

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5058 HSTA HB 32 - HB 52

630

1 (b) The commission may by regulation adjust the distribution of
2 the parimutuel pool as necessary to promote efficient and successful
3 race meets. The total percentage allocated to the licensee, purse
4 money, and the commission may not exceed 35 percent of the parimutuel
5 pool.

6 Sec. 05.40.140. REPORTS BY LICENSEE. The licensee conducting
7 the race meet shall report to the commission within 30 days after each
8 race on the distribution of the parimutuel pool and within 30 days
9 after the end of the race meet on the operation and proceeds of con-
10 cessions at the site of the race meet.

11 Sec. 05.40.150. OBSERVATION OF RACE MEETS. The commission may
12 appoint from among its members or employ a person to observe the
13 conduct of race meets. An observer shall be present at the site of
14 each race meet on the day before, the day after, and during the race
15 meet.

16 ARTICLE 3. PROHIBITED ACTS AND PENALTIES.

17 Sec. 05.40.200. PROHIBITED ACTS AND PENALTIES. (a) It is a
18 class A misdemeanor to

19 (1) violate or fail to comply with a regulation of the
20 commission or a provision of this chapter if no effect on the outcome
21 of the horse race or team dog race was intended;

22 (2) record, report, or register a wager on a horse in a
23 horse race or a team in a team dog race unless under the provisions of
24 this chapter;

25 (3) place a wager upon the results of a horse race or a
26 team dog race except by a parimutuel method of wagering conducted by a
27 person licensed under this chapter, and upon the grounds or enclosure
28 of the licensee;

29 (4) permit a person under the age of 18 to use the

1 parimutuel system.

2 (b) Violation of a regulation or provision of this chapter with
3 intent to affect the outcome of a horse race or a team dog race is a
4 class C felony.

5 ARTICLE 4. GENERAL PROVISIONS.

6 Sec. 05.40.900. ADMINISTRATIVE PROCEDURE ACT. The operations of
7 the commission are subject to the Administrative Procedure Act
8 (AS 44.62).

9 Sec. 05.40.910. CONFLICT OF INTEREST ACT. The commission is
10 subject to AS 39.50 (conflict of interest).

11 Sec. 05.40.990. DEFINITIONS. In this chapter

12 (1) "breakage" means the odd cents by which the amount
13 payable on each dollar wagered exceeds a multiple of 10 cents; break-
14 age may not exceed 20 percent of the total amount deposited in the
15 pool;

16 (2) "commission" means the Alaska Racing Commission;

17 (3) "harness race" means a race where the horses are har-
18 nessed to a sulky, carriage, or similar vehicle and driven by a
19 driver;

20 (4) "horse race" means either a race where the horses are
21 mounted and ridden by jockeys or a harness race;

22 (5) "parimutuel" means a form of wagering on the outcome of
23 horse races or team dog races in which those who wager personally
24 purchase tickets of various denominations on a horse or a team and all
25 wagers for each race are pooled and held by the licensee conducting
26 the meet for distribution; when the outcome of the race has been
27 decided, the licensee conducting the meet distributes the percentage
28 of the total wagers determined by the commission to holders of tickets
29 on the winning horses or teams;

1 (6) "race meet" means an exhibition that includes horse
2 races or team dog races, where the parimutuel system is used;

3 (7) "team dog race" means a race among five or more teams,
4 each team consisting of eight dogs, along a fixed course, not exceed-
5 ing one mile, where the teams start simultaneously from a common
6 starting point and race to a common finish line.

7 * Sec. 2. AS 18.65.080 is amended by adding a new subsection to read:

8 (b) The Department of Public Safety shall investigate and ascer-
9 tain whether a

10 (1) person appointed by the governor to serve as a member
11 of the Alaska Racing Commission under AS 05.40 has been convicted of a
12 crime described in AS 05.40.010(c);

13 (2) member of the staff of or person employed by the Alaska
14 Racing Commission, a race official, or a person licensed to conduct or
15 participate in the conduct of a race meet has been convicted of a
16 crime described in AS 05.40.010(c).

17 * Sec. 3. AS 39.50.200(b) is amended by adding a new paragraph to read:

18 (49) Alaska Racing Commission (AS 05.40.010).

19 * Sec. 4. AS 44.62.330(a) is amended by adding a new paragraph to read:

20 (55) Alaska Racing Commission (AS 05.40.010).

21 * Sec. 5. INITIAL COMMISSION APPOINTMENTS. The governor shall make the
22 initial appointment of members of the Alaska Racing Commission within 90
23 days after the effective date of this Act.
24
25
26
27
28
29

Alaska State Legislature

11



Session Address:
STATE CAPITOL BUILDING
BOX V
JUNEAU, ALASKA 99811
(907) 465-3727

Interim Address:
BOX 53
PALMER, ALASKA 99645
(907) 745-3828 - Palmer
(907) 376-8828 - Wasilla

Representative Ronald L. Larson
District 16B

DATE: February 26, 1987
TO: House HESS Committee
FROM: Representative Ron Larson *R.L. by EJR*
SUBJ: CS for House Bill No. 32

Following is a sectional analysis of the changes to
HB 32 as effected by CS for HB 32.

Section 1, Sec. 05.40.010, page 1.

Lines 14-15: "The Alaska Racing Commission (heretofore 'the commission') is composed of five members appointed by the governor." In HB 32 the commission was to be appointed by the governor and confirmed by the legislature in joint session. The Division of Legal Affairs advises that the requirement for legislative approval is unconstitutional.

Lines 16-18: Requires three members to "have experience in the regulation, supervision, or conduct of parimutuel wagering, horse racing, or team dog racing." This language assures experienced members on the commission.

Lines 25-26: Adds stipulation that a person may not serve on the commission if previously convicted of an offense defined by a municipal or federal law comparable to an offense defined by AS 05.40.200 or AS 11.66.200 - 11.66.280 (HB 32 only referred to other state law). This language simply broadens the coverage of the provision.

Lines 27-28: A person may not serve as a commission member until after the investigation required under AS 18.65.080. This clause prevents a person from serving on the commission before being properly investigated and approved.

Section 1, Sec. 05.40.020, page 2:

Lines 1-2: Provides that commission members will serve staggered terms of four years. HB 32 did not provide for

staggered terms; it stipulated only that members would serve four year terms.

Section 1, Sec. 05.40.030, page 2:

Lines 5-13: Further clarifies reasons why the governor may remove a member of the commission (incompetence and misconduct in office) and sets out the procedures for that removal.

Lines 14-16: Adds language allowing the governor to suspend a commission member pending removal from office. HB 32 had no provisions for suspension.

Section 1, Sec. 05.40.040, page 2:

Lines 22-25: Provides that, in addition to per diem and travel expenses, a commission member will be compensated \$100 per day for performing duties as a race meet observer. This provision provides incentive for commission members to participate as race observers.

Section 1, Sec. 05.40.060, page 3:

Line 1-2: Simplifies wording of commission's jurisdiction to "a race meet authorized under this chapter" (under HB 32, "a meeting where horse racing or team dog racing is authorized under this chapter for a stake, purse, or reward").

Section 1, Sec. 05.40.070, page 3:

Lines 8-11: Under the adoption of regulations by the commission, adds regulations concerning the immediate suspension of the license of a person during an investigation. Again, HB 32 had no provision for suspension. This clause tightens up the oversight role of the commission.

Section 1, Sec. 05.40.080, page 4:

Lines 22-23: Omits words "Violation of a regulation of the commission is punishable under AS 05.40.200." The omission simply rids the bill of a redundancy.

Section 1, Sec. 05.40.110, pages 4-5:

Line 1, page 4, and Lines 1-4, page 5: HB 32 provided only that a person could not conduct a race meet without a valid license. The US provides that a person operating

concessions at a race meet must also be licensed. HB 32 did not stipulate the length of time a license would remain valid without renewal and did not provide for revocation or suspension of the license. The CS sets the validity of a license at three years and provides for revocation and suspension. The added language provides for greater oversight by the commission and the public (lines 22-23 provides for a public hearing and municipal approval for renewal).

Lines 5-7: Added language clarifies the operation of concessions at a race meet.

Lines 9-11: HB 32 did not stipulate the length of time a race participant's license would remain valid and did not provide for revocation or suspension. The CS does both, setting the validity of a participant's license at one year.

Lines 12-13: New language stipulates that a license may not be issued until after an investigation required under AS 18.65.080 is completed.

Note: All modifications made in Sec. 05.40.110 are an attempt to tighten oversight of race meets.

Section 1, Sec. 04.40.120, page 5:

Lines 15-22: HB 32 provided that a license to conduct a race meet within a municipality could be issued only after the voters of the municipality approve a referendum authorizing parimutuel wagering and races. The CS's new language provides for a two step process for issuing such a license--approval of a referendum and the approval by the municipal governing board after a public hearing. It also provides for renewal of a license--again, with the approval of the municipal governing board after a public hearing.

Section 1, Sec. 05.40.130, pages 5-6:

This new language establishes how the parimutuel pool will be distributed and allows the commission (by regulation) "to adjust the distribution of the parimutuel pool as necessary to promote efficient and successful race meets."

Section 1, Sec. 05.40.140, page 6:

This new language requires that the licensee conducting a race meet report to the commission within 30 days after a race (the distribution of the parimutuel pool and the proceeds of concessions).

Section 1, Sec. 05.40.150, page 6:

This new language provides for a paid observer of a race meet the day before, the day of, and the day after the meet is held.

Note: Sections 140 & 150 provide for tighter oversight of race meets.

Article 4. General Provisions, page 7-8:

Note: Article 4 of the CS combines Article 4 and 5 of the original HB 32. It also changes the sectional numbering from 05.40.250 through 05.40.300 to 05.40.900 through 05.40.990. These changes are simply a technical changes reflecting drafting style.

Section 1, Sec. 05.40.990:, page 8:

Line 1: Changes HB 32's defining of "meeting" or "meet" to "race meet" (though the actual definition stays the same).

