

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
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153

the intrusion." Id., United States v. Martinez-Fuerte, 428 U.S. 543, 558 (1976). The basic difference recognized by the court is that a driver is warned of a roadblock by the posting of signs and can see other vehicles being stopped and subjected to the same intrusion. The intrusion on a driver whose vehicle bears special plates is similarly distinguishable from a random stop situation in that the driver is on notice of the increased likelihood of being stopped and has assented to this.

Assuming that the state has the power it asserts in MSA §168.041 Subd. 3 to impound registration plates upon conviction resulting in mandatory revocation of driving privileges, the state clearly has the power to give back (with attendant limitations) some of the privileges it has taken away. MSA §168.041 Subd. 6. The person driving the vehicle, be it the revoked driver operating under a restricted license (MSA §171.30) or a member of the revoked driver's family, is aware that the privilege of operating the vehicle has been reinstated only conditionally -- the conditions extending to permissible times of operation and to persons permitted to drive the vehicle as well as to the possibility of being stopped for inquiry without reasonable suspicion of a violation. The revoked driver and her family have, in effect, agreed to submit to a greater degree of interference with freedom of movement, inconvenience, and anxiety than the normal driver in return for the re-extension of the privilege of operating the vehicle.

An analogy can be drawn to the situation presented in United States v. Biswell, 406 U.S. 311 (1972). The challenged action in Biswell was the warrantless search, without probable cause, of the premises of a person licensed to sell firearms under the Gun Control Act of 1968, 18 U.S.C. §921 et. seq., 406 U.S. at 311-312. In upholding the validity of the search, the court noted "that inspections for compliance with the

Gun Control Act pose only limited threats to the dealer's justifiable expectations of privacy," in that the federal license was accepted with the knowledge that the permits would be subject to inspection. Id. at 316. In the case of a specially-licensed vehicle, the operator has similarly accepted a license with the knowledge that a degree of 4th Am. protection is surrendered in return. The driver of a specially-licensed vehicle has a lesser justifiable expectation of privacy on the road than the normal unrestricted driver.

NOTE: The above analysis proceeds on a theory of waiver of 4th Am. rights by the revoked driver and her family. Under current Supreme Court doctrine, a waiver of constitutional rights will be found only if it is "voluntary, knowing, and intelligently made." D.H. Overmeyer v. Frick, 405 U.S. 174, 185 (1972). The state should, therefore, take steps to ensure that the individuals involved are advised that the vehicle bearing the special plates may be stopped without evidence of a violation, and that those individuals accept this limitation on their rights.

4. Allowing police officers to stop vehicles bearing special plates does not subject the occupants of those vehicles to the unconstrained exercise of police discretion. Under Prouse, states may develop methods for enforcing motor vehicle licensing and registration laws which do not involve the unconstrained exercise of discretion associated with random stops. 440 U.S. at 663. Police officers are not permitted to stop any vehicle without reasonable suspicion -- the practice struck down in Prouse; they may only stop the limited number of vehicles bearing special registration plates. The decision to stop the car is thus not entirely in the hands of the police officer, having been made by the legislature, the court, and the motor vehicle registration authorities. c.f. United States v. Martinez-Fuerte, 423 U.S. 543, 566 (1976).

NOTIF: In the interest of limiting police discretion, it would be preferable for the statute or regulation to make it imperative that the vehicle be stopped if special plates are observed -- the question then becomes one of the state's power and of waiver of rights as discussed in part III.

The general motoring public will not be subjected to potentially unlimited interference at the sole discretion of police officers. Id. at 559.

The usual method of limiting officers' discretion is the requirement of probable cause or reasonable suspicion to justify the seizure. Prouse, 440 U.S. at 657. The basis for the stop can then later be later examined for sufficiency by an impartial court. Id. at 654. Unless, however, a police officer personally knows and can recognize a particular driver whose license has been revoked or limited (an unlikely situation in urban areas), there will be no objective facts that the vehicle is not being driven in conformity with the restrictions perviously imposed.

Where, as here, there is an important state interest along with a possibility of arbitrary invasions of 4th Am. rights, the permissibility of a particular practice will be judged by balancing the intrusion upon the individual against the promotion of legitimate governmental objectives. Id. For this case, the intrusion upon the individual, as discussed in part III, is justifiable. The state, on the other hand, has a vital interest -- recognized by the Prouse Court -- in ensuring that only qualified persons are permitted to drive motor vehicles. Id. at 658. This interest is not sufficient to justify the random stopping of any vehicle, given the reasonable alternative of stopping only upon evidence of a violation. Here, however, there is no outward evidence of the violation and the court should find that the state's interest is sufficient to allow stopping of the limited number of vehicles bearing special plates. The state will not be stopping a large

number of vehicles, among whose operators will presumably be a much higher than average percentage of unlicensed or restricted drivers.

IV. CONCLUSION

The fact that a vehicle bears a specially numbered license plate does not create an articulable and reasonable suspicion of a licensing or registration violation. A stop of the vehicle cannot be justified on these grounds under Delaware v. Prouse, 440 U.S. 648 (1979).

The stopping of a car bearing special license plates can, however, be justified on a different ground stated by the Prouse Court. A statute such as MSA §168.041 represents a method for the spot-checking of vehicles which is less intrusive of the driver's 4th Am. rights than is a purely random stop. The driver of a specially-licensed vehicle has a lower expectation of privacy than an ordinary driver (assuming that clear notice of the right of police officers to stop the vehicle without suspicion of a vehicle has been given). The driver of a specially-licensed vehicle can be viewed as having waived the 4th Am. rights recognized in the Prouse decision.

The restraint of police officers' discretion afforded by MSA §168.041 is an additional ground for its validity under the Prouse rationale. Police officers are limited to stopping only vehicles bearing the special plates -- vehicles singled out because of restrictions imposed upon their operation, not because of the officer's discretionary decision. A police officer may, therefore, validly stop a vehicle solely because it bears specially-numbered license plates.

RECOMMENDATION TO THE LEGISLATURE FOR LEGISLATIVE ACTION #23

The Minnesota Criminal Justice System DWI Task Force recommends that the Minnesota Legislature adopt a statute that requires that license plates be impounded from individuals whose drivers licenses are revoked a second time within five years or a third time within ten years for violation of Minnesota's DWI Laws.

This recommendation is based on the following reasons:

1. Approximately 25 percent of all alcohol-related traffic fatalities in Minnesota involve a driver who has a prior DWI-related driver's license revocation.
2. Repeat violators of the DWI law have a very high probability of being chemically dependent.
3. Revoking the driver's license of a chemically dependent person does not stop them from driving. They must be separated from their vehicle until they deal with their chemical dependency.
4. Impounding the license plates of repeat DWI violators can make it more difficult for them to continue to drive after their license is revoked.
5. The impoundment law, as drafted by the Minnesota Criminal Justice System DWI Task Force, allows for the issuance of special plates so that other members of the repeat violator's household can continue to drive as well as allowing the repeat violator himself to drive if he obtains a limited drivers license.
6. An impoundment law directed at repeat violators is consistent with the philosophy that the criminal justice system should focus on repeat violators because of the high probability of their being involved in an alcohol-related accident.

The following amendments to the license plate impoundment statute, 168.041, resulted from Minnesota Criminal Justice System DWI Task Force recommendations. They passed out of committee but were not passed by the full legislature in 1986 due to time constraints. Only that portion dealing with registration plate and certificate impoundment has been reproduced below.

"Section 1. Minnesota Statutes 1984, section 168.041, is amended to read:

168.041 [IMPOUNDING REGISTRATION PLATES AND CERTIFICATES.]

Subdivision 1. When any person is convicted of driving a motor vehicle after the suspension or revocation of the driver's license or driving privileges of such person, the court shall require the registration plates and registration certificates of any motor vehicle involved in such violation owned by such person or registered in his name to be surrendered to the court. Upon surrender thereof the court shall issue a receipt therefor.

If the violator is not the owner of such motor vehicle, the court shall require the registration plates and the registration certificate of any motor vehicle used by the violator, with the permission of the owner who had knowledge of the fact that the violator's drivers had been revoked or suspended prior to the commission of the offense, to be surrendered to the court.

Subd.2. If any person is convicted of violating any law or municipal ordinance, except parking laws or ordinances, regulating the operation of motor vehicles on the streets or highways, and the record of such person so convicted shows a previous conviction for driving after suspension or revocation of his driver's license or driving privileges, the court may direct the commissioner of public safety to suspend the driver's license

of such person for not exceeding one year. The court may also require the registration plates and registration certificates of any motor vehicles owned by the violator or registered in his name to be surrendered to the court.

Subd. 3. Except as otherwise provide in subdivision 3a, if a person is convicted of any offense which makes mandatory the revocation of the driver's license of such person, or is convicted of driving a motor vehicle without having a valid driver's license in force, the court may require the registration plates and registration certificates of any motor vehicle owned by such person or any motor vehicles registered in his name to be surrendered to the court.

Subd. 3a. If a person's driver's license or driving privileges are revoked pursuant to a third violation of sections 169.121 or 169.123 within ten years, the court shall require the registration plates and registration certificates of any motor vehicle involved in the violation and owned by or registered in the name of the violator, including vehicles registered jointly in the name of the violator and the violator's spouse, to be surrendered to the court. An impoundment order shall be issued under this subdivision when the person appears in court on any criminal charge or civil driver's license matter arising out of the incident resulting in the most recent license revocation. If no criminal charge or civil license matter is initiated in court, the attorney general may initiate a registration plate and certificate impoundment proceeding, requesting an impoundment order under this subdivision. This proceeding shall be brought in municipal or county court in the jurisdiction where the

violation of section 169.121 or 169.123 occurred.

Subd. 4. Any registration plates surrendered to the court pursuant to this section shall be destroyed by the court. Any registration certificates surrendered to the court shall be forwarded to the registrar of motor vehicles by the court. Except as provided in subdivisions 5a, 6, or 7, no new registration plates may be issued to the person, violator, or owner until such time as the driver's license of the person, violator, or owner has been reissued or reinstated.

Subd. 5. At the time of ordering the surrender of the registration plates and registration certificates of the person, violator, or owner, the court shall notify the registrar of motor vehicles of that fact. The registration plates shall be destroyed by the court within three days of the date of surrender. When the registration plates are destroyed, the court shall notify the registrar of motor vehicles of that fact.

Subd. 5a. If the driver's license revocation which is the basis for a registration plate and certificate impoundment order is rescinded, upon application to the registrar of motor vehicles, the person whose registration plates and certificate have been impounded shall receive new plates and the certificate for the impounded vehicle at no cost. The application shall include a copy of the order rescinding the driver's license revocation.

Subd. 6. Any such person, violator, or owner may apply to the court which ordered the surrender of registration plates and certificates for new registration plates which shall bear a

special series number which may be readily identified by traffic law enforcement officers. The court may authorize the issuance of special plates if (1) a member of the person's, violator's, or owner's household has a valid driver's license, or (2) the person, violator, or owner has a limited license issued pursuant to section 171.30. If the court authorizes the issuance of special plates, it shall notify the registrar of motor vehicles and the registrar shall issue the special plates upon payment of a \$100 fee for each vehicle for which special plates are requested. Until the driver's license of such person, violator, or owner is reinstated or reissues, any new registration plates issued to him or to an owner whose plates have been ordered surrendered shall bear a special series number.

Subd. 7. If the owner wishes to sell a motor vehicle during the time its registration plates bear a special series number, he may apply to the court which ordered he surrender of such plates and certificate, for consent to transfer title to the motor vehicle. If the court is satisfied that the proposed sale is in good faith and for a valid consideration, that the owner will thereby be deprived of the custody and control of the motor vehicle, and that the sale is not for the purpose of circumventing the provision of this section, it may certify its consent to the registrar of motor vehicles. The registrar shall then transfer the registration certificate to the new owner upon proper application and shall issue new registration plates to the new owner. After the registration plates and certificate of registration have been surrendered to the court pursuant to this section, if the title to said motor vehicle is transferred by the

foreclosure of a chattel mortgage, the cancelation of a conditional sales contract, a sale upon execution, or by decree or order of a court of competent jurisdiction, the court shall order the registration certificate surrendered to the new owner. The registrar of motor vehicles shall then transfer the registration certificates to the new owner and shall issue new registration plates to the new owner.

Subd. 8. Nothing contained in this section is intended to change or modify any provision of this chapter, with respect to the taxation of motor vehicles or the time within which the taxes thereon shall be paid.

Subd. 9. Any person who fails to surrender any registration plates or registration certificates to the court upon demand pursuant to this section or who operates any motor vehicle on a street or highway at a time when a court has ordered the surrender of its registration plates and registration certificate is guilty of a misdemeanor.

Robert J. Sundberg
Commissioner

465-4371

October 22, 1986

Mr. Ray Lewis, Research Consultant
Minnesota Criminal Justice System
DWI Task Force
University of Minnesota
190 Law Center
229 19th Avenue South
Minneapolis, Minnesota 55455

RECEIVED
OCT 23 1986


Dear Mr. Lewis:

In response to your letter of October 9, 1986, there are no court jurisdictions in Alaska that allow for the impounding of the license plates and registration certificates of motor vehicles owned or registered to individuals convicted of a DWI offense.

Although our State Statute does allow for the confiscation of a vehicle owned or registered to an individual that has three or more convictions for DWI, this sanction is seldom used. It is cumbersome because of the ownership complications involved.

However, confiscation of the license plates and registration certificates would seem to eliminate this problem and is certainly worth pursuing. Good luck.

Sincerely,


T. Michael Lewis, Program Director
Alaska Highway Safety Planning Agency

bcc: Senator Mitch Abood ✓



UNIVERSITY OF MINNESOTA
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OCT 14 1985

HIGHWAY SAFETY

October 9, 1986

Mr. Michael Lewis, Program Director
Department of Public Safety
Batch 5
Minneapolis, MN 55455

Governor's Highway Safety Traffic Coordinator:

The courts in three Minnesota counties are regularly impounding the license plates and registration certificates of motor vehicles owned or registered to individuals convicted of Gross Misdemeanor DWI, Aggravated DWI, or driving after license withdrawal. The judges believe this practice has resulted in a reduction in the number of such cases in their jurisdictions. The Minnesota Criminal Justice System DWI Task Force has recommended that the legislature adopt a statute requiring all courts to follow this practice.

However, no centralized reporting system in Minnesota has been able to provide information on the increase or decrease of these offenses in response to implementation of the impoundment policy in individual jurisdictions. Do you know of any court jurisdictions in your state that regularly impounds the license plates and registration certificates of repeat DWI offenders? Has such a program ever been evaluated for effectiveness in reducing DWI recidivism? If so, would you please send me this information and the name of a contact person.

I am enclosing a memo regarding the present impounding practice in one southern Minnesota jurisdiction and the proposed statutory amendments for registration plate and certificate impoundment in Minnesota.

Thank you for your response,

Ray Lewis

Ray Lewis, Research Consultant
Minnesota Criminal Justice System DWI Task Force

xcc: Senator Mitch Abood, w/attachments 10/86 ✓



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December 1, 1986

THE MINNESOTA CRIMINAL JUSTICE SYSTEM DWI TASK FORCE

The Minnesota Criminal Justice System DWI Task Force was established in 1982 to undertake a comprehensive and ongoing examination of Minnesota's efforts to reduce the number of drunk drivers on our roads. An essential concept of the task force is that its investigation is ongoing and that its existence is not limited to a single legislative session.

The purpose of the task force is to examine the DWI laws in Minnesota and the manner in which they are enforced by law enforcement agencies and the courts. The task force also recommends changes in statutes, enforcement practices, and public policy that will result in decreasing the number of people who drive a car after consuming too much alcohol. The Minnesota Criminal Justice System DWI Task Force has made twenty three recommendations for improving DWI control to the legislature, law enforcement agencies, and the courts.

