 10, art. IV, Constitution of the  
14 State of Alaska and this chapter.

M E M O R A N D U M

To: Karla Forsythe  
General Counsel

Date: May 30, 1985

From: Linda Hartshorn  
Magistrate

Subj: Senate Bill 321: An  
Act including certain  
magistrates within the  
jurisdiction of the  
Commission on Judicial  
Conduct

I have no objection to the inclusion of magistrates within the jurisdiction of the Commission on Judicial Conduct. However, I do not agree with this applying only to certain magistrates. If the bill were to pass, I would fall under the jurisdiction of the Commission if a complaint were filed against me, but those magistrates in Craig and Haines, for instance, would be under the jurisdiction of the presiding judge. I see no reason to make a distinction between large and small court magistrates as the duties and jurisdiction of magistrates statewide are the same. Do you know why Senator Rodey wanted this to apply only to those magistrates in the large courts?

Magistrates in superior court locations usually have a heavier caseload. They also sit as masters more often than the magistrates in the outlying areas. As masters, we make findings for the superior court and a superior court judge enters the final order. A master's appointment is an additional duty not within the statutory definition of a magistrate's jurisdiction and duties. Any misconduct in this area would not seem to fall within the powers and duties of the Commission, but rather be within the supervisory capacity of the superior court.

The wording "or a magistrate if the location at which the magistrate holds court also has a superior court that holds regular sessions" is unclear. Does this mean a location with a resident superior court judge? Does it include those locations where a superior court judge may come through on a regular schedule? What about the magistrate from a small location who fills in at a superior court location?

It would be interesting to know the history of this bill and why it is considered necessary.

Thank you for the opportunity to comment. I would be interested in any further developments.

cc: Honorable Thomas E. Schulz

MEMORANDUM

RECEIVED  
In the District Court  
at Wrangell

TO: Presiding Judges  
Magistrates  
Stephanie Cole  
Carole Baekey

DATE: May 24, 1985

MAY 30 1985

*G. Lowe*  
MAGISTRATE/CLERK

FROM: Karla Forsythe *KLF*  
General Counsel

SUBJ: SB 321: An act including  
certain Magistrates within  
the jurisdiction of the  
Commission on Judicial  
Conduct

I have attached a copy of SB 321, which would bring within the jurisdiction of the Commission on Judicial Conduct those Magistrates who sit in Superior Court locations. I have also attached a copy of AS 22.30.010-080, which outlines the powers and the duties of the Commission.

I would appreciate your comments on this proposed legislation, either in writing or over the telephone (264-0634).

KF/rlc

Introduced: 5/10/85  
Referred: Judiciary

1 IN THE SENATE

BY RODEY

2

SENATE BILL NO. 321

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act including certain magistrates within the

7 jurisdiction of the commission on judicial qualifica-

8 tions."

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

10 \* Section 1. AS 22.30.080(2) is amended to read:

11 (2) "judge" means a justice of the supreme court, a judge  
12 of the court of appeals, a judge of the superior court, [OR] a judge  
13 of the district court who is the subject of an investigation or pro-  
14 ceeding under sec. 10, art. IV, Constitution of the State of Alaska  
15 and this chapter, or a magistrate if the location at which the magis-  
16 trate holds court also has a superior court that holds regular  
17 sessions.

### Chapter 30. Judicial Qualifications.

Section	Section
10. Commission on judicial conduct	60. Rules and confidentiality
11. Powers and duties of the commission	66. Inquiry
40. Preparation of budget	80. Definitions
50. Validity of acts of the commission	

**Sec. 22.30.010. Commission on judicial conduct.** The Commission on Judicial Conduct shall consist of nine members as follows: three persons who are justices or judges of state courts, elected by the justices and judges of the state courts; three members who have practiced law in this state for 10 years, appointed by the governor from nominations made by the governing body of the organized bar and subject to confirmation by a majority of members of the legislature in joint session; and three citizens who are not judges, retired judges, or members of the state bar, appointed by the governor and subject to confirmation by a majority of the members of the legislature in joint session. Commission membership terminates if a member ceases to hold the position that qualified that person for appointment. A person may not serve on the commission and on the Judicial Council simultaneously. The commission shall elect one of its members to serve as chairman for a term prescribed by the commission. A vacancy shall be filled by the appointing power for the remainder of the term. (§ 1 ch 213 SLA 1968; am § 23 ch 71 SLA 1972; am § 1 ch 160 SLA 1984)

**Effect of amendments.** — The 1984 amendment, effective July 6, 1984, substituted "Conduct" for "Qualifications" in the catchline and "A person may not" for "No person may" in the third sentence and, in the first sentence, substituted "Conduct" for "Qualifications," "three persons who are justices or judges of state courts" for "one justice of the supreme court," "and judges of the state courts; three" for "of the supreme court; three judges of the superior court, elected by the judges of the superior court; one judge of the district court, elected by the judges of the district court; two," and "and subject to confirmation by a majority of the members of the legislature in joint session; and three" for "and two" and inserted "governor from nominations made by the."

**Sec. 22.30.011. Powers and duties of the commission.** (a) The commission shall on its own motion or on receipt of a written complaint inquire into an allegation that a judge

- (1) has been convicted of a crime punishable as a felony under state or federal law or convicted of a crime that involves moral turpitude under state or federal law;
- (2) suffers from a disability that seriously interferes with the performance of judicial duties and that is or may become permanent;
- (3) within a period of not more than six years before the start of the current term, committed an act or acts that constitute
  - (A) wilful misconduct in office,
  - (B) wilful and persistent failure to perform judicial duties,

(C) conduct prejudicial to the administration of justice.

(D) conduct that brings the judicial office into disrepute, or

(E) conduct in violation of the code of judicial conduct; or

(1) is habitually intemperate.

(b) The commission may hold a hearing on an allegation under (a) of this section. A hearing under this section is a hearing under AS 44.62.310(d) and is private unless a public hearing is requested by the judge.

(c) A judge appearing before the commission at the hearing is entitled to counsel, may present evidence, and may cross-examine witnesses.

(d) The commission may, after a hearing held under (b) of this section

(1) exonerate the judge of the charges;

(2) informally and privately admonish the judge or recommend counseling;

(3) reprimand the judge publicly or privately;

(4) refer the matter to the supreme court with a recommendation that the judge be suspended, removed, or retired from office or publicly or privately censured by the supreme court.

(e) A decision by the commission to reprimand a judge publicly or privately may be appealed by the judge to the supreme court.

(f) If the commission decides to reprimand a judge privately, the commission shall forward the reprimand to the judge. A copy of the reprimand shall be sent to the chief justice of the supreme court. A private reprimand is confidential.

(g) If the commission exonerates a judge, a copy of the proceedings and report of the commission may be made public on the request of the judge. (§ 1 ch 58 SLA 1981; am §§ 2 — 4 ch 160 SLA 1984)

**Effect of amendments.** — The 1984 amendment, effective July 6, 1984, in paragraph (3) of subsection (a), deleted "or" at the end of subparagraph (C) and added subparagraph (E); changed the

internal reference in subsection (b); and, in subsection (d), inserted present paragraph (2) and redesignated former paragraphs (2) and (3) as present paragraphs (3) and (4), respectively.

#### Sec. 22.30.015. Term of office.

**Cross references.** — For terms of members appointed or elected after July 1,

1984, see § 10, ch. 160, SLA 1984 in the Temporary and Special Acts.

**Sec. 22.30.040. Preparation of budget.** The commission shall be responsible for preparing and presenting to the legislature its proposed annual budgets. (§ 1 ch 213 SLA 1968; am § 5 ch 160 SLA 1984)

**Effect of amendments.** — The 1984 amendment, effective July 6, 1984, rewrote this section, which formerly read "The Alaska court system shall be respon-

sible for preparing and presenting to the legislature proposed annual budgets for the commission."

§ 22.30.040

§ 22.30.050

JUDICIARY

§ 22.30.080

**Sec. 22.30.050. Validity of acts of the commission.** No act of the commission is valid unless concurred in by a majority of the members serving on the commission at the time the act is taken. (§ 1 ch 213 SLA 1968; am § 6 ch 160 SLA 1984)

**Effect of amendments.** — The 1984 amendment, effective July 6, 1984, substituted "the members serving on the commission at the time the act is taken" for "its members."

**Sec. 22.30.060. Rules and confidentiality.** (a) The commission shall make rules implementing this chapter and providing for confidentiality of proceedings.

(b) All proceedings, records, files, and reports of the commission are confidential and disclosure may not be made except

(1) upon waiver in writing by the judge at any stage of the proceedings;

(2) if the subject matter or the fact of the filing of charges has become public, in which case the commission may issue a statement in order to confirm the pendency of the investigation, to clarify the procedural aspects of the proceedings, to explain the right of the judge to a fair hearing, or to state that the judge denies the allegations; or

(3) upon filing of formal charges, in which case only the charges shall become public. (§ 1 ch 213 SLA 1968; am § 7 ch 160 SLA 1984)

**Effect of amendments.** — The 1984 amendment, effective July 6, 1984, added subsection (b).

**Sec. 22.30.066. Inquiry.** (a) The commission may subpoena witnesses, administer oaths, take the testimony of any person under oath, and require the production for examination of documents or records relating to its inquiry under AS 22.30.011.

(b) In the course of an inquiry under AS 22.30.011 into judicial misconduct or the disability of a judge, the commission may request the judge to submit to a physical or mental examination. If the judge refuses to submit to the examination, the commission must determine the issue for which the examination was required adversely to the judge. (§ 2 ch 58 SLA 1981; am § 8 ch 160 SLA 1984)

**Effect of amendments.** — The 1984 amendment, effective July 6, 1984, added subsection (b).

**Sec. 22.30.080. Definitions.** In this chapter

(1) "commission" means the Commission on Judicial Conduct provided for in § 10, art. IV, Constitution of the State of Alaska and this chapter;

(2) "judge" means a justice of the supreme court, a judge of the court

of appeals, a judge of the superior court, or a judge of the district court who is the subject of an investigation or proceeding under § 10, art. IV, Constitution of the State of Alaska and this chapter. (§ 1 ch 213 SLA 1968; am § 19 ch 12 SLA 1980; am § 9 ch 160 SLA 1984)

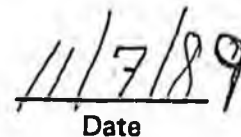
*Effect of amendments.* — The 1984 amendment, effective July 6, 1984, substituted "Conduct" for "Qualifications" in paragraph (1).