Section 5:

Lines 21-23: Changes the initial appointment of members to the commission from 30 days to 90 days after the effective date.

RECEIVED

Dear Representative: *Ullmer*

I would like to urge your support of HB32. Since it is an issue that would be decided on a local option basis, I think the people of our state should be able to decide for themselves.

Karl Erik Rye

Signature

KARL ERIK RYE
445 NORTH ALASKA ST.
PALMER, ALASKA 99845

Address

745 1982

phone no.

* I am a registered voter in this state.

BILL NO: HB 32

DATE: 2/20/87

13

TITLE: "An Act establishing the Alaska
Racing Commission and
parimutuel wagering"

CONTACT: James D. Vaden
Deputy Commissioner

DEPARTMENT OF
PUBLIC SAFETY
POSTMAN PAPER

HB 32 will legalize parimutuel betting at dog and horse races and generate revenues for the general fund.

This Department would be directly affected by the requirement to provide background checks under Section 2, AS 18.65.080(b)(2). of this bill.

Add sub-paragraph "c" to AS 18.65.080: "(c) Investigative reports required by this section will be maintained by the Department of Public Safety as confidential records, but are subject to review by the Commission."

The Department of Public Safety has no position on this bill.



William R. Nix
Acting Commissioner

draft

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

A

Bill Version: HB32

Publish Date: _____

REQUEST

Revision Date: February 20, 1987

Agency Affected: Revenue

Title: Establishing the Alaska Racing Commission & authorizing parimutuel wagering

BRU: Public Services Operating

Sponsor: Larson and Menard

Components: _____

Requestor: State Affairs and Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

<u>OPERATING</u>	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>	<u>FY 91</u>	<u>FY 92</u>
PERSONAL SERVICES	-	115.1	119.7	124.5	129.5	134.7
TRAVEL	-	12.8	*a 6.0	6.2	6.4	6.7
CONTRACTUAL	-	28.0	29.1	30.3	31.5	32.8
SUPPLIES	-	2.5	2.3	2.2	2.0	2.0
EQUIPMENT	-	33.4	-	-	-	-
LAND & STRUCTURES	-	-	-	-	-	-
GRANTS/CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
<u>TOTAL OPERATING</u>	-	191.80	167.10	163.20	169.40	176.20

<u>CAPITAL</u>	-	-	-	-	-	-
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<u>REVENUE</u>	-	-	*b 9.6	-	-	-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

*a. Does not include site inspections nor events from 89-92.

*b. Does not include license fees.

Prepared by: Sally Smith *Sally Smith*

Phone: 465-2392

Division: Public Services

Date: February 20, 1987

Approved by
Commissioner: _____

Date: _____

Agency: Revenue

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management & Budget
- Impacted Agency(ies)
- Senate Secretary

REVISED FISCAL NOTE
H B 32

Worksheet

Personal Services--only the Office Manager and the Clerk Typist would be on board for FY 88. An auditor would be added in FY 89 as activities commenced.

Travel--Six commission meetings at 2 days each in Anchorage in FY 88 to develop regulations. Assumed were 3 commissioners from Anchorage, 1 from Fairbanks and 1 from Juneau.

FAI/ANC	6 x \$220	=	\$1,320
JNU/ANC	6 x \$352	=	2,112
per diem	6 x 5 x 2 x \$80	=	4,800
claims for mileage		=	500
	Sub Total		\$ 8,732

Public hearings held in Anchorage, Fairbanks, Nome and Juneau by the office manager at 1.5 days each.

Travel		= \$	998
Per diem		=	480
	Sub Total		\$ 1,578

Site inspections are averaged per inspection as follows for the manager and one commissioner.

Airfare		= \$	600
per diem	2 x 2 x \$80	=	320
	Sub Total		\$ 920

Events will be attended by the manager and one commissioner.

Airfare		= \$	600
Per diem	2 x 4 x \$80	=	960
	Sub Total		1,520

FY 88 GRAND TOTAL \$12,750

In FY 89 there would be four commission meetings. No site inspections events or regulatory hearings have been included.

FAI/ANC	4 x \$220	= \$	880
JNU/ANC	4 x 352	=	1,408
per diem	4 x 5 x 2 x \$80	=	3,200
mileage			500

FY 89 GRAND TOTAL \$ 5,988

For FY 90 - 92 a .04% increase was added.

FISCAL NOTE
HB 32

Assumptions for revenue figures

1. Effective date of July 1, 1987 and no races during FY '88.
2. Unknown number of races.
3. 34,400 players per 6-day event.
4. An average handle of \$963.2 based on an average wager of \$28.00 (Montana's average).
5. A takeout of 20% (\$192.6) with the state's share at 5% for state revenues of \$9.6 per event.

Assumptions for costs

1. Commission will be headquartered in Anchorage and meet 6 times in FY 88; quarterly thereafter. Each meeting will be 2 days.
2. Personal services will include an office manager to manage and oversee daily activities and to review and attend all events; an auditor I to follow-up all events; and a clerk typist III to process the paper.
3. Travel will include attendance by the office manager and one commissioner at each event plus the commission meetings.

B

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST

Revision Date: _____
 Title: "An Act establishing the
 Alaska Racing Commission..."
 Sponsor: Rep. Larson & Menard
 Requestor: House State Affairs

Bill Version: HB 32
 Publish Date: _____
 Agency Affected: Public Safety
 BRU: Alaska State Troopers
 Components: Detachments & CIB

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		13.3	13.7	14.1	14.5	14.9
TRAVEL						
CONTRACTUAL		.4	.4	.4	.4	.5
SUPPLIES		.1	.1	.1	.1	.1
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	13.8	14.2	14.6	15.0	15.5
CAPITAL						
REVENUE						

FUNDING:: (Thousands of Dollars)

GENERAL FUNDS	0	13.8	14.2	14.6	15.0	15.5
FEDERAL FUNDS						
OTHER						
TOTAL	0	13.8	14.2	14.6	15.0	15.5

POSITIONS:

FULL-TIME						
PART-TIME		1.0	1.0	1.0	1.0	1.0
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This Department would be directly affected by the requirement to provide background checks under Section 2, AS 18.65.080 (b)(2) of HB 32. Contains 3% inflation factor.

JMR
2/25/87
 Prepared by: Joseph Reeves, Program Budget Analyst Phone: 465-4349
 Division: Administrative Services Date: 2/25/87

Approved by Commissioner: [Signature] Date: 2/25/87
 Agency: Public Safety

Distribution (by preparer):

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

Position Title Clerk Typist III		No. of Positions 1	Range/Step 8/B	Barg. Unit GGU
Time Status PPT	Staff Months 6	Location Anchorage		Election District 7-15
Type of Expenditure		Justification		
1	2	3		
Salary	10.1	This position will provide clerical support needed for investigative reports related to legalized parimutuel betting at dog and horse races.		
Benefits	3.2			
Premium Pay				
Other		This position will perform all general clerical work including filing, typing and general correspondence.		
Other Personal Services	13.3			
Travel				
Contractual		Total costs include \$.4 contractual communication needs and \$.1 minimal office supply needs for this position.		
Commodities	.4			
Equipment	.1			
Other				
Total Cost		13.8		
Funding Source for Total Cost				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	13.8		
I-A Receipts	1006			
CIP Receipts	1001			
Other				

REQUEST FOR
NEW POSITION

Agency Department of Public Safety
BRU Alaska State Troopers
Component Detachments & CIB

Page 2 of 2
Revised Date

FY 88

HB

35

Royce Weller

2300

4925-

will do FV

Should have Tues Morning -

Should be \emptyset .

Need to run program to
check assignments -



Official Business

Alaska State Legislature

House

Pouch V
State Capitol
Juneau, Alaska 99811

STATE AFFAIRS COMMITTEE

HOUSE BILL 35

FILE CONTENTS

1. MEMO FROM TAMARA BRANDT COOK TO REPRESENTATIVE FRAN ULMER, DATED 2/12/87
2. PROPOSED CSHB 35 (STATE AFFAIRS)
3. HB 35
4. LETTER FROM KARLA FORSYTHE TO REPRESENTATIVE PETER GOLL, DATED 2/3/87
5. FISCAL NOTE AND ANALYSIS, DEPARTMENT OF REVENUE
6. LETTER FROM REPRESENTATIVE PETER GOLL TO REPRESENTATIVE FRAN ULMER, DATED 1/28/87, WITH LETTER AND BACKUP FROM THE DEPARTMENT OF REVENUE
7. LETTER IN SUPPORT OF HB 35 FROM COMMISSIONER HUGH MALONE TO REPRESENTATIVE PETER GOLL, DATED 1/28/87
8. PUBLIC OPINION MESSAGE IN SUPPORT OF HB 35
9. ADVERTISEMENT FOR PURCHASE OF PERMANENT FUND DIVIDEND CHECKS
10. FORM FOR ASSIGNMENT OF RIGHTS TO ALASKA'S PERMANENT FUND DIVIDEND
11. LETTER FROM COMMISSIONER HUGH MALONE TO REPRESENTATIVE PETER GOLL, DATED 1/28/87, PROVIDING INFORMATION ON THE NUMBER OF ASSIGNMENTS, ETC.
12. LETTER FROM GEORGE MUNDELL TO REPRESENTATIVE PETER GOLL, DATED 1/27/87

Original sponsors: Goll, Ulmer,
Davis and Davidson

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 35 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A B. L

6 For an Act entitled: "An Act relating to assignments of the right to
7 receive a permanent fund dividend."

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

9 * Section 1. AS 43.23 is amended by adding a new section to read:

10 Sec. 43.23.067. ASSIGNMENTS. (a) Except as provided in (b) of
11 this section, a person eligible to receive a permanent fund dividend
12 may not assign the right to the dividend. An attempted assignment of
13 the right to receive a permanent fund dividend is against public
14 policy and is void.

