ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4650 HJUD HB 52 - HB 53

222

**MADD**
*MOTHERS AGAINST DRUNK DRIVERS*
*Fairbanks Northern Lights Chapter*
P.O. Box 1167
Fairbanks, Alaska 99707-1167
(907) 456-3964

## FORFEITURE OF VEHICLE

## OBJECTIVE



In 1985 ~~[illegible]~~ twelve (12) FNSB residents were killed in alcohol-related crashes, one boy was killed Outside and two UAF students (brother and sister) were killed outside of Wasilla. In 1986 fifteen (15) FNSB residents were killed in alcohol-related crases, two were killed in California. Five of the impaired drivers responsible for deaths in 1986 had prior DWI convictions and one was driving with an illegally obtained license at the time he killed a young woman on Farmers Loop Road.

We are told that the reason the district attorney's office in Fairbanks has not requested confiscation of a vehicle is because that most defendents do not have clear title to the vehicle, or that the vehicle is of such poor quality that it would not be cost effective to impound and then later auction older model cars. We feel the philosophy of confiscation as a deterrent to others is being overlooked here.

We do not feel that these are sufficient reasons to fail to exercise the option under HB-6, particularly when there is a risk of further human lives being lost! Both the Fairbanks Police Department and the Alaska State Troopers have higher arrest statistics the past two years for individuals Driving With Suspended Operators Licnese (DWSOL). This is due in part to the fact that our community is painfully aware that both law enforcements agencies have experienced labor cutbacks that translates into fewer officerson the road at any given time. In other words like everyone else DWI offenders recognize that their chances for being stopped have been minimized. The magnitude of this problem demands that the DWI offender be refused further access to his or her vehicle to ensure that further lives and injuries are not caused by their continuing to drive without a license.

It is admirable that the judges were given a chance to use discretion to confiscate, by the word "may" being used in the content of AS 28.35.036. However, it has become obvious that the justice system has failed to exercise common sense in its discretion to use this option as a [illegible] [illegible]tion and as a deterrent measure to others, and has therefor failed to [illegible]

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OBJECTIVE



tect the public. Under the circumstances we would ask that the word "may" be changed to "shall" in AS 28.35.032(a), to ensure that first time DWI offenders realize that if convicted for a second offense they will no longer have a vehicle in their possession with which to jeopardize human loss of life and limb.

To counter the argument of "clear title" we refer you to AS 28.35.037 Remission of Forfeitures which specifically addresses lienholders rights.

Additionally we feel sure that once the public is notified of the amendment to this law, credit companies will request that potential creditors who already have a DWI conviction to increase mandatory SR22 premiums to cover possible forfeiture of vehicles.

To counter the argument of immediate confiscation of vehicles used in the commission of a crime i.e., DWI/refusal to submit to a breath test, we remind you of the routine practice of Alaska Game Wardens in their authority to immediately confiscate not only cars and trucks, but guns, planes, snowmachines, etc., when a hunting violation is charged, prior to due process being completed. We are secure that the precedent set there should certainly extend to the protection of human lives, as opposed to animal life!

In anticipation of the argument that the impaired driver may not be arrested while driving his/her own registered vehicle, consider this option. Upon the first conviction for DWI/Refusal, and upon completion of other requirements made by the court for the return of the offenders license we would suggest color-coded driver's licenses to indicate to car rental agencies, employers, or others who might "loan" vehicles to inform and protect them from possible forfeiture. Remembering that a lienholder must, according to AS 28.35.037, prove that "the petitioner did not know or have reasonable cause to believe that it would be used in the commission of an offense". Obviously insurers would want to inform clients of possible loss of coverage should the insured loan a car to individual prior to checking the borrowers license.

# MADD

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FORFEITURE OF VEHICLE

REQUESTS



1st CONVICTION DWI/REFUSAL

- * In addition to administrative and court ordered requirements now in place, impound the vehicle until the individual purchases special risk policy (SR22), incorporating leinholders protection from forfeiture for possible future offenses. Insurance must be "term" that cannot be cancelled by vehicle owner. If insurance expires for non-payment, or a refund is requested thereby cancelling the policy, the insurance company is required to inform the State Division of Motor Vehicles within 24 hours.
- * Upon completion of all requirements to reinstate the drivers license the DMV be required to color-code, or otherwise plainly note, the DWI conviction visibly on the license.
- * Accompanying costs to above procedure i.e., impoundment fees, filing fees, record search fees, be paid by the applicant.

2nd CONVICTION DWI/REFUSAL

- * Vehicle used in the commission of the crime DWI/Refusal be confiscated by the state and disposed of at public auction. Proceeds to be returned to the General Fund or designated for compensation to victims of drunk driving. (It might be noted that an increased fleet of cars available to auction are a great resource for non-profit groups who typically might have manpower and in-kind contributions to repair damaged [illegible] t little or no cost, then use them as a raffle item).
- * Ninety (90) days prior to the effective date of this legislation public notification is given to the public informing all of the ramifications of the act.

Attachments:
1985 Alcohol-Related Traffic Fatalities - USA
AS 28.35.037
Effect of Bankruptcy on DWI Judgments

## 1985 ALCOHOL RELATED TRAFFIC FATALITIES*

| State | Fatalities | Population In Millions | Fatalities Per Million |
|---|---|---|---|
| Alabama | 214 | 3.9 | 55 |
| Alaska | 69 | .4 | 173 |
| Arizona | 335 | 2.8 | 120 |
| Arkansas | 324 | 2.3 | 141 |
| California | 2,412 | 23.7 | 102 |
| Colorado | 242 | 2.9 | 83 |
| Connecticut | 252 | 3.1 | 81 |
| Delaware | 73 | .6 | 122 |
| Florida | 1,294 | 9.7 | 133 |
| Georgia | 700 | 5.4 | 130 |
| Hawaii | 77 | 1.0 | 77 |
| Idaho | 118 | .9 | 131 |
| Illinois | 554 | 11.4 | 49 |
| Indiana | 232 | 5.5 | 42 |
| Iowa | 234 | 2.9 | 81 |
| Kansas | 152 | 2.4 | 63 |
| Kentucky | 168 | 3.6 | 47 |
| Louisiana | 401 | 4.2 | 95 |
| Maine | 56 | 1.1 | 51 |
| Maryland | 741 | 4.2 | 176 |
| Massachusetts | 222 | 5.8 | 38 |
| Michigan | 719 | 9.3 | 77 |
| Minnesota | 261 | 4.1 | 64 |
| Mississippi | 300 | 2.5 | 120 |
| Missouri | 486 | 4.9 | 99 |
| Montana | 118 | .8 | [illegible] |
| Nebraska | 91 | 1.6 | [illegible] |
| Nevada | 112 | .8 | [illegible] |
| New Hampshire | 102 | .9 | [illegible] |
| New Jersey | 246 | 7.4 | [illegible] |
| New Mexico | 293 | 1.3 | [illegible] |
| New York | 695 | 17.6 | [illegible] |
| North Carolina | 637 | 5.9 | [illegible] |
| North Dakota | 50 | .7 | 71 |
| Ohio | 746 | 10.8 | [illegible] |
| Oklahoma | 279 | 3.0 | 93 |
| Oregon | 285 | 2.6 | 110 |
| Pennsylvania | 767 | 11.9 | [illegible] |
| Rhode Island | 50 | .9 | 56 |
| South Carolina | 385 | 3.1 | 124 |
| South Dakota | 69 | .7 | 99 |
| Tennessee | 318 | 4.6 | 69 |
| Texas | 989 | 14.2 | 70 |
| Utah | 110 | 1.5 | 73 |
| Vermont | 41 | .5 | [illegible] |
| Virginia | 479 | 5.3 | 90 |
| Washington | 326 | 4.1 | 80 |
| West Virginia | 257 | 2.0 | 129 |
| Wisconsin | 187 | 4.7 | 40 |
| Wyoming | 70 | .5 | 140 |

*Fatality totals were determined by State Departments of Highway and are official numbers, but probably less than actual numbers because of under-reporting of intoxicated injured drivers. Population totals are from Statistical Abstract of the United States, 1982-1983, and are, therefore, an estimate of 1985 population.

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forfeited under this section may be disposed of at the discretion of the department. (if sold at auction $ pd. in to victim fund)

Sec. 28.35.037. REMISSION OF FORFEITURES. (a) Upon receiving notice from the court of the time and place set for a hearing under AS 28.35.036, the state shall provide to every person who has an ascertainable ownership or security interest in the motor vehicle written notice that includes

(1) a description of the motor vehicle;

(2) the time and place of the forfeiture hearing;

(3) the legal authority under which the motor vehicle may be forfeited;

(4) notice of the right to intervene to protect the interest in the motor vehicle.

(b) At the hearing, a person who claims an ownership or security interest in the motor vehicle must establish by a preponderance of the evidence that

(1) the petitioner has an interest in the motor vehicle acquired in good faith;

(2) a person other than the petitioner was convicted of the offense that resulted in the forfeiture; and

(3) before parting with the motor vehicle, the petitioner did not know or have reasonable cause to believe that it would be used in the commission of an offense.

(c) If a person satisfies the requirements of (b) of this section, the court shall order that an amount equal to the value of the petitioner's interest in the motor vehicle be paid to the petitioner or the court shall order that the motor vehicle be released to the petitioner together with title to the motor vehicle.

(d) Forfeiture of a motor vehicle under AS 28.35.036 is without



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## REVIEW RESOURCES FOR PROSECUTORS

most states, the public prosecutor has a great deal of discretionary power deciding what cases he wants to try and what charges will be filed. Some ites allow for the hiring of a private prosecutor if a victim is not satisfied th the public prosecutor. In some of those states the public prosecutor must ant the private prosecutor permission to try the case. Victims should be aware their state statutes regarding this procedure.

most states, prosecutors are subject to review both by the bar association d by a state regulatory group usually referred to as a "Prosecutor's Council" "Prosecutor Review Board." Call the switchboard of your state capitol get the phone number and address of such a group. Usually they consist other prosecutors, so the review is by peers.

few states have what is called a "John Doe Statute" or a "One Man Jury atute" in which a person may go directly to a judge if he believes that a ime was committed and the prosecutor has not filed charges. Wisonsin's atute follows:

62.26 John Doe proceeding. If a person complains to a judge that he has ason to believe that a crime has been committed within his jurisdiction, the idge shall examine the complainant under oath and any witnesses produced y him and may, and at the request of the district attorney shall, subpoena nd examine other witnesses to ascertain whether a crime has been committed nd by whom committed. The extent to which the judge may proceed in such amination is within his discretion. The examination may be adjourned and ay be secret. Any witness examined under this section may have counsel resent at the examination but such counsel shall not be allowed to examine is client, cross-examine other witnesses or argue before the judge. If it appears robable from the testimony given that a crime has been committed and who ommitted it, the complaint shall be reduced to writing and signed and verified; nd thereupon a warrant shall issue for the arrest of the accused. Subject to 971.23, the record of such proceeding and the testimony taken shall not e open to inspection by anyone except the district attorney unless it is used y the prosecution at the preliminary hearing or the trial of the accused and en only to the extent that it is so used.

A defendant must be allowed to use testimony of witnesses at a secret John Doe proceeding to impeach the same witnesses at the trial, even if the prosecution does not use the John Doe testimony. Myers v. State, 60 W (2d) 248, 08 NW (2d) 311.

Immunity hearing must be in open court. State ex rel. Newspapers, Inc. v. Circuit Court, 65 W (2d) 66, 221 NW (2d) 894.

Person charged as result of John Doe proceeding has no recognized interest n the maintenance of secrecy in that proceeding. John Doe discussed. State v. O'Connor, 77W (2d) 261, 252 NW (2d) 671.

No restrictions of the 4th and 5th amendments preclude enforcement of an order for handwriting exemplars directed by presiding judge in John Doe proceeding. State v. Doe, 78 W (2d) 161, 254 NW (2d) 210.

See note to Art. I, sec. 8, citing Ryan v. State, 79 W (2d) 83, 255 NW (2d) 910.

This section does not violate constitutional separation of powers doctrine. John Doe discussed. State v. Washington, 83 W (2d) 808, 266 NW (2d) 597 1978).

Balance between public's right to know and need for secrecy in John Doe proceedings discussed. In re Wis. Family Counseling Services v. State, 95 W 2d) 670, 291 NW (2d) 631 (Ct. App. 1980).

John Doe judge may not issue material witness warrant under 969.01 (3). State v. Brady, 118 W (2d) 154, 345 NW (2d) 533 (Ct. App. 1984).

## REVIEW RESOURCES FOR JUDGES

In most states, there is a review procedure for the handling of complaints about judges. It is usually called a "Commission on Judicial Conduct," a "Judicial Review Board," or other similar title. Call your local bar association or State Capitol switchboard to learn what is available in your state.

If you file a complaint, grievance, or concern, *be sure you know the facts.*

## MADD CHAPTER TO FILE COMPLAINT AGAINST LOCAL JUDGE, PRESIDENT SAYS

**By Steve McGonigle**
**Staff Writer of The News**

The president of the Dallas County chapter of Mothers Against Drunk Driving said Thursday that her group will file a complaint with the state Commission on Judicial Conduct against County Criminal Court Judge Harold Entz in connection with Entz's handling of a recent drunken driving case.

Milo Kirk said Entz acted without authority when he allowed Martin Vargas Rivera of Dallas to plead guilty on Jan. 16 to a misdemeanor charge that did not reflect the fact that Rivera had seriously injured four people in a car accident.

Entz initially granted Rivera probation but later re-sentenced Rivera to a maximum two-year jail term after Rivera's attorney requested that the guilty plea be voided and that Rivera be given a new trial.

Entz said he granted Rivera probation by mistake after reading an incomplete probation report and after the defendant assured him that there were no injuries in the accident. He has maintained he did nothing improper.

Mrs. Kirk said her group will file the complaint against Entz after a court hearing Thursday to determine whether Entz should be disqualified from hearing a request by Rivera's new attorney for a third trial.

Chief misdemeanor prosecutor Mike Gillett requested the disqualification because he contended that Entz has shown he cannot be fair to the prosecution.

Retired state District Judge R. C. Vaughan of Sherman ruled at the conclusion of the hearing that prosecutors had not proved Entz was biased, though Vaughan said he was bothered by the handling of the case.

## ATTENTION CIVIL ATTORNEYS!!
### EFFECT OF BANKRUPTCY ON DWI JUDGMENTS

The U.S. Constitution and Federal Statues allow liberal protection of debtors through relief in the Bankruptcy Courts. A debtor is allowed to have certain liabilities discharged by operation of law, rendering the creditor's claim valueless. In bankruptcy, the holder of a civil judgment obtained in a lawsuit against a drunk driver is considered a *Creditor*, and the drunk driver a *Debtor*.

**CHAPTER 7**

An individual debtor has two options in bankruptcy. The most commonly used is liquidation under Chapter 7 of the Bankruptcy Code. The debtor has most obligations forgiven and keeps a portion of his or her assets to facilitate a "fresh start" after Bankruptcy. The debtor keeps such things as a homestead, clothing, household furnishings, personal effects, tools of trade and, generally, an automobile.

These are typical of the assets exempted by law from execution to satisfy judgments. The rest of the assets are returned to secured creditors or liquidated (sold) to pay the creditors on a pro-rata basis. *Certain debts are not discharged and forgiven, such as taxes, child support, alimony, and DWI judgments.* The DWI judgment holder should carefully follow the bankruptcy case, and might consider retaining counsel to be sure the origin of the claim is brought to the attention of the Bankruptcy Court, and the non-dischargeable nature of the debt is noted and even confirmed.

It should be remembered that holding a non-dischargeable debt is still no guarantee of collecting any money since the debtor, immediately after bankruptcy, holds only property which cannot be taken to satisfy a judgment. The creditor holding the DWI judgment, unlike those creditors whose claims are discharged, will be able to wait and attempt to collect as the debtor rebuilds assets following bankruptcy.

**CHAPTER 13**

An individual debtor could seek relief under Chapter 13 of the Bankruptcy Code and effect an adjustment of his or her debts. The debtor typically pays a portion of the debts, and has a portion discharged through a court supervised plan of three to five years. Some debts that would be non-dischargeable in a Chapter 7 liquidation are dischargeable in a Chapter 13 Debt Adjustment plan. *A DWI judgment could be discharged after a partial payment under such a plan.* The DWI judgment holder should retain counsel if the debtor attempts a Chapter 13 plan. *The entire plan can be rejected if the Bankruptcy Court finds it has been proposed in "bad faith."* The timing of the bankruptcy, the amount of the DWI judgment compared to the entire amount of debt, the effect on the holder of the judgment compared to other creditors, and many other factors will be considered by the court in evaluating a plan with an objecting creditor.

Defeating the entire plan may be the only way to prevent the discharge of the DWI judgment. If unsuccessful, the holder of the DWI judgment should still follow the Chapter 13 plan very closely, because many debtors do not follow through with their plan to completion and the discharge of the debts. Some Chapter 13 plans are converted to Chapter 7 liquidations where the DWI judgment is not discharged.

It is not uncommon for attorneys representing defendants in lawsuits to threaten that their client will resort to bankruptcy relief if the suit is pursued to judgment. However, this threat has much less impact on victims of drunk drivers because of the preferential treatment of such judgments in the Bankruptcy Code.

THIS ALSO HOLDS A PROTECTION FOR VEHICLE LEINHOLDERS

(7)

**Sec. 28.35.035. Administration of chemical tests without consent.** (a) If a person is under arrest for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while intoxicated, and that arrest results from an accident that causes death or physical injury to another person, a chemical test may be administered without the consent of the person arrested to determine the amount of alcohol in that person's breath or blood.

(b) A person who is unconscious or otherwise in a condition rendering that person incapable of refusal is considered not to have withdrawn the consent provided under AS 28.35.031(a) and a chemical test may be administered to determine the amount of alcohol in that person's breath or blood. A person who is unconscious or otherwise incapable of refusal need not be placed under arrest before a chemical test may be administered.

(c) If a chemical test is administered to a person under (a) or (b) of this section, that person is not subject to the penalties for refusal to submit to a chemical test provided by AS 28.35.032 and 28.35.034. (§ 21 ch 117 SLA 1982; am § 22 ch 77 SLA 1983)

Effect of amendments. — The 1983 amendment in subsection (a) substituted "an offense . . . driving a motor vehicle" for "the crime of driving" and in subsection (b) revised the internal reference in the present first sentence and added the present second sentence.

NOTES TO DECISIONS

Stated in Copelin v. State, Sup. Ct. Op. No. 2617 (File Nos. 5453, 5708), 259 P.2d 1206 (1983); Pena v. State, Ct. App. Op. No. 245 (File No. 6174), 664 P.2d 169 (1983).

**Sec. 28.35.036. Forfeiture of motor vehicle.** (a) After conviction of an offense under AS 28.35.030 or AS 28.35.032 involving a motor vehicle of a type for which a driver's license is required, the state may move the court to order the forfeiture of the motor vehicle involved in the commission of the offense if the convicted person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has more than once been previously convicted of one of the following offenses:

(1) driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements; or

(2) refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements.

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

(c) Upon receipt of a motion for forfeiture, the court shall schedule a hearing on the matter and shall notify the state and the convicted

person of the time and place set for the hearing. At the hearing, the court may order the forfeiture of the motor vehicle if the court, sitting without a jury, determines by a preponderance of the evidence that the forfeiture of the motor vehicle will serve one or more of the following purposes:

(1) deterrence of the convicted person from the commission of future offenses under AS 28.35.030;

(2) protection of the safety and welfare of the public;

(3) deterrence of other persons who are potential offenders under AS 28.35.030; or

(4) expression of public condemnation of the serious or aggravated nature of the convicted person's conduct.

(d) Upon forfeiture of a motor vehicle the court shall require the surrender of the registration and certificate of title of that motor vehicle. The registration and certificate of title shall be delivered to the department.

(e) If not released under AS 28.35.037, a motor vehicle forfeited under this section may be disposed of at the discretion of the department. (§ 23 ch 77 SLA 1983)

**Sec. 28.35.037. Remission of forfeitures.** (a) Upon receiving notice from the court of the time and place set for a hearing under AS 28.35.036, the state shall provide to every person who has an ascertainable ownership or security interest in the motor vehicle written notice that includes

(1) a description of the motor vehicle;

(2) the time and place of the forfeiture hearing;

(3) the legal authority under which the motor vehicle may be forfeited;

(4) notice of the right to intervene to protect the interest in the motor vehicle.

(b) At the hearing, a person who claims an ownership or security interest in the motor vehicle must establish by a preponderance of the evidence that

(1) the petitioner has an interest in the motor vehicle acquired in good faith;

(2) a person other than the petitioner was convicted of the offense that resulted in the forfeiture; and

(3) before parting with the motor vehicle, the petitioner did not know or have reasonable cause to believe that it would be used in the commission of an offense.

(c) If a person satisfies the requirements of (b) of this section, the court shall order that an amount equal to the value of the petitioner's interest in the motor vehicle be paid to the petitioner or the court shall order that the motor vehicle be released to the petitioner together with title to the motor vehicle.