The task force brings together representatives from all parts of the Minnesota Criminal Justice System so that ideas and information about the DWI problem can be shared and discussed.

3/12/87-4:30

[RESDEPT] ES/jb RH704A-3

1 _____ moves to amend H. F. No. 704, as follows:

2 Delete everything after the enacting clause and insert:

3 "Section 1. Minnesota Statutes 1986, section 168.041, is
4 amended to read:

5 168.041 (IMPOUNDING REGISTRATION PLATES AND CERTIFICATES.)

6 Subdivision 1. When any person is convicted of driving a
7 motor vehicle after the suspension or, revocation or
8 cancellation of the drivers driver's license or driving
9 privileges of such person, the court shall require the
10 registration plates and registration certificates certificate of
11 any motor vehicle involved in such violation owned by such
12 person or registered in that person's name to be surrendered to
13 the court. Upon surrender thereof the court shall issue a
14 receipt therefor.

15 If the violator is not the owner of such the motor vehicle,
16 the court shall require the registration plates and the
17 registration certificate of any motor vehicle used by the
18 violator, with the permission of the owner who had knowledge of
19 the fact that the violator's drivers driver's license had been
20 revoked or suspended prior to the commission of the offense, to
21 be surrendered to the court.

22 Subd. 2. If any person is convicted of violating any law
23 or municipal ordinance, except parking laws or ordinances,
24 regulating the operation of motor vehicles on the streets or

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**



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The task force brings together representatives from all parts of the Minnesota Criminal Justice System so that ideas and information about the DWI problem can be shared and discussed.

Members compare the goals, perspectives, priorities, and policies of the different agencies and institutions they represent. The task force members include judges, prosecutors, defense attorneys, police officers, court services personnel, driver license evaluators, public health workers, and state traffic safety officials.

The task force meetings provide a regular opportunity for members of different agencies and organizations to identify and discuss common problems in DWI control. Areas of investigation are generated by task force members. Once an area is identified, resource materials and information are gathered and distributed to members in advance of the meeting at which the area is to be discussed. The task force believes it has been successful in its attempts to identify the different aspects of the DWI problem and in its investigation of possible solutions. Its ability to gather data, which it bases its actions on, is crucial to its success.

To follow up on the information gathered, a quarterly newsletter updates members of the criminal justice system on legislative activity, legal cases, improved enforcement and court procedures, and research findings. The current mailing list for the Newsletter reaches over 1,500 individuals involved in the DWI control system.

The task force is supported by the Minnesota Department of Public Safety with funds from the National Highway Traffic Safety Administration. The task force is based at the University of Minnesota Law School. Ray R. Lewis is the DWI research consultant for the task force. Professor Stephen M. Simon is the director of the Minnesota Criminal Justice System DWI Task Force.

3/12/87-4:30

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7 motor vehicle after the suspension or, revocation or
8 cancellation of the ~~drivers~~ driver's license or driving
9 privileges of such person, the court shall require the
10 registration plates and registration certificates certificate of
11 any motor vehicle involved in such violation owned by such
12 person or registered in that person's name to be surrendered to
13 the court. Upon surrender thereof the court shall issue a
14 receipt therefor.

15 If the violator is not the owner of such the motor vehicle,
16 the court shall require the registration plates and the
17 registration certificate of any motor vehicle used by the
18 violator, with the permission of the owner who had knowledge of
19 the fact that the violator's ~~drivers~~ driver's license had been
20 revoked or suspended prior to the commission of the offense, to
21 be surrendered to the court.

22 Subd. 2. If any person is convicted of violating any law
23 or municipal ordinance, except parking laws or ordinances,
24 regulating the operation of motor vehicles on the streets or

1 highways, and the record of such the person so convicted shows a
2 previous conviction for driving after suspension or revocation
3 of the person's driver's license or driving privileges, the
4 court may direct the commissioner of public safety to suspend
5 the driver's license of such the person for not exceeding one
6 year. The court may also require the registration plates and
7 registration certificates certificate of any motor vehicles
8 vehicle owned by the violator or registered in the violator's
9 name to be surrendered to the court.

10 Subd. 3. Except as otherwise provided in subdivision 3a,
11 if a person is convicted of any offense which makes mandatory
12 the revocation of the drivers person's driver's license of such
13 person, or is convicted of driving a motor vehicle without
14 having a valid driver's license in force, the court may require
15 the registration plates and registration certificates
16 certificate of any motor vehicle owned by such person or any
17 motor vehicles vehicle registered in that person's name to be
18 surrendered to the court.

19 Subd. 3a. If a person's driver's license or driving
20 privileges are revoked pursuant to a second violation of section
21 169.121 or 169.123 within five years, or a third or subsequent
22 violation of section 169.121 or 169.123 within ten years, the
23 court shall issue an impoundment order requiring the surrender
24 of the registration plates and registration certificate of any
25 motor vehicle involved in the violation, and any motor vehicle
26 owned by, registered, or leased in the name of the violator,
27 including vehicles registered or leased jointly in the name of
28 the violator and the violator's spouse. This requirement does
29 not apply to rental motor vehicles, as defined in subdivision
30 10, that are involved in the violation, leased in the name of
31 the violator, or leased jointly in the name of the violator and
32 the violator's spouse. An impoundment order must be issued
33 under this subdivision when the person appears in court on any
34 criminal charge or civil driver's license matter arising out of
35 the incident resulting in the most recent license revocation.
36 If no criminal charge or civil license matter is initiated in

1 court, the attorney general may request an impoundment order
2 under this subdivision in municipal or county court, or the
3 unified district court in the jurisdiction where the violation
4 of section 169.121 or 169.123 occurred.

5 Subd. 4. ~~Except as provided in subdivision 6 or~~
6 ~~subdivision 7, the court shall retain custody of the surrendered~~
7 ~~plates and certificates~~ Within three days after the court issues
8 an impoundment order, the registration plates and certificates
9 must be surrendered to the court. The court either must destroy
10 surrendered registration plates within seven days and forward
11 surrendered registration certificates to the registrar of motor
12 vehicles or it may retain custody of the surrendered plates and
13 certificates. Except as provided in subdivision 5, 6, or 7, no
14 new registration plates may be issued to the person, violator,
15 or owner until such time as the drivers driver's license of
16 the person, violator, or owner has been reissued or reinstated.

17 Subd. 5. ~~At the time of ordering the surrender of the~~
18 ~~registration plates and registration certificates of a violator~~
19 ~~or owner, the court shall notify the registrar of motor vehicles~~
20 ~~of that fact. Except as provided in subdivision 6 or~~
21 ~~subdivision 7, no new or duplicate registration plates or new~~
22 ~~registration certificates shall be issued to such violator or~~
23 ~~owner until the surrendered plates and certificates are returned~~
24 ~~to the violator or owner by the court. If the driver's license~~
25 ~~revocation that is the basis for an impoundment order is~~
26 ~~rescinded, the registrar of motor vehicles must issue new plates~~
27 ~~and the certificate for the vehicle at no cost, when the~~
28 ~~registrar receives an application that includes a copy of the~~
29 ~~order rescinding the driver's license revocation.~~

30 Subd. 6. (a) Any such violator or owner may apply to the
31 ~~registrar of motor vehicles~~ commissioner for new registration
32 plates which shall bear a special series number ~~which may of~~
33 numbers or letters so as to be readily identified by traffic law
34 enforcement officers. A fee of \$5 shall accompany the
35 application. The registrar of motor vehicles shall forthwith
36 notify the court of such application. The court may return the

1 registration-certificate-of-such-violator-or-owner-to-the
2 registrar-of-motor-vehicles, together with its consent to the
3 issuance of such registration plates to such violator or owner.
4 Thereupon the registrar of motor vehicles shall issue such new
5 registration plates. The commissioner may authorize the
6 issuance of special plates if (1) a member of the person's,
7 violator's, or owner's household has a valid driver's license,
8 or (2) the person, violator, or owner has a limited license
9 issued under section 171.30. The commissioner may issue the
10 special plates on payment of a \$20 fee for each vehicle for
11 which special plates are requested.

12 (b) Until the drivers driver's license of such person,
13 violator, or owner is reinstated or reissued, the person,
14 violator, or owner must inform the commissioner that an
15 impoundment order is in effect when requesting any new
16 registration plates issued to the violator or to an owner whose
17 plates have been impounded shall bear a special series number.

18 Subd. 7. If An owner wishes to may not sell a motor
19 vehicle during the time its registration plates and registration
20 certificate are impounded have been ordered surrendered or
21 during the time its registration plates bear a special series
22 number of numbers or letters, unless the owner may apply
23 applies to the court which impounded such plates and
24 certificate, for consent to transfer title to the motor
25 vehicle. If the court is satisfied that the proposed sale is in
26 good faith and for a valid consideration, that the owner will
27 thereby be deprived of the custod, and control of the motor
28 vehicle, and that the sale is not for the purpose of
29 circumventing the provisions of this section, it may certify its
30 consent to the registrar of motor vehicles and return the
31 impounded registration plates and certificates. If during The
32 registrar shall then transfer the registration certificate to
33 the new owner upon proper application and issue new registration
34 plates. After the time the registration plates and certificate
35 of registration are impounded have been ordered surrendered to
36 the court under this section, if the title to said motor vehicle

1 is transferred by the foreclosure of a chattel mortgage, the
2 cancellation of a conditional sales contract, a sale upon
3 execution, or by decree or order of a court of competent
4 jurisdiction, the court shall order the ~~license-plates-and~~
5 registration certificate surrendered to the new owner and ~~notify~~
6 ~~the-registrar-of-motor-vehicles-of-such-action.~~ The registrar
7 of motor vehicles shall then transfer the registration plates
8 ~~and-registration-certificates-to-the-new-owner~~ certificate and
9 issue new registration plates to the new owner.

10 Subd. 8. Nothing contained in this section is intended to
11 change or modify any provision of this chapter, with respect to
12 the taxation of motor vehicles or the time within which the
13 taxes thereon shall must be paid.

14 Subd. 9. Any person who fails to surrender any ~~impounded~~
15 registration plates or registration ~~certificates~~ certificate to
16 the court upon demand or under this section, and operates any
17 motor vehicle on a street or highway at a time when a court has
18 ordered the surrender of its registration plates and
19 registration certificate, or who fails to comply with
20 subdivision 6, paragraph (b), is guilty of a misdemeanor.

21 Subd. 10. As used in subdivision 3a, "rental motor vehicle"
22 means a passenger vehicle, truck, motorcycle, or motorized
23 bicycle which is one of a fleet of two or more vehicles that are
24 rented for periods of 30 days or less.

25 Sec. 2. Minnesota Statutes 1986, section 169.123,
26 subdivision 5b, is amended to read:

27 Subd. 5b. [ADMINISTRATIVE REVIEW.] At any time during a
28 period of revocation imposed under this section and of
29 impoundment under section 168.041 a person may request in
30 writing a review of the order of revocation or impoundment by
31 the commissioner of public safety. Upon receiving a request the
32 commissioner or the commissioner's designee shall review the
33 order, the evidence upon which the order was based, and any
34 other material information brought to the attention of the
35 commissioner, and determine whether sufficient cause exists to
36 sustain the order. Within 15 days of receiving the request the

1 commissioner shall report in writing the results of the review.
2 The review provided in this subdivision is not subject to the
3 contested case provisions of the administrative procedure act in
4 sections 14.01 to 14.70. As a result of this review, if the
5 commissioner finds that the owner's driver's license or driving
6 privileges were not revoked under this section or section
7 169.121, the owner was not and is not a member of the revoked
8 operator's household, and the owner had no knowledge that the
9 vehicle was being driven, operated, or physically controlled in
10 violation of section 169.121, the commissioner may authorize the
11 issuance at no cost of new registration plates and a
12 registration certificate to the owner of the vehicle, or may
13 authorize the return of the owner's former registration plates
14 and registration certificate if custody of them was retained by
15 the court under section 168.041, subdivision 4.

16 The availability of administrative review for an order of
17 revocation shall have no effect upon the availability of
18 judicial review under this section.

19 Sec. 3. Minnesota Statutes 1986, section 169.123,
20 subdivision 5c, is amended to read:

21 Subd. 5c. [PETITION FOR JUDICIAL REVIEW.] Within 30 days
22 following receipt of a notice and order of revocation pursuant
23 to this section, or while an impoundment order is in effect
24 under section 168.041, a person may petition the court for
25 review. The petition shall be filed with the court
26 administrator of county or municipal court in the county where
27 the alleged offense occurred, together with proof of service of
28 a copy on the commissioner of public safety, and accompanied by
29 the standard filing fee for civil actions. No responsive
30 pleading shall be required of the commissioner of public safety,
31 and no court fees shall be charged for the appearance of the
32 commissioner of public safety in the matter.

33 The petition shall be captioned in the name of the person
34 making the petition as petitioner and the commissioner of public
35 safety as respondent. The petition shall state with specificity
36 the grounds upon which the petitioner seeks rescission of the

1 order of revocation or denial or the order of impoundment.

2 The filing of the petition shall not stay the revocation or
3 denial or the impoundment order. The reviewing court may order
4 a stay of the balance of the revocation or impoundment if the
5 hearing has not been conducted within 60 days after filing of
6 the petition upon terms the court deems proper. Judicial
7 reviews shall be conducted according to the rules of civil
8 procedure.

9 Sec. 4. Minnesota Statutes 1986, section 169.123,
10 subdivision 6, is amended to read:

11 Subd. 6. [HEARING.] A hearing under this section shall be
12 before a municipal or county judge, in any county in the
13 judicial district where the alleged offense occurred. The
14 hearing shall be to the court and may be conducted at the same
15 time and in the same manner as hearings upon pretrial motions in
16 the criminal prosecution under section 169.121, if any. The
17 hearing shall be recorded. The commissioner of public safety
18 shall appear and be represented by the attorney general or
19 through the prosecuting authority for the jurisdiction involved.

20 The hearing shall be held at the earliest practicable date,
21 and in any event no later than 60 days following the filing of
22 the petition for review. The judicial district administrator
23 shall establish procedures to ensure efficient compliance with
24 the provisions of this subdivision. To accomplish this, the
25 administrator may, whenever possible, consolidate and transfer
26 review hearings among the county courts within the judicial
27 district.

28 The scope of the hearing shall be limited to the issues of:

29 (1) whether the peace officer had probable cause to believe
30 the person was driving, operating, or in physical control of a
31 motor vehicle while under the influence of alcohol or a
32 controlled substance, and whether the person was lawfully placed
33 under arrest for violation of section 169.121, or the person was
34 involved in a motor vehicle accident or collision resulting in
35 property damage, personal injury or death, or the person refused
36 to take a screening test provided for by section 169.121,

1 subdivision 6, or the screening test was administered and
2 recorded an alcohol concentration of 0.10 or more; and

3 (2) whether at the time of the request for the test the
4 peace officer informed the person of the person's rights and the
5 consequences of taking or refusing the test as required by
6 subdivision 2; and

7 (3) either (a) whether the person refused to permit the
8 test, or (b) whether a test was taken and the test results
9 indicated an alcohol concentration of 0.10 or more at the time
10 of testing, and whether the testing method used was valid and
11 reliable, and whether the test results were accurately evaluated.

12 It shall be an affirmative defense for the petitioner
13 prove that, at the time of the refusal, the petitioner's refusal
14 to permit the test was based upon reasonable grounds.

15 Certified or otherwise authenticated copies of laboratory
16 or medical personnel reports, records, documents, licenses and
17 certificates shall be admissible as substantive evidence.