15 (b) A person may assign the right to receive a permanent fund
16 dividend to a

17 (1) federal, state, or municipal governmental entity;

18 (2) person or organization providing health care or social
19 services which is licensed, certified, approved, or otherwise recog-
20 nized by the state; or

21 (3) person or organization that receives state funds for
22 the provision of health care or social services and is required or
23 allowed by regulations of the Department of Health and Social Services
24 to charge a fee for those services.

25 (c) The department shall establish a fee for processing assign-
26 ments made under (b) of this section. The fee shall be deducted from
27 the assigned permanent fund dividend or, if less than the entire
28 dividend is assigned, from the balance due to the assignor.

→ Request Draft CS HB 35
Today -

5-0096A

②
③

Heins

Introduced: 1/19/87
Referred: State Affairs
and Finance

1 IN THE HOUSE

BY GOLL AND ULMER

2

HOUSE BILL NO. 35

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act prohibiting the assignment of the right to receive a permanent fund dividend; and providing for an effective date."

7

8

9

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

10

* Section 1. AS 43.23 is amended by adding a new section to read:

11

Sec. 43.23.067. ASSIGNMENT PROHIBITED. A person eligible to receive a permanent fund dividend may not assign the right to the dividend. An attempted assignment of the right to receive a permanent fund dividend is against public policy and is void.

12

13

14

15

* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

→
LAWRENCE POINT
The Dept. has some information
not deferring

RECEIVED MAR 10 1987

SITKA COMMUNITY HOSPITAL

209 MOLLER AVENUE • SITKA, ALASKA 99835 • (907) 747-3241

3 March, 1987

Representative Fran Ulmer
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

re: HB 35

Dear Representative Ulmer:

Recommend support of the ammendment to HB 35 that would permit assignment to a government entity or organization licensed to provide health care.

Continued support of health care efforts will keep health care available to those in need of it. If we may be of assistance, feel free to let us know how.

Sincerely,



Ed Malewski
Administrator
EM/kjb

cc: Legislative Information Office, Sitka
Health Association of Alaska



Official Business

Alaska State Legislature

House

P.O. BOX V
State Capitol
Juneau, Alaska 99811

COMMITTEE ON STATE AFFAIRS

March 11, 1987

Ed Malewski, Administrator
Sitka Community Hospital
209 Moller Avenue
Sitka, AK 99835

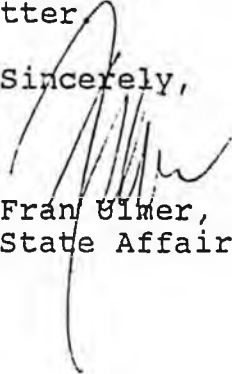
Dear Mr. Malewski:

Thank you for your letter suggesting an amendment to House Bill 35. This issue was brought before the committee when it considered House Bill 35 last month and the State Affairs Committee adopted a committee substitute (enclosed) which covers your concerns.

For your information, House Bill 35 is now in the House Rules Committee pending action by the full House of Representatives. From there it will be sent to the Senate for its deliberations.

Thank you again for your letter.

Sincerely,


Fran Ulmer, Chair
State Affairs Committee

Enclosure

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE GOLL

NAME: ORV GILBERT
 TITLE:
 ADDRESS: GENERAL DELIVERY
 CITY: ANAKTUVUK PASS
 PHONE: 661-3328
 BILL NO: HB 35
 SUBJECT: PROHIBITING ASSIGNMENT OF PF DIVIDEND
 MESSAGE: I URGE THE PASSAGE OF HB 35. LIVING IN THE BUSH, I HAVE SEEN THE
 USE OF ASSIGNING THE RIGHTS TO PERMANENT FUND DIVIDENDS.

ZIP: 99721

POMID: 03075907
 DATE: 01/20/87
 TIME: 07:59:07
 LOCATION: ANCHORAGE LIO

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE GOLL

NAME: JANICE LIENHART
 TITLE: VICTIMS FOR JUSTICE
 ADDRESS: 3100 MOUNTAIN VIEW DRIVE
 CITY: ANCHORAGE
 PHONE: 337-5201
 BILL NO:
 SUBJECT: FIRING OF VICTOR KRUMH
 MESSAGE: WE WERE SORRY TO HEAR ABOUT THE FIRING OF VICTOR KRUMH. HE HAS DONE
 A SUPERB JOB. MR. HOLVERTON, WHO IS THE RECOMMENDED D A- HAS NEVER PROCESSED
 CASE AND HAS BEEN A WEAK JUDGE. IT WOULD SEEM THAT THIS WOULD NOT BE IN THE
 BEST INTEREST OF THE COMMUNITY.

ZIP: 99501

POMID: 03085330
 DATE: 01/20/87
 TIME: 03:53:30
 LOCATION: ANCHORAGE LIO

COPIES:	<u>REPRESENTATIVES</u>	<u>REPRESENTATIVES</u>	<u>SENATORS</u>
	ADAMS	BARNES	ZAWACKI
	BOUCHER	BOYER	ADOOD
	EROWH	CATO	BENNETT
	COLLINS	COTTEH	BINKLEY
	DAVIDSON	DAVIS	COGHILL
	DONLEY	ELLIS	DUNCAN
	FRANK	FURNACE	ELIASON
	GRUENBERG	GRUSSENDORF	FAHRENKAMP
	HANLEY	HERRMANN	FAIKS
	HOFFMAN	HUDSON	FERGUSON
	KOPONEN	LARSON	FISCHER
	HARTIN	MEHARD	HALFORD
	HILLER	NAVARRE	JONES
	PEARCE	PETTYJOHN	JOSEPHSON
	PHILLIPS	POURCHOT	KELLY
	RIEGER	SHULTZ	KERTTULA
	SPRINGER	SUND	RIDEY
	SHACKHAMMER	TAYLOR	STURCULENSKI
	ULNER	HALLIS	SZYMANSKI
	ZAWACKI		UEHLING

BILL SHEFFIELD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF ALCOHOLISM AND DRUG ABUSE

POUCH H 05F
JUNEAU, ALASKA 99811
PHONE: 586-6201

MS
(6)

January 27, 1987

The Honorable Peter Goff
Alaska State House of Representatives
P.O. Box V
Juneau, Alaska 9811

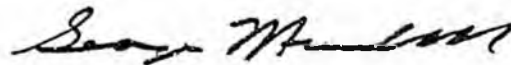
Dear Representative Goff:

Passage of House Bill No. 35 "An Act prohibiting the assignment of the right to receive a permanent fund dividend" in its present form would be detrimental to the economic well-being of State funded alcoholism and drug abuse treatment programs. In 1986, these programs collected in excess of \$74,000 from permanent fund dividend assignments for treatment services provided. As long as programs are needed the assignment process we estimate this source of revenue will increase to \$150,000 in 1987.

State financial support for alcoholism and drug abuse programs has decreased 17.3% between FY86 and FY87. This decrease has made it necessary for programs to become increasingly innovative in obtaining payment for services if they are to maintain the quantity and quality of community based services they presently offer.

We respectfully request you consider an amendment to HB35 that will allow our programs to continue to receive permanent fund dividend assignments.

Sincerely,



George E. Mundell
Regional Program Coordinator

cc: Randall Burns
Special Assistant to Commissioner
Department of Health and Social Services

002-105

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

STATE OF ALASKA
THE LEGISLATURE

1
POUL THE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 12, 1987

SUBJECT: Assignments of the right to receive a permanent fund dividend (CSHB 35(SA))

TO: Representative Fran Ulmer, Chair
House State Affairs Committee

FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

Here is the draft you requested changing section 43.23.067(b)(2). With this change that subsection reads in pertinent part:

A person may assign the right to receive a permanent fund dividend to a . . . person or organization providing health care or social services which is licensed, certified, approved, or otherwise recognized by the state. . . .

I do not believe that this language is definite enough to enable the Department of Revenue to discern whether an assignment is or is not valid because it cannot be determined with certainty that approval by the state or recognition by the state has occurred or what that consists of. It also appears that (b)(2) is so broad that it completely covers all entities described in (b)(3), in which case (b)(3) should be deleted.

TBC:mkr
m8/121

Enclosure



STATE OF ALASKA
 Department of Revenue
 Pouch SA
 Juneau, Alaska 99811

3
 15

**ASSIGNMENT OF RIGHTS
 TO ALASKA PERMANENT FUND DIVIDEND**

If you desire to have all or a portion of your permanent fund dividend payment issued to another party, complete this form and send it to the address shown above. Only one assignment may be made for each dividend. Assignment may not be made where the application for the dividend was made on behalf of a child or other adult. Once an assignment is made it may not be retracted by the assignor.

ASSIGNOR (Dividend Applicant)		
Social Security Number		
First Name	MI	Last Name
Mailing Address		
City, Town or Post Office, State and Zip Code		

ASSIGNEE (Rights Assigned To)	
Permanent Fund Dividend Year	Amount to be Assigned
Full Name of Individual or Agency	
Mailing Address	
City, Town or Post Office, State and Zip Code	

In accordance with 15 AAC 23., I hereby assign to the party stated above (Assignee), all right, title and interest in the permanent fund dividend to which I may be entitled, limited to the amount stated above. This assignment must be signed in the presence of two witnesses or a notary public.

Signature of Assignor	Date
-----------------------	------

TWO WITNESSES	
This assignment was executed freely and voluntarily in the presence of two disinterested witnesses whose signatures appear here.	
Witness	Date
Witness	Date

NOTARY PUBLIC
This assignment was subscribed and sworn to before me on this _____ day of _____, 19____, at _____.
SEAL
Signature of Notary
My Commission Expires



4

Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE
STAFF COUNSEL

303 K Street
Anchorage, Alaska 99501

(907) 264-8228

February 3, 1987

Representative Peter Coll
P. O. Box V
Juneau, Alaska 99811

Dear Representative Coll:

I am writing to bring to your attention some court-related concerns regarding House Bill 35, an act prohibiting the assignment of the right to receive a permanent dividend. Under this measure, assignments of dividends would be prohibited.