(d) Forfeiture of a motor vehicle under AS 28.35.036 is without prejudice to the rights, and does not extinguish the claims of a creditor with an interest in the motor vehicle. (§ 23 ch 77 SLA 1983)

**Sec. 28.35.038. Municipal impoundment and forfeiture.** Notwithstanding other provisions in this title, a municipality may adopt an ordinance providing for the impoundment or forfeiture of a motor vehicle involved in the commission of an offense under AS 28.35.030, 28.35.032, or an ordinance with elements substantially similar to AS 28.35.030 or AS 28.35.032. An ordinance adopted under this section is not required to be consistent with this title or regulations adopted under this title. (§ 23 ch 77 SLA 1983)

## Article 3. Reckless and Negligent Driving.

**Section**
40. Reckless driving
45. Negligent driving

**Sec. 28.35.040. Reckless driving.** (a) A person who drives a motor vehicle in the state in a manner which creates a substantial and unjustifiable risk of harm to a person or to property is guilty of reckless driving. A substantial and unjustifiable risk is a risk of such a nature and degree that the conscious disregard of it or a failure to perceive it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

(b) A person convicted of reckless driving is guilty of a misdemeanor and is punishable by a fine of not more than $1,000 or by imprisonment for not more than one year or by both.

(c) Lawfully conducted automobile, snowmobile, motorcycle or other motor vehicle racing or exhibition events are not subject to the provisions of this section. (§ 50-5-4 ACLA 1949; am § 1 ch 182 SLA 1955; am § 1 ch 70 SLA 1961; am § 2 ch 121 SLA 1967; am § 1 ch 13 SLA 1971; am § 46 ch 32 SLA 1971; am § 6 ch 74 SLA 1974)

### NOTES TO DECISIONS

**Codification of common-law standard of care. —** This section and AS 28.35.045, defining reckless and negligent driving, do not set forth precise standards of care, but merely codify the usual common-law standard of care. Bailey v. Lenord, Sup. Ct. Op. No. 2308 (File No. 4696), 625 P.2d 849 (1981).

**Specific conduct not proscribed. —** This section and AS 28.35.045, defining reckless and negligent driving, do not proscribe specific conduct, but rather state that a person shall not drive a motor vehicle in a manner which creates an unjustifiable risk. Bailey v. Lenord, Sup. Ct. Op. No. 2308 (File No. 4696), 625 P.2d 849 (1981).

**Risks to safety of general public. —** Reckless driving involves risks to the safety of the public at large. Calder v. State, Sup. Ct. Op. No. 2224 (File No. 4293), 619 P.2d 1026 (1980).

A defendant was not placed in double jeopardy by his conviction of the lesser included offense of reckless driving on a felony charge of assault with a dan-

DEPARTMENT OF PUBLIC SAFETY / POSITION PAPER /

BILL NO: HB 52

DATE: January 22, 1987

TITLE: An Act relating to motor vehicle forfeiture

CONTACT: T. Michael Lewis 465-4374

This bill would provide a strong deterrant to the act of drinking and driving in that it increases the possibility of forfeiture of the motor vehicle for repeat offenses. As the public became more aware of this added sanction, there would be an increased inclination to seek alternative modes of transportation when drinking. Although mandatory jail terms, fines and license revocation are effective for first time offenders, these sanctions do not seem to deter the multiple offender to any great extent.

It is felt that the added loss of the vehicle to an offender is an expense and inconvenience that most people would wish to avoid. In the case of the individual that continues to drink and drive in spite of several alcohol related offenses, the loss of the offenders vehicle would virtually remove this hazardous driver from our highways.

The department supports this bill.

William R. Nix
Acting Commissioner

RECEIVED JAN 2 6 1987

# STATE OF ALASKA

**DEPARTMENT OF LAW**

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO

☒ CRIMINAL DIVISION CENTRAL OFFICE
POUCH KC
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☐ OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE (907) 279 7424

February 10, 1987

The Honorable John Sund
Chairman, Judiciary Committee
Alaska State House
P.O. Box V
Juneau, Alaska 99811

Re: HB 52

Dear Chairman Sund:

This letter is in response to a request from the Judiciary Committee for the department's position on HB 52, an act relating to motor vehicle forfeiture. HB 52 requires the state to move for forfeiture of a motor vehicle upon a third conviction for DWI or refusal to take a breath test. The present statute, which permits forfeiture to be pursued in the discretion of the prosecutor, is rarely used by the state because of the expense involved in litigating forfeiture cases (a departmental fiscal note has been prepared showing the costs) and because the criminal sentence and lengthy license revocation is usually sufficient to satisfy the state's interests.

The department believes that, while the primary effect of HB 52 will be to shift the discretion in forfeiture cases from prosecutors to judges, it is doubtful that additional forfeitures will be ordered, except in the most egregious cases. It must be recognized that a forfeiture order is not mandatory, and that the grounds for forfeiture in AS 28.35.036(c) are very similar to the grounds for imposition of a sentence in AS 12.55.005. Under the class A misdemeanor penalties permitted for DWI, a court can impose a jail term of up to one year and fine of up to $5,000, therefore many judges may feel that the statutory criteria in AS 28.35.036(c) will have already been satisfied by the criminal sentence and no additional purpose will be served by the forfeiture, especially where loss of the car would work a financial hardship.

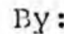
The department therefore believes that the added cost of filing mandatory forfeiture actions and litigating competing claims by joint owners and secured lienholders will provide little in the way of additional deterrence and public safety. The department believes that the present statutory scheme is

03-C31LH

adequate and could conceivably be used more frequently by the state without a great deal of additional expense, therefore additional consideration will be given to these cases depending upon subsequent budgetary restraints.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL



By: ____________________
Dean J. Guaneli
Assistant Attorney General

DJG:so-74

cc: Bob Evans
Legislative Liaison
Office of the Governor

Nadine Winters
Director of Constituent Relations
Office of the Governor

The Honorable Niilo Koponen
Alaska State House

B.J. Lewis
Legislative Liaison
Department of Law

HB
53

STATE OF ALASKA
THE LEGISLATURE
**LEGISLATIVE AFFAIRS AGENCY**
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JUNEAU, ALASKA 99811
907-465-3800

May, 1988

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

Mary Van Nimwegen

House Judiciary:

2/11/87

2/12/87

2/20/87

2/23/87

Alaska State Legislature
Representative Niilo Koponen

Pouch V
Juneau, Alaska 99811
(907) 465-4992

542 4th Avenue, Suite C
Fairbanks, Alaska 99701
(907) 456-8161

MEMORANDUM

TO: Honorable John Sund

FROM: Representative Niilo Koponen

RE: HB 53 "An Act Relating to Penalties for Violations to Work-Place Safety Laws."

DATE: January 30, 1987

I would appreciate it if you would schedule CSHB 53 at your earliest convenience.

The purpose of this bill is to reinforce the legislative intent in AS 18.60.010, which states that the legislature finds that "...personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, the people of the state in terms of loss of production, wage loss, medical expenses and disability compensation payments."

CSHB 53. would increase the maximum penalty for serious and for failure to abate violations to $10,000 (HB 53 read $25,000). A penalty of $5,000 (HB 53 read $10,000) fine for non serious violations. This bill is a deterrent intended to encourage businesses to conform to work-place safety laws and regulations. In Washington, an equivalent violation now carries a maximum fine of $50,000.

This bill does carries a fiscal note though it is the sponsor's earnest hope that greater compliance will result in a decrease in the number of fines levied. Collected fines levied will be deposited into the general fund which can be used to offset the temporary administrative costs that the Department of Labor will have until the new fines are promulgated.

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(d) The OSHA Review Board shall notify the authorized representative of the affected employees that an employer is contesting a citation or notification issued under (a) or (b) of this section and afford the representative an opportunity to participate in the hearing on the matter.

(e) An employer, an affected employee or a representative of affected employees has 15 working days from the receipt of a citation within which to notify the commissioner and the OSHA Review Board that the period of time fixed in the citation for the abatement of a violation is unreasonable. The OSHA Review Board shall afford an opportunity for a hearing and thereafter issue an order, based on findings of fact, affirming or modifying the original period for abatement, and the order is final 30 days after its issuance. If the contest is initiated by the employer, the OSHA Review Board shall notify the employees in the same manner as provided by (d) of this section. If the contest is initiated by the employees, the OSHA Review Board shall notify the employer and afford the employer an opportunity to participate in the hearing on the matter. (§ 7 ch 72 SLA 1973; am § 2 ch 26 SLA 1983)

**Effect of amendments.** — The 1983 amendment, in subsection (a), inserted "or after an employer's failure to correct a violation for which the employer has been issued a notice" and "or expiration of the time period set out in the notice" in the first sentence, substituted "after receipt of the penalty notice" for "from the receipt of the notice" in the second sentence, removed personal pronouns from the first and second sentences, and made a minor word change in the second sentence.

**Opinions of attorney general.** — Agencies assessed penalties under this section and AS 18.60.095 must, as a general rule, pay those penalties, within the limits of available appropriations, from their operating budgets. In the event an agency wishes to contest a citation, the agency may be represented by its assigned counsel in the Attorney General's Office before the Occupational Safety and Health Act Review Board; if the agency chooses to contest an adverse determination by the review board, outside counsel, funded by the agency, will have to be employed. March 27, 1980 Op. Att'y Gen.

NOTES TO DECISIONS

**The 1973 amendments to this title made mandatory the enforcement of safety regulations in most instances.** Wallace v. State, Sup. Ct. Op. No. 1352 (File No. 2683), 557 P.2d 1120 (1976).

**Sec. 18.60.095. Penalties.** (a) An employer who wilfully or repeatedly violates a provision of AS 18.60.010 — 18.60.105 that is applicable to the employer or a standard or regulation adopted under AS 18.60.010 — 18.60.105 may be assessed by the commissioner a civil penalty of not more than $10,000 for each violation.

(b) An employer who receives a citation for a serious violation of a provision of AS 18.60.010 — 18.60.105 that is applicable to the employer or of a standard or regulation adopted under AS 18.60.010 — 18.60.105 shall be assessed by the commissioner a civil penalty [illegible]

to $1,000 for each violation. For purposes of this subsection, a serious violation is considered to exist if the violation creates in the place of employment a substantial probability of death or serious physical harm. However, a serious violation is not considered to exist if the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(c) An employer who receives a citation for a violation of a provision of AS 18.60.010 — 18.60.105 that is applicable to the employer or a standard or regulation adopted under AS 18.60.010 — 18.60.105, and the violation is specifically determined not to be of a serious nature, may be assessed by the commissioner a civil penalty of up to $1,000 for each violation.

(d) An employer who fails to correct a violation within the period permitted for its correction for which a citation has been issued may be assessed by the commissioner a civil penalty of not more than $1,000 for each day during which the failure to correct the violation continues.

(e) An employer who wilfully or repeatedly violates a provision of AS 18.60.010 — 18.60.105 that is applicable to the employer or a standard or regulation adopted under AS 18.60.010 — 18.60.105, and the violation causes death to an employee, upon conviction, is punishable by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both. However, upon a second conviction after a prior conviction for a violation causing death, an employer is punishable by a fine of not more than $20,000, or by imprisonment for not more than one year, or by both.

(f) A person who knowingly makes a false statement, representation, or certification in an application, record, report plan or other document filed or required to be maintained under AS 18.60.010 — 18.60.105, upon conviction, is punishable by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

(g) An employer who violates the posting requirements of this chapter shall be assessed by the commissioner a civil penalty of up to $1,000 for each violation.

(h) In assessing a civil penalty, the commissioner shall give due consideration to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations. (§ 7 ch 72 SLA 1973)

**Opinions of attorney general.** — Agencies assessed penalties under AS 18.60.093 and this section must, as a general rule, pay those penalties, within the limits of available appropriation from their operating budgets. In the event an agency wishes to contest a citation, the agency may be represented by its assigned counsel in the Attorney General's Office before the Occupational Safety and Health Act Review Board; if the agency chooses to contest an adverse determination by the review board, outside counsel, funded by the agency, will have to be employed. March 27, 1980 Op. Att'y Gen.





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The state may enforce the criminal penalties set out in subsections (e) and (f) on the Annette Islands Reserve. May 3, 1983 Op. Att'y Gen.

## NOTES TO DECISIONS

**Section and former AS 18.60.090 compared.** — See Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

Whereas former AS 18.60.090 set forth "fines" and "imprisonment" as penalties, this section, which replaced the former section, now specifies "civil penalties" for most violations, saving "fines" and "imprisonment" for serious violations only. Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

**Neither mention tort remedies or nonavailability of contributory negligence.** — See Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

**Defense of contributory negligence not abolished.** — See Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

From indicia concerning former AS 18.60.090 the federal district court was not persuaded the legislature intended to abolish the defense of contributory negligence for a violation of the Alaska General Safety Code or in any way intended to depart from the normal practice of allowing the defense. Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

The Alaska legislature did not intend to deny the defense of contributory negligence to negligence per se based on violations of the Alaska General Safety Code. Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

**The effect of the Alaska General Safety Code and the enabling legislation** is not to place the entire responsibility for the harm on the defendant employer. Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

**Action by injured workman for damages not authorized.** — Nowhere in either AS 18.60.010 — 18.60.105 or regulations can there be found authorization for a claim for relief and award of civil damages to an injured workman for harm resulting from the breach of AS 18.60.010 — 18.60.105 or the General Safety Code. Morris v. City of Soldotna, Sup. Ct. Op. No. 1296 (File No. 2256), 553 P.2d 474 (1976).

**The worker's limited ability to exercise self-protective care because of economic duress** did not persuade the federal district court to construe this article to eliminate the defense of contributory negligence. Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

**Fact finder to sift through facts of each case.** — By retaining the defense of contributory negligence, it remains to the finder of fact to sift through the facts and circumstances of each case and determine whether the employee met that duty. Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

**Applied in** Woods & Rohde, Inc. v. State, Dep't of Labor, Sup. Ct. Op. No. 1433 (File No. 2993), 565 P.2d 138 (1977).

**Sec. 18.60.096. Imminent dangers.** (a) The commissioner, or a designated agent as authorized by the commissioner, may issue orders restraining a particular condition or practice in any place of employment that constitutes a danger that could reasonably be expected to immediately cause death or serious physical harm. The terms of an order issued under this section may require steps to be taken as necessary to avoid, correct, or remove the imminent danger and may prohibit the employment or presence of an individual in locations or under conditions where imminent danger exists. The terms of the order may allow the presence of individuals necessary to avoid, correct, or remove the imminent danger.

(b) When and as soon as a representative of the department [illegible]

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is alleged to have occurred, or the department may utilize the procedures for collection of civil penalties as set forth in RCW 51.48.120 through 51.48.150.

Enacted by Laws 1973, ch. 80, § 18. Amended by Laws 1986, ch. 20, § 2.

**Law Review Commentaries**

Citations and penalties under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 571.

Constitutional challenges to suggested procedural deficiencies of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 361.

Defending employer against alleged violation of general duty clause of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 399.

Legal process for enforcement of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 349.

Sanctions against violation of Washington Industrial Safety and Health Act. 9 Gonzaga L.Rev. 457.

**Library References**

Labor Relations ⇐10.
C.J.S. Labor Relations § 12.

**Notes of Decisions**

Where farm tractor driver, who had been assigned to drive tractor by employer, permitted plaintiff to ride on metal frame holding onto cross-bar while tractor was being driven from one area of hop field to another, where such conduct violated regulation pertaining to farm employees, and where driver's negligence in failing to determine whether plaintiff was off tractor before engaging mechanism was proximate cause of plaintiff's injury, tractor driver's employer was liable for plaintiff's injury. Garcia v. Brulotte (1980) 25 Wash.App. 818, 609 P.2d 976, reversed on other grounds 94 Wash.2d 794, 620 P.2d 99.

Under principle that in any conflict between statutory provisions which treats subject in general way and another which treats subject in specific way, specific statute will prevail, notice and review procedures of State Industrial Safety and Health Act of 1973 (§ 49.17.010 et seq.) prevail, and there is no conflict, and no violation of due process, in labor and industries department's taking advantage of warrant procedures available to department as alternate means of collection. Department of Labor and Industries v. City of Kennewick (1982) 31 Wash.App. 777, 644 P.2d 1196, reversed on other grounds 99 Wash.2d 225, 661 P.2d 133.

Where there was only one action to determine issues, i.e., propriety of citations and assessments by department of labor and industries under State Industrial Safety and Health Act of 1973, § 49.17.010 et seq., department's warrant, which respondent characterized as new cause of action because it was given cause number as required by § 51.48.140, merely established department's right to payment and acted as lien, same as judgment in civil case duly docketed in office of county clerk, and assignment of cause number did not alone split department's cause of action, as against contention that statutory procedures in essence allowed department to split its cause of action. Department of Labor and Industries v. City of Kennewick (1982) 31 Wash.App. 777, 644 P.2d 1196, reversed on other grounds 99 Wash.2d 225, 661 P.2d 133.

It was not prejudicial error to refuse instruction on safety regulation where employee of subcontractor, who had been injured at construction site, failed to show general contractor's actual negligence. Hyatt v. Sellen Const. Co., Inc. (1985) 40 Wash.App. 893, 700 P.2d 1164.

## 49.17.190. Violations—Criminal penalties

(1) Any person who gives advance notice of any inspection to be conducted under the authority of this chapter, without the consent of the director or his authorized representative, shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or by both.

(2) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction

out this chapter, or when relevant in any proceeding under this chapter. In any such proceeding the director, the board of industrial insurance appeals, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

Enacted by Laws 1973, ch. 80, § 20.

**Cross References**

Uniform trade se[illegible] act, see ch. 19.108

**Library References**

Witnesses ⚿216.
C.J.S. Witnesses § 264.

**49.17.210. Research, experiments, and demonstrations for safety purposes—Variances**

The director is authorized to conduct, either directly or by grant or contract, research, experiments, and demonstrations as may be of aid and assistance in the furtherance of the objects and purposes of this chapter. The director, in his discretion, is authorized to grant a variance from any rule or regulation or portion thereof, whenever he determines that such variance is necessary to permit an employer to participate in an experiment approved by the director, which experiment is designed to demonstrate or validate new and improved techniques to safeguard the health or safety of employees. Any such variance shall require that all due regard be given to the health and safety of all employees participating in any experiment.

Enacted by Laws 1973, ch. 80, § 21.

**Library References**

Labor Relations ⚿10.
C.J.S. Labor Relations § 12.

**49.17.220. Records—Reports—Notice to employee exposed to harmful materials**

(1) Each employer shall make, keep, and preserve, and make available to the director such records regarding his activities relating to this chapter as the director may prescribe by regulation as necessary or appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this section such regulations may include provisions requiring employers to conduct periodic inspections. The director shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this chapter, including the provisions of applicable safety and health standards.

(2) The director shall prescribe regulations requiring employers to maintain accurate records, and to make periodic reports of work-related deaths, and of injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The director shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who

has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by any applicable safety and health standard promulgated under this chapter and shall inform any employee who is being thus exposed of the corrective action being taken.

Enacted by Laws 1973, ch. 80, § 22.

**Administrative Code References**

In general, see WAC 296–27–010 et seq.

**Law Review Commentaries**

Washington plan constituting alternative to preemption under Federal Occupational Safety and Health Act of 1970: record keeping. 9 Gonzaga L.Rev. 626.

**Library References**

Labor Relations ⇐10.
C.J.S. Labor Relations § 12.

### 49.17.230. Compliance with federal act—Agreements and acceptance of grants authorized

The director is authorized to adopt by rule any provision reasonably necessary to enable this state to qualify a state plan under section 18 of the Occupational Safety and Health Act of 1970 (Public Law 91–596, 84 Stat. 1590)[1] to enable this state to assume the responsibility for the development and enforcement of occupational safety and health standards in all work places within this state subject to the legislative jurisdiction of the state of Washington. The director is authorized to enter into agreement with the United States and to accept on behalf of the state of Washington grants of funds to implement the development and enforcement of this chapter and the Occupational Safety and Health Act of 1970.

Enacted by Laws 1973, ch. 80, § 23.

[1] 29 U.S.C.A. § 667.

**Administrative Code References**

Record keeping and reporting, see WAC 296–27–010 et seq.

**Law Review Commentaries**

Alternative to preemption under Federal Occupational Safety and Health Act of 1970: The Washington plan. 9 Gonzaga L.Rev. 615.

Constitutional challenges to suggested procedural deficiencies of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 361.

Defending employer against alleged violation of general duty clause of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 399.

Demonstrated need for agricultural standards under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 439.

Employee's rights and duties under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 543.

Employer's rights and duties under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 519.

Grants and loans to employers, under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 605.

Legal process for enforcement of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 349.

Legislative history of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 327.

Overview of Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 477.

Standards under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 493.

Variances under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 509.

**Library References**

Labor Relations ⇐10.
C.J.S. Labor Relations § 12.