# RECORDS CERTIFICATION

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

  
Signature of Camera Operator

  
Date

S B

z r r

BILL CONTACT/ACTION

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4/21	B. J. JORDEN - INCH OF (011) (5600)
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Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 288 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the taking of fish and game for  
7 subsistence and personal use; and providing for an  
8 effective date."

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

10 \* Section 1. AS 16.05.251(a)(6) is amended to read:

11 (6) classifying as commercial fish, sport fish, personal  
12 use fish, subsistence fish, or predators or other categories essential  
13 for regulatory purposes;

14 \* Sec. 2. AS 16.05.251(a) is amended by adding a new paragraph to read:

15 (12) regulating commercial, sport, subsistence, and personal  
16 use fishing as needed for the conservation, development, and utiliza-  
17 tion of fisheries.

18 \* Sec. 3. AS 16.05.251 is amended by adding new subsections to read:

19 (d) Regulations adopted under (a) of this section must, con-  
20 sistent with sustained yield and the provisions of AS 16.05.258,  
21 provide a fair and reasonable opportunity for the taking of fishery  
22 resources by personal use, sport, and commercial fishermen.

23 (e) The Board of Fisheries shall establish criteria for the  
24 allocation of fishery resources among personal use, sport, and commer-  
25 cial fishing. The criteria may, as appropriate to particular alloca-  
26 tion decisions, include factors such as

27 (1) the history of each personal use, sport, and commercial  
28 fishery;

29 (2) the number of residents and nonresidents who have

1 participated in each fishery in the past and the number of residents  
2 and nonresidents who can reasonably be expected to participate in the  
3 future;

4 (3) the importance of each fishery for providing residents  
5 the opportunity to obtain fish for personal and family consumption;

6 (4) the availability of alternative fisheries resources;

7 (5) the importance of each fishery to the economy of the  
8 state;

9 (6) the importance of each fishery to the economy of the  
10 region and local area in which the fishery is located;

11 (7) the importance of each fishery in providing recreation-  
12 al opportunities for residents and nonresidents.

13 \* Sec. 4. AS 16.05.255(a) is amended by adding a new paragraph to read:

14 (10) regulating sport hunting and subsistence hunting as  
15 needed for the conservation, development, and utilization of game.

16 \* Sec. 5. AS 16.05.255 is amended by adding a new subsection to read:

17 (d) Regulations adopted under (a) of this section shall provide  
18 that, consistent with the provisions of AS 16.05.258, the taking of  
19 moose, deer, elk, and caribou by residents for personal or family  
20 consumption has preference over taking by nonresidents.

21 \* Sec. 6. AS 16.05 is amended by adding new sections to read:

22 Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION OF FISH AND GAME.

23 (a) The Board of Fisheries and the Board of Game shall identify the  
24 fish stocks and game populations, or portions of stocks and popu-  
25 lations, that are customarily and traditionally used for subsistence  
26 in each rural area identified by the boards.

27 (b) The boards shall determine

28 (1) what portion, if any, of the stocks and population  
29 identified under (a) of this section can be harvested consistent wit

1 sustained yield; and

2 (2) how much of the harvestable portion is needed to pro-  
3 vide a reasonable opportunity to satisfy the subsistence uses of those  
4 stocks and populations.

5 (c) The boards shall adopt subsistence fishing and subsistence  
6 hunting regulations for each stock and population for which a harvest-  
7 able portion is determined to exist under (b)(1) of this section. If  
8 the harvestable portion is not sufficient to accommodate all consump-  
9 tive uses of the stock or population, but is sufficient to accommodate  
10 subsistence uses of the stock or population, then nonwasteful subsis-  
11 tence uses shall be accorded a preference over other consumptive uses  
12 and the regulations shall provide a reasonable opportunity to satisfy  
13 the subsistence uses. If the harvestable portion is sufficient to  
14 accommodate the subsistence uses of the stock or population, then the  
15 boards may provide for other consumptive uses of the remainder of the  
16 harvestable portion. If it is necessary to restrict subsistence  
17 fishing or subsistence hunting in order to assure sustained yield or  
18 continue subsistence uses, then the preference shall be limited, and  
19 the boards shall distinguish among subsistence users, by applying the  
20 following criteria:

21 (1) customary and direct dependence on the fish stock or  
22 game population as the mainstay of livelihood;

23 (2) local residency; and

24 (3) availability of alternative resources.

25 (d) The boards may adopt regulations consistent with this sec-  
26 tion that authorize taking for nonsubsistence uses a stock or popula-  
27 tion identified under (a) of this section.

28 (e) Fish stocks and game populations, including bison, and  
29 portions of fish stocks and game populations, not identified under (a)

1 of this section may be taken only under nonsubsistence regulations.

2 (f) Takings authorized under this section are subject to reason-  
3 able regulation of seasons, catch or bag limits, and methods and  
4 means. Takings and uses of resources authorized under this section  
5 are subject to AS 16.05.831 and AS 16.30.

6 Sec. 16.05.259. ADMINISTRATIVE APPEALS. The Board of Fisheries  
7 and the Board of Game, acting jointly, may establish by regulation an  
8 appeal procedure for persons aggrieved by the adoption or repeal of a  
9 regulation.

10 \* Sec. 7. AS 16.05 is amended by adding new sections to read:

11 Sec. 16.05.261. NO SUBSISTENCE DEFENSE. In a prosecution for  
12 the taking of fish or game in violation of a statute or regulation, it  
13 is not a defense that the taking was done for subsistence uses.

14 Sec. 16.05.262. SUBSISTENCE LICENSE. (a) The department shall  
15 issue a subsistence license to a resident domiciled in a rural area of  
16 the state who

17 (1) applies for the license on a form provided by the  
18 department;

19 (2) pays an annual license fee of 25 cents; and

20 (3) presents proof that the applicant's annual family gross  
21 income for the preceding calendar year was below the official federal  
22 poverty line established by the director of the federal Office of  
23 Management and Budget, as revised by the Secretary of Health and Human  
24 Services under 42 U.S.C. 9847 and 9902.

25 (b) A subsistence license expires one year after the date of  
26 issuance.

27 Sec. 16.05.263. LICENSE REQUIRED FOR SUBSISTENCE TAKINGS. A  
28 person who takes fish or game for subsistence uses shall have in  
29 possession a current, valid subsistence license that was issued under

1 AS 16.05.262 to the person or to another individual for whose benefit  
2 the person is taking the fish or game.

3 \* Sec. 8. AS 16.05.330 is amended by adding a new subsection to read:

4 (c) The Board of Fisheries and the Board of Game may adopt  
5 regulations providing for the issuance and expiration of subsistence  
6 permits for rural areas as needed for authorizing, regulating, and  
7 monitoring the subsistence harvest of fish and game. The boards shall  
8 adopt these regulations when the subsistence preference requires a  
9 reduction in the harvest of a fish stock or game population by nonsub-  
10 sistence users.

11 \* Sec. 9. AS 16.05.940(22) is amended to read:

12 (22) "subsistence fishing" means the taking of, fishing for,  
13 or possession of fish, shellfish, or other fisheries resources by a  
14 resident domiciled in a rural area of the state for subsistence uses  
15 with gill net, seine, fish wheel, long line, or other means defined by  
16 the Board of Fisheries;

17 \* Sec. 10. AS 16.05.940(23) is amended to read:

18 (23) "subsistence uses" means the noncommercial, customary  
19 and traditional uses [IN ALASKA] of wild, renewable resources by a  
20 resident domiciled in a rural area of the state for direct personal or  
21 family consumption as food, shelter, fuel, clothing, tools, or trans-  
22 portation, for the making and selling of handicraft articles out of  
23 nonedible by-products of fish and wildlife resources taken for per-  
24 sonal or family consumption, and for the customary trade, barter, or  
25 sharing for personal or family consumption; in [FOR THE PURPOSES OF]  
26 this paragraph, "family" means [ALL] persons related by blood, mar-  
27 riage, or adoption, and a [ANY] person living in [WITHIN] the house-  
28 hold on a permanent basis;

29 \* Sec. 11. AS 16.05.940 is amended by adding new paragraphs to read:

1 (28) "domicile" means the true and permanent home of a  
2 person from which the person has no present intention of moving and to  
3 which the person intends to return whenever the person is away; domi-  
4 cile may be proved by presenting evidence acceptable to the boards of  
5 fisheries and game;

6 (29) "fish stock" means a species, subspecies, geographic  
7 grouping or other category of fish manageable as a unit;

8 (30) "game population" means a group of game animals of a  
9 single species or subgroup manageable as a unit;

10 (31) "personal use fishing" means the taking, fishing for,  
11 or possession of finfish, shellfish, or other fishery resources, by  
12 Alaska residents for personal use and not for sale or barter, with  
13 gill or dip net, seine, fish wheel, long line, or other means defined  
14 by the Board of Fisheries;

15 (32) "rural area" means a community or area of the state in  
16 which the noncommercial, customary, and traditional use of fish or  
17 game for personal or family consumption is a principal characteristic  
18 of the economy of the community or area;

19 (33) "subsistence hunting" means the taking of, hunting for,  
20 or possession of game by a resident domiciled in a rural area of the  
21 state for subsistence uses by means defined by the Board of Game.

22 \* Sec. 12. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

23 \* Sec. 13. This Act takes effect June 1, 1986.  
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Ford  
4/18/86

Original sponsor: Rodey

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 322 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Department of Law."

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

8 \* Section 1. AS 37.07 is amended by adding a new section to read:

9 Sec. 37.07.055. BUDGETING FOR THE DEPARTMENT OF LAW. Notwith-  
10 standing the other provisions of this chapter, a state agency in  
11 preparing a budget as required by AS 37.07.050(a)(3), shall budget for  
12 the cost of legal services provided by the Department of Law under  
13 AS 44.23.070. The Department of Law may not be included in the gover-  
14 nor's proposed operating program and budget recommendations, except  
15 for expenditures that are not included in a budget of another state  
16 agency.