It is my understanding that this legislation is drafted to address situations in which permanent fund dividends are assigned to private persons for less than full consideration. However, the broad language of this bill would also prohibit state agencies such as the court system from requesting and accepting these assignments. Defendants currently assign their permanent fund checks to the state to pay fines and restitution. Additionally, the supreme court is considering amending Criminal Rule 39 to require that as a condition of receiving court-appointed counsel at public expense, a defendant must execute a waiver of release of information to the court and an assignment of the permanent fund dividend check. Although there have been procedural difficulties in determining how to process such assignments, including questions about how these assignments relate to statutory exemption rights, these assignments have been a means of securing payment from defendants who otherwise would not pay a fine, make restitution, or reimburse the state for the costs of appointed counsel.

I would be glad to provide you with further information or discuss this bill with you or your staff in greater detail.

Representative Peter Goll
P. O. Box V
Juneau, Alaska 99811

Thank you for considering these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karla L. Forsythe".

Karla L. Forsythe
Staff Counsel

KLF:bs

cc: Representative Fran Ulmer
Arthur H. Snowden, Administrative Director
Susan Mill, Manager, Special Projects
William Cotton, Court Rules Attorney

2/3/87-8

Fiscal Note 5

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST _____

Bill Version: HB 35
Publish Date: _____

Revision Date: _____
Title: An act prohibiting the assign-
ment to right to receive PFD's
Sponsor: Goll and Ulmer
Requestor: House State Affairs

Agency Affected: Revenue
BRU: Permanent Fund Dividend

Components: Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

(See attached)

Prepared by: Ervin B. Jones
Division: Administrative Services

Phone: 465-2313
Date: 1/27/87

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 1/27/87

Distribution (by Agency preparing fiscal note):

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

FISCAL NOTE ANALYSIS
CONTINUATION

HB 35

Assumptions:

1. HB 35 would have an effective date prior to March 15, 1987, so that the Department of Revenue would have an opportunity to advise the public of the change in law before the 1987 PFD filing season starts on April 1, 1987.

Analysis:

There would be no fiscal impact on the administration of the PFD program. Prior to the popularity of the "Dividend-Buying" plan of certain private individuals, one full-time accounting clerk was very busy processing all garnishments and assignments received by the department. The prohibition on assignments would result in an increase in the number of garnishments processed, as most assignees would opt for the remaining more expensive option of garnishment. This bill would probably, however, cause those entrepreneurs who are "buying dividends" to go out of business.

Attachments A and B provide pertinent detail regarding the users of the assignment and garnishment processes.

REPRESENTATIVE
PETER GOLL



P O BOX
JUNEAU, ALASKA
(907) 465

6

STATE OF ALASKA
HOUSE OF REPRESENTATIVES

January 28, 1987

The Honorable Fran Ulmer
Chair
House State Affairs Committee
Alaska State Legislature
Juneau, Alaska 99811

Dear Rep. Ulmer:

Attached are materials related to House Bill 35, relating to the assignment of Permanent Fund Dividend checks.

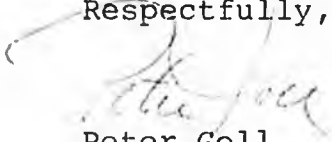
The bill as written prohibits all assignments of Permanent Fund Dividend checks.

At the present time, the Department of Revenue will make available on request a form with which a citizen may assign his or her check to another party.

The form is then returned to and processed by the Department of Revenue at state expense. Abuses of this system have led to the introduction of House Bill 35.

It is my understanding that certain assignments may be in the public interest. For that reason, the close scrutiny of this legislation by your committee is encouraged and solicited.

Respectfully,


Peter Goll



STATE OF ALASKA
HOUSE OF REPRESENTATIVES

January 28, 1987

Statement of costs incurred by the Department of Revenue to process assignments of Permanent Fund Dividend checks:

Source: Department of Revenue
Figures are approximate

Cost per assignment: \$3.40

Number of submitted requests for assignments and administrative cost:

1984:	604.	If all requests are approved, total cost:	\$2,053.60	INCREASE
1985:	1,047.	If all requests are approved, total cost:	\$3,559.80	IN ADMIN
1986:	5,145.	If all requests are approved, total cost:	\$17,493.00	COSTS -
				productive GROW
				POP.

The rapid increase in the annual number of assignments is evident.

A major part of this increase has been the result of so-called Dividend Buyers.



STATE OF ALASKA
HOUSE OF REPRESENTATIVES

January 28, 1987

Source: Department of Revenue
Figures are approximate

Attached please find:

Chart #1 and Chart #2 from the Department of Revenue, and a letter from the State Office of Alcoholism and Drug Abuse.

The Department of Revenue charts which are attached provide the following information.

Chart #1 provides the total number of assignment requests accepted and paid by the Department in 1986.

Chart #2 provides a breakdown of the types of assignments and garnishments of Permanent Fund Dividend checks in 1986.

Please note that garnishments are not impacted by HB35.

I believe that assignments to government agencies do not constitute a significant financial burden on the state, and often serve a public interest purpose. I have no objection to permitting assignment to government agencies if this is the will of the committee. I am advised that the opportunity to assign to government agencies has the support of the Department of Revenue.

Other assignments are divided into "Dividend Buyers" and "All others." "All others" includes gifts to charities, assignments to non-profit agencies, assignments to funeral homes and other categories to be outlined by the Department in its testimony before the committee.

The letter from the State Office of Alcoholism and Drug Abuse indicates the use of assignments to obtain health and social services from licensed or approved non-profit agencies. That letter suggests an expected increase in assignments of 100 per cent during 1987.

The legislation as written would prohibit the assignment of checks to approved non-profit agencies for the purchase of health and social services. If the committee agrees that assignment of checks for the purchase of health and social services from approved non-profit entities is in the public interest and should be administered by the Department of Revenue, I have no objection to permitting this sort of assignment.

Thank you for your consideration.

STATE OF ALASKA

DEPARTMENT OF REVENUE

STEVE COWPER, GOVERNOR

STATE OFFICE BUILDING
POUCH SA
JUNEAU, ALASKA 99811


January 27, 1987

The Honorable Peter Goll
Representative
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Goll:

At your request, the Department of Revenue has reviewed the records of permanent fund dividend assignments and garnishments. The attached statistical information is offered.

Sincerely,


Evelyn Jones, Director
Administrative Services Division

Attachments

EJ:ms

Department of Revenue
Administrative Services Division
Analysis of
Assignments/Garnishments
1986
HB 35
Attachment A
1/27/87

1986 Total Services Accepted and Paid By Department of Revenue

	<u>Accepted</u>	<u>Paid</u>
<u>Assignments</u>	5,145	4,267*
<u>Garnishments</u>	11,963	10,240*

*See Attachment B for further detail.

Department of Revenue
Administrative Services Division
Analysis of
Assignments/Garnishments
1986
HB 35
Attachment B
1/27/87

Detail Analysis of Services Paid

	<u>Agency</u>	<u># Paid</u>	<u>\$ Paid</u>
<u>Garnishments</u>			
Federal:	Internal Revenue Service	2,756	\$1,481,764
State:	Child Support Enforcement	4,400	2,282,836
	Department of Labor	725	307,199
All Other:		2,359	\$ 721,859
TOTAL:		<u>10,240</u>	<u>\$4,793,559</u>

Assignments

Federal:	Internal Revenue Service	31	16,119
	Small Business Administration	1	556
	U.S. Department of Justice	3	1,213
State:	Commerce	1	556
	Child Support Enforcement	26	11,307
	Corrections	1	556
	Education	13	5,355
	H&SS	19	4,723
	Labor	35	15,399
	Law	3	1,513
	Natural Resources	2	903
	Public Safety	2	556
	Revenue	7	2,521
	Transportation	1	556

→ Dividend Buyers:		1,282	696,383
All Others:		<u>2,840</u>	<u>\$1,287,739</u>
TOTALS		<u>4,267</u>	<u>\$2,048,055</u>

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

7
P.O. BOX 5
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300

January 28, 1987

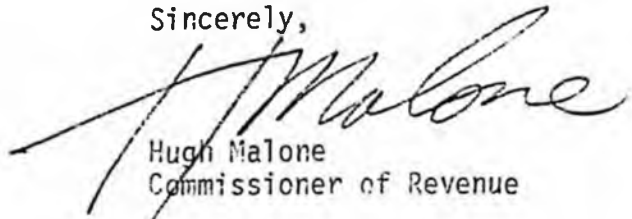
The Honorable Peter Goll
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Goll:

The Department of Revenue supports HB 35 - "An Act prohibiting the assignment of the right to receive a PFD..." We believe your proposal properly addresses current abuses in the assignment program.

We would, however, encourage you to amend the proposed language to allow for assignments to public agencies and qualified non-profit organizations.

Sincerely,



Hugh Malone
Commissioner of Revenue

HM:mkw
07-13

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

January 28, 1987

STEVE COWPER, GOVERNOR

P.O. BOX 5
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300

The Honorable Peter Goll
Representative
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Goll:

Per your request, I am providing the following information regarding the processing of assignments and garnishments of permanent fund dividends.

- 1) The number of assignments received by the department has escalated in recent years as follows:

1984 -	604
1985 -	1,047
1986 -	5,378

- 2) Estimate of cost per service received and processed by the department - \$3.40. (This includes only associated personal services cost. Computer resource costs would take more time to estimate, but should be considered.)