18 The court shall order either that the revocation or
19 impoundment be rescinded or sustained and forward the order to
20 the commissioner of public safety. The court shall file its
21 order within 14 days following the hearing. If the revocation
22 is sustained, the court shall also forward the person's driver's
23 license or permit to the commissioner of public safety for
24 further action by the commissioner of public safety if the
25 license or permit is not already in the commissioner's
26 possession. If the impoundment is sustained, the court shall
27 also direct the petitioner to forward the registration plates
28 and registration certificate to the court for further action if
29 the plates and certificate are not already in the court's
30 possession. Proof of all of the following is an affirmative
31 defense to an impoundment order:

32 (1) the petitioner is the owner of the vehicle;
33 (2) the petitioner's driver's license or operating
34 privileges were not revoked under this section or section
35 169.121;

36 (3) the petitioner was not and is not a member of the

1 revoked operator's household; and

2 (4) the petitioner had no knowledge that the vehicle was
3 being driven, operated, or physically controlled in violation of
4 section 169.121.

5 Sec. 5. Minnesota Statutes 1986, section 169.1261, is
6 amended to read:

7 169.1261 [REINSTATEMENT OF DRIVING PRIVILEGES; NOTICE.]

8 Upon expiration of any period of revocation under section
9 169.121 or 169.123, or of impoundment under section 168.041, the
10 commissioner of public safety shall notify the person of the
11 terms upon which driving privileges can be reinstated, and new
12 registration plates and registration certificate issued, which
13 terms are: (1) successful completion of a driving test and
14 proof of compliance with any terms of alcohol treatment or
15 counseling previously prescribed, if any; and (2) any other
16 requirements imposed by the commissioner and applicable to that
17 particular case. The commissioner shall also notify the person
18 that if driving is resumed without reinstatement of driving
19 privileges, and issuance of new registration plates and
20 registration certificate, the person will be subject to criminal
21 penalties.

22 Sec. 6. Minnesota Statutes 1986, section 171.29, is
23 amended by adding a subdivision to read:

24 Subd. 3. A person whose driver's license has been revoked
25 under section 169.121 or 169.123 must not be issued another
26 driver's license at the end of the revocation period unless the
27 person has complied with all applicable registration plate
28 impoundment provisions of section 168.041.

29 Sec. 7. [DESTRUCTION OF STORED LICENSE PLATES.]

30 License plates surrendered to courts before the effective
31 date of section 1 may be destroyed.

32 Sec. 8. [EVALUATION.]

33 The commissioner of public safety shall monitor and
34 evaluate the implementation and effects of the registration
35 plate impoundment provisions of sections 1 to 7, and shall
36 submit a written report to the legislature by January 1, 1989.

3/12/87-4:30

[RESDEPT] ES/jb RH704A-3

1 containing the commissioner's findings and recommendations.

2 Sec. 9. [EFFECTIVE DATE.]

3 Sections 1 to 8 are effective August 1, 1987, and apply to

4 violations committed on or after that date."



Oregon Traffic Safety Commission

4th FLOOR - STATE LIBRARY BUILDING, SALEM, OREGON 97310 PHONE 378-3669
Toll Free 1-800-922-2022

November 17, 1986

11078607C

Ray Lewis
Research Consultant
Minnesota Criminal Justice System
DWI Task Force
190 Law Center
229 19th Avenue South
Minneapolis, Minnesota 55455

Approximately 100 vehicle registrations a month are suspended resulting in removal of the license plates in Oregon.

Occasionally, courts also impound cars driven by drivers who are second or subsequent DUI or for driving while suspended.

The program has not been evaluated for recidivism rates.

Sincerely,


Gil Bellamy
Administrator

GB:cek



Governor's Office of Highway Safety

959 East Confederate Ave., S.E.

P.O. Box 1497

Atlanta, Georgia 30301

(404) 656-6996

Gov. Frank Harris
GOVERNOR

Minuand C. McGuire
DIRECTOR

October 23, 1986

Mr. Ray Lewis
Research Consultant
Minnesota Criminal Justice System
DWI Task Force
University of Minnesota
190 Law Center
229 19th Avenue South
Minneapolis, Minnesota 55456

Dear Mr. Lewis:

This shall acknowledge receipt of your inquiry regarding the practice of courts impounding the registration certificate and license plates for those persons convicted for certain violations related to DWI and driving after suspension.

Provisions of our current statutes provide for the suspension of the operators license and vehicle registration/plate for driving while under suspension (regardless of suspension type), failure to maintain safety responsibility and failure to comply with the provisions of the No-Fault Insurance law.

Judges in our state have certain discretionary authority to suspend licenses for certain offenses, however, the State Department of Public Safety is vested with authority to suspend on virtually all mandatory suspensions. Courts rarely take possession of a license unless they convict for operating while suspended. We know of no court that suspends the registration for any conviction.

As previously stated above, the Department of Public Safety does suspend as provided by statute, however, no studies have been conducted to determine the effectiveness of this practice. We do know that unless one central agency administers both driver history records and registrations it is difficult to prevent their obtaining duplicates through fraudulent means. It is also quite prevalent that these individuals can easily obtain stolen plates and continue operating as before.

I regret that we could not be of more assistance on this inquiry but do not hesitate to advise us in the future if we can be of service.

Sincerely,

Minuand C. McGuire

MCM:gdw



STATE OF DELAWARE
OFFICE OF HIGHWAY SAFETY
S. 1E 363 THOMAS COLLINS BUILDING
540 SOUTH DUPONT HIGHWAY AT WATER STREET
DOVER, DELAWARE 19901

TELEPHONE (302) 739-4475

October 24, 1986

Mr. Ray Lewis
Research Consultant
Minnesota Criminal Justice System
DWI Task Force
190 Law Center
229 19th Avenue South
Minneapolis, Minnesota 55455

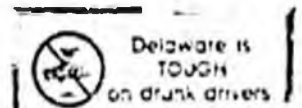
Dear Mr. Lewis:

This is in response to your letter of October 9, 1986 requesting information concerning impoundment of license plates and registration certificates of repeat DUI offenders. While our DUI law contains provisions for this, courts have not enforced it. I would appreciate a copy of the results of any evaluations that you do.

Sincerely,

Francis A. Ianni
Director

Inclosure - DUI Law



Delaware

or affirmed is guilty of perjury and shall be fined or imprisoned as are other persons committing perjury.

§ 2756. Driving Vehicle While License Is Suspended Or Revoked; Penalty.

(a) Any person whose driver's license or driving privileges have been suspended or revoked and who drives any motor vehicle upon the highways of this State during the period of suspension or revocation shall for the first offense be fined not less than \$100 nor more than \$500 and be imprisoned not less than 30 days nor more than six months. For each subsequent like offense, be fined not less than \$500 nor more than \$1,000 and in addition be imprisoned not less than 60 days nor more than one year. However, for a first offense under this section, if the suspension or revocation resulted from a violation of §4177 of this Title or a local ordinance substantially conforming thereto, the minimum fine shall be \$200.

(b) The minimum fine for a first or subsequent offense shall not be subject to suspension. The period of imprisonment for a subsequent offense shall not be subject to suspension. In addition, for the first or subsequent offense under this section, if the suspension or revocation resulted from a violation of a criminal statute dealing with injury or death caused to another person by the person's driving or operation of the vehicle and driving under the influence was an element of such offense, the minimum fine shall be \$500 and the minimum period of imprisonment shall not be subject to suspension.

(c)(1) With respect to any vehicle used in connection with a violation of this section, while the permit or license of the operator was revoked for violation of §2742 or §4177 or pursuant to §2732 of this Title, the Court, at the time of sentencing the operator for violating this section may, upon motion by the State, order the said vehicle to be impounded for at least ninety days for the first violation of this section, and for at least one year for a subsequent violation, provided that a public or private secure storage area may be obtained by the arresting police agency for said vehicle. The court shall permit any party with a legal or equitable interest in the vehicle an opportunity to show cause why the impoundment of such vehicle should cease. Prior to release of said vehicle, the person to whom the vehicle is released

shall pay all reasonable towing and storage fees connected therewith. The State and the arresting police agency shall be liable for any expenses incurred in connection with the towing and storage of said vehicle.

(c)(2) In lieu of impoundment, the title, license or registration plate, of any vehicle used in connection with a violation of this section, while the permit or license of the operator was revoked for violation of §4177 or §2742, or pursuant to §2732 of this Title, shall be surrendered to the Department for at least ninety (90) days for the first violation of this section, and for at least one (1) year for a subsequent violation. The court shall permit any party with a legal or equitable interest in the vehicle an opportunity to show cause why the surrender of said plate should cease.

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§ 2757. Penalties.

(a) Whoever violates this chapter shall for the first offense be fined less than \$10 nor more than \$100 or imprisoned not less than 5 nor more than 30 days or both. For each subsequent like offense, he shall be fined not less than \$25 nor more than \$200 or imprisoned not less than 10 nor more than 60 days or both.

(b) This section shall not apply to violations for which a specific punishment is set forth elsewhere in this chapter.

§ 2758. Driving During Period of Denial; Penalties.

(a) Any person not licensed to drive a motor vehicle who is arrested and convicted of an offense for which the penalty is mandatory suspension or revocation of driver's license or driving privileges shall be ineligible for licensing for a time equivalent to the time his license would have been suspended or revoked if he had been licensed.

(b) Any person not licensed as a driver who is convicted of driving a motor vehicle during a license denial period shall be punished as provided in § 2756 of this title.

§ 2759. Liability for Towing Expenses

Whenever a motor vehicle is towed in connection with the enforcement of §4177 or a criminal offense for which violation of §4177 is an element, the person to whom the vehicle is released shall be liable for the towing and storage costs, except that the police agency ordering such towing shall be liable for such costs if the driver was not actually arrested for driving in violation of §4177 or another criminal offense as a result of that incident and no other existing situation reasonably necessitated such towing.

90-A

§ 4177. Operation of Vehicle While Under the Influence of Intoxicating Beverage or Drugs; Penalties.

(a) No person shall drive, operate or have in actual physical control a vehicle, an off highway vehicle, a moped or a bicycle while under the influence of alcohol or of any drug or any combination of drugs and/or alcohol.

(b) Any person charged under subsection (a) of this section whose blood alcohol concentration is one tenth of 1% or more by weight as shown by a chemical analysis of a blood, breath or urine sample taken within four hours of the alleged offense shall be guilty of violating subsection (a) of this section. This provision shall not preclude a conviction based on other admissible evidence.

(c) The fact that any person charged with violating this section is or has been legally entitled to use alcohol or a drug shall not constitute a defense against any charge of violating this section.

(d) Whoever is convicted of a violation of subsection (a) of this section shall

(1) For the first offense, be fined not less than \$200 nor more than \$1,000 or imprisoned not less than 60 days nor more than six months or both, and shall be required to complete a course of instruction.

STATE OF MICHIGAN



JAMES J. BLANCHARD, GOVERNOR
DEPARTMENT OF STATE POLICE
COL. GERALD L. HOUGH, DIRECTOR

OFFICE OF HIGHWAY SAFETY
PLANNING
LOWER LEVEL
111 S. CAPITOL AVENUE, E.
LANSING, MICHIGAN 48227
PHONE 317 3741 11

November 12, 1986

Mr. Ray Lewis, Research Consultant
Minnesota Criminal Justice System
DWI Task Force
University of Minnesota
190 Law Center
229 19th Avenue South
Minneapolis, Minnesota 55455

Dear Mr. Lewis:

I have been asked to respond to your survey on vehicle/registration impoundment. Although Michigan has two statutes dealing with the impoundment of vehicles or confiscation of registration plates of vehicles, we were unable to find one court that has enforced these particular sections of the law. I have enclosed copies of these sections of our Vehicle Code for your information.

This office coordinated the efforts of the Michigan Drunk Driving Task Force and this same issue was raised. We would be interested in hearing of the results of your efforts.

Sincerely

A handwritten signature in cursive script that reads "Gary R. Holben".

GARY R. HOLBEN, Chief
Special Programs Unit

GRH:nmb

Enclosure

CHAPTER VIII.

PENALTIES

257.901 Misdemeanor, penalty. [MSA 9.2601]

Sec. 901. (1) It is a misdemeanor for a person to violate this act, unless that violation is by this act or other law of this state declared to be a felony or a civil infraction.

(2) Unless another penalty is provided in this act or by the laws of this state, a person convicted of a misdemeanor for the violation of this act shall be punished by a fine of not more than \$100.00, or by imprisonment for not more than 90 days, or both.

Am. 1978, Act 610.

257.901a No license in possession, when fine waived. [MSA 9.2601(1)]

Sec. 901. If a person has received a citation for a violation of section 311, the court shall waive any fine and costs, upon receipt of certification by a law enforcement agency that the person, before the appearance date on the citation, has produced his or her operator's or chauffeur's license and that the license was valid on the date the violation of section 311 occurred.

Add. 1982, Act 433.

257.902 Felony, penalty. [MSA 9.2602]

Sec. 902. Any person who is convicted of a violation of any of the provisions of this act declared to constitute a felony, unless a different penalty is expressly provided herein, shall be punished by imprisonment for not less than 1 year nor more than 5 years, or by a fine of not less than \$500.00 nor more than \$5,000.00, or by both such fine and imprisonment.

257.903 False certification is perjury. [MSA 9.2603]

Sec. 903. A person who makes a false certification to a matter or thing required by the terms of this act to be certified, is guilty of perjury.

Am. 1980, Act 398.

257.904 Suspended, revoked or denied license or registration, penalty for operation of vehicle. [MSA 9.2604]

Sec. 904. (1) A person whose operator's or chauffeur's license or registration certificate has been suspended or revoked and who has been notified as provided in section 212 of that suspension or revocation, or whose application for license has been denied, as provided in this act, or who has never applied for a license, and who operates a motor vehicle upon the highways of this state or who knowingly permits a motor vehicle owned by the person to be operated by another upon a highway, except as permitted under this act, while the license or registration certificate is suspended or revoked, or whose application for license has been denied, as provided in this act, is guilty of a misdemeanor, punishable, except as provided in subsections (2) and (3), by imprisonment for not less than 3 days nor more than

90 days, or a fine of not more than \$100.00, or both. Unless the vehicle was stolen or used with the permission of a person who did not knowingly permit an unlicensed driver to operate the vehicle, the registration plates of the vehicle shall be confiscated.

(2) A person whose operator's or chauffeur's license has been suspended under section 321a because that person has failed to answer a citation or has failed to comply with an order or judgment issued pursuant to section 907 and who operates a motor vehicle upon a highway, may be punished by imprisonment for not more than 90 days, or a fine of not more than \$100.00, or both.

(3) A person convicted of a second or subsequent violation of this section is guilty of a misdemeanor, punishable by imprisonment for not less than 5 days nor more than 1 year, or a fine of not more than \$500.00, or both. Unless the vehicle was stolen, the registration plates of the vehicle shall be confiscated.

(4) The secretary of state, upon receiving a record of the conviction or probate court finding of a person upon a charge of unlawful operation of a motor vehicle while the license of the person is suspended, revoked, or denied, or of the conviction, civil infraction determination, or probate court finding of a person for a violation of the motor vehicle laws of this state while the license of the person is suspended, revoked, or denied, immediately shall extend the period of the first suspension or revocation for an additional like period, or if a period has not been determined, then for not less than 30 days nor more than 1 year.

(5) The secretary of state, upon receiving a record of the conviction or a civil infraction determination of a person upon a charge of unlawful operation of a motor vehicle requiring a class 1, class 2, or class 3 indorsement while the indorsement is suspended pursuant to section 319a, immediately shall extend the period of suspension for an additional like period.

(6) Before the plea of the person is accepted under this section, the arresting officer shall check with the secretary of state to determine the record and status of the person according to the records of the secretary of state and so inform the court.

(7) This section shall not apply to a person who operates a vehicle solely for the purpose of protecting human life or property, if the life or property is endangered and the summoning of prompt aid is essential.