17 \* Sec. 2. AS 44.23 is amended by adding a new section to read:

18 Sec. 44.23.070. LEGAL SERVICES PROVIDED TO OTHER STATE AGENCIES.  
19 The Department of Law shall charge each state agency for the cost of  
20 legal services it performs for the agency.  
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Ford  
4/18/86

Original sponsor: Rodey

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# MEMORANDUM

# State of Alaska

TO: Richard I. Pegues  
Director  
Administrative Services

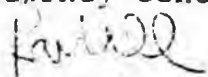
DATE: September 12, 1985

FILE NO:

TELEPHONE NO: 465-3600

FROM: Harold M. Brown  
Attorney General

SUBJECT: SB 322

By:   
Randall F. Burns  
Special Assistant  
to the Attorney General

Attached to this memorandum is a copy of SB 322, which was introduced on May 12th of this year by Senator Rodey. Kevin Bruce, who is staff to the Senate Judiciary Committee of which Senator Rodey is chair, has called asking for the Department of Law's position on SB 322.

Since I know next-to-nothing on this subject and you are the expert, Ron has suggested I forward the request to you for a response. I would appreciate the opportunity to review the response, if only to better understand the subject myself and to bring the matter to Hal's attention, prior to its provision to Senator Rodey.

I recognize you are in the middle of budget preparations; inasmuch as Kevin has not indicated a pressing need for an immediate response, let's go with "at your earliest convenience" unless Kevin later indicates a more specific time frame.

Thanks!

RFB/glg

Attachment

cc: Ron Lorensen

Kevin Bruce

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

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

**REQUEST**

Bill Resolution No. : SB 322  
 Title : "An Act relating to the  
Department of Law."

Sponsor : Sen. Rodey  
 Requestor : Governor's Office/OMB  
 Date of Request : January 10, 1986

**FISCAL DETAIL**

Agency Affected : Department of Law  
 BRU : Legal Services

Components : Administration and  
Support

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

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		131.8	162.3	167.2	172.2	177.4
TRAVEL		2.0	2.5	2.6	2.7	2.8
CONTRACTUAL		18.3	22.6	23.3	24.0	24.7
SUPPLIES		10.0	4.9	5.0	5.2	5.4
EQUIPMENT		23.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>185.1</b>	<b>192.3</b>	<b>198.1</b>	<b>204.1</b>	<b>210.3</b>

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

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

**FUNDING : (Thousands of Dollars)**

GENERAL FUND		185.1	192.3	198.1	204.1	210.3
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

FULL-TIME		4.0	4.0	4.0	4.0	4.0
PART-TIME						
TEMPORARY						

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

- Please see attached analysis.-

Prepared by : Richard I. Pegues, Director Phone : 465-3672  
 Division : Administrative Services Division / Date : January 10, 1986  
Richard I. Pegues / FOR  
 Approved by Commissioner : Harold M. Brown, Attorney General Date : January 10, 1986  
 Agency : Department of Law

Distribution (by Agency preparing fiscal note) :

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

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 322

This bill would place all legal services provided by the Department of Law to other agencies and departments on a total chargeback basis. In FY86, 52.7% of the Legal Services BRU budget (previously the Department's Civil and Administrative Services Divisions) will be paid by interagency receipts, and the remaining 47.3% of the BRU's budget will be paid from the general fund. Currently, when an attorney position in the Civil Division is funded by general fund monies, that position can be assigned to any matter that needs attention, and the department can move to rapidly respond to developing legal problems by reordering existing general fund caseloads. Where a position is funded by interagency receipts, however, that position's services must be dedicated to the legal services needs of the client agency that funds that position. In most cases, this dedication of services is for a specific program or project within a client agency. Consequently, a position funded by one agency cannot be used to handle the legal work of another agency, unless there is an equal and offsetting exchange in legal service effort between the same client agencies during the same fiscal year.

Under the existing system of mixed interagency and general fund budgeting, the problem of shifting work priorities is handled by moving general fund resources to respond to changing legal needs. The department retains its flexibility in this manner, and it avoids the administrative expense of balancing and re-balancing client agency accounts, which can be considerable.

Predicting the exact cost of each client agencies' legal services needs one year in advance, as would be required by total chargeback, cannot be accomplished with any degree of accuracy. Legal actions, court decisions, congressional and legislative acts, federal and state administrative decisions and regulatory rulings, and the personal and business actions of the general public and industry have an enormous impact on state government programs and departments, and they have a corresponding impact on how the Department of Law conducts its business. Yet each is outside the control of the department. That is why of all of the states only one funds its legal services with a total chargeback system. The one state that uses total chargeback is Oregon and its particular circumstances are discussed at greater length below. All other states, however, apply a mix of budget source funding that is similar to the

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 322

method used by Alaska. This actual mix of funding varies from state to state, depending upon an individual state's funding policies and existing resources.

In Oregon there are two factors that make total chargeback feasible. First, their interim legislative budget committee is empowered to transfer funds between appropriations. Thus, client agency budgets can and often are changed to transfer appropriations between client agencies as the legal services needs of individual agencies wax and wane. Second, in the event of totally new, unforeseen legal services needs, the interim legislative budget committee is empowered to increase client agency budgets by drawing from a special emergency fund that has been established for that purpose. Oregon has a biennial budget and it has built this flexibility into its budget/appropriation system to accommodate just the sort of uncertainty that accompanies legal services budgeting.

This flexibility is not available in Alaska because of the state's constitutional prohibition against the expenditure of money without an appropriation made by law, a power which the courts have held may not be delegated to an interim committee. See Kelly v. Hammond and Legislative Budget and Audit Committee v. Hammond. Likewise, the statutory provisions of AS 37.25.010 (b), that permit an indebtedness from a prior year to be paid from a current year appropriation, provided the expenditure does not exceed the prior year's lapsed balance, would have to be revised to delete the requirement that there be a prior year lapsed balance. Due to necessity, Oregon routinely pays prior year costs from current year appropriations because of funding shortfalls in the prior year and where, obviously, there was no lapse.

If these constitutional and statutory restrictions were removed, however, the Department of Law could implement total chargeback, provided adequate staff and budgetary resources are provided to our Administrative Services Division for this purpose. We estimate that implementation could be accomplished by the addition of four new positions, at a cost of \$185,100.

Oregon has 135 attorney and paralegal timekeepers and Alaska has 134. The administrative services functions of the two law departments are somewhat similar, except that Oregon can draw upon 32 administrative staff members, while Alaska can draw upon

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 322

an administrative staff of only 18. The key that makes Oregon's chargeback system work is the timeliness and the control it has over expenditures and accounting transactions. Budget authorizations between client agencies are changed constantly as their total source of funds is kept balanced.

The resources to achieve this level of control are not available to us at this time. During the past year, the department processed 150 revised programs (budget authorization changes) and it processed 310 transactions through the contract review committee. It is anticipated that the number of budget authorization changes will probably double with total chargeback. These are essential transactions that must take place before work can commence and before any expenditures occur and before costs can be recorded. The time that it now takes to process these transactions (from three to four weeks and sometimes longer) must be substantially reduced. Otherwise, the department will not be able to track and manage the large number of reimbursable transactions that will occur as a result of implementing chargeback.

The following four positions will be required to implement total chargeback using the Oregon model: One Management Analyst III to analyze and project case/client needs in terms of the attorney and paralegal hours required; one Administrative Assistant III to negotiate and manage interagency agreements and to improve the timeliness of professional services agreements; one Accounting Technician II to process a doubling in revised program budget authorization changes, and to assist with interagency billings and collections; and one Clerk Typist III to handle the increased paperflow that will result from a full legal services chargeback system.

Because of the overall impact that the constitutional and statutory changes required for a chargeback system would have on the state's entire appropriation and budget process, it does not appear likely that such changes will take place. Without such changes, however, a total chargeback system will simply not work. The Department of Law therefore recommends against passage of this bill. Even if total chargeback could be made workable, the bill would create another level of bureaucracy, and cause a substantial increase in the department's administrative costs.

COST SUMMARY - SB 322

	<u>Mgt. Analyst III</u>	<u>Admin. Asst. III</u>	<u>Acct. Tech. II</u>	<u>Clerk Typist III</u>	<u>TOTAL</u>
71000	41.0	35.9	31.6	23.3	131.8
72000	1.0	1.0			2.0
73000	10.3	2.8	2.8	2.4	18.3
74000	2.5	2.5	2.5	2.5	10.0
75000	<u>5.0</u>	<u>5.0</u>	<u>5.0</u>	<u>8.0</u>	<u>23.0</u>
TOTAL	59.8	47.2	41.9	36.2	185.1

First year, FY87, costs are for 10 months. Costs beyond FY87 have been adjusted to cover full-year funding, less one-time startup costs, plus a 3% annual inflation factor.

Position Title Management Analyst III			No. of Positions 1	Range/Step 18/A	Barg. Unit CGU	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 10	RP Number	Location Juneau		Election District 4	Leg.		
Type of Expenditure			Justification					
		Amount	<p>This is the first of four positions that will be required to implement total chargeback for Department of Law legal services as envisioned by SB 322. The position will be responsible for analyzing departmental services and costs to arrive at case costs in terms of attorney and paralegal hours required for a variety of client agency legal services projects. This analysis is of particular importance as legal needs change throughout the fiscal year and client agency and legal services budget authorizations must be changed, accordingly. Such changes will occur frequently, and they must be accomplished rapidly so that legal services will be available when they are needed.</p>					
1	2	3						
Salary	31,290							
Benefits	9,681							
Premium Pay								
Other								
Total Personal Services		40,971						
Travel		1,000						
Contractual		10,300						
Commodities		2,500						
Equipment		5,000						
Other								
Total Cost		59,791						
Receipt Code	Funding Source							
	Federal Receipts	1002						
	G. F. Match	1003						
	General Funds	1004	59,791					
	I-A Receipts	1005						
	Program Receipts	1028						
	CIP Receipts	1061						
	Other							
For B&M Use Only								
Key Number								

**Request For  
New Position**

Agency Department of Law  
 BRU Legal Services  
 Component Legal Services Operations