- 3) In addition to state and federal agencies and persons "buying" dividends, the assignment process is also used by the following:
 - a. Churches
 - b. Hospitals
 - c. Regional housing authorities
 - d. Funeral homes
 - e. Non-profit organizations
 - f. Court system
 - g. Collection agencies
 - h. Insurance companies
 - i. Rehabilitation centers
 - j. Doctors
 - k. Automotive dealers
 - l. Flying schools
 - m. Attorneys

The Honorable Peter Goll
January 28, 1987
Page 2

- n. Furniture stores
- o. Telephone companies
- p. Credit unions
- q. Banking institutions
- r. Bookkeeping services

I hope this answers your questions. If not, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Hugh Malone", with a flourish extending to the right.

Hugh Malone
Commissioner of Revenue

HM:EJ:ms
87-14



Official Business

Alaska State Legislature

House

P.O. BOX V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

February 13, 1987

SUBJECT: Assignments of the right to receive a
permanent fund dividend (CSHB 35(SA))

TO: Representative Fran Ulmer, Chair
House State Affairs Committee

FROM: Dennis J. Burns
House State Affairs Committee Aide

At the request of Representative Goll, I have contacted the Department of Revenue regarding assignment of Permanent Fund checks prior to the passage of CSHB 35. According to Royce Weller, if a valid assignment is made prior to the effective date of CSHB 35, this assignment would be honored by the Department. The effective date of the CSHB 35 should be clearly indicated on Dept. of Revenue applications to prevent invalid assignments.

1.9

the department... cars were recalled last year because of safety-related defects. Although car manufacturers are required to notify owners of the recalls, the

charge to the consumer.

The agency indicated in a news release, "No matter how long ago the recall occurred, the manufac-

will be a problem.

Hotline operat... sumers with o... problems to the... al, state or local

In addition, offers booklets c

WE BUY DIVIDEND CHECKS FOR \$300 CASH

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527 Fourth Avenue • 456-6022

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Call our 1 8333, day c answering call. You name, by editor or call, ple telephor

Mahay's Riverboat Service

raft
s



H B

5 2

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE ULMER

NAME: KATHERINE BIGLER
TITLE: PRESIDENT OF MADD/ANCHORAGE
ADDRESS: 2526 ARLINGTON DRIVE
CITY: ANCHORAGE
PHONE: 561-6233
BILL NO: HB 52
SUBJECT: MOTOR VEHICLE FORFEITURE
MESSAGE: WE SUPPORT HB 52. WE WOULD LIKE TO SUPPORT ALL EFFORTS TO FREE OUR HIGHWAYS OF DRINKING DRIVERS.

ZIP: 99517

POMID: 03110612
DATE: 01/29/87
TIME: 11:06:12
LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES

SUND
COTTEN
GRUENBERG
NAVARRE
BARNES
TAYLOR
KOPONEN


↑
*pls send her
copy of S/A to
report...
adds pass
7*

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 52 "An Act Relating to Motor Vehicle Forfeiture."
DATE: January 30, 1987

I would appreciate it if you would schedule HB 52 at your earliest convenience.

The purpose of this bill is to strengthen the legislative intent of AS 28.35.036 by stating the "...the state shall [may] move the court to order the forfeiture of the motor vehicle...." The primary intent of HB 52 is to limit drunk driving fatalities. This legislation may also act as a deterrent by convincing first time DWI offenders that they will no longer have a vehicle in their possession if they are convicted of a second DWI offense.

After HB 6 was signed into law in September 1983, the prosecution was given the option to request the confiscation of a vehicle for second time DWI offenders. Since 1983, only two cars have been confiscated state-wide for second DWI offense. Alaska statistics show that in 1985, there were 365 drunk driving accidents involving third time offenders. This figure increased to 412 accidents for the first 11 months of 1986.

HB 52 has a zero fiscal note. I have enclosed backup material. If you need any further information on this bill, please contact me or my staff.

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

POSITION PAPER

HB 52 "AN ACT RELATING TO MOTOR VEHICLE FORFEITURE."

Alaska ranks third highest per capita nationwide in alcohol-related accident fatalities. After HB 6 was signed into law in September 1983, the prosecution was given the option to request the confiscation of a vehicle for second time DWI offenders. In Fairbanks, only one person in three years has been ordered to forfeit their car. Alaska statistics show that in 1985, there were 365 drunk driving accidents involving third time offenders. During the first 11 months of 1986, this figure increased to 412 drunk driving accidents. These alarming statistics have led me to introduce this legislation.

The purpose of HB 52 is to strengthen the legislative intent of AS 28.35.036 by stating that "...the state shall [may] move the court to order the forfeiture of the motor vehicle..." The primary intent of HB 52 is to limit drunk driving fatalities. This legislation may also act as a deterrent by convincing first time DWI offenders that they will no longer have a vehicle in their possession if they are convicted of a second time DWI offense.

It is important to realize that under AS 28.35.037 (Remission of Forfeitures) an offender can go to court in order to retrieve his or her car, thereby protecting and third party interests in the motor vehicle. The offender must follow the guidelines within statute and present relevant arguments to the judge. Sec. 28.35.037(c) states that if the person satisfies these requirements, the court shall order that the motor vehicle and title be released.

It is routine practice of Alaska game wardens to immediately confiscate cars, trucks and guns when a hunting violation is charged, prior to completion of the violator's due process proceedings. It is my feeling that the protection of human life should be considered at least as important in state law as a hunting or parking violation.

MADD

MOTHERS AGAINST DRUNK DRIVERS
Fairbanks Northern Lights Chapter

P.O. Box 1167
Fairbanks, Alaska 99707-1167
(907) 456-3964

FORFEITURE OF VEHICLE

OBJECTIVE

It is no secret that the effects of Driving While Intoxicate (DWI), are a major health problem. Once again 1985 statistics compiled by individual state departments of highway, Alaska has ranked third nationwide for the highest rate per capita of alcohol-related crash fatalities (see attached). Death, injury, and trauma occur to the victims and victim families of DWI crashes. Economically this problem is costing our communities millions annually in lost wages, court costs, unrecoverable medical charges, higher insurance rates, and other related expenses.

Mothers Against Drunk Driving (MADD), is an organization whose primary goal is to reduce the number of deaths and injuries resulting from DWI crashes through our educational, legislative and Victim Assistance programs.

In the past three years, we have asked you, our legislators, to increase the penalties for DWI, and refusal to submit to a breath test, to raise the drinking age to 21, to prohibit Happy Hour sales, to institute mandatory driver insurance, and to allow for vehicle confiscation for second time DWI offenders, and other related legislation.

We are once again faced with making a request that you consider amending AS 28.35.036 Forfeiture of Motor Vehicle.

It has been our observation since the passage of HB-6 which was signed into law in September of 1983 by then Governor Sheffield, that our district attorneys and judges have been failing to exercise their option to confiscate a vehicle for a second offender for DWI. To date, our district attorney's office in Fairbanks (Fourth Judicial District), have been failing to exercise their option to confiscate a vehicle for a second offender for DWI. To date our district attorney's office reports that they have only confiscated one (1) vehicle.

We do not feel that the confiscation of one vehicle in nearly three years serves as a deterrent for anyone, and without deterrents that get the public's attention, we can never hope to see a decrease in the conduct. In fact, we have seen a serious rise in the number of people killed and injured in the Fairbanks North Star Borough the last year.

MADD

MOTHERS AGAINST DRUNK DRIVERS

Fairbanks Northern Lights Chapter

P.O. Box 1167

Fairbanks, Alaska 99707-1167

(907) 456-3964

FORFEITURE OF VEHICLE

OBJECTIVE

page 2

In 1985 ~~seventeen~~ ^{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 officer on 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 33.05.06. However, it has become obvious that the Justice system has side common sense in use discretion to use this option as a deterrent and as a deterrent measure to others, and has therefore

15

M A D D

MOTHERS AGAINST DRUNK DRIVERS

Fairbanks Northern Lights Chapter

P.O. Box 1167

Fairbanks, Alaska 99707-1167

(907) 456-3964

FORFEITURE OF VEHICLE

OBJECTIVE

page 3

protect 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, snow-machines, 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 forfeiture of license should the insured loan a car to individual prior to checking the driver's license.

(3)

MADD

MOTHERS AGAINST DRUNK DRIVERS

Fairbanks Northern Lights Chapter

P.O. Box 1167

Fairbanks, Alaska 99707-1167

(907) 456-3964

FORFEITURE OF VEHICLE

REQUESTS

page 4

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 cars at 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

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1985 ALCOHOL RELATED TRAFFIC FATALITIES*

State	Fatalities	Population In Millions	Fatalities Per Million	State	Fatalities	Population In Millions	Fatalities Per Million
Alabama	214	3.9	55	Montana	118	.8	146
Alaska	69	.4	173	Nebraska	91	1.6	57
Arizona	335	2.8	120	Nevada	112	.9	125
Arkansas	324	2.3	141	New Hampshire	102	.9	113
California	2,412	23.7	102	New Jersey	246	7.4	33
Colorado	242	2.9	83	New Mexico	293	1.3	223
Connecticut	252	3.1	81	New York	695	17.6	39
Delaware	73	.6	122	North Carolina	637	5.9	108
Florida	1,294	9.7	133	North Dakota	50	.7	72
Georgia	700	5.4	130	Ohio	746	10.8	69
Hawaii	77	1.0	77	Oklahoma	279	3.0	93
Idaho	118	.9	131	Oregon	285	2.6	110
Illinois	554	11.4	49	Pennsylvania	767	11.9	65
Indiana	232	5.5	42	Rhode Island	50	.9	56
Iowa	234	2.9	81	South Carolina	385	3.1	124
Kansas	152	2.4	63	South Dakota	69	.7	99
Kentucky	168	3.6	47	Tennessee	318	4.6	69
Louisiana	401	4.2	95	Texas	989	14.2	70
Maine	56	1.1	51	Utah	110	1.5	74
Maryland	741	4.2	176	Vermont	41	.5	81
Massachusetts	222	5.8	38	Virginia	479	5.3	90
Michigan	719	9.3	77	Washington	326	4.1	81
Minnesota	261	4.1	64	West Virginia	257	2.0	129
Mississippi	300	2.5	120	Wisconsin	177	4.7	37
Missouri	486	4.9	99	Wyoming	70	.5	146

*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.