Am. 1982, Act 310.

257.904a Motor vehicles; operation by unlicensed person; penalty; second offense. [MSA 9.2604(1)]

Sec. 904a. Any person, not exempt from license under this act, who shall operate a motor vehicle upon the highways of this state and who is unable to show that he has been issued a license to operate a motor vehicle by any state or foreign country valid within the 3 years preceding is guilty of a misdemeanor, and upon conviction shall be punished by

other than for the purposes and under the conditions prescribed in the permit shall, upon conviction therefor, be imprisoned for ten (10) days."

Amendments. The 1985 amendment, by Act No. 1064, in the first sentence of the first paragraph substituted "of" for "from" preceding "the person arrested"; in the first sentence of the second paragraph substituted "not less than ninety (90) days nor more than one hundred twenty (120) days" for "at least ninety days (90)", substituted "not less than one (1) year nor more than sixteen (16) months" for "at least one year," substituted "a second offense within three (3) years" for "the second offense within three years", substituted "not less than two (2) years nor more than thirty (30) months" for "at least two years", substituted "within three (3) years" for "within three years," and substituted "within a three (3) year period" for "within a three year period," at the end of the second sentence of the second paragraph substituted "for a period of three (3) years" for "until and unless a three year period has transpired during which the person has not been cited for any moving traffic offense or violation"; and added the third paragraph.

Emergency. Section 3 of Acts 1985,

75-2512. Operation of motor vehicle during period of suspension or revocation of license.

Any person whose privilege to operate a motor vehicle has been suspended or revoked under the provisions of this Act [§§ 75-1031.1, 75-1045, 75-2501 — 75-2514], who shall, during the period of such suspension or revocation, operate a motor vehicle in this State, shall be imprisoned for ten (10) days. [Acts 1983, No. 549, § 14, p. 1153.]

NOTES TO DECISIONS

Suspension of Sentence.

The sentencing provisions of the Omnibus DWI Act of 1983 (§§ 75-2501 — 75-2514) are mandatory; where impris-

No. 113, read: "It is hereby found and determined by the General Assembly that Section 13 of Act 549 of 1983 prescribed only minimum periods of suspension of motor vehicle operator licenses upon first and subsequent offenses of driving while intoxicated and contain no maximum periods of suspension; that as a result of one or more lower court decisions in the State, serious concern has arisen concerning the constitutionality of the Legislature prescribing only minimum periods of suspension and prescribing no maximum periods; that this Act is designed to prescribe minimum and maximum periods of motor vehicle operator license suspension for violations of Act 549 of 1983 and should be given effect immediately in order to remove constitutional doubt concerning the license suspension provisions of that Act. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved February 14, 1985.

Cited: Lovell v. State, — Ark. —, 681 S.W.2d 395 (1984); Rawlings v. State, — Ark. —, 683 S.W.2d 223 (1985).

onment is required, such a sentence cannot be reduced or suspended by the judge. Lovell v. State, — Ark. —, 681 S.W.2d 395 (1984).

75-2513. Impoundment of license plate — Temporary substitute license plate.

When any law enforcement officer arrests a person for operating a motor vehicle while such person's operator license or permit has been suspended or revoked under the laws of any state due to such person having previously been found guilty or having pled guilty or nolo contendere to violating Section 3 [§ 75-2503] of this Act, and if the motor vehicle operated by the person is owned in whole or part by the person, the motor vehicle license plate shall be impounded by the law enforcement officer for no less than ninety (90) days. If the court determines it is in the best interest of dependents of the offender, the court shall instruct the Revenue Commissioner to issue a temporary substitute license plate to such vehicle and such license plate shall indicate that the original plate has been impounded. [Acts 1983, No. 549, § 15, p. 1153.]

75-2514. Highway safety program advisory council — Members — Terms — Duties.

There is hereby created the Highway Safety Program Advisory Council to be composed of 16 members as follows: one (1) shall be the Director of the Office of Alcohol and Drug Abuse Prevention, one (1) shall be the Director of the Highway Safety Program, one (1) shall be the Chief Administrative Officer of the Office of Driver Services, one (1) shall be the Chief Administrative Officer of the Blood Alcohol Program of the Department of Health, one (1) shall be appointed by the Governor to represent the Arkansas State Police, one (1) shall be appointed by the Governor to represent local law enforcement agencies, one (1) shall be appointed by the Governor to represent the Judiciary, one (1) shall be appointed by the Governor to represent the field of alcoholic rehabilitation, and eight (8) shall be lay citizens appointed by the Governor. The members first appointed by the Governor shall serve the following terms: four (4) shall serve four (4) year terms, four (4) shall serve three (3) year terms, and four (4) shall serve two (2) year terms. Subsequent members shall be appointed to four (4) year terms. The members of the Highway Safety Program Advisory Council shall serve without compensation. The Council shall act in an advisory capacity to the Highway Safety Program and shall:

- (a) Monitor the effectiveness of DWI legislation;
- (b) Encourage public awareness programs to heighten the public perception of the dangers of drunken driving;
- (c) Encourage and initiate the involvement of volunteer community groups in addressing the DWI problem;

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VEHICLES

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Chapter 39-06, 39-06.1, or 39-20.

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Source: S.L. 1959
1957 Supp., § 39-06
1969, ch. 340, § 6
349, § 1; 1981, ch.

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g. or revoking a license shall
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patrolman or peace officer to secure
same to the commissioner. A suspension,
covered under this title shall be deemed to have
er is delivered to the licensee at his address of record
pursuant to section 39-06-20. Constructive delivery under
shall be considered as occurring forty-eight hours after the order
to the person by regular mail.

Source: S.L. 1955, ch. 251, § 36; R.C. 1913,
Supp., § 39-0637; S.L. 1967, ch. 292, § 14;
1975, ch. 341, § 2; 1981, ch. 385, § 4.

39-06-40.1. Reproducing operator's or driver's license or permit — Penalty.

1. It shall be unlawful for any person to print, photograph, photostat, duplicate, alter, or in any way reproduce any operator's or driver's license or permit or facsimile thereof, or to print, photograph, photostat, duplicate, alter, or in any way reproduce any document used in the production of any operator's or driver's license or permit or facsimile thereof, in such a manner that it would be mistaken for a valid license or document containing valid information, or to display or have in his possession any such print, photograph, photostat, duplicate, reproduction, or facsimile unless authorized by the provisions of the North Dakota law.
2. It shall also be unlawful for any person to alter in any manner any operator's or driver's license or permit, or to display or have in his possession any altered operator's or driver's license or permit.
3. Every person violating the provisions of this section shall be guilty of a class B misdemeanor.
4. The commissioner upon receiving a record of the conviction or other satisfactory evidence of the violation of this section shall revoke forthwith the operator's or driver's license or driving privileges of such person. The period of revocation shall be determined at the discretion of the commissioner.

Source: S.L. 1969, ch. 340, § 9; 1971, ch.
370, § 1; 1975, ch. 406, § 431; 1979, ch. 405, § 7;
1981, ch. 384, § 6.

39-06-42. Penalty for driving while license suspended or revoked — Impoundment of vehicle number plates — Authority of cities.

1. Except as provided in chapters 39-16 and 39-16.1 and section 39-06.1-11, any person who drives a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state while that person's license or privilege so to do is suspended or revoked is guilty of a class B misdemeanor.

Source:
1957 Supp.,
1975, ch. 34
415, § 11; 19

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making a license shall be retained by the commissioner

any license or permit in the order of the commissioner to secure a suspension. A suspension shall be deemed to have been delivered under this section after the order

permit — Penalty. A duplicate, or a copy of any operator's license or permit in a manner that it contains valid information, photograph, photograph, or any other information by the provisions

any operator's license or permit shall be considered as altered

be guilty of a class

or other satisfactory person. The period of suspension shall be as provided in this section.

or revoked —

39-06.1-11, any person who is convicted of a crime while his license is suspended or revoked is guilty

- 2. If the suspension or revocation was imposed for violation of section 39-08-01 or equivalent ordinance or was governed by section 39-06-31 or chapter 39-20, the sentence must be at least four consecutive days' imprisonment and such fine as the court deems proper. The sentence and the imposition of sentence may not be suspended under chapter 12-53. Forfeiture of bail is not permitted in lieu of the defendant's personal appearance in open court for arraignment on a charge under this subsection.
- 3. In addition to any other punishment imposed, the court may order the number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded by the sheriff for the duration of the period of suspension or revocation. When a period of suspension has been extended under subsection 5 of section 39-06-17, the court may order the number plates to be impounded in accordance with this subsection. The impounded number plates may be released, upon order of the court, to a bona fide purchaser of the offender's motor vehicle, if that purchaser produces a new certificate of title to the motor vehicle issued by the registrar of motor vehicles.
- * 4. A city may, by ordinance, authorize its municipal judge to order impoundment of motor vehicle number plates in the manner provided in subsection 3.

Source: S.L. 1955, ch. 251, § 41; R.C. 1943, 1957 Supp., § 39-0642; S.L. 1975, ch. 100, § 432; 1975, ch. 344, § 1; 1977, ch. 350, § 1; 1983, ch. 415, § 11; 1985, ch. 429, § 4.

Actual Knowledge that License Revoked.

Defendant's claim that he did not receive notices of an opportunity for a hearing and the orders for suspension of his driver's license provided no defense to a charge of driving while his license was revoked where at the time of arrest on the charge he had actual knowledge that his driver's license was revoked. State v. Moore (1983) 341 NW 2d 373.

Collateral Attack on License Suspension.

At trial on charge of driving while driver's license suspended, defendant could not collaterally attack the validity of the suspension of his license where he had been notified of his right to a hearing on the suspension, he failed to make a written request for a hearing, he was notified that his license was suspended, and he surrendered his license to the proper authorities without contesting the validity of the suspension. State v. Metlhoff (1982) 318 NW 2d 314.

Expired Temporary License.

Defendant was properly convicted for driving while his license was suspended where he was arrested for driving with an expired temporary driver's license which had been issued to him, along with a hard copy of a citation for driving under influence, after he had been arrested for driving under influence and his regular license confiscated by arresting officer pursuant to section 39-20-03.1, due process requirement of notice and opportunity for a hearing before state may suspend a driver's license was not violated because, under circumstances, defendant had actual knowledge that he was driving while his license was suspended and he was given notice of an opportunity for a hearing by his possession of hard copy of driving under influence citation which contained such notice. State v. Obrigewitch (1984) 356 NW 2d 105.

Strict Liability.

As a matter of law, the defense of excuse based upon mistake of law, section 121-05-02, is not applicable to prosecutions for driving while license is suspended, a strict liability offense for which proof of culpability is not required. State v. Fridley (1983) 335 NW 2d 785.

39-06-43. Extension of license suspension or revocation. The commissioner upon receiving a record of the conviction of any person upon a charge of driving a vehicle while the license or driving privileges of the person was suspended shall extend the period of that suspension for an additional like period and if the original suspension was for an indefinite or unstated period of time, the additional suspension shall be for a period of six months on and after the date the person would otherwise have been entitled to the return of license or privileges. If, however, the original suspension of driving privileges resulted solely from failure to appear in court or to post and forfeit bond on noncriminal traffic violations, there shall be no additional period of suspension. If the conviction was upon a charge of driving

39-07-13. Wrecker and towing services to report. The person in charge or the operator of any commercial towing or wrecker service which causes any motor vehicle to be transported to a private residence or business other than a garage or repair shop which shows evidence of having been involved in a reportable accident as provided in section 39-08-09 or of being struck by any bullet, shall report or cause a report to be made to a police officer within twenty-four hours after such motor vehicle is transported. The report must give the registration number, and the name and address of the owner, operator, or person in control of such vehicle with a description of the location and type of damage to the vehicle, or any missing parts, along with the location such vehicle was transported to, if the vehicle does not have a sticker on a window thereof issued by a police officer, sheriff, or highway patrolman, bearing information to show that the accident in which the vehicle was involved has been investigated. If the vehicle does bear such a sticker the towing or wrecker service need not make the report this section requires.

Source: S.L. 1983, ch. 433, § 1.

CHAPTER 39-08

REGULATIONS GOVERNING OPERATORS

Section	
39-08-01.	Persons under the influence of intoxicating liquor or controlled substances not to operate vehicle — Penalty.
39-08-01.1.	Prior offenses.
39-08-01.2.	Special punishment for causing injury or death while operating a vehicle while under the influence of alcohol.
39-08-03.1.	Exhibition driving and drag racing — Definitions — Penalty.
39-08-04.1.	Emergency care at scene of accident — Liability.
39-08-09.	Immediate notice of accident.
39-08-11.	When driver unable to report.
39-08-13.	Accident report forms.
39-08-17.	Repealed.
39-08-18.	Open bottle law — Penalty.
39-08-20.	Driving without liability insurance prohibited — Penalty.

39-08-01. Persons under the influence of intoxicating liquor or controlled substances not to operate vehicle — Penalty.

1. A person may not drive any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:
 - a. That person has a blood alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving.
 - b. That person is under the influence of intoxicating liquor.
 - c. That person is a habitual user of narcotic drugs or is under the influence of a narcotic drug.
 - d. That person is under the influence of any controlled substance to a degree which renders that person incapable of safely driving.
 - e. That person is under the influence of a combination of intoxicating liquor and a controlled substance to a degree which renders that person incapable of safely driving.
2. A person may not be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:

- a. That person has a blood alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after being in physical control of a vehicle.
 - b. That person is under the influence of intoxicating liquor.
 - c. That person is a habitual user of narcotic drugs or is under the influence of a narcotic drug.
 - d. That person is under the influence of any controlled substance to a degree which renders that person incapable of safely driving.
 - e. That person is under the influence of a combination of intoxicating liquor and a controlled substance to a degree which renders that person incapable of safely driving.
3. A person violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second conviction in a five-year period, and of a class A misdemeanor for a later conviction in a five-year period. Notwithstanding the other provisions of this subsection, a person violating this section or equivalent ordinance is guilty of a class A misdemeanor for the fourth or subsequent conviction in a seven-year period. The minimum penalty for violating this section is as provided in subsection 5. The court shall take judicial notice of the fact that a conviction would be a subsequent conviction if indicated by the records of the commissioner or may make such finding based on other evidence.
- * 4. Upon conviction, the court may order the motor vehicle number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded by the sheriff or the chief law enforcement officer of the city, as is appropriate, for the duration of the period of suspension of the offender's driver's license or driving privilege by the licensing authority. The impounded motor vehicle number plates may be released, upon the order of the court, to a bona fide purchaser of the offender's motor vehicle, if that purchaser produces a new certificate of title issued by the registrar of motor vehicles.
5. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection.
- a. For a first offense, the sentence must include both a fine of at least two hundred fifty dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - b. For a second offense within five years, the sentence must include at least four days' imprisonment of which forty-eight hours must be served consecutively, or ten days' community service; a fine of at least five hundred dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - c. For a third offense within five years, the sentence must include at least sixty days' imprisonment, of which forty-eight hours must be served consecutively; a fine of one thousand dollars, and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - d. For a fourth offense within seven years, the sentence must include one hundred eighty days' imprisonment, of which forty-eight hours must be served consecutively and a fine of one thousand dollars.
 - e. A sentence or imposition of sentence under this section may not be suspended under chapter 12-53 except that a fine or a sentence of imprisonment may be suspended in any of the following instances:
 - (1) Upon conviction of being in actual physical control of a motor vehicle in violation of this section or equivalent ordinance.
 - (2) If the defendant is under age eighteen when convicted except that if the defendant has, within the preceding five years, previously been convicted of violating section 39-08-01 or equivalent ordinance, the sentence must include at least forty-eight consecutive hours imprisonment

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1985 SUPPLEMENT When license is suspended or revoked § 4507.38

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shall impound for operating w/o proof of financial responsibility

may modify its original sentence of a fine to an alternative sentence to which the defendant could have originally been sentenced, without violating the equal protection clause: State v. Harris, 2 OApp3d 46, 2 OBR 54, 440 NE2d 572.