Page 1 of 1  
 Revised Date

**FY 87**

Position Title <b>Administrative Assistant III</b>			No. of Positions 1	Range/Step 16/A	Barg. Unit CGU	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 10	RP Number	Location Juneau		Election District 4	Leg.		
Type of Expenditure			Justification					
		Amount	<p>This is the second of four positions that will be required to implement total chargeback for Department of Law legal services as envisioned by SB 322. The position will be responsible for initiating and negotiating interagency reimbursable services agreements needed to effect budget authorization changes and revised programs. It is anticipated that such transactions will more than double from their current annual level of 150 budget revisions. Processing time for such transactions is currently three to four weeks. This processing time must be reduced substantially in order that expenditures can take place, and in order that such expenditures are properly managed. Likewise, the processing time for professional services agreements must also be substantially reduced in order to improve expenditure controls.</p>					
1	2	3						
Salary	27,150							
Benefits	8,734							
Premium Pay								
Other								
Total Personal Services		35,884						
Travel		1,000						
Contractual		2,820						
Commodities		2,500						
Equipment		5,000						
Other								
Total Cost		47,204						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G. F. Match 1003							
	General Funds 1004		47,204					
	I-A Receipts 1005							
	Program Receipts 1028							
	CIP Receipts 1061							
	Other							
For B&M Use Only Key Number _____								

**Request For  
New Position**

Agency Department of Law  
 BRU Legal Services  
 Component Legal Services Operations

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 Revised Date \_\_\_\_\_

**FY 87**

Position Title <b>Accounting Technician II</b>			No. of Positions 1	Range/Step 14/A	Barg. Unit GGU	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 10	RP Number	Location Juneau		Election District 4	Leg.		
Type of Expenditure			Justification					
1	2	Amount	<p>This is the third of four positions that will be required to implement total chargeback for Department of Law legal services as envisioned by SB 322. This technician's position will be responsible for handling the more than 100% increase in accounting documents/transactions required to control interagency receipt budgeting, expenditures, billings and collections. The transactions include AKSAS entry of the initial authorization, monthly reports, RSA fund transfers, authorization revisions, and final closeout of each RSA account. Here again, the timeliness of interagency transactions is essential to controlling and managing a total chargeback system, where any legal services expenditure must be identified and charged to the appropriate client agency.</p>					
Salary	23,650							
Benefits	7,933							
Premium Pay								
Other								
Total Personal Services		31,583						
Travel								
Contractual		2,820						
Commodities		2,500						
Equipment		5,000						
Total Cost		41,913						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G. F. Match 1003							
	General Funds 1004		41,913					
	I-A Receipts 1005							
	Program Receipts 1028							
	CIP Receipts 1061							
	Other							
For B&M Use Only								
Key Number								

**Request For  
New Position**

Agency Department of Law  
 BRU Legal Services  
 Component Legal Services Operations

Page 1 of 1  
 Revised Date

**FY 87**

Position Title <b>Clerk Typist III</b>			No. of Positions <b>1</b>	Range/Step <b>8/B</b>	Barg. Unit <b>GGU</b>	Gov.	Approv.	Disapp.
Time Status <b>PFT</b>	Staff Months <b>10</b>	RP Number	Location <b>Juneau</b>		Election District <b>4</b>	Leg.		
Type of Expenditure			Justification					
		Amount	<p>This is the fourth of four positions that will be required to implement total chargeback for Department of Law legal services as envisioned by SB 322. The position will be responsible for handling a more than 100% increase in interagency paperflow that will be required to keep interagency agreements, professional services transactions, and vendor and client agency correspondence timely. The timeliness is needed in order that budget authorization changes can be accomplished speedily.</p>					
<b>1</b>	<b>2</b>	<b>3</b>						
Salary	16,870							
Benefits	6,382							
Premium Pay								
Other								
Total Personal Services		23,252						
Travel								
Contractual		2,400						
Commodities		2,500						
Equipment		8,000						
Other								
Total Cost		36,152						
Receipt Code	Funding Source							
	Federal Receipts	1002						
	G. F. Match	1003						
	General Funds	1004	36,152					
	I-A Receipts	1005						
	Program Receipts	1028						
	CIP Receipts	1061						
	Other							
For B&M Use Only Key Number _____								

**Request For  
New Position**

Agency Department of Law  
 BRU Legal Services  
 Component Legal Services Operations

Page 1 of 1  
 Revised Date \_\_\_\_\_

**FY 87**

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IN THE SENATE

BY RODEY

SENATE BILL NO. 322

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Department of Law."

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

\* Section 1. AS 37.07 is amended by adding a new section to read:

Sec. 37.07.055. BUDGETING FOR THE DEPARTMENT OF LAW. Notwithstanding the other provisions of this chapter, a state agency in preparing a budget as required by AS 37.05.050(a)(3), shall budget for the cost of legal services provided by the Department of Law under AS 44.23.070. The Department of Law may not be included in the governor's proposed operating program and budget recommendations, except for expenditures that are not included in a budget of another state agency.

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Sec. 44.23.070. LEGAL SERVICES PROVIDED TO OTHER STATE AGENCIES. The Department of Law shall charge each state agency for the cost of legal services it performs for the agency.

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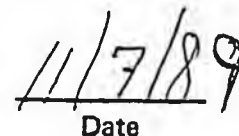


# RECORDS CERTIFICATION



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

  
Signature of Camera Operator

  
Date

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B

S

BILL CONTACT/ACTION

DATE	CONTACT/ACTION
3/14	NOTIFIED OF MEETING CAMPBELL ON 3/20
	# 27 - all bills will be heard, 1005
	ME. 1005: DEPT. DUNSAFER (4372) SUM WADEN
	SENATOR RAY (4922)
3/18	NOTIFIED SUM WADEN (#4322) OF 3/20 MEETING
	ALSO SENATOR RAY (#4922). SHOULD GO 1ST
	DURING THIS MEETING - UPSET AT NOT
	BEING CALLED & BEING KEPT WAITING 3/17

DEPARTMENT OF PUBLIC SAFETY  
POSITION PAPER - CS SB 323 (S.A.)

Neutral

February 4, 1986

CS SB 323 (S.A.) An Act relating to suspension and revocation of a minor's license to drive and the definition of driver's license.

The committee substitute addresses the problem areas previously addressed in the original bill.

As a point of information, current law (AS 28.20.240) will require the individual to file and maintain proof of financial responsibility for the future (SR-22 insurance) for three years. If the SR-22 is not filed the license action will continue for that additional three year period.

  
ROBERT J. SUNDBERG  
Commissioner

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

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

**REQUEST**

Bill/Resolution No. : CS SB 323 (State Affairs)  
 Title : An Act relating to suspension  
 and revocation of a minor's license  
 to drive.....  
 Sponsor : Ray  
 Requestor : Senate State Affairs  
 Date of Request : \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected : Public Safety  
 BRU : Motor Vehicles  
 Components : Driver Services

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

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		5.4	7.5	7.9	8.3	8.7
TRAVEL						
CONTRACTUAL		.2	.2	.2	.2	.2
SUPPLIES		.1	.1	.1	.1	.1
EQUIPMENT		2.3				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>8.0</b>	<b>7.8</b>	<b>8.2</b>	<b>8.6</b>	<b>9.0</b>

<b>CAPITAL</b>						
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<b>REVENUE</b>		1.0	10.0	20.0	40.0	40.0
----------------	--	-----	------	------	------	------

**FUNDING : (Thousands of Dollars)**

GENERAL FUND		8.0	7.8	8.2	8.6	9.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

FULL-TIME						
PART-TIME		1	1	1	1	1
TEMPORARY						

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

One part-time clerical position will be necessary to handle additional work load, including preparing file, entry of license action on computer, preparing certified copies, notifying individual, maintaining proof of insurance file, preparation of records for microfilm, entry of data on microfilm retrieval system, etc. Cost breakdown attached.

Prepared by : Bill Brown  
 Division : Motor Vehicles

Phone : 465-2650

Date : 2/03/86

Approved by Commissioner : [Signature]  
 Agency : \_\_\_\_\_

Date : 2/3/86

**Distribution (by Agency preparing fiscal note) :**

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS SB 323(State Affairs)

DETAIL

100	Personal Services		
	One Document Processing Clerk II	5.4	5.4
	Part time - 2 hours per day		
300	Contractual		
	310 Postage and tolls	.2	.2
400	Commodities		
	Normal office supplies	.1	.1
500	Equipment		
	1 typewriter	1.2	
	1 desk	.6	
	1 chair	.2	
	1 file cabinet	.3	
		2.3	
	TOTAL		8.0

INFORMATION

It has been learned that of the total number of youth ages 13 to 17 who are arrested for offenses outlined in AS 28.15.185(a)(1) & (2), an estimated 300 to 400 will be convicted or adjudicated by a juvenile court. Therefore, a full time position will not be required to process the additional workload, and the fiscal note has been revised downward for a part-time position only.

With the effective date being September 1, 1986, documents will not start being received from the Court until around October 1, 1986. Therefore, personal services for FY87 reflect a nine month period with the employee being hired October 1, 1986. Other items are budgeted accordingly with the first full year being FY88.

FY88 and subsequent years reflect a 5% inflation factor

REVENUE

Statutes require payment of a \$100.00 reinstatement fee prior to issuance of a driver's license following a suspension or revocation. The revenue indicated is based on an estimation of the number of minor's whose driving privileges were taken away under this legislation who would not have otherwise lost those privileges, and who will apply for a license and pay the \$100.00 fee.



# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

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

**REQUEST**

Bill/Resolution No. : CSSB 323 (SA)  
 Title : "An Act relating to suspension  
 and revocation of a minor's license  
 to drive..."  
 Sponsor : Senator Ray  
 Requestor : Senate Judiciary  
 Date of Request : \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected : Public Safety  
 BRU : Alaska State Troopers  
 \_\_\_\_\_  
 Components : \_\_\_\_\_  
 \_\_\_\_\_

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

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

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

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

**FUNDING : (Thousands of Dollars)**

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

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

*K Niles*  
 Prepared by : Kathy Niles, Admin. Assistant Phone : 465-4336  
 Division : Commissioner's Office Date : 2/19/86

Approved by Commissioner : *[Signature]* Date : \_\_\_\_\_  
 Agency : Public Safety

Distribution (by Agency preparing fiscal note) :

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



CITY/BOROUGH OF JUNEAU  
ALASKA'S CAPITAL CITY

10002 Glacier Hwy., Rm. 201  
Juneau, AK 99801 (907) 789-4889

September 11, 1985

Senator Bill Ray  
Alaska State Capitol  
Pouch Y  
Juneau, AK 99811

Dear Senator Ray:

What can we do to help stop our youth from drinking and driving?