JAN 23 '87 16:30 LIO - FRIPRHS

Chapter 77

forfeited under this section may be disposed of at the discretion of the department. *(if sold at auction I 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 states allow for the hiring of a private prosecutor if a victim is not satisfied with the public prosecutor. In some of those states the public prosecutor must get the private prosecutor permission to try the case. Victims should be aware of their state statutes regarding this procedure.

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

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

§2.26 John Doe proceeding. If a person complains to a judge that he has reason to believe that a crime has been committed within his jurisdiction, the judge shall examine the complainant under oath and any witnesses produced by him and may, and at the request of the district attorney shall, subpoena and examine other witnesses to ascertain whether a crime has been committed and by whom committed. The extent to which the judge may proceed in such examination is within his discretion. The examination may be adjourned and may be secret. Any witness examined under this section may have counsel present at the examination but such counsel shall not be allowed to examine the client, cross-examine other witnesses or argue before the judge. If it appears probable from the testimony given that a crime has been committed and who committed it, the complaint shall be reduced to writing and signed and verified; and thereupon a warrant shall issue for the arrest of the accused. Subject to §71.23, the record of such proceeding and the testimony taken shall not be open to inspection by anyone except the district attorney unless it is used by the prosecution at the preliminary hearing or the trial of the accused and then 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, 208 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 in 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. 5, 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.

Milio Kirk said Entz acted without authority when he allowed Martin Vareas 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 Statutes 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.

MADR. ALICE WINDS A PROTECTION FOR ARTICLE LEMBUKSES

BILL NO: HB 52

DATE: January 22, 1987

TITLE: An Act relating to motor vehicle forfeiture

CONTACT: ^{Tim} T. Michael Lewis
465-4374

DEPARTMENT OF
PUBLIC SAFETY

POSTAL PERMIT

This bill would provide a strong deterrent 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 26 1987

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version : HB52
Publish Date : _____

Revision Date: _____
Title: An Act relating to motor vehicle forfeiture

Agency Affected: Public Safety
BRU: AK Highway Safety Planning Agency

Sponsor: Koponen
Requestor: House State Affairs

Components : _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: T. Michael Lewis *TML*

Phone: 465-4374

Division: Alaska Highway Safety Planning Agency

Date: 1/22/87

Approved by Commissioner: *[Signature]*

Date: 1/23/87

Agency: _____

Distribution (by preparer):

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

JMR
1/23/87

MEMORANDUM

State of Alaska

TO: Susan S. McLean
Assistant District Attorney
Kodiak

DATE: April 26, 1983

FILE NO:

TELEPHONE NO:

FROM: Sarah Elizabeth McCracken ^{SEM}
Assistant Attorney General
Natural Resources-Anchorage

SUBJECT: Release of Crab
Pots

This is a somewhat tardy response to your February 23, 1983 memo requesting a form for the release of crab pots.

It is difficult to develop a universal agreement for release of crab pots or other gear, because the circumstances of the seizure, the nature of the gear seized and other matters may differ from case to case and require special tailoring. However, the form that is enclosed should be a good general guideline for release of crab pots and other gear (including vessels) seized in connection with district court criminal matters. It could also be modified to address civil seizure and forfeiture actions. A few comments are in order:

1. In general, when we seize a fishing vessel we do not wish to enter into a stipulation "for value" whereby the stipulation would result in substitution of the bond or other security for the vessel itself. This is because the value of a fishing vessel is likely to increase during the pendency of the action. However, crab pots and other gear are likely to depreciate in value, particularly if released and subjected to use and deterioration from the elements. Therefore, we would probably wish to enter into a stipulation for value with respect to depreciating goods such as crab pots so that we would have the benefit of the value of the crab pots when seized, rather than be left with what might be virtually worthless equipment at the end of a criminal trial or appeal. Whether equipment for which you would like to use the stipulation appreciates or depreciates should determine whether to call it a stipulation for value and whether to use the language suggested in paragraph 11.

2. Depending on the nature of the goods, you may or may not need the language in paragraph 13 (that the items will be maintained in as good a condition as when seized.) If we intend to substitute the bond anyway, that language would not be necessary. I have attempted to cover both situations in paragraph 11 by allowing the state to have the option of either retaining the goods or accepting the bond or other security as a substitution.
3. Other paragraphs in this draft may or may not be applicable, given the particular facts of a specific case. For example, there may be no need for paragraph 5 relating to obligations if it is clear that none exist for the equipment. In other cases, there may be very complicated financing, particularly if you have seized expensive gear.

I hope this will be of some use to you, and I reiterate that we would be glad to assist you as necessary in implementing these kinds of release agreements.

You may also be interested to know that the Alaska Board of Fisheries (and also the Alaska Board of Game) adopted regulations during the last regulatory meeting in March and April specifying that fish and game regulations are intended to be strict liability offenses unless otherwise provided by the regulations or statute. The Board of Fisheries regulation should be sent to the Lt. Governor's office for filing sometime within the next week or two, and hence would be in effect 30 days thereafter. We are hopeful that this action by the boards will remedy some of the problems created by the Reynolds decision.

Best regards.

SEM/jmo

cc: John Gissberg
Kathleen McGuire
Larri Spengler /

this agreement. This release agreement shall become effective when signed by the parties.

5. Custodian shall meet all obligations on the [crab pots/gear], which include:

	<u>Lenders</u>	<u>Total</u>	<u>Monthly Payment</u>	<u>Due Date</u>
a.	_____	_____	_____	_____
b.	_____	_____	_____	_____

6. Custodian may not further encumber the [crab pots/gear]
7. Custodian shall hold the State harmless for any damages or obligations that may occur after delivery to custodian under this agreement.
8. The stipulated value of the [crab pots/gear] at the date of seizure [_____, 19__], is [_____].
9. Custodian shall post [with the court], at the time this agreement is executed, a [cash bond/other security] in the amount of \$[_____] to protect the State's interests during the period of release.
10. Upon a court judgment forfeiting the [crabpots/gear] to the State, custodian shall deliver the [crab pots/gear] as soon as possible, and in no event more than 30 days after forfeiture is ordered, to [_____], Alaska.
11. If the [crab pots/gear] are returned in substantially the same condition as when released, so that their value is equal to or exceeds that set in paragraph 8 of this agreement, the bond shall be exonerated. If the value of the [crab pots/gear] at the time forfeiture is ordered is

less than the amount set in paragraph 8 of this agreement, the State may, at its option, retain the bond and any interest as a substitution for the [crab pots/gear].

12. Upon judgment [of acquittal/denying forfeiture of crabpots/gear], the bond will be exonerated and the [crab pots/gear] will be returned to custodian.
13. Custodian shall keep, maintain, and preserve the [crabpots/gear] in accordance with all applicable laws, regulations, and ordinances, and generally accepted fishing industry standards. The items shall be maintained in as good a condition as when seized.
14. Custodian shall keep the [crabpots/gear] within the [_____] Judicial District unless otherwise agreed by the State.
15. This agreement is for the purpose of release of [crab pots/gear] only, and does not constitute an admission of liability or wrongdoing by either party.
16. This agreement contains the entire agreement between the parties, and its terms are contractual and not a mere recital.
17. This agreement shall be construed under the laws of the State of Alaska.
18. If custodian breaches the terms of this agreement, the custodian must deliver the items to the State immediately;

any failure to deliver within ten days after the breach of any terms of this agreement will automatically forfeit the bond to the State.

Dated: _____

Assistant District Attorney

Dated: _____

[Claimant/owner]

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I GUIDELINES FOR PROSECUTING FORFEITURE ACTIONS :
FISH, GAME AND GUIDING

A. Statutory Authority: Forfeiture in Fish, Game
and Guiding Violations

Several statutes provide authority for forfeiture of equipment and illegally taken fish and game; these include AS 16.05.190, AS 16.05.195, and AS 08.54.210. The statute primarily used as a basis for in rem forfeiture of illegally used equipment is AS 16.05.195, enacted in 1974. That statute provides, in relevant part:

(a) Guns, traps, nets, fishing gear, vessels, aircraft, other motor vehicles, sleds, and other paraphernalia or gear used in or in aid of a violation of this title, or regulation promulgated under this title, be forfeited to the state

(1) upon conviction of the offender in a criminal proceeding
...or

(2) upon judgment of a court of competent jurisdiction in a proceeding in rem that an item specified above was used in or in aid of a violation of this title or regulation promulgated under it.

(b) Items classified in (a) of this section may be forfeited under this section regardless of whether they were seized before instituting the forfeiture action.

(c) An action for forfeiture under this section may be joined with an alternative action for damages brought by the state to recover damages for the value of fish and game or parts of them...transported or possessed contrary to the provisions of this title or a regulation promulgated under it.

- (d) It is no defense that the person who had the items specified in (a) of this section in possession at the time of its use and seizure has not been convicted or acquitted in a criminal proceeding resulting from or arising out of its use.
- (e) No forfeiture may be made of an item subsequently sold to an innocent purchaser in good faith. The burden of proof as to whether the purchaser purchased the item innocently and in good faith shall be on the purchaser.
- (f) An item forfeited under this section shall be disposed of at the discretion of the department.

The legislature passed this statute partly in response to procedural questions that arose in the case State v. Graybill, 545 P.2d 629 (Alaska 1976), where forfeiture was demanded by the state in a criminal case involving illegal possession and transportation of a bear hide. Graybill had argued that it was mandatory for the state to initiate a separate in rem civil proceeding in order to seek forfeiture of the airplane used in the violation. The supreme court rejected this argument and held that under AS 16.05.190, which was the only fish and game forfeiture statute at the time, an aircraft could be forfeited in a criminal proceeding.