2. (1983) Revised Code § 4507.34 is not void for vagueness because it does not forbid conduct, but merely gives the trial court discretion to suspend the license of a defendant who violates a statute or ordinance relating to reckless operation: Columbus v. Tyson, 19 OApp3d 224, 19 OBR 374, 484 NE2d 155.

3. (1983) Where defendant is convicted under Columbus City Ordinance 2113.01, and is charged with but found not guilty of a violation of RC § 2903.07, it is not a violation of defendant's due process rights for the trial court to invoke, without notice, RC § 4507.34 to suspend defendant's driver's license, since RC § 4507.34 does not charge an offense but merely sets forth a possible penalty. Furthermore, the application of RC § 4507.34 does not violate the constitutional provisions prohibiting double jeopardy, because the legislature has authorized the imposition of multiple punishments in this case: Columbus v. Tyson, 19 OApp3d 224, 19 OBR 374, 484 NE2d 155.

4. (1983) Use of the phrase "relating to reckless operation" in RC § 4507.34 demonstrates the General Assembly's intent to give the trial court authority to invoke RC § 4507.34 when a defendant is guilty of something less than "recklessness," as defined in RC § 2901.22, and when a defendant has been found guilty of violating laws and ordinances other than RC § 4511.20 (reckless operation). So interpreted, a conviction for violating Columbus City Ordinance 2113.01 by operating a motor vehicle through a red light is a conviction for an offense "relating to reckless operation." Columbus v. Tyson, 19 OApp3d 224, 19 OBR 374, 484 NE2d 155.

§ 4507.35 Display of license.

CASE NOTES AND OAG

1. (1984) Failure to display an operator's license when that license is not on or about the person or, a fortiori does not exist, is not a criminal violation of RC § 4507.35, but rather prima-facie evidence of not having a license: State v. Green, 13 OMisc2d 14, 13 OBR 301, 462 NE2d 466 (CoC).

§ 4507.36 Prohibition against false statements.

Cross-References to Related Sections
Additional court cost imposed, RC § 2743.70.

§ 4507.38 [Restriction against driving when license suspended; impoundment of registration and license plates.]

(A) No person whose operator's or chauffeur's license or permit or nonresident operating privilege has been suspended or revoked under sections 4507.01 to 4507.40 of the Revised Code or under applicable law in any other jurisdiction where the license or permit was issued, shall operate any motor vehicle upon the highways or streets in this state

while such license, permit, or privilege is suspended or revoked. No person who is granted occupational driving privileges by any court shall operate any motor vehicle upon the highways or streets in this state except in accordance with the terms of the privileges.

(B) It is an affirmative defense to any prosecution brought pursuant to this section that the alleged offender drove under suspension because of a substantial emergency, provided that (1) other person was reasonably available to drive in response to the emergency.

(C) In the event such person is convicted of a violation of this section, the trial judge of any court shall, in addition to, or independent of any other penalties provided by law or ordinance, impound the certificate of registration and identification license plates of any motor vehicle registered in the name of such person.

(D) The court shall send the impounded certificate of registration and license plates to the registrar of motor vehicles who shall retain the certificate of registration and license plates until such time as the operator's or chauffeur's license of the owner has been reinstated.

(E) Whenever such certificate of registration and license plates have been impounded in accordance with the provisions of this section, the court shall notify the registrar of motor vehicles of such action. Such notice shall contain the name and address of the driver, the serial number of his operator's or chauffeur's license, the serial numbers of the certificate of registration and license plates of the motor vehicle, and the length of time for which the certificate of registration and license plates have been impounded. The registrar shall record such data in such manner that it shall become a part of the driver's permanent record.

(F) Any such motor vehicle owner may apply to the registrar of motor vehicles, or to a deputy registrar, for special license plates which shall conform to the requirements of section 4503.231 [4503.23.1] of the Revised Code. The registrar, or deputy registrar, shall forthwith notify the court of such application, and upon approval of the court, shall issue special plates to the applicant.

Until such time as the operator's or chauffeur's license of the owner is reinstated, any new license plates issued to him shall also conform to such requirements.

(G) A fee of two dollars [and] fifty cents shall be charged for every set of special license plates which are [is] issued in accordance with this section, except upon renewal as specified in section 4503.10 of the Revised Code, when the regular fee as provided in section 4503.04 of the Revised Code shall be charged. Whenever a set of special license plates is exchanged, by reason of the reinstatement of the operator's or chauffeur's license of the owner, for those ordinarily issued, no fee shall be charged.

(H) If an owner wishes to sell a motor vehicle during the time the special license plates provided under this section are in use, he may apply to the court which impounded such plates and registration certificate for permission to transfer title to the motor vehicle. If the court is satisfied that such sale will be made in good faith and not for the purpose of circumventing the provisions of this section, it may certify its consent to the owner and to the registrar of motor vehicles who shall enter notice of such transfer in the owner's driving record.

(I) If, during the time the special license plates provided under this section are in use, the title to a motor vehicle is transferred by the foreclosure of a chattel mortgage, a sale upon execution, the cancellation of a conditional sales contract, or by order of a court, the court shall notify the registrar of motor vehicles of such action and the registrar shall enter notice of such transfer in the owner's driving record.

(J) Nothing contained in this section is intended to change or modify any provision of Chapter 4503, of the Revised Code with respect to the taxation of motor vehicles or the time within which the taxes thereon shall be paid.

*HISTORY: 139 v S 432. Eff 3-16-83.

Cross-References to Related Sections

Penalty, RC § 4507.99.
 Additional court cost imposed, RC § 2743.70.
 Aggravated vehicular homicide, RC § 2903.06.
 Six points assessed for violation, RC § 4507.40.
 Vehicular homicide, RC § 2903.07.

Law Review

Driving under the influence of alcohol in Ohio after Senate Bill 432—the prosecutor's viewpoint. Ronald J. O'Brien. 15 ToledoLRev 171 (1983).
 Ohio's new drunk driving law: a halfhearted experiment in deterrence. L. R. Katz & R. D. Sweeney, Jr. 34 CaseWResLRev 239 (1983-4).

CASE NOTES AND OAG

1. (1982) In a prosecution under RC § 4509.76, once the state meets its burden to present a prima facie case that the defendant drove under suspension, then the defendant may proffer evidence to rebut the presumption of compliance by the Bureau of Motor Vehicles with the statutorily devised notice provisions: State v. Morrison, 2 OApp3d 364, 2 ORR 421, 442 NE2d 114.
2. (1983) A defendant cannot be found guilty of a violation of RC § 4507.02, driving without a license, if he in fact has a license, although it is under suspension by the Bureau of Motor Vehicles: Cincinnati v. Tribble, 7 OMisc2d 46, 7 OBR 310, 455 NE2d 27 (MC).
3. (1984) A safety search conducted by a state highway patrolman pursuant to RC § 4513.02 in a non-random fashion so that motor vehicles are not being stopped pursuant to unbridled acts of whim, but as part of a calculated pattern of inspecting motor vehicles at a designated checkpoint, does not violate the Fourth Amendment prohibition against unreasonable searches and seizures. Hence, pursuant to RC § 4513.02, evidence obtained in a safety search made from a designated checkpoint indicating that the

driver of the stopped vehicle was driving under a suspension in violation of RC § 4507.38 is not obtained in violation of the Fourth Amendment and is thus admissible: State v. Goines, 16 OApp3d 168, 16 OBR 178, 474 NE2d 1219.

§ 4507.39 Operating vehicle with license suspended prohibited.

(A) No nonresident or other person whose operator's or chauffeur's license or permit or nonresident operating privilege has been suspended or revoked shall operate a motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction, or otherwise operate a motor vehicle in this state during a period of such suspension, or within one year after the date of such revocation.

(B) It is an affirmative defense to any prosecution brought pursuant to this section that the alleged offender drove under suspension because of a substantial emergency, provided that no other person was reasonably available to drive in response to the emergency.

*HISTORY: 139 v S 432. Eff 3-16-83.

Cross-References to Related Sections

Penalty, RC § 4507.99.
 Additional court cost imposed, RC § 2743.70.
 Vehicular homicide, RC § 2903.07.

Law Review

Driving under the influence of alcohol in Ohio after Senate Bill 432—the prosecutor's viewpoint. Ronald J. O'Brien. 15 ToledoLRev 171 (1983).

§ 4507.40 Point system for motor vehicle violations; repeat traffic offender; habitual traffic offender.

(A) Every county court judge, mayor, and clerk of a court of record shall keep a full record of every case in which a person is charged with any violation of sections 4511.01 to 4511.771 [4511.77.1], 4511.99, and 4513.01 to 4513.36 of the Revised Code, or of any other law or ordinance regulating the operation of vehicles, streetcars, and trackless trolleys on highways or streets.

(B) Within ten days after the conviction or forfeiture of bail of a person upon a charge of violating any of such sections or other law or ordinance regulating the operation of vehicles, streetcars, and trackless trolleys on highways or streets, the county court judge, mayor, or clerk shall prepare and immediately forward to the bureau of motor vehicles an abstract of the court record covering the case in which the person was convicted or forfeited bail, which abstract shall be certified by the person required to prepare the same to be true and correct.

(C) The abstract shall be made upon a form approved and furnished by the bureau and shall include the name and address of the party charged,

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held, and the suspension provided in divisions (A) and (C) of this section shall not be imposed. The court shall inform the registrar of motor vehicles in writing of the action taken.

HISTORY: 1943 H 453. Eff. 9-25-72.

Penalty, RC § 4507.99(B).

Research Aids

Conviction of driver's license to violate liquor laws:

O-Jur3d: Auto § 87

Am-Jur2d: Auto §§ 122-132

[§ 4507.16.4] § 4507.164 Impoundment of registration and license plates upon suspension or revocation of license.

When the license of any person is suspended or revoked, the trial judge may impound the certificate of registration and identification license plates of any motor vehicle registered in the name of such person. When such certificate of registration and license plates have been impounded, divisions (C) to (E) of section 4507.35 of the Revised Code are applicable.

HISTORY: 1924 H 518 (Eff. 12-14-67); 135 v S 313. Eff. 7-26-74.

Penalty, RC § 4507.99(B).

Research Aids

Impoundment of registration and license plates:

O-Jur3d: Auto § 86

Am-Jur2d: Auto § 90

[§ 4507.16.5] § 4507.165 [Suspension for passing stopped school bus.]

The trial judge of any court of record or mayor's court may, in addition to all other penalties provided by law, suspend for not more than one year the license of any person who is convicted of or pleads guilty to a violation of division (A) of section 4511.75 of the Revised Code.

When an operator's or chauffeur's license has been suspended under this section, the trial court shall cause the offender to deliver the license to the court, and the court or clerk of the court shall forthwith forward the license to the registrar of motor vehicles, together with notice of the action of the court.

HISTORY: 197 v S 389. Eff. 3-15-79.

Cross-References to Related Sections

Penalty, RC § 4507.99(B).

See RC § 4511.75, I which refers to this section.

Research Aids

Conviction of crime:

O-Jur3d: Auto § 88

Am-Jur2d: Auto §§ 133-139

[§ 4507.16.6] § 4507.166 [Suspension for causing death while fleeing officer.]

The trial judge of any court of record shall, in ad-

dition to or independent of all other penalties provided by law, suspend the driver's or chauffeur's license of any person who is convicted or pleads guilty to causing the death of another, as the proximate result of operating a motor vehicle, while eluding or fleeing a police officer.

After the operator's or chauffeur's license has been suspended, the trial court shall cause the offender to deliver to the court such license, and the court or clerk of such court shall forthwith forward to the registrar such license together with notice of the action of the court.

Such suspension shall be for a period of ten years and the registrar shall not issue to the offender another operator's or chauffeur's license during the effective dates of such revocation.

The trial judge of any court of record shall suspend the driver's or chauffeur's license of any person who is convicted or pleads guilty under this section a second time, for the life of the offender.

HISTORY: 135 v H 116. Eff. 8-22-79.

Penalty, RC § 4507.99(B).

Research Aids

Conviction of crime:

O-Jur3d: Auto § 86

Am-Jur2d: Auto §§ 133-136

§ 4507.17 Effect of revocation of license. (GC § 6296-21)

Any person whose license is suspended or revoked under sections 4507.01 to 4507.39, inclusive, of the Revised Code, is not entitled to apply for or receive a new license during the effective dates of such suspension or revocation.

HISTORY: GC § 6296-21; 116 v Phil 33, § 21; Bureau of Code Revision, 10-1-53; 125 v 367. Eff. 10-15-53.

See former GC § 12607-1.

Penalty, RC § 4507.99(B).

Research Aids

Suspension or revocation of license:

O-Jur3d: Auto § 85

Am-Jur2d: Auto § 145

§ 4507.18 Disposition of license while appeal proceedings are pending. (GC § 6296-18)

Any person whose operator's or chauffeur's license has been suspended or revoked under section 4507.16 of the Revised Code, who desires to retain such license during the pendency of an appeal, shall at the time sentence is pronounced notify the trial court of his intention to appeal; whereupon the court, or clerk of such court, shall retain such license until such appeal is perfected, and, if execution of sentence is stayed, such license shall be returned to the accused to be held by him during the pendency of such appeal. If such appeal is not perfected or is dismissed or terminated in an affirmance of the conviction, then such license shall be taken up by the

119.01 to 119.13 of the Revised Code, except as otherwise provided under section 4509.101 [4509.10.1] of the Revised Code.

*HISTORY: 139 v S 250. Eff 1-1-84.

The effective date of SB 250 is set by section 3 of the act.

§ 4509.06 Accident reports.

Cross-References to Related Sections

Increase minimum amount of damage required to bring accident under financial responsibility, RC § 4509.101.

[§ 4509.10.1] § 4509.101 [Operation of motor vehicle without maintaining proof of financial responsibility prohibited.]

(A)(1) No person shall operate, or permit the operation of, a motor vehicle in this state, unless proof of financial responsibility is maintained with respect to that vehicle, or, in the case of a driver who is not the owner, with respect to his operation of that vehicle.

(2) Whoever violates division (A)(1) of this section shall be subject to the following civil penalties:

(a) Suspension of the person's operating privileges and impoundment of the person's license until the person complies with division (A)(5) of this section, which suspension shall be for a period of not less than ninety days and shall not be subject to revocation, suspension, or occupational or other limited operating privileges;

(b) In addition to the suspension of an owner's license under division (A)(2)(a) of this section, the suspension of the rights of the owner to register the motor vehicle and the impoundment of the owner's certificate of registration and registration plates until the owner complies with division (A)(5) of this section.

(3) A person to whom this state has issued a certificate of registration for a motor vehicle or a license to operate a motor vehicle or who is determined to have operated any motor vehicle or permitted the operation in this state of a motor vehicle owned by the person shall be required to verify the existence at the time of the traffic offense or accident of proof of financial responsibility covering the operation of the motor vehicle or the person's operation of the motor vehicle whenever the person, or a third person operating the person's motor vehicle with the person's permission, is required to appear in court on the charge of a traffic offense specified in Traffic Rule 13(B) or the person or a motor vehicle owned by the person is involved in a traffic accident that requires the filing of an accident report under section 4509.06 of the Revised Code.