The state of Oregon has found the answer! In 1984 they adopted a law called "Youth Substance Abuse and Driving Accident Prevention". Since the law was adopted in September of 1984 the Division of Motor Vehicles of Oregon has denied driving privileges to more than 1,292 youths. (See attachments)

As supervisor of the local alcohol/drug abuse clinic I know there is an extremely high correlation between youths receiving minor consuming charges and a year or two later showing up at the clinic with a DWI. I feel this type of legislation has a twofold beneficial effect: it will initially make our roads safer and secondly it will help to impact the severity of drinking and driving on our youth.

Please give this legislation your careful attention!

If I can be of any assistance please call on me!

Sincerely,

W J PLATTE  
Clinical Supervisor

WJP/bjl

*Merry*

Enrolled

# House Bill 2975

Sponsored by Representatives LOMBARD, AGRONS, ANDERSON, BELLAMY, BROGOITTI, CALOURI, DeBOER, FARMER, FORD, HARPER, MARKHAM, MILLER, PARKINSON, VAN VLIET, VanLEEuwEN, YOUNG, ZAJONC, Senator THORNE, Representatives BURROWS, JOHNSON, D. JONES, Senators HANNON, HEARD (at the request of Wes Smith, Principal, Ashland Jr. High School)

CHAPTER.....

## AN ACT

Relating to driving privileges; creating new provisions; and amending ORS 482.470.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) Whenever a person who is 17 years of age or younger, but not younger than 13 years of age, is convicted of any offense described in this subsection or determined by a juvenile court to have committed one of the described offenses, the court in which the person is convicted shall prepare and send to the Motor Vehicles Division, within 24 hours of the conviction or determination, an order of denial of driving privileges for the person so convicted. This section applies to any crime, violation, infraction or other offense involving the possession, use or abuse of alcohol or controlled substances.

(2) If a court has issued an order of denial of driving privileges under this section, the court, upon petition of the person, may review the order and may withdraw the order at any time the court deems appropriate except as provided in the following:

(a) A court may not withdraw an order for a period of 90 days following the issuance of the order if it is the first such order issued with respect to the person.

(b) A court may not withdraw an order for a period of one year following the issuance of the order if it is the second or subsequent such order issued with respect to the person.

SECTION 2. Section 3 of this Act is added to and made a part of ORS chapter 482.

SECTION 3. (1) In addition to any other authority to suspend driving privileges under this chapter, the division shall suspend all driving privileges of any person upon receipt of an order of denial of driving privileges under section 1 of this 1983 Act. The suspension shall be imposed without hearing. The driving privileges of the person shall be suspended as provided in the following:

(a) Upon receipt of the first order denying driving privileges, the division shall impose a suspension for one year, or until the person so suspended reaches 17 years of age, whichever is longer.

(b) Upon receipt of a second or subsequent order denying driving privileges, the division shall suspend for one year or until the person reaches 18 years of age, whichever is longer.

(2) If the division receives notice from a court that it has withdrawn an order issued under section 1 of this 1983 Act, the division shall immediately reinstate any driving privileges that have been suspended under this section because of the issuance of the order.

SECTION 4. ORS 482.470 is amended to read:

482.470. (1) The division shall not suspend a license for a period of more than one year except:

- (a) As provided in ORS 482.430 (3) and (4) and section 3 of this 1983 Act;
- (b) As provided in ORS 482.440 in the case of offenses which, if committed by a driver under ORS 482.430, would result in mandatory suspension or revocation for more than one year;
- (c) When the suspension results from failure to obtain medical clearance when requested to do so under ORS 482.260 (1)(d)(B);
- (d) When the driver fails to complete reexamination as required under ORS 482.260 (4); or
- (e) When the driver fails to complete a requirement of ORS 482.850.

(2) When the operator's or chauffeur's license of any person has been suspended, the division shall not issue an operator's or chauffeur's license to the person prior to the expiration of the suspension period, except as otherwise provided in this chapter.

(3) When any license is suspended or revoked it shall be surrendered to and retained by the division. Upon the conviction of any operator or chauffeur for any offense which by this chapter is cause for mandatory suspension or revocation, the court in which the conviction was had shall issue an order of suspension or revocation, take up the operator's or chauffeur's license and immediately forward the license and a copy of the order to the division. When necessary to give full effect to this section, the court shall issue a temporary operator's permit, on a form provided by the division, to the convicted person which shall be valid until midnight of the day of the conviction. At the end of the period of suspension upon a license so surrendered, it shall be returned to the licensee upon request being made to the division by the licensee. However, the division may require the licensee to furnish evidence to the effect that the licensee is qualified to continue as an operator or chauffeur under this chapter, before returning the license.

SECTION 5. Section 6 of this Act is added to and made a part of ORS chapter 482.

SECTION 6. Notwithstanding any suspension of driving privileges under section 3 of this 1983 Act, the division may issue a special temporary permit described under ORS 482.160 (2) to a person whose driving privileges are suspended under section 3 of this 1983 Act if the person qualifies for the special temporary permit. For purposes of this section an emergency situation that leaves the applicant with no alternative means to travel to and from school is an emergency for purposes of ORS 482.160 (2) in addition to other emergency situations.

SECTION 7. If House Bill 2965 becomes law, section 6 of this Act is repealed and section 8 of this Act is enacted in lieu thereof.

SECTION 8. Notwithstanding any suspension of driving privileges under section 3 of this 1983 Act or ORS 165.805 or 471.430, the division may issue a special temporary permit described under ORS 482.160 (2) to a person whose driving privileges are suspended under section 3 of this 1983 Act or under ORS 165.805 or 471.430 if the person qualifies for the special temporary permit. For purposes of this section an emergency situation that leaves the applicant with no alternative means to travel to and from school is an emergency for purposes of ORS 482.160 (2) in addition to other emergency situations.

Passed by House June 16, 1983

Repassed by House July 15, 1983

.....  
 Chief Clerk of House

.....  
 Speaker of House

Passed by Senate July 11, 1983

.....  
 President of Senate

Received by Governor:

..... M., ..... 1983

Approved:

..... M., ..... 1983

.....  
 Governor

Filed in Office of Secretary of State:

..... M., ..... 1983

.....  
 Secretary of State

## 600 denied privileges

More than 600 Oregon youths between the ages of 13 and 17 were denied driving privileges during the first six months in 1985, according to Motor Vehicles Division.

Denials are based on court convictions involving alcohol or drug

possession, use or abuse. Courts then order DMV to deny licenses.

Most of the 627 denials ordered during the first six months of this year were for alcohol offenses. Minors in possession of alcohol or drugs accounted for 577, or 92 percent of the total. Twenty-seven denials were for having an open container or drinking alcohol in a motor vehicle, and eight were for driving under the influence.

Fifteen denials were ordered for miscellaneous alcohol and drug offenses, such as theft, delivery or manufacturing of a controlled substance.

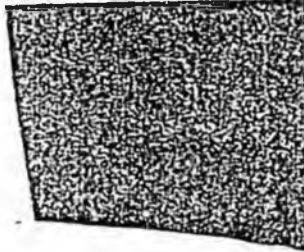
Males accounted for 74 percent of the 627 total.

Denials of driving privileges for first offenders is one year or until the person becomes 17, whichever is longer. Repeat offenders are suspended for a year or until the person becomes 18, whichever is longer.

DMV statistics show 62 second denials and four third denials (all males) during the first six months of 1985.

PLACE

os County



# Licenses revoked

*Myrtle Point, Oregon 10/31/84*

Seventy-one young people were denied driving privileges by court order during September. Denials were based on violations of alcohol or drug laws by young people between the ages of 13 and 17.

Most of the young people (48) who were denied driving privileges last month were males. The most frequent reason for denial was "minor

in possession of alcohol" which, alone, accounted for 76 percent (54) of the court ordered denials.

The Motor Vehicles Division's administrator, David P. Moonaw, said that the September figure brings the number of denials so far this year to 692. The law took effect late in 1983.

Other grounds for denial last month were minor in possession of drugs, 11; having an open container of an alcoholic beverage in a motor vehicle, 4; and intoxicated minor (not related to driving), 2.

Three denials were for 13-year olds. Five were 14 years old; 10 were 15 years old; 21 were 16 years old and 32 were 17 years old.

Under the law, denial means no license can be issued or a license already issued must be taken away for one year or until the person becomes 17, whichever is longer. Repeat offenders, however, are suspended or denied a license for one year or until the person becomes 18, whichever is longer.

~~100 P2 and 815~~

and which they supply convey a certain impression of unreliability, and it is proper to demand that some evidence of their credibility and reliability be shown. One practical way of making such a showing is to point to accurate information which they have supplied in the past.

*Erickson*, 507 P.2d at 517 (footnote omitted).

(1) Somewhat surprisingly, courts faced with anonymous informants in contexts similar to this one have been willing to characterize the informant as a citizen informant. See, e.g., *Campbell v. State Department of Licensing*, 31 Wash.App. 823, 644 P.2d 1219, 1220 n. 1 (1982). Upon closer examination, however, the reason becomes clear. Informants from the criminal milieu are distrusted because they often give evidence against the defendant: (1) for pay; (2) for immunity from punishment; or (3) for personal advantage or vindication. See *Evans v. State*, 550 P.2d 830, 843 & n. 35 (Alaska 1976). Since the informant here is anonymous and his tip conveyed by police through a police dispatcher, it is unlikely that he gave information in expectation of any one of these rewards. While the possibility of an anonymous informant's hostility to the defendant motivated by a false claim is always present, it is of less significance in the context of a R.E.D. report than other considerations. A primary reason for distrusting anonymous informants is the fear that there will in fact be no informant and that the officer will blame a fictional informant to account for information which in fact was illegally obtained or to justify a search or seizure based on an unsupported hunch that ultimately proved inaccurate. The court must be especially sensitive to the risk that an anonymous informant is fictitious. Where the court has induced the risk that the police induced an informant in order to justify a search or seizure on illegally obtained evidence or to justify a successful search, courts are more likely to classify an anonymous informant as a "citizen informant." See, e.g., *Commonwealth v. An-*

[P]olice at the Boston Greyhound terminal were summoned by a dispatcher and handed a note saying that there was a black man wearing a blue hat carrying a brown paper bag who had a gun and narcotics on the bus from New York to Boston. The dispatcher explained that the note had been given by a bus driver, who in turn received it from a man in a toll booth who said he had been thrown into the booth by someone on a New York to Boston bus, and who passed the other bus and arrived at the terminal ahead of it. The bus from which the note had been thrown then arrived, and the first passenger to exit was a black man with a blue hat carrying a brown paper bag, who walked briskly when he saw the police on the scene. In upholding the stop which was then made, the court properly emphasized (i) that the police could not be faulted for not having more details, and (ii) that there was no risk of fabrication.