### 49.17.240. Safety and health standards

(1) The director in the promulgation of rules under the authority of this chapter shall establish safety and health standards for conditions of em-

ployment of general and/or specific applicability for all industries, businesses, occupations, crafts, trades, and employments subject to the provisions of this chapter, or those that are a national or accepted federal standard. In adopting safety and health standards for conditions of employment, the director shall solicit and give due regard to all recommendations by any employer, employee, or labor representative of employees.

(2) Any safety and health standard adopted by rule of the director shall, where appropriate, prescribe the use of labels or other forms of warning to insure that employees are apprised of all hazards to which they may be exposed, relevant symptoms, and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such rules shall so prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be reasonably necessary for the protection of employees. In addition, where appropriate, any such rule shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event that such medical examinations are in the nature of research, as determined by the director, such examinations may be furnished at the expense of the department. The results of such examinations or tests shall be furnished only to the director, other appropriate agencies of government, and at the request of the employee to his physician.

(3) Whenever the director adopts by rule any safety and health standard he may at the same time provide by rule the effective date of such standard which shall not be less than thirty days, excepting emergency rules, but may be made effective at such time in excess of thirty days from the date of adoption as specified in any rule adopting a safety and health standard. Any rule not made effective thirty days after adoption, having a delayed effectiveness in excess of thirty days, may only be made upon a finding made by the director that such delayed effectiveness of the rule is reasonably necessary to afford the affected employers a reasonable opportunity to make changes in methods, means, or practices to meet the requirements of the adopted rule. Temporary orders granting a variance may be utilized by the director in lieu of the delayed effectiveness in the adoption of any rule.

Enacted by Laws 1973, ch. 80, § 24.

**Law Review Commentaries**

Enforcement of standards of Washington Industrial Safety and Health Act. 9 Gonzaga L.Rev. 459.

**Library References**

Labor Relations ⇨10.
C.J.S. Labor Relations § 12.

**49.17.250. Voluntary compliance program—Consultation and advisory services**

(1) In carrying out his responsibilities for the development of a voluntary compliance program under the authority of RCW 49.17.050(8) and the rendering of advisory and consultative services to employers, the director may grant an employer's application for advice and consultation, and for the purpose of affording such consultation and advice visit the employer's work place. Such consultation and advice shall be limited to the matters specified in the request affecting the interpretation and applicability of

safety and health standards to the conditions, structures, machines, equipment, apparatus, devices, materials, methods, means, and practices in the employer's work place. The director in granting any requests for consultative or advisory service may provide for an alternative means of affording consultation and advice other than on-site consultation.

(2) The director, or his authorized representative, may make recommendations regarding the elimination of any hazards disclosed within the scope of the on-site consultation. No visit to an employer's work place shall be regarded as an inspection or investigation under the authority of this chapter, and no notices or citations shall be issued, nor, shall any civil penalties be assessed upon such visit, nor shall any authorized representative of the director designated to render advice and consult with employers under the voluntary compliance program have any enforcement authority: *Provided*, That in the event an on-site visit discloses a serious violation of a health and safety standard as defined in RCW 49.17.180(6), and the hazard of such violation is either not abated by the cooperative action of the employer, or, is not subject to being satisfactorily abated by the cooperative action of the employer, the director shall either invoke the administrative restraining authority provided in RCW 49.17.130 or seek the issuance of injunctive process under the authority of RCW 49.17.170 or invoke both such remedies.

(3) Nothing in this section shall be construed as providing immunity to any employer who has made application for consultative services during the pendency of the granting of such application from inspections or investigations conducted under RCW 49.17.070 or any inspection conducted as a result of a complaint, nor immunity from inspections under RCW 49.17.070 or inspections resulting from a complaint subsequent to the conclusion of the consultative period. This section shall not be construed as requiring an inspection under RCW 49.17.070 of any work place which has been visited for consultative purposes. However, in the event of a subsequent inspection, the director, or his authorized representative, may in his discretion take into consideration any information obtained during the consultation visit of that work place in determining the nature of an alleged violation and the amount of penalties to be assessed, if any. Such rules and regulations to be promulgated pursuant to this section shall provide that in all instances of serious violations as defined in RCW 49.17.180(6) which are disclosed in any consultative period, shall be corrected within a specified period of time at the expiration of which an inspection will be conducted under the authority of RCW 49.17.070. All employers requesting consultative services shall be advised of the provisions of this section and the rules adopted by the director relating to the voluntary compliance program. The director may provide by rule for the frequency, manner, and method of the rendering of consultative services to employers, and for the scheduling and priorities in granting applications consistent with the availability of personnel, and in such a manner as not to jeopardize the enforcement requirements of this chapter.

Enacted by Laws 1973, ch. 80, § 25.

**Law Review Commentaries**

Washington plan constituting alternative to preemption under Federal Occupational Safety and Health Act of 1970; consultation inspection. 9 Gonzaga L.Rev. 627.

**Library References**

Labor Relations ⇐10.
C.J.S. Labor Relations § 12.

### 49.17.260. Statistics—Investigations—Reports

In furtherance of the objects and purposes of this chapter, the director shall develop and maintain an effective program of collection, compilation, and analysis of industrial safety and health statistics. The director, or his authorized representative, shall investigate and analyze industrial catastrophies, serious injuries, and fatalities occurring in any work place subject to this chapter, in an effort to ascertain whether such injury or fatality occurred as the result of a violation of this chapter, or any safety and health standard, rule, or order promulgated pursuant to this chapter, or if not, whether a safety and health standard or rule should be promulgated for application to such circumstances. The director shall adopt rules relating to the conducting and reporting of such investigations. Such investigative report shall be deemed confidential and only available upon order of the superior court after notice to the director and an opportunity for hearing: *Provided*, That such investigative reports shall be made available without the necessity of obtaining a court order, to employees of governmental agencies in the performance of their official duties, to the injured workman or his legal representative or his labor organization representative, or to the legal representative or labor organization representative of a deceased workman who was the subject of an investigation, or to the employer of the injured or deceased workman or any other employer or person whose actions or business operation is the subject of the report of investigation, or any attorney representing a party in any pending legal action in which an investigative report constitutes relevant and material evidence in such legal action.

Enacted by Laws 1973, ch. 80, § 26.

**Administrative Code References**

Record keeping and reporting, see WAC 296-27-010 et seq.

**Law Review Commentaries**

Records and reports under Federal Occupational Safety and Health Act of 1970. 9 Gonzaga L.Rev. 589.

**Library References**

Labor Relations ⇔10.

C.J.S. Labor Relations § 12.

### 49.17.270. Administration of chapter

The department shall be the sole and paramount administrative agency responsible for the administration of the provisions of this chapter, and any other agency of the state or any municipal corporation or political subdivision of the state having administrative authority over the inspection, survey, investigation, or any regulatory or enforcement authority of safety and health standards related to the health and safety of employees in any work place subject to this chapter, shall be required, notwithstanding any statute to the contrary, to exercise such authority as provided in this chapter and subject to interagency agreement or agreements with the department made under the authority of the interlocal cooperation act (chapter 39.34 RCW) relative to the procedures to be followed in the enforcement of this chapter: *Provided*, That in relation to employers using or possessing sources of ionizing radiation the department of labor and industries and the department of social and health services shall agree upon mutual policies, rules, and regulations compatible with policies, rules, and regulations adopted pursuant to chapter 70.98 RCW insofar as such policies, rules, and regulations are not inconsistent with the provisions of this chapter.

Enacted by Laws 1973, ch. 80, § 27.

EMPLOYER TRUSTEES
DERALD SCHOON
SECRETARY
P. D. KOON
RETIREMENT
WILLIAM REEVES
LEGAL
HARVEY W. MARLIN
TRAINING
EMPLOYEE TRUSTEES
RAY LEE
CHAIRMAN
MANO FREY
TRAINING
JIM SAMPSON
LEGAL
JOE THOMAS
RETIREMENT
TRAINING DIRECTOR
LESLIE N. LAUINGER
AFFILIATED WITH:
LABORERS-AGC
EDUCATION & TRAINING
FUND

# Alaska Laborers Training School

13500 OLD SEWARD HIGHWAY • (907) 345-3853
ANCHORAGE, ALASKA 99515

ADMINISTERED BY
LABOR TRUST SERVICES

January 21, 1987

Nilo Koponen
Representative
PO Box V
Juneau, Alaska 99811

Dear Represtative Koponen:

I am writing in regards to a proposal being made for increased fines for contractors and companies who violate health and safety regulations.

The current situation gives OSHA the authority to levy fines for violation of health and safety standards, however, this can be minimal in effect. Some contractors would rather pay a minimal fine than get the proper equipment to safely perform the job. It simply boils down to dollars and cents. Proper equipment, adequate work crews, good personal protective equipment all cost money. Fines are often the cheaper alternative if your caught.

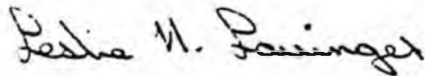
Most contractors are concerned about health and safety and enforce it on their projects. However, there are always those few who cut corners at the expense of health and safety and as a result we have injuries or, at the least, increasing risks.

Workmans Compensation rates are soaring. The construction industry is fiercely competitive and some positive steps should be taken to ensure that minimum safety and health standards are adhered to. This proposal would show that the state is serious about safety and health requirements on the job.

Some would probably say to increase fines would adversely affect business. But why would this be the case if they are following the rules that the state has already set forth. Furthermore, if there is a question about what is right or wrong, safe or unsafe, being in compliance or not, than a contractor or company can call OSHA's voluntary compliance division and get a "free" inspection to help clear up any questions and ensure a safe and healthy workplace.

I believe it is time to look at the area of safety and health compliance. Too many people are hurt on jobsites. Training is important but enforcement is crucial. Enforcement with some teeth. It would be a positive reinforcement for good companies and a strong signal to those cutting corners. The state can say that they mean business when it comes to health and safety. We all gain in the long run as well. The owner gets a safer job, the contractor may see insurance rates go lower, the state sees fewer workers comp. cases, and fewer workers are hurt. Safety really does pay. Stiffer penalties for violations would help convince the disbelievers.

Sincerely,



Leslie N. Lauinger
Training Director

LNL/cz

| | | | |
|---|---|---|---|
| Bill No. | House Bill No. 53 | Date | January 27, 1987 |
| Title | "An Act relating to penalties for violation of workplace safety laws." | Contact: | Eileen Plate<br>465-2700<br><br>Richard Arab<br>465-4856 |

Under House Bill 53, the penalties assessed by the Department of Labor for violations of Alaska's Occupational Safety and Health law and regulations would be increased.

Specifically, the provisions of this bill:

(1) increase the maximum penalty for a willful or repeat violation from $10,000 to $25,000;

(2) establish a $1000 minimum penalty for a serious violation; and increase the maximum penalty for a serious or failure to abate violation from $1,000 to $25,000;

(3) increase the maximum penalty for a non-serious violation from $1,000 to $10,000;

(4) increase the maximum penalty for a willful or repeat violation which results in the death of a worker from $10,000 to $150,000; and increase from $20,000 to $500,000 the maximum penalty for a second conviction of a willful or repeat violation causing death;

(5) increase from $10,000 to $25,000 the maximum penalty for falsifying or otherwise misrepresenting occupational safety and health records or documents; and

(6) increase the maximum penalty for a violation of occupational safety and health posting requirements from $1,000 to $5,000.

The penalties in effect have not been increased since Alaska's occupational safety and health law was initially enacted in 1973.

More important than providing for an overdue inflationary increase in the penalty system, however, the increased penalties would serve as an effective deterrent to workplace safety and health violations. This, of course, will translate into safer workplaces, and a reduced risk of injury and illness to Alaska's workers.

An increased emphasis on worker safety and health is particularly important in times of economic decline, such as are presently being experienced. When cost-saving measures are implemented by employers during recessionary periods, equipment maintenance and replacement are diminished, and the need to increase worker productivity often results in unsafe "shortcuts" that would not be taken or even considered in more prosperous times. The deterrent effect of increased penalties would, therefore, assure that implementation of cost-saving measures by Alaska business is not at the expense of or to the detriment of the safety and health of Alaska's workers.

**POSITION PAPER/Department of Labor**

The Department of Labor supports the concept of increasing penalties for violations of Alaska's occupational safety and health law and regulations as provided in House Bill 53. However, the Department would recommend that the $25,000 maximum penalty proposed for serious and for failure to abate violations each be reduced to $10,000; and that the $10,000 maximum proposed for non-serious violations be reduced to $5,000. The Department feels that these lesser maximum penalties will still produce the desired deterrent effect.

The following specific amendments to House Bill 53 would be required to achieve this:

1. change line 20 on page 1 to read:

   less than [UP TO] $1,000 <u>and not more than $10,000</u> for each violation.

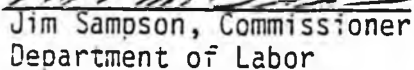
2. change line 4 on page 2 to read:

   up to <u>$5,000</u> [$1,000] for each violation.

3. change line 9 on page 2 to read:

   than <u>$10,000</u> [$1,000] for each day during which the failure to correct

APPROVED:



Jim Sampson, Commissioner
Department of Labor

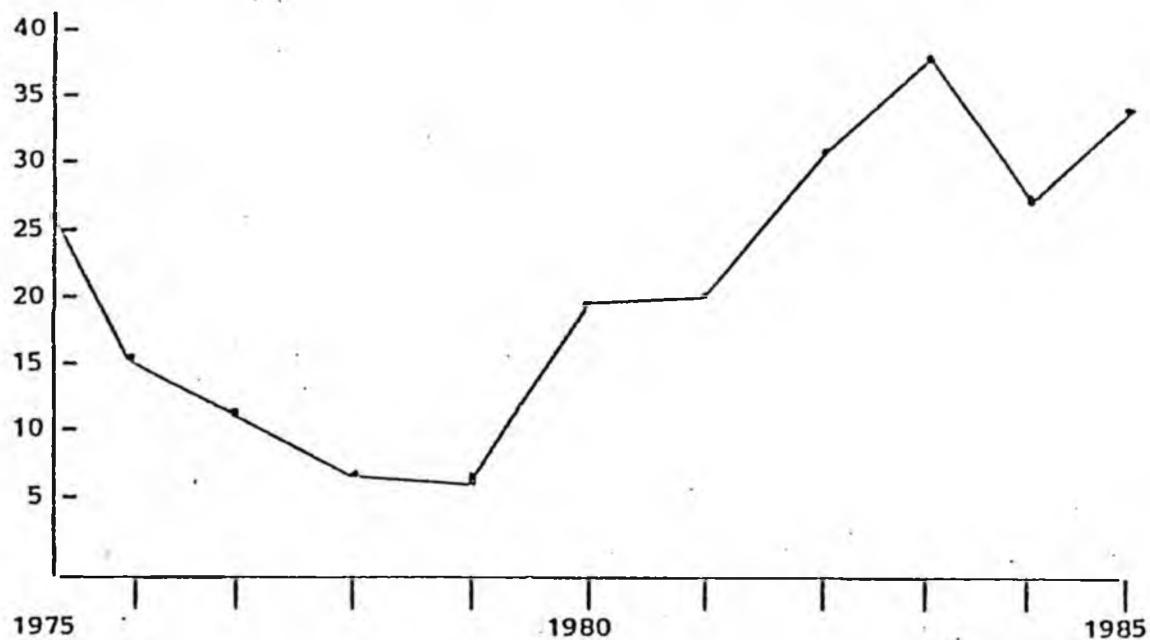
Virgin Islands 2.8 2.4

D

Incidence rates of Recordable Occupational Injuries and Illnesses
Comparison of all States - Private Sector
1983 to 1984

| | 1983 | 1984 |
|---|---|---|
| USA | 7.6 | 8.0 |
| | | |
| Maine | 11.0 | 13.2 |
| Oregon | 9.8 | 10.6 |
| Alaska | 10.6 | 10.3 |
| Vermont | 9.2 | 10.0 |
| Hawaii | 10.6 | 10.0 |
| Washington | 9.7 | 9.9 |
| Oklahoma | 8.9 | 9.8 |
| Arizona | 9.3 | 9.5 |
| California | 9.1 | 9.3 |
| Utah | 8.5 | 9.2 |
| Nevada | 9.0 | 9.0 |
| Florida | 8.7 | 8.9 |
| Nebraska | 8.4 | 8.8 |
| New Mexico | 7.8 | 8.7 |
| Tennessee | 7.9 | 8.6 |
| Wyoming | 7.9 | 8.6 |
| Montana | | 8.5 |
| Rhode Island | 8.3 | 8.4 |
| Connecticut | 8 0 | 8.3 |
| Alabama | 7.9 | 8.3 |
| Kentucky | 7.6 | 8.3 |
| Iowa | 7.8 | 8.1 |
| Arkansas | 8.1 | 8.0 |
| Mississippi | | 8.0 |
| Missouri | 7.5 | 8.0 |
| Louisiana | 7.4 | 7.9 |
| Maryland | 7.6 | 7.8 |
| Minnesota | 7.3 | 7.7 |
| Kansas | | 7.7 |
| Indiana | 7.3 | 7.7 |
| Virginia | 7.0 | 7.6 |
| Michigan | 6.8 | 7.6 |
| North Carolina | 6.8 | 7.2 |
| West Virginia | 6.7 | 7.2 |
| South Carolina | 6.7 | 6.9 |
| Delaware | 5.3 | 5.5 |
| Puerto Rico | 4.2 | 3.9 |
| American Samoa | 2.5 | 3.0 |
| Guam | 2.7 | 2.8 |
| Virgin Islands | 2.8 | 2.4 |
| Texas | | |
| Illinois | | |
| New Hampshire | | |
| New Jersey | | |
| Wisconsin | | |
| Massachusetts | | |
| Idaho | | |
| Georgia | | |
| Ohio | | |
| South Dakota | | |
| North Dakota | | |
| Colorado | | |
| Pennsylvania | | |
| New York | | |

### Alaska Injury and Illness Rate
### Percentage Above National Average




### Alaskan versus National Incidence Rates By Year

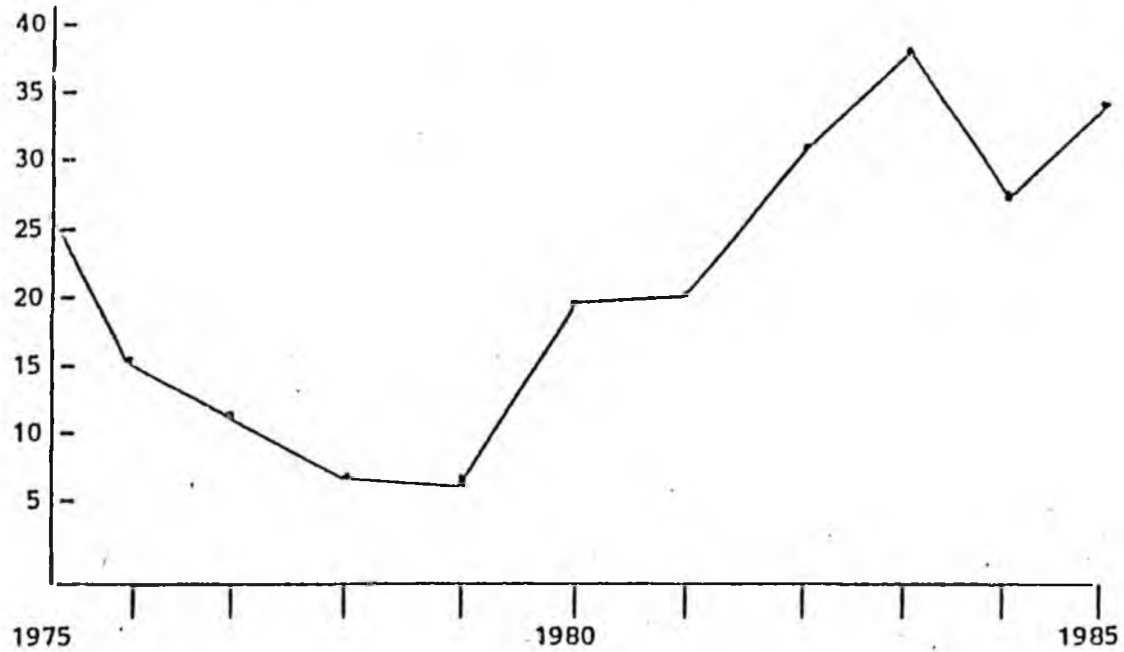
| | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 | 1981 | 1982 | 1983 | 1984 | 1985 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Alaska | 11.5 | 10.7 | 10.4 | 10.0 | 10.1 | 10.4 | 10.0 | 10.3 | 10.6 | 10.3 | 10.7 |
| U.S. | 9.1 | 9.2 | 9.3 | 9.4 | 9.5 | 8.7 | 8.3 | 7.7 | 7.6 | 8.0 | 7.9 |
| Percentage Above National Average | 26.0 | 16.3 | 11.8 | 6.38 | 6.3 | 19.5 | 20.4 | 33.7 | 39.4 | 28.0 | 35.0 |

# CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

02-576(2/77)

Alaska Injury and Illness Rate
Percentage Above National Average




Alaskan versus National Incidence Rates By Year

| | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 | 1981 | 1982 | 1983 | 1984 | 1985 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Alaska | 11.5 | 10.7 | 10.4 | 10.0 | 10.1 | 10.4 | 10.0 | 10.3 | 10.6 | 10.3 | 10.7 |
| U.S. | 9.1 | 9.2 | 9.3 | 9.4 | 9.5 | 8.7 | 8.3 | 7.7 | 7.6 | 8.0 | 7.9 |
| Percentage Above National Average | 26.0 | 16.3 | 11.8 | 6.38 | 6.3 | 19.5 | 20.4 | 33.7 | 39.4 | 28.0 | 35.0 |

# Sample of Penalty Structure

Other-than-Serious:[1]

| Number of Employees | Present Penalty | Penalty under HB 53 |
|---|---|---|
| 3 | $60 | $600 |
| 50 | $240 | $2,400 |
| 200 | $300 | $3,000 |

Serious:

| Number of Employees | Present Penalty | Penalty under HB 53 |
|---|---|---|
| 3 | $60 | $1,280 |
| 13 | $240 | $4,350 |
| 65 | $450 | $10,620 |
| 300 | $550 | $13,150 |

Repeated Violations:[2]

| Number of Employees | Present Penalty | Penalty under HB 53 |
|---|---|---|
| 3 | $120 | $2,560 |
| 13 | $480 | $8,700 |
| 65 | $900 | $21,240 |
| 200 | $1,100 | $26,300 |

Willful Violations:

| Number of Employees | Present Penalty | Penalty under HB 53 |
|---|---|---|
| 3 | $1,300 | $18,000 |
| 50 | $2,400 | $24,000 |
| 100 | $5,000 | $50,000 |

---

[1] It is the department's current policy not to assess a penalty for "other" violations unless 10 or more violations are found at the worksite.