(4) An order of suspension and impoundment of a license or registration, or both, shall state the

date on or before which the person is required to surrender the person's license or certificate of registration and registration plates. The person is deemed to have surrendered the license or certificate of registration and registration plates, in compliance with the order, if the person does either of the following:

(a) On or before the date specified in the order, personally delivers the license or certificate of registration and registration plates, or causes the delivery of such items, to the registrar of motor vehicles or court, whichever issued the order;

(b) Mails the license or certificate of registration and registration plates to the registrar or court, whichever issued the order, in an envelope or container bearing a postmark showing a date no later than the date specified in the order.

(5) The registrar shall not restore any operating privileges or registration rights suspended under this section or return any license, certificate of registration, or registration plates impounded under this section unless such rights are not subject to suspension or revocation under any other law and unless the person, in addition to complying with all other conditions required by law for reinstatement of such operating privileges or registration rights, complies with all of the following:

(a) Pays a reinstatement fee of thirty dollars. The reinstatement fee may be increased, upon approval of the controlling board, up to an amount not exceeding fifty dollars.

(b) If the person has not voluntarily surrendered the license, certificate, or plates in compliance with the order, pays a nonvoluntary compliance fee in an amount, not to exceed fifty dollars, determined by the registrar;

(c) Files and maintains proof of financial responsibility under sections 4509.44 to 4509.65 of the Revised Code.

(B)(1) Any defendant, who is charged with a traffic offense specified in Traffic Rule 13(B) that requires an appearance in court, shall be required to verify the existence of proof of financial responsibility covering the operation of the vehicle at the time of the offense in accordance with this section. If the defendant pleads guilty or is found guilty, the court shall, as part of the sentencing procedures, require the defendant to prove that the operation of the motor vehicle was covered by proof of financial responsibility. The court may order the defendant to identify the owner of the motor vehicle, and, if the defendant owns the motor vehicle, to present its certificate of registration.

The court may cause notice to be given to defendants charged with such offenses at such time and in such manner as the court determines to be necessary or appropriate, and may allow a reasonable continuance to permit the defendant to obtain evidence of proof of financial responsibility. The court may permit a defendant to present evidence

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Senator Mitch Abood
CHAIRMAN

Senate Committee on State Affairs

February 24, 1987

MEMORANDUM

To: Members, Senate State Affairs Committee

From: Senator Mitch Abood, Chairman
Senate State Affairs Committee

Re: SB 3, "An Act relating to motor vehicle
registration and registration plates.

SB 3 was before the Senate State Affairs Committee on February 4, 1987 and was held over to allow for further research on questions which were raised during the hearing.

As you may know, by reviewing the back-up provided, SB 3 was molded after the language used for impounding of vehicle registration and registration plates in Minnesota. My staff has contacted the Criminal Justice System, DWI Task Force in Minnesota for additional information on how they are currently enforcing their law and procedures which they follow for processing the cases.

I am providing each of you with a copy of suggested amendments and questions which individuals expressed at the committee hearing and the information which we received from Minnesota. Also attached, for your review, is a committee substitute for SB 3 and sectional analysis.

S B

4

SENATE COMMITTEE REPORT

FURTHER:

DATE TURNED INTO OFFICE Feb. 19, 1987

Mr. President:

TRANSPORTATION Committee considered SB 4

relating to outdoor advertising.

and recommended:

replace with _____ CS FOR _____) same title
 or adopt _____ CS FOR _____) new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

Committee attached or adopted fiscal note(s)

new updated or previous
 zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Tim Kelly
Mike Wood
John Corbett
Fahnestock

Lord James P. Pass
Chairman signature and recommendation

Committee Backup Attached

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: February 2, 1987

Bill Version: Senate Bill No. 4
Publish Date: _____

Revision Date: _____
Title: An Act relating to outdoor advertising
Sponsor: Fahrenkamp
Requestor: Abood

Agency Affected: DOT&PF
BRU: _____
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-
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS :

There is no fiscal impact to the Department. Revenues received from franchise should offset departmental expenditures.

Prepared by: Milton H. Lentz
Division: Engineering & Operations Standards

Phone: 465-2985
Date: 2/3/87

Approved by Commissioner: Robert A. ...
Agency: Transportation and Public Facilities

Date: _____

Distribution (by preparer):

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

SB 4 An Act relating to outdoor advertising by Senator
Fahrenkamp

Background

Commercial advertising is commonly found on the sides of buses and on bus shelters and bus benches along bus routes within municipal right of ways. Typically, an advertising firm will supply the benches and shelters at no cost to the municipality in return for the privilege of placing them at bus stops and along bus routes and selling advertising space on them. In this manner a public need and convenience is fulfilled at no cost to government.

However, under existing state law, DOT/PF cannot allow such transit related advertisement to be placed near state right of ways along interstate, primary, and secondary highways. There are strict state and federal restrictions on advertising along roadways, dating back to the federal Beautification Act and the Federal Aid Highway Act. The Federal Highway Administration is responsible for enforcing the laws and regulations pertaining to outdoor advertising. The Highway Administration has approved bench and shelter advertising along federal aid highways in those states that authorize it. FHWA recognized that this form of advertising is an attractive fiscal proposition for local governments and in the interest of promoting mass transit as a way of making it more convenient and thus more appealing.

Purpose

SB 4 amends AS 19.25.105 LIMITATIONS ON OUTDOOR ADVERTISING to include a new exception to allow advertising along state right-of-ways on bus benches and bus shelters. Current law does not make an exception for this form of advertising.

Sectional Analysis

Section 19.25.105 LIMITATIONS ON OUTDOOR ADVERTISING Subsection (a)(5) is added to allow "advertising on bus benches or bus shelters if the state determines that the advertising conforms to state and federal standards for interstate and highway systems." Standards will be set by DOT/PF to insure conformity with federal requirements so no federal funding would be in jeopardy.

Provided by Senator Fahrenkamp's office



Dept. of Transportation & Public Facilities

Position Paper

BILL NO: Senate Bill No. 4

APPROVED: 
Rocky Gutierrez

TITLE: An Act relating to outdoor advertising

DATE: Commissioner
February 3, 1987

The intent of Senate Bill No. 4 under paragraph (3) would allow advertising on bus benches or bus shelters if the State determines that advertising would not impair or inhibit the free flow of traffic.

The language of Senate Bill No. 4, however, excludes the words...and visible from the main-traveled way...from Sec. 19.25.105(a) which are present in the existing statutes and a part of the federal regulations. Federal laws 23 U.S.C. 101(a) (the urban area definition) and 23 U.S.C. 131 (the Act) and Federal Regulation 23 CFR Subpart G, which provide distance requirements affecting commercial signs are very explicit. In summary, such signs are currently controlled within 660 feet of the highway right of way designated urban areas. Outside of urban areas, signs are controlled to limits of visibility.

Paragraph (3)(b) implies that outdoor advertising may not be erected or maintained beyond 660 feet of the nearest edge of the right of way of an interstate, primary or secondary highway if the outdoor advertising impairs or inhibits the free flow of traffic. This language does not conform to the federal regulations and may jeopardize federal-aid funding.

Although the Federal Highway Administration has changed its position on outdoor advertising to allow advertising on transit-related facilities, we must bear in mind that this change in State statutes would require specific requirements for the control of such advertising to meet federal requirements.

The Department does not object to transit-related outdoor advertising providing it furnishes a public service. It is, however, the Department's position that additional consideration should be given to the language used in establishing distance requirements for the control of outdoor advertising or signs.

Back-up

SB 4 An Act relating to outdoor advertising by Senator Fahrenkamp

Background

Commercial advertising is commonly found on the sides of buses and on bus shelters and bus benches along bus routes within municipal right of ways. Typically, an advertising firm will supply the benches and shelters at no cost to the municipality in return for the privilege of placing them at bus stops and along bus routes and selling advertising space on them. In this manner a public need and convenience is fulfilled at no cost to government.

However, under existing state law, DOT/PF cannot allow such transit related advertisement to be placed within or near state right of ways along interstate, primary, and secondary highways. There are strict state and federal restrictions on advertising along roadways, dating back to the Federal Aid Highway Act and the federal Beautification Act. The Federal Highway Administration is responsible for enforcing the laws and regulations pertaining to outdoor advertising. The Administration has allowed other states to permit transit related advertising along federal aid highways. FHWA recognized that this form of advertising is an attractive fiscal proposition for local governments and in the interest of promoting mass transit as a way of making it more convenient and thus more appealing.

Purpose

SB 4 rewrites AS 19.25.105 LIMITATIONS ON OUTDOOR ADVERTISING to include a new exception to allow advertising in or along state right-of-ways on bus benches and bus shelters. Current law does not make an exception for this form of advertising. The proposed Section 105 also incorporates new language suggested by Legal Services to clarify existing statutes.

Sectional Analysis


Section 19.25.105 LIMITATIONS ON OUTDOOR ADVERTISING

(a) Notwithstanding the exceptions below in (a)(1) to (a)(3), outdoor advertising is prohibited within 660 feet of the right of way.

Existing law would allow ads within 660 feet that are not visible from the main highway, plus certain exceptions similar to ones maintained in this proposal. Under this new subsection (a), signs that are not visible from the main highway would be prohibited.

(a)(1) Combines previous subsections (a)(1), (a)(3), and (a)(4).

(a)(2) Changes "signs, displays and devices" to "signs".


- Sponsor's Back-up -

SB 4 continued

(a)(3) This is the new subsection that contains the crux of the bill's purpose. As long as advertising on bus benches or bus shelters would not "impair or inhibit" the free flow of traffic and conform to federal standards as would be required by subsection (c), they would be allowed in or along the right of ways of interstate, primary, or secondary highways.

(b) This subsection deals with signs beyond 660 feet of the nearest edge of a right-of-way. Previous law prohibited signs "with the purpose of their message being read from that travel way". The new subsection simply says "impairs or inhibits the free flow of traffic."

(c) This subsection requires that all advertising conform to federal standards. This requirement was found only in previous statute subsection (a)(1).

Provided by Senator Fahrenkamp's office



Fairbanks North Star Borough

Mayor: Juanita Helms

February 3, 1987

Senator Mitch Abood
Chairman
Senate State Affairs Committee
Room 423, Capitol Building
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Abood:

I support and urge the Alaska State Legislature to pass SB4, "An Act Relating to Outdoor Advertising".

A private enterprise is presently providing bus benches and bus shelters to the residents of the borough who use public transportation. This is a service used and appreciated by bus riders borough-wide. It is also a service that the borough government would not be able to provide.

I whole-heartedly support the concept of the public and private sectors collaborating to provide additional services to the public and additional opportunities for private enterprise to be successful. Passage of SB4 will allow this collaboration to continue.

Sincerely,

Juanita Helms
Borough Mayor

- Support Letter -

Legislative history reports. — For report on ch. 233, SLA 1968 (HCSCSSB 144 am FCC), see 1968 House Journal, p. 815.

Collateral references. — 40 Am. Jur. 2d, Highways, Streets and Bridges, §§ 273-336.

40 C.J.S., Highways, §§ 217, 232. Billboards and other outdoor advertising signs as civil nuisance. 38 ALR3d 647.

Sec. 19.25.090. Outdoor advertising prohibited. Except as provided in AS 19.25.105, all outdoor advertising is prohibited. (§ 3 ch 59 SLA 1949; am § 1 ch 86 SLA 1953; am § 2 ch 155 SLA 1970)

Sec. 19.25.100. Rural signs.

Repealed by § 14 ch 155 SLA 1970.

Editor's notes. — The repealed section derived from § 4, ch. 59, SLA 1949; § 1, ch. 86, SLA 1953; § 9, art. VII, title II, ch. 152, SLA 1957.

Sec. 19.25.105. Limitations of outdoor advertising signs, displays and devices. (a) No outdoor advertising may be erected or maintained within 660 feet of the nearest edge of the right-of-way and visible from the main-traveled way of the interstate, primary, or secondary highways in this state except the following:

(1) directional and other official signs and notices which include, but are not limited to, signs and notices pertaining to natural wonders, scenic and historic attractions, which are required or authorized by law, and which shall conform to federal standards for interstate and primary systems;

(2) signs, displays and devices advertising the sale or lease of property upon which they are located or advertising activities conducted on the property;

(3) signs determined by the state, subject to concurrence of the United States Department of Transportation, to be landmark signs, including signs on farm structures, or natural surfaces, of historic or artistic significance, the preservation of which would be consistent with the provisions of this chapter;

(4) directional signs and notices pertaining to schools.

(b) Repealed by § 21 ch 94 SLA 1980.

(c) No outdoor advertising may be erected or maintained beyond 660 feet of the nearest edge of the right-of-way of the main traveled way of the interstate primary or secondary highways in this state with the purpose of their message being read from that travel way except those outdoor advertising signs, displays or devices allowed under (a) of this section. (§ 3 ch 155 SLA 1970; am §§ 1, 2 ch 195 SLA 1975; am § 1 ch 30 SLA 1980; am § 21 ch 94 SLA 1980)

Effect of amendments. — The first 1980 amendment added paragraph (4) of subsection (a). The second 1980 amendment repealed subsection (b).

S B

10

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date: _____

REQUEST

FISCAL DETAIL

Bill/Resolution No.: SB 10
 Title: Removing a limitation on the Alaska Railroad to apply for a right of way or exercise eminent domain
 Sponsor: Coghill
 Requestor: Senate Labor & Commerce
 Date of Request: _____

Agency Affected: Alaska Railroad
 BRU: _____
 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	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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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

Alaska Railroad not subject to Executive Executive Budget Act.

Prepared by: Mark K. Johnson, Counsel Phone: 455-3822
 Division: Senate Labor & Commerce Committee Date: 2-18-87

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by Agency preparing fiscal note):

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

SENATE COMMITTEE REPORT

FURTHER:

2/19/87

DATE TURNED INTO OFFICE March 3, 1987

Mr. President:

TRANSPORTATION Committee considered SB 10

removing a limitation on the power of the Alaska railroad to apply for a right-of-way or exercise eminent domain.

and recommended:

replace with CS FOR _____) same title
 or adopt _____ CS FOR _____) new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

Committee attached or adopted fiscal note(s)

new updated or previous
 zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Handwritten signatures]

[Handwritten signature]

Chairman signature and recommendation

Committee Backup Attached

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 2-12-87 5-DAY NOTICE IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: TRANSPORTATION

**FISCAL NOTE(S) ATTACHED X ** IN ACCORDANCE WITH AS 24.08.035 (see below)

1/19/87 DATE TURNED INTO OFFICE

Mr. President:

LABOR & COMMERCE Committee considered SB 10

removing a limitation on the power of the Alaska Railroad to apply for a right-of-way or exercise eminent domain.

and recommended:

- [] replace with CS [] same title [] attached amendment(s) and [] new title

[] do pass

[] do not pass

~~[]~~ no recommendation

~~[]~~ individual recommendations

[] further referral to

[] letter of intent adopted and attached

** Committee [X] attached or [] adopted fiscal note(s) [X] zero [] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]

[Signature] m rec. Mike S... - NO REC.

Tim Kelly - Do Pass Chairman signature and recommendation

[] Committee Backup Attached

L + C Permit

Senator John B. (Jack) Coghill
Alaska State Legislature



Box V
Juneau, Alaska 99811
(907) 465-4797

Box 55028
North Pole, Alaska 99705
(907) 488-0862

TO: TRANSPORTATION COMMITTEE
FROM: SENATOR JACK COGHILL
DATE: MARCH 2, 1987
RE: SB 10 ALASKA RAILROAD RIGHT-OF-WAY

SB 10 repeals Section 42.40.355 of the Alaska Railroad Act. This sub-section prohibits the railroad from applying for rights-of-way in the western unit of the Gates of the Arctic National Preserve under 16 U.S.C. 410hh(4)(b)-(e). 16 U.S.C., etc., refers to Chapter 11 of the ANILCA Act. Chapter 11 allows the State of Alaska to apply for access across or into national parks and preserves if the appropriate requirements are met.