AS 16.05.190, which was not repealed or replaced by AS 16.05.195, provides authority for the state to seize guns, traps, nets, aircraft, etc., and provides that upon conviction of the offender of a violation of the fish and game code, the

equipment may be forfeited by court order. AS 16.05.190 differs from AS 16.05.195 in that it does not address civil in rem procedures, and it specifies that illegally taken fish and game shall be forfeited by the court upon conviction; it does not, however, address the disposition of vessels, aircraft or other equipment forfeited by a court. In contrast, AS 16.05.195 establishes that forfeited equipment "shall be disposed of at the discretion of the department" [of Fish and Game].

Generally, when bringing an in rem forfeiture action, AS 16.05.195 is the appropriate statutory authority; use AS 16.05.190 for obtaining a search and seizure warrant or for obtaining a court order disposing of illegally taken fish or game in a criminal proceeding.

In addition to the forfeiture authority provided in Title 16 for fish and game violations, AS 08.54.210(b) provides in pertinent part:

[A] person who engages in guiding or transporting activity during the period his license is suspended or revoked under this chapter [guiding chapter, Title 8, Alaska Statutes, is guilty of a felony punishable, upon conviction, by a fine or not more than \$5,000 and by imprisonment for not less than one year nor more than 3 years. In addition to punishment for a felony, all guns, fishing tackle, boats, aircraft, automobiles or other vehicles, camping gear and other equipment and paraphernalia used in, or in aid of, guiding or transporting activity engaged in during the period of suspension or revocation shall be confiscated by persons authorized to enforce this chapter. [Emphasis added]

This statute uses the term "confiscate" rather than "forfeit" but the terms have been used synonymously, State, Conservation Department v. Brown, 53 N.W.2d 859 (Mich. 1952), and thus the statute provides a separate forfeiture authority for guiding violations.

It is clear, both from the statutes discussed above and from case law, that the state has the authority to seek forfeiture of vessels, aircraft and other equipment used in violation of fish and game and some guiding statutes or regulations both in a criminal case brought against the individual or in a civil in rem action brought against the vessel or airplane itself. State v. Graybill, 545 P.2d 629 (Alaska 1976).

B. Civil In Rem Actions.

In contrast to a criminal action, which is prosecuted by the district attorney's office, a civil in rem action is brought by the attorney general. An in rem proceeding is substantially different from a criminal action, and provides certain strategic advantages. First, the in rem complaint is brought against the aircraft or vessel itself as the defendant, and no individual people need be named as defendants in the case.

Service is effected on a vessel or aircraft by actual or constructive seizure of the equipment (with a warrant), by posting the item with a copy of the complaint, and by filing notice of forfeiture by publication. The warrant should be

obtained under Alaska Rule of Criminal Procedure 37. See F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980). The registered owner and any known claimants should be notified of the action, but need not be made parties. United States v. Pollastrine, 8 Alaska 104 (D. Alaska 1929); United States v. Bleasby, 257 F.2d 278 (3d Cir. 1958); People v. One 1971 Mercury Sedan, 168 P.2d 443 (Ct. App. Cal. 1946).

Secondly, the in rem proceeding is a civil action and therefore the rules of evidence, burden of proof, and discovery provisions for civil cases are applicable. Civil rules provide considerably more expansive discovery than criminal rules, and the civil burden of proof by a preponderance of the evidence applies. Case law shows that in rem forfeitures are considered, although civil actions, "quasi criminal in nature". Graybill v. State, 545 P.2d 629 (Alaska 1976). This holding does not, however, mean that a criminal burden of proof applies. Judge Madsen, who rendered the superior court decision in F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980), cert. denied, ___ U.S. ___, 71, L. Ed.2d 284 (1982), stated in his decision granting forfeiture of a fishing vessel:

The court, after having heard and weighing the testimony of the witnesses and the exhibits, finds that the state has met its burden by clearly and convincingly proving by a preponderance of the evidence.

See also, State v. Rice, 626 P.2d 104 (Alaska 1981); U.S. v. Twelve Ermine Skins, 78 F. Supp. 734 (D. Alaska 1948).

Because the in rem action is civil rather than criminal, the case must be filed within two years (AS 09.10.070); in rem civil actions are not bound by the criminal procedure four-month rule.

Most forfeiture statutes, like AS 16.05.195, are silent on the question of whether a jury trial is of right. The opportunity for a jury trial will probably be favored in Alaskan courts, but because of the complexity and nature of civil forfeiture proceedings, judge trials are preferable, as is the practice in admiralty. In general, courts look to admiralty procedures in handling forfeitures, U.S. v. \$5,372.85 U.S. Coin and Currency, 283 F. Supp. 904 (D.N.Y. 1968); One Plymouth Automobile v. U.S., 165 F.2d 186 (5th Cir. 1947). Also see, F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980), cert. denied, ___ U.S. ___ 71 L. Ed.2d 284 (1982). As a general rule, admiralty cases are tried by a court, not a jury. The Paolina S., 11 F. 171 (_____ 1880); Clark v. U.S., 5 F. Case No. 2, 837 (C.C. Pa. 18__); see also, Humble Oil & Refining Co. v. Philadelphia Ship Maintenance Co., 342 F. Supp. 786 (D. Pa. 1972); American of Puerto Rico, Inc. v. Transocean Tankers Corp., 317 F. Supp. 798 (D. Puerto Rico 1969); Texas Menhaden Co. v. Palermo, 328 F.2d 579 (6th Cir. 1964).

Some courts refuse to apply admiralty procedure that denies a trial by jury in civil forfeitures for state or federal

drug violations. This position is based on the argument that although admiralty forfeitures are prosecuted in rem according to admiralty practice, seizures on land are not admiralty cases but "common law informations," in which a jury trial is demandable. People v. One 1941 Chevrolet Coupe, 231 P.2d 832 (Cal. 1951); One Plymouth Automobile v. U.S., 165 F.2d 186 (5th Cir. 1947). The court in People v. One 1941 Chevrolet Coupe, 231 P.2d 832 (Cal. 1951) distinguishes between forfeitures of contraband, where there is no right to trial by jury, and forfeitures of otherwise lawful instrumentalities, where trial by jury is a constitutional right. The court in State Conservation Dept. v. Brown, 55 N.W.2d 859 (Mich. 1952) held that forfeiture actions are statutory and not founded in the common law, and claimants therefore are not accorded a right to a jury trial.

Another important distinction between a criminal case and an in rem civil action, is that the in rem civil forfeiture is not considered strictly a punishment or penalty, but rather is a deterrent and remedial, i.e., it is a way to remove an instrumentality from the hands of one using it improperly, in order to protect the state's resources. Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663 (1974); Gulp v. U.S., 523 F.2d 557 (3th Cir. 1975). A court may be more willing to order forfeiture in a civil in rem proceeding than in a criminal action where there may be a large disparity between the maximum fine or penalty (generally, the maximum fine for fish and game violations is \$1,000 and one year in jail) and the value of the vessel or

aircraft that is seized and forfeited, which may be in excess of \$1,000,000. However, many courts, while recognizing the deterrent and remedial aspects, still view forfeitures as primarily a punishment or penalty and not favored in the law. See One Cocktail Glass v. State, 565 P.2d 1265 (Alaska 1977).

Because the value of property subject to forfeiture may be so great, some courts favor granting partial forfeiture of the equipment, or ordering forfeiture of a bond or other security in lieu of the item itself. F/V American Eagle v., State, 620 P.2d 657 (Alaska 1980), cert. denied, ___ U.S. ___ 71 L.Ed.2d 284 (1982).

Neither AS 16.05.195 nor the rules of civil procedure in Alaska provide specific guidelines for the procedure to be followed in an in rem action. The closest rules or guidelines are, as discussed above, the Federal Admiralty Rules that relate to bringing a complaint or libel against a vessel, and Alaska Rules of Civil Procedure 4 and 5; courts will look to these procedures as guidelines for the action.

C. Guidelines for Bringing Civil In Rem Actions.

An action for forfeiture of valuable equipment such as a vessel or airplane is an extreme measure and represents the harshest penalty for a fish and game violation. On the other hand, vessels and airplanes provide a unique opportunity to

deplete the fish and game populations of the state, and it is for this reason that special consideration has been given to the matter by the legislature, which granted broad authority for forfeiture under AS 16.05.195.

In determining whether to prosecute in rem a boat or aircraft used in a fish and game violation, one should keep in mind that forfeiture actions are difficult and time-consuming to prosecute and may take up to three to five years attorney commitment time. Therefore, the following is an outline of the criteria to assess before bringing a civil forfeiture action:

1. Does the violation involve a substantial commercial benefit to the violator, i.e., a "windfall profit"? E.g., big game guiding, commercial fishing, fish guiding.
2. Is the violation, even if committed by a sport hunter or fisherman, egregious? Is there any intent involved or was the crime a mistake that would be excused if strict liability did not apply to fish and game violations? E.g., herding and harassing game, grossly over limit on fish or game, waste, inhumane kill, destruction of significant breeding stock, hunting in closed area. In particular, is there a likely detriment to the species or stock?

3. Is the equipment, vessel, vehicle, or aircraft an integral part of the violation? E.g., spotting from aircraft, using boat for access to closed area.
4. Is this the second or third similar violation by the offender?
5. Is there a significant need to deter the public that necessitates bringing a case to civil trial on evidence that would not support a criminal action? E.g., violation occurring on identified vessels but crewmen now known.
6. What is the value of the equipment, vessel, vehicle, or aircraft relative to the commercial profit or damage to the resource?

If the violation does not fit one or more of these categories, civil forfeiture is probably not appropriate.