[2] If the violation is repeated a second time, the original penalty is multiplied by four and if it is repeated a third time the original penalty is multiplied by 10.

Failure to Abate Violation:[3]

| Number of Employees | Present Penalty | Penalty under HB 53 |
|---|---|---|
| 3 | $240 | $2,400 |
| 13 | $1,680 | $30,450 |
| 65 | $4,050 | $95,580 |
| 300 | $5,500 | $131,500 |

Posting Violations:

| | Present Penalty | Penalty under HB 53 |
|---|---|---|
| Failure to post the "Safety and Health Protection on the Job" poster | $60 | $300 |
| Failure to post the "Annual Summary of Occupational Injuries and Illnesses" form | $100 | $500 |
| Failure to post a citation issued by the Department of Labor | $250 | $1,250 |
| Failure to post the "Right-to-Know poster | $60 | $300 |

[3] Note the maximum penalty under HB 53 for each day a violation is uncorrected is $25,000. In calculating these penalties it is assumed that the violation was uncorrected for 10 days

Criminal Willful:[4]

| | Present Penalty | Penalty under HB 53 |
|---|---|---|
| | $10,000 | $150,000 |

[4] The department has never issued a criminal willful violation; however, if such a violation was found, the department would ask for the maximum penalty allowed under the law.

## Comparison of Alaska and U.S. Injury/Illness Rate* by Industry Type
## 1980 - 1984

| Industry | 1980 Alaska / U.S. | 1980 % Above U.S. Average | 1981 Alaska / U.S. | 1981 % Above U.S. Average | 1982 Alaska / U.S. | 1982 % Above U.S. Average | 1983 Alaska / U.S. | 1983 % Above U.S. Average | 1984 Alaska / U.S. | 1984 % Above U.S. Average |
|---|---|---|---|---|---|---|---|---|---|---|
| Oil and Gas Production | 12.4 / 13.4 | -7% | 15.8 / 14.1 | 12% | 15.3 / 12.1 | 26% | 11.8 / 9.8 | 20% | 10.6 / 11.8 | -10% |
| Construction | 16.5 / 15.7 | 5% | 17.2 / 15.1 | 14% | 19.4 / 14.6 | 33% | 17.6 / 14.8 | 19% | 16.9 / 15.5 | 9% |
| Seafood Processing Canned | 21.4 / 20.2 | 6% | 19.9 / 22.4 | -11% | 18.6 / 17.8 | 5% | 21.4 / 17.1 | 25% | 25.0 / - | - |
| Seafood Processing Frozen | 31.7 / 19.4 | 63% | 24.6 / 18.6 | 32% | 21.8 / 17.1 | 28% | 32.9 / 17.9 | 84% | 26.1 / 17.3 | 51% |
| Lumber | 32.5 / 18.6 | 75% | 26.8 / 17.6 | 52% | 26.9 / 16.9 | 59% | 31.2 / 18.3 | 70% | 43.0 / 19.6 | 119% |
| Transportation | 12.2 / 9.4 | 30% | 11.6 / 9.0 | 29% | 10.7 / 8.5 | 26% | 11.4 / 8.2 | 39% | 12.1 / 8.8 | 38% |
| Wholesale Trade | 10.9 / 8.2 | 33% | 9.8 / 7.7 | 27% | 9.6 / 7.1 | 35% | 12.3 / 7.0 | 76% | 11.7 / 7.2 | 62% |
| Retail Trade | 6.8 / 7.1 | -4% | 7.4 / 7.1 | 4% | 9.3 / 7.2 | 29% | 9.6 / 7.3 | 31% | 9.5 / 7.5 | 27% |
| Services | 4.3 / 5.2 | -17% | 4.3 / 5.0 | -14% | 4.4 / 4.9 | -10% | 4.7 / 5.1 | -8% | 5.1 / 5.2 | -2% |

* per 100 full-time workers

# CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

02–576(2/77)

Comparison of Alaska and U.S. Injury/Illness Rate* by Industry Type
1980 - 1984

| | 1980 | | | 1981 | | | 1982 | | | 1983 | | | 1984 | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Alaska | U.S. | % Above U.S. Average | Alaska | U.S. | % Above U.S. Average | Alaska | U.S. | % Above U.S. Average | Alaska | U.S. | % Above U.S. Average | Alaska | U.S. | % Above U.S. Average |
| Oil and Gas Production | 12.4 | 13.4 | -7% | 15.8 | 14.1 | 12% | 15.3 | 12.1 | 26% | 11.8 | 9.8 | 20% | 10.6 | 11.8 | - [illegible]0% |
| Construction | 16.5 | 15.7 | 5% | 17.2 | 15.1 | 14% | 19.4 | 14.6 | 33% | 17.6 | 14.8 | 19% | 16.9 | 15.5 | 9% |
| Seafood Processing Canned | 21.4 | 20.2 | 6% | 19.9 | 22.4 | -11% | 18.6 | 17.8 | 5% | 21.4 | 17.1 | 25% | 25.0 | - | - |
| Seafood Processing Frozen | 31.7 | 19.4 | 63% | 24.6 | 18.6 | 32% | 21.8 | 17.1 | 28% | 32.9 | 17.9 | 84% | 26.1 | 17.3 | 51% |
| Lumber | 32.5 | 18.6 | 75% | 26.8 | 17.6 | 52% | 26.9 | 16.9 | 59% | 31.2 | 18.3 | 70% | 43.0 | 19.6 | 1[illegible]9% |
| Transportation | 12.2 | 9.4 | 30% | 11.6 | 9.0 | 29% | 10.7 | 8.5 | 26% | 11.4 | 8.2 | 39% | 12.1 | 8.8 | [illegible]8% |
| Wholesale Trade | 10.9 | 8.2 | 33% | 9.8 | 7.7 | 27% | 9.6 | 7.1 | 35% | 12.3 | 7.0 | 76% | 11.7 | 7.2 | [illegible]2% |
| Retail Trade | 6.8 | 7.1 | -4% | 7.4 | 7.1 | 4% | 9.3 | 7.2 | 29% | 9.6 | 7.3 | 31% | 9.5 | 7.5 | [illegible]7% |
| Services | 4.3 | 5.2 | -17% | 4.3 | 5.0 | -14% | 4.4 | 4.9 | -10% | 4.7 | 5.1 | -8% | 5.1 | 5.2 | [illegible]2% |

* per 100 full-time workers

# MEMORANDUM State of Alaska

TO: Sheri Paul
Aide to Representive Koponen

DATE: January 23, 1987

FILE NO:

TELEPHONE NO: 465-4854

FROM: Richard Arab, Deputy Director
Occupational Safety and Health

SUBJECT: Alaska Occupational Safety and Health Activity for FY 1984 - 1986

Attached are computer printouts for the past three years that shows the major activity measures for Alaska's program. The report is divided into two columns, AK10 represents activity performed by our safety compliance officers and AK20 represents activity performed by our industrial health enforcement staff. The categories on the computer printout are written for someone familiar with our program and therefore, I will be glad to explain them if they are confusing.

I was able to compile data for federal OSHA activity for FY 1986. OSHA covers approximately 27 states including such major states as New York, Illinois and Texas. It is, therefore, difficult to compare OSHA's experience with a single state such as Alaska. Please keep this in mind when you look at OSHA's totals.

cc: Eileen Plate w/attachments

02-001A (Rev. 10/79)

REGION 10 STATE 2 - AK

| (18B) STATE DATA ONLY | DIVISION AK 10 | DIVISION AK 20 | STATE TOTAL | REGION TOTAL |
|---|---|---|---|---|
| TOTAL INSPECTIONS | 771 | 141 | 912 | 912 |
| RECORDS INSPECTIONS | 48 | 0 | 48 | 48 |
| INSPECTIONS BY CATEGORY | | | | |
| SAFETY INSPECTIONS | 768 | 5 | 773 | 773 |
| HEALTH INSPECTIONS | 3 | 136 | 139 | 139 |
| INSPECTIONS BY TYPE | | | | |
| UNPROGRAMMED | | | | |
| ACCIDENT | 12 | 3 | 15 | 15 |
| COMPLAINT | 65 | 50 | 115 | 115 |
| REFERRAL | 71 | 5 | 76 | 76 |
| MONITORING | 0 | 0 | 0 | 0 |
| VARIANCE | 1 | 0 | 1 | 1 |
| FOLLOW-UP | 9 1.1% | 3 = 2.1% Fails limit to 5% | 12 | 12 |
| UNPROGRAMMED RELATED | 17 | 8 | 25 | 25 |
| OTHER | 0 | 0 | 0 | 0 |
| PROGRAMMED | | | | |
| PLANNED | 590 | 67 | 657 | 657 |
| PROGRAMMED RELATED | 6 | 5 | 11 | 11 |
| OTHER | 0 | 0 | 0 | 0 |
| OTHER | 0 | 0 | 0 | 0 |
| INSPECTIONS BY INDUSTRY | | | | |
| CONSTRUCTION | 509 | 35 | 544 | 544 |
| MARITIME | 0 | 1 | 1 | 1 |
| MANUFACTURING | 128 | 26 | 154 | 154 |
| OTHER | 134 | 79 | 213 | 213 |
| INSPECTIONS BY OWNERSHIP | | | | |
| PRIVATE SECTOR | 747 | 120 | 867 | 867 |
| PUBLIC SECTOR | 24 | 21 | 45 | 45 |
| FEDERAL AGENCY | 0 | 0 | 0 | 0 |

AK 10 = Safety [illegible]

AK 20 = [illegible]

(18B) STATE DATA ONLY

| | DIVISION AK 10 | DIVISION AK 20 | STATE TOTAL | REGION TOTAL |
|---|---|---|---|---|
| INSPECTION CLASSIFICATION | | | | |
| SAFETY PLANNING GUIDE | 639 | 5 | 644 | 644 |
| HEALTH PLANNING GUIDE | 1 | 46 | 47 | 47 |
| LOCAL EMPHASIS PROGRAM | 82 | 25 | 107 | 107 |
| NATIONAL EMPHASIS PROGRAM | 71 | 11 | 82 | 82 |
| MIGRANT FARMWORKER CAMP | 0 | 0 | 0 | 0 |
| EMPLOYEE INFORMATION | | | | |
| EMPLOYED IN ESTABLISHMENT | 20139 | 6740 | 26879 | 26879 |
| COVERED BY INSPECTION | 11631 | 4022 | 15653 | 15653 |
| AVG CASE HRS PER INSP | | | | |
| SAFETY | 10 | 33 | 10 | 10 |
| HEALTH | 17 | 30 | 30 | 30 |
| VIOLATIONS | | | | |
| WILLFUL | 0 | 0 | 0 | 0 |
| REPEAT | 29 | 1 | 30 | 30 |
| SERIOUS | 268 | 12 | 280 | 280 |
| OTHER | 1024 | 220 | 1244 | 1244 |
| F-T-A | 1 | 0 | 1 | 1 |
| TOTAL | 1322 | 233 | 1555 | 1555 |
| PENALTIES | | | | |
| WILLFUL | 0 | 0 | 0 | 0 |
| REPEAT | 9170 | 1000 | 10170 | 10170 |
| SERIOUS | 45825 | 4610 | 50435 | 50435 |
| OTHER | 1570 | 1600 | 3170 | 3170 |
| F-T-A | 300 | 0 | 300 | 300 |
| TOTAL | 56865 | 7210 | 64075 | 64075 |
| CONTESTED CASES | | | | |
| INSPECTIONS CONTESTED | 11 | 4 | 15 | 15 |
| INSP W/CITATIONS CONTESTED (%) | 2.3 | 4.8 | 2.7 | 2.7 |
| LAPSE DAYS INSP TO CIT ISSUED | | | | |
| AVG LAPSE SAFETY INSP | 18 | 12 | 18 | 18 |
| AVG LAPSE HEALTH INSP | 36 | 30 | 30 | 30 |
| AVG LAPSE ALL INSP | 18 | 30 | 20 | 20 |

OSHA REPORT INSP8
1 OCT 84 - 30 SEP 85

REGION 10 STATE 2 - AK

U. S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
INSPECTION REPORT

10/16/86
PAGE 1

| (18B) STATE DATA ONLY | DIVISION AK 10 | DIVISION AK 20 | STATE TOTAL | REGION TOTAL |
|---|---|---|---|---|
| TOTAL INSPECTIONS | 749 | 228 | 977 | 977 |
| RECORDS INSPECTIONS | 40 | 0 | 40 | 40 |
| INSPECTIONS BY CATEGORY | | | | |
| SAFETY INSPECTIONS | 747 | 0 | 747 | 747 |
| HEALTH INSPECTIONS | 2 | 228 | 230 | 230 |
| INSPECTIONS BY TYPE | | | | |
| UNPROGRAMMED | | | | |
| ACCIDENT | 33 | 1 | 34 | 34 |
| COMPLAINT | 93 | 91 | 184 | 184 |
| REFERRAL | 54 | 13 | 67 | 67 |
| MONITORING | 0 | 1 | 1 | 1 |
| VARIANCE | 0 | 0 | 0 | 0 |
| FOLLOW UP | 10.9% | 1.4% | 8 | 8 |
| UNPROGRAMMED RELATED | 97 | 42 | 139 | 139 |
| OTHER | 0 | 0 | 0 | 0 |
| PROGRAMMED | | | | |
| PLANNED | 448 | 78 | 526 | 526 |
| PROGRAMMED RELATED | 17 | 1 | 18 | 18 |
| OTHER | 0 | 0 | 0 | 0 |
| OTHER | 0 | 0 | 0 | 0 |
| INSPECTIONS BY INDUSTRY | | | | |
| CONSTRUCTION | 510 | 62 | 572 | 572 |
| MARITIME | 0 | 0 | 0 | 0 |
| MANUFACTURING | 94 | 55 | 149 | 149 |
| OTHER | 145 | 111 | 256 | 256 |
| INSPECTIONS BY OWNERSHIP | | | | |
| PRIVATE SECTOR | 729 | 178 | 907 | 907 |
| PUBLIC SECTOR | 20 | 50 | 70 | 70 |
| FEDERAL AGENCY | 0 | 0 | 0 | 0 |

AK 10 = Safety Compliance
AK 20 = Health Compliance

INSPECTION REPORT

REGION 10 STATE 2 - AK

| (18B) STATE DATA ONLY | DIVISION AK 10 | DIVISION AK 20 | STATE TOTAL |
|---|---|---|---|
| INSPECTION CLASSIFICATION | | | |
| SAFETY PLANNING GUIDE | 599 | 0 | 599 |
| HEALTH PLANNING GUIDE | 1 | 92 | 93 |
| LOCAL EMPHASIS PROGRAM | 67 | 30 | 97 |
| NATIONAL EMPHASIS PROGRAM | 2 | 28 | 30 |
| MIGRANT FARMWORKER CAMP | 0 | 0 | 0 |
| EMPLOYEE INFORMATION | | | |
| EMPLOYED IN ESTABLISHMENT | 33953 | 11222 | 45175 |
| COVERED BY INSPECTION | 10751 | 7276 | 18027 |
| AVG CASE HRS PER INSP | | | |
| SAFETY | 12 | 0 | 12 |
| HEALTH | 79 | 21 | 22 |
| VIOLATIONS | | | |
| WILLFUL | 1 | 0 | 1 |
| REPEAT | 17 | 1 | 18 |
| SERIOUS | 306 | 19 | 325 |
| OTHER | 1021 | 280 | 1301 |
| F-T-A | 1 | 4 | 5 |
| TOTAL | 1346 | 304 | 1650 |
| PENALTIES | | | |
| WILLFUL | 8000 | 0 | 8000 |
| REPEAT | 7380 | 120 | 7500 |
| SERIOUS | 53860 | 3230 | 57090 |
| OTHER | 0 | 300 | 300 |
| F-T-A | 0 | 2400 | 2400 |
| TOTAL | 69240 | 6050 | 75290 |
| CONTESTED CASES | | | |
| INSPECTIONS CONTESTED | 14 | 1 | 15 |
| INSP W/CITATIONS CONTESTED (%) | 3.2 | 1.0 | 2.8 |
| LAPSE DAYS INSP TO CIT ISSUED | | | |
| AVG LAPSE SAFETY INSP | 24 | 0 | 24 |
| AVG LAPSE HEALTH INSP | 11 | 36 | 36 |
| AVG LAPSE ALL INSP | 24 | 36 | 25 |

[illegible] OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION — PAGE 1

INSPECTION REPORT

Actual 1983

REGION 10 STATE 2 - AK

| (100) STATE DATA ONLY | DIVISION AK 10 | DIVISION AK 20 | STATE TOTAL | REGION TOTAL |
|---|---|---|---|---|
| TOTAL INSPECTIONS | 601 | 63 | 664 | 664 |
| RECORDS INSPECTIONS | 84 | 0 | 84 | 84 |
| INSPECTIONS BY CATEGORY | | | | |
| SAFETY INSPECTIONS | 551 | 0 | 551 | 551 |
| HEALTH INSPECTIONS | 50 | 63 | 113 | 113 |
| INSPECTIONS BY TYPE | | | | |
| UNPROGRAMMED | | | | |
| ACCIDENT | 17 | 0 | 17 | 17 |
| COMPLAINT | 86 | 23 | 109 | 109 |
| REFERRAL | 22 | 4 | 26 | 26 |
| MONITORING | 0 | 0 | 0 | 0 |
| VARIANCE | 1 | 0 | 1 | 1 |
| FOLLOW UP | 10 (1.6%) | 0 (0%) | 10 | 10 |
| UNPROGRAMMED RELATED | 53 | 3 | 56 | 56 |
| OTHER | 0 | 0 | 0 | 0 |
| PROGRAMMED | | | | |
| PLANNED | 377 | 25 | 402 | 402 |
| PROGRAMMED RELATED | 35 | 8 | 43 | 43 |
| OTHER | 0 | 0 | 0 | 0 |
| OTHER | 0 | 0 | 0 | 0 |
| INSPECTIONS BY INDUSTRY | | | | |
| CONSTRUCTION | 365 | 25 | 390 | 390 |
| MARITIME | 0 | 0 | 0 | 0 |
| MANUFACTURING | 66 | 8 | 74 | 74 |
| OTHER | 170 | 30 | 200 | 200 |
| INSPECTIONS BY OWNERSHIP | | | | |
| PRIVATE SECTOR | 221 | 57 | 278 | 278 |
| PUBLIC SECTOR | 15 | 6 | 21 | 21 |
| FEDERAL AGENCY | 0 | 0 | 0 | 0 |

AK 10 = Safety Compliance

AK 20 = Health Compliance

REGION 10 STATE AK

| (NON) STATE DATA ONLY | DIVISION AK 10 | DIVISION AK 20 | STATE TOTAL | REGION TOTAL |
|---|---|---|---|---|
| **INSPECTION CLASSIFICATION** | | | | |
| SAFETY PLANNING GUIDE | 330 | 0 | 330 | 330 |
| HEALTH PLANNING GUIDE | 28 | 19 | 47 | 47 |
| LOCAL EMPHASIS PROGRAM | 104 | 13 | 117 | 117 |
| NATIONAL EMPHASIS PROGRAM | 0 | 6 | 6 | 6 |
| MIGRANT FARMWORKER CAMP | 0 | 0 | 0 | 0 |
| **EMPLOYEE INFORMATION** | | | | |
| EMPLOYED IN ESTABLISHMENT | 29907 | 1910 | 33097 | 33097 |
| COVERED BY INSPECTION | 8376 | 837 | 9213 | 9213 |
| **AVG CASE HRS PER INSP** | | | | |
| SAFETY | 11 | 0 | 11 | 11 |
| HEALTH | 27 | 23 | 25 | 25 |
| **VIOLATIONS** | | | | |
| WILLFUL | 3 | 0 | 3 | 3 |
| REPEAT | 4 | 0 | 4 | 4 |
| SERIOUS | 193 | 3 | 196 | 196 |
| OTHER | 903 | 11 | 914 | 914 |
| F T A | 2 | 0 | 2 | 2 |
| TOTAL | 1105 | 14 | 1119 | 1119 |
| **PENALTIES** | | | | |
| WILLFUL | 2320 | 0 | 2320 | 2320 |
| REPEAT | 1040 | 0 | 1040 | 1040 |
| SERIOUS | 32965 | 240 | 33205 | 33205 |
| OTHER | 1290 | 0 | 1290 | 1290 |
| F T A | 2000 | 0 | 2000 | 2000 |
| TOTAL | 39615 | 240 | 39855 | 39855 |
| **CONTESTED CASES** | | | | |
| INSPECTIONS CONTESTED | 23 | 0 | 23 | 23 |
| INSP W/CITATIONS CONTESTED (%) | 6.7 | 0.0 | 6.6 | 6.6 |
| **LAPSE DAYS INSP TO CIT ISSUED** | | | | |
| AVG LAPSE SAFETY INSP | 21 | 0 | 21 | 21 |
| AVG LAPSE HEALTH INSP | 47 | 50 | 50 | 50 |
| AVG LAPSE ALL INSP | 23 | 50 | 23 | 23 |

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(d) The OSHA Review Board shall notify the authorized representative of the affected employees that an employer is contesting a citation or notification issued under (a) or (b) of this section and afford the representative an opportunity to participate in the hearing on the matter.