This bill would provide the Alaska Railroad Corporation with the flexibility to study and plan for future railroad extension into an important mineral and resource rich area of the state.

Frank Turpin, President and CEO of the Alaska Railroad Corporation, favors repeal of A.S. 42.40.355. He states in a letter to me: "The legislature has previously found that the Corporation must function as a viable economic entity, which will also provide a level of transportation service that best satisfies the needs of the people of the State. Although any proposed extension of the rail system calls for careful scrutiny consistent with such Legislative purposes, by promoting flexibility, SR 10 meshes well with our desire to responsibly plan for the future."

I urge you to pass this bill as one step toward future resource development.

ALASKA RAILROAD CORPORATION



P.O. Box 7-2111 • Anchorage, Alaska 99510-7069

Via Telecopier

March 2, 1987

Honorable Jack Coghill, Senator
P.O. Box V, Room 30
Juneau, Alaska 99811

Dear Senator Coghill:

I understand that Senate Bill 10 which you sponsored is scheduled for a hearing before the Senate Transportation Committee on March 3, 1987.

SB 10 repeals AS 42.40.355 which prohibits ARRC from applying for a right-of-way across or exercising its rights of eminent domain in the western unit of the Gates of the Arctic National Preserve. Although the Alaska Railroad Corporation does not have any present plans to extend the railroad into the western unit of the Gates of the Arctic National Preserve, we certainly do not oppose the bill. We support this and all other efforts which will meaningfully serve Alaska's developmental needs, present or future.

Sincerely,

Frank G. Turpin
President and CEO

cc: Honorable Senator Lloyd Jones, Chairman
Senate Transportation Committee
James O. Campbell, Chairman
Alaska Railroad Corporation

3875L

- ARC Position -

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(c) The corporation may lease, subject to AS 42.40.285 and (d) of this section, grant easements in or permits for, or otherwise authorize use of portions of rail land. However, the corporation may not convey its entire interest in rail land except as provided in AS 42.40.285, 42.40.370(d) and 42.40.400.

(d) A lease or disposal of land approved by the legislature under AS 42.40.285 by the corporation to a party other than the state shall be made at fair market value as determined by a qualified appraiser or by competitive bid. (§ 2 ch 153 SLA 1984)

Sec. 42.40.355. Prohibition. Notwithstanding any other provision in AS 42.40, the state-owned railroad as defined under 45 U.S.C. 1202(14) may not apply for a right-of-way across, or exercise eminent domain in, the western (Kobuk River) unit of the Gates of the Arctic National Preserve under 16 U.S.C. 410hh(4)(b)-(e). (§ 2 ch 153 SLA 1984)

Sec. 42.40.360. Request for land. (a) The board may nominate federal land it determines may be useful for present or future railroad purposes for selection under the Alaska Statehood Act (P.L. 85 — 508, 72 Stat. 339), as amended, and request the commissioner of natural resources to select the land for the state through the federal land selection process.

(b) The board may identify and request the commissioner of natural resources to convey land necessary or useful for present or future railroad purposes owned by or tentatively approved for transfer to the state, including land not contiguous with a railroad utility corridor or rail land. The request must include a statement of and justification for the present or future railroad use. Upon receipt of a request, the commissioner shall temporarily reserve the land identified in the request for railroad purposes and defer disposal or lease of that land under other laws to a party other than the corporation. The temporary reservation of land is subject to valid existing rights and remains in effect for 180 days. (§ 2 ch 153 SLA 1984)

Sec. 42.40.370. Conveyance of land. (a) Within 90 days after receiving a request under AS 42.40.360(b) the commissioner of natural resources shall by written decision

(1) designate the identified land for railroad purposes and, subject to valid existing rights, convey the state's interests in the land to the corporation;

(2) notify the corporation of reasons for refusal to designate the identified land for railroad purposes; or

(3) approve the request in part and deny it in part and convey as appropriate.

(b) A conveyance of land under this section may be for less than its appraised value as determined by the commissioner of natural resources.



AS 42 40.355

S B

17

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version : CSSB 17 (SA)

Publish Date : _____

Revision Date: _____

Agency Affected: DOT/PE

Title : An Act Relating to Sanction of Official

BRU : Engineering & Operations Standards

Private Traffic Control Devices & Damages to Highways & Roads

Sponsor : Falks and Sturgulewski

Components : _____

Requestor : JONES

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

No significant fiscal impact is anticipated.

John J. Simpson, Director 2/5/87

Prepared by: John J. Simpson, Director Phone: 465-2951

Division: Engineering & Operations Standards Date: 2/5/87

Approved by Commissioner: *Robert L. Williams* Date: 2/4/87

Agency: Department of Transportation and Public

Distribution (by preparer): Facilities

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

Senate Secretary



Dept. of Transportation & Public Facilities

Position Paper

BILL NO: CSSB 17 (SA)

APPROVED: Rocky Gutierrez
Commissioner

TITLE: An Act Relating to Vandalism of Official and
Private Traffic Control Devices and Damages
to Highways and Roads

DATE: February 5, 1987

The Department has no objections to this legislation.

For further information call Susan Fleischhauer at 465-3900.

FISCAL NOTE

REQUEST

Revision Date: 2/23/88
Title: "An Act relating to vandalism of
official traffic control devices..."
Sponsor: Sen. Faiks
Requestor: House Judiciary

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY88	FY89	FY90	FY91	FY92	FY93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUNDS						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

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

Phone: 269-5691
Date: 2/23/88

Approved by Commissioner: *H. Hoelzer, Dep. Comm.*
Agency: Public Safety

Date: *2-29-88*

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

DRAFT

Bill Version: CSSB 17 ()

Publish Date: _____

Agency Affected: Public Safety

BRU: Alaska State Troopers

Components: Detachments & CIB

REQUEST

Revision Date: _____

Title: "An Act relating to vandalism of official traffic control devices.."

Sponsor: Sen. Faiks

Requestor: Senate Transportation

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
CAPITAL		0	0	0	0	0
REVENUE						

FUNDING:: (Thousands of Dollars)

GENERAL FUNDS		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan
Division: Alaska State Troopers

Phone: 269-5691

Date: 3/27/87

Approved by Commissioner: William R. Nix
Agency: Public Safety

Date: 3/27/87

Distribution (by preparer):

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

DEPARTMENT OF PUBLIC SAFETY

BILL NO: DRAFT CSSB 17 ()

DATE: 3/31/87

TITLE: "An Act relating to unlawful possession and vandalism of official traffic control devices, disregard of a highway obstruction, and damage to highways."

CONTACT: *JW* James Vaden
Deputy Commissioner

This bill groups these types of offenses in one area of statutes, clarifies penalties, and provides a mechanism for forfeiture of instrumentalities.

Provides penalties and/or forfeiture of property relating to unlawful possession and vandalism of official traffic control devices, disregard of erected highway obstructions, and damages to highways.

Sec. 11.46.460 provides authority to arrest or charge an individual who disregards traffic control devices or detours through construction zones, closed roadways, and barricaded traffic lanes.

Sec. 11.46.462 appears to be redundant to AS 11.46.190 "Theft by Receiving." However, this may be necessary to clarify forfeitures under Sec. 11.46.487 - 489 of this bill.

Sec. 11.46.484(a)(7) provides penalties for theft or vandalism of traffic control devices, etc.

Sec. 11.46.487-489 would allow for stiff penalties to be applied to individuals who knowingly violate the law. This would provide the Court with a mechanism to forfeit the instrumentalities of the offense to the State.

The Department of Public Safety supports this legislation.

William R. Nix

William R. Nix
Acting Commissioner

5-0097X ✓
Utermohle
4/1/87

Original sponsors: Faiks and Sturgulewski

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 17 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to unlawful possession and vandalism
7 of official traffic control devices, disregard of a
8 highway obstruction, and damages to highways."

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

10 * Section 1. AS 11.46 is amended by adding new sections to read:

11 Sec. 11.46.460. DISREGARD OF A HIGHWAY OBSTRUCTION. (a) A
12 person commits the crime of disregard of a highway obstruction if,
13 without the right to do so or a reasonable ground to believe the
14 person has the right, the person

15 (1) drives a vehicle through, over, or around an obstruc-
16 tion erected upon a highway under authority of AS 19.10.100; or

17 (2) opens an obstruction erected upon a highway under
18 authority of AS 19.10.100.

19 (b) Violation of this section is a class A misdemeanor.

20 Sec. 11.46.462. UNLAWFUL POSSESSION OF OFFICIAL TRAFFIC CONTROL
21 DEVICE. (a) A person commits the crime of unlawful possession of an
22 official traffic control device if, without the right to do so or a
23 reasonable ground to believe the person has the right, the person pos-
24 sesses an official traffic control device.

25 (b) Unlawful possession of an official traffic control device is
26 a violation and is punishable by a fine of

27 (1) not less than \$100 for the first offense; or

28 (2) not less than \$300 for each subsequent offense.

29 * Sec. 2. AS 11.46.484(a) is amended to read:

1 (a) A person commits the crime of criminal mischief in the third
2 degree if, having no right to do so or any reasonable ground to be-
3 lieve the person has such a right

4 (1) with intent to damage property of another, the person
5 damages property of another in an amount of \$50 or more but less than
6 \$500;

7 (2) the person drives, tows away, or takes the propelled
8 vehicle of another;

9 (3) having custody of a propelled vehicle under a written
10 agreement with the owner of the vehicle that includes an agreement to
11 return the vehicle to the owner at a specified time, the person know-
12 ingly retains or withholds possession of the vehicle without the
13 consent of the owner for so long a period beyond the time specified as
14 to render the retention or possession of the vehicle an unreasonable
15 deviation from the agreement;

16 (4) the person tampers with a fire protection device in a
17 building that is a public place;

18 (5) the person knowingly accesses a computer, computer
19 system, computer program, computer network, or [ANY] part of a com-
20 puter system or network; [OR]

21 (6) the person uses a device to descramble an electronic
22 signal that has been scrambled to prevent unauthorized receipt or
23 viewing of the signal unless the device is used only to descramble
24 signals received directly from a satellite or unless the person owned
25 the device before September 18, 1984; or

26 (7) the person knowingly removes, relocates, defaces,
27 alters, obscures, shoots at, destroys, or otherwise tampers with an
28 official traffic control device or damages the work upon a highway
29 under construction.

1 * Sec. 3. AS 11.46 is amended by adding a new section to read:

2 Sec. 11.46.487. FORFEITURE OF PROPERTY UPON CONVICTION. Fire-
3 arms and other personal property, except a motor vehicle, used in aid
4 of a violation of AS 11.46.460, 11.46.462, or 11.46.484(a)(7) may be
5 forfeited to the state upon conviction of the offender for the crime.

6 * Sec. 4. AS 11.46.490 is amended by adding new paragraphs to read:

7 (5) "highway" has the meaning given in AS 19.45.001;

8 (6) "motor vehicle" has the meaning given in AS 28.40.100;

9 (7) "official traffic control device" means a traffic
10 control device that has been placed on a highway by authority of a
11 state or municipal agency, a utility, or a contractor employed by a
12 state or municipal agency or a utility;

13 (8) "traffic control device" includes a sign, signal, road
14 marker, barricade, flare, warning light, reflector, railroad sign or
15 signal, shield, insignia, milepost, or similar device intended to
16 warn, inform, or control the flow of pedestrian, equestrian, bicycle,
17 or motor vehicle traffic.

18 * Sec. 5. AS 19.25.040 is amended to read:

19 Sec. 19.25.040. DAMAGES TO STATE HIGHWAYS AND ROADS. The com-
20 missioner of administration shall separately account for money depos-
21 ited in the general fund that is derived from damages that are re-
22 covered from vehicle owners, drivers, other persons, or insurance
23 companies for damage to property related to state-owned roads and
24 highways, including bridges, overpasses, signal poles, street lights
25 and poles, traffic control devices [SIGNALS], guardrails, or fences.
26 The annual estimated balance in the account may be used by the legis-
27 lature to make appropriations to the department for the purpose of
28 repairing the damage.

29 * Sec. 6. AS 19.25.030 is repealed.

5-0097L ✓
Utermohle
3/19/87

Original sponsors: Faiks and Sturgulewski

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 17 ()
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to unlawful possession and vandalism
7 of official traffic control devices, disregard of a
8 highway obstruction, and damages to highways."

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

10 * Section 1. AS 11.46 is amended by adding new sections to read:

11 Sec. 11.46.460. DISREGARD OF A HIGHWAY OBSTRUCTION. (a) A
12 person commits the crime of disregard of a highway obstruction if,
13 without the right to do so or a reasonable ground to believe the
14 person has the right, the person

15 (1) drives a vehicle through, over, or around an obstruc-
16 tion erected upon a highway under authority of AS 19.10.100; or

17 (2) opens an obstruction erected upon a highway under
18 authority of AS 19.10.100.

19 (b) Violation of this section is a class A misdemeanor.

20 Sec. 11.46.462. UNLAWFUL POSSESSION OF OFFICIAL TRAFFIC CONTROL
21 DEVICE. (a) A person commits the crime of unlawful possession of an
22 official traffic control device if, without the right to do so or a
23 reasonable ground to believe the person has the right, the person pos-
24 sesses an official traffic control device.

25 (b) Unlawful possession of an official traffic control device is
26 a violation and is punishable by a fine of

27 (1) not less than \$100 for the first offense; or

28 (2) not less than \$300 for each subsequent offense.

29 * Sec. 2. AS 11.46.484(a) is amended to read:

1 (a) A person commits the crime of criminal mischief in the third
2 degree if, having no right to do so or any reasonable ground to be-
3 lieve the person has such a right

4 (1) with intent to damage property of another, the person
5 damages property of another in an amount of \$50 or more but less than
6 \$500;

7 (2) the person drives, tows away, or takes the propelled
8 vehicle of another;

9 (3) having custody of a propelled vehicle under a written
10 agreement with the owner of the vehicle that includes an agreement to
11 return the vehicle to the owner at a specified time, the person know-
12 ingly retains or withholds possession of the vehicle without the
13 consent of the owner for so long a period beyond the time specified as
14 to render the retention or possession of the vehicle an unreasonable
15 deviation from the agreement;

16 (4) the person tampers with a fire protection device in a
17 building that is a public place;

18 (5) the person knowingly accesses a computer, computer
19 system, computer program, computer network, or [ANY] part of a com-
20 puter system or network; [OR]

21 (6) the person uses a device to descramble an electronic
22 signal that has been scrambled to prevent unauthorized receipt or
23 viewing of the signal unless the device is used only to descramble
24 signals received directly from a satellite or unless the person owned
25 the device before September 18, 1984; or

26 (7) the person knowingly removes, relocates, defaces,
27 alters, obscures, shoots at, destroys, or otherwise tampers with an
28 official traffic control device or damages the work upon a highway
29 under construction.

1 * Sec. 3. AS 11.46 is amended by adding a new section to read:

2 Sec. 11.46.487. FORFEITURE OF PROPERTY UPON CONVICTION. (a)
3 Motor vehicles, firearms, and other personal property used in aid of a
4 violation of AS 11.46.460, 11.46.462, or 11.46.484(a)(7) may be for-
5 feited to the state upon conviction of the offender for the crime.
6 The forfeiture under this section of a motor vehicle for which a
7 driver's license is required is subject to the procedures set out
8 under (b) - (d) of this section and AS 11.46.489.