D. Relationship Between Civil and Criminal Actions.

A criminal case against an individual for a fish or game violation is an action independent of any in rem proceeding for forfeiture. Haas v. One 1965 Ford Auto, 529 P.2d 410 (Or. App. 1974). See also State v. Graybill, 545 P.2d 629 (Alaska 1976). A judge in a criminal action has authority to forfeit, as part of the criminal sentencing procedure, the equipment, aircraft, vessels, etc. used in or in aid of a violation of the

fish and game statutes or regulations, under AS 16.05.190; whether a prosecuting attorney in a criminal case will ask for forfeiture is a decision to be made by the district attorney. Many cases will involve a criminal prosecution only, for example, where a private sport hunter flies his aircraft to an open hunting area where he is then involved in a minor game violation not related to the use of the airplane; here the attorney general would not bring a civil in rem proceeding because the case does not fall within the category of cases outlined above.

Because an action in rem for forfeiture is independent of any criminal prosecution, a forfeiture action may be brought even though the individual defendant in the underlying criminal case was acquitted. United States v. One 1961 Cadillac Hardtop, 207 F. Supp. 693 (D. Tenn. 1962); U.S. v. Three Thousand Two Hundred Thirty Six Dollars, 167 F. Supp. 495 (D. Alaska 1958). Also, there may be situations where no criminal case can be brought, yet where there is sufficient evidence to proceed with a civil in rem action (for example, when there is no positive identification of the pilot or passengers of an aircraft, but there is a clear description of the aircraft used in a violation). Cases resting on circumstantial evidence are particularly appropriate for civil action because the extensive discovery procedures available can identify critical evidence.

If both civil and criminal actions are contemplated, it is best to bring both cases simultaneously, or as near to the same time as possible. If the cases are brought simultaneously,

and if the criminal case, which will probably be heard first, is dismissed or if the defendants are acquitted, the defendants will not be in a position to argue that the in rem case was brought merely because the criminal case was lost and the state is "out to get" the defendants. Furthermore, it is very helpful for an assistant attorney general to attend a criminal case before trying the same general issues in a subsequent civil in rem action. The criminal court might decline to grant forfeiture, even if the case were won by the district attorney, and the attorney general in that situation would be in a position to continue with the in rem action against the aircraft or vessel itself. This may be particularly appropriate in cases, such as fishing in closed areas, where a maximum criminal penalty is insufficient to deter the conduct, because the value of the harvest far exceeds the criminal fine. In some instances the criminal court may choose not to order forfeiture because of the pending civil action.

If a criminal case is won and forfeiture is granted but the judgment is appealed, the attorney general may wish to proceed with an action in rem on the theory that if the criminal conviction were overturned on appeal, the in rem action would still be valid. Although the attorney general need not wait for the final outcome of a criminal action before proceeding in rem, strategy may favor staying action in the civil case until the criminal action is over. The primary advantage of this sequence is that it will preclude the criminal defendant's resort to the

fifth amendment right to remain silent which might hinder evocation of pertinent evidence in the civil suit.

II MECHANICS OF BRINGING CIVIL FORFEITURE ACTIONS

A. Notification.

As mentioned above, it is important that the district attorney's office notify the attorney general's office (and vice versa) of any fish and game violation that involves a possible forfeiture, if the violation falls within the guidelines for civil prosecution in rem as outlined above. It is essential for the attorney general's office to become involved in the case from the very beginning, so that the attorney general's office can review the evidence and make a determination as to whether there is sufficient basis to proceed with a civil in rem case.

If there is a stipulation to release the vessel or airplane in the criminal action, the attorney general's office has a strong interest in making sure that the release will cover the subsequent civil in rem action, i.e., the release must provide for a sufficient bond or other security for the equipment, and include an agreement that the vessel or aircraft is properly insured and will not leave the state or be sold or encumbered. The release agreement should also obviate the need to re seize the vessel or aircraft for the civil in rem action in order to "serve" the item.

E. Seizure and Service of Process.

A.S. 16.05.195 provides: "Items specified in (a) of this section may be forfeited under this section regardless of whether they were seized before instituting the forfeiture action." At least one superior court judge in Anchorage has ruled that, notwithstanding this language, the state must actually or constructively seize the equipment in order to bring it within the court's jurisdiction; merely filing a notice of lis pendens was held insufficient to obtain jurisdiction. State v. One Blue and White PA-18 Airplane, No. 3AN-78-900 Civ. (Super. Ct. Third Jud. Dist. Alaska, Sept. 1978). There are several other reasons why actual seizure may be appropriate. First, looking to the Rules of Admiralty for guidance in bringing an in rem action, seizure is the means for bringing the action, and the libel must be posted on the vessel. (Supplemental Rule C, FRCP provides that the clerk of court issue an arrest warrant when a verified complaint is filed.) Since an action in rem is brought against the item itself, it may be necessary to "serve" the aircraft or vessel while it is within the jurisdiction of the court; due to the high mobility of aircraft and vessels, seizure may be the only way to assure that the res will be within or remain within the jurisdiction of the court. It would be pointless to bring a forfeiture action against an aircraft or vessel that may subsequently disappear from the jurisdiction of the court or be sold or otherwise encumbered.

Seizure for an in rem civil case should be made upon a warrant issued by a superior court judge. Evidence obtained as the result of an illegal search may not be admissible in a civil in rem action. One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693 (1965). However, as long as the evidence supporting the forfeiture is not tainted, it can be argued that an illegal seizure of the defendant's property is not a basis for dismissal of the case. See, The Ship Richmond v. United States, 9 Cranch 102, 3 L.Ed. 670 (1815); United States v. One Chevrolet Sedan, 7 Alaska 605 (D. Alaska 1927). The court in Boyd v. United States, 115 U.S. 616 (1886) distinguished between a search for and seizure of a man's private books and papers for the purpose of obtaining information or using them as evidence against him, and seizure for the purpose of forfeiture. In United States v. One Ford Coupe Auto, 272 U.S. 321 (1926), the court held that where property declared forfeit by a federal statute is seized by one having no authority to do so, the United States may "adopt" the seizure with the same effect as if it originally had been made by a duly authorized officer.

C. Release.

Depending on the circumstances, it may be desirable to allow the defendant property to be released pending trial.

If an aircraft or vessel is released on stipulation, it is important that the agreement provide either a bond or

promissory note or at least insurance coverage for the value of the vessel or aircraft. If a bond is secured, it should cover at least the full value of the vessel, with a provision for alteration of the stated value in the event that the property increases in value during the pendency of the litigation. It may be impossible to accomplish this as a practical matter. In that event, it is best to establish the security or bond in much the same manner as bail. Any stipulation for release should also include a provision that the owner not sell or otherwise encumber the property, and that the owner will produce the item upon demand.

D. Service and Parties.

In accordance with admiralty procedure, service on a ship (or airplane) can be effected by posting a copy of the complaint on the property and leaving a copy with the person having control of it, and by publication of a notice of filing a forfeiture complaint.

Alaska courts may require personal service of the notice of filing a forfeiture action on all ascertainable owners or claimants, so a title search should be made in connection with service of process. The U.S. Supreme Court has ruled that where the government knew that the owner of a forfeited car was not at the address to which notice was sent, the service was inadequate. Robinson v. Hanrahan, 409 U.S. 38 (1972).

Because the action is in rem, there are no "necessary" parties to the action, other than the "res" and the state. Utah Liquor Control Comm'n. v. Wooras, 93 P.2d 455 (Utah 1939). For a case contra this general rule, see People v. Broad, 12 P.2d 941 (Cal. 1932). The presence of the owner or claimant is not necessary for the action to proceed. The owner of the item, or anyone claiming an interest in it, although not named as a party, may appear and make a defense, either by filing a claim and answer or by moving to intervene. People v. One 1941 Mercury Sedan, 168 P.2d 443 (Ct. App. Cal. 1946).

Because of AS 16.05.195(e), a lis pendens giving notice of the forfeiture action must be filed against the ship or aircraft, with the U.S. Coast Guard, FAA, or local recording district, as appropriate. In the case of vessels, the U.S. Coast Guard will file the notice, with the vessels documentation papers.

III DISPOSITION OF FORFEITED EQUIPMENT

AS 16.05.195 provides that equipment, including aircraft and boats, forfeited for a fish and game violation is to be disposed of at the discretion of the Department of Fish and Game. The statute does not require that the department sell the equipment at public auction, nor does it specify that the department pay off liens or mortgages on the forfeited equipment. However, the Alaska Supreme Court, in State v. Rice, 626 P.2d 104

(Alaska 1981) held that where a third party (in that case, a financial institution) had done all it reasonably could be expected to do to avoid illegal use of equipment in which it had an interest, it was entitled to remission of its interest in the forfeited equipment.

FORFEITURE CHECKLIST: INITIATING THE ACTION

1. Seizure Warrant, Affidavit of Return. (n.b. - separate court number and file for the seizure warrant).
2. Receipt and Inventory of aircraft/floats/skis, or vessel and gear.
3. Civil Complaint for Forfeiture, Summons (post on vessel or airplane), Return.
4. Title Search.
5. Notice of Filing Complaint - send to owner and lienor.
6. Motion for Service by Publication, Affidavit, Order.
7. Notice of Filing Complaint (for publication in newspaper).
8. Affidavit of Publication.
9. Lis Pendens (file in Oklahoma City, for aircraft, or State Recording Office further equipment).
10. Stipulation for Release, bond, insurance coverage, etc.

OPERATOR'S
SEIZURE INFORMATION
(AIRCRAFT)

1. Make of aircraft _____
2. Model of aircraft _____
3. Official F.A.A. Registration No. _____
4. Engine Serial No(s). _____
5. Airframe Serial No. _____
6. Floats (Skiis) type _____
7. Floats (Skiis) - Serial No. _____
8. Floats (Skiis) - Estimated value today _____
9. Description of aircraft, (wheels, STOL kits, stall fences,
types of fabric, color scheme, etc.)

10. Value when purchased \$ _____
11. a. Date of last reappraisal _____, 19____
b. Value at last reappraisal \$ _____
c. Name and address of appraiser _____

12. Estimated value today \$ _____
13. Place and date of most recent overhauls or repairs
_____, 19____
_____, 19____
14. a. Name of owner(s) _____
b. Address of owner _____

Tele. () _____