LaFave then quotes from the case:

In this case we are of the opinion that there exists indicia of reliability to sustain the police officer's actions. First, the inference could be drawn from the note that the informant was on the same bus as the defendant and very probably based his information on personal observations. The brevity and the lack of detail of the note are explainable by a need to act quickly in getting the message to the toll booth operator for the authorities. It is not unimportant that the message was in writing and was passed on by some disinterested citizen, thus eliminating the possibility of a police fabrication which is a principal concern in assessing the propriety of a threshold inquiry launched by an anonymous tip.

3 W. LaFave, *supra*, § 9.3, at 102-03, quoting *Anderson*, 318 N.E.2d at 838. The facts here are substantially similar to those in *Anderson*. The informant reported

is that he observed Effenbeck actually and reached the conclusion that Effenbeck was intoxicated based on that observation. The brevity and lack of detail in the description are explainable by the informant's need to act quickly to get the message to the police so that they could intercept Effenbeck before he injured someone. Finally, the circumstances virtually eliminate the possibility of police fabrication.

A further comment by Professor LaFave

Finally, it must be acknowledged that stoppings for investigation are not all of one kind and that in some instances the need for immediate action may be so great that substantial doubts about the reliability of the informant or his information cannot be permitted to stand in the way of prompt police action. But the fact that this is so in certain extraordinary situations is not to suggest that the same sacrifice of reliability must be made across the board in stopping-for-investigation cases.

3 W. LaFave, *supra*, § 9.3, at 103. LaFave goes on to distinguish cases such as this one where police action is necessary to intercept and prevent injurious conduct and cases where an investigatory stop is made to seize drugs or gambling paraphernalia. *Id.* at 103-04. In Alaska, our supreme court has essentially limited investigatory stops to the first situation. See *Ebona v. State*, 577 P.2d 698, 700 (Alaska 1978); *Coonan v. State*, 553 P.2d 10, 43 (Alaska 1976). Given the information the officer had, corroborated in part by his observing Effenbeck leaving a bar parking lot, we are satisfied that the exigencies of this situation warranted the investigatory stop.

The judgment of the district court is AFFIRMED.

\* Johnstone, Superior Court Judge, sitting by assignment made pursuant to article IV, section

Roberts

v.  
STATE of Alaska, Appellee.

No. A-312.

Court of Appeals of Alaska.

May 31, 1985.

Defendant was convicted of driving while his license was suspended, and defendant filed motion for postconviction relief. The District Court, Third Judicial District, Anchorage, Natalie K. Finn, J., denied motion, and defendant appealed. The Court of Appeals, Bryner, C.J., held that defendant who did not have valid driver's license in any jurisdiction when State purported to suspend his privilege to drive could not be convicted of offense of driving while license was suspended.

Reversed.

Automobiles §326

Defendant who did not have valid driver's license in any jurisdiction when State purported to suspend his privilege to drive could not be convicted of offense of driving while license was suspended. AS 28.15.011(a), 28.15.291, 28.35.230(b)(now AS 28.40.050(b)).

James L. Johnston, Anchorage, for appellant.

Russell S. Babcock, Asst. Dist. Atty., Victor C. Krumm, Dist. Atty., Anchorage, and Norman C. Gorsuch, Atty. Gen., Juneau, for appellee.

OPINION

Before BRYNER, C.J., SINGLETON, J., and JOHNSTONE, Superior Court Judge.\*

16 of the Constitution of Alaska.

REASON FOR SECTION 3 Lawsuit

700 P.2 815

... while his license was sus-  
pended (DWLS), in violation of AS 28.15.  
... He later filed a motion for post-con-  
viction relief, seeking to set aside his con-  
viction based on this court's decision in  
*Francis v. Anchorage*, 641 P.2d 226 (Alas-  
ka App.1982). District Court Judge Nata-  
lie K. Finn denied the motion. Roberts has  
appealed, claiming that the District Court  
erred in failing to vacate his DWLS convic-  
tion. We reverse.

Roberts has apparently never had an  
Alaska driver's license. It is uncontested  
that his California driver's license expired  
sometime during or prior to 1981. In 1982  
and 1983 the State of Alaska purported to  
suspend Roberts' driver's license or privi-  
lege to drive based on (1) a conviction for  
driving while intoxicated, (2) an accumula-  
tion of points, and (3) failure to provide  
proof of financial responsibility.

Subsequently, on June 8, 1983, Roberts  
was arrested for DWLS. After being con-  
victed of that offense, Roberts moved to  
have the conviction vacated. He argued  
that, since he did not have a valid driver's  
license in any jurisdiction when the state  
purported to suspend his privilege to drive  
in 1982-1983, he had no license or driving  
privilege to suspend. Accordingly, Roberts

1. At the time of Roberts' offense, AS 28.15.291  
provided in relevant part:

*Driving while license cancelled, suspended,  
or revoked, or in violation of limitation.*

(a) No person may drive a motor vehicle on  
a highway or vehicular way or area in this  
state at a time when his driver's license, or  
privilege to drive in this state if he is licensed  
in another jurisdiction, has been cancelled,  
suspended or revoked, or when he is driving  
in violation of the limitation placed upon his  
license, even when he is driving under a li-  
cense issued in another jurisdiction....

2. We have previously held, as a matter of policy,  
that an attack on the validity of an administra-  
tive suspension could not properly be  
brought the first time collaterally, in a prose-  
cution for DWLS. See *McClain v. State*, 641  
P.2d 1277 (Alaska App.1982). Our decision in  
*McClain* however, involved a non-judicial  
challenge—one that did not implicate the au-  
thority of the suspending agency. We note that  
cases from other jurisdictions have drawn dis-  
tinctions between collateral challenges involv-

the District Court of his post-conviction  
motion, Roberts appeals, reasserting the  
argument he raised below.<sup>2</sup>

In *Francis v. Anchorage*, 641 P.2d 226  
(Alaska App.1982), we considered a case  
which was similar to the one raised by  
Roberts. *Francis* involved a fifteen-year-  
old driver who was convicted of DWLS  
under section 9.12.010(B) of the Anchorage  
Municipal Code.<sup>3</sup> Prior to Francis' DWLS  
arrest, the state had suspended his driving  
privilege for failure to furnish proof of  
financial responsibility following an acci-  
dent. Francis argued that he could not  
properly be convicted of DWLS because, at  
the time the state purported to suspend his  
driving privilege, he had no license or privi-  
lege to suspend. In reversing Francis' con-  
viction, we expressly ruled that a driver's  
license or privilege to drive cannot properly  
be suspended unless the driver was in fact  
licensed or otherwise actually privileged to  
drive a motor vehicle within the state.  
Specifically, we held:

In the context of the municipal ordi-  
nances and the state's driver's licensing  
scheme, we conclude that "privilege to  
drive" must mean some kind of legal  
authorization to drive. The privilege in  
this sense follows issuance of a driver's

ing jurisdictional and non-jurisdictional argu-  
ments against the validity of a driver's license  
suspension. See, e.g., *State v. Putman*, 137 Vr  
410, 407 A.2d 161 (1979). Ultimately, we need  
not decide whether a collateral attack raising  
jurisdictional questions should generally be ad-  
judicated on its merits in cases such as the  
present one. Roberts' claim is clearly jurisdic-  
tional in nature. Judge Finn ruled on the mer-  
its of Roberts' argument below, and the state  
has not contended, either below or on appeal,  
that a collateral attack should not be considered  
in this case. Under these circumstances, we  
have deemed it appropriate to decide Roberts'  
claim despite its collateral nature.

3. At the time of Francis' offense, AMC 9.12.  
010(B) provided:

No person may violate a condition or privi-  
lege of such license, nor may any person drive  
a vehicle while such license is suspended,  
revoked, refused or cancelled....

argument. We reject the interpretation  
suggested by the city that privilege to  
drive means nothing more than privilege  
to apply for a driver's license. While we  
recognize that at age fourteen, Francis  
had the opportunity under state law to  
apply for two categories of licenses, such  
an opportunity gave him no privilege to  
drive a vehicle on the public streets; that  
privilege is earned only by successfully  
completing the application process, in-  
cluding passing a written test, driving  
test, and eye test.

641 P.2d at 227 (citations omitted).

The only arguably significant distinction  
we perceive between the present case and  
*Francis* is that Roberts was convicted of  
DWLS under state law, while *Francis* was  
convicted under the Anchorage Municipal  
Code. Although the state relies on this  
distinction in urging us not to apply our  
decision in *Francis* to the present case, we  
decline to do so. As we noted in our opin-  
ion, the DWLS ordinance in *Francis* was  
analogous to the Alaska Statutes. *Fran-  
cis*, 641 P.2d at 227. Moreover, while *Fran-  
cis* was convicted under the municipal  
DWLS ordinance, it was the state, not the  
municipality, that had previously purported  
to suspend Francis' license. The validity of  
the state suspension was thus the legal  
issue on which Francis' claim ultimately  
turned. Since Francis' driving privileges  
had been suspended under state law rather  
than city ordinance, our holding in that  
case was necessarily based on an interpre-  
tation of both state and municipal law.

The state nevertheless requests that we  
consider overruling *Francis*. It advances  
two arguments in support of this request.  
Initially, the state relies on former AS 28-  
35.230(b) (renumbered AS 28.40.050), which  
states:

(b) A person convicted of a misde-  
meanor for a violation of a provision of  
this title for which another penalty is not  
specifically provided is punishable by a  
fine of not more than \$500, or by impris-  
onment for not more than ninety days, or

may be suspended or revoked...  
[sic added].