9 (b) Upon receipt of a motion under this section for forfeiture
10 of a motor vehicle for which a driver's license is required, the court
11 shall schedule a hearing on the matter and shall notify the state and
12 the convicted person of the time and place set for the hearing. At
13 the hearing, the court may order the forfeiture of the motor vehicle
14 if the court, sitting without a jury, determines by a preponderance of
15 the evidence that the forfeiture of the motor vehicle will serve one
16 or more of the following purposes:

17 (1) deterrence of the convicted person from the commission
18 of future offenses under AS 11.46.460, 11.46.462, or 11.46.484(a)(7);

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

20 (3) deterrence of other persons who are potential offenders
21 under AS 11.46.460, 11.46.462, or 11.46.484(a)(7); or

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

24 (c) Upon forfeiture of a motor vehicle under this section, the
25 court shall require the surrender of the registration and certificate
26 of title of the motor vehicle. The registration and certificate of
27 title shall be delivered to the Department of Public Safety.

28 (d) If not released under AS 11.46.489, a motor vehicle for-
29 feited under this section may be disposed of at the discretion of the

1 Department of Public Safety.

2 (e) Forfeiture of a motor vehicle under this section is without
3 prejudice to the rights, and does not extinguish the claims, of a
4 creditor with an interest in the motor vehicle.

5 * Sec. 4. AS 11.46 is amended by adding a new section to read:

6 Sec. 11.46.489. REMISSION OF FORFEITURES. (a) Upon receiving
7 notice from the court of the time and place set for a hearing under
8 AS 11.46.487(b), the state shall provide to every person who has an
9 ascertainable ownership or security interest in the motor vehicle
10 written notice that includes

- 11 (1) a description of the motor vehicle;
12 (2) the time and place of the forfeiture hearing;
13 (3) the legal authority under which the motor vehicle may
14 be forfeited;
15 (4) notice of the right to intervene to protect the inter-
16 est in the motor vehicle.

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

- 20 (1) the petitioner has an interest in the motor vehicle
21 acquired in good faith;
22 (2) a person other than the petitioner was convicted of the
23 offense that resulted in the forfeiture; and
24 (3) before parting with the motor vehicle, the petitioner
25 did not know or have reasonable cause to believe that it would be used
26 in the commission of an offense.

27 (c) If a person satisfies the requirements of (b) of this sec-
28 tion, the court shall order that an amount equal to the value of the
29 petitioner's interest in the motor vehicle be paid to the petitioner

1 or the court shall order that the motor vehicle be released to the
2 petitioner together with title to the motor vehicle.

3 * Sec. 5. AS 11.46.490 is amended by adding new paragraphs to read:

4 (5) "highway" has the meaning given in AS 19.45.001;

5 (6) "official traffic control device" means a traffic
6 control device that has been placed on a highway by authority of a
7 state or municipal agency, a utility, or a contractor employed by a
8 state or municipal agency or a utility;

9 (7) "traffic control device" includes a sign, signal, road
10 marker, barricade, flare, warning light, reflector, railroad sign or
11 signal, shield, insignia, milepost, or similar device intended to
12 warn, inform, or control the flow of pedestrian, equestrian, bicycle,
13 or motor vehicle traffic;

14 (8) "utility" has the meaning given in AS 42.05.720.

15 * Sec. 6. AS 19.25.040 is amended to read:

16 Sec. 19.25.040. DAMAGES TO STATE HIGHWAYS AND ROADS. The com-
17 missioner of administration shall separately account for money depos-
18 ited in the general fund that is derived from damages that are re-
19 covered from vehicle owners, drivers, other persons, or insurance
20 companies for damage to property related to state-owned roads and
21 highways, including bridges, overpasses, signal poles, street lights
22 and poles, traffic control devices [SIGNALS], guardrails, or fences.
23 The annual estimated balance in the account may be used by the legis-
24 lature to make appropriations to the department for the purpose of
25 repairing the damage.

26 * Sec. 7. AS 19.25.030 is repealed.
27
28
29

5-0097L
Utermohle
3/10/87

Original sponsors: Faiks and Sturgulewski

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 17 ()
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to unlawful possession and vandalism
7 of official traffic control devices, disregard of
8 highway obstruction, and damages to highways."

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

10 * Section 1. AS 11.46 is amended by adding new sections to read:

11 Sec. 11.46.460. DISREGARD OF A HIGHWAY OBSTRUCTION. (a) A
12 person commits the crime of disregarding a highway obstruction if,
13 without the right to do so or a reasonable ground to believe the
14 person has the right, the person

15 (1) drives a vehicle through, over, or around an obstruc-
16 tion erected upon a highway under authority of AS 19.10.100; or

17 (2) opens an obstruction erected upon a highway under
18 authority of AS 19.10.100.

19 (b) Violation of this section is a class A misdemeanor.

20 Sec. 11.46.462. UNLAWFUL POSSESSION OF OFFICIAL TRAFFIC CONTROL
21 DEVICE. (a) A person commits the crime of unlawful possession of an
22 official traffic control device if, without the right to do so or a
23 reasonable ground to believe the person has the right, the person pos-
24 sesses an official traffic control device.

25 (b) Unlawful possession of an official traffic control device is
26 a violation and is punishable by a fine of

27 (1) not less than \$100 for the first offense; or

28 (2) not less than \$300 for each subsequent offense.

29 * Sec. 2. AS 11.46.484(a) is amended to read:

1 (a) A person commits the crime of criminal mischief in the third
2 degree if, without having the [NO] right to do so or a [ANY]
3 reasonable ground to believe the person has the [SUCH A] right

4 (1) with intent to damage property of another, the person
5 damages property of another in an amount of \$50 or more but less than
6 \$500;

7 (2) the person drives, tows away, or takes the propelled
8 vehicle of another;

9 (3) having custody of a propelled vehicle under a written
10 agreement with the owner of the vehicle that includes an agreement to
11 return the vehicle to the owner at a specified time, the person know-
12 ingly retains or withholds possession of the vehicle without the
13 consent of the owner for so long a period beyond the time specified as
14 to render the retention or possession of the vehicle an unreasonable
15 deviation from the agreement;

16 (4) the person tampers with a fire protection device in a
17 building that is a public place;

18 (5) the person knowingly accesses a computer, computer
19 system, computer program, computer network, or [ANY] part of a
20 computer system or network; [OR]

21 (6) the person uses a device to descramble an electronic
22 signal that has been scrambled to prevent unauthorized receipt or
23 viewing of the signal unless the device is used only to descramble
24 signals received directly from a satellite or unless the person owned
25 the device before September 18, 1984; or

26 (7) the person knowingly removes, relocates, defaces,
27 alters, obscures, shoots at, destroys, or otherwise tampers with an
28 official traffic control device or damages the work upon a highway
29 under construction.

1 * Sec. 3. AS 11.46 is amended by adding a new section to read:

2 Sec. 11.46.489. FORFEITURE OF PROPERTY UPON CONVICTION. Motor
3 vehicles, firearms, and other personal property used in aid of a
4 violation of AS 11.46.460, 11.46.462, or 11.46.484(a)(7) may be
5 forfeited to the state upon conviction of the offender for the crime.
6 The forfeiture of a motor vehicle is subject to the procedures set out
7 under AS 28.35.036 and 28.35.037.

8 * Sec. 4. AS 11.46.490 is amended by adding new paragraphs to read:

9 (5) "highway" has the meaning given in AS 19.45.001;

10 (6) "official traffic control device" means a traffic
11 control device that has been placed on a highway by authority of a
12 state or municipal agency, a utility, or a contractor employed by a
13 state or municipal agency or a utility;

14 (7) "traffic control device" includes a sign, signal, road
15 marker, barricade, flare, warning light, reflector, railroad sign or
16 signal, shield, insignia, milepost, or similar device intended to
17 warn, inform, or control the flow of pedestrian, equestrian, bicycle,
18 or motor vehicle traffic;

19 (8) "utility" has the meaning given in AS 42.05.720.

20 * Sec. 5. AS 19.25.040 is amended to read:

21 Sec. 19.25.040. DAMAGES TO STATE HIGHWAYS AND ROADS. The com-
22 missioner of administration shall separately account for money depos-
23 ited in the general fund that is derived from damages that are re-
24 covered from vehicle owners, drivers, other persons, or insurance
25 companies for damage to property related to state-owned roads and
26 highways, including bridges, overpasses, signal poles, street lights
27 and poles, traffic control devices [SIGNALS], guardrails, or fences.
28 The annual estimated balance in the account may be used by the legis-
29 lature to make appropriations to the department for the purpose of

1 repairing the damage.

2 * Sec. 6. AS 28.35.036(c) is amended to read:

3 (c) Upon receipt of a motion for forfeiture, the court shall
4 schedule a hearing on the matter and shall notify the state and the
5 convicted person of the time and place set for the hearing. At the
6 hearing, the court may order the forfeiture of the motor vehicle if
7 the court, sitting without a jury, determines by a preponderance of
8 the evidence that the forfeiture of the motor vehicle will serve one
9 or more of the following purposes:

10 (1) deterrence of the convicted person from the commission
11 of future offenses under AS 11.46.460, 11.46.462, 11.46.484(a)(7), or
12 AS 28.35.030;

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

14 (3) deterrence of other persons who are potential offenders
15 under AS 11.46.460, 11.46.462, 11.46.484(a)(7), or AS 28.35.030; or

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

18 * Sec. 7. AS 28.35.036 is amended by adding a new subsection to read:

19 (f) After conviction of an offense under AS 11.46.460, 11.46.-
20 462, or 11.46.484(a)(7) involving a motor vehicle of a type for which
21 a driver's license is required, the state may move the court to order
22 the forfeiture of the motor vehicle involved in the commission of the
23 offense.

24 * Sec. 8. AS 19.25.030 is repealed.

5-0097L
Utermohle
2/19/87

Original sponsors: Faiks and Sturgulewski

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 17 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to vandalism of official and private
7 traffic control devices and damages to highways and
8 roads."

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

10 * Section 1. AS 11.61 is amended by adding new sections to article 1 to
11 read:

12 Sec. 11.61.155. INTERFERENCE WITH OR DAMAGE TO HIGHWAY OBSTRUC-
13 TIONS OR CONSTRUCTION. (a) A driver or owner, or both, of a vehicle
14 commits the crime of disregarding a highway obstruction, if the driver
15 or owner, or both, drives a vehicle through, over, or around an ob-
16 struction erected upon a highway under authority of AS 19.10.100.

17 (b) A person commits the crime of interfering with a highway
18 obstruction, if the person opens an obstruction erected upon a highway
19 under authority of AS 19.10.100 without permission from the engineer
20 in charge of the highway.

21 (c) A person commits the crime of destruction of highway con-
22 struction, if the person knowingly damages the work upon a highway
23 under construction.

24 (d) Disregarding a highway obstruction, interfering with a
25 highway obstruction, and destruction of highway construction are
26 class A misdemeanors.

27 Sec. 11.61.160. UNLAWFUL POSSESSION OF OFFICIAL TRAFFIC CONTROL
28 DEVICE. (a) A person, except an authorized person, commits the crime
29 of unlawful possession of an official traffic control device if the

1 person possesses an official traffic control device.

2 (b) Unlawful possession of an official traffic control device is
3 a class B misdemeanor and is punishable by a fine of

4 (1) not less than \$100 or more than \$500 for the first
5 offense; or

6 (2) \$500 for each subsequent offense.

7 Sec. 11.61.165. INTERFERENCE WITH OFFICIAL TRAFFIC CONTROL
8 DEVICE. (a) A person, except an authorized person, commits the crime
9 of interference with an official traffic control device, if the person
10 removes, relocates, defaces, alters, obscures, shoots at, destroys, or
11 otherwise tampers with an official traffic control device.

12 (b) Interference with an official traffic control device is a
13 class B misdemeanor and is punishable

14 (1) for the first offense, by a fine of not less than \$300
15 or more than \$500, or by a sentence of not more than six months, or by
16 both; and

17 (2) for the second and each subsequent offense, by a fine
18 of not less than \$500 or more than \$1,000, or by a sentence of not
19 less than six months or more than one year, or by both.

20 Sec. 11.61.170. INTERFERENCE WITH PRIVATE TRAFFIC CONTROL DE-
21 VICE. (a) A person commits the crime of interference with a private
22 traffic control device if the person removes, relocates, defaces,
23 alters, obscures, shoots at, destroys, or otherwise tampers with a
24 private traffic control device without the permission of the owner.

25 (b) Interference with a private traffic control device is a
26 class B misdemeanor and is punishable by a fine of

27 (1) not less than \$100 or more than \$500 for the first
28 offense; or

29 (2) \$500 for each subsequent offense.

1 Sec. 11.61.175. FORFEITURE OF PROPERTY UPON CONVICTION. Motor
2 vehicles, firearms, and other personal property used in aid of a
3 violation of AS 11.61.155 - 11.61.195 may be forfeited to the state
4 upon conviction of the offender for the crime.

5 Sec. 11.61.195. DEFINITIONS. In AS 11.61.010 - 11.61.195

6 (1) "authorized person" means a person authorized by the
7 Department of Transportation and Public Facilities or an employee or
8 an agent, while acting within the scope of employment or agency, of a

9 (A) state or municipal agency;

10 (B) public utility;

11 (C) contractor licensed under AS 08.18; or

12 (D) business engaged in the manufacture, sale, or
13 rental of traffic control devices;

14 (2) "highway" has the meaning given in AS 19.45.001;

15 (3) "obstruction" means a traffic control device placed
16 upon a highway to exclude traffic or to control the flow or direction
17 of traffic;

18 (4) "official traffic control device" means a traffic
19 control device placed on a highway by an authorized person;

20 (5) "private traffic control device" means a traffic con-
21 trol device, other than an official traffic control device, used to
22 protect persons or property from imminent danger of serious injury or
23 to warn persons of the presence of an imminent hazard to persons or
24 property;

25 (6) "traffic control device" includes a sign, signal, road
26 marker, barricade, flare, warning light, reflector, railroad sign or
27 signal, shield, insignia, milepost, or similar device intended to
28 warn, inform, or control the flow of pedestrian, equestrian, bicycle,
29 or motor vehicle traffic.

1 * Sec. 2. AS 19.25.040 is amended to read:

2 Sec. 19.25.040. DAMAGES TO STATE HIGHWAYS AND ROADS. The com-
3 missioner of administration shall separately account for money depos-
4 ited in the general fund that is derived from damages that are re-
5 covered from vehicle owners, drivers, other persons, or insurance
6 companies for damage to property related to state-owned roads and
7 highways, including bridges, overpasses, signal poles, street lights
8 and poles, traffic control devices [SIGNALS], guardrails, or fences.
9 The annual estimated balance in the account may be used by the legis-
10 lature to make appropriations to the department for the purpose of
11 repairing the damage.

12 * Sec. 3. AS 19.25.030 is repealed.

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Alaska State Legislature



Senate

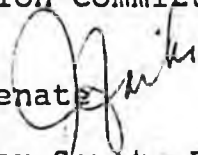
PRESIDENT
907-465-3755

JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

February 23, 1987

MEMORANDUM

TO: Senator Lloyd Jones, Chairman
Senate Transportation Committee

FROM: Senator Jan Faiks 
President of the Senate

SUBJECT: Background to CS for Senate Bill 17
An Act relating to vandalism of official
traffic control devices and damages to highways
and roads.

Senate Bill 17 has been referred to your committee for consideration. It was previously heard and passed by the Senate State Affairs Committee. This bill expands the current statutes relating to vandalism of official traffic control devices and damages to highways and roads.

Safety on our highways and roads has long been of prime concern to all Alaskans. In recent years, the increase in the number of vehicles on our roads, along with an increase in major highway construction projects has lead to an alarming rate of accidents.

Vandalism to traffic signs, barricades, warning lights, and other safety devices contributes greatly to the deaths, personal injuries, and property damages suffered each year on our highways, roads, waterways, and other public and private property. The intent of this legislation is to provide criminal sanctions for vandalism to and theft of traffic control devices which have been utilized to protect or warn of dangers to real or personal property.

OUT OF SESSION

600 YUKON DRIVE ANCHORAGE, ALASKA 99516 907-274-6611