(e) An employer, an affected employee or a representative of affected employees has 15 working days from the receipt of a citation within which to notify the commissioner and the OSHA Review Board that the period of time fixed in the citation for the abatement of a violation is unreasonable. The OSHA Review Board shall afford an opportunity for a hearing and thereafter issue an order, based on findings of fact, affirming or modifying the original period for abatement, and the order is final 30 days after its issuance. If the contest is initiated by the employer, the OSHA Review Board shall notify the employees in the same manner as provided by (d) of this section. If the contest is initiated by the employees, the OSHA Review Board shall notify the employer and afford the employer an opportunity to participate in the hearing on the matter. (§ 7 ch 72 SLA 1973; am § 2 ch 26 SLA 1983)

**Effect of amendments.** — The 1983 amendment, in subsection (a), inserted "or after an employer's failure to correct a violation for which the employer has been issued a notice" and "or expiration of the time period set out in the notice" in the first sentence, substituted "after receipt of the penalty notice" for "from the receipt of the notice" in the second sentence, removed personal pronouns from the first and second sentences, and made a minor word change in the second sentence.

**Opinions of attorney general.** — Agencies assessed penalties under this section and AS 18.60.095 must, as a general rule, pay those penalties, within the limits of available appropriations, from their operating budgets. In the event an agency wishes to contest a citation, the agency may be represented by its assigned counsel in the Attorney General's Office before the Occupational Safety and Health Act Review Board; if the agency chooses to contest an adverse determination by the review board, outside counsel, funded by the agency, will have to be employed. March 27, 1980 Op. Att'y Gen.

NOTES TO DECISIONS

The 1973 amendments to this title made mandatory the enforcement of safety regulations in most instances. Wallace v. State, Sup. Ct. Op. No. 1352 (File No. 2683), 557 P.2d 1120 (1976).

**Sec. 18.60.095. Penalties.** (a) An employer who wilfully or repeatedly violates a provision of AS 18.60.010 — 18.60.105 that is applicable to the employer or a standard or regulation adopted under AS 18.60.010 — 18.60.105 may be assessed by the commissioner a civil penalty of not more than $10,000 for each violation.

(b) An employer who receives a citation for a serious violation of a provision of AS 18.60.010 — 18.60.105 that is applicable to the employer or of a standard or regulation adopted under AS 18.60.010 — 18.60.105 shall be assessed by the commissioner a civil penalty of up

to $1,000 for each violation. For purposes of this subsection, a serious violation is considered to exist if the violation creates in the place of employment a substantial probability of death or serious physical harm. However, a serious violation is not considered to exist if the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(c) An employer who receives a citation for a violation of a provision of AS 18.60.010 — 18.60.105 that is applicable to the employer of a standard or regulation adopted under AS 18.60.010 — 18.60.105, and the violation is specifically determined not to be of a serious nature, may be assessed by the commissioner a civil penalty of up to $1,000 for each violation.

(d) An employer who fails to correct a violation within the period permitted for its correction for which a citation has been issued may be assessed by the commissioner a civil penalty of not more than $1,000 for each day during which the failure to correct the violation continues.

(e) An employer who wilfully or repeatedly violates a provision of AS 18.60.010 — 18.60.105 that is applicable to the employer or a standard or regulation adopted under AS 18.60.010 — 18.60.105, and the violation causes death to an employee, upon conviction, is punishable by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both. However, upon a second conviction after a prior conviction for a violation causing death, an employer is punishable by a fine of not more than $20,000, or by imprisonment for not more than one year, or by both.

(f) A person who knowingly makes a false statement, representation, or certification in an application, record, report, plan or other document filed or required to be maintained under AS 18.60.010 — 18.60.105, upon conviction, is punishable by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

(g) An employer who violates the posting requirements of this chapter shall be assessed by the commissioner a civil penalty of up to $1,000 for each violation.

(h) In assessing a civil penalty, the commissioner shall give due consideration to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations. (§ 7 ch 72 SLA 1973)

**Opinions of attorney general.** — Agencies assessed penalties under AS 18.60.093 and this section must, as a general rule, pay those penalties, within the limits of available appropriations, from their operating budgets. In the event an agency wishes to contest a citation, the agency may be represented by its assigned counsel in the Attorney General's Office before the Occupational Safety and Health Act Review Board; if the agency chooses to contest an adverse determination by the review board, outside counsel, funded by the agency, will have to be employed. March 27, 1980 Op. Att'y Gen.





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**gence.** — See Krall v. Roy
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The state may enforce the criminal penalties set out in subsections (e) and (f) on the Annette Islands Reserve. May 3, 1983 Op. Att'y Gen.

## NOTES TO DECISIONS

**Section and former AS 18.60.090 compared.** — See Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

Whereas former AS 18.60.090 set forth "fines" and "imprisonment" as penalties, this section, which replaced the former section, now specifies "civil penalties" for most violations, saving "fines" and "imprisonment" for serious violations only. Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

**Neither mention tort remedies or nonavailability of contributory negligence.** — See Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

**Defense of contributory negligence not abolished.** — See Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

From indicia concerning former AS 18.60.090 the federal district court was not persuaded the legislature intended to abolish the defense of contributory negligence for a violation of the Alaska General Safety Code or in any way intended to depart from the normal practice of allowing the defense. Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

The Alaska legislature did not intend to deny the defense of contributory negligence to negligence per se based on violations of the Alaska General Safety Code. Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

**The effect of the Alaska General Safety Code and the enabling legislation** is not to place the entire responsibility for the harm on the defendant employer. Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

**Action by injured workman for damages not authorized.** — Nowhere in either AS 18.60.010 — 18.60.105 or regulations can there be found authorization for a claim for relief and award of civil damages to an injured workman for harm resulting from the breach of AS 18.60.010 — 18.60.105 or the General Safety Code. Morris v. City of Soldotna, Sup. Ct. Op. No. 1296 (File No. 2286), 553 P.2d 474 (1976).

**The worker's limited ability to exercise self-protective care because of economic duress** did not persuade the federal district court to construe this article to eliminate the defense of contributory negligence. Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

**Fact finder to sift through facts of each case.** — By retaining the defense of contributory negligence, it remains to the finder of fact to sift through the facts and circumstances of each case and determine whether the employee met that duty. Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

**Applied** in Woods & Rohde, Inc. v. State, Dep't of Labor, Sup. Ct. Op. No. 1433 (File No. 2903), 565 P.2d 138 (1977).

**Sec. 18.60.096. Imminent dangers.** (a) The commissioner, or a designated agent as authorized by the commissioner, may issue orders restraining a particular condition or practice in any place of employment that constitutes a danger that could reasonably be expected to immediately cause death or serious physical harm. The terms of an order issued under this section may require steps to be taken as necessary to avoid, correct, or remove the imminent danger and may prohibit the employment or presence of an individual in locations or under conditions where imminent danger exists. The terms of the order may allow the presence of individuals necessary to avoid, correct, or remove the imminent danger.

(b) When and as soon as a representative of the department concludes that conditions or practices described in (a) of this section exist

FEDERAL OSHA ACTIVITY
FY '86

| | Safety | Health |
|---|---|---|
| Total Inspections | 53,365 | 8,794 |
| **Inspections by Type** | | |
| Unprogrammed | | |
| Accident | 1,383 | 92 |
| Complaint | 4,490 | 4,144 |
| Referral | 2,531 | 1,297 |
| Monitoring | 148 | 139 |
| Variance | 1 | 1 |
| Follow-up | 1,465 | 463 |
| Unprogrammed related | 3,441 | 424 |
| Unprogrammed other | 3 | 33 |
| Programmed | | |
| Planned | 37,149 | 2,073 |
| Programmed related | 1,762 | 74 |
| Programmed other | 992 | 4 |
| **Violations** | | |
| Willful | 222 | 99 |
| Repeat | 2,357 | 365 |
| Serious | 32,215 | 3,239 |
| Other | 73,829 | 14,782 |
| TOTAL | 109,123 | 18,485 |
| **Penalties** | | |
| Willful | $ 1,558,060 | $1,932,100 |
| Repeat | 1,750,453 | 190,660 |
| Serious | 8,450,045 | 1,164,665 |
| Other | 53,605 | 18,510 |
| TOTAL | $11,812,163 | $3,305,935 |
| Contested Cases: | 1,104 | 251 |

# Job-related injuries on the increase

## Statistics show on-the-job hazards up for hospital, restaurant, hotel workers

By MATT YANCEY
THE ASSOCIATED PRESS

WASHINGTON – Working in the mines is not as dangerous as it used to be, but on-the-job hazards have increased in hospitals, restaurants and hotels, according to government figures on occupational injuries and illnesses.

The number of work-related injuries rose by 86,900 from 1984 to nearly 5.3 million in 1985 and job-caused illnesses rose by 800 to 125,600, the Bureau of Labor Statistics reported Thursday.

Work-related deaths in 1985 totaled 3,750, two-thirds of them in the construction, manufacturing, transportation and public utilities industries. The total is 10 more deaths than in 1984.

As in previous years, the leading cause of death was motor vehicle accidents, accounting for nearly one-third of the fatalities, the BLS said.

Because of a 2 million increase in the number of Americans working full time, the rate of job-related injuries and illnesses fell from 8.0 to 7.9 per every 100 workers, the BLS said.

The rate of injuries and illnesses had increased sharply in 1984, from a record low of 7.6 per 100 workers in 1983.

"This strengthens our belief that we are making progress, because additional workers and longer hours often are associated with greater, rather than fewer job-related injuries and illnesses," said John Pendergrass, head of the Occupational Safety and Health Administration.

The overall figures masked dramatic declines in some traditionally hazardous occupations. Injury rates fell from 13.5 to 10.6 per 100 workers among foresters, from 9.5 to 8.3 per 100 among miners and from 15.4 to 15.0 in construction.

At the same time, it increased from 6.0 to 6.8 per 100 employees among health care workers, from 7.7 to 8.1 per 100 among restaurant employees and from 9.7 to 9.9 among hotel workers.

Margaret Seminario, associate director of occupational safety and health for the AFL-CIO, said the numbers show injuries are decreasing only in declining industries while at the same time they are rising in the rapidly expanding service areas of the economy.

"What that suggests is that we can't have increases in economic activity in this country without also having increases in injury rates," she said. "We need a policy that doesn't rely on recessions to decrease injuries to workers."

Seminario also renewed an ongoing complaint from labor unions that the BLS data under-report the real incidence of job injuries because of 1981 changes by the Reagan administration in OSHA inspection and enforcement policies.

And in an unusual disclaimer on the cover of the report released Thursday, BLS Commissioner Janet L. Norwood also expressed "concern about the completeness of the record keeping upon which the survey is based."

The data is compiled from a BLS survey of OSHA-required injury and illness logs from 280,000 of the nation's 5 million workplaces employing 11 or more full-time workers.

Ms. Norwood said her agency is taking several steps to address what bureau officials acknowledged "may be problems" with the data.

Those problems have been highlighted in recent months by fines totaling $1,184,000 against the Chrysler Corp., Union Carbide Corp., and Fina Corp. for under-reporting injuries and illnesses on logs used by OSHA to enforce health and safety laws by the BLS to track trends in the area.

"We don't have any direct evidence of under-reporting," Associate BLS Commissioner William Eisenberg said Thursday. "But there have been some recent cases where the Labor Department has brought actions against a few firms and people are making allegations that the logs aren't accurate."

The White House Office of Management and Budget earlier this year rejected a request by the BLS to conduct in-plant audits of injury and illness logs using backup medical records at a small sample of plants.

However, OSHA, after coming across the incidences of under-reporting at Carbide, Chrysler and Fina, has launched a pilot survey involving on-site evaluations of the records of 200 companies in two states. The BLS said it is awaiting the results of those surveys.

Unions claim the record problem began in 1981 when the Reagan administration abandoned a previous OSHA policy of trying to inspect all workplaces in hazardous industries and, instead, said it would inspect only those with higher-than-average injury and illness rates based on their logs.

"Employers are being exempted from inspections based on their injury rates," said the AFL-CIO's Seminario. "That's an incentive for them to under-report."

The labor statistics bureau's Eisenberg also there [illegible] a problem in recognizing occupational illnesses such as asbestosis, brown lung and black lung that have long latency periods. Rarely do those cases show up in the data used by the bureau.

Eisenburg said the BLS has asked the National Academy of Sciences to review the entire safety and health statistics system used by the government and possibly develop new methods for estimating the extent of occupational illnesses.

*Option 25: If the United States makes available funds or tax incentives for the building or rebuilding of industry*
- *controls for health and safety hazards could be eligible for the same funds or tax breaks as other construction costs;*
- *companies receiving reindustrialization assistance might be required to design health and safety into their new plant and equipment, either to meet existing standards or to achieve lower exposure levels or safer processes.*

It has been suggested that regulatory requirements have diverted resources from "productive" uses and contributed to economic slowdowns. However, in at least two cases (standards concerning vinyl chloride and cotton dust), new production processes were developed that both benefited worker health and improved productivity. Fitting regulatory activities to productivity concerns can be achieved in two ways: either delaying regulatory requirements until they coincide with planned modernization or using health and safety regulations to "spur" productivity improvements.

*Option 26: Congress could direct OSHA to:*
- *delay the required use of engineering controls, so that the installation of these controls coincides with modernization of an industry;*
- *use health and safety regulations to encourage plant and equipment modernization.*

## Creation of an Occupational Safety and Health Fund

OTA is aware of concern about recent large swings in occupational safety and health policy. Two areas—education and training programs, and research on workplace controls—have had funding reduced in the past few years. The creation of an Occupational Safety and Health Fund might provide more stable and enhanced funding.

Recent U.S. research concerning the use of "washed cotton" to control the hazards of cotton dust also provides a model for cooperative research. This project was funded by Government and industry, with oversight and direction provided by a group of labor, management, and Government officials. Jointly administered research efforts and training programs have also emerged from collective bargaining.

A fund could be established with or without a Government contribution. For example, interested citizens, employers, workers, foundations, and other groups could make voluntary contributions. Or Congress could create a fund. If it becomes a Federal activity, financing could be through a payroll tax on employers or, although this would be more difficult, through a tax or surcharge based on workers' compensation premiums (with some adjustments for the presence of health hazards in various industries). For example, a 0.1 percent employer tax on the total U.S. payroll of $1.6 trillion (in 1982) would result in annual revenues of about $1.6 billion; a 0.01 percent tax would produce $160 million. A 1.0 percent surcharge on workers' compensation premiums (about $25 billion in 1980) would produce annual revenues of $250 million. Another possibility would be to allocate fines collected for violations of OSHA standards to this fund. This would produce less money; in 1983, OSHA's proposed fines totaled $6.4 million.

Several different administrative arrangements for such a fund are available. Congress could follow the model of the Work Environment Fund of Sweden by creating a tripartite board of employers, employees, and Government representatives, or it could delegate administrative responsibilities to NIOSH, since this would be a research and information dissemination activity. The fund and its research and training projects could exist alongside existing projects and arrangements at OSHA and NIOSH, or Congress could consolidate existing research and training activities (including NIOSH extramural research grants and training grants, OSHA New Directions grants and OSHA-funded consultations) under one umbrella group.

Although such a fund would enhance the commitment to research and training, there are disadvantages to consider—primarily that this represents a new venture, with all the problems that such undertakings incur. Moreover, a new tax or surcharge, even though of modest size, runs against the desire embodied in recent legislation to reduce business taxes.

*Option 27: Congress could create an Occupational Safety and Health Fund to finance research in control technology, training and education, and information dissemination.*

## The Needs of Small Businesses

### Loans for Compliance With OSHA Standards

Small businesses are often disproportionately burdened by investments required for health and safety protection. Congress recognized this when it passed the OSH Act by also amending the Small Business Act to allow the Small Business Administration (SBA) to make loans for OSHA compliance. Between 1971 and 1981, when Congress eliminated authorization for this program, SBA processed 261 such loans. Now may be a good time to study this program to learn what effect these loans had and why so few were processed. Following such a study, Congress could consider reauthorizing the loan program.

*Option 28: Congress might direct OSHA and/or SBA to study the results of SBA loans made for compliance with OSHA standards.*

### Shared Resources

It is inefficient and impractical to require each small business to provide a full range of health and safety services. Instead, organizations and programs to serve the needs of a number of small businesses in a given area or industrial specialty might be cost effective. Initial funding could come from OSHA or NIOSH, with the hope that these programs would ultimately be self-supporting.

The most difficult part of this option is to design a method to sustain the program after the startup period. Even though shared programs should cost less than if a company were to purchase the services entirely on its own, some small businesses might find the price beyond their means. It is unclear how to aid those companies.

*Option 29: Congress might direct NIOSH and OSHA to encourage the development of shared programs to provide industrial hygiene, safety engineering, medical surveillance, and worker health and safety training for small businesses.*

### Changed Regulatory Approaches

Providing protection against occupational injuries and illnesses in small business establishments presents its own set of problems. It may be cost effective to treat occupational health and safety in such firms in a fashion similar to current regulation of consumer products—by regulating machines and products that small businesses purchase.

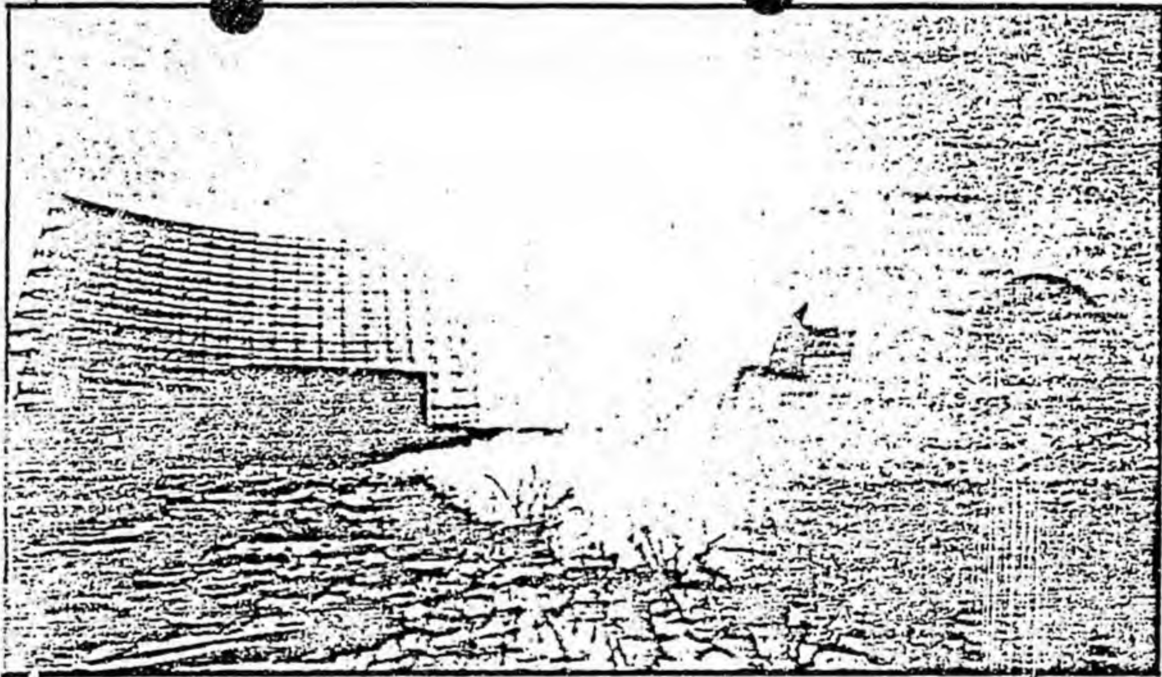
Of course, many products purchased by small businesses are also used in larger businesses, whose employees would also benefit from such regulation. An important limitation of this approach is that some occupational hazards are created in the improper installation, use, and maintenance of machines and products, and this regulatory approach would have only limited impact on those hazards.