The state points out that the penalties spe-  
cified in this statute are applicable to the  
offense of DWLS, since no penalties are  
otherwise expressly provided for that of-  
fense. See AS 28.15.011(b). The state's  
argument is that, since a license suspension  
is expressly authorized under former AS  
28.35.230(b), and since that provision ap-  
plies to persons convicted of DWLS, then it  
must follow that it is possible to suspend  
the license, or "privilege to drive," of an  
unlicensed driver.

The state's argument might seem plau-  
sible if former AS 28.35.230(b) were a pen-  
alty provision dealing specifically with the  
offense of DWLS. Yet it is not. Instead,  
former AS 28.35.230(b) is a generic penalty  
provision, broadly applicable to violations  
of all Title 28 provisions for which the  
specific penalties are given. Consequently,  
inclusion of license suspension as a possible  
penalty in AS 28.35.230(b) gives little real-  
istic insight to whether the legislature actu-  
ally intended unlicensed drivers to be sub-  
ject to license suspensions.

The state's second statutory argument is  
based on AS 28.15.011(a), which provides:

(a) No person shall be denied the privi-  
lege to drive a motor vehicle upon a  
highway in this state, except as pre-  
scribed by law.

The state argues that the effect of this  
statute is to confer on all citizens of Alaska  
a "privilege to drive," which can be re-  
stricted only by law. Under this interpre-  
tation, all persons—presumably including  
infants and children—are privileged driv-  
ers, and, hence, their driving privileges can  
be suspended before they are licensed.

The state's interpretation of AS 28.15-  
011(a) was implicitly rejected by our hold-  
ing in *Francis*. In our view, the provisions  
of AS 28.15.011(a) constitute a broad state-  
ment of the legislature's intent, in enacting  
the motor vehicle code, to adopt a statutory  
scheme that deals with the licensing of  
Alaska drivers in a comprehensive and uni-

form manner. We do not read this subsection as a legislative commitment to the philosophical concept of an innate privilege to drive.<sup>4</sup>

In short, we discern no basis for holding that this case is not wholly governed by our decision in *Francis*, nor are we convinced of any sound reason for overruling that precedent.

We are not insensitive to the fact that the current statutory scheme governing the suspension of driver's licenses and the offense of DWLS, as interpreted by this court in *Francis*, may in certain instances lead to undesirable results. We emphasize, however, that *Francis* comports with Alaska's current statutory language and reflects the result reached in other jurisdictions that have addressed similar issues

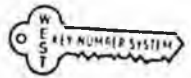
4. In any event the state's reading of AS 28.15.011(b) ultimately fails to advance its argument. Assuming that the statute originally vested Roberts with a broad "privilege to drive," it is manifest that, under the provisions of the motor vehicle code, the privilege was extinguished by Roberts' failure to renew his California driver's license or to apply for an Alaska license. Thus, even under the state's theory it would be possible to conclude, that prior to the state's action to suspend driving privilege, his "privilege to drive" had in effect been denied "as prescribed by law." AS 28.15.011(a).

under similar statutory language. See *Francis*, 611 P.2d at 228.

At this stage we believe that the solution for any problems stemming from the current statutory language should properly be resolved through legislative action rather than by the process of judicial interpretation.<sup>5</sup>

The conviction is REVERSED.

COATS, J., not participating.



5. The New York legislature has apparently recently dealt with this issue and remedied prior legislation by expressly providing for suspension of "the privilege to obtain a license." Moreover, for the purposes of the offense of DWLS, New York Statutes expressly define an expired driver's license to fall within the definition of "license." See *People v. Rivera*, 95 Misc.2d 933, 408 N.Y.S.2d 723 (N.Y.Crim.Ct. 1978); *People v. Goodenough*, 89 Misc.2d 455, 391 N.Y.S.2d 940 (N.Y. Justice's Ct. 1977).

Jerry JONES and Sandra Jones, husband and wife, Plaintiffs/Appellees,  
v.  
PAK-MOR MANUFACTURING COMPANY, Defendant/Appellant.

No. 17412-PR.

Supreme Court of Arizona,  
En Banc.

Jan. 17, 1985.

Garbage collector brought product liability action against manufacturer of garbage compactor for injuries he sustained while riding on exterior of compactor. The Superior Court, Pima County, No. 179374, Robert B. Buchanan, J., entered verdict in favor of plaintiff, and defendant appealed. The Court of Appeals, 700 P.2d 830, affirmed, and defendant petitioned for review. The Supreme Court, Feldman, J., held that: (1) in product liability cases involving a claim of defective design, trial court has discretion to admit evidence of safety history concerning both existence and nonexistence of prior accidents, provided that the proponent establishes the necessary predicate for the evidence, but (2) testimony of manufacturer's president that manufacturer had had no reports of any injuries similar to that sustained by plaintiff was inadmissible.

Opinion vacated in part and approved in part.

1. Products Liability  $\approx$ 81

In products liability actions, although trial court has discretion to admit evidence of prior accidents, rule relating to inadmissibility of evidence of absence of prior accidents is a per se rule.

2. Products Liability  $\approx$ 81

3. Products Liability  $\approx$ 74

In product liability actions based on defective design, relevant issues may include whether defendant should have foreseen the potential danger from use of the product as designed, whether a defect existed, and whether a particular danger was unreasonable, including the likelihood of its causing serious injury. 17A A.R.S. Rules of Evid., Rules 401, 402.

4. Products Liability  $\approx$ 81

In product liability cases involving a claim of defective design, whether based on negligence, strict liability, or both, trial court has discretion to admit evidence of safety history concerning both existence and nonexistence of prior accidents, provided that the proponent establishes the necessary predicate for the evidence. 17A A.R.S. Rules of Evid., Rule 403.

5. Products Liability  $\approx$ 81

In product liability cases involving a claim of defective design, evidence of safety history is admissible on issues pertaining to whether design caused the product to be defective, whether the defect was unreasonably dangerous, whether it was a cause of the accident, or, in negligence cases, whether defendant should have foreseen that the design of the product was not reasonably safe for its contemplated uses. 17A A.R.S. Rules of Evid., Rule 403.

6. Products Liability  $\approx$ 81

In cases involving a manufacturing flaw, fact that product as a whole has a demonstrated safety history is irrelevant. 17A A.R.S. Rules of Evid., Rule 402.

7. Products Liability  $\approx$ 81

In products liability action brought by garbage collector against manufacturer of garbage compactor, testimony of manufacturer's president that during period of time compactor had been in use, manufacturer had received no reports of any injuries similar to those sustained by plaintiff was inadmissible to show product was not de-

Ford  
3/19/86

Original sponsor: Ray

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 323 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to suspension and revocation of a  
7 minor's license to drive and the definition of driv-  
8 er's license; and providing for an effective date."

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

10 \* Section 1. AS 28.15.181(c) is amended to read:

11 (c) Except for court revocation of a minor's license to drive  
12 under AS 28.15.185, a [A] court convicting a person of an offense  
13 described in (a)(5) or (8) of this section arising out of the opera-  
14 tion of a motor vehicle for which a driver's license is required shall  
15 revoke that person's driver's license as provided in this subsection.  
16 The revocation may be concurrent with or consecutive to an administra-  
17 tive revocation under AS 28.15.165. The court may not, except as  
18 provided in (e) of this section, grant limited license privileges for  
19 the following periods:

20 (1) not less than 90 days if, within the preceding 10  
21 years, the person has not previously been convicted of an offense

22 (A) described in (a)(5) or (8) of this section; or

23 (B) under a law or ordinance in another jurisdiction  
24 with elements substantially similar to an offense described in  
25 (a)(5) or (8) of this section;

26 (2) not less than one year if, within the preceding 10  
27 years, the person has been previously convicted of one offense

28 (A) described in (a)(5) or (8) of this section; or

29 (B) under a law or ordinance in another jurisdiction

1 with elements substantially similar to an offense described in  
2 (a)(5) or (8) of this section;

3 (3) not less than 10 years if, within the preceding 10  
4 years, the person has been previously convicted of more than one of  
5 the following offenses or has more than once been previously convicted  
6 of one of the following offenses:

7 (A) an offense described in (a)(5) or (8) of this  
8 section; or

9 (B) an offense under another law or ordinance in  
10 another jurisdiction with elements substantially similar to an  
11 offense described in (a)(5) or (8) of this section.

12 \* Sec. 2. AS 28.15 is amended by adding a new section to read:

13 Sec. 28.15.185. COURT REVOCATION OF A MINOR'S LICENSE TO DRIVE.

14 (a) A person who is at least 13 years of age, but not older than 17  
15 years of age who is convicted, or adjudicated by a juvenile court, of  
16 having committed one of the following offenses shall have the person's  
17 driver's license revoked:

18 (1) misconduct involving a controlled substance (AS 11.71);

19 (2) possession or consumption of alcohol (AS 04.16.050);

20 (3) driving a motor vehicle while intoxicated (AS 28.35.-  
21 030);

22 (4) refusal to submit to a chemical test (AS 28.35.032).

23 (b) The court shall impose the revocation as follows:

24 (1) for a first conviction or adjudication, the revocation  
25 shall be for one year or until the person reaches 17 years of age,  
26 whichever is longer;

27 (2) for a second or subsequent conviction or adjudication,  
28 the revocation shall be for one year or until the person reaches 18  
29 years of age, whichever is longer.

1 (c) Upon conviction or adjudication of an offense listed in (a)  
2 of this section the court may, upon petition of the person, review the  
3 revocation and may restore the driver's license, except a court may  
4 not restore the driver's license for a period of

5 (1) 90 days for the first conviction or adjudication;

6 (2) one year for second or subsequent convictions or adju-  
7 dications.