*Option 30: Congress could take actions to improve the safety of products used by small business. This might include:*
- *directing NIOSH to conduct tests of products used by small businesses and to publish the results in a form easily available to such establishments;*
- *encouraging OSHA, Consumer Product Safety Commission, and EPA regulations concerning the products used by small businesses.*

### Establishment of Occupational Medicine Clinics

In the United States, most occupational medicine is practiced in the workplace by physicians employed by industry, especially by large companies.

Changes are apparent, however, as small- and medium-sized companies are making choices between contracting with hospital-based clinics for medical care or maintaining a company medical department. The clinics may grow to fill current voids—servicing industries, regions, and employers where such services are unavailable or deficient. Clinics might, because of a larger patient load and a staff that consequently sees more patients, be able to provide more-knowledgeable care and improved physician training.



U.S. Air Force photo

Clear Air Force Station, part of the United States' ballistic missile early warning system.

# After their exposure to microwaves at Clear, workers are looking for help

By RICHARD MAUER
Daily News reporter

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CLEAR — On a normal day, the giant aluminum web dish of the Clear tracking radar is pointed at the heavens, casting two powerful microwave beams skyward. The invisible, 5 million watt searchlight probes space for operating satellites, orbiting junk or ballistic missiles aimed at North America.

But on Sept. 14, the tracker beams were cut off and its motor drives stilled. The only noise within the dome sheltering the tracker dish came from eight men at work.

Richard Eldridge and John Jessop were welding a cracked aluminum tube. Carl Keppler and William Emmons, civil service inspectors from California, inspected the work and checked the alignment of critical parts. Ronald Foster and Ed Forsling, two radar technicians, helped the others. Two electricians were installing floodlights beneath the dish.

Sometime after 3 that afternoon, strange things began to happen.

Eldridge, Jessop and Emmons couldn't understand why it was becoming so uncomfortably warm. The radome temperature had been about 60 when they walked in that morning.

Their scalps were especially annoying, as if they had worn hats all day in the summer sun.

Even odder were the stinging metal filings. The welders prepared the aluminum for welding with a grinding wheel, which threw off hot and biting bits of metal.

As Foster crawled around the tracker radar looking for a hole where a fallen bolt belonged, he also felt the strange warmth.

Keppler left his spot on top of the dish and came over to the others. His flashlight was hot to the touch. The bulb had burned out.

See Page A-10, WORKERS

Richard Eldridge, a welder at Clear, and his wife, Kathy, discuss the accident and its aftermath at their home in Fairbanks.

# Radiation victims remain [illegible]certain about the extent of [illegible]mage and what future holds

Continued from Page A1

Before it died, the light shined even when the switch was off, he told them.

"Are you kidding me!" Foster said. It sounded like a weird joke.

Someone asked Emmons, "Do you have a flashlight?"

Emmons reached into his shirtpocket and pulled out a penlight.

It was glowing. The switch was off.

Emmons swept his arm around in an arc. The light in his hand shone brightly first, then dimmed as he swung it in front of him. At the end of the arc, it started blinking in a rapid rhythm.

At the same time, Eldridge heard something overhead on the aluminum screen. It was a crackling electrical arc, shooting between the tubular pieces. The blue spark was flashing in time with Emmons' light.

The mystery was over.

"We've got radiation! We've got to get the hell out of here," Eldridge said.

Jessop, on this job less than a year, hesitated.

"John, we've got to get out of here now," Eldridge told him.

The tracker had turned into an enormous microwave oven.

No one panicked. While the six men climbed down, Eldridge asked Jessop the time. It was 3:47.

The electricians, shielded from the radiation by distance and the bottom of the tracker screen, wondered what the commotion was about.

As the men left the radome with changes in their minds and bodies they don't understand to this day, it brought an end to the most serious reported radiation accident at the Ballistic Missile Early Warning System base at Clear.

But the way it began, and the subsequent response of the Air Force and the International Telephone & Telegraph Co. subsidiary that operates the site, have raised serious questions about safety and operations at Clear, a cornerstone in the strategic defense of North America.

Documents submitted to government agencies in connection with the microwave overexposure, reports prepared by ITT and the Air Force, and interviews with Clear employees and others close to the investigation show:

- An ingenious and foolproof radar shutoff system that could have prevented the accident was routinely bypassed as a matter of company policy.
- Monitoring panels and automatic controls don't match the actual layout of transmitting equipment because of an equipment switch made before the base was opened in 1962. The fault, which was never corrected, contributed to the accident.
- Men who were not fully trained were working alone on key control panels, while one critical work station was unmanned at the time of the accident.
- A simulation of the accident by the Air Force to determine the workers' exposure levels was conducted with a broken detection meter. A second working meter was used incorrectly.
- Despite repeated requests by the Alaska Department of Labor to the U.S. Occupational Safety and Health Administration for help in conducting a second, independent exposure simulation, the federal government has failed to respond. Last November, an OSHA radiation specialist in Salt Lake City was told to pack his bags for a flight to Alaska, but the trip was called off by the regional OSHA administrator in Seattle.

The men, who continue to suffer from the overexposure and whose conditions may deteriorate with time, say they have been treated callously by officials who appear to be more eager to minimize the accident than to provide them with proper medical care. They are especially concerned about their eyes because cataracts have been linked to microwave exposure.

Of the six, only Eldridge has seen independent doctors who are experts in the field of microwave overexposure, and he was fired by the ITT subsidiary, Felec Services Inc., while undergoing consultations on the East Coast. He said he was forced to remain away from his job longer than he expected because the Air Force wouldn't provide his medical records. It was not until he asked Sen. Ted Stevens, R-Alaska, for assistance that the records were finally sent to his doctors in New York and Massachusetts, he said.

When Dr. Don Justesen read about the Clear accident in Microwave News, a trade publication specializing in the kind of radiation emitted by radio transmitters and electrical devices, he noticed some striking parallels to his observations of laboratory mice and rats.

For the same reason that microwave ovens cook so rapidly — the radiation penetrates the food, warming it inside at the same time the surface is heated — microwaves from any source can be harmful to living organisms.

The great danger in exposure to high levels of radiation is that there is no way to know what is happening, said Justesen, director of the Veterans Administration Behavioral Radiology Laboratories in Kansas City.

The human body is designed to recognize heat that goes from "the outside in" because the nerve sensors that recognize heat are near the skin's surface, Justesen said. Intense microwave radiation, especially at the 420 megahertz frequency used by the Clear tracker, penetrates deep into tissue, Justesen said. Cells begin to die at temperatures several degrees lower than heat that triggers pain, he said.

When microwaves are beamed at rats or mice — animals that surpass most species in their ability to escape noxious situations — "they seem to get confused," Justesen said in a telephone interview. "They don't attribute the warming to external forces."

While it's difficult to translate effects from rats to man, one thing is clear, he said. "You could absorb quite a dollop of energy and even feel thermally discomforted and not know where it's coming from."

Whatever happened to the men at Clear, Justesen said, it would have been important for them to see a physician at once, especially if they complained of being warm or overheated. "The danger, as I see it, is delay," he said.

Four hours passed before the men saw even a nurse, Justesen was told.

"Oh, lord," he said.

When the workers got out of the radome, Ron Foster, the radar technician, asked his lead man, Andrew Souders, if the radar was on. Souders blanched.

A Nov. 29 ITT investigation would level most of the blame on Souders, who had opened the switches that allowed the radiation to enter the tracker and had pushed the button that, unbeknown to him, had started the radar transmitter.

But employees familiar with the site say the accident occurred because of a compounding series of errors. Souders' actions wouldn't have put the men in jeopardy if other precautions had been followed, they said.

While Foster was talking with Souders, welder Richard Eldridge was calling his boss, Vern Finch.

"We just had a radiation accident," Eldridge told him.

When Finch arrived, the two welders weren't showing any signs of serious medical problems other than feeling warm and a bit out of sorts. He told them to go back up and finish the job. They balked.

"What guarantees do you have that this won't happen again?" Eldridge asked.

"You've got my word," Finch said.

"That's not good enough," said Eldridge.

Foster and Forsling were also told to return to work.

"They didn't treat it like an accident," Foster said later.

The workers finally agreed to go back and pick up their tools and re-bolt the parts that would allow the tracker to operate normally.

At 6:30 that evening, they were taken to the base nurse, another Felec employee. Their temperatures were still elevated. She measured their other vital signs.

Keppler had large red areas on his upper torso. Eldridge's wrist was burned where it rubbed a metal snap from his denim work shirt. He said later that the nurse failed to note that in her report.

Air Force officials promised the men that they would get expert care from the aerospace medicine center at Brooks Air Force Base in San Antonio, Texas — a promise that wouldn't be fulfilled for nearly a month.

A dispute developed around 6:30 that evening over radiation badges worn by Eldridge and Jessop. The film badges were the kind used by people who work around sources of ionizing radiation — such as X-rays, or the radiation that emanates from uranium and plutonium.

Eldridge and welder John Jessop said that Tom Miller, Felec chief of safety and security at Clear, assured them the badges would also detect radio frequency radiation, which includes microwaves. When the men challenged that assertion, Miller became adamant.

"There's 250 experts on this base, I guess, but I'm telling you this is a dual-purpose badge, that it detects radio frequency and ionizing radiation," Miller said, according to Eldridge.

(Miller declined to comment for this article. He referred all questions to Robert Laird, industrial relations manager for Felec Services in Colorado Springs, Colo. Laird, who has represented the company in meetings with the Alaska Department of Labor, refused to comment about any aspect of the radiation accident and referred questions to ITT's public relations department in Paramus, N.J. There, John O'Grady, who oversees the public relations department as an ITT vice president and director of administration, also refused to discuss the accident. "We have no comment at all," O'Grady said.)

Miller promised to send the badges to a lab for processing. "We'll fly them out and in 24 hours, we'll know the level of radiation," he told Eldridge.

The men spent a restless night. They reported for work the next morning. After lunch, they were taken by van to Fairbanks Memorial Hospital, 30 miles away.

While the doctors there acknowledged their lack of experience in microwave radiation, they diagnosed the men as suffering nothing more than a "mild sunburn," according to the workers. The symptoms the men were complaining about — restlessness, dizziness, disorientation, headaches and pain through their bodies — could be attributed to stress, they said.

While at the hospital, Jessop began feeling wobbly and sick to the stomach. He was hospitalized about a week. Eldridge checked in the next day.

Seven days after the accident, the secretary for the Clear site manager called Eldridge and Jessop at home. The results from the film badges had finally come back.

The men had not been radiated, she said.

"Why the hell did they give them radiation badges?" said Samuel Koslov, former special assistant for science to the assistant secretary of the Navy and now a researcher at Johns Hopkins University in Baltimore. "I would suspect that was really stupid."

Film badges can't detect microwave radiation, Koslov said in a telephone interview.

Though the radiation at Clear failed to darken the film badges as X-rays would have, it could have done something to the men, said Koslov, who based his opinion on reports of the exposure in Microwave News.

"That's a very high exposure, but a fairly short time," he said.

After decades of research into the biological effects of microwaves, scientists are sharply divided.

Some scientists say that even at low-power levels, radio waves at certain frequencies, especially in the microwave range, can change body cells and chemistry in subtle ways and also alter behavior.

Cataracts, or clouding of the eye lenses, are one possible effect, they say. Genetic changes and alterations in the body's disease-fighting immunological system are also possible.

Russian scientists long ago concluded that microwaves change behavior and have set an occupational standard one-thousandth that of the U.S. standard.

The Russian research has led some American scientists to speculate that the "Moscow signal" — a low-power microwave transmission beamed at the U.S. Embassy in Moscow for more than a decade — was designed to disrupt the thoughts of U.S. diplomats. That belief was not shared officially by the State Department or the CIA.

Koslov said that despite all the years of U.S. research into microwaves, most of it paid for by the Pentagon, has been misdirected.

"There seems to be more of an effort proving there are no effects," he said. [illegible] compared the situation to the debate over Agent Orange, the Vietnam war defoliant blamed for numerous ailments by veterans but which the Defense Department maintains was safe.

Koslov said the Clear workers received strong enough dose of radiation to cause [illegible] damage. It was critical that they be examined immediately to establish medical and psychological baselines from which future changes could be plotted.

"It would appear to me that responsible Air Force management would have been concerned as hell to get as much information as they can and handle it in a responsible manner."

On Sept. 22, eight days after the accident, the Air Force sent a team to Clear to simulate what happened and determine how much radiation hit the men.

Heading the Air Force team was Lt. Col. David Nuss of Elmendorf Air Force Base. He was accompanied by Capt. John Clerg of Eielson Air Force Base in Fairbanks.

Ron Foster, the radar technician, assisted the two, and he immediately became suspicious about the results. In conducting the tests, Nuss used two radiation detection meters. Though both were the same make and model, their readings were substantially different when placed side by side at the base of the tracker.

"Like 30 percent different," Foster said. Weeks later, when the lower-reading meter was sent to the factory, the company reported the meter probe was broken, Foster said.

The team laid the meter probe where they believed each man was working, on the radar dish just beneath the source of radiation. Then they left the dish to avoid being exposed and radioed technician Ed Forsling in the control room, who turned on the power.

The meter had to be exposed for a minimum of six seconds of radiation to achieve an accurate reading, Foster said, but instead they relied on an five-second count. Though Nuss' written report said his key readings were taken with 10-second exposures, Forsling's [illegible] log entries would prove that the radar ran for only five seconds.

An internal Felec memo written Oct. 13 [illegible] the company's radiation protection officer, Cecil Gates, said Nuss used the meter switch position designed for measuring radiation leaks from microwave ovens, not the enormous and complex radiation fields produced by radar.

When Nuss took his readings, the radar emanated 500,000 watts. It produced about [illegible] million watts on Sept. 14, Foster said.

Nuss turned down a request for an interview, directing questions to the Air Force Space Command Headquarters in Colorado Springs, which is responsible for Clear. [illegible] Air Force spokeswoman at the Space Command said she couldn't provide answers about the survey over the phone. A series of written questions about the Clear accident mailed to the Space Command Feb. 9 had not been answered by Friday.

In a meeting after his Sept. 22 survey, Nuss presented his results to the workers. They were told not to worry.

"It was a slight exposure, like a mild sunburn. You don't require any medical attention," the men were told, according to Foster.

Nuss said the overexposure lasted eight minutes, ranging from a low of 19 milliwatts per square centimeter for Eldridge to a high of 102 milliwatts for Keppler. The maximum exposure allowed by the Air Force is [illegible] milliwatts, a standard that is about to be lowered to four milliwatts, according to Dr. John Mitchell, who directs the Air Force radiation research lab at Brooks.

During the Sept. 22 meeting, Foster did some rough calculations and concluded that the exposure was closer to 300 times the standard.

The next Monday, there was a conference call to Brooks. The doctors there would see all six men for intensive "flight physicals," but not for two weeks. Keppler, Eldridge, Emmons and Forsling agreed to go. Jessop and Foster would not. They were getting too suspicious of the Air Force.

Foster and Jessop finally visited Brooks last month, but they have yet to receive their

See Page A-14, MOVES

# Workers who suffered radiation at Clear look for answers and someone they can trust

Continued from Page A-10

medical records, they were told the base legal department would have to review the reports first.

"They said they mailed them yesterday," Foster said Friday. "They've been mailing them yesterday for two weeks now. We need to get these records so we can get started on some treatments."

Felec conducted its investigation into the accident, which it submitted to the Air Force on Nov. 29.

Foster made an independent investigation. He concluded that the company left out important information about the cause of the accident. He gave his own report, which he initially prepared for the Air Force Inspector General, to the Alaska Department of Labor.

At the heart of the safety system for the Clear tracker radar is a series of key interlocks. If the system was used as it was designed, it would have prevented the accident, Foster said.

Foster and Congressional aide William Sharrow, who is investigating the Clear accident for Alaska Rep. Don Young, said inadequate control room staffing contributed to the accident.

"There's not adequate manning when the government is paying for it," Foster said. "To tell the truth about the accident is to tell the truth about a lot of money not accounted for."

One ITT subsidiary or another has operated and maintained the Ballistic Missile Early Warning System for 12 of the past 22 years. Under its current contract, ITT's Felec subsidiary is paid $47,753,189 to operate and maintain the BMEWS headquarters at Colorado Springs and BMEWS stations at Clear, Greenland and England.

The Alaska Department of Labor cited Felec for two "serious" occupational safety violations on Dec. 22 and threatened to fine it $840.

Jorgensen said the labor department and Felec have reached a tentative settlement in the case. Under the agreement, which is not yet in writing, Felec will be allowed to pay a reduced penalty of $1?0 without admitting wrongdoing. Jorgensen said he is satisfied with the company's efforts to avoid a repeat of the accident. Foster is not.

Five months after the radar accident, Ed Forsling, 4?; John Jessop, 42, Ron Foster, ?, and Richard Eldridge, 40, say some of their initial symptoms — short-term memory loss, vertigo, exhaustion and sleeping problems — have eased. But they have not gone away.

Foster said that sometimes he loses control of his arms, which start "flapping like a chicken." While on the job Wednesday, his legs buckled beneath him. He was sent home on a medical leave.

Linda Jessop, John's wife, said their family life has suffered.

"It hurts watching what's going on with my husband," she said in Fairbanks recently while waiting for her husband to complete an eye examination. "I see the signs and symptoms, and the pain."

Jessop used to be an extremely active man, she said, generally working on welding projects in his own shop on Saturdays and spending all day Sunday with the four children still at home. Now he spends all day Saturday sleeping and only after lying in bed through Sunday morning can he find the energy to spend with his youngsters.

"All of a sudden, we don't do anything anymore. I have to tell the kids, 'Daddy don't feel well.' It's really hard on them because they can't see it. It's hard to explain that someone can be hurt without showing outside symptoms. It's not like the measles or chicken pox, or seeing a Band-aid."

On top of that, Mrs. Jessop said, she has had to cope with anonymous telephone threats.

About a month ago, someone called and asked, "Could

Ron Foster gets an eye test.

you give me the price of a coffin for a seven-year-old girl?" She couldn't figure out what the caller was talking about and hung up. The next night, the same person called, this time asking, "Could you give me the price of a coffin for a nine-year-old boy?"

Those were the ages and sexes of two of her children. Mrs. Jessop said she went to the FBI and alerted her children's teachers and school bus driver. She didn't tell her husband at first. He had enough on his mind, she said.

Neither William Emmons nor Carl Kepuler, the two technical specialists from Sacramento, could be reached for comment.

Forsling has also been suffering pain, faint spells and numbness to his left side. Both Foster and Jessop said that in addition to headaches, they have trouble seeing backlighted objects like television.

Forsling, who never wore glasses before, has been told he needs bifocals. Foster said his eye doctor has seen a rupture inside his eyeball.

Jessop has gone through two eyeglass prescriptions since the accident. On Feb. 14, while undergoing a follow-up eye examination in Fairbanks, Dr. Alfred Dellamus said, "It looks like something is starting to happen in there." Though it was too early to make a definite diagnosis, Dellamus thought the change he was seeing in Jessop's right eye might be the start of a cataract.

Foster said that he, Jessop and Forsling have been pressing Felec and its workmens' compensation insurance company to send them to non-Air Force physicians who specialize in their injuries.

But the workers got another setback. In a letter dated Feb. 1, the insurance company said that a recommended specialist, Dr. Charles Becker of San Francisco University, "chooses not to become involved in this particular case due to the political nature of the claim."

Dr. Herbert Pollack, a physician who led Project Pandora, a secret government study in the 1960s and 1970s into the effects of the Moscow Signal, downplayed the severity of the Clear accident in a telephone interview at his office in Palm Beach, Fla.

"The amount of damage one can expect in this particular situation is minimum, if any at all," he said.

Others are not so sure.

Dr. Hans-Arne Hansson, a clinical and laboratory researcher at the university in Goteborg, Sweden and a leading expert in microwave radiation, said in a telephone interview that it would be hard to assess the damage to the men because so little is known about microwave exposure. Accidents like the one at Clear "are only rarely known," Hansson said.

But research is slowly catching up, Hansson said. Technical improvements in equipment and methods have enabled researchers to detect minute changes in body chemistry caused by microwaves — changes that could have significant impact on a person as time goes on.

Hansson is now doing clinical studies for the Swedish armed forces on workers who have been exposed to radar, but he wouldn't reveal his preliminary findings.

"This is hot stuff," he said.

Swedish doctors are convinced of one thing: in the case of a microwave overexposure, patients should be treated "in the range of a day or so," Hansson said.

If the men at Clear develop cataracts, they can be treated surgically, said Dr. Milton Zaret, an ophthalmologist from Scarsdale, N.Y., who identified a "microwave" cataract when conducting research for the Air Force.

But the cure is never complete.

"The eye is really a disabled eye from that point on. You can't focus anymore," Zaret said.

Because additional exposure could cause cumulative and irreversible damage to the workers at Clear, Zaret said, they might be wise to avoid microwave radiation sources, whether at Clear or from leaking microwave ovens, computer video display terminals or even citizen's band radios.

Zaret examined Richard Eldridge in December and found swelling of the eye lens. He said it was too early to predict whether Eldridge would develop cataracts.

The delays that the Clear workers went through before receiving treatment may have had more than medical effects, Zaret said.

"Part of the problem with these fellows now is that they're so suspicious that they wouldn't feel a good doctor-patient relationship with any of the physicians being put forward by the military establishment or some of the (military) sponsored research scientists," Zaret said.

The Clear case has caught the interest of Alaska's congressional delegation. On Jan. 16, Rep. Don Young call for a full-scale investigation of safety procedures at Clear in a letter he sent to Verne Orr, the Air Force secretary.

Young said the Air Force and Felec "did not cooperate in good faith with the affected employees in evaluating and treating any injuries or physical damage that may have incurred."

Young's aide, William Sharrow, was unhappy with the public responses of both Felec and the Air Force. "One refers public questions to the other, and the other refuses to answer. It almost smacks of collusion."

K. Cormier, a spokeswoman for the Air Force Space Command in Colorado Springs, Colo., said Friday the Air Force has not yet responded to Young's demands. While a contract compliance team from the Air Force is scheduled to arrive at Clear today, she said, the visit is a routine annual inspection, not an investigation of the accident.

Sens. Ted Stevens and Frank Murkowski of Alaska have asked the Air Force to keep them informed of official actions in the case.

"In December, Sen. Stevens and Sen. Murkowski both wrote the Air Force and asked that the victims get proper medical attention," said an aide to Stevens. "We got a letter back that was not satisfactory to either office."

Young has also called for an independent evaluation to measure how much radiation the workers were exposed to. He is not alone.

According to state documents, the Alaska Department of Labor requested the U.S. Occupational Safety and Health Administration office in Seattle to provide assistence in a new survey three times since Nov. 1. The request was repeated to Jim Lake, OSHA regional administrator in Seattle, when he visited Juneau Thursday on other matters.

Ray Jorgensen, chief industrial hygienist for the state labor department, said state investigators lack the equipment and experience for a survey. Though OSHA is usually "more than conducive to provide assistance," Jorgensen said, in this case the answer from Lake has so far been negative.

In an internal memo to Lake, Robert Curtis, senior industrial hygienist for OSHA's special health response team in Salt Lake City, suggested Jan. 12 that a second survey be done to alleviate the doubts expressed by the workers. The memo was obtained under the Freedom of Information Act.

In his memo, Curtis reported that Col. Roger Graham of Brooks Air Force Base had said the official Air Force position is to "discourage additional measurements." Curtis said he was told by Dr. John Mitchell, also of Brooks, that the problems of the Clear workers could be attributed to "age and smoking habits."

In an interview, Curtis said his OSHA supervisors in November asked him to prepare to fly to Alaska to conduct a second survey at Clear. But Lake, who has jurisdiction over OSHA activies in Alaska, called "and told us not to come."

Lake said in an interview that he "was still struggling" over whether to order a new survey.

"Hell, I don't know myself what I'm going to do," Lake said. "Based on the Air Force expertise in this area, we've made up our minds that the Air Force is competent to handle it. It wouldn't have made a difference what kind of exposure (the workers) had because the medical evaluation that was done would take care of any situation. I don't know what we would buy by coming back in and doing a remeasurement."

But Foster said Lake is wrong. "It happens everyone is sick from this, and this is going to be with us for the rest of our lives. Every one of our doctors is telling us an accurate survey is important."

John Jessop, the welder, noticed something very strange while working in an underground utility corridor near the giant detection radar dishes at Clear. The discovery has him nervous.

"I'm no expert, but I know what I've seen," Jessop said. "I've seen some very disturbing, grossly deformed little critters, shrews and red-backed voles. I've seen them with crooked tails, crooked legs, humps on their backs, deformities in their heads, and some without even any eyes. They run around out here in back of the screens."

Jessop said he talked about the rodents in the meetings with Air Force personnel following the accident. A worker from Eielson Air Force Base seemed interested at the time but so far no one has gone to Clear to capture them.

After seeing what microwave radiation may have done to the mice and feeling what it already has done to him, Jessop is wondering what the future holds.

ALASKA CLIPPING SERVICE
Anchorage Times
Anchorage, AK
FEB 6 1985

# Radiation accident report reveals 'definite problems'

by David Ramseur
Times Washington Bureau

Washington — A federal investigation of a September 1983 radiation accident at Clear Air Force Base has turned up "definite problems," but details won't be made public until June, said Alaska Rep. Don Young.

Young was briefed today on an ongoing General Accounting Office investigation of the incident in which six workers were exposed to dangerous levels of radiation at the base south of Fairbanks.

Young declined to release details of the briefing because he said the investigation is unfinished.

"I am impressed with the findings of the investigation which indicate that there are definitely problems at the Clear facility, but I'm not going to release any specific findings so as to not prejudice further investigators work," Young said in a prepared statement.

"It is apparent that an investigation by an outside, neutral body was necessary in order to set the record straight so that future operations at the Clear facility will be conducted in the manner consistent with protecting the health and safety of the workers," he added.

Chuck Davis, Young's press aide, said a draft GAO report will be released in June for comments by those involved in the incident and a final report probably will be released in September.

Federal agencies will oversee the Clear operations for 18 months following the release of the final report, Davis said.

The problem originated when workers were repairing a large radar dish at the Missile Early Warning System site that was apparently turned on.

An investigation by the federal Occupational Safety and Health Administration last November found that the workers may have been subjected to radiation levels up to 35 times those considered acceptable by the federal government.

A separate Air Force investigation found that the radiation was similar to a minor sunburn.

Several of the workers became ill after the accident and have complained of continuing medical problems.

The contractor on the job was Felec Services, Inc., a wholly-owned subsidiary of International Telephone and Telegraph.

ITT was cited by the Alaska Department of Labor for violations of state safety laws. The company, seeking to avoid a state safety hearing last fall, agreed to pay a $150 fine and changed its radar dish repair procedures.

Young, who has criticized the Air Force treatment of the incident, has pushed for independent investigations.

He was briefed today by three members of the GAO's Washington staff and one Denver investigator.

The GAO investigation is focusing on whether the employees received proper medical treatment following their exposure and whether the Air Force and Felec acted properly both before and after the incident.

to preliminary findings released this past week.

The pollution was serious enough to force closure or other steps to purify water in 109 of the wells, said Dr. Ken Kizer, director of the state Department of Health Services.

Six contaminated wells are still operating — all in Southern California — because no other supplies are available, the state reported. But customers have been warned of the health risks and most are presumed to be drinking bottled water.

Another 315 of the 2,558 wells tested showed levels of contamination that were severe enough to warrant further monitoring, but not closure, according to the findings.

Kizer said that the results are a cause for concern, "but I don't think they are alarming."

In some respects, he added, the findings "are reassuring" since the samples came from areas where state inspectors expected to find the worst contamination.

At least 25 percent of the wells were tested in 753 water start, but we know it's not the whole picture," he said. "It's clear that we need to move quickly to analyze wells in the hundreds in surrounding areas that have not yet been tested."

Connelly, a Sacramento Democrat, authored the bill that ordered the study. In recent months he has been chafing at delays in completing it.

The study was to be finished last July, but the preliminary report contained only about 80 percent of the results.

Kizer said the report will be finished in January. He blamed computer problems for the delay and noted that no state has ever undertaken such a large sample before.

The report also concluded that the "workload was onerous, in spite of all the planning that had been done beforehand to streamline the process."

Many of the test results still to be evaluated come from the Los Angeles area and the San Gabriel Valley, in particular, Kizer said.

Los Angeles County led the list with 69 wells showing worrisome levels of pollution.

# More Sick Workers, Less OSHA

What accounts for the big increase in job-related injuries and illnesses recently reported by the Labor Department? The Reagan Administration's hostility to health and safety regulation, says the A.F.L.-C.I.O. Increased business activity and employment, says an analyst for the Congressional Office of Technology Assessment. The answer almost surely is both, but while the latter is inescapable, the former is inexcusable.

When more people are working, obviously more are risking job-related health problems. Public regulation can help, but the Administration wants neither to regulate nor help.

•

The regulator is supposed to be the Occupational Safety and Health Administration. Created in 1971 to reduce job illnesses and injuries, OSHA has never been a regulatory paragon. Under this Administration, however, it has become less a thorn in the side of business, as the President charges, than a cipher. Unless it can be energized and given clear direction, it won't much matter why the worker health figures are getting worse.

The 12 percent increase in health problems in 1984 was the first in four years and the biggest since Government started collecting these data. Over all, workplace injuries and illnesses rose to 5.4 million in 1984 from 4.9 million in 1983, and the workdays thus lost rose to 3.7 per 100 workers, from 3.4.

Increased business activity undoubtedly was a [illegible]. But the policies of the Administration also played a role. From the beginning, its hostility toward OSHA has been undisguised. It has tried in a variety of ways to cripple the agency, in the interest of "getting Government off the back of business." That is especially unfortunate because, during the Carter Administration, OSHA seemed for the first time to have found its bearings.

Ideally, the agency should focus on occupational health — protecting workers from hazardous substances and conditions that require investigation to identify and regulate. This is where the resources and expertise of a Government agency are of greatest help. Workplace safety, though a legitimate Government concern, may be more easily addressed non-governmentally, through union-management agreements, for instance, and insurance requirements.

Under Eula Bingham in the Carter Administration, OSHA was finally moving in this direction. That momentum was destroyed, however, by Thorne Auchter and Robert Rowland, the two men who have headed OSHA under President Reagan. Through exuberant budget-cutting they stripped the agency of technical and scientific expertise. With piddling fines they let employers know that OSHA had no teeth.

The agency has not even had a chief since Mr. Rowland's resignation last July. After a search, during which several prospects reportedly said no, Labor Secretary Bill Brock has submitted the name of a candidate to the White House.

No matter how capable, a new OSHA chief can be no more effective than the Administration allows. The Office of Management and Budget recently delayed a regulatory change on cotton dust that had won the agreement of organized labor, the textile industry, OSHA and Mr. Brock; that O.M.B. decision gives no reason for hope. The Administration seems in the grip of zealots who want not to see OSHA improved, but eliminated.

LSS 1-31

**U.S. Department of Labor**

Occupational Safety & Health Administration
Federal Building & U.S. Courthouse
701 C Street, Box 29
Anchorage, Alaska 99513

Telephone: (907) 271-5152

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November 7, 1986

Richard Arab
Deputy Director
State of Alaska Department of Labor
Division of Labor Standards and Safety
1111 West Eighth Street, Room 304
Juneau, Alaska 99802

Dear Mr. Arab:

Enclosed is a copy of the State of Alaska's Annual Evaluation Report covering the period October 1, 1985 through September 30, 1986.

A meeting will be held at the Anchorage OCSH offices at 10:00 a.m. on November 13, 1986. If you should have any questions, please do not hesitate to call me.

Sincerely,

Leonardo P. Limtiaco
Area Director

Enclosure

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## INTRODUCTION

This is an evaluation report of the Alaska Division of Occupational Safety and Health (DOSH) operations under Section 18(f) of the Occupational Safety and Health Act (OSH Act). Alaska's State plan was approved July 3, 1973, and the developmental period, as required by Section 18(e) of the OSH Act, ended October 1, 1976. The plan's enabling legislation, the Alaska Occupational Safety and Health Act, was passed by the Alaska Legislature and signed by the Governor, effective July 24, 1973.

The Alaska statutes provide a system of law and procedures similar to those established under the OSH Act, and DOSH is responsible for enforcing compliance with the standards and regulations adopted under the Alaska law.

The State of Alaska received certification for completing all developmental steps as specified in the plan. The certification was published in the Federal Register and became effective September 13, 1977.

The State received 18(e) determination after the program met the criteria established by the Assistant Secretary, and was determined as effective as the Federal program. The determination was published in the Federal Register and became effective September 26, 1984.

In accordance with the 18(e) determination in Alaska, Federal enforcement in the State of Alaska is limited to those areas identified as exclusive Federal jurisdiction and to both offshore and onshore enforcement responsibility under maritime, except work sites employing State and local government employees. Federal enforcement is also exercised on Annette Island and the Denali National Park.

The State had an unsettling year; during the last seven months of the evaluation period the State had to move their offices twice. The original office building was closed in February after several employees in other agencies became ill, apparently from the environment in the building. The enforcement section was moved to the National Guard Armory along with several other agencies, while the consultation staff was located in office space in another building. The armory space was limited, so much of the division's equipment was put in storage or left in the original building, including the Altos microcomputer. Enforcement personnel began working out of their homes under a system which required them to report to the armory one day a week and to call in for assignments other days. Citations were prepared on word processing equipment used prior to the installation of the Altos system and files were identified as to whether the forms had been data entered. The second move was in May to the temporary office space the State is occupying at the current time. This space is large enough for both enforcement and consultation, and has telephone service for the Altos. The State was able to enter and verify the accuracy of the February through

August data in time for the SPAM report used for the enforcement sections of this report.

Two CASPA's were received during the evaluation period, both of which concerned the State's response to complaints. Neither CASPA was found to be valid.

The evaluation is based on the State of Alaska's performance from October 1, 1985 through September 30, 1986. Sections A, B, C, D, G, and I use data collected through on-site monitoring activities for the entire evaluation period. Sections E, F, and H are based on SPAM report data through August 30, 1986. Information for Section J was obtained from a variety of sources, including OMDS reports, on-site moitoring, and grant applications. Section K data was provided by the Bureau of Labor Statistics. All measures are evaluated. The format of the report describes a measure, lists the numerical limits or ranges of State performance that, if met, will generally result in no further review of State performance (the Further Review Level, or FRL) the appropriate performance data, and analysis of the data. Each section concludes with a summary.

SUMMARY

Alaska DOSH's timely response to Federally initiated standards has improved. The related performance measures were within acceptable limits as were the performance measures relating to the State's variance program.

The public sector consultation program met the goals and objectives for public sector consultation. DOSH, while devoting only 1.25 man-years of effort to the program, has successfully provided prompt and accurate identification of workplace hazards in the public sector. Consultative staff have also given public sector employers reliable, timely, and cost-effective recommendations for controlling workplace hazards. The consultative staff continually works with public sector employers to ensure timely correction of serious hazards and imminent danger situations. They have also been adept in encouraging employers to establish effective safety and health programs as well as providing the training and technical assistance necessary for this program development.

The project continues to have the managerial and administrative support necessary. There has been an excessive lag time from the closing conference until the report is mailed to the employer. However, examination of the facts contributing to this outlier seem to indicate that unusual and non-recurring circumstances, such as having the program move twice in one year, has had a negative effect. Although this element is considered an outlier, tighter administrative control by the program manager plus the fact that the program is not scheduled to move, should reduce this element to non-outlier status. Tighter administrative control would include a weekly review of closing conference dates and when those reports were due to the employers. Regional TECFAP staff will make periodic checks to ensure a reduction in the time it take for an employer to get his written report.

RECOMMENDATION

Ensure, through appropriate administrative control, that all reports going to the employer are mailed within 15 calendar days* from the date of the closing conference. For those cases that have to rely on sample analysis, compute this time lag from the time the last samples are received from the laboratory. *The 15 calendar day figure represents a program average.

The public sector enforcement program is administered equally with the private sector enforcement program. The State directed 5.3 percent of their inspection resources into the public sector, principally by responding to complaints and referrals. The types of violations cited in the public sector mirrored the private sector.

The State schedules programmed inspections in approximately the same proportion as the Federal sector. The health section's percentage

programmed inspections is higher, however, due to the lower percentage of referrals inspected. The health section's lower not-in-compliance rate for programmed inspections is attributable to scheduling several inspections into SIC groups where no violations were found. A recommendation has been made to monitor the results of inspections by SIC group.

The State once again inspected a higher percentage of complaints than the Federal sector. All complaints were responded to properly. Complaints were responded to in a timely manner.

A study is currently under way to determine why so few referrals between safety and health are shown in the SPAM report. No analysis of the obviously-incorrect data has been made.

The State encountered two denials of entry for which warrants were promptly secured and reentry occurred immediately.

The State generally follows correct inspection procedures. The circumstances creating the outlier for employee participation occurred early in the evaluation period. The measure is not currently a six-month outlier.

The State experienced outliers for the average number of violations cited in programmed safety inspections with citations and the percent of health violations cited serious. Steps have been implemented to correct the safety outlier, however, no specific cause for the health deviation has been found.

The State assigns reasonable abatement periods and conducts followup inspections when warranted.

The State Department of Labor and the Alaska Review Board continue to adhere to approved procedures for the handling of contested cases. Cases appealed constitutes a 5 percent contest rate for the period. This rate is over one percent less than last period and continues to show Alaska's emphasis for handling settlements in the field. DOSH performance in the area of informal and formal review continues to reflect a good rate for sustaining contested violations. The rate for affirming a serious violation was approximately 74 percent as compared to almost 81 percent last period. The rate for sustaining other violations was about 92 percent this period. Although a recommendation was made to DOSH officials for program improvement in the area of vacating serious violations. Alaska's performance under the "Review Procedures" section of the program was found to be operating overall at an acceptable level.

The State conducts quality discrimination investigations and has a satisfactory level of performance.

Alaska's response in submitting timely and quality responses to both Federal and State-Initiated Changes has improved. The State experienced a 98 percent and 100 percent performance in the submission of Federal and State-Initiated Changes, respectively, for this evaluation period. This compares with last period's performance of 93 percent and 91 percent respectively. The State's submissions are generally very thorough and complete, with comparison documents and analysis submitted where required. The State sends samples to an AIHA-accredited lab whose turnaround times are well within acceptable limits.

Alaska's safety and health compliance positions are fully staffed. The State's occupational safety and health program is adequately funded by the State. The costs of the Alaska program are high because of the higher cost of living in Alaska, because of the higher ratio of compliance officers to covered employees than is the case for Federal OSHA, and because the State's small program cannot achieve the economies of scale possible in larger programs.

The increase in the lost workdays for manufacturing is considered a volatile rate which was affected by sharp increases in the LWD for two SIC groups in manufacturing. The Total Cases and Lost Workday Cases went down for the State between 1983 and 1984 for all other categories. Increases in the number of hours of exposure contributed to the increase in the Lost Workday Cases for the Trucking and Warehousing industry, however, no cause for the increase in the Logging industry cases could be established.

Special measures were developed to measure the State's performance in a program known as Notice of Violations. The State issues Notices onsite for general violations, providing employers agree to abate the hazard, and agree not to contest the Notice. During the last evaluation period the recommendation was made to develop procedures to increase the number of inspections with verification of abatement in the file. The State has improved their performance on this measure, and had verification in 33 percent of the NOV files.

The State's program, overall, remains as effective as the Federal program. The deviations discussed in the report can easily be remedied by closer supervisory attention, and do not represent flaws in the State's policies or procedures.