8 \* Sec. 3. AS 28.40.100(a)(5) is amended to read:

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

14 \* Sec. 4. AS 47.10.090(a) is amended to read:

15 (a) The court shall make and keep records of all cases brought  
16 before it. The court's official records may be inspected only with  
17 the court's permission and only by persons having a legitimate inter-  
18 est in them. All information and social records pertaining to a minor  
19 and prepared by an employee of the court or by a federal, state or  
20 city agency in the discharge of the employee's or agency's official  
21 duty, are privileged and may not be disclosed directly or indirectly  
22 to anyone without the court's permission, except for traffic offenses  
23 and driver's license action taken under AS 28.15.185. Traffic of-  
24 fenses and driver's license action may not be disclosed without the  
25 court's permission, except as specified in AS 28.15.151. However, a  
26 state or city law-enforcement agency shall disclose information re-  
27 garding a case which is needed by the person or agency charged with  
28 making a preliminary investigation for the information of the court.  
29 The court shall forward a record of adjudication of a violation of an

1 offense listed in AS 28.15.185(a) to the Department of Public Safety.  
 2 Within 30 days of the date of a minor's 18th birthday or, if the court  
 3 retains jurisdiction of a minor past the minor's 18th birthday, within  
 4 30 days of the date on which the court relinquishes jurisdiction over  
 5 the minor, the court shall order sealed all the court's official  
 6 records, information and social records pertaining to that minor, as  
 7 well as records of all criminal proceedings against the minor and  
 8 punishments assessed against the minor except for traffic offenses and  
 9 driver's license action taken under AS 28.15.185. A person may not  
 10 use these sealed records for any purpose except that the court may  
 11 order their use for good cause shown or may order their use by an  
 12 officer of the court in making a presentencing report for the court.

13 \* Sec. 5. This Act takes effect September 1, 1986.  
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# 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

*11/7/89*  
Date

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# Alaska State Legislature

CO-CHAIRMAN  
FINANCE COMMITTEE

907 465-3740

JAN FAIKS  
POUCH A  
CAPITOL BUILDING  
JUNEAU ALASKA 99811

Senate

February 5, 1986

## MEMORANDUM

TO: Senator Pat Rodey, Chairman  
Senate Judiciary Committee

FROM: Senator Jan Faiks *JF*

SUBJECT: Hearings on Senate Bill 330

I would appreciate your scheduling a hearing on Senate Bill 330, an act relating to civil liability for veterinary care.

For the information of your Committee, I am enclosing a background memo on this bill.

Thank you.

*Bow-Wow!*

OUT OF SESSION

1024 WEST SIXTH AVENUE, SUITE 302 ANCHORAGE, ALASKA 99501 907-274-6611



Official Business

# Alaska State Legislature

## Senate

Pouch V  
State Capitol  
Juneau, Alaska 99811

February 5, 1986

### MEMORANDUM

TO: Members of the Senate Judiciary Committee

FROM: Senator Jan Faiks

SUBJECT: Background on Senate Bill 330, an Act relating to civil liability for veterinary care

When an ailing animal is brought to a veterinarian during work hours and the pet's owner is unavailable to authorize care, current regulations urge the vet to provide minimum treatment to alleviate the animal's suffering. (12 AAC 68.200)

However, many veterinarians are understandably reluctant to aid an animal in this situation. Without the owner's consent, any treatment increases the risk of liability for the veterinarian. This risk is compounded by the fact that the doctor is expected to aid an animal about whom he has no background information.

Faced with escalating malpractice insurance rates, many veterinarians hesitate or decline to place themselves in jeopardy. The obvious loser in this situation is the suffering animal.

Senate Bill 330 will help relieve this predicament by providing veterinarians and their supervised assistants with a minimum amount of legal protection for their "Good Samaritan" acts. The protection from civil liability will exist only when the animal is in immediate need of aid to avoid serious harm or death and when the owner is unavailable to authorize the treatment.

The bill will not protect a veterinarian if further harm is the result of his intentional or reckless misconduct. Likewise, the doctor will not be protected if harm was the result of his gross negligence, that is, his failure to use even slight care when treating an animal.

Finally, the bill would not apply to legal actions which are in progress on the date that it takes effect.

Senate Bill 330 will afford veterinarians the same protection which our general "Good Samaritan" law, AS 09.65. 90, gives to persons who aid humans. The bill has the support of many consumer groups, including the Alaska Kennel Club, Care Alaska, and the Dog Obedience Training Club of Anchorage.

Passage of Senate Bill 330 should inhibit the spiraling costs of malpractice insurance. Thus, it should help to contain health care costs for pet owners. More importantly, the bill will encourage a high level of emergency service care for those animals who are found in a critical condition.

Thank you.

AVMA

Professional Liability Insurance Trust



January 27, 1986

Dr. Pam Tuomi  
2036 East Northern Lights  
Anchorage, AK 99515

Dear Dr. Tuomi:

I enjoyed our telephone conversation on January 17.

While we are not seeing any claim activity with specific regard to good samaritan acts, we do see a fair amount of claims involving emergency clinics, perhaps the closest thing to good samaritan.

Malpractice claim activity against veterinarians in general has escalated dramatically in recent years. The attached copy of the December 20th report from the American Association of Equine Practitioners underscores this in an article appearing on the last two pages (highlighted in yellow) which I wrote.

While the AVMA policy covers insured members for claims arising from their good samaritan acts, it would obviously be much better if they could be immune to claims in the first place.

I wish you and Senator Faiks the best of luck in your endeavor to bring this about in Alaska. If it is convenient for you to do so, I would appreciate your letting me know the outcome.

In the meantime, Dr. Tuomi I hope my comments will be of some help.

Sincerely,

Lance Sanberg  
Vice President

5698W/ag

cc: Senator Faiks

RECEIVED FEB 10 1986

VETERINARY ASSOCIATES, P. C.  
COLLEGE VILLAGE ANIMAL CLINIC  
2036 E. NORTHERN LIGHTS BLVD.  
ANCHORAGE, ALASKA 99508

Telephone 274-5623

Copy

Senator Pat Rodey  
Chairman, Senate Judiciary Committee  
P.O. Box V  
Juneau, Alaska 99811

February 5, 1986

Dear Senator Rodey,

As a member of the Veterinary Examining Board, I hope that your committee can consider and pass Senate Bill 330 in the near future. This "Good Samaritan" legislation has been a project of the board since it was first suggested by our lay member, Dody Froelich, in 1980. Malpractice claims and awards have increased dramatically in all professions including veterinary medicine in recent years and we would hate to see fear of legal action influence the availability of emergency treatment for injured or gravely ill animals whose owners are not immediately identified or available.

The Southcentral Veterinary Medical Association has discussed the current draft as presented from Senator Faik's office and feels that this wording covers the practitioners' areas of concern with one exception. Perhaps Sec. 9.65.097 line 12 should read "a person working under the direct supervision". This would prevent a situation where a poorly qualified employee (ie) a secretary or janitor, might take inappropriate action in the absence of their supervising employer while care by knowledgeable and properly supervised veterinary assistants would still fall under the act.

If you have any further questions, please feel free to contact me in Anchorage at the address and phone number listed in the letterhead.

We would appreciate your prompt attention to this legislation.

Sincerely,

Pam Tuomi, DVM



RECEIVED JAN 27 1985

ALASKA, INC.

111424  
P.O. Box 12424  
Anchorage, Alaska 99511

January 22, 1986

**FOUNDING  
MEMBERSHIP**

Alaska  
Cat Club

Alaska  
Humane Society

Alaska  
Kennel Club

Dog Obedience  
Training Club  
of Anchorage

South Central  
Veterinary  
Medical Association

The Honorable Jan Faiks  
Senator  
State of Alaska  
Pouch "V"  
Capitol Building  
Juneau, Alaska 99811

Dear Senator Faiks:

The Care Alaska mail is not collected on a regular basis, so there has been some delay in your December 20 letter reaching me.

Certainly Care members support the Good Samaritan legislation for veterinarians, as we have for years. The wording is acceptable. Even better wording (the California clause) was provided five years ago, but at this time, it's important that we get on with it.

I was a member of the State Board of Veterinary Examiners from 1981 to 1984, and this was one of my specific projects. This kind of a delay for something so simple, so needed is truly mind boggling. We wonder why people lose faith in government and why government is so expensive. The story on this legislation is an excellent example.

Nonetheless, it is encouraging that you are now involved and will lend your support. We greatly appreciate your keeping us informed of matters of interest to us.

Sincerely,

CARE ALASKA, INC.

Dody Froeklich  
Secretary

RECEIVED FEB 10 1986



EAST ANCHORAGE VETERINARY HOSPITAL, INC.

February 6, 1986

Jan Faiks  
Pouch V  
Capitol Building  
Juneau, Alaska 99811

Dear Senator Faiks,

Thank you for your letter on Senate Bill 330. We would like to take this opportunity to thank you for your time and effort in introducing this bill. We believe the bill is long overdue and will improve animal medical care. At this time we have no suggestions to improve the way the bill is written, but we would support any change Dr. Pam Tuomi felt was necessary. The intention of this letter is to let you know we support Senate Bill 330.

Thank you,

*R. Todd Palmatier D.V.M.*  
R. Todd Palmatier D.V.M.

*David Howe D.V.M.*  
David Howe D.V.M.

*Jon E Basler, DVM*  
Jon Basler D.V.M.



111c

# EAGLE RIVER VETERINARY HOSPITAL, INC.

P.O. BOX 771033  
EAGLE RIVER, AK 99577  
PHONE: 907-694-3800

March 14 1986

Senator Pat Rody  
Box V  
Juneau, Alaska 99811

Dear Senator Rody:

Senate Bill 330 is currently in the Judicial Committee of which you are a member. Passage of this bill will increase the quality of veterinary care in the state of Alaska and I urge the passage of this bill.

Sincerely.

*Deborah Dare*  
Deborah Dare, D.V.M.

# EAGLE RIVER VETERINARY HOSPITAL, INC.

P.O. BOX 771033  
EAGLE RIVER, AK 99577  
PHONE: 907-694-3800

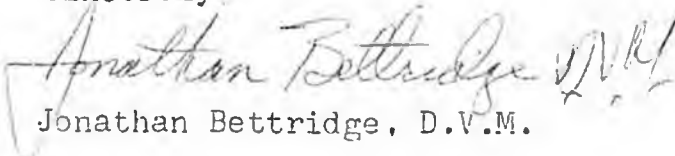
March 14 1986

Senator Pat Rodey  
Box V  
Juneau, Alaska 99811

Dear Senator Rody:

Senate Bill 330 is currently in the Judicial Committee of which you are a member. Passage of this bill will increase the quality of veterinary care in the state of Alaska and I urge the passage of this bill.

Sincerely,

  
Jonathan Bettridge, D.V.M.