Incidence rates of Recordable Occupational Injuries and Illnesses
Comparison of all States - Private Sector
1983 to 1984

| | 1983 | 1984 |
|---|---|---|
| USA | 7.6 | 8.0 |
| | | |
| Alabama | [illegible] | [illegible] |
| Alaska | 10.2 | 10.3 |
| Arizona | 8.3 | 9.5 |
| Arkansas | 8.1 | 8.0 |
| California | 9.1 | 9.3 |
| Colorado | | |
| Connecticut | 8.0 | 8.3 |
| Delaware | 5.3 | 5.5 |
| Florida | 8.7 | 8.9 |
| Georgia | | |
| Hawaii | 10.5 | 10.0 |
| Idaho | | |
| Illinois | | |
| Indiana | 7.3 | 7.7 |
| Iowa | 7.8 | 8.1 |
| Kansas | | 7.7 |
| Kentucky | 7.6 | 8.3 |
| Louisiana | 7.4 | 7.9 |
| Maine | 11.0 | 12.2 |
| Maryland | 7.6 | 7.8 |
| Massachusetts | | |
| Michigan | 6.9 | 7.6 |
| Minnesota | 7.3 | 7.7 |
| Mississippi | | 8.0 |
| Missouri | 7.5 | 8.0 |
| Montana | | 8.5 |
| Nebraska | 8.4 | 8.6 |
| Nevada | 9.0 | 9.0 |
| New Hampshire | | |
| New Jersey | | |
| New Mexico | 7.2 | 8.7 |
| New York | | |
| North Carolina | 6.6 | 7.3 |
| North Dakota | | |
| Ohio | | |
| Oklahoma | 8.9 | 9.6 |
| Oregon | 9.6 | 10.6 |
| Pennsylvania | | |
| Rhode Island | 8.3 | 8.4 |
| South Carolina | 6.7 | 6.8 |
| South Dakota | | |
| Tennessee | 7.9 | 8.6 |
| Texas | | |
| Utah | 8.5 | 9.2 |
| Vermont | 9.2 | 10.0 |
| Virginia | 7.0 | 7.6 |
| Washington | 8.7 | 9.0 |
| West Virginia | 6.7 | 7.2 |
| Wisconsin | | |
| Wyoming | 7.9 | 8.6 |
| American Samoa | 3.5 | 3.0 |
| Guam | 2.7 | 2.6 |
| Puerto Rico | 4.2 | 3.9 |
| Virgin Islands | 2.6 | 2.4 |

Incidence rates of Recordable Occupational Injuries and Illnesses
Comparison of all States - Private Sector
1983 and 1984 [illegible]

| | 1983 | 1984 |
|---|---|---|
| USA | 7.6 | 8.0 |
| Maine | 11.0 | 12.8 |
| Oregon | 9.8 | 10.5 |
| Alaska | 10.5 | 10.3 |
| Vermont | 9.2 | 10.0 |
| Hawaii | 10.6 | 10.0 |
| Washington | 9.7 | 9.9 |
| Oklahoma | 8.9 | 9.8 |
| Arizona | 9.3 | 9.5 |
| California | 9.1 | 9.3 |
| Utah | 8.5 | 9.2 |
| Nevada | 9.0 | 9.0 |
| Florida | 8.7 | 8.9 |
| Nebraska | 8.4 | 8.8 |
| New Mexico | 7.8 | 8.7 |
| Wyoming | 7.9 | 8.6 |
| Tennessee | 7.9 | 8.6 |
| Montana | | 8.5 |
| Rhode Island | 8.3 | 8.4 |
| Alabama | 7.9 | 8.3 |
| Kentucky | 7.6 | 8.3 |
| Connecticut | 8.0 | 8.3 |
| Iowa | 7.6 | 8.1 |
| Mississippi | | 8.0 |
| Arkansas | 8.1 | 8.0 |
| Missouri | 7.5 | 8.0 |
| Louisiana | 7.4 | 7.9 |
| Maryland | 7.6 | 7.8 |
| Minnesota | 7.3 | 7.7 |
| Kansas | | 7.7 |
| Indiana | 7.3 | 7.7 |
| Virginia | 7.0 | 7.6 |
| Michigan | 8.8 | 7.6 |
| North Carolina | 6.8 | 7.2 |
| West Virginia | 6.7 | 7.3 |
| South Carolina | 6.7 | 6.9 |
| Delaware | 5.3 | 5.5 |
| Puerto Rico | 4.8 | 3.9 |
| American Samoa | 2.5 | 3.0 |
| Guam | 2.7 | 2.8 |
| Virgin Islands | 2.8 | 2.4 |
| New Hampshire | | |
| South Dakota | | |
| Wisconsin | | |
| Texas | | |
| Illinois | | |
| Colorado | | |
| New York | | |
| Georgia | | |
| Pennsylvania | | |
| North Dakota | | |
| New Jersey | | |
| Massachusetts | | |
| Idaho | | |
| Ohio | | |

Incidence Rates of Recordable Occupational Injuries and Illnesses
Comparison of all States - Private Sector
1983 and 1984

| | 1983 | 1984 |
|---|---|---|
| USA | 7.6 | 8.0 |
| Maine | 11.[illegible] | 11.2 |
| Alaska | 10.6 | 10.3 |
| Hawaii | 10.5 | 10.0 |
| Oregon | 9.8 | 10.8 |
| Washington | 9.7 | 9.9 |
| Arizona | 9.3 | 9.5 |
| Vermont | 9.2 | 10.0 |
| California | 9.1 | 9.3 |
| Nevada | 9.0 | 9.0 |
| Oklahoma | 8.9 | 9.8 |
| Florida | 8.7 | 8.9 |
| Utah | 8.5 | 9.2 |
| Nebraska | 8.4 | 8.8 |
| Rhode Island | 8.3 | 8.4 |
| Arkansas | 8.1 | 8.0 |
| Connecticut | 8.0 | 8.3 |
| Wyoming | 7.9 | 8.5 |
| Tennessee | 7.9 | 8.6 |
| Alabama | 7.9 | 8.3 |
| New Mexico | 7.8 | 8.7 |
| Iowa | 7.8 | 8.1 |
| Maryland | 7.8 | 7.8 |
| Kentucky | 7.6 | 8.3 |
| Missouri | 7.5 | 8.0 |
| Louisiana | 7.4 | 7.9 |
| Minnesota | 7.3 | 7.7 |
| Indiana | 7.3 | 7.7 |
| Virginia | 7.0 | 7.6 |
| North Carolina | 6.8 | 7.2 |
| Michigan | 6.9 | 7.6 |
| West Virginia | 6.7 | 7.3 |
| South Carolina | 6.7 | 6.9 |
| Delaware | 5.3 | 5.5 |
| Puerto Rico | 4.2 | 3.9 |
| Virgin Islands | 2.6 | 2.4 |
| Guam | 2.7 | 2.6 |
| American Samoa | 2.5 | 3.0 |
| New Hampshire | | |
| New York | | |
| Kansas | | 7.7 |
| Georgia | | |
| Mississippi | | 8.0 |
| Pennsylvania | | |
| Wisconsin | | |
| North Dakota | | |
| Illinois | | |
| New Jersey | | |
| Montana | | 8.5 |
| Massachusetts | | |
| Texas | | |
| South Dakota | | |
| Colorado | | |
| Idaho | | |
| Ohio | | |

November 1986

FATALITY RATES — From BLS-OSH Survey

Bureau of Labor Statistics calculates a fatality rate for private sector firms employing more than 10 workers. The rate has a base of 100,000 full-time workers and is computed (estimated number of fatilities x 200,000,000)/hours worked. If we use the fatalities estimated by the OSH survey for Alaska and follow the same formula we get comparable statistics. An important point is that the fatalities estimated by the survey equal about half of those reported to Workers° Compensation. Fatality rate is therefore underestimated.

| | U.S. | Alaska |
|---|---|---|
| 1974 | 9.8 | |
| 1975 | 9.4 | |
| 1976 | ~~7.9~~ | |
| 1977 | 9.1 | |
| 1978 | 8.2 | |
| 1979 | 8.6 | |
| 1980 | 7.7 | |
| 1981 | 7.6 | |
| 1982 | 7.4 | |
| 1983 | 5.6 | 15.3 |
| 1984 | 6.4 | 14.7 |
| 1985 | | 16.1 |

ILLNESS RATES — From BLS-OSH Survey

The annual survey computed its incidence rates using a base of 100 full-time workers (using the formula [number of cases x 200,000]/hours worked . In its last release of data for 1984, the Bureau of Labor Statistics computed an illness rate using a base of 10,000 workers (number of cases x 20,000,000)/hours worked. This was done to make the illness statistic more meaningful. We can compute comparative data for Alaska.

Illness Rates Using a Base of 10,000 workers:

| | U.S. | Alaska |
|---|---|---|
| 1983 | | 28.8 |
| 1984 | 18.4 | 21.4 |
| 1985 | | 28.7 |

# HOUSE COMMITTEE REPORT

(7)

Date referred: 1/30/87

FURTHER REFERRALS: Finance

DATE: 2 - [illegible]

The Judiciary Committee has considered HB 53

"An Act relating to penalties for violation of workplace safety laws."

RECOMMENDS:

[✓] replace with CS HB 53 (Judiciary)

[ ] attached amendment(s)

[ ] the same title

[✓] a new title

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the ______ Committee

ADOPTS: [ ] ______ letter of intenc

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

[✓] same as previous fiscal note published 1/30/87

[ ] same as previous zero fiscal note published ______

SIGNING DO PASS:

[signatures]

SIGNING OTHER RECOMMENDATIONS:

Ramona L. Barnes to Pass

[signature] AND nr

Robin L. Taylor (DO NOT PASS - eliminate OSHA 30 positions Feds will do same job with .2 at NO cost to state)

[signature]

Chairman's signature

Original sponsors: Koponen, Goll, Davis and Donley

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 53 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to violations of workplace safety
7 laws."

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

9 * Section 1. AS 18.60.095(a) is amended to read:

10 (a) An employer who wilfully or repeatedly violates a provision
11 of AS 18.60.010 - 18.60.105 that is applicable to the employer or a
12 standard or regulation adopted under AS 18.60.010 - 18.60.105 may be
13 assessed by the commissioner a civil penalty of not more than <u>$25,000</u>
14 [$10,000] for each violation.

15 * Sec. 2. AS 18.60.095(b) is amended to read:

16 (b) An employer who receives a citation for a serious violation
17 of a provision of AS 18.60.010 - 18.60.105 that is applicable to the
18 employer or of a standard or regulation adopted under AS 18.60.010 -
19 18.60.105 shall be assessed by the commissioner a civil penalty of <u>not</u>
20 <u>less than</u> [UP TO] $1,000 <u>and not more than $10,000</u> for each violation.
21 For purposes of this subsection, a serious violation is considered to
22 exist if the violation creates in the place of employment a substan-
23 tial probability of death or serious physical harm. However, a seri-
24 ous violation is not considered to exist if the employer did not, and
25 could not with the exercise of reasonable diligence, know of the
26 presence of the violation.

27 * Sec. 3. AS 18.60.095(c) is amended to read:

28 (c) An employer who receives a citation for a violation of a
29 provision of AS 18.60.010 - 18.60.105 that is applicable to the

employer or [OF] a standard or regulation adopted under AS 18.60.010 - 18.60.105, and the violation is specifically determined not to be of a serious nature, may be assessed by the commissioner a civil penalty of up to $5,000 [$1,000] for each violation.

* Sec. 4. AS 18.60.095(d) is amended to read:

(d) An employer who fails to correct a violation within the period permitted for its correction for which a citation has been issued may be assessed by the commissioner a civil penalty of not more than $10,000 [$1,000] for each day during which the failure to correct the violation continues.

* Sec. 5. AS 18.60.095(e) is amended to read:

(e) An employer who knowingly [WILFULLY] or repeatedly violates a provision of AS 18.60.010 - 18.60.105 that is applicable to the employer or a standard or regulation adopted under AS 18.60.010 - 18.60.105, and the violation causes death to an employee, upon conviction, is punishable by a fine of not more than $150,000 [$10,000], or by imprisonment for not more than six months, or by both. However, upon a second conviction after a prior conviction for a violation causing death, an employer is punishable by a fine of not more than $500,000 [$20,000], or by imprisonment for not more than one year, or by both.

* Sec. 6. AS 18.60.095(f) is amended to read:

(f) A person who knowingly makes a false statement, representation, or certification in an application, record, report, plan or other document filed or required to be maintained under AS 18.60.010 - 18.60.105, upon conviction, is punishable by a fine of not more than $25,000 [$10,000], or by imprisonment for not more than six months, or by both.

* Sec. 7. AS 18.60.095(g) is amended to read:

(g) An employer who violates the posting requirements of this chapter shall be assessed by the commissioner a civil penalty of up to $2,000 [$1,000] for each violation.

* Sec. 8. The amendments made by this Act apply to violations that occur on or after the effective date of this Act.

5-0251L
Cramer
2/21/87

Original sponsors: Koponen, Goll,
Davis and Donley

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 53 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to violations of workplace safety
7 laws."

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

9 * Section 1. AS 18.60.095(a) is amended to read:

10 (a) An employer who knowingly [WILFULLY] or repeatedly violates
11 a provision of AS 18.60.010 - 18.60.105 that is applicable to the
12 employer or a standard or regulation adopted under AS 18.60.010 -
13 18.60.105 may be assessed by the commissioner a civil penalty of not
14 more than $25,000 [$10,000] for each violation.

15 * Sec. 2. AS 18.60.095(b) is amended to read:

16 (b) An employer who receives a citation for a serious violation
17 of a provision of AS 18.60.010 - 18.60.105 that is applicable to the
18 employer or of a standard or regulation adopted under AS 18.60.010 -
19 18.60.105 shall be assessed by the commissioner a civil penalty of not
20 less than [UP TO] $1,000 and not more than $10,000 for each violation.
21 For purposes of this subsection, a serious violation is considered to
22 exist if the violation creates in the place of employment a substan-
23 tial probability of death or serious physical harm. However, a seri-
24 ous violation is not considered to exist if the employer did not, and
25 could not with the exercise of reasonable diligence, know of the
26 presence of the violation.

27 * Sec. 3. AS 18.60.095(c) is amended to read:

28 (c) An employer who receives a citation for a violation of a
29 provision of AS 18.60.010 - 18.60.105 that is applicable to the

employer or [OF] a standard or regulation adopted under AS 18.60.010 - 18.60.105, and the violation is specifically determined not to be of a serious nature, may be assessed by the commissioner a civil penalty of up to $3,000 [$1,000] for each violation.

* Sec. 4. AS 18.60.095(d) is amended to read:

(d) An employer who fails to correct a violation within the period permitted for its correction for which a citation has been issued may be assessed by the commissioner a civil penalty of not more than $10,000 [$1,000] for each day during which the failure to correct the violation continues.

* Sec. 5. AS 18.60.095(e) is repealed and reenacted to read:

(e) An employer is guilty of a class B misdemeanor if the employer knowingly or repeatedly violates a provision of AS 18.60.010 - 18.60.105 that is applicable to the employer or a standard or regulation adopted under AS 18.60.010 - 18.60.105 and if the violation causes death to the employee. The commissioner may also assess a civil fine of not more than $150,000 against the employer. An employer who has a prior conviction under this subsection is guilty of a class A misdemeanor if the employer is subsequently convicted for a violation causing death and the commissioner may assess a civil fine of not more than $500,000 against the employer.

* Sec. 6. AS 18.60.095(f) is amended to read:

(f) A person who knowingly makes a false statement, representation, or certification in an application, record, report, plan or other document filed or required to be maintained under AS 18.60.010 - 18.60.105, upon conviction, is punishable by a fine of not more than $25,000 [$10,000], or by imprisonment for not more than six months, or by both.

* Sec. 7. AS 18.60.095(g) is amended to read:

1 (g) An employer who violates the posting requirements of this
2 chapter shall be assessed by the commissioner a civil penalty of up to
3 2,000 ~~$5,000~~ 3000 [$1,000] for each violation.
4 * Sec. 8. The amendments made by this Act apply to violations that
5 occur on or after the effective date of this Act.
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Adopted

AMENDMENT #1

BY: SUND

Offered in the House
TO: CSHB 53 (HESS)

Page 1, Line 6, amend title to read:

"An Act relating to violations of workplace safety laws"

Page 1, Line 10 delete "wilfully" replace with "knowingly"

Page 2, Line 12 delete "wilfully" replace with "knowingly"

AS 11.81.900(a)(2) defines "knowingly"

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

Adopted

AMENDMENT #2

BY: SUND

Offered in the House
TO: CSHB 53 (HESS)

Page 2, line 4:
delete "$5,000" insert "$3,000"

Barnes

AMENDMENT HB 53 #3

Page 2, line 12-20 delete and replace with the following language:

(e) An employer who knowingly and repeatedly violates a provision of AS18.60.010 - 18.60.105 that is applicable to the employer or a standard or regulation adopted under AS 18.60.010 - 18.60.105, and the violation causes death to an employee, the employer may be assessed by the commissioner a civil penalty of not more than $150,000. An employer who knowingly or repeatedly violates a provision of AS 18.60.010 - 18.60.105 that is applicable to the employer or a standard or regulation adopted under AS 18.60.010 -18.60.105, and the violation causes the death of a second employee, the employer may be assessed by the commissioner a civil penalty of not more than $500,000. The provisions of this section do not preclude a prosecutor from bringing a criminal charge against an employer for the death of the employee and the sentence given to the employer upon conviction of the crime shall be in addition to the civil penalties provided in this section.

# STATE OF ALASKA 1987 LEGISLATIVE SESSION
# FISCAL NOTE

Bill Version : CSHB 53 (HESS)
Publish Date :

**REQUEST:**

Revision Date:
Title : "An Act relating to penalties for violation of workplace safety laws"
Sponsor : Koponen and Goll
Requestor : House HESS

Agency Affected : Labor
BRU : Occupational Safety and Health
Components : Occupational Safety and Health

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

| OPERATING | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | 3.2 | 1.7 | | | |
| CONTRACTUAL | | 60.0 | 27.5 | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 63.2 | 29.2 | 0 | 0 | 0 |
| CAPITAL | | | | | | |
| REVENUE | 0 | 242.9 | 132.0 | 91.1 | 91.1 | 91.1 |

**FUNDING:** (Thousands of Dollars)

| | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
|---|---|---|---|---|---|---|
| GENERAL FUND | | 31.6 | 14.6 | | | |
| FEDERAL FUNDS | | 31.6 | 14.6 | | | |
| OTHER | | | | | | |
| TOTAL | 0 | 63.2 | 29.2 | 0 | 0 | 0 |

**POSITIONS:**

| | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
|---|---|---|---|---|---|---|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

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

(see attached)

Prepared by : Tom Stuart, Director
Division : Labor Standards and Safety
Phone : 465-4870
Date : 1/30/87

Approved by Commissioner : Jim Sampson
Agency : Labor
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Fiscal Note Analysis
For Committee Substitute for House Bill 53 (HESS)

Committee Substitute for House Bill 53 increases penalties for violations of workplace safety and health laws and is viewed as an effective deterrent to such violations. However, it is anticipated that a two-year period will be required for the deterrent effects of the increased penalties to be fully realized. Until the deterrent effect is fully realized, it is projected that the increased penalties will result in increased contests which will temporarily result in increased expenditures. Likewise, it is expected that revenues from penalties will initially increase and then decline as the deterrent effect materializes.

The increased costs are:

Contractual:

In FY 88 an additional $45,000 will be required for legal costs for services provided by the Department of Law in connection with contested citations, and collection of penalties. This amount will decrease in FY 89 as the increased deterrent effect of the increased penalties is realized, and by FY 90, contests will have returned to present levels.

In FY 88, an additional $10,000 in hearing officer costs will also be incurred for the OSHA Review Board which decides contested cases. As with the Department of Law costs, this fiscal note anticipates a decline in the caseload in FY 89, and a return to present levels in FY 90.

A one-time cost of $5,000 is also included for mailing a notice to all employers in the state to inform them of the increased penalties.

Travel:

In FY 88, an additional $3,200 in per diem costs will be incurred for the three-member OSHA Review Board which decides contested cases. The Board will meet an additional 8 days to hear the additional cases. These costs would likewise decrease in FY 89 and dissipate in FY 90.

Following are the specific workload assumptions used in projecting costs and revenues:

1. Increased penalties will take effect July 1, 1987;

2. In FY 88, there will be a 25% reduction in the number of serious violations and the number of serious citations. In FY 89 and FY 90, there will be further reductions of 35% and 20%, respectively. After FY 90, further reductions are not anticipated.

| | FY 87 | FY 88 | FY 89 | FY 90 |
|---|---|---|---|---|
| Number of Serious violations | 250 | 190 | 125 | 100 |
| Number of Serious citations | 165 | 125 | 80 | 65 |

(Serious citations average 1½ serious violations each. Therefore, the number of citations issued is less than the number of serious violations.)

3. 40% of the Serious citations issued by the Department will be contested. (This is the present contest rate for citations with penalties of $500 or more.)

| | FY 87 | FY 88 | FY 89 | FY 90 |
|---|---|---|---|---|
| Number of Contested citations | 25 | 50 | 32 | 25 |

Additional Revenues:

The increased revenues are projected upon increases in penalties as follows:

| Type of Violation | FY 87 Violations | FY 87 Penalties | FY 88 Violations | FY 88 Penalties | FY 89 Violations | FY 89 Penalties | FY 90 Violations | FY 90 Penalties |
|---|---|---|---|---|---|---|---|---|
| Repeat | 30 | $10,700 | 20 | $71,400 | 10 | $35,700 | 5 | $17,850 |
| Serious | 250 | 45,000 | 190 | 342,000 | 125 | 225,000 | 100 | 180,000 |
| Failure to Abate | 1 | 300 | 1 | 3,000 | 0 | 0 | 0 | 0 |
| Willful | 0 | 0 | 1 | 15,000 | 0 | 0 | 0 | 0 |
| Proposed Penalties | | $56,000 | | $431,400 | | $260,700 | | $197,850 |
| Less penalty reduction as a result of negotiated settlements and uncollectible penalties | | ($18,480) | | ($151,000) | | ($91,200) | | ($69,200) |
| Less Current Revenues | | (37,520) | | (37,520) | | (37,520) | | (37,520) |
| Additional Revenues | | 0 | | $242.880 | | $131,980 | | $91,130 |

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